

## 33/20: Right to reside – The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 – UC

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## Introduction

1. A status for frontier workers has been introduced in compliance with the UK's obligations under the Withdrawal Agreement<sup>1</sup>. The status has been introduced via the [Citizens' Rights \(Frontier Workers\) \(EU Exit\) Regulations 2020](#)<sup>2</sup> ("The Frontier Workers SI"). These regulations came into force 4.11.20<sup>3</sup>, except<sup>4</sup> Part 2 of the SI (with the exception of regulations 6(1)(b) & 6(2) - see paragraph 2); Part 4; regulation 24 (in so far as it relates to an appeal against a decision made under Part 2 or Part 4), and Regulation 28, which come into force at 11pm on 31.12.20.

*1 Withdrawal Agreement, Part 2; 2 The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 (SI 2020 No. 1213); 3 Reg 1(2)(a); 4 Reg 1(3)*

2. This Frontier Workers SI also provides for the restriction of those rights and establishes a scheme for frontier worker permits. These regulations come into force on 1.7.21<sup>1</sup>.

*1 The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 1(2)(b) & 1(4)*

## Background

3. The purpose of this Frontier Workers SI is to protect the rights of EEA nationals who, as workers<sup>1</sup> or self-employed persons<sup>2</sup>, have pursued an economic activity as a frontier worker in the UK by the end of the transition period, at 11pm on 31.12.20 and wish to continue to do so thereafter (Part 2 of the SI). They have rights under the Withdrawal Agreement, the EEA European Free Trade Association (EFTA) Separation Agreement and the Swiss Citizens' Rights Agreement (referred to collectively throughout this Memo as "the Agreements") to continue to enter the UK from 11pm on 31.12.20 and work as frontier workers for as long as they continue to be so.

*1 TFEU, Art 45; 2 Art 49*

4. Frontier workers' rights are granted under specified legislation<sup>1</sup>. Those regulations will continue to apply to all EEA workers covered under the Withdrawal Agreement. This means that frontier workers are entitled to access benefits in the same manner as EEA workers subject to the Citizens Directive 2004/38 currently do.

*1 Regulation (EU) 492/11*

5. The Agreements<sup>1</sup> require that a frontier worker document scheme is to be implemented by the end of the transition period. In addition, the UK has decided (as a matter of domestic policy) to give effect to the Agreements, for a frontier worker to hold a permit<sup>2</sup> which certifies their right to enter the UK as a protected frontier worker from 1.7.21. This Frontier Workers SI establishes a frontier workers' permit scheme (Part 3 of the SI) under which a protected frontier worker can apply for and be issued with a permit certifying their rights to continue to enter and work in the UK (please see paragraphs 42 - 51 for further guidance on permits).

*1 Withdrawal Agreement, Art 14; the EEA EFTA Separation Agreement, Art 1; the Swiss Citizens' Rights Agreement, Art 13; 2 The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 6(1)(b)*

6. This Frontier Workers SI also sets out the circumstances in which a protected frontier worker's rights to enter the UK as a frontier worker can be restricted, and a permit can be refused or revoked (Part 4 of the SI), in accordance with the Agreements. It also provides protected frontier workers with statutory rights of appeal, and with a right of administrative review, against certain decisions to restrict their rights (Part 5 of the SI).

## **Definitions**

### **EEA national**

7. "EEA national" means<sup>1</sup> a national of an EEA state who is not also a British citizen.

*1 The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 2*

### **EEA state**

8. "EEA state" means<sup>1</sup>

- 1.** a Member State or
- 2.** Iceland, Liechtenstein, Norway or Switzerland.

*1 The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 2*

### **Frontier worker permit**

9. “Frontier worker permit” means<sup>1</sup> a document which certifies a person’s rights to enter the UK as a frontier worker.

*1 The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 2*

### **Frontier workers’ rights**

10. “Frontier workers’ rights” means<sup>1</sup> the rights a person has as a frontier worker under Part II of the Withdrawal Agreement, Part 2 of the EEA EFTA separation agreement or Part 2 of the Swiss citizens’ rights agreement.

*1 The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 2*

### **Relevant restriction decision**

11. “relevant restriction decision” means<sup>1</sup>

- 1.** an exclusion direction or
- 2.** a deportation order<sup>2</sup> or
- 3.** an exclusion or deportation order<sup>3</sup>, including those continued in effect<sup>4</sup> or
- 4.** a deportation order<sup>5</sup>.

*1 The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 2; 2 reg 15(1)(b);  
3 Imm (EEA) Regs 2016; 4 EU (Withdrawal Agreement) Act 2020, s 7 or s 9; 5 Immigration Act 1971, s  
3;*

### **Self-employed person**

12. “Self-employed person” means<sup>1</sup> a person who is established in the UK in order to pursue activity as a self-employed person within the meaning of Art. 49 of the TFEU.

*1 The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 2*

### **Worker**

13. “Worker” means<sup>1</sup> a worker within the meaning of Art. 45 of the TFEU.

*1 The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 2*

### **Meaning of frontier worker**

14. A person is a frontier worker<sup>1</sup> if they, immediately before 11pm on 31.12.20 and continuously since

11pm on 31.12.20, were

1. an EEA national and
2. not primarily resident (see paragraph 15 below) in the UK and
3. either
  - 3.1 a worker in the UK or
  - 3.2 a self-employed person in the UK or
  - 3.3 have worker or self-employed status or would be considered to have retained worker or self-employed worker status in the UK.

**Note:** It does not matter if a person changes from one of the statuses in 3.1, 3.2 or 3.3 to another<sup>2</sup>.

*1 The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 3(1); 2 Reg 3(2)*

### **Not primarily resident**

15. A person is to be treated<sup>1</sup> as not being primarily resident in the UK at a particular point in time ("the relevant date") if

1. They have been present in the UK for less than 180 days in the 12-month period immediately before the day on which the relevant date falls or
2. they have returned to their country of residence at least
  - 2.1 once in the 6-month period immediately before the day on which the relevant date falls or
  - 2.2 twice in the 12-month period immediately before the day on which the relevant date falls, unless there are exceptional reasons for not having done so.

*1 The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 3(3)*

### **Retained worker or self-employed worker status**

16. Under the Withdrawal Agreement<sup>1</sup>, a worker or self-employed worker can retain their worker status on the same basis as EEA migrant workers are entitled under EU law<sup>2</sup>. This applies despite the fact that they do not move their residence to the State of work. As long as they worked, or were self-employed in the UK, and meet the conditions for retaining worker status, they can retain their worker status whilst they are either in the UK or in their country of primary residence.

17. A person who is no longer a worker<sup>1</sup> or self-employed person<sup>2</sup> in the UK is to be treated as such if the person, immediately following ceasing work in the UK

**1.** is temporarily unable to work or to engage in activities as a self-employed person as the result of an illness or accident or

**2.** is in duly recorded involuntary unemployment after

**2.1** having been employed or

**2.2** having worked as a self-employed person

in the UK for at least one year, provided<sup>3</sup> the person provides evidence that they continue to seek employment or self-employment in the UK and has registered as a jobseeker<sup>4</sup> with the relevant employment office (see Note 2 below) or

**3.** is in duly recorded involuntary unemployment after

**3.1** having been employed or

**3.2** having worked as a self-employed person

in the UK for less than one year, provided<sup>3</sup> the person provides evidence that they continue to seek employment or self-employment in the UK and has registered as a jobseeker<sup>4</sup> with the relevant employment office (see Note 2 below) or

**4.** is in involuntary unemployment or is involuntarily no longer in self-employment and has embarked on vocational training or

**5.** has voluntarily ceased working or self-employment and has embarked on vocational training that is related to the person's previous employment or occupation or

**6.** is temporarily unable

**6.1** to work or

**6.2** to engage in activities as a self-employed person

due to pregnancy or childbirth, provided they give up or stop seeking work or self-employment due to the physical constraints of the late stages of pregnancy and at the outset of their claim, expresses an intention to return to their previous work or self-employment, or find another job, at the end of the 52-week reasonable period.

**Note 1:** A person to whom 3. applies<sup>5</sup>, may only retain worker or self-employed status for a maximum of six months.

**Note 2:** The domestic definitions of retained worker or self-employed worker status found within this SI, mirror the definitions found within the Imm (EEA) Regs 2016<sup>6</sup>, except that the requirement to be registered with an employment office has been omitted. An amendment is being made to ensure that a person who wishes to retain worker status or self-employed worker status and access benefits, knows that they have to “register as a jobseeker with the relevant employment office” as soon as they are in duly recorded involuntary unemployment. Therefore, an amendment to regulation 4(5) of this SI has been included within the [Immigration \(Citizens’ Rights etc.\) \(EU Exit\) Regulations 2020](#)<sup>4</sup> (SI 2020 No. 1372), which for regulation 7 of SI 2020 No. 1372, comes into force on 22.12.20. The guidance detailed in this paragraph 17 reflects that amendment.

1 *The Citizens’ Rights (Frontier Workers)(EU Exit) Regulations 2020, reg 4(1)*; 2 *Reg 4(3)*; 3 *Reg 4(5)*;

4 *The Immigration (Citizens’ Rights etc.)(EU Exit) Regulations 2020, reg 7*; 5 *The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 4(4)*; 6 *Imm (EEA) Regs 2016, reg 6*

18. A person who has been employed or worked as a self-employed person in the UK for at least one year may retain the status of

1. a worker or

2. a self-employed person

for longer than six months, provided they are involuntarily unemployed, have registered as a job seeker with the relevant employment office and are continuing to seek employment or self-employment in the UK, by being available (i.e. there is no impediment such as immigration status or education) and able (actual capability) to re-enter the labour market in a reasonable amount of time<sup>1</sup>.

1 *KH v Bury MBC and SSWP [2020] UKUT 50 (AAC), paras 39 - 44*

### **In duly recorded involuntary unemployment - evidence of job seeking**

19. A frontier worker who needs access to benefits whilst they are in duly recorded involuntarily unemployment must register with an employment office soon after they are recorded as duly unemployed. This is in line with established case law<sup>1</sup>.

**Note:** DMs should note that a person who is unable to register with DWP because they are over the financial threshold that qualifies them for access to benefits or because they do not require access to benefits, will still be able to retain worker status. An individual in such a situation will need to demonstrate through evidence that they were job seeking during the period when they were unemployed.

1 *Secretary of State for Work and Pensions v MK [2013] UKUT 0163 (AAC)*

20. A person, who retains worker<sup>1</sup> or self-employed worker<sup>2</sup> status after having worked for less than a year, can only retain their status for a maximum of six months. During that period, they are required to show that they are registered as a jobseeker with the relevant employment office and that they can provide evidence that they continue to seek employment or self-employment in the UK.

*1 The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 4(2); 2 Reg 4(4)*

## **Evidence**

21. The requirement to provide evidence that the person continues to seek employment or self-employment is one of the conditions<sup>1</sup> that must be satisfied in order for a person to retain worker status<sup>2</sup> or self-employed worker status<sup>3</sup>.

*1 The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 4(5); 2 Regs 4(1)(b), 4(1)(c) & 4(1)(f);  
3 4(3)(b), 4(3)(c) & 4(3)(f)*

22. A claimant is required to be available for employment ([ADM J3112](#)), and actively seeking employment for each week of their benefit claim. This means taking steps that the claimant can reasonably be expected to take, to give them the best chance of getting employment. Details of what steps the claimant has agreed to take are found within the claimant's commitment ([ADM Chapter J1](#)).

23. In order for the DM to determine evidence that the claimant continues to seek employment ([ADM J3080](#)), the DM should decide

1. what steps it is reasonable for the claimant to be expected to take, that offers them the best chance of obtaining employment and
2. whether the claimant has taken those steps and
3. whether the claimant is to be treated as actively seeking employment.

## **Compelling evidence of job-seeking**

24. When a frontier worker makes a claim for benefits, for example two years after the end of the transition period, a DM will need to look back into the history of the claimant's status and confirm that they

1. were a frontier worker before the end of the transition period and
2. have maintained that status since the last time their status was confirmed.

25. This may be difficult in cases where the claimant identifies as a frontier worker who retained their status during a period where they did not make a claim for benefits. In such a case, a frontier worker would not have been subject to any checks by authorities who could confirm that they were job seeking.

The person themselves, would therefore need to provide evidence of job seeking during the period they seek to assert that they had retained worker status.

26. The “compelling evidence” test no longer represents a higher threshold than the requirement to prove that a person is continuing to seek genuine and effective employment. Compelling evidence may include

1. recent job applications in the UK or
2. job acceptance letters of genuine and effective work or
3. a change of circumstance which has significantly improved their prospects of obtaining genuine and effective work or
4. successful completion of a vocational course which is directly relevant to the field in which they are hoping to work or
5. awaiting the outcome of job interviews.

This is not an exhaustive list.

### **Retained status as a result of accident or illness**

27. In the same way as any other worker, a frontier worker is allowed to retain their worker status if they become temporarily unable to engage in activities as a worker or self-employed person as the result of an illness or accident<sup>1</sup>. Leading case law<sup>2</sup> on the interpretation of what “temporarily ill” means is equally applicable to frontier workers.

- 1 The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 4(1)(a) & 4(3)(a);*  
*2 FMB Uganda [2010] UKUT 447 (IAC)*

28. A frontier worker will meet the definition of “not primarily resident in the UK” (see paragraph 15 above) for the relevant period if they have been present in the UK for less than a total of 180 days in any relevant 12-month period and they have also returned to their country of residence at least once in every 6-month period, or twice in every 12-month period.

29. It is unclear for how long or in what circumstances a frontier worker can maintain their status without travelling back to their country of primary residence. Where a frontier worker has not returned to their country of primary residence with the required frequency, they may still meet the definition of “not primarily resident in the UK”, if the evidence provided shows that they had exceptional reasons for preventing them from travelling back to their country of primary residence.

30. Exceptional reasons for not meeting the travel requirement may include

1. pregnancy or childbirth. Evidence of this may include medical certificates or a letter from their

doctor confirming the pregnancy took place and the due date/birth date, or the birth certificate of their child or

**2.** illness or accident (e.g. if the illness is related to COVID-19) or

**3.** travel restrictions as a result of COVID-19 or

**4.** where the applicant became a frontier worker shortly before 11pm on 31.12.20 and has not been able to go to their place of primary residence in that time.

This not an exhaustive list. There may be other circumstances beyond the control of the frontier worker, or other compelling reasons as to why they could not return to their country of residence. DMs should consider the circumstances and facts of each individual case.

### **Retained status as a result of embarking on vocational training**

31. There are two circumstances in which a person can retain their worker or self-employed worker status if they have embarked on vocational training. These are

**1.** when they embark on vocational training after becoming involuntarily unemployed (involuntarily unemployed is defined in the same way as a person who needs to register as a job seeker) or

**2.** where the person has voluntarily ceased working and embarked on vocational training (in these circumstances, the vocational training has to be related to their previous employment).

32. There is no requirement that the vocational training has to be carried out in the UK, nor is there any specific requirement that it should be in the EU. When a person seeks to rely on this condition, it is necessary that evidence demonstrating that they had embarked on vocational course in the correct circumstances provided for in the regulations is checked.

### **St Prix- retained status as a result of pregnancy/maternity**

33. A person who is temporarily unable to work or engage in self-employed activities because of pregnancy or child birth can retain their status for up to 52 weeks. A frontier worker who wishes to claim income related benefits on the basis that they are on maternity leave still needs to meet the conditions of entitlement including the requirement to be in GB and the temporary absence restrictions whilst they are in receipt of that benefit.

## **Frontier workers' rights**

34. The Withdrawal Agreement<sup>1</sup> sets out the rights of workers, including frontier workers, which adopts the protection set out in the Treaty of Functioning European Union<sup>2</sup> ("TFEU"). This secures the right to equal treatment for all workers who are exercising free movement within the EU. These objectives<sup>2</sup> are achieved through Regulation 492/11.

**Note:** There is no Reg 492/11 equivalent for self-employed workers. However, the Withdrawal Agreement<sup>3</sup> grants the same protections to self-employed workers. (Here is an example of the Withdrawal Agreement creating new rights that do not currently exist.)

*1 The Withdrawal Agreement, Art 24 & Art 25; 2 TFEU, Art 45;*

*3 The Withdrawal Agreement, Art 25*

35. DWP is obliged to comply with the following rights listed in the Withdrawal Agreement<sup>1</sup>

- 1.** The right to assistance afforded by the employment offices of the host state or the state of work as offered to own nationals and
- 2.** the right to social and tax advantages and
- 3.** the rights and benefits accorded to national workers in matters of housing and
- 4.** the rights of the children of workers to be admitted into general education, apprenticeship, and vocational training courses under the same conditions as the nationals of the host state and
- 5.** the right to enter and exit the host state and retain worker status.

*1 The Withdrawal Agreement, Art 24 & Art 25*

### **The right to social and tax advantages and housing**

36. The concept<sup>1</sup> of “social and tax advantages” has been held to cover benefits connected with contracts of employment and all other advantages which are open to citizens of the host Member State and are consequently also open for workers, primarily because of their objective status as workers. It covers both financial benefits and non-financial ones and the Court has found that the term covers welfare benefits in their broadest sense.

*1 Regulation 492/2011, Art 7(2)*

### **Access to income-related benefits**

37. For DWP purposes, this means that any benefits that are available to UK national workers should be available to EEA workers. Regulation 492/11 stipulates that the rights it protects should be enjoyed without discrimination by permanent, seasonal and frontier workers who pursue their activities for the purpose of providing services. It follows that frontier workers should be granted access to all income related benefits where they meet the entitlement criteria.

38. In order to allow frontier workers (and their family members who have been granted EUSS leave) to have access to UC, where they meet the relevant conditions, the following provisions are inserted into legislation<sup>1</sup>

- “(cb) a frontier worker within the meaning of regulation 3 of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020;
- (cc) a family member, of a person referred to in sub-paragraph (cb), who has been granted limited leave to enter, or remain in, the United Kingdom by virtue of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971;”.

**Note:** This amendment was made within the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020<sup>2</sup>, please see Memo [DMG 25/20](#) & Memo [ADM 29/20](#).

*1 UC Regs 2013, reg 9(4); 2 the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 75(3)(b)*

39. Provision is also inserted into the relevant benefit regulation<sup>1</sup> which provides that, references to the Imm (EEA) Regs 2016 are to be read with Schedule 4 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020.

*1 IS (Gen) Regs, reg 21AA(6); JSA Regs, reg 85A(6); ESA Regs, reg 70(6); SPC Regs, reg 2(6)*

## **Frontier worker rights**

40. Part 2 of this Frontier Workers SI sets out the rights of frontier workers protected by the Agreements. Those rights are that frontier workers

**1.** unless subject to a relevant restriction decision<sup>1</sup> (see paragraph 11), do not require leave to enter or remain in the UK<sup>2</sup> under specified legislation<sup>3</sup> when entering or remaining in the UK for economic activity or

**2.** have the right to be admitted to the UK as a frontier worker, provided<sup>4</sup> they produce

**2.1** a valid identity document and

**2.2** a valid frontier worker permit.

**Note:** A frontier worker who is an Irish citizen is not required to produce a frontier worker permit<sup>5</sup>.

*1 The Citizens’ Rights (Frontier Workers)(EU Exit) Regulations 2020, reg 5(2); 2 Reg 5(1); 3 Immigration Act 1971; 4 The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 6(1); 5 Reg 6(2)*

41. The meaning of ‘worker’ (see paragraph 13) (see [ADM C1290](#)) has been established in CJEU case law<sup>1</sup>.

The concept is quite broad but essentially the work must be 'genuine and effective' and not on such small a scale as to be marginal and ancillary<sup>2</sup> (see [ADM C1294](#)). This principle also applies to the definition of self-employed (see [ADM C1314](#)).

1 Case C-53/81 *D.M. Levin v Staatssecretaris van Justitie*;  
2 CH/3314/2005, CIS/3315/2005 paras 21-30; Case C-357/89 *Raulin* (1992) ECR 1027

## Frontier worker permit

42. Part 3<sup>1</sup> of this statutory instrument provides for the issue of a 'frontier worker permit' and gives effect to the Agreements<sup>2</sup>. The Withdrawal Agreement states that a State may require frontier workers to apply for a document certifying that they have such rights under Title II. Likewise, a frontier worker may request the host state to issue them with such a document.

1 *The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020*, regs 8-14; 2 *Withdrawal Agreement*, Art 14 & Art 26; the *EEA EFTA Separation Agreement*, Art 13 & Art 25 and the *Swiss Citizens' Rights Agreement*, Art 13 & Art 21

43. The frontier worker permit grants the holder permission to enter the UK as a frontier worker.

44. The frontier worker permit will be issued to a protected frontier worker on successful application<sup>1</sup>. They will be required to submit their application electronically and the required biometrics to accompany their application<sup>2</sup>.

1 *The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020*, reg 8(1); 2 Reg 8(2)

45. A protected frontier worker is not required to hold a frontier worker permit or present the document in order to work or rent property, or when accessing benefits or services in the UK. It also means that the declaratory nature exempts the frontier workers from immigration control i.e. they do not need leave to enter or remain in the UK and are consequently not persons' subject to immigration control.

46. The use of the word "certify" when describing the status of frontier workers in the Withdrawal Agreement appears to have been adopted from the Citizens Directive 2004/38. This leads to the conclusion (which has also been confirmed by the Home Office), that the status is declaratory rather than constitutive. This means that the permit merely confirms the status, rather than conferring rights within it.

47. Evidence will need to be provided by the frontier worker that confirms that they

1. worked or were self-employed in the UK during the transition period (if they do not have a frontier worker permit) and
2. have met the conditions and requirements for the frontier worker status either since their

permit was issued or continuously since 11pm on 31.12.20.

48. A frontier worker permit, which can be issued in a digital form, is valid for

1. 2 years<sup>1</sup> from the date of issue, when the individual had retained status when they applied for the permit or
2. otherwise, 5 years<sup>2</sup> from the date of issue.

*1 The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 10(a); 2 Reg 10(b)*

49. After the end of the transition period, 11pm on 31.12.20 and once free movement has ended, it will be mandatory for a protected frontier worker, who is not an Irish citizen, to hold a frontier worker permit from 1.7.21, in order to evidence their right to enter the UK as a protected frontier worker.

50. DMs should note that a person who does not meet the definition of frontier worker at the time that they make their claim for benefit, either by demonstrating that they are a worker or self-employed person or have retained their worker or self-employed person status, cannot be considered a frontier worker even if they had previously held that status.

51. Whilst frontier workers will be eligible to access income related benefits, their access will be on the same basis as any current EEA national accessing benefits. Not only will they need to meet the eligibility criteria, they will also need to meet entitlement requirements. The requirement to satisfy the "in GB" condition and the restrictions on absence will ultimately mean that only those who spend sufficient time in the UK will meet the entitlement requirements for the relevant benefit.

**Note:** Income related benefits are not exportable benefits, and would therefore not be paid to a frontier worker whilst they are outside of the UK (subject to the normal rules on temporary absences).

### **Amendment to the Immigration (Citizens' Rights etc.) (EU Exit) Regulations 2020**

52. Under existing legislation, EEA citizens and their family members who wish to claim benefits or access services must have a right to reside and be habitually resident in the CTA. An amendment is made within the [Immigration \(Citizens' Rights etc.\) \(EU Exit\) Regulations 2020](#) in respect of UC, to maintain the status quo. This amendment adds a new paragraph to the income-related benefits to reflect that<sup>1</sup> leave to enter which is granted by virtue of Appendix EU (Family Permit) to the immigration rules made under s3(2) of the Immigration Act 1971, is leave which is not a relevant right to reside for the purposes of establishing habitual residence. Holders of an EUSS family permit may, in certain circumstances, still be able to establish habitual residence for the purpose of accessing benefits and services by providing evidence of a qualifying right to reside.

*1 The Immigration (Citizens' Rights etc.) (EU Exit) Regulations 2020, reg 25(2)*

### **Family members**

53. The Withdrawal Agreement appears to only confer direct rights on family members of frontier workers in very limited circumstances. Under Article 24(1)(h) the host state is obliged to admit children of workers and frontier workers into general education if the child resides in the territory where the worker works. Article 25 also confers the same rights on the children of self-employed workers.

**Note:** Under current EU law, the children of self-employed workers are not granted these rights; so here is an example of where the Withdrawal Agreement creates rights that never previously existed.

### **Restricted rights and appeals**

54. Part 4<sup>1</sup> of this SI sets out the circumstances in which frontier workers' rights may be restricted and

**1.** provides for the removal of a protected frontier worker and for a frontier worker permit to be refused or revoked in line with the agreements, including

**1.1** on public policy, public security or public health grounds for conduct committed before 11pm on 31.12.20<sup>2</sup> and

**1.2** where conducive to the public good, for conduct committed after 11pm on 3.12.20<sup>3</sup> and

**1.3** on grounds of misuse of frontier workers' rights<sup>4</sup>

**2.** provides for the refusal of entry or removal of a protected frontier worker where they are subject to a deportation order, exclusion order or exclusion direction and

**3.** contains the procedural provisions relating to a person who is refused entry or who is being removed.

*1 The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 12-20; 2 reg 18 & Schedule; 3 Reg 19; 4 Reg 20*

55. Part 5<sup>1</sup> of this SI provides a frontier worker with a statutory right of appeal against certain decisions which restrict their rights and also provides a frontier worker with a right of administrative review against certain decisions which restrict their rights.

*1 The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, regs 21 - 26*

56. Part 6 of this SI makes consequential amendments to existing legislation which are required to

**1.** allow for biometric information to be taken in frontier worker permit applications<sup>1</sup> and

**2.** exclude protected frontier workers from the restrictions and controls placed on those without leave to enter or remain entering the UK from Ireland<sup>2</sup>.

*1 The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 27; 2 Reg 28*

## **Annotations**

Please annotate the number of this memo ([ADM Memo 33/20](#)) against ADM paragraphs:

[C1290](#); [C1294](#); [C1314](#)

## **Contacts**

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E19, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 04/19](#) - Obtaining legal advice and guidance on the Law.

**DMA Leeds: December 2020**

The content of the examples in this document (including use of imagery) is for illustrative purposes only