



FRAGOMEN

**COVID-19 and
UK immigration law:**
A guide for employers

26 May 2020

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On 24 March, the UK's Home Secretary published a helpful new concession for people holding visas that expire between 24 January 2020 and 30 May 2020 (this was updated on 22 May to include all those with visa expiries up to and including 31 July). Those concessions were followed on 30 March 2020 with new arrangements for right to work checks, where an employer cannot physically meet a new recruit or check their documents. They were followed on 3 April with more helpful guidance for sponsored workers.

We will no doubt remain in a difficult and uncertain world for some time to come, but the impacts of COVID-19 on UK immigration are at least becoming clearer. Many outstanding questions remain, but a promise made by Kevin Foster, Minister for Immigration, provides some encouragement that they will be answered pragmatically. On 23 March 2020, Mr Foster told Parliament that the government is 'very clear that no one will have a negative outcome through the immigration system due to a circumstance that was beyond their control.'

At a practitioner level, things are coming more sharply into focus. We speak to clients about COVID-19 frequently, throughout the day. Consistent themes have emerged and the immigration priorities for employers are clear. We have produced this short guide to help you address those issues and understand where you will stand legally. These are fluid times and things are likely to move on, even as we publish our guide. Please be sure to get in touch with your Fragomen contact if you have any questions.

THEMES FOR HR AND MOBILITY

Supporting employees



How can employees confirm their right to stay in the UK and on what terms?

Bolstering your workforce



- ▶ How can you perform compliant right to work checks without seeing physical documents?
- ▶ How, and in what circumstances, can you continue to assign or employ non-Europeans in the UK?

Demobilisation



As the economy slows down, how can your workforce contingency planning remain aligned with Immigration Rules?

Events are unfolding quickly and the situation can change without notice. While our guide is accurate as of 7 April 2020, we recommend you contact Fragomen before taking any decisions.

Right now our conversations with clients tend to fall under three broad headings:

COVID-19 places immediate pressures on HR and mobility, but we are also talking to clients about what comes next. In future releases we will consider how our clients are preparing for remobilisation, including:



Preparation for a new
UK immigration system,
still scheduled for 1
January 2021



Remobilisation
preparatory work,
for instance early
assessment of
destinations
and eligibility



Workforce planning
elsewhere in Europe
and the ICT Directive

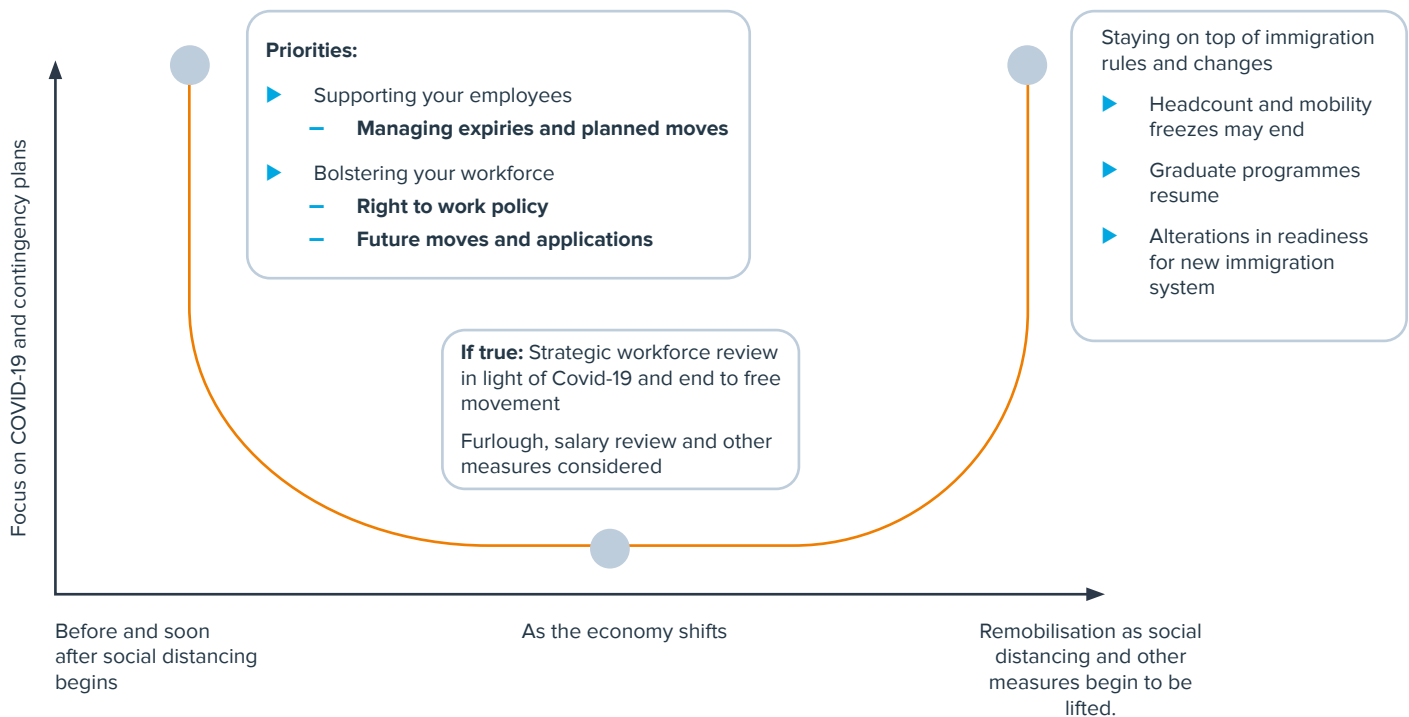


Graduate programme
planning and
mobilisation

Our guide is concerned with UK immigration, but COVID-19 obviously has implications globally. For further information and support, please contact your Fragomen representative. Alternatively visit our [Fragomen Coronavirus Update](#) page for the latest immigration updates on the Coronavirus (COVID-19) outbreak.

Planning your workload

Broadly speaking, we understand there will be three stages to COVID-19, as it relates to immigration, and there are a lot of things that HR and Mobility professionals will need to do at each stage.



We appreciate of course that this chart will look different for different employers, but we hope it is instructive.

STAYING INFORMED

How you manage each stage will depend on whether you can access the information you need to take decisions. There are excellent resources available on the [.gov](#) website, for UK matters. At Fragomen, we want to make sure that it is easy for our clients to access relevant immigration information, for the entire world, not just the UK.

We do this in a number of ways:

1. We send regular coronavirus alerts to our clients. You can sign up for these alerts [here](#).
2. Our [coronavirus microsite](#) contains useful information, including links to important websites and a [country by country guide](#) - a useful resource with the latest state of play for immigration systems around the world (updated daily 20 out of 24 hours).
3. We are also engaging with employers at a range of virtual events, hosted by Fragomen or industry partners. You can see our events [here](#).

Supporting employees:

How can employees confirm their right to stay in the UK and on what terms?

The UK government announced a helpful new concession for people holding visas that expire between 24 January and 30 July 2020. Those who are currently unable to return to their home country due to travel restrictions or self-isolation will be able to extend their visas to 31 July 2020, through an online form. They must provide certain biographical and immigration information and explain why they cannot go home. Individuals will be expected to return to their home country as soon as it is safe and possible to do so.




The Home Office guidance note does not define a 'travel restriction'. But given the current situation, including legal restrictions on movement within the UK, it is in general being accepted by the Home Office that migrants whose visas are expiring are currently unable to leave the UK.

WE RECOMMEND THAT EMPLOYERS:

1. Identify employees who will need to extend their stay and could benefit from the concession.

- ▶ This will mean assessing anybody with a UK visa expiring between 24 January and 30 July 2020 and deciding whether an application is required.
- ▶ You may have employees or former employees holding visas that have already expired and should already have travelled home. You should consider whether to contact them to check whether they were able to travel.
- ▶ Others with visas expiring between June and September 2020 should also be considered, although these are arguably less of a priority right now.

2. Categorise priority employees

 Those who should have already left the UK	 Those due to leave the UK before 1 June 2020	 Those due to leave the UK on or after 1 June 2020
<ul style="list-style-type: none">▶ Get in contact to ascertain if they are still in the UK▶ Direct them to make extension applications if still here, providing support as appropriate	<ul style="list-style-type: none">▶ Extend their stay under the new scheme▶ Be sure to keep a record of the decision and new expiry date for right to work purposes	<ul style="list-style-type: none">▶ Assess eligibility for extension, permanent residence or moving to a new work category▶ Extend their stay in the usual way, in country▶ Those who would normally need to switch to a new visa will be able to apply in the UK (e.g. a move from Youth Mobility to Tier 2)
If you cannot be sure when a person is due to leave, a full extension would normally make sense, although in Tier 2, you will need to give serious thought when specifying a sponsorship end date		

3. Keep track

- ▶ You may wish to keep a copy of applications (screenshots) submitted under the new process
- ▶ Be sure to keep records of each extension. This will be an email from the Home Office to the employee
- ▶ Track expiry of visa extensions

4. How we can help



Current population report: A report limited to migrant workers supported by Fragomen or where we otherwise hold a record



Annotated population report: An analysis of eligibility for an extension (concession or conventional), Indefinite Leave to Remain or a switch between immigration categories



Application support: Assessment of eligibility, briefing for employee and consent to proceed (full SLA and escalation process), submission of application, full case record including decision, expiry tracking and reporting capability

Bolstering your workforce: How can you perform compliant right to work checks without seeing physical documents?



LEGAL CONTEXT

Employers are liable to a civil penalty of up to £20,000 if they employ an illegal worker. Employing illegal workers can also lead to revocation of a sponsor licence (and losing all sponsored workers) and criminal charges, in more serious cases. There are no sanctions for failing to follow these steps where a person has the right to work, but systematically failing to protect against illegal working could have consequences.

The civil penalty and other sanctions would not apply if an employer has followed prescribed right to work check requirements. The person verifying right to work must be an employee of the company (not a third party) and:

- ▶ Be able to see the employee, either in person or via video call
- ▶ Be in physical possession of the documents and able to check authenticity (within reason) and validity
- ▶ Keep certified copies of the documents

There is one exception to the need to see original documents: It is possible to check the right to work of non-Europeans that hold Biometric Residence Permits (BRP) and Europeans holding pre-settled or settled status online. However you must still be able to see the employee in real time. It is not possible to check the right to work of UK nationals online.



THE PROBLEM

Over the last few weeks, many employers have found it impossible to complete compliant right to work checks.

Most employers complete these checks for all new employees, including UK nationals. They are problematic in light of COVID-19 and a general move towards home and remote working. It is unlikely employers will meet new hires on day one of employment and employees may be reluctant to mail documents in order to complete a check due to logistical and cross contamination concerns.



THE SOLUTION

On 30 March 2020, the UK Government published new, temporary guidance on right to work policy. For the time being employers do not need to see an original document but they must follow certain steps. The new policy is intended to ensure you make the best possible efforts to check right to work, can document checks made right now and can follow up where needed. We strongly recommend that you read the new guidance, [here](#).



HOW WE CAN HELP

We hope that this guidance gives you the information you need to amend your right to work processes. Do let us know if we can help or if now is a good time to talk to your recruiters about right to work, particularly as employers will still need to prepare for the upcoming Brexit deadline at the end of 2020.

Bolstering your workforce:

How and in what circumstances can you continue to assign or employ non-Europeans in the UK

UK borders are not closed, but getting a UK visa is more complicated than it was just a few months ago. If you need to get people to the UK very quickly, you should think about:

- 1. Do you have a choice of who can travel? Whilst the transition period is in place, so is free movement of people, so moving a European (or bringing back a UK national) should be quicker than a non-European employee.**
- 2. Do they need to work? Work is never as plain English a word as we might like in immigration, but we tend to know it when we see it (and have consulted the rules). Employees entering for meetings, trouble shooters and other defined groups of business travellers can enter as can enter as visitors.**
- 3. Where are they coming from?**
 - a. Americans, Canadians, Australians and passport holders of other non-visa national countries can, in theory, jump on a flight as a visitor for a short period. Beware though, visitors must only be visiting and, again, cannot work in the UK. You should give thought to an individual's ability to travel home given the fluid nature of ever increasing travel restrictions around the globe.
 - b. The UK's Visa Application Centres are closed right now, generally for an indeterminate period. We expect them to reopen in stages over the coming months, as social distancing rules are rolled back. In the mean time it is possible to prepare applications and take many steps towards filing. Please get in touch if you intend to move people, so that we can assist.
- 4. Would they qualify for a work visa? Are there any suitable residents available or is the job in shortage? Will you meet the minimum salary? Do they have sufficient tenure for an ICT visa? There is a lot more to consider, of course – even these questions are over simplifications – but we can happily steer you in the right direction.**
- 5. Have they already applied? Expect delays and other complications if they have an ongoing application, as it becomes difficult to collect passports. But take heart from the fact that UK Visas and Immigration is still considering applications.**
- 6. The UK will introduce a 14 day quarantine procedure for all those entering the UK from 8 June with limited exceptions, including arrivals from Ireland. Individuals will complete a contact tracing form. Ensure you have adequate accommodation and provision for new arrivals and look out for announcements on air bridges with low risk countries where quarantine would not apply.**

HOW WE CAN HELP

We can help you assess who needs to move and what their options are. Even if it cannot happen now, there is time to put plans in place for when things change.

Demobilisation: As the economy slows down, how can your workforce contingency planning remain aligned with the Immigration Rules?

Many employers will need to change the way that they operate and take difficult decisions, as the economy slows down. Those decisions will always be taken in the best interests of the business and the employees, with due consideration to employment laws. For employers with non-EU employees the Immigration Rules will inevitably play a part too, particularly where those employees may be sponsored.

The Home Office has recognised that the current crisis is exceptional, and has introduced a policy for sponsored workers that allows employers to introduce firm-wide policies to avoid redundancies. Relying on the new policy is still not entirely without risk, as full guidance documents have not yet been released, nor have we yet seen how decision-makers are approaching this scenario in practice. Full guidance may take time – Ministers and officials have a lot on their plates. Wherever possible, it may be best to wait, but that won't always be realistic, and judgements may need to be taken against current policy with reference to Kevin Foster's promise that the government is 'very clear that no one will have a negative outcome through the immigration system due to a circumstance that was beyond their control.'

The Home Office policy specifies that, where furlough or salary reduction takes place, this is compatible with Tier 2 / 5 sponsorship where:

- ▶ The salary remains above £2,500 a month, or 80% of the worker's salary, whichever is lower,
- ▶ The salary reductions are part of a company-wide policy to avoid redundancies due to the company reducing trading, or ceasing trading,
- ▶ All workers are treated the same (i.e. no discrimination based on nationality or visa status), and
- ▶ The reductions are temporary and the sponsored worker's pay will return to previous levels once these arrangements have ended.

It appears these provisions allow a reduction in salary below both visa minimums and SOC code minimums.

Sponsors are advised to retain proof that these decisions were taken on a non-discriminatory basis and to avoid redundancies.

Notifications to the Home Office (SMS updates) will still be required and must be made within 10 working days of the change.

WORKED EXAMPLE

A Tier 2 General worker was sponsored by an employer to come to the UK last year as a chemical engineer under SOC code 2127. There is a general minimum for Tier 2 sponsorship of £30,000 pa, but the SOC code minimum salary of £33,100 pa takes precedence. They are paid £35,000 pa.

Their sponsor decides that to avoid redundancy due to reduced trading during the emergency period, they are furloughed, or their salary reduced, during the emergency period. Their salary can be temporarily reduced in line with the policy, provided it remains above £2,500 a month (i.e. the lower of £2,500 a month and 80% of the normal salary of £35,000 pa (£2,800 a month)).

As can be seen the policy will potentially allow sponsored workers to be furloughed under the Coronavirus Job Retention Scheme. Payments made to employers under the scheme are not classified as 'public funds' and claiming them will not breach the visa conditions of the worker.

FURLOUGHED EMPLOYEES

Fully paid absence	In scope of the Immigration Rules (the Rules)
Unpaid absence where sponsored worker unable to attend work due to the Covid-19 outbreak (including absence of more than 4 weeks)	Home Office has confirmed they will not take compliance action
Fully paid absence, drawing on CJRS fund	In scope of the new policy. Company arrangements must comply with the conditions outlined above.

SALARY

Salary reduced to 80% normal salary or £2,500 a month, whichever is less (including where this is below minimum salary for the job and minimum salary for the visa)	In scope of the Rules. A notification is required.
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* The minimum salary for the job is the minimum rate appearing in Appendix J for the SOC code used to sponsor the worker (in their Certificate of Sponsorship). Different rates are applicable for experienced workers and new entrants.

** The minimum salary for the visa is e.g. £30,000 pa for Tier 2 (General) experienced workers, £20,800 pa for Tier 2 (General) new entrants, and £41,500 for Tier 2 (ICT) Long-Term Staff.

TERMINATING SPONSORSHIP

There may unfortunately be cases in which employers are not able to continue employing sponsored workers in which case Employment law advice should be taken.

From an immigration perspective, an SMS notification must be made to the Home Office within 10 working days of the last day of employment, and this notification will require submitting the personal contact details of the employee to the Home Office. Employers should bear in mind that the last day of employment may not be the same as the last day of carrying out work. Submitting the notification will normally trigger the Home Office to issue a notice curtailing the sponsored worker's visa to a further 60 calendar days, unless this is after the existing visa expiry date. The worker will then normally be required to either submit a further application to the Home Office, or to leave the UK (subject to the possibility of a temporary extension of stay by email as described above).

Please note:

This should not be relied on as legal advice. Employers should always seek full legal advice (not limited to immigration) on the specifics of their plans and population. We are able to provide a broad rule of thumb in regards to exposure for Tier 2 workers. Remember, serious sanctions exist for employers who breach immigration law or their duties as sponsors.

HOW WE CAN HELP

We can review demobilisation, furlough and salary reduction plans to ensure compliance with UK immigration law.



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