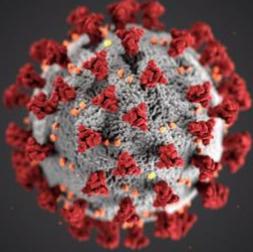


COVID-19 UPDATE

Spring 2020 Goldsmith Chambers Newsletter # 2 (up to date as of 24.04.2020)



REGULAR UPDATES

The Immigration Team at Goldsmith Chambers will be sending out regular updates via email and social media in order to keep you informed as to the position with the Home Office, First-Tier and Upper Tribunals (IAC) as soon as possible after the information is published.

We are endeavouring to ensure that you have the most up to date information available.

In this issue we cover:

- UKVI Factsheets for visa holders and short-term residents and sponsors
- Tribunal Procedure (Coronavirus) (Amendment) Rules 2020
- Admin Court Guidance
- Useful Links

NAVIGATING GUIDANCE IN THE WAKE OF CORONAVIRUS

Developments in the guidance for tribunals, practitioners and individuals continues to multiply and is updated on an almost daily basis. In this second edition of our Covid-19 Newsletter and Update, we aim to take you through some of the changes that have been introduced and to signpost the most up-to-date resources.

In addition, last week we issued [a guide](#) to expect, when issued with directions, by either the First-tier Tribunal and/or the Upper Tribunal.

As ever, we recommend that you keep track of the key gov.uk webpages for the latest information. A collection of resources is available on the [gov.uk website here](#) and we have updated and included our Useful Links section at the end of this Update.

HOME OFFICE GUIDANCE FOR (I) VISA HOLDERS AND SHORT-TERM RESIDENTS AND (II) SPONSORS

The Home Office has updated its guidance for visa holders and short-term residents as well as for Tier 2, 4 and 5 sponsors.

The [visa holders and short-term residents guidance](#) includes the link to the [online form](#) for requesting an extension to any visas expiring before the 31 May 2020 where the individual cannot leave the UK due to coronavirus. This replaces the previous system of emailing the Coronavirus Immigration Help Centre.

A note of caution has been sounded in relation to this and the previous e-mail mechanism for extending leave: completing the form would not, it would seem, extend leave under section 3C of the Immigration Act 1971. Thus, if other routes for extension, which would provide for the safeguards under section 3C are available, this may be a safer option to avoid any risk of being considered as an overstayer. If there are no alternatives, we would strongly advise to make and keep a detailed record of the online form being completed and submitted. Similarly, for those seeking longer-term leave such as those still awaiting a sponsor licence, the normal routes for extension remain preferable.

It has been published that the Home Office's Coronavirus Immigration Team (CIT) aim to respond to extension requests



under this scheme within 5 working days. However, it seems from anecdotal evidence that the actual turn-around time may be considerably longer in some cases, up to 10 days or more.

The Home Office also circulated two factsheets, which run in parallel with the guidance. These are updated from time to time but they do not appear to be published online. The latest versions can be accessed via the ILPA website (without the need for a subscription) [here for visa holders and short-term residents](#) and [here for sponsors](#).

VISA EXTENSIONS FOR NHS WORKERS

The Home Office announced at the end of March that NHS workers on work visas with leave due to expire by 1 October 2020 would be given an automatic one year extension to their leave. This would require no application, no fee and would extend to family members. This is an exception for NHS workers compared to other visa holders and short-term residents, who have to use the online form featured in the section above.

The scheme is limited to **doctors, nurses and paramedics** with a **work visa** and whose leave is **due to expire before 1 October**. UKVI will contact their employers directly to confirm the visa extension. There has been a lack of clarity in the government announcement and guidance as to whether the scheme extends to non-Tier 2 workers. ILPA [announced on Twitter](#) that they had received confirmation from the Home Office that the scheme was not limited to Tier 2 workers. Clearly this is an unsatisfactory way of policy being clarified and more needs to be done to ensure that those who work in these vital roles thanks to a different type of visa are not unfairly excluded.

Criticism has also been made of the exclusion of careworkers from the scope of the scheme given their frontline role, particularly as patients are discharged from hospital into care homes. The Executive Director of the Care Workers' Charity has said that it is "unacceptable to make those visa extensions for the NHS and not acknowledge that social care is fighting the virus on the front line". Others have also highlighted the disproportionate effect on BAME women working in the care sector.

TEMPORARY CONCESSIONS FOR TIER 4 AND SHORT-TERM STUDENTS

In addition to the extension for some NHS workers, the Home Office has issued [guidance aimed at Tier 4 sponsors, migrants and short-term students](#). The guidance supplements existing guidance that respectively concerns [Tier 4 sponsors](#), [Tier 4 students](#) and [short-term students](#) and should be read in conjunction with that guidance. A brief summary of the most relevant parts has been set out below:

The guidance addresses the concessions for sponsors on, for example:

- Reporting requirements and student absences;
- Use of scanned documents; and
- Self-assessment of English language ability.

For Tier 4 students:

- Distance learning is temporarily permitted;
- The restriction on working hours for those with the right to work is temporarily lifted for those employed as a doctor, nurse or paramedic. The normal restrictions on volunteer work are also lifted for those wishing to be an NHS Volunteer Responder, but are otherwise still in place; and



- Whilst the overall time limits for Tier 4 student leave and how long this can be held for are still in place, discretion may be applied by UKVI further down the line where any period of leave might have been exceeded as a result of Covid-19.

For short-term students:

- An additional concession allowing students to switch in-country into Tier 4. This will be allowed on an exceptional basis until 31 May 2020 at least;
- Short-term students, who have been given an extension of leave on an exceptional basis due to Covid-19, will be permitted to study on a different course, other than that which they originally entered the UK to undertake; and
- Clarification that there is no provision for extending short-term study in-country; for such an extension, leave must be sought outside of the Immigration Rules.

TRIBUNAL PROCEDURE (CORONAVIRUS) (AMENDMENT) RULES 2020

The [Tribunal Procedure \(Coronavirus\) \(Amendment\) Rules 2020](#) came into force on 10th April and cover all tribunal chambers. Rule 5 covers the Upper Tribunal whilst Rule 10 covers the FTT (IAC).

In relation to decisions without a hearing at the FTT, Rule 4A inserts a fairly broad discretion on the part of the Tribunal. The same terms are used in relation to decisions without a hearing in the UTT at Rule 5A.

(1) Notwithstanding anything in rule 25 (consideration of decision with or without a hearing) and rule 39 (bail hearings), the Tribunal may make a decision which disposes of proceedings without a hearing if the Tribunal considers that the conditions in paragraph (2) are satisfied.

(2) The conditions are—

(a) the matter is urgent;

(b) it is not reasonably practicable for there to be a hearing (including a hearing where the proceedings would be conducted wholly or partly as video proceedings or audio proceedings); and

(c) it is in the interests of justice to do so.

(3) This rule does not prejudice any power of the Tribunal to make a decision which disposes of proceedings without a hearing otherwise than under this rule.”

These rules should be read in conjunction with the current [FTT \(IAC\) Presidential Practice Statement](#) and the [UT \(IAC\) Presidential Guidance](#) included in our last newsletter, but please note below the revisions that are anticipated to the FTT Practice Statement (No 1 of 2020).

REPLACEMENT PRACTICE STATEMENT FROM FTT(IAC) PRESIDENT EXPECTED IMMINENTLY

The President of the FTT(IAC), Michael Clements, addressed [a letter to stakeholders about the pandemic arrangements in the Chamber](#) on 22 April. In his letter he indicated an intention to issue a further Practice Statement, replacing the earlier Practice Statement (No 1 of 2020). He said that this would amend the procedure for appeals:

Having taken into account feedback from practitioner groups and associations and mindful of the need to ensure that the Tribunal can decide appeals justly and efficiently in the current circumstances, I have decided that, where possible, all appeals will commence using the CCD (“core case data”) platform with effect from 4 May 2020, or such later date if the legal aid issues of using CCD have not been resolved.

We will update you as soon as possible once the new Practice Statement is issued.

NON-URGENT JUDICIAL REVIEW APPLICATIONS IN THE UT (IAC)

We noted in the last edition of this newsletter that the UT had issued a [Notice in relation to the handling of urgent judicial review applications](#). In relation to **non**-urgent judicial review applications, paragraph 35 of the UTIAC Presidential Guidance stipulated that these “may continue to be filed by post (or by hand, if circumstances permit and the relevant office is open).”

It is our understanding that at the present time Field House requires non-urgent judicial review applications to be lodged by post. They have made it absolutely clear that these applications should not be lodged by email and that such email applications will not be accepted. As Field House remains closed to the public, the only remaining option for non-urgent judicial review application is to post a hard copy application.

UT(IAC) GUIDANCE: CONTINUED DIALOGUE BETWEEN THE BAR AND THE TRIBUNALS

As we outlined in the last edition of this newsletter, Mr Justice Lane, President of the UT (IAC), issued [Guidance](#) on 23 March following the SPT’s [Pilot Practice Direction](#). ILPA wrote to the President of the UT (IAC) ([letter available here](#)) expressing, *inter alia*, its concern with the starting point of proposing not to conduct an oral hearing for errors of law-only. Mr Justice Lane has now responded to that letter and a copy of his response is available [here](#) via the ILPA website (no subscription required).

The response sets out in respect of remote hearings that:

...the process required by the Practice Direction is to determine, first, whether a decision can be taken without a hearing; and only where the tribunal determines a hearing is necessary, will it go on to consider if a remote hearing is suitable...

...A provisional view is just that: a provisional view. The actual decision will be taken having regard to any views of the parties, as rule 34(2) requires. Where, following initial examination, the judge considers that, for any reason, it would not be appropriate to decide the error of law/set aside decision without a hearing, the judge will not initiate the process...

This response will be read in conjunction with the provisions set out above in the [Tribunal Procedure \(Coronavirus\) \(Amendment\) Rules 2020](#), introduced on 10 April 2020.

TEMPORARY CLOSURE OF UK VISA APPLICATION CENTRES

All UK Visa Application Centres have been temporarily closed across the globe. In the UK, this includes those centres that have not been outsourced to Sopra Steria. The guidance simply notes that for those outside of the UK, [TLS Contact](#) (for those in Europe, Africa and parts of the Middle East) and [VFS Global](#) (for all other countries) should be contacted for further information. It is our understanding that currently there are no particular arrangements for those granted entry clearance who are not now able to enter the UK before expiry of their visa.

The Home Office has been clear in setting out that an individual's immigration status will not be negatively affected as a result of not being able to attend an appointment. Indeed, the online extension form mentioned above states *"No individual of any nationality whose leave has expired or is due to expire between 24 January 2020 and 31 May 2020, and who cannot leave the UK because of COVID-19, will be regarded as an overstayer or suffer any detriment in the future."* But as already highlighted, we would urge caution in relation to keeping records so as to leave no stone unturned if it becomes necessary to show that a person has not overstayed.

FURTHER USEFUL LINKS

- [Home Office centralised guidance for those affected by changes to immigration and borders due to Coronavirus](#)
- [HMCTS COVID-19 planning and preparation guidance page](#) (13 March 2020, updated 7 April 2020)
- [HMCTS priorities during coronavirus outbreak](#) (19 March 2020, updated 6 April)
- [HMCTS daily operational summary on courts and tribunals during coronavirus \(COVID-19\) outbreak](#) (25 March 2020, updated daily)
- [HMCTS Priority Courts – daily tracker of 'open', 'staffed' and 'suspended' courts](#) (25 March, updated daily)
- [HMCTS Guidance on telephone and video hearings](#) (18 March, updated 14 April)
- [Freemovement.org.uk – Immigration Tribunal Hearings](#)
- [UKSC Registry Information – COVID-19](#)
- [ECtHR Press Release on COVID-19 Measures](#)

(up to date as of 24.04.2020)
