



Business Immigration Team

five  
paper

# FRONTIER WORKERS - CAN EU WORKERS STILL COME TO THE UK?

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## 3 ROUTES

- Frontier worker permit scheme
- Sponsorship as a skilled, intra-company or international agreement worker
- Business visitors

# FRONTIER WORKER PERMIT SCHEME

Scheme is for cross-border workers who work in UK but who live outside of the UK. Workers must be nationals of EEA, EU or Switzerland.

Requirements as to:

- Nationality
- Residence
- Status as a worker or self-employed person in UK

Set out in:

- Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 in force on 10 December 2020
- Caseworker guidance 7 April 2021

# RESIDENCE

Worker must not be primarily resident in UK immediately before 11pm GMT 31 December 2020 (the relevant date) and continue not to be so thereafter. Met if:

- Present in UK for less than 180 days in 12-month period immediately before the relevant date
- They have returned to country of residence at least either:
  - Once in the 6-month period immediately before the relevant date OR
  - Twice in the 12-month period immediately before the relevant date
- No consideration required of any 12-month period before 1 January 2020.
- Requirement may be waived if exceptional reasons which include:
  - Illness or accident, including due to Covid-19
  - Travel restrictions as a result of Covid-19
  - Pregnancy or childbirth

# WORKER OR SELF-EMPLOYED IN UK

- Worker or self-employed status to be assessed by reference to Articles 45 & 49 TFEU
- Retained worker status to be assessed by reference to Article 7(3) Directive 2004/38/EC
- Must have status immediately before end of the transition period, so must not have ceased to have status as worker or self-employed person or retained worker status at that time
- Within scope of 2020 Regulations if worked or been engaged in self-employment in UK at least once in 12 months before the relevant date or have retained status
- To maintain status, must continue to come to UK for purpose of work or self-employment at least once in every rolling 12-month period from first instance in 2020

# GENUINE & EFFECTIVE WORK

- Work or self-employment activity must be genuine & effective.
- Does not meet this if marginal or ancillary to lifestyle as a whole in UK (and comparison drawn with business visitor activities which are considered to be marginal and ancillary)
- Assessment by reference to employer, agreement, pay or offers services or goods for tasks performed, hours worked, level of earnings, frequency of work
- Employment may be with employer based in UK or outside UK
- Show applicant is required to be present in UK working

# GENUINE & EFFECTIVE SELF-EMPLOYMENT

- Activity must be stable and continuous
- Provision of services on a temporary basis outside of scope
- Does applicant have infrastructure in UK, registered with HMRC, CH, pays income tax
- Evidence in the form of invoices, business accounts, references, business advertising, emails / text messages organising work, contracts to undertake work

# RETAINED STATUS

Regulation 4 provides for retained status as worker or self-employed person if temporarily stopped work or engaging in activities in UK and are:

- Temporarily unable to work etc in UK due to illness or accident
- In duly recorded involuntary unemployment
- Involuntarily employed and on vocational training
- Temporarily unable to work etc in UK due to pregnancy or childbirth

Guidance explains that retained status if unable to work etc in UK due to Covid-19 restrictions for a 12-month period

# SUITABILITY

Dual approach under Regulation 19:

- Conduct before end of transition period considered under EU public policy, public security and public health test
- Conduct after end of transition period considered under conducive to public good test

Additionally, scope under Regulation 9 to refuse if misuse of rights under Regulation 20

# PROCESS

- Application for permit not an immigration application
- Grant of permit for 5 years, renewable
- If retained status, grant of permit for 2 years, renewable
- No application fees
- Dependants may not apply

# SPONSORSHIP

Well known and understood sponsored routes:

- Skilled worker
- Intra-company worker
- International agreement worker

# INTERNATIONAL AGREEMENT

Requirements as to:

- International agreement
- Contractual service supplier
- Independent professional

Set out in:

- IR – Appendix T5 (Temporary Worker) International Agreement Worker
- Workers and Temporary Workers Guidance 6 Apr 2021

# KEY REQUIREMENTS

Requirements as to:

- International agreement
- Contractual service supplier
- Independent professional

# WHICH INTERNATIONAL AGREEMENTS?

- UK-EU Trade & Co-operation Agreement
- GATS
- UK Switzerland Temporary Agreement on Services

# SCOPE OF AGREEMENTS

- Annex IAW1 of Guidance sets out scope of sectors covered by the relevant international agreements
- Table A covers contractual service suppliers
- Table B covers independent professionals

# CONTRACTUAL SERVICE SUPPLIER

- Employed by a service supplier contracted to provide a service to sponsor in UK within sector scope
- Service supplier must:
  - Not have a commercial presence in UK
  - Be established in signatory country
- Sponsor must be final consumer of services provided under contract
- Services contract through open tender or other bona fide procedure and must not exceed 12 months
- Worker must be national of country in which overseas entity established
- Worker must have been employee of service supplier for 12 months
- Worker must have degree or equivalent technical qualification (limited exemptions apply)
- Worker must have at least 3 years' professional experience

# IR DEFINITION OF EMPLOYMENT

- Assess employment against the definition in IR at para 6.2:

*“**Employment**” includes paid ... employment, ... self-employment and engaging in business or any professional activity.*

# INDEPENDENT PROFESSIONAL

- Worker contracted to provide service to sponsor in UK within sector scope
- Worker must:
  - Not have commercial presence in UK
  - Have established a business in signatory country
  - Be a national of that country
- Sponsor must be final consumer of services provided under contract
- Services contract through open tender or other bona fide procedure and must not exceed 12 months
- Worker must have degree or equivalent technical qualification (limited exemptions apply)
- Worker must have at least 6 years' professional experience

# PROCESS

- Sponsor must only sponsor workers under contracts approved by HO
- COS must set out usual information including:
  - Relevant job code in Appendix Skilled Occupations (to include under Table 5)
  - Salary (if any) to be paid by sponsor
- Fees - £21 for COS, £244 for application, IHS payable but not the ISC
- Grant of permission for 12 months UK-EU agreement, 12 months in any 24-month period for UK Switzerland Temporary Agreement on Services and 6 months in any 12-month period for any other agreement
- Dependants may also apply

# **BUSINESS VISITORS**

- Increased use and importance
- IR Appendix V
- Appendix V Permitted Activities
- Visit Caseworker Guidance 1 December 2020

# PERMITTED ACTIVITIES

Focus on 3 areas:

- PA 4 – general business activities
- PA 5 – intra-corporate activities
- PA 7 – manufacture and supply of goods to UK

# GENERAL BUSINESS ACTIVITIES

Under paragraph PA 4, permitted activities are for visitor to:

- (a) attend meetings, conferences, seminars, interviews; and
- (b) give a one-off or short series of talks and speeches provided these are not organised as commercial events and will not make a profit for the organiser; and
- (c) negotiate and sign deals and contracts; and
- (d) attend trade fairs, for promotional work only, provided the visitor is not directly selling; and
- (e) carry out site visits and inspections; and
- (f) gather information for their employment overseas; and
- (g) be briefed on the requirements of a UK based customer, provided any work for the customer is done outside of the UK.

# INTRA-CORPORATE ACTIVITIES

Under paragraph PA 5, permitted activities are for employee of overseas company to:

- (a) advise and consult; and
- (b) trouble-shoot; and
- (c) provide training; and
- (d) share skills and knowledge;

on specific internal projects with UK employees of same corporate group, provided no work is carried out directly with clients.

# MANUFACTURE & SUPPLY OF GOODS

Paragraph PA 7

An employee of a foreign manufacturer or supplier may install, dismantle, repair, service or advise on equipment, computer software or hardware, where the manufacturer or supplier has a contract of purchase or supply or lease with a UK company or organisation.

Guidance page 31

- Expect stay for less than 1 month
- Ensure not filling a role in the UK company

# LINKS

## Frontier worker permit Guidance

- <https://www.gov.uk/government/publications/frontier-worker-permit-scheme-caseworker-guidance>

## International Agreement Worker Guidance for sponsors

- <https://www.gov.uk/government/publications/workers-and-temporary-workers-guidance-for-sponsors-sponsor-an-international-agreement-worker>

## Visit Caseworker Guidance

- <https://www.gov.uk/government/publications/visit-guidance>

# THANKS FOR WATCHING!

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