

Implications of Brexit for frontier workers – update

On January 31, 2020 the United Kingdom left the European Union and a transition period took effect that lasts through to December 31, 2020. During this period all EU rules and laws still apply and the EU and the United Kingdom will negotiate about their relationship in the period after January 1, 2021. A special group of workers for whom Brexit may have important implications are UK citizens who live in the United Kingdom and work in the Netherlands as frontier workers.

[We previously informed you](#) that those working in the Netherlands as frontier workers before January 1, 2021, may, regardless of the outcome of the negotiations, continue to work in the Netherlands as of January 1, 2021 without requiring a work permit for this. This is conditional on them having a 'Frontier Worker' document, which can be used to show that they are entitled to travel to and from the Netherlands.

The conditions under which this document can be issued and what the application procedure at the INS involves have now been announced. Although the rules applying to employees are explained below, self-employed persons may also be eligible for the scheme, subject to conditions.

Conditions

The Immigration and Naturalization Service (INS) regards a citizen of the United Kingdom as a frontier worker if that person does not live in the Netherlands and already performed an economic activity in the Netherlands before January 1, 2021 and will also continue this activity after the transition period.

An important condition is that this concerns UK employees who work in the Netherlands on the basis of a Dutch employment contract. Employees who are seconded to the Netherlands by their UK employer do not fall under this scheme and thus must possess another work authorization as of January 1, 2021.

Furthermore, there must also be genuine and actual work, whereby in cases of doubt the INS will check the amount of the income and/or the normal working hours.

If the UK frontier worker lives in another EU Member State and from there works in the Netherlands, it must also be demonstrated that they are lawfully allowed to live in that Member State.

Procedure

1. Prepare application and file it (online)

The Frontier Worker document is only available on request. The application may also be filed online. The Citizen Service Number (*burgerservicenummer*, BSN) is, in any case, required as are a number of documents, including a copy of the passport and a copy of the employment contract or an employer's statement signed by the employer.

2. Assessment by the INS

The INS will send a confirmation of receipt and will investigate whether the Frontier Worker document can be issued. If more information is needed for the assessment, the INS will contact the applicant. The INS will subsequently inform the applicant about the decision.

3. Provision of biometric data

If the decision is positive, the INS will issue the Frontier Worker document. The document is issued as an ID document, which means the INS requires biometric data. This is provided in person at one of the IND counters, for which an appointment must first be made.

4. Taking receipt of the Frontier Worker document

If the document is ready before December 31, 2020, it can be delivered to a Dutch address, for example the work address. However, the document must always be received in person and therefore an appointment must always be made for delivery. After January 1, 2021 it will be possible to collect the document at one of the INS counters or expat centers.

The document is valid for five years and states that the person is a frontier worker and is allowed to work in the Netherlands and does not require a work permit to do so. During the period in which the document is valid it is important that the conditions are always met.

Because the end of the transition period is in sight and it is unclear how long the procedure at the INS will take, we recommend filing the application as soon as possible. For more advice of help, please contact your designated advisor or our immigration team.

Frontier Workers who are not eligible for the Frontier Worker document

Employees who work in the Netherlands on the basis of secondment, for example due to an intra-group transfer, are excluded from the frontier worker scheme. This also applies to UK citizens who wish to start working in the Netherlands as frontier workers after January 1, 2021.

There are a number of possibilities for ensuring that these employees can continue to work in the Netherlands after January 1, 2021

1. Apply for a work permit at the Dutch Employee Insurance Agency (UWV)

There are a number of categories for work permits and it is important to assess which category best suits and which specific conditions apply before filing an application. It takes about three to five weeks for a work permit to be issued and after January 1, 2021 these employees are not allowed to work without a work permit, not even if the application has already been filed.

Frontier workers with a work permit must also be aware that they are only allowed to be in the Netherlands (and the other Schengen countries) for a maximum of 90 days per 180-day period. It is important to keep track of the 180-day period on a calendar and regularly check how many days remain.

2. Apply for a residence permit and work authorization

If the total duration of the stay in the Netherlands exceeds 90 days per 180-day period, then it makes sense to apply for a residence permit. In that case, we assume that the UK citizen lives in the Netherlands. There are also various application categories possible for this, with the preference being for a permit that includes a work authorization, for example, the highly-skilled migrant permit, the ICT permit or the EU Blue card. Have your designated advisor of the immigration team inform you about the possibilities and restrictions.

Meijburg & Co
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