

United Kingdom and European Union confirm Brexit Deal for social security

4 January 2021

In brief

The United Kingdom (UK) Government and the European Union (EU) Commission have announced that a Deal has been agreed for social security.

From 1 January 2021, the current EU coordination rules on social security will be replaced by the Trade and Cooperation agreement, which includes a Protocol on Social Security Coordination (the Protocol).

This will ensure individuals who move between the UK and the EU after 1 January 2021 to access reciprocal healthcare cover and that cross-border workers and their employers are only liable to pay social security contributions in one state at a time. Generally, this will be in the country where work is undertaken. However, there are also provisions governing multi-state workers and detached workers posted for up to 24 months. According to the Protocol, it should be possible to obtain a certificate confirming the country of liability for multi-state workers and detached workers, although in the latter case, this is normally only possible where the EU Member State has agreed to apply the 'detached worker' rules.

The Protocol mandates employer social security obligations in the same way as the current EU social security regulations. This means that for individuals covered by the Protocol, both employee and employer contributions will be due, and the employer has an obligation to register with the relevant authorities to remit employee and employer contributions on a monthly basis according to domestic legislation.

In detail

Detached workers – EU

The announced Deal, which will affect the social security treatment for new assignments starting 1 January 2021 onwards, outlines the following general provisions.

1. UK workers who are sent by their employer to work temporarily in an EU Member State which has agreed to apply the 'detached worker' rules will remain liable to only pay social security contributions in the UK for the period of work in that EU Member State. Similarly, if an EU worker is sent by their employer to work temporarily in the UK from a Member State which has agreed to apply the 'detached worker' rules, they will remain liable to only pay contributions in that EU Member State. These rules are aligned to the 'detached worker' rules in the EU Regulations covering postings up to 24 months, such that similar conditions must be met.
2. An EU country must agree to apply the 'detached worker' rules by 1 February 2021 in order for them to continue to apply. If an individual comes to work in the UK before 1 February 2021 from a country that has not 'opted out' of the 'detached worker' rules, they should apply for a certificate or document from that country to continue paying social security contributions there. Similarly, if an individual from the UK goes to work in an EU country before 1 February 2021 and they have not 'opted out' of the 'detached worker' rules, they should apply for a certificate or document from HMRC to continue only paying UK National Insurance contributions.

Detached workers – non-EU

The 'detached worker' rules only cover EU member states. The previous EU Social Security Regulations also covered Iceland, Liechtenstein, Norway and Switzerland. HMRC have indicated their position with respect to detached workers is as follows:

- Switzerland – A certificate can be obtained for detached workers for postings up to 24 months.
- Norway – A certificate can be obtained for detached workers for postings up to 36 months.
- Iceland – A certificate can be obtained for detached workers for postings up to 52 weeks for non-UK and non-EEA nationals. This can be extended by a further 52 weeks, but an agreement from HMRC and the Iceland social security institution is needed prior to the end of the first 52 weeks.
- Liechtenstein – The UK does not have a bilateral agreement with Liechtenstein. It is expected that UK and Liechtenstein domestic legislation will apply, which may result in a dual social security liability in some situations.

This is in line with the underlying bilateral agreements the UK holds with Switzerland, Norway and Iceland. It is therefore assumed HMRC intends to honour these agreements. However, it is not clear what approach the authorities in Switzerland, Norway and Iceland will take.

Multi-state workers

The Protocol also covers multi-state workers. Again, the rules are aligned to the existing rules for multi-state workers in the EU Regulations. However, in contrast to the 'detached worker' rules, the EU member states are all automatically covered by the rules and do not have the option to 'opt out.' This clause does not cover Iceland, Liechtenstein, Norway and Switzerland. However, such social security position for multi-state workers working in the UK and any of these countries would be determined in accordance with the bilateral social security agreement concluded between the UK and these countries. As there is no bilateral agreement with Liechtenstein, a dual social security liability may arise for UK-Liechtenstein multi-state workers.

Other considerations

An exceptions clause is notably absent from the Protocol. Under the EU Regulations, this clause could be used to override the other Articles, provided the competent authorities in the home and host locations both agreed to do so. This was most commonly used to enable A1 certificates to be extended beyond 24 months for detached workers. It appears that this will not be an option for new moves commencing from 1 January 2021.

Arrangements that started prior to 31 December 2020 and continued beyond 1 January 2021 are expected to be grandfathered and will continue to be covered under the EU coordination rules (see our [previous publication](#)).

The takeaway

Employers should be prepared and start thinking about the action required regarding new assignments between the UK and the EU starting 1 January 2021:

- Consider whether it is appropriate to limit assignments to 24 months to enable individuals to remain in home country social security;
- For assignments planned between the UK and an EU Member State which has neither 'opted out' nor 'opted in' to the 'detached worker' rules, consider whether the assignment can commence before 1 February 2021 so that a certificate can be obtained;
- Care is required for UK moves to/from Iceland, Liechtenstein, Norway and Switzerland as the Protocol does not cover these moves and the social security position may differ as a result; and
- Re-assessment of cost implications for moves starting after 1 January 2021 where a certificate cannot be obtained and communication with the impacted business and employees.

It is important to note that the Protocol applies to assignments starting after 1 January 2021, or existing assignments that have changed sufficiently to no longer be covered under the A1 Certificate. All assignments to and from the UK which started pre-1 January 2021 can still be covered with an A1 Certificate so far as their working pattern does not change.

Companies should make sure:

- A1 Certificates are in place for this legacy population and extended where necessary; and
- Any role changes should be planned carefully in advance to avoid any breaks in work pattern, so that A1 Certificates can remain valid for as long as possible.

Let's talk

For a deeper discussion of how this impacts your business, please contact your Global Mobility Services engagement team or one of the following professionals:

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