



Home Office

# Frontier Worker Permit Scheme Guidance

Draft v1

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# About this guidance

This guidance tells case workers how to consider applications made under the frontier worker permit scheme, contained in the [Citizens' Rights \(Frontier Workers\) \(EU Exit\) Regulations 2020](#) ("the Regulations").

The rights of [European Economic Area \(EEA\) citizens](#) who are frontier working in the UK by 11pm Greenwich Mean Time (GMT) on 31 December 2020 are protected by the [Withdrawal Agreement](#), the [EEA EFTA Separation Agreement](#) and the [Swiss Citizens' Rights Agreement](#) ("the agreements"). Under these agreements, qualifying frontier workers have a right to come to the UK for work for as long as they continue to meet the definition of a frontier worker, and have the right to access benefits and services in the UK which they had access to before the UK left the EU. More information about what benefits and services a frontier worker can access can be found in the guidance on [public funds](#). The frontier worker permit scheme is not a route to settlement.

Where this guidance refers to 'EEA citizens', it should be read as referring to EU, other European Economic Area (EEA) and Swiss citizens and excluding British citizens.

Article 26 of the Withdrawal Agreement (and equivalent provisions in the other citizen's rights agreements) gives frontier workers a right to be issued with a document certifying their rights as frontier workers. This 'document' is the frontier worker permit. Frontier workers do not require leave to enter or remain in the UK and accordingly, the issuing of a frontier worker permit does not confer leave to enter or remain.

From 1 July 2021 a frontier worker will require a permit in order to enter the UK as a protected frontier worker. The permit can also be used by a frontier worker as proof of their rights to work and access benefits and services to which they are entitled in the UK.

Frontier workers will be able to access healthcare, benefits and services according to the same rules as before the UK left the EU, for as long as they continue to be frontier workers. In practice this means maintaining equal treatment to UK workers in matters of housing, healthcare and other benefits and services. This means frontier workers will not need to meet the right to reside test, but they will otherwise need to meet the relevant eligibility requirements at the time they make an application for benefits.

Applications for a frontier worker permit are free of charge, and applicants have a right of appeal. Some refusal decisions made on eligibility grounds also carry a right of administrative review. For information about frontier workers' rights of appeal and administrative review see [administrative review and appeals](#).

Frontier worker permits are valid for:

- 5 years if the applicant meets the eligibility criteria as a current frontier worker under regulation 3 of the Regulations; or

- 2 years if the applicant meets the eligibility criteria as someone with retained worker status under regulation 4 of the Regulations.

Frontier workers can apply to renew their permit for as long as they continue to be frontier workers in the UK.

The Home Office will work with applicants to help them avoid any errors or omissions which may impact on the application decision. Caseworkers will have scope to engage with applicants and give them a reasonable opportunity to submit supplementary evidence or remedy any deficiencies where it appears a simple omission has taken place. A principle of evidential flexibility will apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens.

## Application process

Applicants must apply by using the specified online application process, as detailed on GOV.UK and submit the [required biometrics](#) and supporting evidence.

Other than for proof of their identity and nationality, applicants may submit a photocopy, photograph or scanned digital image of any required evidence. You can require they submit the original document(s) where you have reasonable doubt as to the authenticity of the copy submitted.

Successful applicants will be issued with a frontier worker permit. People who apply using the 'UK Immigration: ID check' app to verify their identity will be issued with a digital permit. People who do not apply using the 'UK Immigration: ID check' app will be required to attend a visa application centre (VAC) and will initially be issued with a physical frontier worker permit.

Please consult operational instructions on any measures in place as a result of coronavirus (COVID-19), in conjunction with this guidance. If you are considering an application where the applicant claims they have not met the eligibility criteria as a result of being affected by restrictions associated with COVID-19, please also consult the section in this guidance titled [Coronavirus \(COVID-19\)](#).

## Cost of application

There is no fee for an application for a frontier worker permit.

Applicants who are required to use a VAC or a UK visa application centre (UKVAC) to verify their identity as part of their application process may be required to pay to use these services, where they are provided by commercial partners. Applicants under the scheme are not required to pay the Immigration Health Charge.

## The best interests of a child

The duty in [section 55 of the Borders, Citizenship and Immigration Act 2009](#) to have regard to the need to safeguard and promote the welfare of a child under the age of

18 in the UK, together with Article 3 of the UN Convention on the Rights of the Child, means consideration of the child's best interests must be a primary consideration in immigration decisions affecting them. This guidance and the Regulations it covers form part of the arrangements for ensuring we give practical effect to these obligations.

Where a child or children in the UK will be affected by the decision, you must have regard to their best interests in making the decision. You must carefully consider all the information and evidence provided concerning the best interests of a child in the UK and the impact the decision may have on the child.

Although the duty in section 55 only applies to children in the UK, the statutory guidance – [Every Child Matters – Change for Children](#) – provides guidance on the extent to which the spirit of the duty should be applied to children overseas. You must adhere to the spirit of the duty and make enquiries when you have reason to suspect a child may be in need of protection or safeguarding, or presents welfare needs which require attention. In some instances, international or local agreements are in place which permit or require children to be referred to the authorities of other countries and you are to abide by these and work with local agencies in order to develop arrangements that protect children and reduce the risk of trafficking and exploitation.

Further guidance can be found in paragraphs 2.34 to 2.36 of the [statutory guidance](#).

For further guidance on how to deal with applications to the frontier worker scheme concerning children see: [Applications in respect of children](#).

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think the guidance has factual errors then email the [European Migration and Citizens' Rights Unit](#).

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can [email the Guidance Rules and Forms team](#).

## Publication

Below is information on when this version of the guidance was published:

- version 1.0
- published for Home Office staff on **[add publication date]**

## Changes from last version of this guidance

This is new guidance.

### Related content

[Contents](#)

**Related external links**

[The Citizens' Rights \(Frontier Workers\) \(EU Exit\) Regulations 2020](#)

[Section 55 of the Borders, Citizenship and Immigration Act 2009](#)

[Every Child Matters](#)

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# Who can apply?

This page tells you who is eligible for a frontier worker permit.

Regulation 3 of the Regulations sets out the meaning of “frontier worker”. A person is a ‘frontier worker’, and therefore eligible to apply for a frontier worker permit, if they were, immediately before IP completion day (i.e. 11pm GMT on 31 December 2020), and have been continuously since IP completion day:

- an EEA citizen
- not primarily resident in the UK
- a worker or self-employed person in the UK or a person treated as a worker or self-employed person in the UK by virtue of regulation 4 of the Regulations

An ‘EEA citizen’ for these purposes is as a national of an EEA State who is not also a British citizen. This means the applicant must be a national of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or Switzerland.

For guidance on how to determine whether someone is not resident in the UK see: [assessing whether the EEA citizen is resident outside of the UK](#).

See also guidance on how to determine whether someone is a [worker](#) or [self-employed person](#), or has [retained worker or self-employed person status](#)

To be issued with a permit, a person who meets the definition of frontier worker must also meet the suitability requirements set out in regulation 9 of the Regulations. For guidance on how to assess whether an applicant meets the suitability requirements see: [suitability](#).

## Irish citizens

Irish citizens enjoy a right to work and reside in the UK which is not reliant on the UK’s membership of the EU.

This means Irish citizens do not need to apply for a frontier worker permit and do not need to hold one in order to enter the UK to work. Nonetheless, Irish citizens can make an application under the frontier worker permit scheme, should they wish to do so.

## British citizens and dual nationals

British citizens and dual national British citizens are not eligible to apply to the frontier worker scheme.

## Family members of frontier workers

Family members of frontier workers are not eligible to apply for a frontier worker permit. They may apply for entry clearance, in the form of an EU Settlement Scheme Family Permit, to join the frontier worker in the UK or to accompany them to the UK, under Appendix EU (Family Permit) to the Immigration Rules. They may also apply for pre-settled or settled status under the EU Settlement Scheme.

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# Making an application: validity

This section tells you how to check an application is valid under regulation 8(3) of the Regulations.

For an application for a frontier worker permit to be valid you must check all of the following:

- it has been made using the required application process
- the required biometrics have been provided
- a valid identity document has been provided
- evidence the applicant is a frontier worker is provided
- the application is complete

## Required application process

Applicants must apply by using the relevant online application form and must follow the process set out in that online application form for:

- providing a valid identity document
- providing the required biometrics
- providing evidence the applicant is a frontier worker

## Required biometrics

Under the Immigration (Provision of Physical Data) Regulations 2006 (as amended), all applicants are required to provide a passport-style facial photograph of themselves (within the meaning of “biometric information” in section 15 of the UK Borders Act 2007) as part of the required application process.

Applicants who chose to apply outside of the UK and attend a VAC to confirm their identity will also be required, under the Immigration (Provision of Physical Data) Regulations 2006 (as amended), to submit fingerprints with their application unless the published guidance in force at the date of application states they are not required to provide these. See the published [biometric guidance](#) for more details.

## Valid identity document

This is either a valid passport or a valid national identity card issued by an EEA state.

‘Valid’ here means the document:

- is genuine
- is the applicant’s own
- has not expired or been cancelled or invalidated at the point it is provided.

If you have clear grounds to believe the identity document provided is fake, or not the applicant’s own, you must reject the application as invalid under regulation 8(3) (see [validity consideration](#)).

If, by the date a decision is made on a case, the document is no longer valid, the application remains a valid application for the purposes of regulation 8 of the Regulations.

## Coronavirus (COVID-19) implications for identity document validity

Some EEA states have extended the validity of their identity documents as a result of restrictions associated with coronavirus (COVID-19). Caseworkers will need to consider the latest position in the relevant country and check this with a senior caseworker, however, the information in the table below was accurate as of 2 November 2020.

The validity of the secure French national identity card (laminated), issued to people aged 18 or over from 1 January 2004 to 31 December 2013, has been increased from 10 years to 15 years. Therefore, any such card is to be treated as having a validity period of 15 years, regardless of the expiry date printed on the card.

The table below sets out which countries have made changes, which documents they apply to, and the impact on the expiry date.

Country	Document	Changes to expiry date
Bulgaria	Passport and national identity card	Any document expiring between 13 March 2020 and 31 October 2020 is to be treated as having no expiry date.
Croatia	Passport and national identity card	Any document expiring on or after 13 March 2020 is to be treated as having no expiry date.
Hungary	Passport and national identity card	Any document expiring on or after 11 March 2020 is to be treated as having no expiry date.
Portugal	Passport and national identity card	Any document expiring between 27 February 2020 and 30 June 2020 is to be accepted as valid until 30 June 2020.
Romania	Passport and national identity card	Any document expiring on or after 16 March 2020 is to be treated as having no expiry date.
Spain	National identity card	Any card expiring between 14 March 2020 and 13 March 2021 is to be accepted as valid until 13 March 2021.

## Alternative evidence of identity and nationality

We expect frontier workers to have the required valid identity documents because frontier workers require them to travel to the UK for work.

We also expect, in cases where a frontier worker does not have the required valid identity document, it reasonable to expect, and will be within their control, for them to obtain one.

However, in some cases there may be genuine, exceptional reasons which are beyond an applicant's control why they cannot provide the required valid identity document. Where the circumstances beyond the applicant's control relate specifically to COVID-19 public health restrictions, they may still be eligible to apply. You must consider these applications on a case-by-case basis. See [Coronavirus \(COVID-19\)](#) for further guidance.

## Evidence the applicant is a frontier worker

The online application form is designed in such a way that an application cannot be submitted without the applicant having provided at least some information or evidence of their frontier worker status. Where the other requirements of a valid application are met, you must not, therefore, reject an application as invalid on the basis that no evidence has been provided. You must assess the evidence provided under [eligibility](#).

## Validity consideration

If the applicant submits an application which is missing any of the components required at regulation 8(2)(b) or (c) of the Regulations for it to be valid, they must be prompted or contacted and given reasonable opportunity to provide what is needed to validate the application. Where the applicant does not remedy the application by providing the missing components within 14 days of being contacted, you must reject the application as invalid under regulation 8(3).

The relevant validity requirements in those sub-paragraphs of regulation 8 are:

- under sub-paragraph (2)(b)(i), the required biometrics have been provided
- under sub-paragraph (2)(b)(ii), a valid identity document has been provided (unless you consider there to be circumstances beyond the applicant's control which relate specifically to COVID-19 public health restrictions and mean the applicant cannot provide a valid identity document)
- under sub-paragraph (2)(b)(iii), the required evidence the applicant is a frontier worker
- under sub-paragraph (2)(c), the application is complete, meaning all required questions have been answered.

## Treating an application as void

An application must be treated as void where:

- the applicant is a British citizen (including a dual British citizen)
- the applicant is not an EEA citizen
- the applicant dies before their application is decided

Applicants are permitted to hold leave to enter or remain in the UK at the point they apply for a frontier worker permit.

## Multiple applications

There may be occasions where an applicant has made more than one application to the scheme at the same time. For example, they may have submitted an online application (with a view to submitting their valid national identity card by visiting a VAC abroad) but subsequently opted to obtain a passport and apply via the 'UK Immigration: ID Check' app (which enables them to provide this proof via the app).

Where this is the case, you must contact the applicant and explain to them that only one application can be made at a time and take the action set out below depending on the particular circumstances:

- where 2 or more invalid applications are submitted because, for example, the required valid identity document has not yet been provided, you must give the applicant a reasonable opportunity to provide what is needed to validate one of the applications and to withdraw the other or others:
  - if they validate one application but fail to withdraw the other or others, you must contact them again, inviting them to withdraw the invalid application or applications, giving a deadline of 10 working days, after which (if the applicant has not agreed to withdraw) you must reject any invalid application or applications under regulation 8(3) of the Regulations - the valid application must be considered in the normal way
  - if, for example, they provide the required valid identity document but fail to specify which application they would like it to validate and fail to withdraw the other or others, you must validate their most recent application (where the other requirements of a valid application are met) and reject the other applications as invalid under rule 8(3) of the Regulations
  - if they do not validate any of the applications after being given a reasonable opportunity to do so, you must reject all the applications received as invalid under regulation 8(3) of the regulations.
- where 2 or more applications are made, where one is valid and the other or others invalid, and the valid application would result in the issue of a frontier worker permit, you must grant the valid application and reject the other application or applications as invalid under regulation 8(3) of the Regulations. However, where the valid application would not result in the issue of a frontier worker permit, you must contact the applicant inviting them to withdraw the invalid application or applications, giving a deadline of 10 working days, after which (if the applicant has not agreed to withdraw) you must reject any invalid application or applications under regulation 8(3) of the Regulations and the valid application must be considered in the normal way
- where 2 or more applications are made, on different days or on the same day, and all are valid but not yet decided, the latest application must be treated as a variation of the earlier application or applications, which must be treated as withdrawn - you must notify the applicant of this.

# Withdrawing an application

An applicant may request to withdraw their application at any time after it has been submitted but before, where it is a valid application, a decision has been made on the application and this decision has been recorded on the caseworking system.

## Requesting to withdraw an application

An applicant can withdraw their application by written request online. This applies to applications made in the UK and from overseas. If the request is ambiguous, you must confirm the withdrawal request with the applicant.

A request for withdrawal must generally be made by the applicant named on the application form. Where the applicant is aged under 18 or was unable to submit their application themselves, you may accept a request for withdrawal from the person or organisation named on the application form as having provided assistance to them or as having completed the application on their behalf.

The applicant must request to withdraw an application in writing. To do this online, they must follow the GOV.UK guidance on [cancelling a visa, immigration of citizenship application](#). The guidance refers to withdrawing visa applications rather than frontier worker permits, but the process is the same.

The date of withdrawal is the date the request is received by the Home Office, calculated in line with the information set out in '[Date of application: original application](#)'.

## Withdrawn applications

The case of [Qadeer v SSHD](#) clarified the Secretary of State does not have to agree to withdraw an application and may still consider and decide the application even where this might lead to a refusal. For example, where there is a suspicion deception has been used by the applicant if they have submitted fraudulent documents in support of their application.

If you do not think it is appropriate to agree to a request to withdraw an application, you must discuss this with your senior caseworker.

## Date of application: original application

The date of application is the date on which the application form is submitted online.

If you withdraw a decision to treat an application as invalid and instead accept it as valid, the date of application is the date the application was originally submitted online.

If an application, or variation, was previously rejected as invalid and the applicant then submits a valid application, the date of application, or variation, is the date the valid application is submitted online.

## **Confirmation of withdrawal**

Once a request to withdraw an application has been actioned, you must use the relevant information provided by the applicant as their correspondence address to confirm to them their application has been withdrawn and note on the caseworking system this has been done.

## **Travel outside the Common Travel Area**

An application made under the Regulations will not be treated as automatically withdrawn if the applicant travels outside the Common Travel Area before the application has been decided.

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# Assessing an application - Eligibility

This section tells you how to consider the eligibility requirements for the frontier worker permit scheme. As set out in the section [who can apply](#), a person will meet the eligibility requirements for a frontier worker permit, if they were, immediately before IP completion day (11pm GMT on 31 December 2020), and have been continuously since 11pm GMT on 31 December 2020:

- an EEA citizen
- not primarily resident in the UK
- either:
  - a worker or self-employed person in the UK
  - a retained worker or self-employed person in the UK

When determining eligibility you must consider every application in full, looking at all of the evidence submitted with the application. If, for example, you intend to refuse an application because the person does not meet one of the eligibility requirements, you must go on to consider whether the applicant meets the other requirements and refuse on multiple grounds if necessary.

## Assessing whether the EEA citizen is not primarily resident in the UK

In order to be eligible as a frontier worker under this scheme, an applicant must have been not primarily resident in the UK immediately before 11pm GMT on 31 December 2020, and continue to be not be primarily resident in the UK thereafter. As set out Regulation 3(1)(b) and 3(3):

A person is to be treated as not being primarily resident in the United Kingdom at a particular point in time (“the relevant date”) if either:

- (a) they have been present in the United Kingdom for less than 180 days in the 12-month period immediately before the day on which the relevant date falls
- (b) unless there are exceptional reasons for not having done so, they have returned to their country of residence at least, either:
  - (i) once in the 6-month period immediately before the day on which the relevant date falls
  - (ii) twice in the 12-month period immediately before the day on which the relevant date falls

You must follow the 2 stage consideration process set out below when determining if an applicant is not primarily resident in the UK. You must consider each stage in order before moving to the next.

## Stage 1: Time spent in the UK (see regulation 3(3)(a) of the Regulations)

When assessing whether the applicant meets the residency requirement:

- you do not need to consider any 12-month period before 1 January 2020
- a “relevant 12-month period” is any rolling 12-month period between 1 January 2020 and the date you consider the application
- for renewal applications, you only need to consider any 12-month period from the date of their last successful application for a frontier worker permit until the date you consider their application to renew their permit.
- any amount of time spent in the UK on a given day is to be considered as though the applicant was present in the UK for the full day
- you must consider the total number of days an applicant spends in the UK during any 12 month period

An applicant will meet the definition of “not primarily resident in the UK” under regulation 3(3)(a) for the relevant period(s) if they have been physically present in the UK for less than a total of 180 days in every relevant 12-month period. If this is the case, you do not need to complete stage 3 and you must move on to [assessing whether the EEA citizen is a worker or self-employed person](#).

If an applicant has been present in the UK for more than a total of 180 days in the UK in any relevant 12-month period(s) you must complete [stage 2](#).

## Stage 2: frequency of travel (see regulation 3(3)(b) of the Regulations)

An applicant will meet the definition of “not primarily resident in the UK” under regulation 3(3)(a) for the relevant period if they have been present in the UK for more than a total of 180 days in any relevant 12-month period(s) and they have also returned to their country of residence at least either:

- once in every 6 months period(s)
- twice in every 12-month period(s).

Where applicants claim to have travelled to their country of residence with the required frequency, they must give details of this travel.

Applicants are required to provide proof of an address outside the UK to confirm that the country they are travelling to is their country of primary residence. This address does not have to be in one of the 27 EU member states as frontier workers can be resident anywhere outside of the UK to be eligible under the scheme.

For the purposes of an application, you may accept a declaration of an applicant’s non-UK residential address as proof of residence outside of the UK. Where you are not satisfied it is genuine, you must make further enquiries to satisfy yourself the applicant meets the residency requirement.

Where an applicant has not returned to their country of residence with the required frequency, they may still meet the definition of “not primarily resident in the UK” if you are satisfied by the evidence provided they had exceptional reasons for not being able to travel to their country of residence, as required. See: [Exceptional reasons for not meeting the travel requirement](#).

For first applications (rather than renewals), where an applicant has been a frontier worker for more than 6 months but less than 12 months at the point of their application, you must apply the “once every 6 months” travel requirement.

If the applicant has not returned to their country of residence with the required frequency and has not claimed exceptional reasons for not doing so, you must refuse their application under regulation 3(3)(b).

### Exceptional reasons for not meeting the travel requirement

An applicant is not required to meet the travel requirements of regulation 3(3)(b) where you are satisfied by evidence there are exceptional reasons for them being unable to do so. You must assess each case on its own merits, taking into account all of the circumstances of the case.

Examples of exceptional circumstances may include:

- illness or accident (if the illness is related to COVID-19, please see the section titled [Coronavirus \(COVID-19\)](#)).
- travel restrictions as a result of COVID-19 (for guidance on how to consider exceptional reasons relating specifically to the COVID-19 travel restrictions please see the section titled [Coronavirus \(COVID-19\)](#)).
- where the applicant became a frontier worker shortly before 31 December 2020 and has not been able to go to their place of primary residence before making their application shortly after.
- pregnancy or childbirth, where this prevented travel for the duration of the 6 or 12 month period under consideration. Evidence of this may include medical certificates or a letter from their doctor confirming the pregnancy took place and the due date/birth date, and that this prevented travel.

The list is not exhaustive and any information provided by an applicant must be fully considered. There may be other circumstances beyond the control of the applicant, or other compelling practical or compassionate reasons, why the applicant could not travel. In all cases, documentary evidence of the exceptional, circumstances must be provided.

If, having completed stage 2, you are not satisfied the applicant is primarily resident outside the UK, you must refuse the application under regulation 3(3)(b). You must still go on to [assess whether the EEA citizen is a worker or self-employed person](#).

If you are satisfied the applicant is not primarily resident in the UK you must move on to [assessing whether the EEA citizen is a worker or self-employed person](#).

## Assessing whether the EEA citizen is a worker or self-employed person

In order to be a frontier worker under the Regulations a person must have been, immediately before IP completion day (11pm GMT on 31 December 2020), and have been continuously since IP completion day, any of the following:

- a worker in the United Kingdom
- a self-employed person in the United Kingdom
- a person treated as a worker or self-employed person in the United Kingdom by virtue of regulation 4 of the Regulations

'Worker' and 'self-employed person' are to be interpreted in accordance with Articles 45 and 49 of the Treaty on the Functioning of the European Union (TFEU). Retained worker status under regulation 4 is to be interpreted in accordance with Article 7(3) of EU Directive 2004/38/EC.

"Immediately before" means the person must meet the requirement before IP completion day rather than at some irrelevant point in the past. It does not mean the applicant must have been in the UK working on IP completion day, rather it means they must not have ceased to be a worker or self-employed person in the UK, or have ceased to have retained worker status, by this date.

To be considered within scope of the Regulations therefore, the applicant must have worked or been engaged in self-employment in the UK:

- at least once in the 12 months before 11pm GMT on 31 December 2020 (or meet the criteria for [retained worker status](#) under regulation 4 at this date).

To maintain their frontier worker status under the regulations an applicant must continue to come to the UK for the purpose of work or self-employment at least once in every rolling 12-month period from their first instance of work or self-employment in the UK in 2020.

The work or self-employment activity must be genuine and effective, and not marginal and ancillary to their lifestyle as a whole whilst in the UK. See the sections titled [workers](#) and [self-employed](#) guidance on considering genuine and effective economic employment for workers and self-employed people in the UK.

See also: [assess whether the EEA citizen has retained worker or self-employed person status](#).

If there is a period of 12 months or more where the applicant has not been present in the UK as a worker or self-employed person from 1 January 2020, you must consider whether they had retained worker or self-employed person status during this period. See: [assess whether the EEA citizen has retained worker or self-employed person status](#) for guidance on how to make this consideration.

If there is a period of 12 months or more from 1 January 2020 where the applicant has not been present in the UK as a worker or self-employed person and has not had retained worker or retained self-employed person status, you must refuse their application under regulation 3(1)(c).

## Maternity and paternity leave

An EEA citizen who is on maternity or paternity leave has not terminated their employment and so remains a worker under Article 45 of the TFEU.

When considering an application made by a person who is, or has been, on maternity or paternity leave, you must first be satisfied the person was carrying out genuine and effective work in the UK before their period of maternity or paternity leave. If you are satisfied of this, you must consider the application as if the applicant has continued carrying out economic activity in the UK for the duration of their paid maternity, paternity or adoption leave.

EEA citizens who have terminated their employment because they are temporarily unable to work as a result of pregnancy or childbirth may retain their worker status. For guidance on how to consider their application see [Retaining worker status following pregnancy](#).

## Child applicants

When considering an application by or on behalf of a person who is under the age of 18, you have a duty to consider the best interest of the child. You must follow the guidance set out in the section titled [applications in respect of children](#).

Applicants under the age of 18 must comply with the UK's [rules on child employment](#).

The youngest age a child can work lawfully in the UK part-time is 13, except for children working in areas like:

- television
- theatre
- modelling

Children working in these areas will need a [performance licence](#).

If the applicant is under 18 and does not comply with the UK's rules on child employment, you must refuse their application under regulation 3(1)(c).

Once you have considered the best interest of the child, you must consider whether they otherwise meet the requirements of being a worker or self-employed person under the Regulations, including whether they are carrying out genuine and effective work in the UK.

## Workers

Genuine employment may have no formal contract but should have:

- an employer
- an agreement between employer and employee that the worker will perform certain tasks
- confirmation the employer will pay or offer services (such as free accommodation) or goods for the tasks performed

An applicant's employment contract may not with an employer based outside the UK, in which case you must be satisfied they are required to be present in the UK working. You must also be satisfied they have received payment for the work carried out in the UK. Reasonable evidence of this may include:

- a letter from employer(s) confirming the need for the employee to travel to the UK for the purpose of work and outlining the frequency usual duration of this travel
- a contract specifying the dates of employment and the work must be wholly or partly undertaken from within the UK.

Where a person is being offered services such as free accommodation instead of being paid for performing certain tasks, you must consult your senior caseworker and refer to guidance contained [in Victims of modern slavery](#) to satisfy yourself they are not a victim of modern slavery.

Applicants must submit proof of payment for the work done in the UK for the relevant periods. This may include wage slips or bank statements covering the relevant periods of work.

If an applicant does not submit evidence of employment in the UK, or the evidence they submit does not satisfy you they have been employed as a worker in the UK, you must refuse their application under regulation 3(1)(c).

### Genuine and effective work

While there is no minimum amount of hours which the applicant must be working for in the UK in order to qualify as a worker, you must be satisfied the work carried out in the UK is genuine and effective, and not marginal and ancillary to their situation as a whole in the UK.

Marginal and ancillary means the work carried out in the UK involves so little time and money as to be largely irrelevant to the lifestyle of the applicant whilst in the UK. Examples of activities in the UK which may be considered marginal and ancillary include:

- attending an interview or short, individual meetings
- negotiating and signing a deal or contract (where the work for the contract is not carried out in the UK)
- taking part in a one-off competition or audition (for artists, entertainers or musicians)

- being briefed on the requirements of a UK based customer, if any work for the customer is done outside of the UK

However, the context may mean these activities do amount to genuine and effective work. You must carefully assess each case on its own merits to see whether the EEA citizen's claimed employment in the UK is genuine and effective.

Relevant considerations for employed workers include:

- whether there is a genuine employer-employee relationship
- whether there is an employment contract specifying the employee is required to carry out work in the UK
- number of hours worked in the UK
- frequency of work in the UK
- level of earnings from activities in the UK (see [level of earnings](#))

If you are not satisfied the work an applicant has carried out in the UK is genuine and effective, you must refuse their application under regulation 3(1)(c).

## Self-employed persons

You must be satisfied a self-employed person is working for themselves and generating an income in an established self-employed capacity in the UK. The applicant's business or business accounts do not need to be based in the UK, but they must have engaged in genuine and effective economic activity in the UK as a self-employed person during the relevant time periods.

You must be satisfied the applicants are genuinely self-employed in the UK. Applicants must provide evidence which shows they meet the factors listed below in support of their application:

- economic activity in the UK, which means they have performed certain tasks in the UK, such as selling goods, in return for payment or services
- genuine and effective self-employment in the UK
- stability and continuity in the UK
- membership of a professional body (where relevant)

There is a difference between an established self-employed person who is carrying out stable and continuous work in the UK, and a person who comes to the UK to provide services on a temporary basis. The latter is outside the scope of Article 49 of the TFEU and so not eligible for a frontier worker permit.

Relevant considerations when determining whether a person is carrying out stable and continuous work may include:

- frequency of economic activity in the UK
- how long the applicant spends in the UK carrying out economic activity
- whether the activity in the UK is regular

- whether the activity in the UK is stable, for example it is clear the applicant will return to the UK to carry out work after each period of economic activity in the UK
- whether the applicant has any infrastructure established in the UK, such as business premises or offices.

If an applicant has carried out short-term, temporary, irregular and unstable self-employed activity in the UK, it is more likely they are a service provider rather than a self-employed frontier worker.

### Example 1

Y is a French national who is self-employed as a hairdresser in Ireland. Sometimes they travel to Northern Ireland for a few hours to cut the hair of clients at their homes, but this is irregular and depends on client demand – sometimes once a month, sometimes less. It is likely Y is a service provider in the UK, rather than a self-employed frontier worker in the UK, because (a) they spend a short amount of time in the UK each time they travel here for work, (b) their work in the UK is temporary and irregular, (c) their work is unstable, and dependent on the demand of clients, and (d) they do not have any established infrastructure in the UK.

### Example 2

Z is a Spanish national who is self-employed builder in the UK specialising in loft conversions. Between the spring and the autumn each year, they spend 5 days per week in the UK completing building projects, returning home to Spain at the weekends. They rent a yard and lock-up in the UK from which they operate. It is likely Z is a self-employed frontier worker in the UK, rather than a service provider, because (a) the work in the UK is regular and stable; it is clear they must return to the UK regularly to complete the building projects; (b) they spend several days at a time working in the UK, (c) they have business premises in the UK.

If, once you have considered all of the applicant's evidence, you are not sure whether they meet the "stable and continuous test", you must refer the case to a senior case worker.

Where you are not satisfied that an applicant is carrying out stable and continuous work in the UK, you must refer the case to a senior case worker before making a refusal.

Applicants must submit evidence of self-employment in the UK, and proof of earnings for this employment.

Reasonable evidence of self-employment in the UK may include contracts to undertake work in the UK. If the applicant is unable to provide formal evidence such as contracts of self-employment, they must explain why and provide at least one alternative form of evidence of self-employment. This may include

- invoices for work done in the UK
- a copy of the business accounts showing payments for work done in the UK

- emails or text messages organising the work in the UK
- testimonials or references from clients in the UK
- examples of business advertising in the UK

Applicants may also submit evidence of any known future self-employed activities in the UK to prove they are carrying out stable and continuous work here, such as contracts to undertake work in the UK in the future, or emails or text messages organising future work.

Reasonable evidence of proof of earnings may include:

- proof of registration for tax and national insurance purposes with HMRC if registered in the UK, for example
  - letter of self-employed status
  - letter confirming payment of tax and NI contributions
- copies of invoices or receipts for payments for work undertaken in the UK. If the business is a limited company these must be on company-headed paper
- business bank statements with an explanation of payments made for work done in the UK. The applicant must be named on the account, or otherwise provide evidence to show they have access to the account.

If an applicant does not submit evidence of self-employment in the UK, or the evidence they submit does not satisfy you they have been self-employed in the UK, you must refuse their application under regulation 3(1)(c).

## Genuine and effective self-employment

Once you are satisfied the self-employment in the UK is genuine, stable and continuous you must also satisfy yourself the work the self-employed person is carrying out in the UK alone is effective and not marginal and ancillary to their situation as a whole when in the UK. While there is no minimum amount of hours which the applicant must be working for in the UK in order to qualify as a worker, as with employment, marginal and ancillary means the economic activity carried out in the UK involves so little time and money as to be largely irrelevant to the lifestyle of the applicant when in the UK.

You must carefully assess if the applicant's claimed self-employment is genuine and effective. You must assess each case on its own merits, considering a number of factors, including [level of earnings](#) and frequency of economic activity in the UK, although not all the factors will be relevant to every application. You must decide each application after analysing all the relevant circumstances.

## Level of earnings: HM Revenue & Customs (HMRC) threshold

HMRC has a primary earnings threshold (PET), which is the point at which employees must pay class 1 national insurance contributions.

The PET is updated each financial year and you must check the [HMRC website](#) for the current rate.

You can use the PET as a benchmark against which to assess a person's pay where you are considering whether the work they are carrying out in the UK is genuine and effective. The PET is provided as a weekly, monthly or annual amount, so if you wish to compare it against a frontier worker's daily pay you can divide the weekly amount by 5 to get a daily rate.

Applicants are not required to give details of their salary at application. However, some applicants may choose to provide evidence of their employment or self-employment at application which contains information on their salary, or the payment received for work undertaken, for example a contract of employment or a receipt.

In cases where the total income from work carried out in the UK exceeds the PET you can be satisfied the person is carrying out genuine and effective work.

In cases where the applicant is earning below the PET for work carried out in the UK you must make enquiries into whether the activity relied upon is nonetheless genuine and effective.

When applying the level of earnings test to frontier worker applications, you must only consider those earnings which are a result of work carried out in the UK.

## Assessing whether the EEA citizen has retained worker or retained self-employed person status

This section tells you how a frontier worker in the UK, who has temporarily stopped working or being self-employed in the UK, can continue to be considered a worker or self-employed person in the UK for the purposes of the Regulations.

Following the Court of Justice of the European Union (CJEU) judgment in [Gusa C-442/16](#) a self-employed person is able to retain their status as a self-employed person in a similar way to a person retaining status after a period of employment. For the purposes of this section, unless otherwise specified, references to 'work', 'working' or 'worker' means employment or self-employment, or someone undertaking those activities.

Someone who has temporarily stopped working in the UK can still be considered a worker under regulation 4 of the Regulations if they can provide proof they had previously carried out genuine and effective work in the UK as a worker and they:

- are temporarily unable to work in the UK because of illness or an accident
- are in duly recorded involuntary unemployment
- are involuntarily unemployed and have embarked on vocational training
- voluntarily stopped working to start vocational training related to their previous work
- are temporarily unable to work in the UK following pregnancy or childbirth

For someone to retain worker status, their period of unemployment must immediately follow a period of employment or self-employment in the UK. This means the

applicant must become unemployed for one of the reasons listed above within 12 months of their last period of work in the UK.

## Example 1

An EEA citizen (P) applies for a frontier worker permit in January 2021 as a person with retained worker status. P claims they are temporarily unable to work in the UK as a result of a back injury they sustained in October 2019. If P last came to the UK to carry out work in April 2016 they would not be eligible as a frontier worker under the Regulations. However, if P had last worked in the UK in August 2019, they may be eligible under the scheme as their unemployment as a result of injury had occurred less than 12 months after their last period of employment in the UK.

If an applicant is a retained worker or self-employed person at the date of application, they are eligible for a 2-year frontier worker permit.

If you are not satisfied from the evidence provided that an applicant has met the requirements to retain their worker or self-employed person status during a period of unemployment in the UK you must refuse their application under regulation 3.

## Proof of previous employment

If an applicant is applying as someone with retained worker status they must provide proof of their previous employment in the UK, and proof of earnings from this employment. You must be satisfied the previous work they carried out in the UK was genuine and effective, and not marginal and ancillary (see above for [guidance on genuine and effective work](#) and [genuine and effective self-employment](#)). The following table sets out some of the evidence you may accept. This table is not exhaustive, and you must consider each case individually.

	Previously employed	Previously self-employed
Proof of previous employment	<p>A letter from their former employer confirming:</p> <ul style="list-style-type: none"> <li>the dates they were employed,</li> <li>they were required to travel to the UK for this work, the frequency and expected duration.</li> <li>their unemployment was involuntary and the reason for the unemployment (this is not required for those who voluntarily stopped working to start vocational training related to their previous work).</li> </ul> <p>If they cannot provide this they must explain why and submit</p>	<p>Proof the business was actively trading in the UK and explanation for why it stopped trading. This could be in the form of:</p> <ul style="list-style-type: none"> <li>contracts to provide services in the UK</li> <li>evidence the company has fallen into liquidation and no longer operational.</li> </ul> <p>If they cannot provide this they must explain why and submit at least one alternative piece of evidence. This could be provided in the form of</p> <ul style="list-style-type: none"> <li>emails or text messages organising work in the UK</li> <li>testimonials or references from clients in the UK</li> <li>examples of business advertising in the UK</li> <li>proof of income tax paid in country of residence and/or UK</li> </ul>

	alternative proof of employment such as a signed and dated contract of employment.	<ul style="list-style-type: none"> <li>• if trading for more than 12 months, a copy of their statutory accounts for the relevant period with a letter from their accountant confirming gross/net profit for the relevant period and this work was carried out in the UK</li> <li>• copies of invoices or receipts for payments for work in the UK. If the business is a limited company these must be on company-headed paper.</li> <li>• business bank statements – the applicant must be named on the account, or otherwise provide evidence to show they have access to the account.</li> <li>• Personal bank statements showing receipt of payments for work carried out in the UK.</li> </ul>
Proof of earnings	One piece of evidence showing proof income or salary, such as wage slips or bank statements covering their most recent period of work in the UK.	<p>Proof of earnings from self-employment could be in the form of</p> <ul style="list-style-type: none"> <li>• Proof of income tax paid in country of residence and/or UK</li> <li>• If trading for more than 12 months, a copy of their statutory accounts for the relevant period with a letter from their accountant confirming gross/net profit for the relevant period and this work was carried out in the UK</li> <li>• copies of invoices or receipts for payments for work in the UK. If the business is a limited company these must be on company-headed paper.</li> <li>• business bank statements – the applicant must be named on the account, or otherwise provide evidence to show they have access to the account.</li> <li>• Personal bank statements showing receipt of payments for work carried out in the UK.</li> </ul>

An applicant must also provide proof of the reason they are retaining their worker status under regulation 4 of the Regulations. A person may move between the reasons listed in regulation 4, as long as they provide proof to satisfy you each reason for retaining the status is genuine.

### Temporarily unable to work due to illness or accident

In these cases the applicant must provide medical certificates or a letter from their doctor outlining the reasons for their inability to work in the UK and why this is temporary.

The Upper Tribunal stated in the case of [FMB Uganda \[2010\] UKUT 447 \(IAC\)](#) there is no time limit on the definition of temporary in relation to being temporarily unable to work in the UK due to illness or accident. They ruled anything not permanent is considered temporary even if it lasts for a long time. Whilst a temporary inability to work for an extended period is acceptable, if a person gives up work owing to illness but does not take further work once they have sufficiently recovered, this would not be sufficient.

There are some circumstances where applicants will have been unable to work as a result of coronavirus (COVID-19). For guidance on how to consider these applications see the section titled [Coronavirus \(COVID-19\)](#) below.

## Duly recorded involuntary unemployment

An applicant may still qualify as a worker if they are involuntarily unemployed after having been employed in the UK and provide proof they:

- have registered as a job seeker with an unemployment office or a recruitment agency
- are seeking work in the UK. They must provide evidence covering the period they've been looking for work in the UK, which can include:
  - copies of recent job applications for posts in the UK
  - rejection letters from employers for posts in the UK
  - invitations to job interviews for posts in the UK

At least one piece of evidence of seeking work must be dated within the 3 months before the date of the application.

If the applicant was working in the UK for less than one year before becoming involuntarily unemployed, then they cannot retain worker status for longer than 6 months.

If they had been working for at least one year in the UK they can retain their worker status for longer than 6 months if they can provide compelling evidence to show they are continuing to seek employment in the UK. Compelling evidence of continuing to seek work may include proof the applicant has

- increased the number of jobs they are applying for
- widened their job search in the UK by applying for roles in new locations or sectors
- registered with additional job search sites online, such as Indeed or Job.com

When determining whether someone has submitted compelling evidence of continuing to seek work, you must assess each case on its own merits, taking into account all of the circumstances of the case. If the applicant has not provided compelling evidence of continuing to seek work in the UK with their initial application, you must contact them and provide them with an opportunity to submit additional evidence of seeking work in the UK before refusing their application.

Where the applicant does not remedy the application by providing the compelling evidence of seeking work within 14 days of being contacted, you must refuse their application under regulation 3.

For the purpose of determining retained worker status, working in the UK for “at least one year” does not mean an applicant has worked in the UK continuously for a total of one year, or 365 days. It means they have met the definition of a frontier worker under regulation 3 of the Regulations for more than 12 months immediately before becoming unemployed. This includes time where they were not present in the UK working but were nevertheless still a frontier worker under the Regulations.

### Example 1

Applicant “P” applies to the frontier worker scheme in January 2021 as a person with retained worker status at the point of application. P first came to the UK to work in January 2020. P worked in the UK for 4 weeks, carrying out genuine and effective work. In April 2020, P became involuntarily unemployed and began looking for work in the UK. As P had previously been a frontier worker for less than 12 months before becoming involuntarily unemployed, P can only retain their worker status for up to 6 months. P has been unemployed for 9 months at the point of application (from April 2020 – January 2021), and so P has lost their retained worker status and must be refused under regulation 4.

### Involuntary unemployment and vocational training

Applicants who are involuntarily unemployed in the UK and have started vocational training must provide evidence the unemployment in the UK was involuntary (see [proof of previous employment](#)).

They must also provide proof they are enrolled on a vocational course. This may include a letter from organisation/training provider confirming course(s), period(s) of training with start date(s), and confirming they are attending the training.

This list is not exhaustive and any information provided by an applicant must be fully considered.

### Voluntary unemployment and vocational training

As well as the evidence listed under the section [Involuntary unemployment and vocational training](#), if a person has voluntarily stopped working in the UK but has started vocational training, they must show their vocational training is related to their previous employment in the UK.

### Retaining worker status following pregnancy

This section does not cover applicants who are on maternity or paternity leave. A person on maternity leave has not terminated their employment and so must be considered as a worker, rather than a person with retained worker rights. See the section titled [Maternity and paternity leave](#).

Applicants who are temporarily unable to work or engage in activities as a self-employed person in the UK as a result of pregnancy or childbirth can retain their worker status if they provide proof of their pregnancy or childbirth. This can be in the form of:

- medical certificates or a letter from their doctor confirming the pregnancy took place, the due date/birth date, and naming them as the parent
- the full birth certificate of their child naming them as the parent

A person who is temporarily unable to work due to pregnancy or childbirth can retain their worker status for up to 52 weeks (12 months) from the date they cease working or self-employment in the UK. During this time, they are not required to seek employment or self-employment to retain their worker status.

A frontier worker may continue to retain their worker status after the initial 52-week (12 month) period if they provide proof they are looking for work or self-employment in the UK and they have registered as a jobseeker with an unemployment office or a recruitment agency. For further information see [‘Duly recorded involuntary unemployment’](#)

If an applicant has not commenced work or job seeking in the UK after this period of 52 weeks, they lose their retained worker status. In these cases, you must refuse the application under regulation 3.

# Coronavirus (COVID-19)

This section tells you how to consider applications where the applicant claims they have not been able to meet the eligibility criteria as a result of being affected by restrictions associated with coronavirus (COVID-19). This includes not being able to:

- submit a valid identity document
- meet the residency requirements
- meet the employment requirements

## Valid identity document

As explained in this guidance under the section [making an application: validity](#) frontier workers are required to provide either a valid passport or valid national identity card to make an application to the frontier worker permit scheme.

There may be some circumstances in which an applicant is unable to produce the required valid identity document due to circumstances beyond their control specifically related to COVID-19 public health restrictions. In such circumstances you may accept alternative evidence of identity and nationality.

For example, the closure of an embassy or high commission in response to COVID-19 restrictions may prevent the person from renewing their passport or national identity card, or the inability to travel to an embassy or high commission may mean they cannot finalise an application for a new document.

Where an applicant is unable to provide evidence of their identity as a result of COVID-19 restrictions, they must provide the following proof in support of their application:

- proof of their inability to produce the required evidence due to circumstances related to COVID-19. For example, if an applicant claims an embassy is closed due to COVID-19 restrictions, they must provide evidence of this closure such as a letter from the relevant national authority, or a link to an official webpage
- alternative evidence of their identity and nationality. Further guidance on acceptable alternative evidence of identity and nationality can be found under the sub-heading 'Other supporting information or evidence' in the section titled 'Alternative evidence of identity and nationality' in the [EU Settlement Scheme caseworker](#) guidance

You must consider each case on its own merits, taking into account all of the circumstances of the case. You must refer to a senior caseworker in all instances.

## Residency requirement

As set out in the section [assessing whether an applicant is not primarily resident in the UK](#) an applicant will normally be considered to be not primarily resident in the UK at a particular point in time (“the relevant date”) if either:

- (a) they have been present in the United Kingdom for less than 180 days in the twelve-month period immediately before the day on which the relevant date falls
- (b) unless there are exceptional reasons for not having done so, they have returned to their country of residence at least, either:
  - (i) once in the 6-month period immediately before the day on which the relevant date falls
  - (ii) twice in the twelve-month period immediately before the day on which the relevant date falls

Exceptional circumstances for being unable to travel which relate specifically to COVID-19 may include:

- being ill with COVID-19
- mandatory self-isolating
- international travel restrictions imposed as part of COVID-19 public safety restrictions, which began in the UK on 23 March 2020

In any case where an applicant claims they have been prevented from travelling due to COVID-19 they must provide a supporting letter with their application outlining the details and the dates they were ill or were in quarantine, and where they were during this time. Where an applicant claims to have been unable to travel as a result of international travel restrictions, you must check such restrictions were in place in the countries they reference.

You must consider each case on its merits, taking into account all of the circumstances of the case. If you are not satisfied the person has exceptional reasons for not travelling, you must refuse their application under regulation 3(3)(b). You must go on to consider whether the applicant meets the employment requirements under the scheme.

## Employment requirements

In order to be considered a frontier worker under this scheme, an applicant must continue to engage in genuine and effective economic activity in the UK as a worker or self-employed person at least once in every rolling 12-month period. For more information on how to assess whether someone is a worker or self-employed person under the scheme see: [assessing whether the EEA citizen is a worker or self-employed person](#).

A person may still meet the employment requirements if they can prove they have been unable to continue carrying out economic activity in the UK during a 12-month period as a result of COVID-19.

In these cases, an applicant must provide proof they had previously carried out genuine and effective work in the UK as a worker or a self-employed person, and they had intended to come to the UK to work or engage in self-employed activities during the relevant 12-month period but had been unable to do so as a result of COVID-19.

For guidance on how to consider whether an applicant has been carrying out genuine and effective work in the UK, see [genuine and effective work](#).

Where the applicant has not provided sufficient proof they have been unable to carry out economic activity as a worker or self-employed person in the UK as a result of COVID-19, you must contact them to request additional evidence before refusing their application.

### Retention of worker or self-employed status

Under regulation 4 of the Regulations, someone who has temporarily stopped working in the UK can still be considered a worker if they can provide proof they had previously carried out genuine and effective work in the UK as a worker or self-employed person and they are:

- temporarily unable to work in or engage in activities as a self-employed person in the UK because of illness or an accident
- in duly recorded involuntary unemployment

This includes people who are unable to:

- work or engage in activities as a self-employed person in the UK as a result of being ill with COVID-19
- travel to the UK to work because they are self-isolating
- travel to the UK to work or engage in activities as a self-employed person in the UK as a result of COVID-19 restrictions, where they were not ill with COVID themselves
- work because they have become involuntarily unemployed specifically as a result of COVID-19 restrictions, where they were not ill with COVID themselves

### Unable to work as a result of being ill with COVID-19

Applicants who are or were unable to work in the UK because they are or were ill with COVID-19 must provide medical certificates or a letter from their doctor outlining the reasons for their inability to work in the UK and why this is temporary. For more guidance on how to consider their application see [temporarily unable to work in the UK because of illness or an accident](#).

If you are not satisfied from the evidence provided an applicant has genuinely been unable to work in the UK due to being ill with COVID-19, you must refuse their application under regulation 3(1)(c).

## Unable to travel to the UK as a result of COVID-19

Acceptable circumstances for being unable to travel to the UK to work which are related to COVID-19 include:

- mandatory self-isolating
- being instructed to work from home temporarily and not come into their UK office(s)
- being told to temporarily close their business premises in the UK as a result of COVID-19
- international travel restrictions imposed as part of COVID-19 public safety restrictions, which began in the UK on 23 March 2020

In any case where an applicant claims they have been prevented from travelling to the UK to work due to self-isolating as a result of COVID-19 they must provide a supporting letter with their application outlining the details and the dates they were self-isolating.

Where applicants state they have been instructed to work from home for prolonged periods of time as a result of COVID-19 restrictions they must provide evidence of this. Reasonable evidence includes a letter from their employer confirming the continued employment and the payment of salary during the period of temporary remote working, and wage slips or bank statements covering the relevant periods showing proof of payment.

Where applicants state they have been instructed to temporarily close their business in the UK and so have not travelled here for work they must both:

- prove they had intended to travel to the UK to carry out self-employed activities in the UK during the relevant 12 months. Acceptable evidence of this may include contracts to undertake work in the UK during this period, emails/text messages with clients organising work in the UK which would have been carried out during the relevant period
- submit a letter with their application explaining why they were unable to carry out economic activity in the UK as a result of COVID-19.

If you are not satisfied from the evidence provided an applicant has been unable to travel to the UK to work or carry out self-employed activities as a result of COVID-19, you must refuse their application under regulation 3(1)(c).

## Involuntarily unemployed as a result of COVID-19 restrictions

An applicant may retain their worker status under the regulation 4 of the Regulations if they have become involuntary unemployed.

This includes self-employed workers who have ceased trading in the UK because

- they have been instructed to close their businesses due to COVID-19 restrictions
- there is reduced demand due to COVID-19

It does not include self-employed people who have been told to temporarily close their business premises in the UK as a result of COVID-19 restrictions but continue to actively trade in the UK. For guidance on how to consider their application see [unable to work in the UK as a result of COVID-19 restrictions](#).

Applicants must provide proof that they have become involuntarily unemployed as a result of COVID-19. For employed people, this may include a letter from their previous employer confirming that the applicant was made unemployed as a result of COVID-19. For self-employed people, this may include proof that they have received a grant from the UK Government's [Self-Employed Income Support Scheme](#) during the relevant period.

A person who has become involuntarily unemployed as a result of COVID-19 is not required to register at an unemployment office or seek work in the UK whilst the UK's Coronavirus Job Retention Scheme (the "furlough scheme") remains in place. Once the UK furlough scheme closes, those who have lost their job in the UK as a result of COVID-19 will be required to register at an unemployment office and begin seeking work in the UK.

For guidance on how to consider cases where the applicant has become involuntarily unemployed and seeking work in the UK, see [duly recorded unemployment](#).

## Furloughed workers

If an applicant is, or was, furloughed (temporarily relieved of normal work duties or responsibilities under the Coronavirus Job Retention Scheme) as a result of the COVID-19 public safety restrictions, you must consider their application as if they had continued to work during this period if they can prove they both:

- were in genuine and effective employment immediately prior to being furloughed
- remained under contract with their employer. Reasonable evidence of this may include a letter from their employer confirming the continued employment and the payment of salary during the period of furlough, and wage slips or bank statements covering the relevant periods showing proof of payment

For guidance on how to consider whether an applicant has been carrying out genuine and effective work in the UK prior to being furloughed, see [genuine and effective work](#).

A person who is made involuntarily redundant or unemployed as a result of COVID-19 is not covered by this policy. They may be able to retain their worker or self-employed status if they meet the requirements set out in [duly recorded unemployment](#).

You must refuse their application under regulation 3(1)(c) if you are not satisfied from the evidence provided a person meets all of the following:

- was furloughed as a result of COVID-19 public safety restrictions
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- carried out genuine and effective work immediately prior to being furloughed
- remained under contract with their employer throughout the period of furlough

DRAFT

# Suitability

This section gives information on how to carry out a suitability consideration for applications to the frontier worker permit scheme.

Article 20 of the [Withdrawal Agreement](#) sets out the circumstances when it may be appropriate to restrict the rights of a protected frontier worker. There are corresponding arrangements in the [EEA EFTA Separation Agreement](#) and the [Swiss Citizens' Rights Agreement](#).

Withdrawal Agreement articles 20(1) and 20(2) mean in particular that, in relation to any restriction of a protected frontier worker's right of entry to the UK, their conduct (including any criminal convictions relating to it) before 11pm GMT on 31 December 2020 is to be assessed according to the EU public policy, public security and public health test, as set out in regulation 18 of the Regulations, while their conduct thereafter (including any criminal convictions relating to it) is to be considered under regulation 19 of the Regulations (on the ground the decision is conducive to the public good).

Regulation 9 of the Regulations sets out the basis on which an application for a frontier worker permit must or may be refused on suitability grounds.

Under regulation 9(1), an application for a frontier worker permit **may be refused**:

- on grounds of public policy, public security or public health in accordance with regulation 18
- on the ground the decision is conducive to the public good in accordance with regulation 19
- on grounds of misuse of rights in accordance with regulation 20

Under regulation 9(2), an application for a frontier worker permit **must be refused** if the applicant is subject to a relevant restriction decision. A relevant restriction decision means:

- an exclusion direction
- a deportation order made under regulation 15(1)(b) of the Regulations
- an exclusion or deportation order made or treated as having been made under the EEA Regulations 2016, including those continued in effect by regulations made under section 7 or 9 of the European Union (Withdrawal Agreement) Act 2020
- a deportation order made under section 3 of the Immigration Act 1971

An exclusion direction is a direction issued by the Secretary of State for a person not to be given entry to the UK on the grounds that the person's exclusion is conducive to the public good (this is also known as an exclusion decision).

From 11pm GMT on 31 December 2020, where conduct was committed before that date, the Secretary of State can make an exclusion direction on the ground it is

conducive to the public good where the public policy, public security or public health test is met.

## Suitability assessment

The assessment of suitability must be conducted on a case by case basis and be based on the applicant's personal conduct and circumstances in the UK and overseas, including whether they have any relevant prior criminal convictions, and whether they have been open and honest in their application.

Applicants (aged 18 or over) are required to provide information about previous criminal convictions in the UK and overseas and are only required to declare past criminal convictions which appear in their criminal record in accordance with the law of the State of conviction at the time of the application.

There is no requirement to declare spent offences, cautions or alternatives to prosecution for example fixed penalty notices for speeding.

Applicants (aged 18 or over) are also required, as in other immigration applications, to declare whether they have any been involved in any terrorist related activities, war crimes, crimes against humanity or genocide.

Applications are subject to a check against the Police National Computer (PNC), where the applicant is aged 10 or over, and the Warnings Index (WI).

Caseworkers can, where appropriate, consider evidence of criminality they encounter on the PNC or WI even if the evidence was not declared by the applicant.

From information provided by the applicant and obtained from the PNC and/or WI, you must consider whether it is justified to refuse the application:

- in respect of conduct committed before 11pm GMT on 31 December 2020, on the grounds of public policy, public security or public health
- in respect of conduct committed after 11pm GMT on 31 December 2020, on the ground the decision is conducive to the public good

If the time of conduct on 31 December 2020 is unclear, you must regard it as having taken place before 11pm and consider whether to refuse the application on grounds of public policy, public security or public health.

In some circumstances it will be appropriate to refer the application to Immigration Enforcement (IE) or Special Cases Unit (SCU) for full case by case consideration of the individual's conduct. If a decision is then made by IE (or SCU) which falls within regulation 9(1) or 9(2) (such as a decision to deport or exclude the individual), the application for a frontier worker permit will be refused by IE (or SCU).

## Referral to Immigration Enforcement

A referral to IE must be made where the result of the check of the PNC, WI or immigration records indicate:

- the applicant has, in the last 5 years, received a conviction which resulted in their imprisonment
- the applicant has, at any time, received a conviction which resulted in their imprisonment for 12 months or more as a result of a single offence (it must not be an aggregate sentence or consecutive sentences)
- the applicant has, in the last 3 years, received 3 or more convictions (including convictions which resulted in non-custodial sentences) unless they have lived in the UK continuously for 5 years or more. At least one of these convictions must have taken place in the last 12 months
- the case is of interest to Criminal Casework in respect of deportation or exclusion, for example where the applicant is in prison and the case is awaiting deportation consideration
- the applicant has entered, attempted to enter or assisted another person to enter or attempt to enter into a sham marriage, sham civil partnership or durable partnership of convenience (or IE is pursuing action because of this conduct)
- the applicant has fraudulently obtained, attempted to obtain or assisted another person to obtain or attempt to obtain a right to reside in the UK under the EEA Regulations 2016 (or IE is pursuing action because of this conduct)
- the applicant has participated in conduct that has resulted in them being deprived of British citizenship

IE (or SCU) will consider whether or not the individual in question ought to be deported or excluded.

## Existing Deportation Order, Exclusion Order or Exclusion Decision

Where the result of the check of the PNC, WI or immigration records indicates the applicant is the subject of an existing UK deportation order, exclusion order or exclusion decision, UKVI must refer the case to IE (or to SCU) who, subject to the next paragraph, will refuse the application under regulation 9(2) if it is a relevant restriction decision as defined in regulation 2 of the Regulations and consider whether it is appropriate to take enforcement action.

In accordance with regulation 32(5) of the EEA Regulations 2016, where a deportation order has been made by virtue of the EEA Regulations 2016 but the applicant has not been removed under that order during the 2-year period beginning on the date on which the order was made, IE must consider whether there has been a material change of circumstances since the deportation order was made. If, following such an assessment, a decision is made that the removal continues to be justified on the grounds of public policy, public security or public health, the application under the scheme must be refused by IE. Further guidance can be found at: [EEA decisions on grounds of public policy and public security](#).

### **A case is not to be referred to IE where:**

- a recorded decision has been made not to pursue deportation, or a recorded decision has been made to revoke a deportation or exclusion order, in respect of the applicant and they have not committed any further offence which meets the referral criteria since that decision
- a previous decision to deport the applicant was overturned on appeal, the Home Office is not appealing that decision and the applicant has not committed any further offence which meets the referral criteria
- the applicant received a custodial sentence and at the time the applicant was in prison, the applicant's conviction did not meet the criteria for referral to the Home Office and the applicant has not committed any further offence which meets the referral criteria

Where an applicant has a past conviction or convictions which were not referred to the Home Office for deportation consideration under the policy in place at the time, as set out in the list below, and has not committed any further offence which meets the referral criteria, the application must be considered without referral to IE:

- prior to 1 April 2009, Home Office policy was to consider whether to deport an EEA citizen (or their family member) where they had received a single custodial sentence of 24 months or more
- on 1 April 2009, this was reduced to 12 months for sexual, violent or drug-related convictions
- on 14 January 2014, the 12-month criterion was applied to all other convictions, and a further criterion was included of 6 or more custodial sentences for any offence in the last 3 years
- this was further amended on 27 January 2014 to a custodial sentence of 12 months or more for any offence and 4 or more custodial sentences for any offence in the last 3 years
- on 1 April 2015, the criterion of a single offence resulting in a custodial sentence of 12 months or more was retained, and the low level persistent offending criterion was reduced to 3 convictions in the last 3 years
- from 6 October 2015, the sentencing criterion was removed for all EEA cases and since then, HM Prison and Probation Service (HMPPS) have referred all EEA and non-EEA citizen foreign national offenders to the Home Office for deportation consideration

### **Overseas criminality**

Where an applicant has declared previous overseas criminality, or a check of the PNC or WI indicates an applicant:

- was previously extradited from the UK
- is subject to an outstanding European Arrest Warrant (EAW) or Interpol alert
- has an overseas conviction

you must make further enquiries to establish if there is police interest (in EAW cases) or to establish further information about an overseas conviction.

It may be necessary for this purpose to contact the applicant to obtain further information about their overseas conviction. An applicant may be contacted by telephone or in writing or invited to an interview to provide additional information in person.

Any request for an overseas criminal record check must first be approved by a senior caseworker. Whether an overseas criminal record check is required will depend on the facts of the case, but is to be requested where it is essential. Such a check will not generally be required where the applicant has declared an overseas conviction, has 5 years' continuous residence in the UK, and there is no evidence of UK offending following a Police National Computer (PNC) check.

Further guidance on how to conduct an overseas criminal record check can be found at: [Criminal casework requests to ACRO for criminal activity checks abroad](#).

Once the details of an overseas conviction or an EAW case are known, consideration must be given to whether any previous convictions require referral to IE for deportation consideration.

### **Pending prosecutions**

For guidance on how to conduct a suitability assessment where an applicant has declared a pending prosecution or the PNC or WI check reveals a pending prosecution see the section "pending prosecution" on page 26 of the [EU Settlement Scheme: suitability requirements](#) guidance.

## **Consideration of regulation 9(1) and 9(2)**

### **Deportation decision**

Where a deportation decision is, or has been, made on grounds of public policy, public security or public health for conduct committed before 11pm GMT on 31 December 2020 or on the ground it is conducive to the public good for conduct committed after 11pm GMT on December 2020 you must make an assessment of the person's conduct and consider whether refusal of the application is justified under regulation 9(1) of the Regulations.

Where a decision to make a deportation order in respect of the applicant is being considered, the consideration must be concluded before any decision is made on their frontier worker application.

Guidance on considering whether to make a decision to deport on the grounds of public policy, public security or public health is at: [EEA decisions on grounds of public policy and public security](#).

Guidance on considering whether to make a decision to deport on the ground it is conducive to the public good is at: [Deporting non-EEA foreign nationals](#).

## Exclusion decision

Where, following a referral to SCU or IE, an exclusion decision is made:

- for conduct committed after 11pm GMT on 31 December 2020 on the ground it is conducive to the public good
- for conduct committed before 11pm GMT on 31 December 2020 on the ground it is conducive to the public good **and** where the public policy, public security or public health test is met

the application must be refused under regulation 9(2) of the Regulations.

Guidance on considering whether to exclude a person from the UK is at: [Exclusion from the UK](#).

Guidance on considering whether to make a decision on the grounds of public policy, public security or public health is at: [EEA decisions on grounds of public policy and public security](#).

## Previous refusal of admission

Where the applicant has previously been refused admission on grounds of public policy, public security or public health for conduct committed before 11pm GMT on 31 December 2020 or on the ground it is conducive to the public good for conduct committed after 11pm GMT on 31 December 2020 you must make an assessment of the person's conduct and consider whether refusal of the application is justified under regulation 9(1) of the Regulations.

## Misuse of rights

Regulation 9(1) provides for an application to the frontier worker permit scheme to be refused on grounds of misuse of rights, in accordance with regulation 20 of the Regulations. Frontier workers have the right to enter the UK and are exempt from the requirement to have leave to enter or remain as long as they are coming to or staying in the UK for the purpose of carrying out economic activity.

A misuse of rights occurs where a person intends to obtain an advantage from the Regulations by artificially creating and observing the minimum criteria for protection under the agreements in a way that does not achieve the purpose of the agreements. This includes where a person is attempting to remain in the UK as a frontier worker for purposes other than economic activity, where they have no other legal basis for being in the UK. In other words, where a person remains in the UK as a frontier worker but does not work. As a person must be a frontier worker in order to misuse their frontier worker rights, this provision only applies in cases where the applicant meets the eligibility requirements of the scheme.

You also must not refuse an application on the basis of misuse of rights if the applicant otherwise has leave to enter or remain in the UK, for example if they have status under the EU Settlement Scheme.

## Decision to refuse under regulation 9(1) or 9(2)

The application may fall for refusal under regulation 9(1) of the Regulations if you are satisfied it is justified:

- on grounds of public policy, public security or public health in accordance with regulation 18
- on the ground the decision is conducive to the public good in accordance with regulation 19
- on the grounds of misuse of rights in accordance with regulation 20

The application will fall for refusal under regulation 9(2) of the Regulations if you are satisfied the applicant is subject to a [relevant restriction decision](#).

Where an application falls to be refused under regulation 9(2) on the basis the applicant is subject to a deportation order or exclusion order under the [EEA Regulations 2016](#) or on the basis of an order or decision made before the application was submitted, it is not necessary to set out the reasons for the earlier decision. The decision letter must refer to the letter communicating the earlier order or decision to the applicant.

Where an application falls to be refused on the basis an order or decision to which regulation 9(1) or 9(2) refers has been made in respect of the applicant since their frontier worker permit application was submitted, the applicant must, where possible, be notified of the making of that order or decision at the same time as they are notified of the frontier worker permit decision.

Where an applicant falls to be refused under regulation 9(1) on the basis they have previously been refused admission, the decision letter must explain, as relevant, why the public policy, public security or public health test is met, or why the decision is conducive to the public good.

Where an applicant falls to be refused under regulation 9(1) on the basis of misuse of rights in accordance with regulation 20, the decision letter must explain the basis on which they are considered to have misused their frontier worker rights, and why refusal of the application is considered proportionate.

## Applications in respect of children

### The best interests of a child

See also: [The best interests of a child](#)

See also: [Child applicants](#)

A child does not need the consent of their parent or guardian to make an application to the frontier worker permit scheme.

However, where a child (who is under the age of 18) makes an application for a frontier worker permit in their own right (that is, the application has not been made on their behalf by a parent or guardian), you have a duty of care to carry out checks to ensure the safeguarding of the child.

It would normally be expected an adult with responsibility for a child under the age of 18 would act on their behalf in respect of administrative matters, such as an immigration application. Therefore, in accordance with the section 55 duty and in line with the statutory guidance “Every Child Matters”, additional checks must be undertaken on any application under the scheme where a child under the age of 18 is applying without a parent or guardian, to ensure there are no obvious welfare concerns. This applies even where a child has provided sufficient evidence to be issued with a permit (for example, they have provided sufficient evidence of lawful employment in the UK).

These checks do not affect eligibility for a permit under the scheme and, where, on the basis of the application, a permit can be issued in accordance with the Regulations, it must be. The purpose of these checks is solely to establish whether a child applicant has appropriate living and care arrangements when in the UK and their employment in the UK complies with the UK’s [rules on child employment](#) to ensure their overall safety and welfare.

## Referral to Children’s Services or other agencies

In certain circumstances, a formal referral to Children’s Services or other agencies may be required, including for example where, in respect of a child under the age of 18, one or more of the following apply:

- the child appears to be living alone or to have no fixed abode
- the child is or appears to be being cared for as part of a non-local authority fostering arrangement
- the child may have been trafficked or is at risk of exploitation
- the child may be at risk of harm or abuse in their current situation
- the child’s employment does not comply with the UK’s [rules on child employment](#)

You must refer to guidance on [making child safeguarding referrals](#) to local authorities.

## Requesting further information or evidence

You may determine whether additional information, evidence or further checks are required by contacting the child to confirm their circumstances (where it is appropriate to do so, for example depending on the child’s age).

You must only request further information or evidence which is necessary to inform a decision as to whether any safeguarding referral needs to be made, and where the information or evidence does not appear from Home Office records to have been previously provided and/or where updated information is necessary to enable the Home Office to comply with its statutory duties.

If the child's living arrangements in the UK whilst working are not apparent from the information or evidence provided or otherwise available to you as part of the application or as a result of additional checks, you must establish the living arrangements for the child. Where there is already some evidence provided or otherwise available to you as part of the application as to the child's living arrangements, you must consider whether further information or evidence about these are needed and, if so, what is needed. Evidence which may be helpful in determining the living arrangements for the child (usually in combination) may include:

- proof of identity of the parent or guardian, such as a passport, national identity card or driving licence (if a document has expired, it may still satisfy you of the parent or guardian's identity)
- evidence of relationship between the child and parent or guardian, such as a full birth certificate, adoption certificate, guardianship order
- proof of the parent or guardian's address, such as a utility bill, bank statement or NHS medical card
- proof of the child's address

The examples above are not prescriptive or exhaustive. It may be the child does not themselves directly possess such evidence or they are unable, due to estrangement or other welfare reasons, to approach the person who may possess the relevant documentation. If so, alternative avenues, such as enquiries with the parent, guardian or other third parties, are to be pursued where possible.

## Enquiries with the parent, guardian or other third parties

Depending on the age of the child, you may be able to get the information or evidence you need from the child themselves through additional enquiries. Otherwise, it may be necessary to speak to the parent or guardian or other third parties in order to obtain the relevant information or evidence.

Documentation is not the only source of information or evidence which may help in determining the living arrangements for the child. Enquiries with other third parties who have a formal relationship with the child, for example teachers or social or healthcare workers, may be helpful for clarification or confirmation.

Generally, if appropriate, the child is to be advised in advance of any enquiries which are to be carried out and who is to be contacted. You must also take account of any known parental issues such as mental or physical illness, parental separation or potential threats to the child (which may be the reason for them making the application without a parent or guardian).

If the child objects to you contacting their parent, guardian or other third parties, you must seek advice from your senior caseworker or the Office of the Children's Champion.

## Making a referral

If you do not receive sufficient information or evidence to be satisfied the applicant is being cared for by a parent or guardian and continue to have concerns about the child's living arrangements or work in the UK, you must discuss the case with a senior caseworker, who will assess whether further enquiries are to be made or whether a referral is needed to the Children's Services Department of the local authority where the child is living whilst working in the UK. If they are not living in the UK whilst working here, see [Every Child Matters](#) for guidance on how to make a referral.

The Office of the Children's Champion can also provide case advice if there are any welfare or safeguarding concerns which have emerged following contact with the child, parent or guardian or other third parties. Where you continue to have doubts about who is caring for a child in the UK, or the information provided by the child indicates they may be at risk of harm, then a referral must be made to Children's Services.

Where a child aged between 16 and 18 is living on their own either in the UK or in their country of residence you must make further enquiries, and where appropriate a referral, if you continue to have concerns about the child's living arrangements or work in the UK. For example, if there are any indications those living arrangements are not the child's choice, the child has care or support needs or you suspect the child is otherwise at risk.

## Deciding the application

The child's application under the frontier worker permit scheme can generally be decided without undue delay, even where a referral to Children's Services is required.

Where the applicant has provided sufficient information and evidence to be issued a frontier worker permit, you must only consider delaying the decision if your enquiries have led you to believe there is reason to suspect the child may be in need of protection or safeguarding and where concluding the case could put the child at continued or additional risk. For example, if there is reason to suspect a child applying under the scheme may be a potential victim of modern slavery, you must consult your senior caseworker and refer to guidance contained [in Victims of modern slavery](#) which includes details on how to refer potential child victims of modern slavery to the National Referral Mechanism.

## Revocation

This section gives information on when to revoke a frontier worker permit.

Regulation 11(2) of the Regulations provides that frontier worker permits may be revoked at any time under the following circumstances:

- on grounds of public policy, public security or public health in accordance with regulation 18
- on conducive grounds in accordance with regulation 19
- on grounds of misuse of rights in accordance with regulation 20
- where the permit holder is subject to a relevant restriction decision

These circumstances are the same as those listed under regulation 9 of the Regulations as grounds for refusing an application. For guidance on how to make a suitability assessment see the section titled [suitability assessment](#).

Regulation 11 also provides for frontier worker permits to be revoked where the permit holder ceases to be or never was a frontier worker. See the section titled [assessing an application – eligibility](#) for information on the eligibility requirements under the Regulations. Where information becomes available showing a person has ceased to or never did meet the eligibility requirements under the regulation 3, you must revoke their frontier worker permit under regulation 11(3).

Where an applicant holds a frontier worker permit at the point of application and any of the circumstances above apply, you should revoke their current permit in addition to refusing their application.

#### **Related content**

[Contents](#)

#### **Related external links**

[Every Child Matters](#)

[Section 55 of the Borders, Citizenship and Immigration Act 2009](#)

# Administrative review and appeals

Anyone who makes a valid application under The Citizens' Rights (Frontier Worker) (EU Exit) Regulations and is refused will be able to challenge the decision by appeal and/or (depending on the reason for refusal) by administrative review.

Administrative review is available where an applicant is refused on eligibility grounds.

## Right of appeal

Anyone who makes a valid application under The Citizens' Rights (Frontier Worker) (EU Exit) Regulations will have a right of appeal against a decision to refuse their application.

They may appeal on grounds the decision:

- breaches any right they have under the Withdrawal Agreement, the EEA EFTA Separation Agreement or the Swiss Citizens' Rights Agreement
- was not in accordance with The Citizens' Rights (Frontier Worker) (EU Exit) Regulations under which it was made

Further guidance is available in the [Rights of Appeal guidance](#).

## Administrative review

Where the application is refused on eligibility grounds and the applicant believes the original caseworker has made an error or not followed the published guidance, or where they have new information or evidence in support of their application, they can apply for an administrative review of the decision.

A different caseworker in an independent team will conduct a full reconsideration of the decision, taking into account any new evidence or information submitted, and decide whether the original decision was either:

- correct and must be maintained
- incorrect and must be withdrawn and a new decision made

Further guidance is will be available in the administrative review guidance.

# Frontier workers at the border

This page tells Border Force officers how to consider frontier workers at the border.

## Right of admission

Frontier workers, as defined by the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 ("the Regulations"), have a right of admission to the UK during the grace period (the period from 11pm GMT on 31 December 2020 to the end of 30 June 2021). From 1 July 2021 onwards they have a right of admission on production of valid identification and a valid frontier worker permit. They **do not require a grant of leave to enter and their travel document must not be stamped**. They are entitled to travel using either a valid passport or valid national identity card.

## Examination powers

You may only examine an individual seeking admission as a frontier worker where you have reason to believe:

- regulation 12 (refusal of admission) applies to the person, or
- they are not entitled to be admitted under regulation 6 (right of admission)

This means you are entitled to conduct an initial examination to establish an individual does meet the requirements of regulation 6, in that they hold a valid identity document and a valid frontier worker permit (where one is required). Once those facts are established, you may only conduct a further examination if you have grounds to believe the individual may fall to be [refused admission](#).

## Frontier worker permit

In the majority of cases, a frontier worker permit will be issued digitally. In certain cases where an individual has been unable to apply for a digital permit, they will be issued with a physical permit. Physical permits will be collected by the individual in country, therefore on their first journey to the UK they will hold a frontier worker permit collection letter, which they are required to present to you on entry.

## Position during the grace period

From 11pm GMT on 31 December 2020 to 30 June 2021, it is **not** mandatory for a frontier worker to have applied for or to produce a frontier worker permit to enter the UK as a frontier worker. During this period, you must not routinely require a frontier worker to produce evidence of their status in order to be admitted.

If you encounter a frontier worker during this period who you consider may fall for refusal on other grounds, you must verify whether they do in fact hold a permit to establish whether a revocation decision is required.

If you encounter an individual during this period who claims to be a frontier worker, but you are satisfied they are not, you may still refuse them admission as a frontier worker by virtue of regulation 6, in accordance with regulation 12(1)(c).

## Requirement to hold a frontier worker permit

From 1 July 2021, it is mandatory for a frontier worker to hold a frontier worker permit in order to enter the UK as a frontier worker. The only exception to this is Irish citizens, who have a separate legal right to enter and work in the UK without needing to rely on their rights as a frontier worker.

If, after this date, you encounter an individual who is seeking to enter the UK as a frontier worker, but does not hold a frontier worker permit, you must refuse them admission under regulation 6.

Where an individual falls to be refused admission under regulation 6, you must then proceed to consider whether they qualify for entry in another capacity. This must include consideration whether the individual meets the requirements of Appendix V as a visitor, when taking into account their intended length of stay and whether the work activities they intend to carry out are permitted under that Appendix.

You must then proceed to either grant or refuse leave to enter.

## Irish citizens

Irish citizens are not required to hold a frontier worker permit, and have a legal right to enter, live and work in the UK under Common Travel Area arrangements. **You must not refuse entry to an Irish citizen unless they are subject to a deportation order, exclusion order or international travel ban.**

However, should an Irish citizen specifically wish to be admitted to the UK as a frontier worker under the regulations, then they will need to comply with the relevant eligibility and suitability requirements, and you **must** refuse them entry as a frontier worker under regulation 12 if you do not believe them to be a frontier worker.

Where an Irish citizen falls to be refused admission under regulation 6, you must then proceed to consider whether they qualify for entry in another capacity, in particular under Common Travel Area arrangements.

## Revocation of permits and refusal of admission

### Suitability and conduct

Regulation 11 of the Regulations provides for frontier worker permits to be revoked under any of the following circumstances:

- on grounds of public policy, public security or public health in accordance with regulation 18

- on the ground the decision is conducive to the public good in accordance with regulation 19
- on grounds of misuse of rights in accordance with regulation 20
- where the permit holder is subject to a relevant restriction decision.

These circumstances are the same as those listed under regulation 9 of the Regulations as grounds for refusing an application. See the section titled [suitability assessment](#) for guidance on how to determine whether the above circumstances apply. Where you are satisfied the relevant test is met, and it is proportionate to do so, you may revoke the frontier worker permit.

Regulation 12 of the Regulations also provides for the refusal of admission of a frontier worker in the circumstances listed above.

Where you have already relied on the above circumstances to revoke a frontier worker permit, you must also rely on the same grounds to refuse admission, in addition to refusing admission under regulation 6 on the basis the individual requires but does not hold a valid frontier worker permit.

Where the individual does not hold a frontier worker permit because they are not yet required to do so to enter the UK, you may still refuse admission directly on the above grounds in accordance with regulation 12(1), by virtue of regulation 6.

Where you have refused admission in any of the above circumstances, you must consider whether the individual is seeking entry in any other capacity. If they are, you must proceed to consider whether to grant or refuse leave to enter under the relevant Immigration Rules, taking into account the grounds on which you refused admission.

## Eligibility

Regulation 11(2)(d) of the Regulations provides for frontier worker permits to be revoked where the holder has either ceased to be, or never was, a frontier worker.

You must not routinely examine permit holders to establish whether they continue to be a frontier worker, and must only conduct such examination where you have reason to suspect they may fall to be refused.

In order to establish that a permit holder has ceased to be a frontier worker, you must be satisfied either:

- they are no longer an EEA citizen
- they are no longer “not primarily resident in the United Kingdom”
- they are no longer a worker, a self-employed person, or someone who is to be treated as a worker or self-employed person in the UK

To no longer be considered “not primarily resident in the United Kingdom”, an individual must cease to meet **all** the [eligibility requirements](#) of regulation 3(3) and you may only revoke a frontier worker permit where you consider that to be the case. In practice, as you will be encountering the individual on their return to the UK, you

must be satisfied they are **not** returning from their country of residence, and additionally they must:

- have spent more than 180 days in the UK in the last 12 months, and
- have returned to their country of residence once or less in the last 12 months, and
- not have exceptional reasons for not having travelled to the UK more than once during the last 12 months

To no longer be treated as a [worker](#) or [self-employed person](#) in the UK, you must consider the eligibility requirements for those definitions, and be satisfied the individual has ceased to meet them. You must then go on to consider whether the individual has [retained status](#) as a worker or self-employed person in the UK. You may only revoke a frontier worker permit where the individual no longer qualifies in **any** of the above categories.

The decision to revoke a frontier worker permit on this basis attracts a right to administrative review and a right of appeal.

Where you have revoked a frontier worker permit under regulation 11(2)(d), you must then also refuse admission under regulation 6 on the basis the individual does not hold a valid frontier worker permit.

If you are taking the decision before 1 July 2021, an individual is not required to hold a frontier worker permit. If you encounter an individual prior to this date who claims to be a frontier worker, but you are satisfied they are not, you may still refuse them admission by virtue of regulation 6, in accordance with regulation 12(1)(c).

Where an individual falls to be refused admission under regulation 6, you must then proceed to consider whether they qualify for entry in another capacity. This must include consideration of whether the individual meets the requirements of Appendix V as a visitor, when taking into account their intended length of stay and whether the work activities they intend to carry out are permitted under that Appendix.

You must then proceed to either grant or refuse leave to enter.

## Revocation of admission

Where an individual has been admitted to the UK under regulation 6, but they were not in fact entitled to be because regulation 12(1) applies, you may revoke their admission under regulation 14.

This is likely to occur where information comes to light after the individual has passed through the primary control point that indicates one of the [suitability grounds](#) for refusal applies.

Once you have revoked admission, the individual is to be treated as though they were a person who has been refused admission under regulation 12.

## Detention and immigration bail

You may detain an individual who is seeking admission as a frontier worker in the following circumstances:

- pending examination
- pending a decision on whether they are to be admitted to the UK
- where admission has been refused, pending a decision on whether to issue removal directions
- pending removal in pursuance of such directions

You may grant immigration bail to any individual who is liable to be detained in the circumstances listed above.

## Administrative review

The decision to revoke a frontier worker permit under regulation 11, on the basis an individual has ceased to be, or never was, a frontier worker, carries a right to administrative review in accordance with regulations 21 and 22.

More information about frontier workers' rights of administrative review will be available in the administrative review guidance.

## Appeal rights

All decisions to revoke a frontier worker permit attract a right of appeal.

All decisions to refuse admission under the Regulations attract a right of appeal, provided the individual can produce:

- a valid identity document, and
- either:
  - o a valid frontier worker permit (which includes a permit that would be valid if it had not been revoked), or
  - o where the individual is not required to hold a frontier worker permit (because the decision is taken prior to 1 July 2021), sufficient evidence to establish in principle that they are a frontier worker

All decisions to revoke admission under the Regulations attract a right of appeal, provided that the individual can produce a valid identity document.

All appeals against decisions taken under the Regulations can be brought and continued **in or out of country**.

Where a decision has been taken at a UK port, the appeal right is exercisable in country and must be treated as suspensive of removal. This means that, unless an individual chooses to voluntarily depart, you must either detain them or grant them immigration bail whilst any appeal right remains extant. Where a decision has been taken at the juxtaposed controls, the individual **is not entitled to be admitted**, but may still legally bring their appeal from in or out of country.

If an individual chooses to voluntarily depart the UK whilst they are still within the deadline to appeal, or their appeal is pending, it will have no effect on their appeal as it may be brought or continued from abroad. However, an individual who is in the UK with an extant appeal right or appeal against a decision taken under the Regulations **must not be subject to an enforced return** until such an appeal is finally determined.

The deadline to lodge an appeal is 14 days from the date of decision for in country appeals, and 28 days from the date of decision for appeals lodged out of country.

More information about frontier workers' rights of appeal under the scheme is available in the [Rights of Appeal guidance](#).

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# Annex A: case studies

Scenario	Decision
<p><u>French banker</u> P1 is a French national who has worked in a bank in Paris for 3 years - from Jan 2018 - December 2020, when they make an application for a FW permit. As part of their work, P1 travels to the UK to carry out genuine and effective work for 3 days in every month.</p> <p>P1 has not come to the UK for work during 2020. This was due to a back injury that left them unable to travel from late Dec 2019 onwards. P1 had travelled to the UK for work for 3 days each month from Jan 2018 - Dec 2019.</p> <p>P1 has a letter from their employer confirming previous employment in the UK and provides proof of payment for work undertaken in the UK. They also have a letter from their GP confirming their back injury, that it is temporary, and that it prevents them from being able to travel or work.</p>	<p>P1 is eligible for a 2-year frontier worker permit as a person who has retained worker status in the UK due to illness or accident:</p> <ul style="list-style-type: none"> <li>• P1 has a genuine reason for retaining their worker status, and their period of unemployment immediately followed their last period of employment in the UK</li> </ul>
<p><u>Polish vet</u> P2 is a Polish national who lives in the Republic of Ireland (ROI) but works in Northern Ireland (NI) as a vet. They work in NI full time and commute to work from ROI every day Monday - Friday. P2 began their current role in ROI on 30 November 2020 and applied for a permit on 20 Dec 2020.</p> <p>P2 has not yet received any payment from their work and so has no proof of payment for work undertaken in the UK. P2 does have a contract of employment in NI and letter from employer confirming their employment in NI.</p>	<p>As P2 does not have any proof of earnings you may wish to contact their employer via telephone to confirm their employment. If you are satisfied that the employment is genuine, P2 is eligible for a 5 year frontier worker permit.</p>
<p><u>Spanish oil rig worker</u> P3 is a Spanish national who lives in Spain but comes to the UK for 6 weeks at a time to work on an oil rig off the shore of Scotland, which is positioned within UK territorial waters. P3 has been working in this role from Jan 2019-December 2020. In December 2020, P3 is made compulsorily redundant. They apply for a frontier worker permit in May 2021. When applying they provide proof that they: had carried out genuine and effective work in the UK; were registered at a recruitment agency in the UK; had been seeking work during 2021 (in the form of copies of job applications made and rejection letters received from job applications).</p> <p>Between January 2019 and December 2020 P3 consistently did 6 weeks in the UK working, followed by 3 weeks rest in Spain. This means they spent more than a total of 180 days in the UK in 2020, however, P3 also</p>	<p>P3 is eligible for a 2 year permit as a person with retained worker rights at the point of application:</p> <ul style="list-style-type: none"> <li>• P3 worked for more than 12 months before becoming unemployed in the UK, and their unemployment immediately followed their period of employment in the UK.</li> <li>• P3 has provided evidence of seeking employment in the UK.</li> <li>• P3 meets the residency requirements, as they</li> </ul>

<p>travelled back to their country of residence more than twice in 2020.</p>	<p>travelled to their country of residence twice in 2020.</p>
<p><u>Belgian hairdresser</u>  P4 is a Belgian national who lives in ROI and primarily works in ROI as a self-employed hairdresser. P4 travels to NI to visit regular clients around 8 times a month. P4 applies for a permit in December 2020 and states that they began frontier working in NI as a hairdresser in 2016.</p> <p>P4 spends less than a total of 180 days in every 12 month period in the UK.</p> <p>P4 does not have a formal contract of work or invoices from their clients in the UK. As proof of work, P4 provides emails showing them organising regular cuts with regular clients in NI and shares the client's contact details. They also provide emails confirming bookings and payment for work and copies of their bank statement showing payments going into their account on the corresponding dates.</p>	<p>If you are satisfied that the evidence supplied is genuine, P4 is eligible for a 5-year permit as they are carrying out stable and continuous work as a self-employed person in the UK.</p>
<p><u>Swiss chef</u>  P5 is a Swiss national who worked in London as a chef 6 days a week between March 2019 and August 2019. They returned to Switzerland approximately once a month during this period.</p> <p>P5 was fired in August 2019 and continues looking for work in the UK. P5 finds another chef job in the UK in January 2021 and shortly afterwards they apply for a frontier worker permit. P5 was signed up to a recruitment agency during their period of unemployment and provides sufficient evidence of seeking work.</p>	<p>P5 is not eligible for a frontier worker permit:</p> <ul style="list-style-type: none"> <li>• P5 was employed for less than 12 months before becoming involuntarily unemployed, which means they can only retain their status for 6 months whilst looking for work.</li> <li>• P5 was unemployed and looking for work for 17 months before returning to work in the UK in 2021, and so they have lost their retained worker status.</li> </ul>
<p><u>Norwegian actress</u>  P6 is a Norwegian actress who lives in Germany and applies for a frontier worker permit in February 2021. P6 has come to the UK for work twice in 2020, each time to audition for a role in a play. The auditions took around one hour each, and P6 did not get the roles. P6 provides evidence to show they attended the auditions.</p> <p>P6 spent less than 180 days in the UK in 2020.</p>	<p>P6 is not eligible for a permit because the work they were carrying out in the UK was not genuine and effective:</p> <ul style="list-style-type: none"> <li>• P6 did not receive payment for work carried out in the UK, and they carried out only 2 hours of economic activity in a 12-month period.</li> </ul>