

# United Kingdom: Social security – Transitional rules and then what?

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## In brief

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The United Kingdom and European Union (EU) have concluded an agreement concerning transitional rules that includes measures intended to mitigate social security complications arising out of Brexit. However, questions still remain. This *Insight* provides a high-level overview of which gaps the transitional rules close, what gaps still exist, and future milestones on the horizon.

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## In detail

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### What gaps do the transition rules close?

The UK House of Commons, House of Lords, the Queen, and now the EU Parliament all have approved the agreement. Transition rules will be implemented, but what does that mean from a social security perspective?

In the short term, the transition rules provide a degree of clarity and predictability – welcome news for mobile individuals and their employers that have sought greater certainty over the past several years. For now, the message is that until December 31, 2020, the ‘status quo’ remains from a social security perspective.

The transition rules provide for:

- Continued application of the European coordination rules on social security until December 31, 2020
- Continued application of the European coordination rules on social security after December 31, 2020, as long as a person’s situation continues *without interruption*
- Predictable compliance requirements and costs in the short-term for employers and employees.

This means that it will be possible to apply for:

- new A1 certificates during the transition period
- extensions of current A1 certificates during the transition period.

## What gaps remain under the transition rules?

The transition rules embody a general end date of December 31, 2020. However, there is specific language in Title III of the Withdrawal Agreement that could enable employers to ‘stretch’ this date to their advantage. The Agreement states:

*“...[Individuals in a cross border situation]... shall be covered [by Regulation 883/2004 i.e. the European coordination rules on social security] for as long as they continue without interruption to be in one of the situations set out in that paragraph involving both a Member State and the United Kingdom at the same time.”*

However, the Agreement does not clearly define what it means to continue to be in a situation ‘without interruption.’ In the near future, and if no further arrangements are agreed between the EU27 and the UK on social security coordination, it will be crucial for companies to understand the extent to which the transition rules can be applied.

In the meantime, the transition rules potentially could be interpreted as follows:

### Reliance on A1 certificates

Individuals that start an assignment before January 1, 2021 may be able to utilise the European coordination rules on social security and rely on an A1 certificate throughout that assignment. This could provide certainty for at least the first 24 months of the assignment where the UK authorities will be able to issue A1 certificates without approaching their EU counterparts for agreement.

More uncertainty may arise where postings extend beyond the 24-month period as obtaining A1s will require the agreement of the host country. Because of this, it is possible that some countries will agree to longer periods of continued coverage under the EU regulations while others may not, resulting in different outcomes based on the country of work.

**Observation:** Over the past several years, the French and German social security authorities have been among the most strict in relation to Brexit and social security coordination, continuously restricting the period of exemption to the various Brexit dates. This approach likely will continue into the transition phase as the feedback we have received so far is that obtaining A1 certificates outside of the transition period is going to demand strong arguments to persuade the authorities to extend A1 certificates. That said, we already have seen both authorities issue A1 certificates beyond December 31, 2020.

### Multi-state scenarios under the transitional rules

A potentially more complex example would be someone working as a multi-state worker before the end of 2020, covered by an A1 certificate, where the role continues into 2021 and beyond. For these cases, it may be possible to argue that this situation is ‘uninterrupted’ and that the same situation still applies. It is unclear what circumstances would be treated as ‘uninterrupted’ (e.g., if the working pattern changes or if the employer changes but the work pattern remains.) These are some of the questions that should be clarified further by social security authorities in the future.

Unfortunately, this situation leaves room for interpretation with the authorities; each case might be subject to a slightly different interpretation.

## What happens after the transition period – a new ‘No Deal’ scenario?

Transition rules generally are applicable for only 11 months. During this time, authorities likely will be focused on trade agreements with the EU and United States, potentially leaving social security as a lower priority.

When the transitional and social security coordination rules cease to apply, employers could face the same uncertainty that the well-known ‘No Deal’ scenario created with an uncoordinated social security situation.

This ‘No Deal’ scenario could come in many different sizes, resulting in greater complexity and potentially increased costs relating to social security compliance after December 31, 2020 if no new arrangements are in place. This likely will depend on how each of the other European countries manages social security coordination going forward. There is an overarching hope that the UK and the EU27 come to an agreement to continue to apply rules that broadly mirror the existing rules, but this may or may not occur.

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## The takeaway

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The transition rules provide much needed clarity in the short term. However, mobile individuals and their employers should continue to watch for developments in 2020 and focus on strengthening their social security compliance processes to increase their readiness for when the transition period ends in 2021. Employers should remain agile to respond to any unexpected changes.

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## Let's talk

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For a deeper discussion of how this issue might affect your business, please contact your PwC Global Mobility Services engagement team or the following team members:

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