



GMS Flash Alert

Immigration Edition

2020-181 | April 17, 2020

United Kingdom – COVID-19: Right to Work Checks and U.K. Sponsor Compliance Updates

On 27 March 2020, the Home Office released guidance for Tier 2, 4, and 5 visa sponsors in the U.K. whose workers have been affected by COVID-19.

On 30 March 2020, the Home Office also published guidance for all employers in relation to making sure employees have the “right to work” in the U.K. during the COVID-19 crisis.

WHY THIS MATTERS

The measures that the government introduced to mitigate the spread of COVID-19 (i.e., staying at home and remote working, where possible) have motivated the Home Office to temporarily adjust the way right to work checks are conducted and the way sponsors of non-EU student and workers comply with their sponsor duties.

The temporary changes – for example, the suspension of the requirement to show/see physical original documents – should make it easier for employers to conduct right to work checks.

The suspension of Home Office enforcement action against sponsors who continue to sponsor individuals in cases where students or employees are absent directly due to COVID-19 and would ordinarily need to have their sponsorship stopped, will alleviate anxieties placed on sponsors and their sponsored employees/students. Postponing work start dates beyond the usual 28-day limit for Tier 2 (General) migrants in certain cases will also reduce pressures on employers.

It is important to emphasise that although there are temporary concessions to help support businesses and individuals during this period, compliance duties for sponsors and restrictions on sponsored workers and students remain onerous.

Temporary Changes to Right to Work Checks Due to COVID-19

The following temporary changes have been made by the Home Office to make it easier for employers to conduct right to work checks in the U.K.¹:

The need for employers to see physical original documents has been suspended. As of 30 March 2020, employers can conduct right to work checks which ordinarily require seeing original physical documents, in the following way:

1. The employee can provide a scan or photograph of his/her original document via email or a mobile app.
2. The employer will need to arrange a video call with the employee. The employee will hold up the original document to the camera. The employer will have to check the document shown on camera against the copy provided via e-mail or mobile app.
3. The right to work check should be recorded as “adjusted check undertaken on [insert date] due to COVID-19.”
4. The Home Office will update its guidance once these concessionary measures have ended.
5. Employers will then have eight weeks from the end of the concessionary measures to conduct a follow up right to work check, which must adhere to the usual requirements, using physical original documents, where appropriate.²
6. Employers should mark this second check: “The individual’s contract commenced on [insert date]. The prescribed right to work check was undertaken on [insert date] due to COVID-19.” Both checks should be kept in the employee’s file.

Employers should use the Employer Checking Service to obtain a Positive Verification Notice where an employee cannot show his/her documents. A follow-up check will then also be required.

KPMG NOTE

An employer should carry out right to work checks on any potential employees before they commence work, regardless of whether they are from the U.K. or overseas. Carrying out a right to work check correctly protects an employer in the event of a worker being found to be “illegal.” The penalty for employing an illegal worker is £20,000 per individual and there are also possible criminal sanctions.

Existing right to work processes are onerous and prescriptive, and in many instances require the employer to see physical original documents prior to any potential employee commencing work. Due to COVID-19 and the U.K. government’s instruction to stay home and practice remote working³ where possible, temporary changes have been made to the way that right to work checks can be carried out. The aim of these changes is to make it easier for employers to continue to prevent illegal working while avoiding coming into physical contact with prospective and current employees.

COVID-19 and U.K. Sponsor Compliance (Tiers 2, 4, and 5)

The Home Office has recognised that these are unprecedented and unique times. In the event that students or employees are absent directly due to COVID-19, the Home Office will not take enforcement action against sponsors who

continue to sponsor these individuals. These reasons can include illness, the need to self-isolate, or inability to travel due to travel restrictions.

KPMG NOTE

Sponsor Compliance (for Tiers 2, 4, and 5)

The guidance provided to sponsors from the Home Office during the COVID-19 crisis helps to clarify what is expected and required of sponsors during this unprecedented period. The concessions made to some reporting duties for sponsors indicate that the Home Office is starting to exercise some flexibility, and the Home Office has confirmed that where sponsors adhere to the updated guidance, non-compliance enforcement action will not be taken. Sponsored workers (and students) in the U.K. will also see some benefits from the limited relaxation of some restrictions.

Unpaid Leave and Withdrawal of Sponsorship

Sponsorship does not need to be withdrawn if a student is unable to attend for more than 60 days or if an employee is absent from work without pay for more than four weeks.

Tier 2: Delay to Start Dates

For Tier 2 (General) migrants, the start date can normally be delayed up to 28 days from the Certificate of Sponsorship start date or the vignette start date, whichever is the later. However, the Home Office has confirmed that a concession applies here and employers are permitted, as an exception specific to COVID-19, to delay the start date beyond 28 days without having to cancel the sponsorship. Tier 2 (Intra Company Transfer) migrants can ordinarily be delayed beyond the 28 days. The usual reporting requirement should still be completed if there are any delays to start dates.

Working from Home

The Home Office has acknowledged that many Tier 2 workers are working from home in the U.K. due to COVID-19. Because of these exceptional circumstances, sponsors are not required to report this to the Home Office, provided working from home in the U.K. is directly related to and a consequence of COVID-19.

KPMG NOTE

The Home Office has not made specific reference to working from homes or other locations overseas. We would advise sponsors to continue reporting these occurrences via the usual Sponsor Management System (SMS) method, and to also seek tax and social security advice where employees need to work from overseas due to COVID-19.

Tier 4 (General – Students) and Distance Learning

Tier 4 sponsor licence holders can continue to sponsor Tier 4 (General – Students) migrants continuing their studies through distance learning if they are in the U.K. or another country. If a student has permanently withdrawn from or deferred his/her studies this should be reported by sponsors as usual.

Any reports made to the Home Office which have occurred due to COVID-19, should be marked as such.

The above arrangements will apply until 31 May 2020, and will reviewed by the Home Office thereafter.

Tier 2, 4, and 5 sponsor licence holders must still adhere to all other reporting duties as normal.⁴

KPMG NOTE

Job Retention Scheme and Salary Levels

Further clarification from the Home Office will be required, for example in relation to the Job Retention Scheme and salary levels. The current guidance notes that sponsors can reduce the salary of sponsored employees to 80 percent of their salary, or £2,500 per month, whichever is lower, only where the reduction is part of a company-wide policy to avoid redundancy with all workers being treated in the same way. However, there is no direct mention of the Job Retention Scheme, furloughing workers or Tier 2 salary thresholds.

Closure of Visa Application Centres

Further information regarding the closure of U.K. visa application centres can be found in our GMS *Flash Alert* (17 April 2020) "United Kingdom – COVID-19: Visa Application Centre Closures Worldwide."

FOOTNOTES:

1 See: https://www.gov.uk/guidance/coronavirus-covid-19-right-to-work-checks?utm_source=5f32175f-2485-4217-aabb-c7bce637cda7&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate .

2 A full list of acceptable documents can be found at: <https://www.gov.uk/government/publications/right-to-work-checklist> .

3 See "stay at home" guidance from the U.K. government at: <https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance> .

4 See: https://www.gov.uk/guidance/coronavirus-covid-19-advice-for-tier-2-4-and-5-sponsors?utm_source=aceff237-0be4-4705-b2d3-c86c59d46981&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate .

* * * *

Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or one of the following professionals with the KPMG International member firm in the United Kingdom.

The KPMG Legal Services – Immigration Team has a wealth of experience in transactional, advisory, and compliance assurance services. We will be able to advise your business in relation to practical considerations in light of the above changes, as well as what this means for your long-term recruitment and compliance strategies.



Punam Birly

Tel. + 44 (0) 20 7694 4950
Punam.Birly@kpmg.co.uk



Denise Osterwald

Tel. +44 (0) 20 7694 3481
Denise.Osterwald@kpmg.co.uk

** Please note the KPMG International member firm in the United States does not provide immigration or labour law services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.*

The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom.

© 2020 KPMG LLP, a U.K. limited liability partnership, and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative, a Swiss entity. All rights reserved.

www.kpmg.com

kpmg.com/socialmedia



© 2020 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 530159

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

The KPMG logo and name are trademarks of KPMG International. KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint ventures. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever. The information contained in herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our GMS practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.