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# United Kingdom: Social security after 'Brexit' – draft transitional rules released

May 1, 2018

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## ***In brief***

The prospective withdrawal of the United Kingdom (UK) from the European Union (EU) – so-called Brexit – is expected to have a significant impact on the social security arrangements for mobile employees. There is currently no detail on what the arrangements will look like for new post-Brexit assignments; stakeholders are waiting to see whether new arrangements will be made, or whether the UK and Europe will default back to the old bilateral agreements between them. However, transitional arrangements pursuant to the new draft Withdrawal Agreement released by the European Commission will apply to those employees on assignments that start prior to January 1, 2021.

This *Insight* summarises the draft rules, which largely provide some welcome clarity but which leave the prospect of an enduring 'two-tier' system – the latter promises to be complex for both employers and employees to manage. There are also some areas of uncertainty which will continue to pose challenges to employers and employees planning for future mobility post-Brexit.

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## ***In detail***

### ***The current position***

At present, the social security position of employees who are assigned from one European country to another are governed by pan-European social security regulations, which apply to all EU member states, members of the European Economic Area (Norway, Liechtenstein, and Iceland), and Switzerland.

These European regulations normally permit employees assigned between European countries to remain in home country social security for up to

five years, so long as certain criteria are met. This ensures continuity of social security coverage.

The regulations also provide for 'aggregation' of benefits, such that where contributions have been paid in two or more European countries, each country takes account of the contributions made in the other location in order to satisfy any vesting criteria for receipt of benefits.

The draft Withdrawal Agreement sets out:

- The anticipated post-Brexit social security position of those who were covered by the European regulations prior to March 29, 2019 (the date on which the UK is to leave the EU).
- The details of a 'transition period', from March 29, 2019 to December 31, 2020, during which the European Commission anticipates that the UK will continue to participate in most EU processes and systems.

### ***The position from January 1, 2021***

Once the transition period comes to an end, individuals who are or have been mobile between the UK and the EU will broadly fall into one of three categories, those who:

- (1) were mobile prior to December 31, 2020 but who have now returned to their home country
- (2) were mobile at December 31, 2020
- (3) will be mobile at some point after December 31, 2020, without having been mobile previously.

For the first two categories of individuals, the situation is now relatively clear, but for the third category, the applicable rules remain uncertain.

From a global mobility perspective, the primary concern will be for employees on assignment, commuters, and business travelers. The remainder of this *Insight* focuses on these areas.

### ***What we know***

#### ***Employees mobile only prior to December 31, 2020***

Workers whose postings have ended will benefit from the ability to aggregate contributions made both before and after the end of the transition period for the purpose of determining benefit entitlement.

This is arguably more generous than anticipated, since it appears to allow for not only the aggregation of contributions made prior to December 31, 2020, but also of any contributions made post-Brexit in the event of any further UK/EU cross-border work.

#### ***Employees mobile at December 31, 2020***

For these individuals, it appears that the existing EU regulations will continue to apply to assignments/work patterns which had started prior to the end of the transition period, for so long as they remain unchanged.

Those who are assigned to work in another country for up to two years should continue to be covered in their home country, and the contribution liability of those with multistate work patterns should continue to be determined using the existing multistate worker rules.

Benefit aggregation will also continue to apply, and the current reciprocal healthcare arrangements (using the European Health Insurance Card or form S1) should continue, again so long as the individual's situation remains unchanged.

This provides welcome certainty for employers and employees planning assignments or other mobile work arrangements which will span the end of the transition period.

### ***What we don't know***

#### ***Employees mobile at December 31, 2020***

The draft Withdrawal Agreement provides that the EU regulations are to apply to these individuals 'for as long as they continue without interruption to be' on assignment, commuting, or traveling between the UK and the EU. However, it is not clear what type or degree of change of circumstance might result in the EU regulations not being applied.

For multistate workers, in particular, including business travelers, project workers, and highly mobile employees (e.g., field service engineers) where work patterns do change quite frequently, this creates a situation of considerable uncertainty. Further practical guidance would be welcomed.

#### ***Employees mobile only after December 31, 2020***

Employees who become mobile for the first time only after the end of the transition period will be subject to whatever multilateral social security agreement is negotiated between the UK and the EU, or to pre-existing underlying bilateral agreements between the UK and European countries.

In the latter scenario, the provisions of the bilateral agreements are typically much more restrictive than the current regulations and may create barriers to mobility and/or additional cost.

There is also a potentially confusing distinction between two groups of employees, dependent on whether their assignment/mobile work pattern began before or after December 31, 2020. This will be difficult for employers to manage.

#### ***Healthcare and family benefits***

No provisions have yet been included relating to the UK's ongoing participation in the European Health Insurance reimbursement procedures, which may increase healthcare costs for employers.

## **The takeaway**

The draft Withdrawal Agreement provides some welcome clarity, particularly for those who were mobile only prior to the end of the transition period or those with straightforward

assignments or work patterns which span the end of that period.

However, it leaves material areas of uncertainty for those with work patterns subject to frequent change. In addition, there is uncertainty for those who become mobile only after

Brexit, for whom no access to the European regulations is currently envisaged, but where the shape of any future social security coordination regime is unknown.

## **Let's talk**

For a deeper discussion of how these issues might affect your business, please contact your PwC Global Mobility Services engagement team or the following professionals:

### ***PwC's Global Social Security Centre of Excellence***

Martin Muhleder  
+44 (0) 207 213 3311  
[martin.muhleder@pwc.com](mailto:martin.muhleder@pwc.com)

Laura Hutton  
+44 (0) 207 804 9427  
[laura.hutton@pwc.com](mailto:laura.hutton@pwc.com)

### ***Global Mobility Services – United States***

Peter Clarke, *Global Leader*  
+1 (646) 471-4743  
[peter.clarke@pwc.com](mailto:peter.clarke@pwc.com)

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