

BREXIT IMMIGRATION BRIEFING - FRONTIER WORKERS – WHAT EMPLOYERS NEED TO KNOW

EU nationals who are employed or self-employed in the UK and commute to work here but can show they live elsewhere, are considered to be frontier workers. A Frontier worker's status in the UK will be protected as long as they began their employment by 11 pm on 31 December 2020.

On 10 December the Home Office launched the frontier worker permit scheme. Applications can be made online and all frontier workers will need to hold a permit when travelling to the UK from 1 July 2021. The permit will confirm a frontier worker's right to work in the UK and can be used to access any services or benefits that they are entitled to in the UK.

WHO IS A FRONTIER WORKER?

An employed or self-employed EU national may be considered to be a frontier worker if:

- they are not primarily resident in the UK;
- they have worked in the UK by 31 December 2020; and
- they continue to travel to the UK for work purposes at least once every 12 months.

WHAT DOES 'NOT PRIMARILY RESIDENT' MEAN?

An individual may be treated as 'not primarily resident' in the UK if:

- they spend less than 180 days in the UK in any 12 month period; or
- unless exceptional circumstances apply, they have returned to their country of residence at least:
 - (i) once in every six month period; or
 - (ii) twice in every 12 month period.

It will therefore be possible for an EU national to be treated as not primarily resident even if they spend more than 180 days in the UK per year. They will need to be able to provide an overseas address for the country they are returning to twice a year in their application. This overseas address can be in any country and is not limited to an EU member state.

Key Points

- Free movement ends on 31 December 2020.
- From 1 July 2021, EU nationals entering the UK as a frontier worker will need have a valid permit in place.
- The frontier worker permit scheme is not a route to settlement. Where possible, EU nationals should consider applying for status under the EU Settlement Scheme by 30 June 2021.
- Regular EU national business travellers who carry out productive work in the UK may qualify for a frontier worker permit and will not need a UK work visa issued under the [UK's new points-based immigration system](#).
- EU nationals may still qualify for a frontier worker permit even if they only:
 - enter the UK for work purposes once in every 12 month period; or
 - return to their home overseas once in every six month period.

Exceptional circumstances may include illnesses or accidents, COVID-19 related reasons, pregnancy or childbirth.

WHO IS A WORKER OR SELF-EMPLOYED PERSON IN THE UK?

An EU national will be considered a frontier worker if they have been employed or self-employed in the UK at least once in the 12 months before 11pm on 31 December 2020. There are adjusted requirements for those who have 'retained worker or self-employed person status', or who have had their economic activity affected in the UK due to COVID-19.

Any employment or self-employment in the UK must be genuine and effective.

- Workers will need to show:
 - existence of an employer employee relationship;
 - confirmation that they were paid for the work carried out in the UK; and
 - that the activities carried out were productive and beyond those permitted for business visitors.
- Self-employed individuals will need to show:
 - they are generating a regular income in an established self-employed capacity in the UK;
 - the work being carried out is stable and continuous in return for payment or services; and
 - that they are not just providing services in the UK temporarily.

An EU national will then need to continue to come to the UK for work or self-employment purposes at least once in every rolling 12 month period. This will need to be from the first date of employment or self-employment in the UK in 2020 for frontier worker status to be maintained.

WHAT IS RETAINED WORKER OR SELF-EMPLOYED PERSON STATUS?

An EU national who is no longer employed or self-employed in the UK will be treated as someone who has retained their status if immediately after ceasing their activity in the UK, they:

- are temporarily unable to work due to an illness (including COVID-19) or accident;
- are recorded as involuntarily unemployed as long as they continue to seek employment or self-employment in the UK.
 - Where their previous employment or self-employment in the UK was for less than one year, an EU national's status will only be protected for six months.
 - EU nationals who have worked in the UK for more than one year, will need to provide compelling evidence to show that they continue to seek employment or self-employment in the UK if they want their status to be protected for more than six months;
- are involuntarily unemployed and have begun vocational training;

- have voluntarily stopped working and have begun vocational training which is directly related to their previous employment; or
- are temporarily unable to work due to pregnancy or childbirth. Retained status for this reason will be protected for 12 months, after which the EU national will need to provide evidence to confirm that they are looking for employment or self-employment in the UK.

For the purposes of assessing whether an EU national has retained their status in the UK, 'immediately after ceasing their activity' means within a period of 12 months.

THE FRONTIER WORKER PERMIT

An individual who successfully applies for a frontier worker permit will be issued with a digital permit if they used the [UK Immigration: ID Check app](#) to verify their identity. EU nationals who do not use this app will initially be issued with a physical document.

The permit will be valid for:

- A period of two years if the EU national has retained worker or self-employed person status; or
- Five years.

There is no end date to the scheme and so a frontier worker will be able to renew their permit as long as they can show they still meet the requirements of the scheme at the time of application.

Status in the UK as a frontier worker does not lead to settlement and so, where possible, EU nationals should consider applying for pre-settled or settled status under the EU Settlement Scheme.

DEPENDANTS OF FRONTIER WORKERS

Family members of frontier workers cannot apply for a permit under the scheme. They may however be able to apply for a Family Permit, pre-settled or settled status under the EU Settlement Scheme.

For more detail on the frontier worker permit scheme and application requirements, please contact us.

CONTACTS

Gulcin Kashano
Immigration Solicitor

T +44(0) 20 7006 1388
E gulcin.kashano@cliffordchance.com

Michael Crossan
Partner

T +44(0) 20 7006 8286
E Michael.crossan@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2020

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Moscow • Munich • Newcastle • New York •
Paris • Perth • Prague • Rome • São Paulo •
Seoul • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.