

EXPLANATORY MEMORANDUM TO
THE CITIZENS' RIGHTS (FRONTIER WORKERS) (EU EXIT) REGULATIONS
2020

2020 No. 1213

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This Explanatory Memorandum refers to 'EEA nationals' to mean citizens of European Union (EU) countries, of other constituent countries of the European Economic Area (EEA) (Iceland, Liechtenstein and Norway) and of Switzerland. This is in accordance with the definition used within this instrument.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to protect the rights of EEA nationals who, in accordance with Article 45 or 49 of the Treaty on the Functioning of the European Union (2012/C 326/01) (TFEU), have pursued an economic activity as a frontier worker in the UK by 31 December 2020 and wish to continue to do so thereafter. A 'frontier worker' is a person who is resident outside the UK but is economically active (which includes employment and self-employment) in the UK. They have rights under the Withdrawal Agreement, the EEA European Free Trade Association (EFTA) Separation Agreement and the Swiss Citizens' Rights Agreement ('the agreements') to continue to enter the UK from 31 December 2020 and work as a frontier worker for as long as they continue to be so.
- 2.2 This instrument protects those rights. It also establishes a frontier workers' permit scheme 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. After the end of the transition period on 31 December 2020 and once free movement has ended, protected frontier workers will be required to obtain such a permit (by 1 July 2021) to evidence their right to enter the UK.
- 2.3 This instrument sets out the circumstances in which a protected frontier worker's rights can be restricted, and a permit can be refused or revoked, 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.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 42 of the European Union (Withdrawal Agreement) Act 2020) and the territorial application of this instrument is not limited either by the Act or by the Instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 Kevin Foster MP, Minister for Future Borders and Immigration, has made the following statement regarding Human Rights:

“In my view the provisions of The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

6.1 The rights of frontier workers to enter and work in the UK derive from the TFEU, in particular:

- Article 45, which abolishes any discrimination on freedom of movement for workers as regards conditions of work and employment; and
- Article 49, which abolishes restrictions on freedom of establishment, allowing self-employed frontier workers to establish themselves in other Member States.

6.2 The Worker Regulation sets out the detailed rights, conditions and limitations of exercising these rights. Provisions of the Worker Regulation that are relevant to frontier workers include:

- Article 1: right to take up employment in another Member State with same priority as a national of that Member State;
- Article 5: right to equal assistance from employment offices as own nationals;
- Articles 7 and 8: right to equal treatment in respect of conditions of employment as own nationals; and
- Article 9: right to equal rights and benefits to own nationals in matters of housing.

6.3 These rights overlap with frontier workers’ free movement rights under Article 21 TFEU and the Free Movement Directive. Provisions of the Free Movement Directive that are relevant to frontier workers include:

- Article 4: right of exit;
- Article 5: right of entry;
- Article 6: right of residence for up to three months;
- Article 7(3): retained worker status; and
- Article 27: restrictions on the right of entry.

- 6.4 The UK implemented the Free Movement Directive in the Immigration (European Economic Area) Regulations 2016 (the 2016 Regulations)¹ made under section 2(2) of the European Communities Act 1972. Provisions of the 2016 Regulations relevant to frontier workers include:
- Regulation 4: definition of worker;
 - Regulation 11: right of admission to the UK;
 - Regulation 23: exclusion and removal from the UK;
 - Regulation 36: appeal rights; and
 - Regulation 37: out of country appeal rights.
- 6.5 The UK has not separately implemented frontier workers' immigration rights given that they are covered by the equivalent rights under the Free Movement Directive and therefore by the 2016 Regulations. Both operate to allow frontier workers to enter and work in the UK. The agreements protect these rights after free movement ends on 31 December 2020.
- 6.6 Articles 24 and 25 of the Withdrawal Agreement (and the corresponding Articles 23 and 24 of the EEA EFTA Separation Agreement and Article 20 of the Swiss Citizens' Rights Agreement) protect the substantive rights of workers and self-employed persons covered by the agreements, including frontier workers already working in the UK by 31 December 2020. These include non-discrimination, equal treatment, employment rights and benefits, and housing rights and benefits. Articles 24(3) and 25(3) of the Withdrawal Agreement (and the corresponding Articles 23(3) and 24(3) of the EEA EFTA Separation Agreement and Article 20(2) of the Swiss Citizens' Rights Agreements) provide for protected frontier workers to continue to have the rights they had as workers under Article 7(3) of the Free Movement Directive. Article 7(3) sets out the circumstances in which a person who has stopped working or self-employment retains the status of worker, essentially so they have a reasonable period in which to resume or begin new work or self-employment.
- 6.7 Article 26 of the Withdrawal Agreement (and the corresponding Article 25 of the EEA EFTA Separation Agreement and Article 21 of the Swiss Citizens' Rights Agreement) allows the UK to require a protected frontier worker to apply for a document confirming their rights under the agreements, and provides that a protected frontier worker has the right to be issued with such a 'document'.
- 6.8 Article 14 of the Withdrawal Agreement (and the corresponding Article 13 of the EEA EFTA Separation Agreement and Article 13 of the Swiss Citizens' Rights Agreement) allows the UK to require a protected frontier worker who does not have such a document to hold a 'visa' or equivalent entry formality, which allows their admission to the UK. The instrument combines both documents, the document under Article 26 and the entry formality under Article 14, into a single document called a frontier worker permit.
- 6.9 Section 8 of the European Union (Withdrawal Agreement) Act 2020 provides for Ministers to make this instrument to implement the UK's commitments under the agreements and to protect the rights of frontier workers once free movement ends.

¹ Previously, the Immigration (European Economic Area) Regulations 2006 and the Immigration (European Economic Area) Regulations 2000.

- 6.10 Alongside this instrument, the Government is today laying two other statutory instruments under the European Union (Withdrawal Agreement) Act 2020: The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 and The Citizens’ Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020.
- 6.11 This instrument does not cover the rights of entry and residence of the family members of a protected frontier worker, which are covered by the EU Settlement Scheme set out in Appendix EU to the Immigration Rules.

7. Policy background

What is being done and why?

- 7.1 The agreements protect the rights of EEA nationals who are frontier working in the UK by the end of the transition period on 31 December 2020 to continue to enter the UK for work for as long as they remain a frontier worker. The frontier workers’ permit scheme will allow a protected frontier worker to obtain a ‘frontier worker permit’ certifying that they have such rights under the agreements. Border Force will thereby be able to establish which EEA nationals have entry rights as a protected frontier worker under the agreements, and employers and landlords will be able to establish the right of a protected frontier worker to work and rent property in the UK.
- 7.2 There is limited data available on how many EEA nationals are covered by the agreements as frontier workers. The available evidence on frontier workers in the UK, including the Irish Census, suggests a large proportion of frontier workers will cross the UK border from Ireland. Irish citizens enjoy a right of entry and residence in the UK that is not reliant on the UK’s membership of the EU. Irish citizens may in addition have rights as a protected frontier worker under the agreements. They will be able to apply for a frontier worker permit certifying those rights, but under UK legislation they cannot be required to hold a permit in order to enter the UK. Our working assumption therefore is around 10,000 – 20,000 people will apply for a frontier worker permit.
- 7.3 The agreements require a frontier worker document scheme 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 Article 14 of the Withdrawal Agreement (and the corresponding Article 13 of the EEA EFTA Separation Agreement and Article 13 of the Swiss Citizens’ Rights Agreement), to make it mandatory to hold a frontier worker certificate (regulation 6) in order to enter the UK as a protected frontier worker from 1 July 2021.

The Regulations

- 7.4 Part 1 of the Regulations contains the interpretation provisions, including the meaning of ‘frontier worker’ and prescribing the circumstances in which a person may retain their status as a frontier worker where they are temporarily unable to work owing to accident or injury; where they are involuntarily unemployed; where they have ceased work to undertake vocational training related to their previous employment; or where they have ceased work due to pregnancy or childbirth.
- 7.5 Part 2 of the Regulations sets out the rights of frontier workers protected by the agreements. They:

- do not require leave to enter or remain in the UK under the Immigration Act 1971 when entering or remaining in the UK for economic activity; and
 - have the right to be admitted to the UK as a frontier worker, provided they have the relevant, valid document (regulation 6).
- 7.6 Part 3 of the Regulations provides for the issue of a ‘frontier worker permit’. This gives effect to Article 26 of the Withdrawal Agreement (and the corresponding Article 25 of the EEA EFTA Separation Agreement and Article 21 of the Swiss Citizens’ Rights Agreement), and Article 14 of the Withdrawal Agreement (and the corresponding Article 13 of the EEA EFTA Separation Agreement and Article 13 of the Swiss Citizens’ Rights Agreement). The frontier worker permit both:
- confirms the holder’s rights as a frontier worker when in the UK; and
 - grants the holder permission to enter the UK as a frontier worker.
- 7.7 It will be mandatory for a protected frontier worker who is not an Irish citizen to hold a frontier worker permit in order to enter the UK as a protected frontier worker from 1 July 2021.
- 7.8 The frontier worker permit will be issued to a protected frontier worker on successful application. They will be required to submit the required biometrics to accompany their application. They are not required to hold a frontier worker permit whilst in the UK, but it will enable them to produce evidence of their status in the UK, including to an employer or landlord.
- 7.9 A protected frontier worker does not require a frontier worker permit in order to work or rent property in the UK and will be able to do so by otherwise proving that they are a protected frontier worker.
- 7.10 A frontier worker permit, which can be issued in a digital form, will be valid for five years from the date of issue, or for two years from the date of issue where it is applied for on the basis of retained worker or self-employed person status under regulation 4.
- 7.11 A protected frontier worker may renew their frontier worker permit under the procedure set out in regulation 10 for as long as they continue to be a frontier worker. The Secretary of State may refuse to issue or renew a frontier worker permit, or a permit may be revoked:
- on grounds set out at regulations 18 to 20;
 - where the applicant or permit holder is subject to a relevant restriction decision, defined in regulation 2; or
 - where the application or permit holder is not, or ceases to be, a frontier worker.
- 7.12 Part 4 of the Regulations 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:
- on public policy, public security or public health grounds for conduct committed before 31 December 2020;
 - where the person ceases to be a frontier worker under regulation 3; and
 - on grounds of misuse of rights.

Part 4 also 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.

Part 4 also contains the procedural provisions relating to a person who is refused entry or who is being removed.

- 7.13 Part 5 of the Regulations provides a frontier worker with a statutory right of appeal against certain decisions which restrict their rights. These are a decision to:
- refuse to issue or renew, or to revoke, a frontier worker permit;
 - refuse admission to the UK under this instrument;
 - revoke admission to the UK of a person admitted to the UK as a protected frontier worker; and
 - remove or deport a person claiming rights under the Regulations as a protected frontier worker.
- 7.14 Part 5 of the Regulations also provides a frontier worker with a right of administrative review against certain decisions which restrict their rights. These are a decision to:
- refuse to issue or renew a frontier worker permit on the grounds that the person ceases to be or never was a frontier worker; and
 - revoke a frontier worker permit at the border where the permit holder ceases to be or never was a frontier worker.
- 7.15 Part 6 of the Regulations makes consequential amendments to existing legislation which are required to:
- allow for biometric information to be taken in frontier worker permit applications; and
 - exclude protected frontier workers from the restrictions and controls placed on those without leave to enter or remain entering the UK from Ireland.

Public interest

- 7.16 We expect some public interest in this instrument as it relates to the citizens' rights elements of the European Union (Withdrawal Agreement) Act 2020. Frontier workers, their employers and advocates of EEA nationals protected by the agreements will have an interest. The Home Office has received enquiries from individuals and organisations about the frontier workers' permit scheme, the eligibility criteria and the application process.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made to address a deficiency in retained EU law. It relates to the withdrawal of the United Kingdom from the European Union and is being made under section 8 of the European Union (Withdrawal Agreement) Act 2020.
- 8.2 The instrument protects the rights of frontier workers who have begun working in the UK by the end of the transition period on 31 December 2020 in UK law so they can continue to enter the UK for the purposes of work after that date. It establishes the legal basis for the frontier workers' permit scheme under which frontier workers can apply for a permit certifying their rights under the agreements.

9. Consolidation

- 9.1 This instrument is not intended to consolidate other legislation amended by this instrument.

10. Consultation outcome

- 10.1 The Home Office has not undertaken a public consultation on these measures, which relate to the rights of those EEA national frontier workers protected by the agreements. The Home Office is legally obliged to implement legislation protecting frontier workers' rights in order to comply with the agreements.

11. Guidance

- 11.1 Detailed guidance is being developed on the operation of the frontier workers' permit scheme. This will be publicly available before the scheme opens.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no significant impact on businesses has been identified.

13. Regulating small business

- 13.1 This instrument does not apply to activities that are undertaken by small businesses. Whilst small businesses may employ frontier workers, the purpose of the instrument is to maintain the status quo for the frontier workers protected by the agreements and to minimise the impact of the end of free movement on those protected frontier workers and their employers.

14. Monitoring & review

- 14.1 The operation and impact of the frontier worker permit scheme implemented by the instrument will be monitored internally by the Home Office.

15. Contact

- 15.1 Paul Howarth at the Home Office, Telephone: 07887 953125 or email: paul.howarth2@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Nicola Smith at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kevin Foster MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.