

# Bird & Bird & Business

## Immigration



### *Frontier Workers from 1 January 2021: What do employers need to know?*

By Yuichi Sekine and Lauren Kourie  
1 March 2021

*Free movement of persons has now ended. One work route off the beaten path which may fill this void, is the Frontier Worker Permit Scheme ('FWPS'). In the post-Brexit landscape, employers should have the FWPS on their radars and consider whether any of their workers are eligible. If so, they may need to prepare their permit applications.*

#### **What is the FWPS?**

The FWPS applies to a certain category of cross-border workers, namely, European citizens who have established a regular pattern of work in the UK *before* the end of the Brexit transition period.

The FWPS entitles individuals to secure their Frontier Worker status and continue to work and access benefits/services in the UK in the same way as they did pre-Brexit. In practice, this means Frontier Workers maintain equal treatment with UK workers in matters of housing, healthcare and other services.

If approved, the permit is valid for five years for current Frontier Workers or two years for individuals with 'retained' Frontier Worker status.

#### **What are the eligibility requirements?**

EEA nationals and Swiss nationals meet the eligibility requirements for a Frontier Worker permit if they were, immediately before the end of the transition period on 31 December 2020, and have been continuously since:

#### **1. Living primarily outside of the UK**

Note that an individual is eligible here if they have either:

- i) lived in the UK for less than 180 days over the course of any rolling 12-month period; or
- ii) returned to their country of residence at least once in the last six months or twice in the last 12 months, unless there are exceptional circumstances for not having done so.

'Exceptional circumstances', referred to above, might exist where an individual was unable to travel to their country of residence for reasons including, among others, illness or accident, pregnancy or COVID-19 travel restrictions.

Under the FWPS, a worker's country of residence does not have to be in Europe, it can be anywhere outside of the UK.

#### **2. A worker or self-employed person in the UK**

Work must be "genuine and effective, and not marginal and ancillary to their situation as a whole in the UK", which means it cannot just consist of small, one-off tasks, such as entering the UK for an interview or signing a contract.

Where a worker has temporarily stopped working in the UK, they may still have 'retained' Frontier Worker status and be considered either a worker or self-employed person, such that they are eligible under the FWPS. For example, if they were temporarily unable to work due to illness or accident, pregnancy or

involuntary unemployment they might fall into this category.

Therefore, although the FWPS is limited to individuals who started working in the UK *before* 31 December 2020 (and who continue to do so), the eligibility requirements are still relatively wide, meaning that a whole range of workers could be eligible depending on the scenario – from the French banker who travels to London to carry out work for three days in every month, to the Spanish national who comes to the UK for six weeks at a time to work on an oil rig in Scotland.

### What about workers commencing work in the UK after 1 January 2021?

The FWPS will not be available to individuals that have not worked in the UK by 31 December 2020, but intend to from 1 January 2021. These workers will need to consider other routes available, for example under the New Immigration rules. For more information on the New Immigration rules, see [here](#).

### When should Frontier Workers apply?

Until 30 June 2021, Frontier Workers will benefit from a grace period and will be able to continue entering the UK simply with a valid passport or national identity card.

From 1 July 2021, Frontier Workers will need to have a permit to enter the UK. After this date, those individuals without a Frontier Worker permit may be refused admission at the border.

### What is the application process?

There is no fee to apply under the FWPS and applicants will be able to apply online from inside or outside the UK. Frontier Workers can also apply to renew their permit for as long as they continue to be Frontier Workers in the UK.

Permits may be refused or revoked where the worker either ceases to be, or never was, a Frontier Worker, as well as in certain other circumstances. Applicants also have a right of appeal under the FWPS.

### What are the limitations of the FWPS?

The FWPS does not cover the permit-holder's family members. It is also not a route that leads to any permanent settlement rights in the UK.

Workers and their employers should carefully consider whether there are any other, more appropriate, visa routes available to them.

For more detailed guidance on the Frontier Worker permits, see [here](#) and [here](#).

*Please do not hesitate to contact us if you require advice on eligibility under the Frontier Worker Permit Scheme, or assistance with Frontier Worker permit applications.*



# Contact

**Yuichi Sekine**

Head of Business Immigration, UK

Tel: +44 20 7982 6419

yuichi.sekine@twobirds.com



**twobirds.com**

Abu Dhabi & Amsterdam & Beijing & Bratislava & Brussels & Budapest & Copenhagen & Dubai & Dusseldorf & Frankfurt & The Hague & Hamburg & Helsinki & Hong Kong & London & Luxembourg & Lyon & Madrid & Milan & Munich & Paris & Prague & Rome & San Francisco & Shanghai & Singapore & Stockholm & Sydney & Warsaw & Satellite Office: Casablanca

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.