

Many UK employers are grappling with the immigration-related impact of the coronavirus disease 2019 (COVID-19) lockdown measures and travel restrictions. The Home Office has been issuing intermittent [guidance](#) but this does not address all of the current challenges and a number of questions remain unanswered. The following FAQs are intended to answer your immediate concerns and we will continue to update them as further Home Office guidance is released.

What Measures Are in Place for Those Trying to Obtain Visas From Within the UK?

• If you are in the UK and your leave expires between 24 January 2020 and 31 May 2020

The Home Office's current [guidance](#) advises that your visa will be extended to 31 May 2020 if you cannot leave the UK because of travel restrictions or self-isolation related to COVID-19. The Home Office has said that no individual who is in the UK legally and who cannot leave because of COVID-19, will be regarded "as an overstayer, or suffer any detriment in the future". Visa holders in this position must now complete a [specific form](#) so that the Home Office can consider their request. The Home Office has said that individuals do not need to do anything else once they have submitted the online e-form and their status in the UK is secure from that point. It has also said that it will respond to such requests within five working days, although this has not been our experience to date. Note also that this visa extension mechanism does not apply to those who are planning to stay in the UK who should apply to extend their leave to remain in the UK in the usual way before it expires.

• All UK Visa and Citizenship Application Services (UKVCAS) centres are temporarily closed

It is not, therefore, currently possible to book visa appointments to extend visas from within the UK. However, those planning to extend their leave to remain in the UK before it expires should still apply using the appropriate online application form and pay the necessary application fees, even if they cannot proceed to book a visa appointment and it may then be many weeks or even months before their visa is considered, let alone approved. Applicants should refer to the [UKVCAS website](#) for further updates as to when appointments might become available. This would usually present a significant challenge for sponsored employees seeking to make a "change of employment" application (either with the same or a different sponsor) as they would not be able to start working in their new role until their visa is approved. However, the Home Office published guidance on 9 April 2020 stating:

"If you're sponsoring an employee who's waiting for their Tier 2 or 5 visa application to be decided

Sponsors may allow employees to start work before their visa application has been decided if:

- *sponsors have assigned them a CoS*
- *the employee submitted their visa application before their current visa expired*
- *the role they are employed in is the same as the one on their CoS*

Sponsor's reporting responsibilities start from the date of employment, not from the date that their application is granted.

If the employee's application is eventually refused sponsors must terminate their employment."

It is not clear whether this approach will only apply to those who already have permission to work in the UK and/or those whose leave expires on or before 31 May 2020. We are in the process of seeking clarification from the Home Office and if you have employees (prospective or existing) to whom this may apply, we would recommend that you seek further advice, if nothing else, to ensure you comply with your employer right to work obligations.

• If you are applying to stay in the UK long term

The Home Office has also confirmed that those whose leave expires between 24 January 2020 and 31 May 2020 will be able to apply from the UK to switch to a long-term UK visa until 31 May 2020. This is an important concession, as it permits a visa application from within the UK where the applicant would usually need to apply from their home country. It covers those intending to apply for a Tier 2 (General) visa but currently in the UK with a standard visitor visa, a Tier 5 Youth Mobility or GAE visa, a Tier 2 dependant visa or a Tier 2 (ICT) visa and eligible for sponsorship in a role with salary of £159,600 or more. Applicants will still need to meet all other relevant criteria for the visa in question. Applicants must apply online and the terms of their leave will remain the same until their application is decided.

If travel restrictions and reduced visa application processing remain in place beyond 31 May 2020, we expect the Home Office guidance to extend this concession to those with visas expiring after this date but no guidance on this point has been issued yet.

What About Those Applying for Visas Outside the UK?

- **All UK Visa Application Centres (VACs) are now closed or offering limited services**

For now, this means that no new visa applications are being accepted outside the UK, and some centres are only allowing applicants to collect their passports where available. Many applicants who filed their applications just before the VACs closed their doors will find they are without their passports and will not get them back until the centres re-open and we do not know when that will be.

Further updates may be published from time to time via:

- [TLS contact](#) if you are in Europe, Africa and parts of the Middle East

- [VFS global](#) for all other countries

- **Expiring Certificates of Sponsorship and 30-day entry visa vignettes**

The Home Office has acknowledged that there will be a number of sponsors who have assigned Certificates of Sponsorship to prospective or existing employees in order for them to apply for a UK visa but whose applications will not now be considered due to VAC closures prior to the Certificates of Sponsorship's three-month expiry. The Home Office has said that it "will not automatically refuse" to process applications where the Certificate of Sponsorship has since expired as a result of COVID-19 but that it will consider these on a case-by-case basis.

In the case of employees whose visas have been approved outside the UK but who are currently unable to enter the UK within the 30-day window indicated on their entry visa vignette, the Home Office has indicated informally that leeway may be given to allow them to nonetheless travel to the UK when restrictions are lifted. However, no formal guidance has been issued on this point. We expect this will be a reasonably straightforward issue to resolve for "non-visa nationals," including those from Australia, Canada, Japan, New Zealand, Singapore, South Korea and the US who could, in due course, be permitted to enter the UK using e-gates even after the expiry of their 30-day entry visa and then collect their Biometric Residence Permits confirming their long-term stay in the UK as usual. However, those nationalities who are normally required to obtain visas to enter the UK even as visitors (including but not limited to Indian, Chinese and South African nationals) may still be required to apply for a new 30-day entry visa before travelling to the UK and we await further guidance on this point from the Home Office.

In either case, we recommend that sponsors and employees retain evidence of COVID-19 related delays or travel restrictions to assist any requests for concessions at a later date (including VAC correspondence and screenshots of government issued communications).

What Are Your Compliance Obligations for Tier 2 Sponsored Employees?

The Home Office's COVID-19 [guidance for sponsors](#) deals with a range of issues:

- **Can we reduce the salaries of sponsored employees?**

Yes – subject to the relevant Home Office guidance which states:

"If you cannot pay the salaries of sponsored employees because you've temporarily reduced or ceased trading You can temporarily reduce the pay of your sponsored employees to 80% of their salary or £2,500 per month, whichever is the lower. Any reductions must be part of a company-wide policy to avoid redundancies and in which all workers are treated the same.

These reductions must be temporary, and the employee's pay must return to at least previous levels once these arrangements have ended."

This means that employers can reduce the salaries of sponsored employees within the limits indicated (subject to the relevant employment law considerations), even if this is below the appropriate minimum rate that usually applies for their sponsorship. The concession applies whether or not the sponsor's business actually applies (or is ultimately eligible) for the reimbursement of salaries under the government's Coronavirus Job Retention Scheme (furlough). The guidance appears to limit the ability to reduce salaries of sponsored employees to businesses that have "temporarily reduced or ceased trading" (rather than the wording used in the government's furlough guidance which refers to employers that "cannot maintain [their] current workforce because... operations have been severely affected by COVID-19)". The reference to a "companywide policy to avoid redundancies and in which all workers are treated the same" is somewhat confusing as it implies, for example, that if any employees are subject to salary reductions or furloughed, they should all be. However, we interpret this to mean that you will be able to make use of the concession providing the policy is applied consistently and sponsored workers are treated no less favourably than non-sponsored workers. The Home Office's primary concern will be that this concession is not used as an excuse simply to reduce the salaries only of sponsored employees.

We would still recommend that you report any reduction in salary for a sponsored employee via the Sponsor Management System in the usual way (just as you would do for an employee receiving statutory maternity pay, for example).

- **What if a sponsored employee is absent due to COVID-19?**

The relevant Home Office guidance says:

"We will not take enforcement action against sponsors who continue to sponsor employees despite absences due to coronavirus. You do not need to report student or employee absences related to coronavirus. This can include absences due to illness, their need to isolate or inability to travel due to travel restrictions. You do not need to withdraw sponsorship if because of coronavirus an employee is absent from work without pay for more than four weeks.

We will keep this under review."

This also means that sponsors would not need to withdraw sponsorship if an employee was absent from work with a salary reduction below the appropriate rate for more than four weeks (whether the employee was furloughed or absent for another COVID-19-related reason).

The guidance gives examples of employee absences "due to illness, their need to isolate or inability to travel due to travel restrictions" but in our view this is not exhaustive and so would not exclude other types of COVID-19-related absence, for example, where the business has reduced or ceased trading, employees are sent home as a result and are furloughed with a reduced salary.

- **What if a sponsored employee is working from home due to COVID-19?**

Sponsors are not required to notify the Home Office that their sponsored employees are working from home but should report other changes to sponsored employees' working arrangements via the Sponsor Management System in the usual way. This would include, for example, a reduction in salary, change in job title or core duties.

- **Can we delay the start date of a newly sponsored Tier 2 (General) employee due to COVID-19?**

Tier 2 sponsors are usually prevented from postponing the "Work Start" date given on a Tier 2 (General) Certificate of Sponsorship by more than 28 days but, in many cases, the employee will be unable to take up their role for a COVID-19-related reason whether they are currently outside or already in the UK. The Home Office has informally indicated that work start dates may be delayed in such circumstances. However, we would recommend that sponsors and employees retain evidence of COVID-19-related delays or travel restrictions (including UKVCAS or VAC correspondence and screenshots of government issued communications) to demonstrate their sponsor compliance in the event of any future Home Office compliance audit. We would also recommend that sponsors report the delayed start date via the Sponsor Management System in the usual way. Depending on the role in question, the sponsored employee may be able to start work remotely from outside the UK. This is permitted from an immigration and sponsor compliance perspective and no right to work check will be required until the employee arrives to start work in the UK although the employer should take appropriate advice from an employment, social security and tax perspective.

Are There Other Issues That Employees With Visas Should Bear in Mind?

- **Continuous residence for indefinite leave to remain (ILR), settled status or naturalisation applications**

Those intending to apply for ILR or settled status at some point in the next five years will be aware that their absences from the UK should not exceed 180 days (for ILR) or six months (for settled status) in any 12-month period during the five-year period immediately prior to their application.

Currently, those seeking to apply for ILR may exceed the 180-day threshold in the event of absences resulting from natural disaster and the Home Office has indicated that absences due to COVID-19 are likely to be treated on the same basis.

There are also some exceptions to the six-month absence rule for those intending to apply for settled status, including, amongst others, one period of up to 12 months for an important reason (e.g. childbirth, serious illness, study, vocational training or an overseas work posting). However, under current rules, this would only apply to an applicant who has spent time outside the UK if they became ill as a result of COVID-19, and even then, any period spent outside the UK before contracting the disease would not fall within the exception. If travel restrictions continue for an extended period, we expect the Home Office to expand the exceptions to cover those restricted from travelling back to the UK as a result of COVID-19, but nothing has been confirmed as yet.

Similarly, with limited exceptions, those seeking to apply to naturalise as a British citizen are generally required to ensure that their absences from the UK do not exceed 450 days in the last five years prior to applying (or 270 days in the last three years, if the applicant is married to a British citizen). Again, there is currently no COVID-19-related guidance from the Home Office on this point.

As a precaution, those caught outside the UK and concerned about their future eligibility for ILR, settled status or naturalisation should retain evidence of COVID-19-related delays or travel restrictions to show the reason they have been prevented from returning to the UK (including correspondence relating to flight cancellations and screenshots of government-issued communications on lockdown measures).

- **Cooling-off period**

Under current rules, with limited exceptions, if a Tier 2 visa holder is outside the UK when their visa expires, they will be hit by a 12-month "cooling-off period" preventing them from applying for another Tier 2 visa (or extending their previous one). We expect the Home Office to provide reassurance to holders of UK visas in this situation (including, possibly, the ability to submit an application from outside the UK), but nothing has been confirmed as yet. As a precaution, those caught outside the UK who are unable to return in time to submit an extension application should retain evidence of COVID-19-related delays or travel restrictions (including correspondence relating to flight cancellations and screenshots of government issued communications).

How Should Employers Carry Out Right to Work Checks?

Checks are still required while COVID-19-related measures are in place and employers should continue to refer to [the Home Office's right to work guidance](#) in relation to the types of documents that confirm the right to work. However, until further notice, employers may adjust their checking processes as follows:

- Ask the worker to submit a scanned copy or a photo of their original documents via email or using a mobile app
- Arrange a video call with the worker – ask them to hold up the original documents to the camera and check them against the digital copy of the documents
- Record the date you made the check and mark it as “adjusted check undertaken on [insert date] due to COVID-19”

If the worker has a current Biometric Residence Permit or Biometric Residence Card or status under the EU Settlement Scheme, employers can use the [online right to work checking service](#) while doing a video call.

These adjusted checks also apply to employers carrying out follow-up right to work checks for those with time limited leave to remain in the UK. If the employee has submitted an “in-time application” before their visa expires, to obtain the protection of a statutory excuse against a civil penalty in the event that an employee’s application is rejected, the employer should also submit a request to the [Employer Checking Service](#) (ECS) to obtain a Positive Verification Notice before the end of the 28-day grace period following the visa expiry. In order to submit an ECS request, the employer needs, amongst other things, a Home Office reference number or case ID. The employer should, therefore, ask the employee for their unique application number (UAN) issued when submitting their online application. However, if a non-EEA employee has submitted an application as the family member of an EEA national, to submit an ECS check, the employee would also need to provide the employer with their Certificate of Application, which would only be issued following a [UKVCAS appointment](#), the service for which is currently suspended until further notice. There is currently no Home Office guidance relating to this scenario and if it applies to one of your employees, we recommend that you seek further guidance from your usual firm Business Immigration contact.

The Home Office says that it will advise employers before the need to carry out adjusted checks comes to an end. Employers will then have eight weeks to carry out retrospective checks on existing employees who started work while the adjustments were in place. For this purpose, employers should then revert to the full checking process set out in [the Home Office's right to work guidance](#).

The Home Office has said it will not take enforcement action against employers if they have carried out adjusted and retrospective checks in line with the guidance. This is reassuring but does create an additional administrative burden for already hard-pressed HR and in-house recruiters to ensure that they gain the protection of a statutory excuse against a civil penalty in the event of unknowingly employing someone without the right to work. While not an excuse to cut corners, employers may take some comfort from knowing that they cannot be penalised simply for not having done a right to work check properly if the employee in question does, in fact, have the right to work.

Immigration-related measures due to COVID-19 are changing quickly, so the guidance set out in this note may change. We would always recommend that you check the latest position with your usual firm Business Immigration contact and specific advice should be taken on particular cases.

In addition, if travel restrictions, quarantine measures and reduced services at visa application centres are affecting your globally mobile workforce, we invite you to sign up to our CV19 Disruption: Global Migration Tracker. This live site provides easy access to reliable sources of information in the form of links to relevant webpages of governments, national immigration departments and official visa application centres around the world. It also provides access to detailed guidance and analysis on recent developments and COVID-19-related changes in immigration law in specific countries. If you would like to be granted free access to the site, please email [global migration](#), providing your name, organization and email address.

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