

# Webinar

## Frontier workers and international agreements

Presented by Rachel Harvey & Amy Leech

## FRONTIER WORKERS AND INTERNATIONAL AGREEMENTS

# Your hosts

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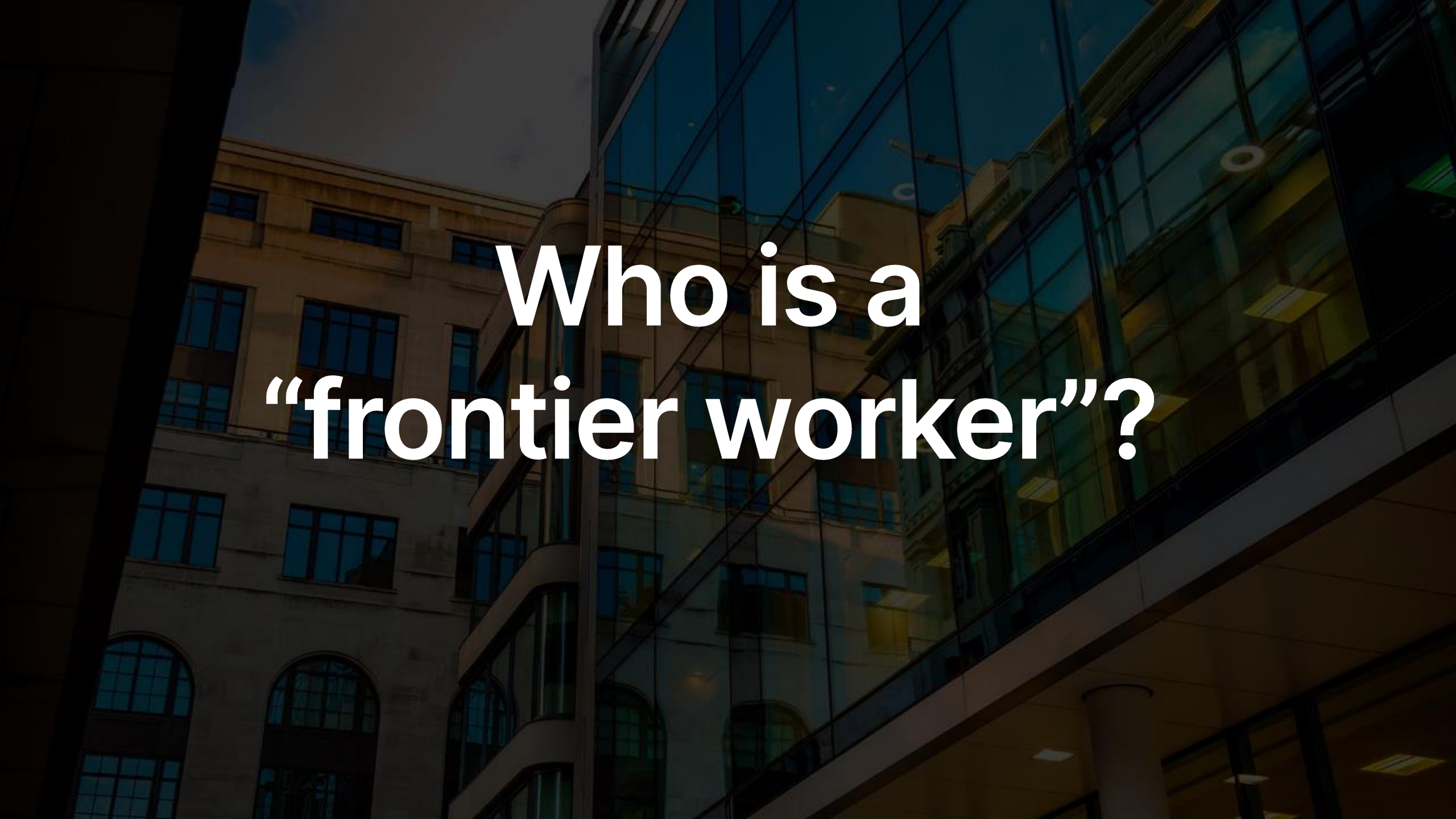
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# What we will cover

- ✓ Who is a frontier worker?
- ✓ How does the frontier worker permit scheme work in practice?
- ✓ Are there alternative routes available for frontier workers?
- ✓ What about the International Agreement route?
- ✓ Our experiences of frontier workers to date

A low-angle photograph of a modern glass skyscraper reflecting a traditional brick building. The text "Who is a frontier worker?" is overlaid in white, bold, sans-serif font in the center of the image.

**Who is a  
“frontier worker”?**

# Who is a “frontier worker”?

An individual who regularly commutes into the UK for work but mainly lives outside of the UK


- Employed or self employed
- Examples: A German Business Development director of a global organisation who shares their time between the Berlin office and the London office or a Polish self-employed builder who lives in Poland but regularly provides services in the UK

Likely to be a EEA/Swiss national

- Although could apply to UK nationals who travel regularly to the continent for work

Free movement ended 31 December 2020

- Routes open to frontier workers include the frontier worker scheme, business visitor rules, sponsorship



# The frontier worker permit scheme

# Where does the scheme come from?

- Article 9 Withdrawal Agreement (2019/C 384 1/01) – *“Union citizens or United Kingdom nationals who pursue an economic activity in accordance with Article 45 or 49 TFEU in one or more States in which they do not reside”*

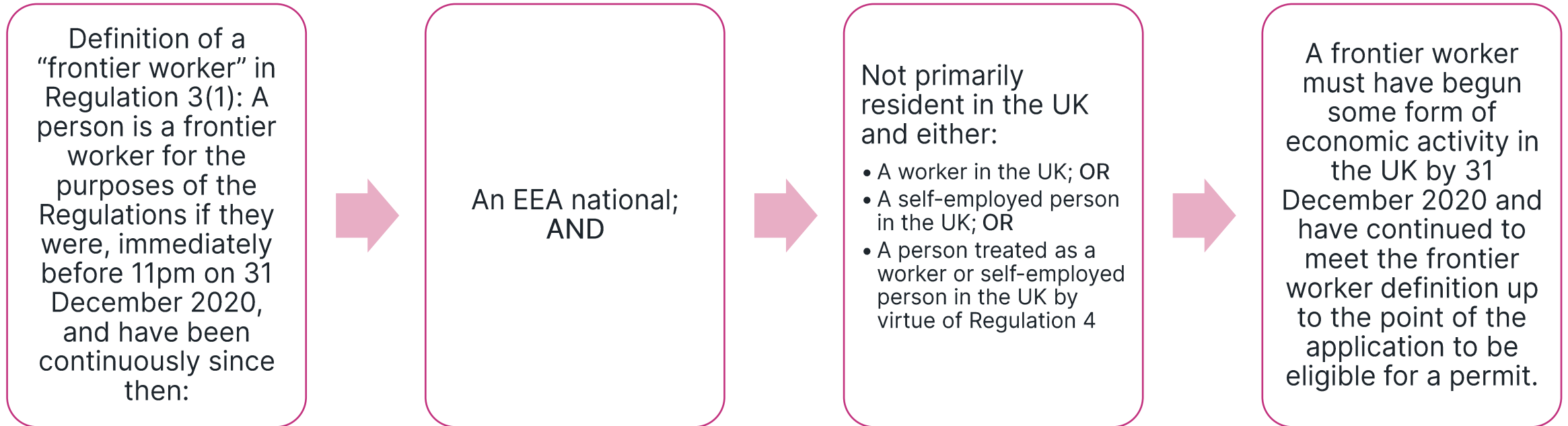
- Section 8 of the European Union (Withdrawal Agreement) Act 2020
- Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020

# Frontier worker permit scheme

- Only applies to EEA/Swiss nationals resident outside of the UK but working regularly in the UK
- Irish nationals can apply but do not require a permit as they are considered settled in the UK
- Frontier workers have a right to enter and to work in the UK as long as they continue to meet the definition of a frontier worker
- No deadline to apply
- No age limit for applicants but those under the age of 18 must comply with rules on child employment
- Provision for family members to join permit holder under Immigration Rules via Appendix EU



# Who can apply?



# “Not primarily resident”

- Definition in Regulation 3(3)
- Since 1 January 2020, has the applicant spent more than a total of 180 days in the UK during any 12 month period?
- If yes, has the applicant returned to their country of residence at least either once in every 6 month period(s) or twice in every 12 month period(s)?
- Note – there are some exceptional reasons for not meeting the travel requirement which can be considered on a case by case basis if necessary.

# Who is a “worker”?

- Worker or self-employed or treated as worker/self-employed person by Regulation 4
- Did the applicant work in the UK in 2020?
- “Worker” – meaning within Article 45 of the Treaty on the Functioning of the European Union.
- Activities must be genuine and effective and not marginal and ancillary. Business visitor activities such as attending meetings or signing a deal or a contract where work is primarily carried out outside of the UK will not fall within definition.
- No minimum amount of hours an applicant must work in the UK.

# Who is a “worker”?

- Employed workers:

- Genuine employer/employee relationship?
- Employment contract in place?
- How many hours worked in the UK?
- Frequency of work in the UK?
- Level of earnings from activities in the UK?

- Self-employed workers:

- Economic activity in the UK?
- Stability and continuity of self-employment in the UK?
- Genuine and effective self-employment in the UK?

# Retained frontier worker status

- Regulation 4(1) - A frontier worker will “retain” their status as a frontier worker if they have previously carried out genuine and effective work and any of the below conditions apply:
  - Temporarily unable to work as the result of an illness or accident
  - Involuntary unemployment after having been employed in the UK for at least one year
  - Involuntary unemployment after having been employed in the UK for less than one year, provided the person has provided evidence that they continue to seek employment or self-employment in the UK
  - Involuntary unemployment and has started vocational training
  - Voluntarily ceased working and has started vocational training that is related to the person’s previous employment
  - Temporarily unable to work due to pregnancy or childbirth
  - COVID-19

# Making the application

- Make the application online either inside or outside the UK
- Free of charge
- Proving identity and nationality
  - UK Immigration: ID check app
  - Visa application centre
- Digital or physical permit
- Retained frontier workers – permit valid for two years
- Everyone else – permit valid for five years
- Can be renewed for an unlimited amount of time
- No option to apply for settlement

# Suitability requirements

Initial application refusal

- Grounds of public policy, public security or public health
- Conducive grounds
- Grounds of misuse of frontier workers' rights


Renewal application refusal or revoked permit

- Permit holder has ceased to be or never was a frontier worker
- Permit hold subject to a relevant restriction decision (e.g. exclusion direction or deportation order)

# Considerations for employers

- Since 1 July 2021, it is mandatory for frontier workers to obtain a frontier worker permit as evidence of their right to enter the UK.
- Whilst it is mandatory for protected frontier workers to hold a frontier worker permit to enter the UK on this basis from 1 July 2021, there is no mandatory requirement for protected frontier workers who have rights under the Agreements to use a frontier worker permit to evidence their rights in the UK.
- To obtain a statutory excuse against liability for a civil penalty in such cases, an employer must request a right to work check from the Employer Checking Service (ECS), using the online form 'request a Home Office right to work check' on GOV.UK.
- An employer must have obtained copies of the employee's documents which evidence that they were exercising rights as a frontier worker on or before 31 December 2020, as these will form part of your statutory excuse.
- If an individual doesn't provide their frontier worker permit, an employer can request alternative evidence and carrying out a ECS check.





**What are the  
alternatives  
for frontier  
workers?**

# Business visitor rules

- Entering the UK as a business visitor
- Remain in the UK for up to 6 months
- Permitted activities

# Sponsorship

- Skilled worker and intra-company transfer routes
- Requirement for a sponsor licence
- Skill and salary thresholds for job role



# International Agreements

# International Agreement route

- Sponsored route for individuals whose work is included under international law or an international agreement the UK is a signatory to
- A UK business (the “sponsor”) must be the consumer of the services. The services must be provided by an overseas business with no UK presence (the “service provider”).
- The service provider must not have a presence in the UK.
- Individual providing the services through the service provider must:
  - Have a degree/technical qualification
  - Been employed by the service provider for at least 12 months
  - Have at least 3 years’ relevant professional experience
- No English-language requirement
- The sponsor needs a sponsor licence with the International Agreement route activated

A photograph of a modern glass skyscraper reflecting an older building, with the word 'Takeaways' overlaid in white text. The image is taken from a low angle, looking up at the buildings. The glass facade of the modern building is highly reflective, showing a clear reflection of the older building's facade, which features arched windows and a classical architectural style. The sky is a deep, dark blue, suggesting dusk or dawn. The overall mood is one of architectural contrast and modernity.

# Takeaways

# Key takeaways

- Frontier worker permit is the best route for those who qualify but the permit holder must be aware of the requirements to keep the permit
- Frequent and successive visits to the UK under the business visitor rules is risky if the activities are not permitted activities
- Sponsored work visas are the main option for non-EEA/Swiss nationals who regularly work cross-border
- The new Global Mobility Route should offer more options for frontier workers

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