

Special legal solutions for foreigners in connection with the SARS-CoV-2 virus epidemic (update 16.05.2020)

I. General information

On 31 March 2020, the Act of 31 March 2020 amending the Act on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them, as well as some other acts (Journal of Laws, item 568) entered into force, on 18 April 2020 entered into force the Act of 16 April 2020 on special support instruments in connection with the spread of the SARS-CoV-2 virus (Journal of Laws, item 695), while on 16 May 2020, entered into force the Act of 14 May 2020 amending some acts in the field of protective activities in connection with the spread of the SARS-CoV-2 virus (Journal of Laws, item 875). These acts introduce to the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them (Journal of Laws, item 374) – hereinafter the “Special Act” – **a number of specific legal solutions aimed at solving the problems caused by the SARS-CoV-2 virus epidemic for the legality of stay of foreigners’ in Poland**. These solutions are characterized above all by the fact that the majority of effects beneficial for foreigners in the area of their residence rights will take place by virtue of the law itself. Foreigners who have stayed legally in Poland so far, in order to be able to remain in its territory in accordance with legal regulations during the period of the epidemic, which is currently in force, **will not have to submit to the public administration bodies any applications for granting or extending permits residence permits or visas or extension of the periods during which they should eventually leave this territory.**

These special legal solutions include:

- 1. extension of the periods of validity of temporary residence permits expiring during the period state of epidemic emergency or state of epidemic – up to the 30th day following the date of cancellation of the last of the above-mentioned states that was in force (art. 15zd para. 3 of the Special Act);**
- 2. extension by law of periods of stay and periods of validity of national visas in cases where the last day of the period of stay on the basis of such visas would fall during the period of state of epidemic emergency or state of epidemic – until the 30th day following the date of cancellation of the last of the above-mentioned states that was in force (art. 15zd para. 1 of the Special Act);**
- 3. recognition the stay of foreigners on the territory of the Republic of Poland as legal by virtue of law in cases where from the day on which the state of epidemic threat was announced in connection with SARS-CoV-2 virus infections, they stayed on this territory on the basis of short-term residence titles, i.e.:**
 - a) under the visa-free travel regime,**
 - b) on the basis of Schengen visas issued by Polish authorities,**



- c) on the basis of Schengen visas or long-stay visas issued by other Schengen countries,
 - d) residence permits issued by other Schengen countries,
 - e) long-term visas or residence permits issued by Member States of the European Union that are not Schengen countries (when, in accordance with European Union law, such visas or documents entitle to stay on the territory of the Republic of Poland,
 - from the day following the last day of legal stay based on these titles, until the end of the 30th day following the date of cancellation of the state of epidemic emergency or the state of epidemic – depending on which one was the last in force (Article 15z¹ para. 1 of the Special Act);
4. extension by law of the periods of validity of work permits and seasonal work permits, as well as periods of permissible work based on declarations on entrusting work to a foreigner, entered in the register of declarations – until the 30th day following the date of cancellation of the last of the above-mentioned states that was in force (art. 15zzq of the Special Act);
5. the possibility to change the conditions of work performed by foreigners specified in work permits, seasonal work permits, declarations on entrusting work to a foreigner, entered in the register of declarations, temporary residence and work permits, temporary residence permits for the purpose of highly qualified employment, permits for temporary residence for the purpose of performing work as part of an intra-corporate transfer or permits for temporary residence for the purpose of long-term mobility of a managerial staff member, specialist or trainee, as part of an intra-corporate transfer, as well as in the documents attached to the notice of intention of making use of the short-term mobility of a managerial staff member, specialist or trainee as part of an intra-corporate transfer - if this change is the result of the entity entrusting the performance of work (or by the host entity having its registered office on the territory of the Republic of Poland) making use of the individual entitlements aimed at protecting jobs in crisis conditions and preventing the spread of SARS-CoV-2 virus, regulated in Article 3, Article 15g para. 8, Article 15x para. 1 and Article 15zf para. 1 of the Special Act (Article 15z⁵ of the Special Act);
6. providing access to seasonal work within the meaning of Article 88 para. 2 of the Act of 20 April 2004 on employment promotion and labour market institutions (Journal of Laws of 2019, item 1482 as amended) for foreigners who in the period after 13 March 2020 had access to the Polish labour market on the basis of a work permit, seasonal work permit, extension of work permit, extension of seasonal work permit or declaration of entrusting work to a foreigner entered in the register of declarations - during the period of the state of epidemic emergency or state of epidemic and within 30 days immediately following the cancellation of the last of these states that was in force;
7. extension by the virtue of law of the periods of validity of residence cards expiring during the period of the state of epidemic emergency or state of epidemic – up to the 30th day following the date of cancellation of the last of the above-mentioned states that was in force (Article 15z² para. 1 of the Special Act);



8. extension by law of the periods of validity of Polish foreigner IDs and documents confirming possession of a permit for tolerated stay called "permit for tolerated stay" ending in the period of the state of epidemic emergency or state of epidemic – up to the 30th day following the date of cancellation of the last of these states that was in force (Article 15z6 para. 3 and 5 of the Special Act);
9. extension by law of the periods of validity of documents issued for a limited period to citizens of the European Union Member States, European Free Trade Association (EFTA) countries – parties to the agreement on the European Economic Area or the Swiss Confederation and members of their families, who stay with them or join them, ending in the period of the state of epidemic emergency or the state of epidemic, i.e. documents confirming the right of permanent residence, residence cards of an EU citizen's family member and permanent residence cards of an EU citizen's family member – up to the 30th day following the date of cancellation of the last of these states that was in force (Article 15z6 para. 1 of the Special Act);
10. extension by the virtue of law of the deadlines for submitting an application for temporary residence permit, permanent residence permit, EU long-term resident's residence permit, for visa extension or for extension of visa-free travel during the period of state of epidemic emergency or state of epidemic – up to 30 on the day following the date of cancellation of the last of the above-mentioned states that was in force (Article 15 of the Special Act);
11. extension by the virtue of law of the dates of leaving the territory of the Republic of Poland falling out during the period of state of epidemic emergency or state of epidemic and resulting from Article 299 para. 6 of the Act of the 12th of December 2013 on foreigners (Journal of Laws of 2020, item 35) – until the 30th day following the date of cancellation of the last of the above-mentioned states that was in force (art. 15zzza of the Special Act);
12. extension by the virtue of law of the periods of voluntary return set out in the decisions obliging the foreigner to return falling out in the period of state of epidemic emergency or state of epidemic – by the 30th day following the date of cancellation of the last of the above-mentioned states that was in force (Article 15zzzb of the Special Act);
13. extension by the virtue of law of the periods of validity of Temporary Foreigner's IDs (TZTCs) expiring during the period of the state of epidemic emergency or state of epidemic – up to the 30th day following the date of cancellation of the last of the above-mentioned states that was in force (Article 15z³ para. 1 of the Special Act).

The provisions of the Special Act, which establish these specific legal solutions, refer to periods of state of epidemic emergency and state of epidemic, announced in connection with SARS-CoV-2 virus infections. It should therefore be clarified that the state of epidemic threat was in force **from 14 March 2020** pursuant to the Regulation of the Minister of Health of 13 March 2020 regarding the announcement of the state of epidemic threat in the territory of the Republic of Poland (Journal of Laws, item 433). This state was cancelled on 20 March 2020 (by the Regulation of the Minister of Health of 20 March 2020 regarding cancellation of the epidemic emergency in the Republic of Poland / Journal

of Laws, item 490/). On the same day, the state of epidemic was announced – pursuant to the Regulation of the Minister of Health of 20 March 2020 regarding the announcement of the state of epidemic in the territory of the Republic of Poland (Journal of Laws, item 491). **This state is currently in force.** It should therefore be noted that if the provisions establishing special legal solutions for foreigners refer to the period of the state of epidemic threat or state of epidemic, announced in connection with SARS-CoV-2 virus infections, **it should be understood as the period that began on 14 March 2020.**

The provisions of the Special Act postpone the specified dates and periods of validity of permits, visas and documents in a uniform manner, i.e. **until the 30th day following the date of cancellation of the last of the above-mentioned states** (state of epidemic emergency or state of epidemic), **that was in force.** As already mentioned, the state that is currently in force is the state of epidemic, which was preceded by the state of epidemic emergency. This wording of provisions is intended to take account of the possibility that after the current state of the epidemic, the state of epidemic threat would be introduced again. Then such state of epidemic threat would be considered as the last in force and so the postponement of dates and periods of validity of permits, visas and documents, as well as of periods of stay deemed legal should be calculated from its cancellation.

II. Information on individual legal solutions

1. Extension by law of the periods of validity of temporary residence permits

Temporary residence permits are residence permits granted by public administration bodies (voivodes, the Head of the Office for Foreigners as a higher instance) for a fixed period, not longer than 3 years (art. 98 para. 2 of the Act on foreigners). A foreigner who has been granted this permit is receives ex officio a residence card issued by the voivode the validity period of which coincides with the period of validity of the granted permit (art. 243 para. 1 point 1 of the Act on foreigners).

The Special Act currently provides that if the last day of the period of validity of the temporary residence permit falls during the period of state of epidemic emergency or state of epidemic (as defined above), this period is by law extended to the 30th day following the date of cancellation of the last of the above-mentioned states that was in force. **The effect resulting in extension of the period of validity of a temporary residence permit is automatic.** No administrative decision will be issued for this purpose. The foreigner will not have to apply for official confirmation of this fact either.

The extension of the period of validity of the temporary residence permit by law **will not entail the issue of a new residence card or replacement of the existing one.** The Special Act expressly excludes the legal basis for voivodes to perform such actions in these situations.

Extending the period of validity of the temporary residence permit by the virtue of law results in the possibility for the foreigners to further perform their purpose of stay on the territory of the Republic of Poland and exercise the rights arising from the possession of the permit, for example to work under the conditions specified in the temporary residence and work permit (Article 118 para. 1 of the Act on

foreigners) or taking up and running a business on the same terms as Polish citizens in the case of a temporary residence permit for the purpose of family reunification (Art. 159 para. 1 of the Act on foreigners in connection with Art. 4 para. 2 point 1 letter c of the Act of 6 March 2018 on the rules for the participation of foreign entrepreneurs and other foreign persons in business transactions on the territory of the Republic of Poland / Journal of Laws of 2019, item 1655/).

2. Extension by law of the periods of stay and periods of validity of national visas

National visas are long-term visas **issued only by Polish authorities**, entitling to enter the territory of the Republic of Poland and to stay there permanently or to have in this territory several consecutive stays, **with a total duration of more than 90 days. The period of validity of a national visa cannot exceed 1 year** (Art. 59 of the Act on foreigners).

The Special Act provides that in the event that the last day of the period of stay on the basis of such a visa (and therefore the last day of admissible stay marked in days in the visa sticker) falls during the period of state of epidemic emergency or state of epidemic (as defined above), this period, as well as the period of validity of the visa itself, is legally extended to the 30th day following the date of cancellation of the last of the above-mentioned states that was in force. In its assumptions, this solution is analogous to the solution consisting in the automatic extension of the periods of validity of temporary residence permits. **Also in this case, the right to stay on the territory of the Republic of Poland is extended by the law itself.** No administrative decision is issued for this effect. There is no need to obtain a visa extension pursuant to Art. 82 et seq. of the Act on foreigners. The extension of the period of stay and of the validity of the national visa by law will also not involve the issuing by any Polish authority of a visa sticker in a foreigner's travel document. As in the case of residence cards in relation to the extension of the period of validity of temporary residence permits, the legislator explicitly excluded the grounds for any public authority of the Republic of Poland (located in Poland or abroad) to place the visa sticker in the travel document.

3. Recognition as legal of the stay on the territory of the Republic of Poland of foreigners who stayed on this territory on the basis of the so-called short-term residence titles, including under the visa-free travel regime

The Special Act introduces the basis for recognition as legal by virtue of law the stay of foreigners who on 14 March 2020 (i.e. the day when the state of epidemic threat was announced in connection with SARS-CoV-2 virus infection) were staying on the territory of the Republic of Poland on the basis of one of the following residence titles:

- under the visa-free travel regime,
- Schengen visa issued by the Polish authority,
- Schengen visa issued by an authority of another Schengen country,
- long-term visa issued by the authority of another Schengen country,

- residence document issued by an authority of another Schengen country,
- long-term visa issued by an authority of another Member State of the European Union, which is not a Schengen country, if, in accordance with European Union law, this visa entitles to stay in this territory (this applies to cases when the foreigner uses certain forms of the so-called intra-EU mobility),
- residence permit issued by an authority of another Member State of the European Union, which is not a Schengen country, if, in accordance with European Union law, this document entitles to stay in this territory (this applies to cases when the foreigner uses certain forms of the so-called intra-EU mobility).

The stay on the territory of the Republic of Poland under visa-free travel regime may result from:

- the exemption from the visa requirement for nationals of certain countries in accordance with Annex II to Regulation 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing third countries whose nationals must be in possession of visas when crossing the external borders, and countries, whose nationals are exempt from this requirement,
- an international agreement to which the Republic of Poland is a party,
- a unilateral waiver of the visa requirement by the Republic of Poland.

The catalogue of citizenships granted with visa exemption is available at: <https://udsc.gov.pl/cudzoziemcy/obywatele-panstw-trzecich/chce-przyjechac-do-polski/czy-potrzebuje-wizy/>

Schengen visa is a visa defined in Article 3 point 22 of the Act on foreigners. This provision refers to the concepts that are used in Article 2 points 2–5 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community code on Visas (Visa Code) (Official Journal of European Union L 243 of 15.09.2009, p. 1 as amended). In any case, a Schengen visa is a visa that is issued for a planned stay on the territory of the Member States (Schengen countries) not exceeding 90 days in each 180-day period, or transit through the international transit zone of airports of the Member States (Schengen States). In order to entitle to stay on the territory of the Republic of Poland, Schengen visa must be a uniform visa, i.e. entitle to stay on the territory of all Schengen countries, or be a visa with limited territorial validity, covering the territory of the Republic of Poland. Apart from the Republic of Poland, the Schengen Area include the following countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Greece, Spain, the Netherlands, Iceland, Liechtenstein, Lithuania, Luxembourg, Latvia, Malta, Germany, Norway, Portugal, Slovakia, Slovenia, Switzerland, Sweden, Hungary and Italy.

A long-term visa issued by an authority of another Schengen State, in order to be a source of entitlement to stay on the territory of the Republic of Poland must be the visa referred to in Article 18 para. 1 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Official Journal of

European Union L 239 of 22.09.2000, p. 19, as amended) (Official Journal of European Union, Polish Special Edition, chapter 19, vol. 2, p. 9, as amended), hereinafter referred to as the "Implementation Convention", i.e. a visa for a stay exceeding 90 days, issued in the form of a uniform visa form defined by European Union law, marked with the letter "D". The maximum permissible period of stay in the territories of the Schengen States other than the one the authority of which issued such visa is up to 90 days over a period of 180 days (Article 21 para. 2a of the Implementation Convention).

A similar solution regarding the freedom of movement within the Schengen area applies to foreigners who have residence permits issued by the authorities of one of the states of this area and a valid travel document (Article 21 para. 1 of the Implementation Convention).

Moreover, it should be noted that the provisions of European Union law in the area of migration provide that long-term visas and residence permits issued by the authorities of individual Member States of the European Union, regardless of whether they apply the Schengen acquis in full, may provide in appropriate cases a basis for staying on the territories of other Member States of the European Union in order to use particular forms of the so-called intra-EU mobility. Such provisions result from:

- Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (Official Journal of European Union L 157 of 27 May 2014, pp. 1–21) and
- Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (Recast) (Official Journal of European Union L 132 of 21.05.2016, p. 21).

The provisions of Polish law that have implemented both of these directives provide for the following forms of mobility based on the possession of a residence permit or long-stay visa issued by the authorities of other Member States of the European Union bound by these directives, which are not connected with the obligation to obtain a temporary residence permit on the territory of the Republic of Poland:

- short-term mobility of a managerial staff member, specialist or trainee, in the framework of an intra-corporate transfer – admissible period of stay on the territory of the Republic of Poland is up to 90 days within 180 days (Article 3 point 7i and Article 139n para. 1 of the Act on foreigners) (only on the basis of a residence permit);
- student mobility – admissible period of stay on the territory of the Republic of Poland is up to 360 days (Article 3 point 7j and Article 149b para. 1 of the Act on foreigners);
- short-term mobility of a researcher – admissible period of stay up to 180 days within 360 days (Article 3 point 7h and Article 156b para. 1 of the Act on foreigners);
- short-term mobility of a researcher's family member – admissible period of stay up to 180 days within 360 days (Article 3 point 7g and Article 169a para. 1 of the Act on foreigners).

The above-mentioned directives are not binding for the Republic of Ireland and Denmark, moreover, these directives are not part of the European Union law binding for the United Kingdom of Great Britain and Northern Ireland in the so-called during the transition period after leaving the EU, and therefore visas and documents from these countries are not a source of entitlement to stay in the framework of the so-called intra-EU mobility.

The stay deemed legal under Article 15z¹ para. 1 of the Special Act is a national, specific form of residence title. It is not tantamount to the extension of any of the above-mentioned visas or documents or the extension of admissible stay under the visa-free travel regime. The use of this legal basis for staying in the territory – as in the case of other legal solutions of the Special Act dedicated to foreigners – is by no means dependent on submitting any applications, issuing permits or documents.

The period of stay deemed legal will start from the day following the last day of legal stay based on the visas, residence permits or visa-free travel regime and will last until the end of the 30th day following the date of cancellation of the state of epidemic emergency or the state of epidemic (depending on which one was the last in force). The exercise of this right depends on the continued stay of the foreigner on the territory of the Republic of Poland. Leaving this territory will prevent the foreigner from invoking this right as an independent title to re-enter the territory of the Republic of Poland.

Foreigners whose stay on the territory of the Republic of Poland will be considered legal on the basis of Article 15z¹ para. 1 of the Special Act, will be entitled to work in the territory of the Republic of Poland, provided they have a valid work permit or a valid seasonal work permit, or if they have a declaration of entrusting work to a foreigner, entered in the register of declarations. This will also apply to cases in which the period of validity of the work permit will be extended by law on the basis of Article 15zzq para. 1 of the Special Act, and cases where the period of admissible work based on the declaration entered in the register of declarations is extended under Article 15zzq para. 3 of this Act. A separate regulation regarding access of foreigners to the Polish labour market based on this type of legal basis was necessary in the Special Act, because it is not a type of basis of residence provided for in Article 87 para. 1 of the Act of 20 April 2004 on the promotion of employment and labour market institutions.

4. Extension by law of work permits, seasonal work permits and periods of work permissible on the basis of declarations on entrusting work to a foreigner entered in the register of declarations

Work permit is an administrative decision determining the right of foreigners to work in the territory of the Republic of Poland, provided that they stay in that territory on the basis of Article 87 para. 1 point 12 of the Act of 20 April 2004 on the employment promotion and labour market institutions (Journal of Laws of 2019, item 1482, as amended), for example:

- temporary residence permit (except for a permit due to circumstances requiring a short stay – Art. 181 of the Act on foreigners),

- national visa or Schengen visa issued by the Polish authority (with the exception of visas for tourist purposes, visas for the purpose of temporary protection and for arrival for humanitarian reasons, due to the interest of the state or international obligations),
- visa issued by another Schengen State,
- residence document issued by another Schengen State,
- under the visa-less travel regime,

Work permits are issued by provincial voivodes for a fixed period of time, no longer than 3 years (exceptionally 5 years – in the case when the performance of work involves performing a function on the management board of a legal person who employs over 25 people on the day of submitting the application).

A special type of work permit is a seasonal work permit issued by starosts for foreigners who perform seasonal work, i.e. work in the field of activity specified in the Regulation of the Minister of Family, Labour and Social Policy of 8 December 2017 regarding subclasses of activity according to the Polish Classification of Activities (PKD), in which seasonal work permits for a foreigner are issued (Journal of 2019, item 1845).

This permit is also issued for a limited period. However, it cannot be longer than 9 months in a calendar year.

A special form of providing a foreigner with access to the Polish labour market is the institution of a declaration on entrusting work to a foreigner, entered in the register of declarations. It is available to citizens of six countries: the Republic of Armenia, the Republic of Georgia, the Republic of Belarus, the Republic of Moldova, the Russian Federation and Ukraine (Article 2 of the Regulation of the Minister of Family, Labour and Social Policy of 8 December 2017 on the countries the citizens of which are concerned with some provisions regarding the seasonal work permit and provisions regarding the declaration of entrusting work to a foreigner / Journal of Laws, item 2349 /) and consists in exemption from the obligation to have a work permit in the case of performing work other than seasonal work (within the meaning of the above) for a period not longer than 6 months in the next 12 months (regardless of the number of entities entrusting this work to the foreigner), provided that the poviast labour office entered the declaration on entrusting work to a foreigner into the register of declarations before the commencement of work, and the work is performed under the conditions specified in that declaration. One of the data placed by the entity entrusting work in the declaration to be entered in the register of declarations is the information about the period or periods of work that is offered to the foreigner (Art. 88z para. 1 point 3 letter d on the Act on employment promotion and labour market institutions).

The Special Act contains solutions enabling foreigners to perform work based on their work permits, seasonal work permits and declarations on entrusting work to a foreigner longer if their rights would end in the period of state of epidemic emergency or state of epidemic (as defined above). If the

end of the period of validity of a work permit or seasonal work permit falls in one of these periods, it will be extended by law to the 30th day following the date of cancellation of the last of the above-mentioned states that was in force. A similar solution has been applied in the case of foreigners who have had a work permit or a seasonal work permit, which were extended by a decision in this regard, and the end of the period of the extended permit of which fell within the period of one of the two above-mentioned states.

In the case of declarations about entrusting work to a foreigner, which have been entered in the register of declarations pursuant to Art. 88z para. 2 of the Act on the employment promotion and labour market institutions, the Special Act provides that if the end of the period indicated in the declaration as the period of work (referred to above) falls within the period of state of epidemic threat or state of epidemic, the foreigner will be able to continue performing work covered by this declaration until the end of the 30th day following the date of cancellation of the last of the above-mentioned states that was in force, still being exempted from the obligation to have a work permit. If the declaration indicates several periods of work that end within the period of state of epidemic emergency or state of epidemic, the foreigner will be able to perform work also in periods not indicated as periods of work. In practice, during a period of state of epidemic emergency or state of epidemic, work based on a declaration or several declarations on entrusting work to a foreigner can be performed for more than 6 months in the next 12 months.

As in the case of extension of the periods of validity of temporary residence permits, this effect in the form of extension of the periods of validity of work and seasonal work permits and periods of permissible work based on declarations on entrusting work to a foreigner, will take place automatically, by virtue of law. The entitlement to continue work by a foreigner will not be based on any administrative decision or material and technical action.

5. Allowing change in the conditions of performing work by a foreigner as a result of using individual anti-crisis solutions provided for in the Special Act

The Special Act contains a number of anti-crisis provisions that constitute the basis for modifying the content of the contractual relationship that constitutes the basis for performing work. Their undoubted goal is to counteract the negative effects of the COVID-19 pandemic and maintain jobs, and to prevent the spread of the SARS-CoV-2 virus.

According to Article 15g para. 8 of the special Act, the entrepreneurs, non-governmental organisations within the meaning of Article 3 para. 2 of the Act of 24th April 2003 on public benefit activities and volunteering (Journal of Laws of 2019, item 688, 1570 and 2020 and of 2020 item 284) and other entities conducting public benefit activities, referred to in Article 3 para. of this Act, who experienced a decrease in economic turnover as a result of COVID-19 (defined in Article 15g para. 9 of the Special Act), may reduce the employee's working time by a maximum of 20%, not more than 0.5 full-time, provided that the remuneration may not be lower than the minimum remuneration for work determined on the basis of the provisions on minimum remuneration for work, taking into consideration the working hours. As

employee, referred to in Article 15g of the Special Act, is considered a natural person who, in accordance with the provisions of the Polish law, is in an employment relationship with the employer. In addition, this provision shall apply mutatis mutandis to persons employed under an outwork or mandate contract or other contract for the provision of services, to which, in accordance with the Act of 23 April 1964 - Civil Code (Journal of Laws of 2019, item 1145 and 1495) the provisions on commissioning apply, or who engage in gainful employment, on the basis of other than the employment relationship, for an employer who is an agricultural cooperative or other cooperative engaged in agricultural production, if they are subject to the pension and disability insurance obligation, with the exception of home assistant employed by a natural person (Article 15g para. 4 of the Special Act). The conditions and procedure for performing work during a reduced working time shall be determined in an agreement concluded by the employer with the trade union organisation or employees' representatives (Article 15g para. 11 of the Special Act).

Pursuant to Article 15x para. 1 of the Special Act, the employer conducting specific types of activity, for which the continuity of its conduct is of critical importance, consisting, for example, in ensuring the functioning of critical infrastructure systems and facilities within the meaning of Article 3 point 2 of the Act of 26 April 2007 on crisis management (Journal of Laws of 2019, item 1398 and of 2020 item 148, 284, 374 and 695), or for which an order was issued by public administration bodies in connection with the COVID-19 pandemic, may make a number of changes in the content of the employment relationship related to the working time of employees:

- changing the system or distribution of employees' working time in a manner necessary to ensure the continuity of the operation of enterprise or station,
- order to work overtime to the extent and in the scope necessary to ensure the continuity of operation of enterprise or station,
- obliging the employee to remain ready to perform work outside normal working hours in the workplace or in another place designated by the employer,
- instructing the employee to exercise their right to rest in a place designated by the employer.

Pursuant to Article 15zf para. 1 of the Special Act, for an employer who has experienced a decline in economic turnover following COVID-19, and who meets certain conditions set out in this provision, it is permissible to:

- limit the continuous rest referred to in Article 132 § 1 of the Act of 26 June 1974 – Labour Code, for not less than 8 hours, and uninterrupted rest referred to in Article 133 § 1 of this Act, for not less than 32 hours, including at least 8 hours of uninterrupted daily rest,
- conclude an agreement on the introduction of an equivalent working time system in which the extension of the daily working time may be allowed, but not more than up to 12 hours, in a reference period not longer than 12 months. The extended daily working time is offset by a shorter daily working hours on other days or days off from work,

- conclude an agreement on the application of less favourable terms of employment for employees than resulting from employment contracts concluded with these employees, to the extent and for the time agreed in the agreement.

Moreover, under Article 3 para. 1 of the Special Act, in order to counteract COVID-19, the employer may instruct the employee to perform, for a fixed period, work specified in the employment contract, outside the place of its permanent performance (remote work).

The use of these instruments of protection against the negative effects of the COVID-19 pandemic and instruments for preventing the spread of the SARS-CoV-2 virus, when it concerns work entrusted to foreigners, may result in modification of the conditions of the performance of work, which were specified in administrative acts constituting the source of foreigner's access to Polish labour market, i.e.

- in a work permit,
- in a seasonal work permit,
- in a temporary residence and work permit,
- in a temporary residence permit for the purpose of highly qualified employment,
- in a temporary residence permit for the purpose of performing work under the intra-corporate transfer,
- in a temporary residence permit for the long-term mobility of a managerial staff member, specialist or trainee under the intra-corporate transfer,

as well as in the declaration of entrusting the performance of work to a foreigner, which was entered in the register of declarations. It may possibly lead to the fact that the conditions of work by the foreigner will be different to those resulting from documents that have been attached by the host unit based in the Republic of Poland to the notification filed to the Head of the Office for Foreigners on the intention of the foreigner to use the short-term mobility of a managerial staff member, specialist or trainee as part of the intra-corporate transfer.

Article 15z5 para. 1 introduced into the Special Act allows the foreigner to perform work on the terms amended as a result of the application by the entity entrusting work to the foreigner within the meaning of Article 2 para. 1 point 21b of the Act on employment promotion and on labour market institutions, one of the above instruments for protection against the negative effects of the COVID-19 pandemic and instruments preventing the spread of SARS-CoV-2 virus, without the need to obtain new permits or change them, as well as without the need to enter a new declaration on entrusting the performance of work to the register of declarations. Thus, even if the conditions modified in this way will be in conflict with the currently defined conditions of access to the labour market (e.g. with the lowest monthly salary of a foreigner in a given position, specified in the work permit pursuant to Article 88f para. 1 of the Act on employment promotion and on labour market institutions, or with the working hours specified in the temporary residence and work permit pursuant to Article 118 para. 1 point 4 of the Act on foreigners),

their implementation by the parties to the legal relationship constituting the basis for performing work by a foreigner will be legal.

The regulation acts similarly in cases where the above-mentioned instruments would be used by the host entity within the meaning of Article 3 point 5b of the Act on foreigners, having its registered office in the territory of the Republic of Poland, to which an employee was posted as part of an intra-corporate transfer (as defined in Article 3 point 13b of the Act on foreigners) and it would result in the change of specific conditions of work performed by the foreigner in such a way that they would be in conflict with the conditions set out in the temporary residence permit issued for the purpose of performing work under intra-corporate transfer (Article 139a para. 1 of the Act on foreigners) or in a temporary residence permit for the long-term mobility of a managerial staff member, specialist or trainee, under the intra-corporate transfer (Article 139o item 1 of the Act on foreigners). In these cases, the host entity will not be obliged to submit an application for granting such a new foreigner an appropriate new permit and the foreigner will be able to perform work in accordance with the changed conditions (Article 15z5 para. 2 of the Special Act). Similarly, in the event that a foreigner uses the short-term mobility of a managerial staff member, specialist or trainee within the territory of the Republic of Poland, as part of an intra-corporate transfer, in connection with the host entity's prior notification of the intention of the foreigner to use this type of mobility (Article 139n para. 1 point 3 of the Act on foreigners), and as a result of the application of the above-mentioned instruments, a situation would arise in which the conditions for the work of a posted employee within this institution would change in relation to the documents attached to this notification, the foreigner will be able to work on such changed conditions (Article 15z5 para. 3 of the Special Act).

The new regulation is completed (Article 15z5 para. 4) by:

- lifting the obligation on a foreigner to notify a voivode who has granted a temporary residence permit for the purpose of highly qualified employment about a change in the minimum working time (Article 137 point 4 in connection with Article 134 para. 2 of the Act on foreigners) in the event that it occurred during the first two years of the foreigner's stay on the basis of this permit and if such change resulted from the application of one of the anti-crisis instruments discussed,
- lifting the obligation on a foreigner to notify a voivode who has granted a temporary residence permit for the purpose of highly qualified employment about having their remuneration lowered or about a change in the minimum working time (Article 134 para. 3 of the Act on foreigners) in the event that it occurred after the first two years of stay on the basis of this permit and if such change resulted from the application of one of the anti-crisis instruments discussed.

6. Allowing access to seasonal work by foreigners who in the period after 13 March 2020 had access to the Polish labour market on the basis of a work permit, seasonal work permit, extension of work permit, extension of seasonal work permit or declaration of entrusting performing work to a foreigner entered in the register of declarations

As already indicated, seasonal work is work within the meaning of Article 88 para. 2 of the Act on employment promotion and labour market institutions. It is work performed in the territory of the Republic of Poland in the scope of activities specified in the Regulation of the Minister of Family, Labour and Social Policy of 8 December 2017 regarding subclasses of activities according to the Polish Classification of Activities (PKD), in which seasonal work permits for a foreigner are issued (Journal of Laws of 2019, item 1845), on the basis of a contract with an entity whose registered office or place of residence or branch, plant or other form of organised activity is located on the territory of the Republic of Poland.

Apart from cases in which a foreigner has full access to the Polish labour market or is exempted from the obligation to have a work permit, access to this work for third-country nationals is regulated by the above-mentioned seasonal work permit institution. In Article 15z7 para. 1 of the Special Act, the legislator provides for a special exemption from the obligation to hold such a permit – such an exemption is of a temporary nature, i.e. it concerns the period of the state of epidemic emergency, state of epidemic and the period of 30 days immediately following the cancellation of the last of these states that was in force. During this period, the foreigner is exempted from the obligation to have a seasonal work permit in order to be able to perform seasonal work, if in the period after 13 March 2020 they had a work permit or a seasonal work permit (and therefore a permit which has been valid for at least one day following 13 March 2020) or extension of one of such permits, or a declaration of entrusting the performance of work to a foreigner entered in the register of declarations, in which the period of performing work was determined in such a way that at least one day of this period falls after 13 March 2020). Exemption from the obligation to have a work permit in this case is of a general nature and is not associated with a specific entity entrusting the performance of work. It does not depend on the type of work (position) covered by the above-mentioned permits or declaration of entrusting the performance of work.

The above exemption from the obligation to have a permit must be correlated with the appropriate basis for the foreigner's stay on the territory of the Republic of Poland. The foreigner must therefore stay on the basis of one of the residence titles listed in Article 87 para. 1 point 12 of the Act on employment promotion and labour market institutions. In the case of national visas and temporary residence permits, the exemption from the obligation to have a work permit will provide general access to seasonal work also to those foreigners whose national visas and temporary residence permits have been extended by law pursuant to Article 15zd para. 1 or 3 of the Special Act). In addition, general access to seasonal work will be provided to foreigners whose stay on the territory of the Republic of Poland is considered legal pursuant to Article 15z1 para 1 of the Special Act (Article 15z7 para. 1 is a special provision in relation to Article 15z12 para. 2 to the extent that this provision provides for the obligation to have a valid seasonal work permit).

7. Extension of the period of validity of residence cards by the virtue of law

The Special Act also provides for a special regulation providing for the extension by law of the periods of validity of residence cards the end of which would fall during a period of the state of epidemic emergency or state of epidemic. The provision of Article 15z² para. 1 of the Special Act applies to all residence cards that are issued on the basis of Polish law to third-country nationals, i.e. foreigners who have:

- temporary residency permit,
- permanent residence permit,
- long-term EU residence permit,
- permission to stay for humanitarian reasons,
- refugee status,
- subsidiary protection.

This provision will result in the extension of the period of validity of the residence card to the 30th day following the date of cancellation of the last of the above-mentioned states (state of epidemic emergency or state of epidemic) that was in force. At the same time, the act expressly excludes that a change in the period of validity of a document would involve the issuance of a new document or its replacement. Foreigners will be able to use their document as valid in everyday legal transactions despite the expiry of the expiration date specified on it.

8. Prolongation by law of the periods of validity of Polish foreigner IDs and "permits for tolerated stay"

The Special Act also includes a special regulation providing for the extension by law of the periods of validity of Polish foreigner IDs and "permits for tolerated stay", the end of which would fall during the period of the state of epidemic emergency or state of epidemic.

The Polish foreigner ID is issued by the voivode in the cases referred to in Article 260 para. 1 of the Act on foreigners, for a period of 1 year (Article 262 of the Act on foreigners). During its validity, this document confirms the identity of the foreigner during the foreigner's stay on the territory of the Republic of Poland, but does not confirm the foreigner's citizenship. It does not entitle the foreigner to cross the border (Article 261 para. 1 and 2 of the Act on foreigners).

In turn, the document known as "permit for tolerated stay" is issued to a foreigner who has been granted permission for tolerated stay on the territory of the Republic of Poland (Article 273 of the Act on foreigners). During its validity, this document confirms the identity of the foreigner during the foreigner's stay on the territory of the Republic of Poland, but does not confirm the citizenship of the foreigner. It does not entitle the foreigner to cross the border (Article 274 of the Act on foreigners). The document "permit for tolerated stay" is issued by the commander of the Border Guard facility or the commander of the Border Guard unit for a period of 2 years (Article 275 of the Act on foreigners).

As a result of this provision (Article 15z6 para. 3 and 5 of the Special Act), the period of validity of a Polish foreigner's ID and "permit for tolerated stay" will be extended until the 30th day following the date of cancellation of one of the states (state of epidemic emergency or state of epidemic), which will be the last in force. At the same time, as in the case of a solution dedicated to residence cards, the Act expressly excludes that a change in the period of validity of a document may involve the issue of a new document or its replacement (Article 15z6 para. 4 and 6). Foreigners will be able to use their document as valid in everyday legal transactions despite the expiry of the expiration date specified on it.

9. Extension by law of the periods of validity of documents issued for a limited period to citizens of the European Union Member States, European Free Trade Association (EFTA) countries - parties to the agreement on the European Economic Area or the Swiss Confederation and members of their families, who stay with them or join them

The Special Act contains a special regulation regarding the extension by law of the periods of validity of the following documents issued to citizens of European Union Member States, European Free Trade Association (EFTA) countries - parties to the agreement on the European Economic Area or the Swiss Confederation and members of their family, who stay with them or join them:

- documents confirming the right of permanent residence,
- residence cards of a family member of an EU citizen,
- permanent residence cards of a family member of an EU citizen.

Analogously to other solutions regarding the extension by law of the periods of validity of documents, if the end of the period of validity of one of the above-mentioned documents falls during the period of the state of epidemic emergency or state of epidemic, it will be extended to the 30th day following the date of cancellation of one of these states (state of epidemic emergency or state of epidemic), which will be the last in force (Article 15z7 para. 1 of the Special Act). At the same time, this extension will not constitute a basis for the exchange or issue of a new document (Article 15z7 para. 2 of the Special Act).

10. Extension of the deadlines for submitting an application for a temporary residence permit, permanent residence permit, EU long-term resident's residence permit, for visa extension or for extension of stay under the visa-free travel regime.

Particular provisions of the Act on foreigners require foreigners who are already in the territory of the Republic of Poland to submit specific applications related to the legalisation of their stay in this territory within the time limits that determine the period of their legal stay (e.g. based on their temporary residence permit, visa, stay under visa-free travel).

These are the following provisions:

- Article 105 para. 1 of the Act on foreigners – in relation to the application for temporary residence permit,

- Article 202 para. 1 of the Act on foreigners – in relation to the application for permanent residence permit,
- Article 202 para. 1 – used pursuant to the reference contained in Art. 223 of the Act on foreigners – in relation to the application for the European Union long-term resident's residence permit,
- Article 85 para. 1 of the Act on foreigners – in relation to the application for visa extension,
- Article 300 para. 2 of the Act on foreigners – in relation to the application for extension of stay as part of visa-free travel.

The timely submission of the application determines that in the course of the procedure which is to lead to the granting of a permit or other action (extension of visa, extension of stay under visa-free travel), the stay of a foreigner on the territory of the Republic of Poland will be considered legal, regardless of how the proceedings will be terminated (e.g. Art. 108 para. 1 point 2 of the Act on foreigners) or additionally the admissibility of conducting proceedings (in the case of extension of a visa, permanent residence permit and long-term EU resident's residence permit, the submission of an application during an illegal stay gives rise to the basis for issuing a decision refusing to initiate proceedings).

In connection with the introduction on 16 March 2020 of the state of epidemic threat, as mentioned earlier, voivodship offices temporarily suspended direct customer service, which in fact prevented foreigners from fulfilling the requirement of submitting a personal application in the above-mentioned cases within the time limits resulting from their current legal stay or of personal appearance at the request of the authority. Therefore, the legislator decided that the deadlines for submitting these applications – if they would fall during the period of the state of epidemic emergency or state of epidemic (which in fact coincides with the date of suspension of direct customer service in voivodship offices) – should be properly extended by law, i.e. by the end of the 30th day following the date of cancellation of the last of the above-mentioned states that was in force. Foreigners who take advantage of this solution, i.e. submit applications within a prolonged period (in particular after reinstating direct service in voivodship offices) **will also be the beneficiaries of the benefit of a stay considered legal in the period preceding the submission of the application** and the legal basis of this stay will result from individual provisions regulating the legality of stay in the course of proceedings, i.e.

- **Article 108 para. 1 point 2 of the Act on foreigners – in relation to the application for temporary residence permit,**
- Article 206 para. 1 point 2 of the Act on foreigners – in relation to the application for permanent residence permit,
- Article 206 para. 1 point 2 applicable pursuant to the reference from Art. 223 of the Act on foreigners – in relation to the application for the European Union long-term resident's residence permit,
- Article 87 para. 1 point 2 of the Act on foreigners – in relation to the application for visa extension,



- Art. 300 para. 4 of the Act on foreigners – in relation to the application for extension of stay as part of visa-free travel.

Therefore, it is a conditional solution that **all foreigners will be able to use, in particular those who are not affected by the special solutions of the special act discussed above**, for example foreigners staying on the territory of the Republic of Poland under the visa-free travel regime who entered this territory after 14 March 2020. The condition for using it will be to submit afterwards one of the appropriate applications.

The fact that the stay of a foreigner **will be considered legal already in the period preceding the submission of the application, based on the specific provisions of the Act on foreigners**, means that the foreigners **will be able to derive certain rights for themselves during this period, including in particular the right to work** in the cases specified in the provisions of the Act on the employment promotion and labour market institutions, i.e.:

a) on the basis of Article 88g para. 1b of this Act – if the foreigner has a work permit (the validity of which will be extended in accordance with the provisions mentioned above), hence the foreigner will be able to work under the conditions specified in this permit, provided that the foreigner subsequently submits (in a prolonged deadline) application for:

- temporary residence and work permit (art. 114 para. 1 or Article 126 of the Act on foreigners),
- temporary residence permit for the purpose of highly qualified employment (Art. 127 of the Act on foreigners),
- temporary residence permit for the purpose of conducting business activity – for performing work consisting in the shareholder fulfilling a function in the management board of a limited liability company or joint-stock company, or conducting affairs of a limited partnership or limited joint-stock partnership by a general partner, or acting as a proxy (Art. 142 para. 3 of the Act on foreigners),
- long-term resident's EC residence permit,

– to continue the work carried out so far;

b) on the basis of Article 88za para. 3 of this Act – if the foreigner has a declaration of entrusting the performance of work to a foreigner, entered in the register of declarations (which, in accordance with the provisions discussed above, will allow the performance of work for periods longer than originally specified and regardless of the rule of 6-months in the next 12 months), therefore the foreigner will be able to perform work on conditions not worse than specified in the declaration, and in order to continue the same work will then (in the extended period) submit an application for a temporary residence and work permit (Art. 114 para. 1 of the Act on foreigners).

11. Extension by law of the time limits for leaving the territory of the Republic of Poland resulting from Art. 299 para. 6 of the Act on foreigners

In Article 299 para. 6 of the Act on foreigners, an obligation was set for foreigners to leave the Republic of Poland within a specified period and thus avoid the risk of being obliged to return. At the same time, this provision distinguishes between deadlines for fulfilling this obligation. And so, a 30-day period is set for foreigners in respect of whom a specific decision closing the way to legalisation of stay has become final or to whom such decision has been delivered as final (decision of a higher authority).

Administrative decisions that have such an effect are decisions on:

- refusal to extend a Schengen visa,
- refusal to extend a national visa,
- refusal to grant a temporary residence permit,
- refusal to grant a permanent residence permit,
- refusal to grant an EU long-term resident's residence permit,
- discontinuation of proceedings regarding the extension of the Schengen visa,
- discontinuation of proceedings regarding the extension of a national visa,
- discontinuance of proceedings regarding the granting of temporary residence permit,
- discontinuation of proceedings regarding the granting of permanent residence permit,
- discontinuation of proceedings regarding the granting of a long-term resident's EU residence permit,
- withdrawal of temporary residence permit,
- withdrawal of permanent residence permit,
- withdrawal of EU long-term resident's residence permit,
- refusal to grant refugee status and subsidiary protection,
- declaring the application for international protection to be inadmissible,
- discontinuation of proceedings on granting international protection,
- revocation of refugee status,
- deprivation of subsidiary protection.

In turn, a 7-day period was established for foreigners who, pursuant to Art. 31 para. 1 of the Act on foreigners, in particularly justified cases, due to their health, were not transferred to a third country, despite the decision to be refused entry. This period runs from the day on which the reasons for not transferring the foreigner to a third country ceased.

Due to the fact that in recent weeks the possibilities of moving across the borders of countries neighbouring the Republic of Poland have been significantly reduced, the implementation of the

obligation to leave the territory of the Republic of Poland within the statutory deadline has become impossible in many cases. Hence, the Special Act introduces a solution based on an appropriate extension of the time limit by **the virtue of law** – in the event that its end falls during the period of state of epidemic emergency or state of epidemic. Then it will be extended until the end of the 30th day following the date of cancellation of the last of the above-mentioned states that was in force.

The extension of time limits by virtue of law will apply to those time limits that started before 14 March 2020, but have not expired by this date, as well as those that would have started to run during the period of the state of epidemic emergency or state of epidemic. Therefore, in the case of receiving, within the period starting on 14 March 2020, by the party (proxy, other representative) of one of the above decisions, which is final, the deadline for fulfilling the obligation to leave the territory of the Republic of Poland – if it does not end until the end of the period of state of epidemic (or the potential subsequent state of epidemic emergency) – will be extended accordingly.

12. Extension by law of the periods of voluntary return

In decisions on the obligation of the foreigner to return (which in today's legal status is the equivalent of old expulsion decisions), as a rule, the deadline for voluntary return is 15–30 days, and in accordance with Art. 315 para. 1 of the Act on foreigners runs from the date of delivery of the decision. Exceptionally, in the case of parallel proceedings for the granting of a residence permit, extension of a visa, proceedings for the grant of international protection, this period runs from the moment a specific decision ending these parallel proceedings becomes final or is delivered as final. The nature of this deadline is such that it allows a foreigner who is the addressee of a return decision to fully fulfil the obligations arising from this decision, without the need to resort to coercive measures. For reasons identical to the dates of leaving the territory of the Republic of Poland pursuant to Art. 299 para. 6 of the Act on foreigners, the fulfilment of specific obligations within the set out deadlines has become impossible in many cases. Hence, the Special Act likewise extends the deadlines for voluntary return, which would fall in the period of the state of epidemic emergency or state of epidemic. The extension shall last until the end of the 30th day following the date of cancellation of the last of the above-mentioned states that was in force. As with other special solutions of the Special Act, this legal effect occurs automatically, by virtue of the law itself. The extension of the deadline for fulfilling the obligation under the decision obliging the foreigner to return is not based on any decision, and the foreigner does not have to apply for the extension of the period of voluntary return in accordance with Art. 316 of the Act on foreigners.

The extension of time limits by virtue of law will apply to those time limits that started before 14 March 2020, but have not expired by this date, as well as those that would have started to run during the period of the state of epidemic emergency or state of epidemic. Therefore, it will also apply to decisions obliging the foreigner to return, which will be issued during one of these states.

13. Extension by the virtue of law of the periods of validity of Temporary Foreigner's IDs (TZTCs)

Temporary Foreigner's IDs are documents issued to foreigners applying for international protection. During their validity, they confirm the identity of foreigners during their stay on the territory of the Republic of Poland and entitle the foreigners and minor children covered by these IDs to stay on the territory of the Republic of Poland until the completion of the proceedings on granting international protection with a final decision (Article 55a para. 1 of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland / Journal of Laws of 2019, item 1666/). The Special Act currently provides for a solution – consistent with other solutions dedicated to foreigners – providing for the extension by law of the periods of validity of such documents if their date of expiry would fall during the period of the state of epidemic emergency or the state of epidemic. The extension of the validity period will last until the end of the 30th day following the date of cancellation of the last of the above-mentioned states that was in force. As with the extension of the period of validity of residence cards, this extension will not result in the issuance of a new Temporary Foreigner's IDs. The foreigner will be able to use the current document as valid.