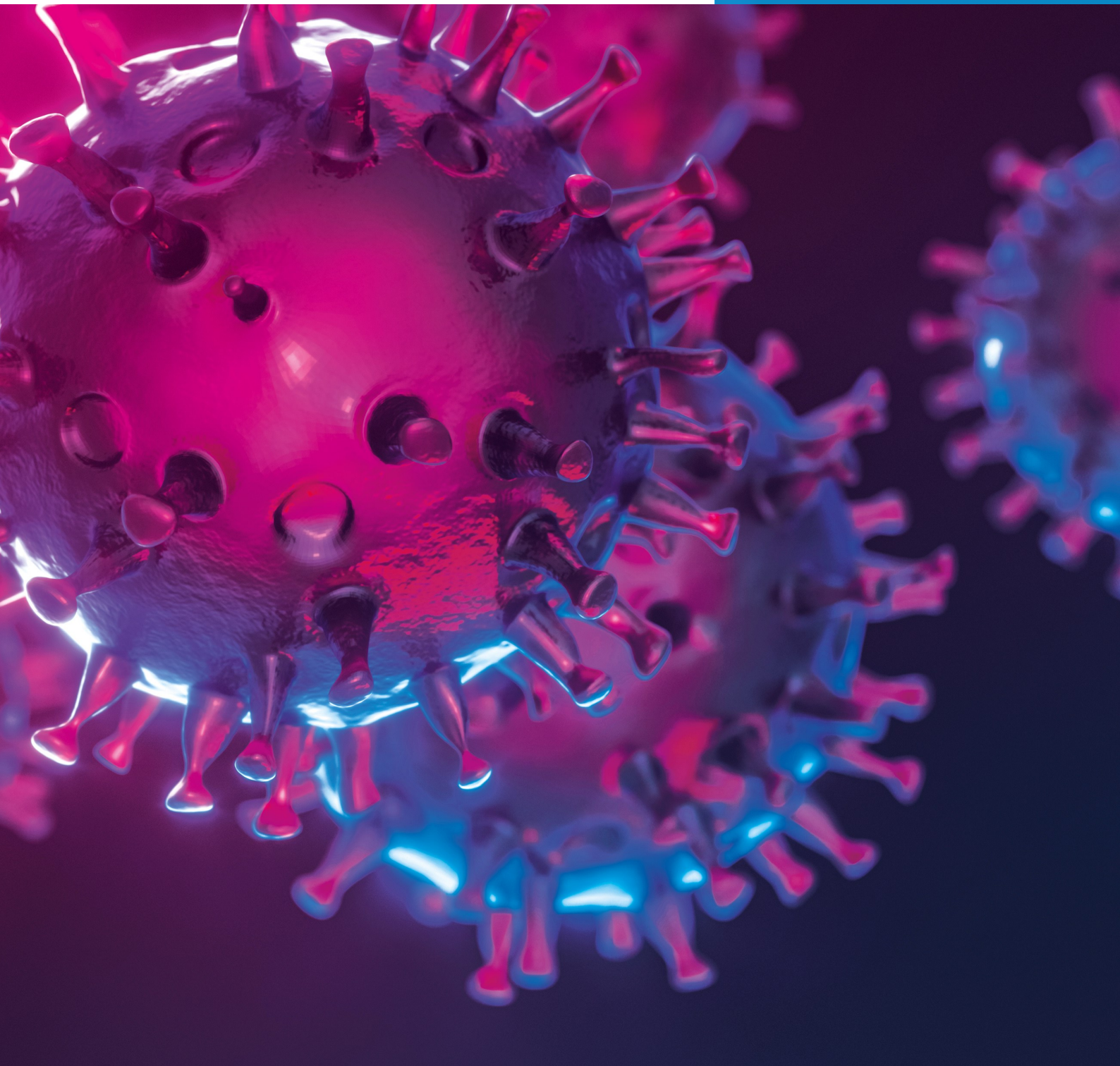


# Covid-19

## UK Immigration – FAQs

June 2020



# Covid-19

## UK Immigration – FAQs

**We set out below our answers to the immigration implications of the COVID-19 pandemic which you should be aware of including the impact on visa applications, the Coronavirus Job Retention Scheme and the prevention of illegal working requirements.**

**The issues relating to COVID-19 and UK visas are complex and frequently changing. Please contact us for advice on any specific situations.**

### **What are the most recent updates which I should be aware of?**

- Those arriving to the UK from 8 June 2020 will need to self-quarantine for 14 days, with some exemptions
  - The Immigration Health Surcharge is to be scrapped for all NHS staff and care workers
  - The Home Office is slowly scheduling the re-opening of visa application centres in the UK. At the time of writing only those who had already booked appointments prior to lockdown have been able to schedule appointments from 1 June 2020 onwards. More appointments will be opened up from 22 June 2020.
  - For some in-country applications submitted online the Home Office has started requesting supporting documents and in some very straightforward cases approving applications without biometrics
  - Some overseas visa application centres have reopened, including those in Beijing, Duesseldorf, Hong Kong, Kuala Lumpur, Melbourne, Perth, Shanghai and Sydney. Overseas visa application centres due to open on 22 June 2020 include Auckland, Brussels, Chengdu, Istanbul, Madrid, Paris, Seoul, Shenzhen and Tokyo with more hopefully to follow soon.
- Some English language testing centres have restarted their operations and there are some very limited Life in the UK test bookings available.
  - The Home Office has confirmed that those with visas expiring between 24 January 2020 and 31 July 2020 who cannot leave the UK due to COVID-19 can be granted an extension to 31 July 2020 and can switch into a long-term visa category from within the UK rather than having to apply abroad.
  - The Home Office has confirmed that individuals with an outstanding in-country application can start work in Tier 2 with their new sponsor prior to receiving a decision in the application, as long as certain conditions are met.

### **Self Quarantine**

The Government has brought in measures from 8 June 2020 which require new arrivals to the UK to self-quarantine for 14 days, with some exceptions. The measures will be reviewed every three weeks.

New arrivals to the UK will need to complete a form with their contact details and are likely to be contacted to check that they are complying with the requirements. They must arrange accommodation, otherwise the government will provide them with accommodation at their own expense. Those failing to comply could be fined up to £1,000.

On arrival, travellers should use personal transport if possible. They must only go out for urgent assistance, to buy food or medicine where this cannot be brought to them or for any other compassionate circumstance. Visitors are not permitted except for where required for essential support.

Those exempt include those entering via Ireland, the Isle of Man or the Channel Islands and those in certain essential occupations.

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### Furlough and employment changes

#### **I have furloughed my Tier 2 sponsored staff using the Coronavirus Job Retention Scheme. What do I need to consider?**

The Government announced the Coronavirus Job Retention Scheme (CJRS) on 20 March 2020, which has been extended until the end of October. Through the scheme the Government will reimburse up to 80% of the salaries of employees who have been furloughed using the scheme, up to £2,500 per month. Those employees must be paid at least at the rate reimbursed by the Government and they must not carry out any work whilst furloughed. The final date by which an employer needs to agree with their employee and place them on furlough was 10 June 2020 to be eligible under the scheme. Employers can only claim for furloughed employees that were employed and who were on your PAYE payroll on or before 19 March 2020.

The Home Office has confirmed that sponsors of Tier 2 workers can reduce their salaries to 80% of the salary stated on their Certificate of Sponsorship (CoS) or £2,500 per month, whichever is lower and they have confirmed that sponsored workers are eligible for the CJRS.

Tier Sponsored workers are prohibited from receiving public funds, however the Government has confirmed that funds received by employers under the CJRS in respect of Tier 2 workers will not be considered as public funds. However Tier 2 workers must not claim benefits while on furlough as this would be a breach of the conditions of their visa and could lead to their visa being cut short and potentially to compliance action against the sponsor.

Where sponsored workers are placed on furlough, sponsors must ensure that they meet the following requirements:

- The salary is not reduced any further than 80% of the salary recorded on the CoS or £2,500 per month, whichever is lower.
- The reduction in salary must be part of a company-wide policy to avoid redundancies and in which all workers are treated the same. This means that sponsored workers should not be furloughed because of their visa status or treated more or less favourably than non-sponsored workers.
- The reduction must be temporary and the employee's pay must return to at least the level stated on the CoS.
- All changes in salary must be reported on the Sponsor Management System (SMS) within 10 working days as per the sponsor duties.
- Tier 2 sponsored workers are restricted in terms of the amount of supplementary work, training or voluntary work they are permitted to do and they should keep within these requirements and check on these conditions if they are unsure, before starting any work while on furlough.

We recommend that you contact us for advice in relation to ensuring that you are compliant in particular in reporting a change in migrant circumstances on the SMS; maintaining records that show that you carried out company-wide measures to avoid redundancies; and ensuring that Tier 2 workers are aware of the conditions of their visas.



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### Can I place a Tier 2 employee on unpaid leave?

The Government guidance for Tier 2 sponsors states that a Tier 2 employee cannot take four weeks or more of unpaid leave per calendar year. This must be pro-rated. For example if a person works full time, the number of days' unpaid leave must be less than 20 and for a person working a four-day week it must be less than 16 days in total in each calendar year. If they take more than this there is a breach of their conditions and their visa may be cut short.

However the Government has said that a sponsor does not need to withdraw sponsorship and the Home Office will not take enforcement action if an employee is absent from work without pay for more than 4 weeks because of coronavirus and if this absence is authorised. This absence does not need to be reported on the SMS.

The absence must be due to coronavirus. The guidance states that this includes absences due to illness, or a need to isolate or inability to travel due to travel restrictions. Sponsors should carefully review in each case whether the unpaid leave is 'due to coronavirus' and keep a note on the person's HR file to explain this.

### We are planning to reduce pay and working hours temporarily/permanently for a member of Tier 2 staff. Is this allowed?

The guidance states that where there is a drop in salary which takes a Tier 2 employee below one of the salary thresholds for Tier 2, such as the £30,000 minimum for experience workers under the Tier 2 (General) route or the minimum appropriate rate for the job role under the Standard Occupational Classification Code, then normally they cannot continue to be sponsored except for some exceptions such as long-term sick leave.

A reduction in salary must be notified within 10 working days on the SMS.

However as detailed above, the Government has permitted sponsors to temporarily reduce the salary of sponsored workers to 80% or £2,500 per month, whichever is lower. This means that if sponsored workers fall below the minimum salary threshold during this period, this is exceptionally permitted, as long as the

amount does not fall below 80% or £2,500 per month, whichever is lower, and as long as the requirements set out above are met, such as that the salaries return to previous levels. Please see the separate section above regarding furloughing.

### We have furloughed a Tier 2 employee who is a high earner – is that ok?

Yes. 'High earners' are those who were granted their visa on the basis that they are earning £159,600 per year or more, meaning that their employer was exempt from the requirement to advertise their job first to local workers.

Normally where the salary drops below the high earner threshold a new Tier 2 visa application is required. However where furloughing a Tier 2 worker results in the salary falling below the high earner threshold of £159,600, this is permitted, as long as the Government requirements in relation to furloughing Tier 2 workers listed above are met, including that the salary returns to previous levels once the measures end. This change must be reported on the SMS within 10 working days.

### We are deferring a salary payment for a Tier 2 employee – is that ok?

It is permitted to defer a sponsored worker's salary but this should be reported on the SMS within 10 working days. Appropriate documentation regarding the deferment should be kept on the personnel file.

### Can I re-deploy a Tier 2 employee?

You may wish to change the duties of a sponsored Tier 2 employee to better suit business needs in the current environment. Whether this is permitted will depend largely on whether the new duties fall within the same Standard Occupational Classification code as that on the CoS. If they do not, a new visa application may be required.

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### We may need to terminate the employment of a Tier 2 worker – what are the considerations?

It is unfortunately the case that some companies are forced to terminate the employment of sponsored workers or make them redundant due to the economic downturn. Employers must notify the Home Office on the SMS within 10 working dates of the person's last day of employment.

Once the notification has been made, the Home Office will write to the person to curtail or cut short their visa to 60 calendar days and to confirm the new visa expiry date. The individual is permitted to apply for leave to remain with another employer or in a different visa category if they qualify. However if they cannot apply within the required period they will be required to leave the UK.

Once a Tier 2 worker leaves the UK following the termination of their employment, a 12-month cooling off period will be triggered which means that they cannot apply for another Tier 2 visa for 12 months unless they will be earning at least £159,600 if applying in Tier 2 General or £120,000 if applying in Tier 2 Intra-Company Transfer, or where their CoS was assigned for three months or less.

The Home Office has confirmed that those whose visas expire between 24 January 2020 and 31 July 2020 will be allowed to extend their stay in the UK until 31 July 2020.

The Home Office has also confirmed that those whose

visas expire on or before 31 July 2020 will be permitted to apply from within the UK including applications where they would normally need to apply for a visa from their home country, as long as they meet the requirements and pay the application fees. They have stated that the terms of their leave will remain the same until their application is decided.

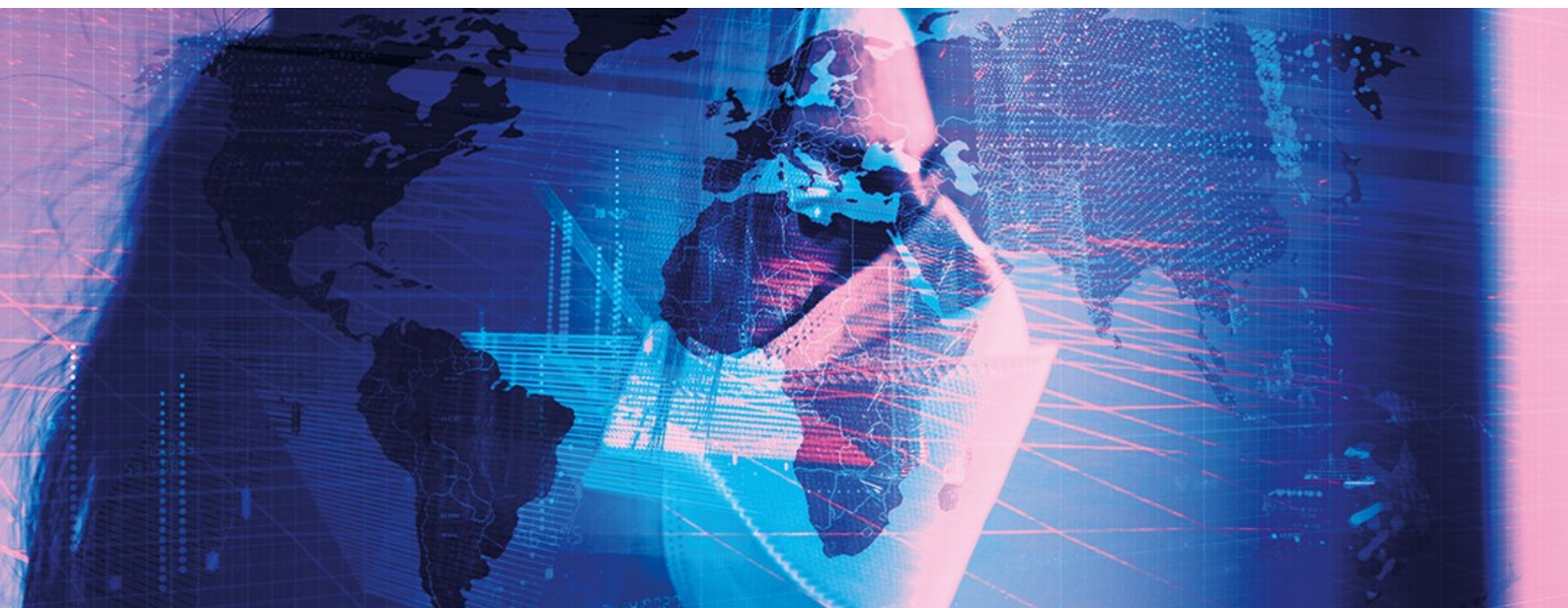
### Visa Processing

#### **Our new hire applied overseas in Tier 2 and is still waiting for a decision in their application. What can we do?**

The Home Office works with third party commercial providers, VFS Global and Teleperformance, who operate the visa centres abroad. As stated above, centres are slowly starting to reopen gradually.

Due to the closure of some centres, some applications have been placed on hold and are awaiting a decision. In addition, some commercial partners are experiencing problems with being able to print and send UK visa vignettes and to return passports to applicants.

Any concerns should be sent to the Home Office's Coronavirus Immigration Team at [CIH@homeoffice.gov.uk](mailto:CIH@homeoffice.gov.uk). As the application centres are gradually opening up, outstanding applications should hopefully soon be resolved.



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### **Our new hire has a visa sticker valid for 30 days and it has now expired. Do they need to re-apply?**

If the person is unable to travel during the 30-day period of their entry clearance vignette, they can request a replacement visa free of charge until the end of 2020 by emailing [CIH@homeoffice.gov.uk](mailto:CIH@homeoffice.gov.uk) with the necessary details. Once the visa centres reopen, they will be contacted to arrange for a replacement visa to be placed in their passport.

The Government has confirmed that individuals will not be penalised for being unable to collect their Biometric Residence Permit while coronavirus measures are in place.

Non-visa nationals may be able to travel without obtaining a replacement vignette. Please contact us if you require further advice on this.

### **The Certificate of Sponsorship has expired because of delays due to COVID-19. Do we need to issue a fresh CoS?**

Not necessarily. Once assigned, a CoS is usually valid for three months within which the visa application should be submitted. The Home Office have confirmed that it will not automatically refuse applications and may accept a CoS where this has expired as a consequence of COVID-19, although the decision is at the discretion of the Home Office and will be considered on a case-by-case basis. Employers should bear in mind that individuals who are unable to travel can still submit the online application pending visa centres reopening.

### **Our new hire is overseas, can we continue to offer Tier 2 sponsorship?**

Yes. Employers can start the sponsorship process in the normal way, but it will not be possible to complete until the individual can attend a visa application centre (VAC) to submit their biometric information. The Home Office has waived the 45-day deadline within which individuals are required to submit their biometric information following their online visa application. Those who have submitted their application online but should expect delays in obtaining an appointment once the VACs reopen and delays in the processing of their application after they have attended an appointment.

Applicants must check and comply with any self-isolation period in the country of application prior to attending an appointment and any restrictions that country has placed on international travel.

In exceptional circumstances it is possible to request a visa waiver in order to enter the UK as a visitor, by making a request to [CIH@homeoffice.gov.uk](mailto:CIH@homeoffice.gov.uk). Requests will be considered on a case-by-case basis. This may be possible if there are urgent, compelling or compassionate reasons, which could potentially include an urgent business need to be in the UK or those wishing to join a British or settled family member.

### **The visa application has been granted but we want to delay the start date - is this permitted?**

Under normal circumstances, the start date for a Tier 2 worker cannot be postponed for more than 28 days from the start date on their Certificate of Sponsorship (CoS) or 28 days from when the visa was issued (whichever is the later). We understand that it is likely that where employees were unable to start on the original intended date due to COVID-19, employers can notify any excess time as unpaid leave and are seeking written confirmation in the absence of any written guidance on this point.

### **Our employee is required to apply for a new visa from outside the UK – what should they do?**

The Government has said that those with a visa expiring between 24 January 2020 and 31 July 2020 who would normally have to apply from outside the UK can now submit their application in the UK instead if they are applying in a long-term visa category such as Tier 2. Those applicants must satisfy all the requirements of the visa category.

### **Our Tier 2 employee has been held up abroad due to travel restrictions – will they be impacted?**

Where a Tier 2 visa holder is stranded abroad and their visa will expire before they are able to return, they may be impacted by the cooling-off period which will prevent them applying for a new Tier 2 visa for 12 months unless as stated above they are a high earner or their CoS was for three months or less. The Home Office may use some discretion but this would be likely to be on a case-by-case basis.

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Tier 2 General migrants who want to apply for Indefinite Leave to Remain are not permitted to have absences of more than 180 days in any 12-month period, unless the absences are due to exceptional circumstances. It is likely that the Home Office would consider people stranded abroad due to travel restrictions under COVID-19 to have exceptional circumstances. We advise that you keep records of flight tickets; screenshots of any local or UK Government guidance advising that only essential travel is permitted; and any correspondence regarding flight cancellations, which can be submitted in support of your application for Indefinite Leave.

### **Our new hire is in the UK and his Tier 2 application is on hold – what can we do?**

Visa application centres in the UK are slowly reopening. More appointments will become available on 22nd June 2020 and hopefully the delays will begin to ease.

The Government has confirmed that a Tier 2 applicant is permitted to start their sponsored role with a new employer before the application has been decided, as long as certain requirements have been met. In these circumstances the sponsor's reporting responsibilities start from the date you have assigned the CoS, not from the date that their application is granted. If for any reason the visa is not granted, the employment must be terminated.

Alternatively, for example if the person is not prepared to hand in their notice until they receive an approval, the visa application can be prepared as far as possible pending attending a biometrics appointment.

### **Our employee has submitted a Tier 2 extension which is pending and their visa has since expired – what should we do?**

In the event that the person submitted a valid application prior to their visa expiry date, they can continue to remain in the UK under the same conditions as their previous visa until a decision is made in their new application. The Home Office has waived the 45-day deadline within which individuals are required to submit their biometric information following their online visa application.

You are likely to need to carry out a repeat right to work check. Please see further details below.

### **Our employee has submitted an application which requires them to complete an English language or Life in the UK test – what is the position?**

English language testing centres have been closed but some are starting to re-open and there is some limited availability for Life in the UK tests. In the meantime the Government has confirmation that applications which are submitted without an English language or Life in the UK test having been taken due to COVID-19 will be placed on hold until the person has been able to sit a test.



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### **We are a Tier 2 sponsor licence holder, what are our duties during the COVID-19 pandemic?**

Tier 2 sponsor licence holders having reporting and record-keeping duties, which continue during the COVID-19 pandemic. However until further notice, Tier 2 sponsors do not need to notify of the following:

- That a sponsored worker is working from home temporarily due to the pandemic. A sponsor must continue to report other changes, for example if a sponsored worker will permanently be working from home, unrelated to COVID-19; if a sponsored employee is working out of another office abroad. While employees are working from home, sponsors should continue to monitor absences and attendance at work;

- Authorised employee absences;
- Absence without pay for four weeks or more.

If you have concerns regarding your sponsor licence duties and how these are impacted by COVID-19, please seek further advice from our specialist immigration team;

## Right to Work

### **Do we still need to check an employee's right to work during the pandemic?**

Yes.

Given that a large proportion of the workforce are working remotely, employers may have difficulty in carrying out right to work (RTW) checks in the usual way. The Home Office has published [guidance](#) advising that the COVID-19 pandemic, employers can carry out right to work checks on the basis of viewing scans of the right to work check documents rather than originals.

Employers would need to have a video call with the person while they review the scans. Employers should continue to check the list of documents set out in the "[Right to Work: Employer's guide](#)";

Please note however that employers must then carry out a further right to work check by viewing the original documents within eight weeks of COVID-19 measures coming to an end. The Government will confirm when the measures have come to an end.

Where a person has submitted a visa application prior to their visa expiry date but a decision has not been made prior to their visa expiring, the employer has a grace period of 28 days from the visa expiry date in which to contact the [Employer Checking Service](#) to check that the person has made a valid 'in-time' application. Following a successful check the Home Office should issue a Positive Verification Notice which the employer can use as proof of right to work six months.

Please contact us if you require further assistance on the right to work requirements.

## EEA Nationals

As we are in the transitional period following the UK leaving the EU, EU nationals and their family members have until 30 June 2021 to apply to the EU Settlement Scheme. They should continue to apply. Those applying for settled status should show that they have not had absences of more than six months in any 12-month period. There is some discretion where a person has had absences for an 'important reason' and we advise that the person keeps records of any reason for being unable to travel, such as government advice allowing only essential travel and flight cancellations.

The Home Office are continuing to process applications with some delays. Non-EU family members can now submit an application but their application will be placed on hold until the visa centres reopen and they can attend a biometrics appointment.