**ILPA and the Law Society: COVID-19 issues and recommendations**

|  |  |
| --- | --- |
| **Issues and recommendations** | **Answers** |
| 1. **Individuals marrying in the UK (*issue 3 in ILPA and the Law Society’s table*).[[1]](#footnote-1)**   There are now multiple examples of caseworkers making repeat requests for marriage certificates where representatives have advised that applicants cannot marry due to Covid. It could take years to clear the backlog during which applicants cannot work etc. | Call with Marriage colleagues and Policy arranged for the 11th March. |
| 1. **Archiving GOV.UK webpages (*issue 6 in ILPA and the Law Society’s table*).**   We would be grateful for an update in relation to archiving GOV.UK webpages. ILPA maintain that all changes relating to Covid-19 made by the Home Office should be available in a single location. Furthermore, given that individuals may need to refer to the applicable policy at a particular point in time in a future application (many of whom may not be represented), it would be helpful for both individuals and caseworkers to have one document outlining the concessions that were introduced, when were they introduced and who did they cover. | The below link to the National Archives currently details instances of changes made to the following page: <https://www.gov.uk/guidance/coronavirus-covid-19-advice-for-uk-visa-applicants-and-temporary-uk-residents>  National Archives link: [https://webarchive.nationalarchives.gov.uk/\*/https://www.gov.uk/guidance/coronavirus-covid-19-advice-for-uk-visa-applicants-and-temporary-uk-residents](https://webarchive.nationalarchives.gov.uk/*/https://www.gov.uk/guidance/coronavirus-covid-19-advice-for-uk-visa-applicants-and-temporary-uk-residents)  Examples shared to George’s team have been passed on to the relevant digital department for consideration who have provided an update to say that we can only archive text using the current National Archives system which enables it to be easily accessible and readable. If a version of a page is required, where changes appear not to be reflected in the NA system then a request can be made via the FOI procedure.  Additionally, the change notes footer on the [https://www.gov.uk/guidance/coronavirus-covid-19-advice-for-uk-visa-applicants-and-temporary-uk-residents](https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gov.uk%2Fguidance%2Fcoronavirus-covid-19-advice-for-uk-visa-applicants-and-temporary-uk-residents&data=04%7C01%7CSally.Keoghan%40homeoffice.gov.uk%7C3ee2bb2d28f34dc3ed5008d8ea10c7b5%7Cf24d93ecb2914192a08af182245945c2%7C0%7C0%7C637516705070517663%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=fRGaPoiGZas1KN2%2Balv632utmEkGNJW%2FR2Ag5jVf5Ow%3D&reserved=0) page also portrays any changes in real time. |
| 1. **Covid Visa Concession Scheme (*issue 11 in ILPA and the Law Society’s table*).**  * **While this policy response is welcome, we recommend removing the requirement that people must have left the UK before 17 March 2020.** | Please see advice below from the CVCS guidance for caseworkers:  **Exceptional circumstances**  This section gives examples of exceptional circumstances that may justify  consideration under the Covid Visa Concession Scheme (CVCS) even if the  eligibility criteria are not met.  **The person may have left the UK after FCO travel advice changed on 17 March 2020 for compelling or compassionate reasons which include**, but are not limited to:  • serious illness or death of a close relative overseas  • travel for the purpose of receiving medical treatment  Where there are compelling or compassionate circumstances explicitly raised or  implied in the information the person provides, you must consider whether the  concession should exceptionally apply to them and that grade 7 authority is  obtained. |
| 1. **Replacement vignettes (*issue 14 in ILPA and the Law Society’s table*).**   **ILPA sent the following to the Home Office on 12 November 2020:**  We have been notified of applicants who were granted Tier 2 leave valid for five years and were then unable to travel to the UK due to the pandemic. They were issued replacement vignettes and, at the same time, issued with new decision letters. The new grants of leave were for less than five years because the start date was aligned with the replacement vignette: the end date was unchanged. This means that a further, paid application will need to be made in order to reach the five years required for ILR.  **The Home Office’s response of 17 December 2020 was:**  Contact is also made with sponsors on a case by case basis where needed Options are being considered (1) we are going to extend the leave to the full 5 years or, (2) enable the customer to apply for ILR when their leave expires and count the COVID related absence towards the qualifying period.   * We would be grateful for an update in relation to this. | For those customers who were unable to travel and received less than 5 years who either contacted us or the sponsor updated the employment dates on the COS we have already amended with new employment dates. The immigration rules only allow us to grant to the end of the employment period as stated on the COS +14 days so in the absence of updated employment dates these could have been issued for less than 5 years however those raised to us in these circumstances have already been amended to reflect the duration requested.  In relation to the LTR cases that are impacted, Policy have agreed to look into a formal concession as these weren’t affected in the same way as those outside the UK as there was a formal concession in place which allowed them to work for the employer whilst the application was outstanding and there status was covered by 3C leave for the majority. |
| 1. **Indefinite Leave to Remain (*issue 16 in ILPA and the Law Society’s table*).**  * **Our outstanding recommendations are as follows:**   1. **Updating the long residence guidance so that absences that arose due to the pandemic are waived.**   2. **Stranded applicants should be allowed to make ILR applications from outside the UK**   3. **The ‘foreseeable future’ requirement for Tier 2/Skilled Worker ILR applications should either be suspended or removed.**   [Long residence guidance](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841917/long-residence-v16.0ext.pdf) (last updated 28 October 2019)- | 1. We have already made changes regarding naturalisation and absences for returning residents. Any additional changes made to long residency will be forwarded to ILPA/Law Society, along with going live on the GOV.UK website. 2. A concession and process is in place for those who are stranded overseas; both ‘CVCS’ and ‘Returning Resident’ scheme. 3. There are no plans to suspend or remove this requirement, which acts as a guarantee (a) the worker will not become economically inactive, or less active, as soon as they are granted settlement; and (b) the salary has not been only temporarily increased for the purpose of meeting the settlement requirements. |
| 1. **No recourse to public funds (NRPF) (*issue 17 in ILPA and the Law Society’s table*).** 2. The Home Office has introduced a concession for people that allows those whose income has been affected by the pandemic to remain in the five-year route to settlement[[2]](#footnote-2). Otherwise, many would face being moved into the ten-year route if unable to meet the minimum income requirements. However no concession has been introduced in respect of people who are in the five-year route whose income has been impacted and who as a result require access to public funds. 3. To illustrate, if a family who were in the five-year route to settlement lost income due to the pandemic, such that they require access to public funds in order to survive, they could make a Change of Conditions application to the Home Office. This is an onerous application process that requires the provision of a lot of evidence and explanation about the family’s finances. If the application is granted, the Home Office will move the family out of the five-year and into the ten-year route to settlement. At that point the family will then be able to apply for benefits which will be granted only if they are deemed eligible. The current application fee for this route is £1,033[[3]](#footnote-3) per person and Immigration Health Surcharge of £1,560 (Adult)[[4]](#footnote-4) and £1,175 (Child). The total for a family of four including two children is £9,602 (£4,132 plus £5,470) each time they need to apply. This is a hefty financial penalty to be applied to people who are only in that situation due to their financial struggles resulting from the pandemic.   Our recommendation is that, in the absence of NRPF being lifted in its entirety during the pandemic, a concession is introduced, whereby if a person’s income has been disrupted due to the pandemic then they can apply to have the NRPF lifted while remaining in the five year route to settlement. | Separate discussion to be held with relevant team directly. |
| 1. **English language (*issue 19 in ILPA and the Law Society’s table*).**   Overseas English tests continue to be effectively inaccessible in many countries despite the test providers theoretically having tests availability. Currently in Turkey there is a lockdown in effect at weekends. The only English tests available in Turkey are at the weekend and while there is an exemption for test takers, there is no exemption for taxi drivers or family members to accompany them. In Lebanon tests up until March have been cancelled but technically they are available, even though they have been impossible to book for two months.   * **Could we look at waiving the requirement or imposing a requirement to test on arrival in the UK?** | George has raised this with Policy and legal advisors, and we hope to update you at the next call. |
| 1. **Sponsored worker change of circumstances (*issue 21 in ILPA and the Law Society’s table*).**   The current Home Office guidance currently allows unpaid leave for more than four 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:   * 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. | Please see the most recent guidance for Sponsors:  <https://www.gov.uk/government/publications/coronavirus-covid-19-student-sponsors-migrants-and-short-term-students> |
| 1. **Applicants unable to attend VACs to have their biometrics taken (*issue 23 in ILPA and the Law Society’s table*).**   We would be grateful for an update on UKVI’s strategy in relation to UKVCAS appointment shortages and the IDV app. | Most UK Visa Application Centres (VACs) have resumed services where local restrictions allow.  Priority and Super Priority services are only available in some locations. If available, you’ll be able to purchase these services when booking your appointment.  For more information, and for updates to the status of VACs, including opening times in your country, check with:   * [TLS contact](https://uk.tlscontact.com/) if you’re in Europe, Africa and parts of the Middle East * [VFS global](https://www.vfsglobal.co.uk/) for all other countries   Ongoing global restrictions mean some UKVI services will remain closed. Where services are resuming, existing customers will be contacted.  You can apply for a visit visa from any UK VAC. You should apply for all other UK visas from the country you’re living in.  If your VAC is closed due to coronavirus restrictions, you can [apply online and select a VAC in another country worldwide](https://visas-immigration.service.gov.uk/apply-uk-visa) to submit your application and biometrics. You’ll need to make sure you’re permitted to travel to that country beforehand.  You’ll be able to make any type of UK visa application. You must select the country where you would like to submit your biometrics at the start of your application.  This concession has been extended to 31 March 2021.  If you’ve already submitted your application through Access UK and now intend to submit your new application at a different VAC from the one selected in that application, you’ll need to make a new application and select the VAC where you’ll submit your application.  You’ll need to pay the fee associated with your new application and [request a refund for your earlier application](https://www.gov.uk/cancel-visa). Biometric enrolment locations Most UK Visa and Citizenship Application Centres (UKVCAS) have now reopened. Customers can check which UKVCAS centres are open at:  <https://www.gov.uk/ukvcas>  As our application centres re-open our commercial partner will be contacting customers to arrange new appointments. If your appointment was cancelled because of COVID-19, you’ll be sent an email asking you to make another appointment. If the available service points are too far away, you can wait until a closer one opens before making your new appointment. This will not affect your immigration status.  If you had not made an appointment before UKVCAS services were suspended on 27 March, you cannot currently book an appointment at a UKVCAS service point as appointments are only being released initially to those whose earlier appointments were cancelled. However, you must still create a UKVCAS account once you complete your online application; this will allow us to contact you when new appointments become available.  If you feel unwell, or a member of your household has recently felt unwell, before attending your appointment please check Public Health England Coronavirus (COVID-19) advice on when you should stay at home, on GOV.UK at:  <https://www.gov.uk/government/organisations/public-health-england>  If you cannot attend a rescheduled appointment for any reason you should contact the UKVCAS customer contact line on **0844 8920232**.  If you cannot or do not want to attend an appointment currently because of coronavirus (COVID-19), your immigration status will not be affected.  Our Service and Support Centres (SSCs) are now offering a reduced number of appointments because of COVID-19. As more appointments are made available UKVI will invite customers, via email or post, to arrange an appointment.  If you have been advised that you can enrol your biometrics at a Post Office you should check the availability of services through the Post Office finder, as advised on your Biometric Enrolment letter, or through updates on GOV.UK.  Your immigration status in the UK will not be affected as a result of you not being able to attend an appointment. |
| 1. **Emails being sent out of hours requesting further evidence, notifying of decisions and especially where time limits run from the time of the email.**   We are grateful to Home Office staff for working out of hours during the Covid-19 pandemic. However, we recommend that where time limits are imposed (e.g. requesting further evidence) that they run from the next working day after the email is sent, rather than running from the time of the email or alternatively emails are drafted but sent the following working day. | Previous comment provided to this scenario remains:  Thank you for raising the point, the circumstances of the pandemic have required large numbers of our staff to work remotely and some are working at variable times due to their circumstances. As a result, we will not be instructing caseworkers to send emails during certain times because we think this will cause UKVI and reps more logistical issues. However, please be reassured that even if an email has been sent out of hours, any required response will still be timed in normal working hours/working days so individuals are not penalised.  If you have any examples where days are lost, please could you forward the details on to us. |
| **New matters** | |
| 1. **Returning residents:**   The latest guidance states that:  **“Extended absence from the UK due to COVID-19 pandemic travel restrictions**    Some applicants will have been prevented from returning to the UK in 2020 and 2021, due to travel restrictions in place relating to the COVID-19 pandemic. In some cases this will have resulted in their indefinite leave lapsing.  You should consider whether travel restrictions after 24 January 2020 resulted in unintended absences from the UK. Where you assess someone had intended to return to the UK before their leave lapsed but were prevented from returning by travel restrictions, you should consider this as an additional factor supporting a grant of entry clearance.”[[5]](#footnote-5)  What is not clear is the situation where someone could travel but does not want to risk exposure to Covid-19 by returning to the UK or having to go through quarantine on arrival.   * **We recommend that the guidance is amended so as to include the risk of exposure to Covid-19 as an acceptable reason for being outside of the UK for more than 2 years.** | Guidance is now available on gov.uk for RR with lapsed leave: If you’ve remained outside the UK for over 2 years and due to coronavirus travel restrictions your indefinite leave has lapsed Your Indefinite Leave to Remain in the UK (ILR) or Indefinite Leave to Enter the UK (ILE) will lapse if you are absent from the UK for over 2 years.  If your ILR/ILE lapsed on or after 24 January 2020, and you’ve been unable to return to the UK due to travel restrictions in place relating to coronavirus, you may apply under the Returning Resident visa route to return to the UK and get indefinite leave.  You need to complete the online [Returning Resident application form](https://www.gov.uk/returning-resident-visa) and pay the fee. As part of your application you’ll need to explain how coronavirus restrictions prevented your return to the UK.  You’ll receive a refund of the application fee and, where applicable, a refund of £55 if you submitted your application at a Mandatory User Pay Visa Application Centre. Confirmation of your refund will be sent to you by email once we’ve made a decision on your application. If you’ve already been issued a Returning Resident visa If you’ve already obtained a Returning Resident visa because your ILR/ILE lapsed on or after 24 January 2020 and you were unable to return to the UK due to travel restrictions in place relating to coronavirus, you may be eligible for a refund of your visa fee.  You will need to email the Covid Immigration Helpline (CIH) at [CIH@homeoffice.gov.uk](mailto:CIH@homeoffice.gov.uk).  Use the subject heading ‘Returning Resident Refund Request’ followed by the GWF number you received when you submitted your application.  Your email must be in English and you must also provide:   * your name * date of birth * any unique Home Office reference numbers, including your payment reference for the visa fee   https://www.gov.uk/guidance/coronavirus-covid-19-advice-for-uk-visa-applicants-and-temporary-uk-residents#outside-uk |
| 1. **Working after a CoS has been issued:**   The COVID concession for workers being able to start work pending a decision on their application was significantly narrowed for those with CoS issued from 1 January. This concession may have been narrowed because priority and super priority services were due to be reintroduced.  These services have now been reintroduced, however there is still a significant delay with obtaining biometrics appointments. Applicants and businesses are now having to wait for a decision in circumstances where there may be financial hardship for the applicant (e.g. where they were previously made redundant due to the pandemic) and/or where a business may need the person to start urgently.   * **We recommend that those issued with CoS on or after 1 January 2021 are able to begin work while their applications are pending.**   **Additional Query emailed 12.2.21**  Hope this finds you well. We’re writing in relation to point 12 of our questions document, which concerns people’s ability to work while their applications are pending. Given that biometric appointments remain limited and the risk of Covid transmission remains high, we recommend that those issued with CoS on or after 1 January 2021 are able to begin work while their applications are pending. This concession currently applies to those with a CoS issued before 1 January 2021, however for the reasons given we would suggest removing the reference to 1 January 2021 under the heading ‘If you’ve applied for a work visa and are waiting for a decision on your application’ ([GOV.UK](https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gov.uk%2Fguidance%2Fcoronavirus-covid-19-advice-for-uk-visa-applicants-and-temporary-uk-residents&data=04%7C01%7CLucy.Davies14%40homeoffice.gov.uk%7Cb18281abd116461a0f0e08d8d4180e41%7Cf24d93ecb2914192a08af182245945c2%7C0%7C0%7C637492547065738727%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=dIr4IzWnA1AzKTCj3SM6vmzkpyllw7MoMWgKntjFjs8%3D&reserved=0)) so that anyone issued with CoS is able to begin work. | George has raised this with Policy and legal advisors, and we hope to update you at the next call. |
| 1. **ILR for skilled workers where leave lapses overseas.**   We are aware of Tier 2 (General) visa holders who became stranded outside the UK due to Covid-19, and whose visas lapsed while outside the UK. They have subsequently been granted further Tier 2 (General)/Skilled worker status and have now returned to the UK.  The current guidance states that after 24 November 2016:  *“If an applicant’s leave expires whilst they are outside the UK and they apply for new entry clearance more than 14 days after their previous leave expires, for any reason, the continuous period is broken and leave is not aggregated. The continuous period would also be broken where the gap is within 14 days, but you do not consider the reasons provided to be sufficiently compelling.”*   * **We recommend that similar provisions for these workers be put in place for those unable to apply within 14 days of their previous leave expiry (e.g. because application centres were closed) as has been introduced for returning residents whose leave lapses while overseas (see 12 above) to support a grant of ILR if the gap in leave is due to Covid-19.** | We are considering this and other Covid-19 issues relating to ILR for a future update to our rules and guidance.  Our principle is applicants should not be disadvantaged due to Covid-19 related circumstances which were outside their control. |
| 1. **Travel bans and third country nationals with “residence rights”.**   The current webpage states the following:  *“British and Irish Nationals, or third country nationals with residence rights in the UK will be able to enter the UK*.”  Can we please have a clarification as to who is included under “third country nationals with residence rights”. For example does it include those issued with visitor visas who were due to undertake essential business activity in the UK, one whichis permitted under the list of exempt jobs from self-isolation? | **Who are you including in your definition of those with residence rights?**  Those with residence rights includes: holders of Indefinite Leave to Remain; holders of existing leave to enter or remain (i.e those with biometric Residence permits) or an entry clearance/visa that grants such leave e.g. students, workers, etc (but excluding visit visas); holders of EU Settlement Scheme (“EUSS”) leave; those who have rights of entry under the Withdrawal Agreements (including returning residents with a right of residence under the EEA Regulations and EEA frontier workers); family members of EEA nationals with rights under the Withdrawal Agreement.  Your application decision may be delayed if you’re applying from a country where travel to the UK is suspended. You’ll receive your visa when suspension of travel is lifted if your application is successful.  If travel to the UK is suspended but you need to travel urgently for compassionate reasons, you’ll still need to apply for a visa in the usual way, including submitting biometrics at your chosen Visa Application Centre (VAC). You should clearly explain the compelling or compassionate reasons for your visit in your application form and alert the VAC staff during biometric submission. You’ll be contacted by UKVI once your application has been received.  If you do not hear from UKVI or your request is exceptionally urgent, you can contact the Coronavirus Immigration Help Centre (CIH) by emailing [CIH@homeoffice.gov.uk](mailto:CIH@homeoffice.gov.uk). Your email must be in English.  You’ll need to:   * use the heading ‘Coronavirus – Urgent Visit Travel Request ’ in your email * provide your name, date of birth, visa application, GWF reference number * provide details of your circumstances |
| 1. **EU Settlement Scheme and COVID concession on absences.**   The deadline to make an application under the EUSS is 30 June 2021. The guidance introduced on 15 December is causing anxiety as there are EEA nationals who are stuck overseas and their absences do not neatly fit within the concession. For example, those who live on their own and have decided that they would form a bubble with family members in Spain rather than be by themselves in a pandemic for fear of becoming ill and not having anyone to support them.  In March it will be a year on from when the UK went into its first lockdown. We are not clear why there is a limit of 12 months on the absence from the UK. This is a fast evolving situation and a more pragmatic and humane approach needs to be taken.   * **We would recommend a review of this concession to take into account the above and we are happy to feed into this more fully.** | The guidance referred to is here:  [https://www.gov.uk/guidance/coronavirus-covid-19-eu-settlement-scheme-guidance-for-applicants](https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gov.uk%2Fguidance%2Fcoronavirus-covid-19-eu-settlement-scheme-guidance-for-applicants&data=04%7C01%7CLucy.Davies14%40homeoffice.gov.uk%7C60424d6b496548cf12dc08d8ceab72d8%7Cf24d93ecb2914192a08af182245945c2%7C0%7C0%7C637486583040539488%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=cHQYUG9Gl1ZlgV2EQ8kmUDM%2FtXBY6eKDrS0JGKrmpbk%3D&reserved=0)  It confirms that absence from the UK of up to 12 months is permitted – without breaking continuity of residence for EUSS purposes – where this results from illness or quarantine restrictions due to COVID-19.  Ministers were satisfied that this provided adequate flexibility for EU citizens living in the UK before the end of the transition period to continue to qualify for EUSS status, given that it had long been made clear that free movement to the UK would end at that point.  There are currently no plans to review the guidance. |
| **Non-Covid issues** | |
| 1. **RLMT**   On 13 January 2021, we sent the following:  “Changes between version 1 and 2 of the guidance  ILPA is concerned that the recent update to Appendix D of the Sponsor Guidance (version 2, cleared for publication on 18 December 2020) suggests that sponsors are now subject to an enhanced requirement to advertise positions, despite the abolition of the Resident Labour Market Test (RLMT). The guidance issued on [1 December 2020](https://webarchive.nationalarchives.gov.uk/20201203001513/https:/www.gov.uk/government/publications/keep-records-for-sponsorship-appendix-d) did not include this, it stated that:  ***“Where you are required to undertake a resident labour market test*** *under the Worker or Temporary Worker routes, or you were required to undertake one under the Tier 2 and Tier 5 routes in place before 1 December 2020, you must retain the evidence set out below. Although there is no requirement to undertake a resident labour market test in all cases, if you have told us you have done so you should retain the evidence.”* [Emphasis added]  Part 2 of [Appendix D](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/946067/2020-12-18_Sponsor-guidance-Appendix-D-12-20_v2.0__002_.pdf) (version 2) now states that:    *"You must retain evidence of any recruitment activity you have undertaken for the job, or jobs, in which you are sponsoring workers.* ***This applies even if you were not required to undertake a formal resident labour market test before recruiting a migrant worker****. If you did not advertise the role, you must be able to explain:*     * *why you did not advertise it (for example, if you are sponsoring a Religious Worker in a supernumerary role, or the individual was previously legally working for you on a different type of visa)* * *how you identified the individual was suitable for the role*   *Where you have advertised the role, you must retain any relevant evidence listed in (a) to (k) below.”* [Emphasis added]  We would be grateful if you could confirm that the new requirements will not apply where sponsors have not advertised a position/not retained documents in reliance on version 12/20 of Appendix D, dated 1 December 2020, up until the new guidance was published on 18 December 2020.  Clarification sought on the abolition of the RLMT  In relation to the enhanced requirements in the current version of the guidance, Part 2 now applies to *any recruitment activity undertaken*, regardless of whether a formal RLMT was previously required. It appears that Shortage Occupations and student switches which were previously exempt from the RLMT will need to be advertised under the new guidance. Please can you confirm whether this is correct?  Although we appreciate that many sponsors will have advertised roles and that evidence of this will be helpful to UKVI in assessing the genuineness of the role, Appendix D now suggests a prescriptive RLMT requirement is still in place and that sponsors will be in breach if they have:     * not advertised a vacancy at all (unless satisfactory reasons are provided), * advertised in a way that does not comply with any of the ways set out in Appendix D, or * not retained evidence of advertising in a manner prescribed by Appendix D.   This does not appear to be in line with earlier statements regarding the RLMT. You will recall that the [Further Details Statement](https://www.gov.uk/government/publications/uk-points-based-immigration-system-further-details-statement/uk-points-based-immigration-system-further-details-statement), published 4 August 2020, said that:    ***“Abolishing the Resident Labour Market Test (RLMT)***  *20. Under the new Skilled Worker route there will be no requirement for employers to undertake a RLMT. This reform will remove at least four weeks from the end-to-end process for sponsoring skilled workers. However, sponsors must still be seeking to fill a genuine vacancy which meets the skill and salary thresholds of the new route. Roles cannot be created solely to facilitate immigration of a specific migrant to the UK.”*    Many of our members are currently very concerned as to how they should be advising sponsors in relation to this requirement. We should be grateful for your urgent confirmation that the evidence of advertising set out in Appendix D is intended to be illustrative only and that Appendix D will be clarified at the earliest opportunity.    We look forward to hearing from you on these issues.”     * **We would appreciate a substantive response to these concerns about the Appendix D Sponsor Guidance.** | [Appendix D](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/946067/2020-12-18_Sponsor-guidance-Appendix-D-12-20_v2.0__002_.pdf) (last updated 18 December 2020)  A revised version of the Appendix D guidance has now been published:  [https://www.gov.uk/government/publications/keep-records-for-sponsorship-appendix-d](https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gov.uk%2Fgovernment%2Fpublications%2Fkeep-records-for-sponsorship-appendix-d&data=04%7C01%7CLucy.Davies14%40homeoffice.gov.uk%7Ce6ebe895dbfa49cd824308d8e89f867e%7Cf24d93ecb2914192a08af182245945c2%7C0%7C0%7C637515119133121579%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=79wzOwzqy7WUO6hw1MwlAZOSFOnHCD0gqfigw8yNExU%3D&reserved=0)  . |
| 1. **Additional query emailed 12.2.21**   It would appear that the declaration on certain forms that fees will not be refunded after an application is withdrawn. However, the guidance on GOV.UK states that a fee will be refunded provided that biometric enrolment has not taken place. We’d be grateful if you could confirm which of the approaches is correct. | Assuming the customer has not enrolled their biometrics we will provide a full refund of both the application fee and IHS as we’ve not started any consideration of the application.  If the customer was to withdraw after enrolling their biometrics and we would have started the consideration and then the application fee would not be refunded, but the IHS would be.  If the ROD form is being used then the assumption is that it concerns an in- country application, to note that if they withdraw they might end up without valid status in the UK and a gap in their leave. So it’s important that the customer is aware of this and that regardless of this application they currently have extent leave. If not the best solution is the vary to a new priority application, they would still get a refund for the standard one but mean paying upfront for the priority one first. This way though there is no gap in leave, and it won’t impact whatever route to settlement the customer is on. |
| 1. **Additional query emailed 12.2.21**   Please see the below – we’d be grateful for clarity on the switching concession from policy colleagues. For example, if someone is in the UK on a visit visa which expires in a few months’ time, is there a general prohibition on them switching to e.g. a spouse visa on the basis that there are a few months outstanding on their visit visa? We of course understand that every case will turn on its facts, but it would be useful to know if the Home Office would expect applicants to wait until their current visa is close to expiring before applying under the Covid switching concession. | Where customers still have months outstanding on their Visitor Visa, they need to demonstrate an urgent need to stay in the UK, or that they cannot return to their home country due to Covid-19, otherwise they should make arrangements to leave the UK and apply at EC. |
| 1. **Exceptional Assurance** | As mentioned in the call, we plan to roll the concession into a further month. The website has now been updated for applicants with leave up to the end of March. <https://www.gov.uk/guidance/coronavirus-covid-19-advice-for-uk-visa-applicants-and-temporary-uk-residents> page to advise that we are opening the concession up for applications for EA to those with leave expiring between 1-31 March. |

Additional Actions from call:

|  |  |
| --- | --- |
| **Topic** | **Outcome** |
| EUSS | EUSS Policy team to contact Sonia directly W/C 15 March to arrange call/discussion. |
| NRPF | Team to contact Sonia directly. |
| Marriage | Meeting between Adrian Seelhoff, ILPA, Dawn Mason and Policy, to be held 11 March 2pm. |
| .GOV | Sonia shared more information regarding question 2 above, team shared with relevant digital dept. |
| CVCS SMART from problems | Error investigated and unknown – exceptionally processing x 2 cases manually for Wilson Solicitors LLP. |

.

1. <https://ilpa.org.uk/home-office-responses-to-ilpa-and-the-law-societys-recommendations-on-covid-19-immigration-impact-18-november-2020/> [↑](#footnote-ref-1)
2. <https://www.gov.uk/guidance/coronavirus-covid-19-advice-for-uk-visa-applicants-and-temporary-uk-residents> [↑](#footnote-ref-2)
3. Application fee, Leave to remain - Other <https://www.gov.uk/government/publications/visa-regulations-revised-table/home-office-immigration-and-nationality-fees-31-january-2021> [↑](#footnote-ref-3)
4. Immigration Health Surcharge <https://www.gov.uk/healthcare-immigration-application/how-much-pay> [↑](#footnote-ref-4)
5. See p. 12 of the [Returning residents](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958708/returning-residents-v3.0ext.pdf) guidance. [↑](#footnote-ref-5)