



COVID-19 – IMMIGRATION IMPACT
ILPA RECOMMENDATIONS TO THE HOME OFFICE

International measures reducing the impact of COVID-19 are affecting foreign nationals who either wish to enter for example to take up a job or are currently in the UK and are unable to leave or apply to extend their stay. It is also having an impact on businesses who rely on them.

These individuals would be anxious about inadvertently breaching UK immigration laws by for example overstaying and harming their ability to visit and reside in the UK. Given these exceptional circumstances, the UKVI's approach must not prejudice individuals impacted by the pandemic and should be flexible and embrace the variety of situations arising from the current containment measures, both immediate and in the longer term. The UKVI's policy on the Ebola outbreak in 2014-16 sets an example of how the UKVI could respond to the COVID-19 pandemic. ILPA strongly recommends the following:

- a. Flexible and pragmatic approach to those whose position is compromised by the COVID-19 pandemic.
- b. Automatic extension of limited leave to remain for any foreign national currently in the UK to at least September 2020.
- c. Allowing foreign nationals to rely on expired documentation for entry into and residence in the UK.
- d. Waiving residence requirements for individuals who either cannot return to the UK or need to travel out of the UK due to COVID-19 outbreak.
- e. Waiving employment restrictions for individuals whose employers are negatively impacted by COVID-19.
- f. Reporting tool to communicate inability to comply with immigration conditions.
- g. Confirmation to third parties (e.g. employers, landlords, NHS) that individuals' residence in the UK remains lawful.

We understand the situation is moving extremely quickly and so it has not been possible to follow ordinary procedures implementing such significant changes to immigration control. However, we urge the Home Office to ensure that any automatic extensions of leave to enter/remain are made secure by way of statutory instrument.

An urgent comprehensive policy update is needed now as individuals are already facing situations which compromise their UK immigration position. The below table sets out concerns and recommendations proposed by ILPA members based on their experience of representing clients whose immigration position has been affected by COVID-19 containment policies. The Law Society has received similar concerns from members and supports ILPA in raising these concerns to assist the Home Office at this time, however, the proposals within this document do not amount to Law Society policy.

The table reflects the live issues arising from the current pandemic and further issues may arise which we will convey to the Home Office as soon as practicable. Given the fast moving situation ILPA is ready to meet with Home Office representatives to contribute to the measures and policies the Home Office will adopt in response to COVID-19.

UKVI operations and policy

	Issues	Recommendations
Out of country		
1.	Applicants unable to apply from their country of nationality / residence	We recommend a flexible approach is adopted to allow applications to be made from different countries , provided the applicant can show lawful entry into that country.
2.	Criminal record certificates and English language test (family/Tier 2/Tier 4)	We recommend accepting alternative evidence or waiving the requirement (where appropriate) if it can be demonstrated that the centres are closed.
3.	Decision delivery - Refugees unable to travel due to travel bans and no access to social assistance to collect decisions.	We recommend that the Home Office send decisions to solicitors on record rather than insisting vulnerable people with no resources pick up decisions in person. E.g. Members have reported that clients in Hitsas, Ethiopia who applied for visas to join refugee siblings in UK, cannot get to the VAC in Addis to pick up decisions as Hitsas is closed.
4.	30 day vignette - Visa holders unable to travel to the UK within the 30-day validity period on their vignette.	Given the difficulty in applying for replacement vignettes and current travel restrictions we recommend the following: 1. issuing vignettes for a longer period of 90 days to allow for possible delays in travel to the UK 2. exceptionally allowing non-visa nationals to enter the UK relying on the expired vignette 3. facilitating an easier process for the issuing of replacement vignettes one where no application form is required
5.	BRP Collection - Visa holders unable to collect their BRPs from Post Offices within usual timeframes (currently 10 days of arrival / vignette expiry).	We recommend that BRPs are retained by the receiving Approved Collection Locations/Post Offices for more than the usual 30 day window. We also recommend facilitating the collection of BRPs by other individuals as nominated by the visa holder e.g. legal representative.
6.	Visa expired overseas - Visa holders unable to return to the UK prior to the expiry of their visa due to travel restrictions imposed	We recommend allowing these individuals to return to the UK relying on their expired visas as some would have been stranded whilst on holiday overseas. We understand this was the approach adopted for those impacted by the Volcanic Ash Cloud. This will need to be communicated to the airlines so that visa nationals are allowed to board the plane and to the border force to allow them entry to the UK.

7.	<p>Official fees unused visas - Individuals who have been unable to travel and utilise their visas potentially for some months, but have incurred costs, such as Immigration Health Surcharge for full period of leave.</p>	<p>As these individuals are likely to have to pay some of these fees again we recommend that where the visa has not been utilised that the fees are refunded including immigration skill charge and immigration health surcharge.</p>
<p>In country</p>		
8.	<p>Leave expiry - Foreign nationals in the UK who are either unable to leave the UK or apply for an extension before the expiry of their leave and become overstayers:</p> <ul style="list-style-type: none"> • E.g. visitors, students, fiancées, although potentially affects any category where individuals hold limited leave to remain. • Affecting employment, housing, access to benefits, criminality / good character and/or having to re-start immigration route to be eligible for settlement. 	<ul style="list-style-type: none"> • We recommend the current approach adopted in the current guidance of providing automatic extensions be expanded to all foreign nationals in the UK whose visa is due to expire or has expired. • We recommend that these foreign nationals are granted automatic extensions to at least September 2020 without the requirement to submit fresh applications or incur additional fees. • The approach should be the same for people who feel unsafe to travel as it is for those who are unable to due to official travel bans or requirements to self-isolate • We recommend that the Guidance be reviewed ahead of the September deadline to see if a further extension is needed. The date of a future update should be prearranged. • Measures need to be adopted to make sure these individuals are able to evidence their extension to third parties so that their right to work, rent, drive, hold a bank account etc. is not impacted.
9.	<p>Difficulty attending Home Office core centres - human rights and asylum applications</p>	<ul style="list-style-type: none"> • We recommend facilitating alternative means for vulnerable people to provide supporting documents e.g. by post / email and for biometrics to be postponed / taken at alternative locations which are nearer to their address or greater use of the mobile biometric units to accommodate such individuals without having to incur extra costs. • We recommend that asylum applicants are permitted to lodge their claim and have remote screening interview and a flexible approach adopted to the substantive interview.
10.	<p>Fees / refunds - Individuals and sponsors face losing application related fees due delay and changes in plans due to COVID-19 crisis.</p>	<p>Offer timely full or partial refund on visa application related costs, including immigration skill charge and immigration health surcharge. Withdrawals should be permitted and full refunds where application withdrawn or where visa granted but individual not activating leave by entry.</p>
11.	<p>Extension / ILR requirements – inability to meet requirements for extension /settlement e.g. Tier 1</p>	<p>We recommend that discretion is applied to waive some of the extension/ILR requirements where the applicant has not been able to meet the requirements due to COVID-19.</p>

	Entrepreneur unable to meet employment requirements	
12.	Switching in-country - Those currently in the UK who do not meet the requirements for an in-country switch but are unable to travel to make fresh application from overseas.	We recommend that the current concession allowing certain nationals to switch from Tier 2 ICT to Tier 2 General in-country be expanded to include all foreign nationals impacted by COVID-19 and to include other categories.
13.	Registering with the police - The 7 day deadline for updating Police Registration Certificates	The HO and police should relax the deadline, and/or allow people to update this electronically or by post instead (rather than requiring them to come to OVRO/police station in person). It would be useful if there was an email address or electronic system instituted temporarily so people can declare the change “in time”.
14.	BRP delivery - BRPs being sent out by TNT to legal representatives.	We recommend that the HO / TNT send an email confirming when a BRP has been dispatched and allowing for re-delivery.
Points Based sponsorship and compliance		
15.	Validity of RCOS / COS / RLMT - sponsors may be unable to assign the CoS within the relevant period or the migrant may be unable to apply within the relevant period	We recommend that these deadlines should be removed / extended for Tier 2 sponsors and Tier 2 migrants who are unable to meet these deadlines due to coronavirus restrictions. The relevant deadlines are as follows: <ul style="list-style-type: none"> • Resident labour market test – this is only valid for 6 months. We recommend that during this period and given that sponsors are unable to complete their recruitment exercise that this limit is removed if the advert was first published from December 2019 onwards • Restricted Certificates of Sponsorship (COS) / COS – this must be used within 3 months of being granted. We recommend that this limit is suspended to allow sponsors to use this as and when travel restrictions are lifted • Start date – the maximum delay to the start date is 28 days from date of entry clearance vignette start date/work date - we recommend that this is also suspended given the travel restrictions to allow sponsors to extend the start date provided the individual has not entered the UK
16.	Sponsored worker change of circumstances - Employers may need to change role outside of SOC code / reduce salary / reduce hours for unspecified	The current Home Office guidance currently allows unpaid leave for more than 4 weeks. We therefore recommend that this is extended to take into account other measures which sponsors are having to take in response to the coronavirus pandemic such as: <ul style="list-style-type: none"> • Allowing reduction of salary below the threshold / reduction of hours for a limited period

	period / put employees on a period of unpaid leave because of current circumstances	<ul style="list-style-type: none"> • Allowing workers to change roles and work under a different SOC Code whilst the business allocates resources to try to meet business needs during/as a result of the crisis • Suspending curtailment of leave where sponsorship is terminated to allow workers longer time to try and find alternative sponsorship
17.	Cooling off period - Many individuals will need to travel to home country – result is unexpected early termination of sponsorship even though may still be required once coronavirus issues reduced.	We recommend the suspension of the cooling off period on those who were impacted by COVID-19 where for example the individual’s employment was terminated early as a result of being unable to return to work in the UK .
18.	Sponsor compliance – inability of sponsors to comply due to circumstances outside their control	<ul style="list-style-type: none"> • We recommend that a pragmatic and flexible approach is taken to compliance with duties and obligations which sponsors are unable to meet due to COVID-19 e.g. reporting requirements. • With regards to Tier 4 sponsors - confirmation that discretion will be applied when considering Basic Compliance Assessment applications as rates likely to be impacted by COVID-19
19.	Original documents – inability to provide these	We recommend that the Home Office allows for alternative means of providing supporting documents rather than having to send in original documents e.g. sponsor licence applications.
20.	Tier 4 - Maximum period of study in the UK - students are likely to need to apply for an extension given the disruption to studies	We recommend that the cap on study periods in the UK be suspended for students impacted by the Coronavirus and whose studies have been disrupted as a result.
General		
21.	Indefinite Leave to Remain - inability to meet immigration rules due to COVID-19	<ul style="list-style-type: none"> • Excess absences from the UK since 1 January 2020 arising from the COVID-19 outbreak to be waived (also applicable to naturalisation applications) . • Tier 2 Salary thresholds for ILR – discretion to be applied where salary was reduced as a result of measures taken by sponsor in response to COVID-19 • Allowing stranded applicants to make ILR applications from outside the UK. To apply discretion where dependants have reached the age of 18 and are unable to apply in-country. • Ensure that children are not adversely affected due to parents’ ability to apply for leave at the same time as one parent may be stranded overseas.

22.	Appendix FM - Minimum Income Requirement	The Minimum Income Requirement in the five year route should not be applied in circumstances where the person has disrupted income during/immediately following this period.
23.	No recourse to public funds	Given that some foreign nationals may be placed in circumstances where they have no means of support e.g. being made redundant and unable to leave the UK. If such individuals are offered official assistance by the UK government this should not be considered a breach of their visa conditions.
24.	Victims of trafficking - Those recognised as victims of trafficking with a positive Conclusive Grounds decision but are not granted leave to remain.	A grant of leave to remain should accompany all positive CG decisions, as the VoT is unlikely to be able to return to their country of origin.

VACs/Service Points

	Issues	Recommendations
25.	Applicants unable to attend the VACs to have their biometrics taken	We recommend that UKVI: a) Re-use previously captured biometrics ; Or b) If the above is not possible, extend the time by which biometrics need to be completed by and confirm that applications will not be invalidated if biometrics are not submitted in time.
26.	Inability to upload documents due to self-isolation by applicants and by legal representatives.	Facilitating the ability of applicants to provide the supporting documents through alternative means at no extra charge e.g. post; email etc.

Border Force/Enforcement

	Issues	Recommendations
27.	Right to work checks - Employers are unable to conduct a physical document check for an employee's right to work	We recommend that for those where online right to work check is not applicable, that electronic documents should be accepted and that the statutory excuse checklist is updated to reflect that electronic documents will be accepted.
28.	Immigration Bail - Reporting requirements	We recommend that reporting requirements are suspended.
29.	Detention and removal – Those still in immigration detention in circumstances where removal is not imminent given the restrictions on travel (i.e. those being removed under the Dublin Regulations).	Given the circumstances and as these individuals no longer meet the criteria for detention as their removal is no longer imminent, they should be released and arrangements made by the SSHD to accommodate them in safe accommodation. In addition, all detainees must be assessed to determine if they have been exposed to Covid-19.