

# LSE Policy for Staff on UK contracts requesting arrangements as frontier workers or cross-border workers

## 1. Introduction

The international character of the LSE is one of our great strengths. We accordingly recognise that circumstances can arise where staff may need to commute cross-border while working at the School. This Policy relates to individuals who normally commute to the UK from their main residence overseas and would be identified as either a 'frontier worker' or a 'cross-border worker'. It seeks to provide clarity on the supports the School makes available to these individuals and to set out the procedures which are now needed given in particular the UK's departure from the EU and related changes to free movement.

This Policy does not relate to any circumstances where an employee is requesting to work overseas for a temporary period (and not returning to the UK on a weekly/regular basis for work) and intends to return to their normal pattern of working in the UK after the temporary period has ended.

## 2. Definitions

- i) For the purpose of this Policy you are a **frontier worker** if:
  - you are employed at LSE and
  - you are an EEA national
  - you normally travel at least once a week to LSE from an EU Member State<sup>1</sup>, and
  - you commenced your commuting arrangement prior to 31 December 2020, under Freedom of Movement legislation.

For example, an EEA national who has commuted from their main residence in France to the UK to teach at LSE each Monday to Thursday during term-time since 1 September 2019 would be considered as a frontier worker.

- ii) For the purpose of this Policy, you are a **cross-border worker** if you are employed at LSE and you are either:
  - a national of an EU Member State and you commenced your commuting arrangement after 1 January 2021 and after Freedom of Movement ended, or
  - you normally travel at least once a week to LSE from a non-UK country.

For example, an individual (of any nationality) who wishes to start a commuting arrangement from their main residence to teach at LSE each week during term-time from 1 January 2021 would be

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<sup>1</sup> This may be during term time for academic and teaching staff.

considered as a cross-border worker.

### **3. Aims**

This Policy aims to outline the School's principles and position surrounding those occasions where Staff either work as frontier workers or request to work as cross-border workers. It also aims to outline the guiding principles for Staff and Managers when requests for cross-border working arrangements need to be made (whether for a short or long term period) and the support available to Staff in this circumstance.

The Policy therefore outlines the key considerations for Staff working under such arrangements and aims to guide LSE Management in considering how to proceed with requests for cross-border working with guidance from HR Partners. It is important to distinguish frontier and cross-border working arrangements from working abroad on a permanent basis.

### **4. Scope**

This Policy relates to all salaried Staff in professional services, academic, teaching and research staff groups whether on a short term or long-term fixed contract or a permanent or open-ended contract with the LSE and who are either currently a frontier worker or who wish to be considered as a cross-border worker, as per the definitions in Section 2.

It also recognises that frontier working (and cross-border working) may not be possible in many roles, including those that involve shift patterns or may cover weekend working on a regular basis.

As noted above, this Policy does not include any circumstances where an employee is requesting to work overseas temporarily.

Information about the new UK Frontier Worker Permit applicable for those Staff who are already working under a frontier worker arrangement before 31 December 2020, can be found in Section 6.1 below.

### **5. Principles**

The LSE campus in London is at the heart of all activities and its community. It is the hub from which the School operates, and which is part of its identity for many students, visitors, collaborators and partners, bringing together global academics, researchers and policy makers. All Staff are expected to make a full range of contribution to the campus community. In addition, academic staff contribute towards research, education and citizenship and are expected to attend the School where necessary to carry out their contractual duties (subject to public health restrictions). These duties include teaching, office hours, School and departmental meetings, student community activities, and other in person academic support meetings. The expected main location and place of work is set out in all LSE offer of appointment letters and/or terms and conditions which are governed by the laws of the UK.

It is not possible for LSE to employ Staff on a permanent basis where the intention is that their formal work location is permanently abroad, based on a personal request. Such arrangements do exist on an exceptional basis for a small number of Staff (e.g. IGC Country based contracts) but do require complex arrangements including setting up a presence in the country, a localised pay administrator to comply with local taxation, and tailored pension and benefits arrangements. It would not be practical nor economical for this to be an option for Staff on UK contracts.

However, the School understands and recognises that, given their personal circumstances, some staff living in EEA countries have been working as frontier workers prior to 31 December 2020 and wish to continue to do so, and that others may wish to become cross-border workers. Under this Policy, LSE acknowledges the current status of Staff operating under frontier working arrangements and provides advice in this regard.

The Policy also sets out the procedure under which the School will accept and support individual personal requests for cross-border working arrangements<sup>2</sup> (where the individual seeks approval from LSE before making such arrangements and / or notifies LSE of their arrangement as well as regularly keeping the School updated on their circumstances and where less than significant working time is spent in the country in which they are resident if that country is not the UK).

As regards such cross-border working requests, both the School and the individual will have to consider the relevant immigration, tax and welfare legislation and the individual will incur the cost of the relevant legal advice. The decision to accept such a cross-border working request rests solely with the School.

It should be noted that the School will not be able to bear any of the additional cost that arises to the employee and the School as a result of the individual choosing for personal reasons to reside outside the UK whilst employed by LSE.

All Line Managers are responsible for respecting the Policy and its principles and they must seek guidance from their HR Partner and Finance team before agreeing to any arrangement taking place, even if they support the request.

## **6. Immigration implications of a frontier worker or cross-border worker arrangement**

You will need to be aware that there may be some implications on your immigration status of undertaking a frontier working or a cross-border working arrangement, depending on your circumstances, which you will need to consider, before making any changes to your working pattern.

### **Irish nationals**

Irish nationals are allowed to travel freely under the Common Travel Agreement, and so if you are an Irish national then undertaking a frontier or cross-border working arrangement will not affect your immigration status in the UK. Therefore, you will not need to take any further action regarding your immigration status, however you will still need to take legal advice on the tax and welfare implications as set out in section 6.3 before making any changes to your working pattern.

### **EU/EEA Nationals (EU Settlement Scheme)**

If you are currently living in the UK and you hold either pre-settled or settled status under the EU Settlement Scheme, then you already have the right to live and work in the UK. You would not normally in these circumstances be applying for frontier worker status.

However, if you apply for a frontier worker permit because your circumstances were such prior to the 31 December 2020, and you believe you would be granted such a permit, you should be aware that any pre-settled or settled status granted to you will effectively be cancelled. A frontier worker is an individual who lives in another country to where they work, and you can therefore not have settled or pre-settled status simultaneously to being a frontier worker. This means that if you wish to return to the UK to live in the future, then you will need to apply for a work visa. You may wish to seek independent immigration advice before making an application for a Frontier Worker Permit, if such circumstances apply to you.

### **Frontier Worker Permit**

The Frontier Worker Permit was created by the UK government to protect the rights of those who live abroad as their main residence and commute to the UK for work purposes under Freedom of

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<sup>2</sup> No School approval requirements apply to frontier work arrangements but such Staff are required to ensure that their immigration status allows them to work in the UK – see section 6

Movement legislation when Freedom of Movement ended on 31 December 2020. Therefore, if you live abroad and you wish to continue to commute to the UK for work purposes, you will need to apply for a Frontier Worker Permit.

You will need to apply for your Frontier Worker Permit in ample time as you will need to present it at the border when you travel with effect from 1 July 2021. You are asked to advise your HR Partner that you have obtained your Frontier Worker Permit to ensure that records are kept up-to-date.

Once you have your Frontier Worker Permit, you will be able to retain your status in the event of any of the following:

- you are temporarily unable to work due to illness or an accident;
- you are temporarily unable to work due to pregnancy or recent childbirth; or
- you are on maternity or paternity leave, and will return to previous employment or find another job after that leave.

If you have recently joined LSE, you may have gained frontier worker status under your previous employment which you wish to maintain. If so, please contact your HR Adviser who will be able to advise you on your position.

### **6.1 Requests for frontier worker arrangements**

If you met the criteria of a frontier worker as set out in Section 2, then you will continue to be considered as a frontier worker after 1 January 2021 and you are not required to make a request to continue such an arrangement (section 9 does not accordingly apply). In any case, and as noted above in section 6, you will need to consider the implications to your immigration and residency status in the UK before committing to any changes in your working pattern.

This means that as long as your frontier working arrangement was in place before 31 December 2020 (in that you were engaging in such an activity; no formal School approval was or is required) you will be able to continue that arrangement, providing you can demonstrate you have right to work in the UK.

If you do not meet the frontier worker criteria, and you wish to work cross-border, then the School has put in place a process for considering requests for cross-border worker status which you must follow (section 9).

### **6.2. Requests for cross-border worker arrangements**

If you wish to request a cross-border working arrangement after 1 January 2021 you would need to ensure that the UK continues to be your main residence and that you do not lose your right to live and work in the UK.

In these cases, the School as part of its normal processes would always need to consider your individual circumstances to ascertain whether your immigration status would allow the arrangement.

If you need a visa to work in the UK, consideration would be given to which visa options are available and the implications of your proposed working arrangement before making a decision.

### **6.3. Taxation and Welfare implications for frontier worker and cross-border worker arrangements**

Tax arrangements for frontier workers and cross-border workers are subject to bilateral agreements between UK and other countries that exist to avoid double taxation. This is a complex area, and we encourage staff to seek advice, where necessary, about the implications for them personally.

The general rule laid down in the OECD model for a person resident in one State but working in another is that taxation applies in the State where they work. However, the specific provisions concerning cross-border workers in bilateral double taxation treaties usually grant the right of taxation to the State of residence rather than the State of the place of work. The proportion of time worked in the UK and the country of residence over the course of the year must be considered in detail and may lead to residence for tax purposes outside the UK which could lead to tax obligations for the School and/or employee in the country of residence<sup>3</sup>.

In some cases, the School may not need to register for tax deduction at source unless it has a permanent establishment in that country – meaning that the obligation for tax registration may fall on the employee rather than the School. Due to the complicated nature of bilateral tax conventions which are often superseded by local tax rules, there is a need to seek specialist advice for confirmation<sup>4</sup>.

**Mutual agreement procedure:** Not all countries follow the statement of the OECD, which leads to countries having different approaches to the taxation of cross-border workers and it is necessary for the individual to obtain advice on these in both countries.

**Social Security:** For working arrangements that commence on or after 1 January 2021, cross-border working between the UK and EU Member States will be governed by the EU-UK Trade and Cooperation agreement, which includes a protocol on Social Security Coordination (the Protocol). Under the Protocol a multi-state worker is an individual who normally works in the UK but is also in one or more EU or EEA jurisdictions for at least 5% of their working time. If an employee is deemed to be a multi-state worker, they may be liable to social security contributions in the jurisdiction in which they are habitually resident, if at least 25% of their working time is spent in that jurisdiction.

It is important to seek specialist advice via the Finance Team to determine whether the School is liable to social security contributions in that other jurisdiction. The School may be required to register a non-resident entity with the local authorities, set up local payroll and pay employees and employer's contributions there. The costs for registering and operating payroll overseas can be significant. The School will look to seek reimbursement from the employee for any additional costs incurred from social security contributions, subject to it being legally compliant with the rules in that country.

Additionally, staff should be aware that not being resident in the UK for tax purposes may potentially preclude you from being a member of the School's pension schemes. If you have any questions with regards to your School pension arrangements, please contact [HR.Pensions@lse.ac.uk](mailto:HR.Pensions@lse.ac.uk).

## **7. Legal advice, and other implications of a frontier worker and cross-border worker arrangement**

Due to the tax and welfare implications of frontier or cross-border working arrangements, you will need to ensure that you seek appropriate legal advice for your particular circumstances before making any changes to your working pattern.

You will also need to seek advice on social security, statutory benefits and local public health guidance. Often working more than 25% in the country of residence will mean that you are subject to local social security arrangements. Professional advice must be sought on the requirements

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<sup>3</sup> <https://www.lexology.com/library/detail.aspx?g=bc2604e8-ad56-4b4a-a045-6a761db69111>

<sup>4</sup> Income received by the employee from the employer will in principle be attributed to the place where the employment relationship is exercised (the UK) and this principle is mirrored in several double tax treaties (DTT), which define the countries' taxation rights as related to the employee's physical presence when performing the activities for which the employment income is paid.

for your working arrangements to ensure you and your family can access local healthcare and other benefits.

If you are working from your home country, the income that you receive would in principle be attributable to your country of residence.<sup>4</sup>

In addition, you are expected to take responsibility for ensuring you have the necessary technology and arrangements in place to enable you to work effectively. You must accept that you are working from abroad at your own risk and that the School will not be liable for any loss you may suffer due to your request being approved. You must also comply with all applicable public health guidance in both the country from which you travel and in the UK.

## **8. Costs of legal advice**

In all cases, you are strongly recommended to take legal advice on the implications of any current frontier or potential cross-border working arrangements. In the case of a request to undertake a cross-border working arrangement, the School will require that, before any request can be considered and/or approved by the School, you confirm that you either have taken, or do not believe you need, personal legal advice. This is to ensure that you are fully advised on the implications of your individual circumstances.

In addition, it will be necessary for the LSE and the relevant department or division to obtain local legal advice to support current frontier workers, or before it can agree to cross-border working arrangements. In these cases, the School's legal costs will be borne as follows:

1. For employees who have been working on a frontier working arrangement prior to 31 December 2021 or, if they are joining the School after 31 December 2020, can demonstrate they had a frontier working arrangement in place with their previous employer:

In these cases, the School will [on notification that the employee has obtained/has applied for a Frontier Worker Permit] obtain and fund the necessary advice on the employee's circumstances, including the costs of any additional steps required to ensure LSE is compliant with relevant legislation. As noted above, employees will need to seek and meet the cost of their own legal advice.

2. Employees who request a new cross-border working arrangement:

In these cases, the School will need to obtain legal advice on its position and obligations prior to the employee moving abroad. The School will not be able to fund these additional costs, as these will be incurred by the School in seeking to examine the implications for the School of a choice made by the employee. The employee will therefore need to obtain and meet the cost of their own legal advice, and also that of the School's legal advice before a cross-border working arrangement can be considered. The arrangements for repaying the costs to the School will be confirmed to you separately.

As part of School's attempt to support staff to the greatest extent possible, we have procured the services of external specialists to provide advice on the tax and welfare implications of current frontier or potential cross-border working arrangements. This is available for you to use if you wish, though you will need to bear the associated costs of seeking the advice where applicable in accordance with the above.

## **9. Procedure for cross-border worker arrangement requests**

The School recognises that the personal circumstances of its Staff may change. You may accordingly request that the School agree to a cross-border working arrangement. Such requests will only be considered if:

- your role can be performed effectively remotely and
- can be done lawfully from the country in question and
- the new arrangements would not adversely affect your right to work in the UK.

Requests are generally more likely to be approved for a short, time-limited duration where your expected return date is clearly documented. The School is concerned to accommodate individuals' reasonable requests and changed personal circumstances but, given business needs and legal requirements, reminds Staff that requests will usually be approved on an exceptional basis only.

In the first instance, you are required to talk, in good time, to your Line Manager about your request to make arrangements for cross-border working. You should, at least [X] weeks in advance of your proposed change to your current arrangements, set out the nature of your request, how it will benefit you and how it will benefit the School, and how you plan to meet your commitments to the School.

Your Line Manager, in consultation with the relevant HR Partner, should assess the individual case. If the case is supported, a business case should be drafted by the Line Manager for approval by the Director of Human Resources and Chief Financial Officer. The business case should include the advantages to the School of agreeing to the cross-border working request, any skill shortages in the employment market, and the willingness of the individual to meet the cost of advice on taxation and including advice on social security, statutory benefits and local public health guidance.

Any necessary independent personal financial advice and advice on social security, statutory benefits and local public health guidance (and legal advice as noted above) (for the Staff member) and relevant advice for the School, must be sought in advance. LSE Finance Division will advise and all associated legal costs will be met as set out in accordance with Section 8 of this Policy **before** plans can be made or agreed locally with managers.

Individuals must keep the School up to date on their personal circumstances should this have significant changes that affect their arrangements. The employee will be liable for any additional taxes or employee social security which may be charged because of their decision to work for a short period in an overseas location. In circumstances where applicable the employee will be asked to reimburse the School for any additional employer contributions.

The terms of any approval of a cross-border working arrangement must be agreed in advance with LSE Finance and HR and recorded in writing. You should not make any arrangements or plans for cross-border working until a signed agreement is in place. Any arrangement will be compliant with the relevant legislation pertaining to your circumstances and the country you plan to be resident in.

For the avoidance of doubt, this approval procedure does not apply to frontier workers.

## 10. Options and outcome of requests

If your request for cross-border working arrangements is approved, then you will have the arrangement confirmed in writing, and it would be subject to the provision that such arrangements could change in the future due to legislative or tax and welfare changes.

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