**The Frontier Workers Permit Scheme**

Date: 28 May 2021

Introduction

1. When the UK exited the European Union on 1 January 2021, it also meant that the UK was no longer part of the Single Market which included, inter alia, the right to the freedom of movement. This has led to the UK Government creating a number of immigration policies and schemes on order to allow for workers from other countries to enter the UK. One such scheme is the frontier worker permit which opened to new applicants on 10 December 2020. Although only open to people who had previously come into the UK for work on a temporary basis before Brexit kicked in, the criteria are generous enough that a range of people may be eligible to apply. This would involve those who have worked in the rural economy in the UK.

Who are Frontier Workers?

1. Frontier workers are people who work in one country but live primarily in another. Free movement enabled this working pattern to develop and flourish within the EU, helped along by cheap travel and remote working.
2. Frontier working comes in various forms. A worker could be a French employee of a multinational company sharing their time between offices in Paris and London, or a Polish worker undertaking seasonal work on a farm.
3. Existing frontier workers are protected by provisions of the Brexit Withdrawal Agreement which require the British government to ensure that frontier workers who began working in the UK before 31 December 2020 can continue to do so now that free movement has come to an end. As a result, the Home Office has created the frontier worker permit scheme.  There is no deadline to apply for a permit but frontier workers will need to secure some form of immigration permission by 30 June 2021 to continue working in the UK.

Who is Eligible?

1. Those considering applying under the frontier workers permit scheme should consider whether there are other immigration schemes that may provide greater flexibility, such as the skilled worker visa scheme[[1]](#footnote-1) or EU settled status scheme.
2. If the frontier worker permit is seen as the best option, the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020 sets out who is deemed to be eligible.
3. The Regulations sets out the definition of a frontier worker. For the purposes of a permit, a frontier worker is someone who, immediately before 11pm on 31 December 2020 was, and continuously since then, has been;

* An EEA or Swiss national;
* Not primarily resident in the UK;
* And one of the following
  + A worker in the UK;
  + Self-employed in the UK;
  + A person treated as self-employed/a worker under regulation 4 as they have retained this status.

1. The frontier worker permit lasts for 5 years and can be renewed.
2. The key point to note is that the frontier worker must have begun working in the UK before 31 December 2020 and have continued in this working pattern up to the point of application to be eligible for a permit. Family members of frontier workers can also obtain status in the UK. They should not apply under the scheme but they can apply for an EU Settlement Scheme family permit to join the frontier worker in the UK, or for pre-settled/settled status under that scheme if they are eligible.

What does “not primarily resident mean”?

1. The Regulations state that someone is seen as not primarily resident in the UK if at a “particular point in time”, they can show one of the following:

* They have been present in the UK for less than 180 days in the 12-month period immediately before the relevant day; or
* They have returned to their country of residence at least once in the last six months or twice in the last 12 months before the relevant day unless there are exceptional reasons for not having done so.

1. More details on the guidance given by the Home Office can be found at: [Frontier worker permit scheme caseworker guidance - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/frontier-worker-permit-scheme-caseworker-guidance). The caseworker deciding the permit application will consider each point in turn.

*Stage 1 – spent less than 180 days in the UK*

1. In this assessment, the Home Office is not interested in any time spent in the UK before 1 January 2020. They will check whether the applicant has spent less than 180 days in the UK during any rolling 12-month period from 1 January 2020 until the date of application. If it is an application to renew a permit then the 12-month periods will run from the date the last permit was granted.
2. If the applicant has been present in the UK for more than 180 days then the caseworker will move on to see if the person instead qualifies under the second stage.

*Stage 2 – frequency of travel*

1. If the applicant cannot meet the first stage of the test, they will have to show that they have returned to their country of residence at least either:

* once in every 6-month period immediately before a particular point in time; or,
* twice in every 12-month period immediately before a particular point in time.

1. It appears that, at any given date, a frontier worker must be able to show that they have returned to their country of residence at least once in every six months or twice in every 12 months preceding that date.

*For example:*

Nico is a Spanish citizen. He started working in London in March 2020. He is making an application for a frontier worker permit in January 2021. As he has travelled back to Spain in August 2020, he meets the requirement for “not primarily resident” as he has returned to his country of residence at least once in every six-month period since he started work in the UK.

Audrey is an Austrian citizen. She began working in the UK in October 2018. She is making her application for a frontier worker permit in January 2021. She travelled back to Austria in March 2019, September 2019, February 2020 and July 2020. She meets the requirement for “not primarily resident” as she has returned to her country of residence at least twice in any 12-month period since she started work in the UK.

1. Applicants will need to provide an address outside of the UK as their primary residence but the guidance indicates that declaring an address will suffice. This does not need to be in the EU but can be anywhere in the world. An applicant will need to provide details of their travel outside of the UK over the relevant periods of time.  This could be difficult for European Economic Area (EEA) nationals without stamps in their passports; it is therefore advisable for the applicant to trawl through emails for ticket bookings and/or find any other written evidence of travel.
2. However, there is also some flexibility to the travel requirements. The Home Office can allow an application which does not meet the conditions in “exceptional circumstances”. These include travel restrictions due to Covid-19, illness or accident or pregnancy and childbirth.
3. The frontier worker permit, is particularly useful for people who have pre-settled status and who fail to qualify for settled status before their five-year visa expires due to too much time spent abroad. There is no deadline to apply so, provided they have remained working in the UK and made a couple of trips home a year, a frontier worker permit may offer them an option to remain in the UK.

How do you “retain” frontier worker status?

1. This is set out fully in regulation 4 of the Citizens’ Rights regulations. It allows for a worker to retain their status as a frontier worker, and their permit, if they have had to stop working due to certain circumstances. This includes people who:

* are temporarily unable to work in the UK because of illness or an accident
* are duly recorded involuntarily unemployed
* are involuntarily unemployed and have embarked on vocational training
* voluntarily stopped working to start vocational training related to their previous work
* are temporarily unable to work in the UK following pregnancy or childbirth

1. For those who qualify, they will be entitled to retain their frontier worker permit, although the length of time they can retain it varies from between two years and six months depending on the reason for them stopping work. Regulation 4 sets out the full details on this and the evidence required to support a retained frontier worker status applicant.
2. Retained worker status requires an applicant to have had a period of employment or self-employment before they become unemployed. This means the applicant must become unemployed for one of the reasons listed above within 12 months of their last period of work in the UK. Proof of previous employment or self-employment will need to be provided with the application if relying on retained frontier worker status.

How regularly does someone need to work in the UK?

1. There remains the question as to how little time an applicant can spend in the UK and still be eligible? It would appear, very little. The applicant must be able to show a period of work in the UK at least once in the 12 months before 11pm on 31 December 2020 or be able to meet the criteria for retained worker status by this date (see paragraphs 19 to 21 above), to qualify. The guidance then requires the applicant to continue to have worked in the UK at least once in every rolling 12-month period since then to maintain their frontier worker status.
2. There is also provision for people who have not been able to travel to the UK as they normally would because of coronavirus restrictions, explained below.

Implications of COVID 19

1. With a significant number of rural workers having spent the last year at home because of travel restrictions, many frontier workers who ordinarily would have been coming to the UK have been stuck unable to travel either into or out of the UK.
2. The Home Office guidance makes clear that being unable to travel due to COVID travel restrictions, having to self-isolate or being ill will amount to an “exceptional circumstance” for failing to meet the residency requirements detailed above. Circumstances which will be accepted by the Home Office for being unable to travel to the UK to work will also include those who have been instructed to work from home temporarily and not come into the UK. This means that frontier workers who have sat out most of 2020 working in their resident countries may still be eligible to apply for a permit.

What constitutes “work”?

1. The regulations state that the meaning of a “worker” is the same as under Article 45 of the Treaty on the Functioning of the European Union. The Home Office guidance tends to be more helpful that the work or self-employment must be “genuine and effective”, and not “marginal and ancillary” to the applicant’s time in the UK.
2. However, the Home Office does not stipulate a minimum number of hours a person must work in the UK. The guidance lists several classic visitor-type activities, such as attending meetings and negotiating deals, as examples of what would not be “genuine and effective” work but makes clear that each case must be considered on its merits.
3. The result is that the definition of work is rather vague and ill defined. But this approach can have its benefits. A whole host of workers, with differing working patterns, can potentially qualify for a permit provided a solid case can be put forward.
4. Interestingly, if an employed worker applies, they do not necessarily need an employment contract in the UK. They will need an employer based in the UK and some form of “agreement” that they are to undertake tasks in the UK. The employer must also offer some form of pay or services for the work undertaken. A key piece of evidence for the application will be a contract of employment or a letter from a UK employer setting out the activities in the UK and what pay they receive for it.

What is the application process?

1. The application is free of charge but must be made online[[2]](#footnote-2)  from either inside or outside the UK. An applicant will need to prove their identity as part of the application; they can use the UK Immigration ID check App[[3]](#footnote-3) to do this or attend a visa application centre.
2. If approved, the frontier worker permit will be valid for five years for workers and the self-employed but only two years (or six months in certain circumstances) for those workers who have ‘retained’ frontier worker status under regulation 4 (see above). If an applicant applies via the app the permit will be digital but physical permits are available.
3. The permit does not confer leave to enter or remain under the Immigration Act 1971 but constitutes a right of admission as a person who is exempt from immigration control. It therefore does not lead to indefinite leave to remain (settlement) in the UK but can be extended indefinitely provided the applicant continues to meet the definition of a frontier worker.

Can applications be refused?

1. Decisions on applications is clearly at the discretion of the Home Office. Stopping working and loss of frontier worker status could lead to an application being refused, as can reasons of public policy, public security or public health. A right of appeal and of administration review against refusal decisions is available in certain circumstances.
2. An application can also be refused under regulation 20 of the Citizens’ Rights regulations on the ground of “misuse” of frontier workers’ rights. This provision amounts to a “genuineness test”. “Misuse” will be found if a person intends to “obtain an advantage from these Regulations by engaging in conduct which artificially creates the conditions required to satisfy the criteria set out in these Regulations”. In short, this means that anyone who tries to remain in the UK as a frontier worker but does not actually work is likely to have their application refused or their permit revoked.
3. However, there does appear to be a degree of flexibility within the regulations and guidance to cover a whole host of working patterns and the benefits of an unlimited renewable permit are extensive when compared to securing status under the Points Based Immigration System.

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1. [How to apply for a Skilled Worker visa | Free Movement](https://www.freemovement.org.uk/how-to-apply-for-a-skilled-worker-visa-uk/) [↑](#footnote-ref-1)
2. [Frontier Worker permit: Apply - GOV.UK (www.gov.uk)](https://www.gov.uk/frontier-worker-permit/apply) [↑](#footnote-ref-2)
3. [Using the ‘UK Immigration: ID Check’ app - GOV.UK (www.gov.uk)](https://www.gov.uk/guidance/using-the-uk-immigration-id-check-app) [↑](#footnote-ref-3)