

RIGHT TO RESIDE – THE CITIZENS’ RIGHTS (FRONTIER WORKERS) (EU EXIT) REGULATIONS 2020 – CA, DLA & AA

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Introduction

- 1 A new immigration status for frontier workers has been introduced in compliance with the UK's obligations under the Withdrawal Agreement¹. The status has been introduced via the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020² ("The Frontier Workers SI"). These regulations came into force on 4.11.20³, except⁴ 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 came 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. The regulations for this scheme come into force on 1.7.21¹.

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

Background – EU Social Security Coordination

- 3 The EU Social Security Coordination Regulations¹ were designed to facilitate the movement of individuals within the EU by providing a system of coordination so that



individuals, and their families, are not disadvantaged when exercising their EU freedom of movement rights and are treated in line with nationals of the host state for the purpose of social security. They coordinate the different social security systems of individual Member States.

1. Regulation (EC) No 883/2004; Regulation (EC) No 987/2009

- 4 The EU Social Security Coordination Regulations ensure that an individual is only “subject to the legislation of” one Member State at a time. Typically, an individual is “subject to the legislation of” the state in which they work and reside. If these are different, it is typically the state in which they work (if they pursue an economic activity) or reside (where they do not pursue an economic activity).
- 5 For individuals in scope of Title III of the Withdrawal Agreement, the EU Social Security Coordination Regulations will continue to apply across the whole of the UK and the EU after the end of the transition period. This will ensure that individuals in a “cross-border situation” involving the UK and the EU (e.g. people who have moved between the UK and the EU) before the end of the transition period will continue to be able to access pensions, benefits and other forms of social security, including healthcare cover, on the same terms as before the end of the transition period for as long as they remain in scope.
- 6 If you have residence rights under the Withdrawal Agreement, existing EU Social Security Coordination rules will continue to apply¹. These rules
 1. ensure that workers (and their employers), as well as the self-employed, only pay into one social security system at a time **and**
 2. provide for the right to aggregate periods of insurance, employment, self-employment or residence completed, for the purposes of meeting different states’ benefit entitlement conditions. This includes relevant contributions made both in the UK and the EU before and after the transition period. The rules will also protect the rights that flow from such contributions such as benefit, pension and reciprocal healthcare rights **and**
 3. provide individuals with the same access to relevant benefits and healthcare as they would have under the current EU rules **and**
 4. provide for the payment of relevant benefits by either the UK or EU to a person who is residing in another state, as under the current EU rules **and**



5. provide for the uprating of the UK State Pension paid to pensioners in Member States and, in accordance with EU rules, provide associated healthcare cover in the EU. This applies to people who were not at State Pension age at the end of the transition period, once they start drawing their UK State Pension at a later date **and**
6. ensure that where the UK or a Member State is responsible for the healthcare of an individual, they will be entitled to reciprocal healthcare cover. This includes
 - 6.1 people who live in one state but are insured in another (S1 scheme) **and**
 - 6.2 planned health treatment (S2 scheme) **and**
 - 6.3 necessary healthcare cover during a temporary stay (the European Health Insurance Card scheme, known as EHIC).

Note: These social security coordination rules may also apply to other people, for example UK nationals who are frontier workers in an EU country.

1. Withdrawal Agreement, Art.30(3)

Competency for cash sickness benefits

- 7 DMs are reminded of the need to consider the EU Social Security Coordination Regulations and which EEA State's legislation applies (see DMG 071761 to 071763). The state of applicable legislation is determined in accordance with Title II of Regulation 883. In general, where a person is working in an EEA State other than the UK, it is the legislation of that EEA State which will apply. Otherwise, it will generally be the legislation of the state of residence. The state of applicable legislation will in most cases also be the competent (responsible) state for payment of Cash Sickness Benefits under Title III of Regulation 883. However, there can be exceptions, including when a person receives SP/ESA(C).
- 8 DMG Memo 16/20 advises that where benefit is in payment before the change of residence to a Member State (Export Claims) Article 7 of Regulation 883 protects payments of Cash Sickness Benefits where the state of residence is the only change of circumstances. Where the change of residence occurs before the application for benefit is made (First Claim from Abroad – FCFA) Article 7 does not apply.

Insured persons



- 9 An “insured person” (and members of that person’s family) who is residing or staying in an EEA State (A) other than the EEA State (B) in which they are insured, is entitled to sickness benefits in cash from EEA State B¹ (see DMG 071768)

1 Reg (EC) 883/04, Art 21

- 10 Frontier workers (see paragraph 29) who work in GB are generally considered to fall under UK competency, but there may be specific exceptions to this where the claimant is already in receipt of a benefit or pension from a member state. Please refer such cases to DMA Leeds.

Past presence test deemed to be met

- 11 Persons within the scope of the EU Social Security Coordination Regulations claiming AA, DLA (Care) or CA do not have to satisfy the past presence test (DMG 071717), if they can show that they have a genuine and sufficient link to the UK (see DMG 071786 and DMG Memo 08/19). However, a person within the personal scope of the above legislation who moves to the UK, or returns to the UK, from another EEA Member State who **does not** have a genuine and sufficient link as at the first day of potential entitlement may nonetheless be able to satisfy the past presence test by other means.
- 12 The past presence test is deemed to be met (see DMG 071791) for certain categories of claimant who are EEA nationals and who demonstrate a sufficient link to the UK in another way.
- 13 The following groups are not required to satisfy the past presence test at the first date from which benefit could be established if on that date they are
1. current workers (and their family members), whether employed or self-employed, who pay UK national insurance contributions. This includes posted workers and frontier workers (see paragraph 29) **or**
 2. people (and their family members) who, although not currently employed, are receiving ESA in the assessment phase or those who continue to be insured for ESA(C) after they cease work.

DM action

- 14 Under Reg (EC) 883/04, before the end of the transition period, the Member State in which a frontier worker (as defined in paragraph 29) is working is the competent



(responsible) state for the payment of Cash Sickness Benefits (i.e. CA, DLA, AA and PIP) to that frontier worker and their family.

- 15 As the Frontier Workers SI essentially allows a frontier worker (as defined in paragraph 29 and under Title II of the Withdrawal Agreement) to carry on as they were as long as they were a frontier worker immediately before the end of the transition period and continue to be so thereafter. This means that those covered by the Frontier Worker SI and Memo, can still access Cash Sickness Benefits on the same terms as they could before the end of the transition period.
- 16 Where the frontier worker does not hold a frontier worker permit (see paragraph 23), DMs will have to identify that the claimant is a frontier worker, and then carry out assessments of competency as previously, checking that there are no competing competency rights or competency disputes related to the frontier worker or their family member.
Note: For further guidance on frontier worker permits, see paragraphs 56 - 65.
- 17 When determining if an individual is in full scope of the social security coordination provisions it is necessary to consider their nationality and residence record from 31.12.20 to the date of application e.g. a frontier worker who was resident in the UK while working in an EU Member State, or who was resident in an EU Member State while working in the UK, at the end of the transition period and had continued to be so thereafter, would be considered in scope.

Example

Nils has made a claim to benefit in February 2021 as he is looking for work. He is a Norwegian citizen who has declared that he is a frontier worker. He normally works in Shetland as a boat builder and, during the tourist season, a part time Viking re-enactor.

Nils does not have a frontier worker permit but as this is a “declaratory” status he is not required to show it for access to benefits. Information about his recent work activities has been gathered as part of the HRT gather. This is enough to show that his work would be treated as genuine and effective.

However, before it can be shown that Nils has a right to reside as a frontier worker further evidence is required in order to determine whether Nils satisfies the definition of being a frontier worker (see paragraph 29). The DM contacts Nils to ask whether he maintains a residence in Norway and how often he returns there (i.e. to ensure that Nils is not primarily resident in the UK (see paragraph 30)).



Nils confirms that he has a house in Norway and that he returns there as often work allows. However, he then says that he has only been back once in the previous 12 months.

To be treated as a frontier worker, Nils is required to return to his own country at least twice in every 12-month period. If he does not do so, he must have a good reason. If he cannot show a good reason, he is deemed to be resident in the UK and must satisfy the normal conditions for an EEA migrant.

Nils states that he had actually booked tickets to return home for the second time within the year, but just before he was due to travel there was a restriction on international travel due to COVID-19. He has not been able to return home since.

The DM determines that Nils has good reason for not returning home twice within the past 12-months. Although his work has dropped off recently it can still be treated as genuine and effective. Nils has status as a frontier worker which is the equivalent of EEA worker status within the meaning of the Immigration (EEA) Regulations 2016. Consequently, he is not a person subject to immigration control.

Frontier worker SI

- 18 The purpose of this Frontier Workers SI is to protect the rights of EEA nationals who, as workers¹ or self-employed persons², have pursued an economic activity as a frontier worker in the UK by the end of the transition period 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

- 19 Frontier workers' rights are granted under specified legislation¹. 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

- 20 The Agreements¹ 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 permit² 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 56 - 65 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)*

- 21 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

- 22 "EEA national" means¹ 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

- 23 "EEA state" means¹

3. a Member State **or**
4. Iceland, Liechtenstein, Norway or Switzerland.

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

Frontier worker permit

- 24 "Frontier worker permit" means¹ 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

- 25 "Frontier workers' rights" means¹ 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

26 “relevant restriction decision” means¹

1. an exclusion direction **or**
2. a deportation order² **or**
3. an exclusion or deportation order³, including those continued in effect⁴ **or**
4. a deportation order⁵.

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

27 “Self-employed person” means¹ 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

28 “Worker” means¹ 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

29 A person is a frontier worker¹ 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 29 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 another².

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

Not primarily resident

30 A person is to be treated¹ 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

31 Under the Withdrawal Agreement¹, a worker or self-employed worker can retain their worker status on the same basis as EEA migrant workers are entitled under EU law². 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.

1. Withdrawal Agreement, Art. 24(3) & 25(3); 2. Directive 2004/38, Art. 7(3)

32 A person who is no longer a worker¹ or self-employed person² 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 personin the UK for at least one year, provided³ the person provides evidence that they continue to seek employment or self-employment in the UK and has registered as a jobseeker⁴ 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 personin the UK for less than one year, provided³ the person provides evidence that they continue to seek employment or self-employment in the UK and has registered as a jobseeker⁴ 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 persondue 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.** applies⁵, 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 2016⁶.

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*

33 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 time¹.

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

In duly recorded involuntary unemployment - evidence of job seeking

34 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 law¹.

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)*

35 A person, who retains worker¹ or self-employed worker² 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

- 36 The requirement to provide evidence that the person continues to seek employment or self-employment is one of the conditions¹ that must be satisfied in order for a person to retain worker status² or self-employed worker status³.

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)

- 37 A claimant is required to be available for employment (DMG 21180), and actively seeking employment (DMG 21571) 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 Jobseeker's agreement (DMG 21573).

- 38 In order for the DM to determine evidence that the claimant continues to seek employment (DMG 21574), 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

- 39 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.

- 40 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.



- 41 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

- 42 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 accident¹. Leading case law² 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)*

- 43 A frontier worker will meet the definition of “not primarily resident in the UK” (see paragraph 29 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.
- 44 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.
- 45 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.

The is 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

- 46 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).
- 47 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

- 48 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

49 The Withdrawal Agreement¹ sets out the rights of workers, including frontier workers, which adopts the protection set out in the Treaty of Functioning European Union² ("TFEU"). This secures the right to equal treatment for all workers who are exercising free movement within the EU. These objectives² are achieved through Regulation 492/11.

Note: There is no Reg 492/11 equivalent for self-employed workers. However, the Withdrawal Agreement³ 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*

50 DWP is obliged to comply with the following rights listed in the Withdrawal Agreement¹

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

51 The concept¹ 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.

Frontier worker rights

52 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 decision¹ (see paragraph 25), do not require leave to enter or remain in the UK² under specified legislation³ 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, provided⁴ 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 permit⁵.

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)*

53 The meaning of 'worker' (see paragraph 27) (see DMG 072810) in regards to a right to reside has been established in CJEU case law¹. 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 ancillary² (see DMG 072816). This principle also applies to the definition of self-employed (see DMG 072843).

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*

Note: The definition of a 'worker' for right to reside purposes, should not be conflated with the judgement in JS v SSWP¹ where the UT decided that a period of two hours work was sufficient, for social security coordination purposes, to switch competency to the Member State of work (DMG Memo 03/20).

1. *JS v Secretary of State for Work and Pensions (CA): [2019] UKUT 239 (AAC)*

Frontier worker permit

54 Part 3¹ of this statutory instrument provides for the issue of a 'frontier worker permit' and gives effect to the Agreements². 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, reg 8-14; 2. Withdrawal Agreement, Art. 14 & Art.26; the EEA EFTA Separation Agreement, Art13 & Art.25 and the Swiss Citizens' Rights Agreement, Art.13 & Art.21*

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

56 The frontier worker permit will be issued to a protected frontier worker on successful application¹. They will be required to submit their application electronically and the required biometrics to accompany their application².

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

57 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.

58 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.

59 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.

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

1. 2 years¹ from the date of issue, when the individual had retained status when they applied for the permit **or**
2. otherwise, 5 years² from the date of issue.

- 61 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.
- 62 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.
- 63 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).

Family members

- 64 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

- 65 Part 4¹ 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 31.12.20² **and**
 - 1.2 where conducive to the public good, for conduct committed after 11pm on 3.12.20³ **and**
 - 1.3 on grounds of misuse of frontier workers' rights⁴
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, regs 12-20; 2. reg 18 & Schedule; 3. Reg 19; 4. Reg 20*

66 Part 5¹ 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*

67 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 applications¹ **and**
2. exclude protected frontier workers from the restrictions and controls placed on those without leave to enter or remain entering the UK from Ireland².

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

ANNOTATIONS

Please annotate the number of this memo (05/21) against DMG paragraphs:

071766; 071767 (Heading); 071791; 072810; 072816; 072843



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: May 2021

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