



CORONAVIRUS: IMMIGRATION Q&A

The Covid-19 pandemic has had a wide ranging impact on virtually every aspect of life, including immigration matters. We have set out below some of the key issues for businesses and individuals to consider in relation to immigration applications and sponsoring Tier 2 employees during this period.

IMPACT ON SPONSOR LICENCE APPLICATIONS

We were about to submit a sponsor licence application? Is this still possible?

The sponsor licence application form itself is submitted online but usually original documents or certified copies of original documents are submitted by post in support of the application. The Home Office has said in informal correspondence that documents in support of sponsor licence applications will be accepted by email and that original documents are not required at this time. Therefore, it appears that supporting documents can be sent as scanned pdf files to the Home Office. It has also been confirmed that a digital signature will be acceptable for the submission sheet.

IMPACT ON TIER 2 APPLICATIONS

We were planning to sponsor a US national to come to work for us in the UK. Can they still submit their application from the US?

The online visa application form can still be submitted but the application will not be processed yet. All Visa Application Support Centres in the US are closed until further notice. In other countries Visa Applications Centres are also closed. There will be delays to all decisions and the priority service and super priority service have both been suspended for applications made outside of the UK.

If you have concerns about whether to submit an immigration application, please contact us and we can advise further.

We were planning to sponsor an individual from overseas under Tier 2 (General). We have been granted the restricted Certificate of Sponsorship. Can we now put the application on hold and for how long?

The sponsor can choose to delay the application but bear in mind that usually restricted Certificates of Sponsorship ('CoS') must be assigned to the individual within 3 months of the CoS being granted by the Home Office. Once the CoS has been assigned to the individual, it must then be used to support their Tier 2 application within 3 months of the assignment of the CoS to the individual. If the restricted CoS is not assigned to the individual within 3 months or the Tier 2 application is not made within 3 months of the CoS assignment, the CoS becomes invalid. Generally the sponsor would have to apply again for a new restricted CoS if it wishes to progress with the application in future. In some cases, this may mean having to undertake the Resident Labour Market Test again.

We have seen informal correspondence from the Home Office indicating that the 3-month time limits above may be relaxed in the current situation. The Home Office has confirmed that it **may** accept a CoS that has become invalid where the employee was unable to travel as a result of coronavirus but that each case would be considered on a case by case basis.

We would therefore generally recommend that any restricted CoS is still assigned to the individual within the 3 months window.

If the individual is then unable to use the CoS to support their Tier 2 application within 3 months of the CoS being assigned to them, they should keep evidence of the reason why it was not possible – e.g. illness/travel restrictions due to coronavirus.

We wish to sponsor an individual and she has recently submitted her Tier 2 visa application overseas. She obtained her Tier 2 visa but has not yet travelled into the UK. Can she still come to the UK?

At the time of writing, the UK borders are still open but only limited flights are operating. Individuals who have had their Tier 2 application approved overseas are granted a temporary 30-day visa in their passports and they must enter the UK within this 30-day period.

If she is still able to travel from her overseas country to the UK she should do her best to enter the UK during the 30-day validity period. If she is unable to travel to the UK during the 30-day period, the general rule is that she would need to apply for a replacement 30-day visa (Transfer of Conditions), which costs £154.

However, the Home Office has now published guidance which states that if the 30-day visa has expired or is about to expire, a replacement visa can be requested with revised validity dates free of charge until the end of this year.

The request can be made by emailing the Coronavirus Immigration Team and individuals must provide their name, nationality, date of birth and GWF application reference number with 'REPLACEMENT 30 DAY VISA' in the subject line. Individuals will then be contacted once Visa Application Centres re-open to arrange for a replacement visa to be endorsed in their passports. The replacement 30-day visa will be issued with a revised validity date of up to 90 days.

The guidance also states that individuals will not be penalised for being unable to collect their Biometric Residence Permit while coronavirus measures are in place.

We wish to sponsor an individual under Tier 2. She has obtained her Tier 2 visa and is able to travel to the UK. Will she face any restrictions that could affect her ability to start working for the company when she arrives?

The UK borders are still open but on 10 May the Government announced that quarantine rules will be imposed for most people arriving in the UK as soon as possible. The implementation date is yet to be confirmed. It is understood that a 14-day quarantine period will be imposed

for all those travelling into the UK, whether by air, ferry or train. It appears that this will apply to virtually all travellers, including returning UK residents. The quarantine will not apply however to those arriving from the Republic of Ireland and nor will it apply to those arriving from France due to reciprocal arrangements with France.

We understand that once these rules are in effect anyone travelling into the UK will need to provide a UK address where they are able to self-isolate. If they are unable to provide this they will be required to quarantine themselves in accommodation arranged by the Government.

Individuals arriving in the UK will therefore need to factor in this quarantine period on their arrival in the UK and the delay this will cause to their start date in the UK. Sponsors must also make the required notifications regarding the change in start date.

We have an individual we are sponsoring who wants to apply for their family to join them in the UK. Can the family still come to the UK?

The UK Government has not yet taken the decision to close its borders to foreign nationals arriving from overseas. However, as all Visa Application Centres overseas have now closed until further notice, family members will not be able to book appointments to have their applications processed. Even if they are able to book appointments, by the time their visas are granted, they will also be subject to the 14-day quarantine rules recently announced by the Government.

The Home Office's guidance now confirms that UK Visas & Immigration services are limited and that applicants are not encouraged to submit applications at this time as UK Visas & Immigration cannot say when an application will be decided if an individual does decide to apply. However, there are sometimes good reasons why the family members may want to submit the application forms now (such as a child is approaching their 18th birthday) and we recommend taking advice on this.

Will the online immigration application forms that individuals have completed remain 'live'?

UK Visas & Immigration has confirmed in informal correspondence that application forms are being held in the online system for an increased period of 240 days. UK Visas & Immigration has said that this will ensure applications remain live and valid for applicants to be able to book appointments to submit their biometrics at application centres once services have resumed.

For individuals who have submitted applications in the UK and will need to attend a Sopra Steria centre to provide biometrics, the correspondence states that after they have submitted their forms they will need to register for their Sopra Steria account to activate this so that Sopra Steria can contact them when the service resumes.

We are planning to sponsor an individual under Tier 2 (General) who is overseas who will need to take a test to meet the English language requirement. Will they still be able to take the test?

IELTS tests have been suspended in many counties. A detailed list of locations where this has happened and relevant dates have been published on the IELTS website and can be viewed [here](#).

We are planning to sponsor an individual under Tier 2 (General) who is overseas who will need to take a TB test. Will they still be able to take the test?

TB testing has been suspended in a number of counties as many Home Office approved test centres are closed until further notice.

We have an individual currently employed under Tier 2 (General) who has submitted her online application form and has paid the fee to extend her Tier 2 leave. However, she had not yet been able to attend a Sopra Steria centre to submit her biometrics. Can she still attend an appointment?

All of the Sopra Steria centres are now closed so it will not be possible for her to attend a biometric appointment.

The Home Office has however said in published guidance that an individual's immigration status will not be negatively affected as a result of the individual not being able to attend an appointment. This guidance also states that once an application has been submitted online, applicants will be in the UK lawfully and no one will be subject to immigration action if they are unable to attend a biometric appointment or if there are delays in processing their application.

Are the Priority or Super Priority services still available to expedite immigration applications in the UK?

The Priority and Super Priority services have been temporarily suspended until further notice.

Our employee has just arrived in the UK with a Tier 2 visa and is supposed to register with the police within 7 days of his arrival. He's advised us that the Overseas Visitors Records Office (OVRO) is closed. What should he do?

Some non-EEA nationals must register with the police as a condition of their Tier 2 visa. For those living in London, this is often the Overseas Visitors Records Office ("OVRO"), which is now temporarily closed.

Those required to register at the OVRO are advised to keep evidence of their attempts to contact the OVRO and to register as soon as the OVRO re-opens.

Can a Tier 2 migrant submit an application for indefinite leave to remain if they are unable to take the Life in the UK test or English language test?

The Home Office has confirmed in informal correspondence that where an application is submitted without the English language test certificate or a Life in the UK test, the application will not be rejected as invalid. The Indefinite Leave to Remain application can be submitted in order to protect existing leave and the Home Office will put the application on hold until the applicant is able to take the relevant test(s) for the application to be decided. This also applies to applications for naturalisation as a British citizen.

We have issued a Certificate of Sponsorship to a new hire who is currently sponsored by another employer under Tier 2 (General) in the UK. She submitted her Tier 2 application but has been unable to submit her biometrics and receive a decision due to Covid-19. When can we start employing her?

In the current circumstances, individuals may start work for the new sponsor *before* their Tier 2 application has been decided provided that the individual submitted their application before their current leave expired and provided they will be working in the role specified in their Certificate of Sponsorship. The sponsor assumes all the usual sponsor obligations (reporting and record keeping duties) from the date the individual starts working for them.

If the individual's Tier 2 immigration application is later refused, the sponsor must terminate their employment. The employment contract should therefore make it clear that the employer may terminate the individual's employment in these circumstances.

We would strongly recommend keeping relevant records to evidence that the sponsor checked the individual's Tier 2 application was submitted before their current leave expired.

IMPACT ON A TIER 2 SPONSOR'S COMPLIANCE OBLIGATIONS (REPORTING AND RECORD KEEPING)

We sponsor a number of employees under Tier 2. Can we put them on unpaid leave and for how long?

Usually sponsors must stop sponsoring a migrant who is absent from work without pay for 4 weeks or more in total in any calendar year. There are very limited exceptions to this (such as maternity leave).

The Home Office has issued guidance confirming that they have relaxed this requirement during the COVID-19 pandemic and that sponsors do not need to withdraw sponsorship if the reasons for unpaid leave is COVID-19 as this is a recognised exceptional situation.

If a sponsor does decide to place a Tier 2 migrant on unpaid leave it should ensure that it notifies the Home Office of this via the Sponsor Management System and explains the reason for doing so.

We recommend taking advice before placing any Tier 2 migrant on unpaid leave as there are some ambiguities in the guidance.

Our sponsored employee can no longer work due to illness/quarantine/travel restrictions. Do we need to make any notification to the Home Office?

Provided you have authorised these absences from work, there is no need to report the employee's absence from work via the Sponsor Management System.

As set out above, recent Home Office guidance indicates that there is also now no need to withdraw sponsorship if the Tier 2 migrant is absent without pay for 4 weeks or more if the reason for absence from work is due to COVID-19 (e.g. illness, need to self-isolate or inability to travel due to travel restrictions). We recommend taking advice before placing any Tier 2 migrant on unpaid leave as there are some ambiguities in the guidance.

Sponsors are advised to keep evidence on the migrant's Tier 2 file that the reason for the absence was because of COVID-19 – e.g. emails between the sponsor and employee/ press reports, together with a copy of the current Home Office guidance on this.

Our operational needs have changed. Can we change the duties of our sponsored employees?

There has been no change due to COVID-19 in this area. If the change to the duties and responsibilities of the role means that the new role falls out of the original SOC Code (i.e. job code) a new Tier 2 application must be submitted – which may first involve carrying out the Resident labour market test.

If the duties and responsibilities of the role change but remain within the same SOC Code, no new Tier 2 application is required. However, the changes must still be reported to the Home Office within 10 working days of the change.

We strongly recommend taking immigration advice before any changes are made to a sponsored migrant's role to ensure compliance with the rules.

Can we reduce the hours and salaries of sponsored employees?

This will depend upon a number of factors, including whether this is a temporary or permanent reduction, whether the person is being furloughed, whether the new pro-rated salary still meets the required Tier 2 salary level, if the role was advertised and if the individual was sponsored under the 'high earner' category.

We strongly recommend taking immigration advice before any reductions in hours or salary are made as this is a complex area.

Should we report if sponsored employees are working from home?

Sponsors have an obligation to report any change of work location for their sponsored migrants. This would normally mean that a sponsor notification should be made for each sponsored migrant that they are now working from home.

However, the Home Office has confirmed that, due to the current exceptional situation, sponsors will not be required to report this if working from home is directly related to the pandemic. Other changes must still be reported as usual.

How do we carry out right to work checks for new starters when the whole office is working from home?

It may be possible to carry out an online right to work check if the individual holds a current Biometric Residence Permit, Biometric Residence Card or status issued under the EU Settlement scheme (settled or pre-settled status). Employers should carry out this online check whilst in a video call with the prospective employee.

If this is not relevant, the Home Office has temporarily relaxed the right to work checks **as of 30 March 2020**. This relaxation of the rules allows employers to check the relevant scanned documents (passport, Biometric Residence Permit etc) over a video call with the prospective employee. The person carrying out the right to work check must also record the date of the check as an 'adjusted check undertaken on [date] due to COVID-19'.

The check still needs to be carried out in the correct way – in line with the Home Office right to work checklist below but potentially means that employers can still obtain the statutory defence against a possible civil penalty of £20,000 should that employee subsequently be found to be working illegally in the UK.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774286/Right_to_Work_Checklist.pdf.

The Home Office has also confirmed that once this temporary relaxation of right to work checks has ended, employers must then carry out a follow-up/retrospective right to work check within 8 weeks of the COVID-19 measures ending and keep both right to work checks on record. The Home Office has said it will advise employers in advance when these measures will come to an end.

The Home Office has stipulated that this follow up right to work check must be recorded as 'the individual's contract commenced on [date]. The prescribed right to work check was undertaken on [date] due to COVID-19.'

The Home Office has confirmed that, provided the initial adjusted check and the follow up check were carried out correctly, they will not take enforcement action against the employer.

CAN WE FURLOUGH OUR TIER 2 SPONSORED MIGRANTS?

Can you furlough employees who are sponsored under Tier 2 under the government's Coronavirus Job Retention Scheme?

Based on the government's guidance on furloughing and some immigration guidance that has now been published, our view is that staff who are sponsored under Tier 2 (General) could be furloughed provided that they are employed in the UK by a UK employer and are subject to PAYE and the employer has a UK bank account and the other eligibility requirements are met.

The latest immigration guidance published confuses the matter however by dealing with furloughing under the heading 'If you cannot pay the salaries of sponsored employees because you've temporarily reduced or ceased trading'. It also states that any reductions must be part of a company-wide policy to avoid redundancies and in which all workers are treated the same. It's currently unclear what is meant here. From a common sense perspective however, we do not see how they would expect all staff to be furloughed and companies to furlough sponsored workers only where they have temporarily reduced/ceased trading.

The ability to furlough should also apply to individuals directly employed in the UK under Tier 2 (ICT). However, individuals who have been seconded to the UK and who remain employed by an overseas entity are likely to fall outside the Job Retention Scheme and it would appear that they cannot be furloughed.

It is still not entirely clear if employers must comply with minimum salary requirements under Tier 2 if Tier 2 migrants are furloughed. If so, employers may need to top up salaries for sponsored employees to the amount needed to ensure that their salaries do not fall below the minimum level permitted for the particular roles.

Further, changes to salary must be reported to the Home Office within 10 working days of the change. Employers should therefore seek advice before taking any action in relation to individuals working for the company under Tier 2 (General) and Tier 2 (ICT).

In any case, any reduction in salary must be temporary and the sponsored worker's pay must return to its usual level once the furloughing arrangements have ended.

We are sponsoring an individual under Tier 2 (General) who is sponsored under the high earner category. We want to furlough them and reduce their salary to below £159,600. Is there any action that we need to take first?

The usual position is that if the salary of a high earner is to be reduced to an amount below £159,600 a new Tier 2 application would first need to be made before the reduction takes place. The Home Office has confirmed in informal correspondence that the individual is not required to submit a change of employment application where the salary has been reduced to below £159,600 if the reduction is due to COVID-19.

The reduction must be in line with the concession provided in the Home Office's immigration guidance, i.e. temporarily reducing the salary of sponsored workers to 80% of the salary stated on their Certificate of Sponsorship or £2,500 per month, whichever is lower. This must be part of a companywide policy to avoid redundancies and the individual's salary must return to its usual level once they return to work. The change to salary must still be reported to the Home Office within 10 working days of the change.

This concession is to date in informal correspondence and we are awaiting a formal policy announcement from the Home Office.

We have a sponsorship licence and want to continue to be able to access the Sponsor Management System (SMS). Can a Level 1 User who has been furloughed continue to log in and carry out actions on the company's behalf?

Employees who have been furloughed are not allowed to carry out any work. As the Level 1 User carries out the day-to-day sponsorship activities for a company on the SMS, our view is that a Level 1 User on furlough would not be able to log into the SMS and perform any tasks in the system as this would amount to working. Companies that have sponsorship licences should now be considering who their existing Level 1 Users are, the position of these employees going forward and their ability to continue to be able to log into the SMS remotely. We strongly recommend adding another one or two Level 1 Users (on the priority service) to ensure you can continue accessing the SMS once this service resumes. The Home Office has published a message in the SMS to sponsors that the priority service remains closed.

WHAT ABOUT INDIVIDUALS IN THE UK WHO ARE UNABLE TO LEAVE BEFORE THEIR CURRENT IMMIGRATION LEAVE EXPIRES?

The Home Office has now published guidance in relation to the following:

- Individuals in the UK (of any nationality) whose leave will expire between 24 January 2020 and 30 May 2020 **AND** who cannot leave the UK due to travel restrictions or self-isolation as a result of COVID-19 may request an extension of their leave to remain until 31 May 2020.

To have their leave extended no fee is required. **Individuals must however update their records with the Coronavirus Immigration Team. They will need to complete an online form and provide their personal details, including why they cannot return to their home country. For example, if the border has closed, flight restrictions or self-isolation.** UK Visas & Immigration will then update its records. No new visa or Biometric Residence Permit (BRP) will be issued. Individuals will need to contact the Coronavirus Immigration Team to get a status letter confirming a visa extension or a new BRP with a revised expiry date.

Please note that the underlying legislation has not changed and that this appears to be a concession outside of the Immigration Rules. Therefore we advise individuals to seek advice if their leave is due to expire before 31 May 2020 as it may be better for them to submit a fresh immigration application.

The Home Office has emphasised that this scheme is not for anyone who wishes to stay in the UK on a long-term basis. Status letters confirming successful extensions state that individuals must leave the UK as soon as they are able to do so.

- Concession to allow individuals to submit applications from within the UK where usually these applications must be submitted from the applicant's home country

For example, switching from Tier 5 (Youth Mobility Scheme) leave into Tier 2 (General) would now be permitted from within the UK **if the individual's leave is due to expire between 24 January and 30 May 2020 AND the individual cannot leave the UK due to travel restrictions or self-isolation as a result of COVID-19.** Individuals will still need to meet the same requirements for the particular immigration application and submit a valid online application and pay the UK application fees.

NHS WORKERS

On 31 March 2020, the Government announced that doctors, nurses and paramedics with immigration leave due to expire before 1 October 2020 will have their leave automatically extended for one year to enable them to continue their work on the frontline against COVID-19. This will now also include other frontline workers such as midwives, radiographers, social workers and pharmacists. It will apply to those working both in the NHS and independent sector. NHS workers eligible for an automatic extension who have paid for an unresolved application will be offered the option of a refund.

It has also been confirmed that family members and dependants of healthcare workers who sadly pass away as result of contracting the virus will be offered immediate indefinite leave to remain.

This extension will be free of charge, with no immigration application fees or Immigration Health Surcharge payable.

The automatic extension of one year will also apply to any family members who are in the UK as their dependants.

The Home Office has also lifted restrictions on the number of hours that student nurses and doctors can work for the NHS.

TIER 2 MIGRANTS AND ACCESS TO PUBLIC FUNDS

Our Tier 2 sponsored migrant has asked whether they can now claim public funds in the UK?

One of the conditions of Tier 2 leave is that the individual has no access to public funds.

However, we understand from some correspondence with the Home Office that employees whose leave in the UK is subject to conditions that they have no recourse to public funds *may* be able to access assistance (subject to meeting all requirements) through:

- Statutory sick pay;
- Contributory-based employment and support allowances; and
- Support provided to employers through the job retention scheme.

In particular, HMRC has confirmed in published guidance that grants under the job retention scheme are not counted as 'access to public funds'.

Before advising sponsored employees to claim public funds, we would strongly recommend that they wait for official Home Office guidance and print this out so that it can be relied upon in the future. This is particularly important before claiming any employment or support allowance.

TIER 2 MIGRANTS, APPLICATIONS FOR ILR AND UK ABSENCES DUE TO COVID-19

Our Tier 2 (General) sponsored migrant worker has been stranded overseas during this period. Will she still be eligible to apply for indefinite leave to remain or British nationality in future?

No specific guidance has yet been published by the Home Office on how it will consider absences from the UK due to the COVID-19 pandemic that cause individuals to exceed the permitted absences for ILR or naturalisation applications. The Home Office already has a power to exercise its discretion if absences are due to serious, compelling and exceptional circumstances.

The Home Office has already recognised that this current situation is exceptional and it is hoped that they will publish specific guidance shortly to allow for excess absences due to the pandemic.

We recommend that individuals who are looking to apply for ILR and/or British nationality in the future and are currently unable to return to the UK keep evidence of why they are unable to return so that they have this for any future ILR/nationality application.

FOREIGN VISITORS IN THE UK

We have someone from our overseas office who has come over for a business trip. What happens if they fall ill?

Visitors in the UK are normally charged for any non-urgent treatment that they receive on the NHS while in the UK. The government has confirmed that all diagnosis and treatment of coronavirus will be free of charge to overseas visitors (even if tests later show negative results).

IS THERE ANY IMPACT ON EUROPEAN WORKERS?

We have European employees who now wish to leave the UK and return to Europe. Is this OK and will it affect their ability to stay in the UK long-term in light of Brexit?

It is important to check if your European employee has already obtained pre-settled status under the EU Settlement scheme. This is because they will need to apply for their settled status once they have 5 years' continuous residence and this settled status application will be jeopardised if they spend more than 6 months out of the UK in any 12-month consecutive period.

We were in the process of recruiting a European national to work for us starting later this year. Can we proceed with this recruitment?

Up until 11pm on 31 December 2020, European nationals still have the ability to come to the UK and work on the basis of their current EEA passport or ID card.

Provided they have started residing in the UK by that date, they will be covered by the EU Settlement application and should be able to stay long-term in the UK. **It's worth noting that all European nationals and their family members (even those who have been here for decades) must make an application under the EU Settlement scheme by 30 June 2021 at the very latest** (subject to limited exceptions).

This guidance is correct as at 14 May 2020. It is not intended as legal advice and should not be used as a substitute for such advice.

KEY CONTACTS

For further information about any of the issues raised in this guide, or in relation to immigration issues arising from COVID-19, please contact:



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