KPMG

Brexit: Updates on Social Security aspects

August 2017

Social Security aspects of the UK leaving the EU – UK Government opening Policy paper (26 June 2017) and initial negotiations with the EU (17-20 July 2017)

Background

On 26 June 2017 the UK Government published its Policy paper '*Safeguarding the position of EU citizens in the UK and UK nationals in the EU*' which sets out its starting position and approach to the Brexit negotiations with the EU. Whilst the paper predominantly covers immigration aspects of Brexit, social security coordination matters were also considered.

The opening position was further discussed during the second round of negotiations held between the UK and EU on 17-20 July 2017, which was followed by the release of a Technical Note by Task Force 50 (TF50 – the EU's group of negotiators) which summarises and compares the respective UK and EU positions.

What is known as of August 2017?

The key points relating to EU social security coordination, including the ongoing provision of benefits, healthcare and pensions are detailed below:

i. **Healthcare coverage:** The UK government intends to seek an ongoing agreement with the EU that healthcare coverage under the existing EU regime (such as the European Health Insurance Card (EHIC)), which broadly allows citizens to receive free or reduced cost healthcare on a needs-arising basis whilst living in the EU, can continue after the UK's departure from the EU. The UK expects to protect these arrangements for EU citizens in the UK and UK nationals living in the EU. However, this treatment will only continue to apply for those individuals who were eligible before the 'specified date'.[(1)]

ii. **Exporting of benefits:** Existing rights for UK and EU citizens to export UK benefits are to be preserved. In particular, parties agreed on the common approach to the lifetime exporting and uprating of State pensions for those individuals who already export UK benefits at the 'specified date'. For those who do not, there is only confirmation that any new individuals will be treated on the same basis as UK nationals in future. The position for UK nationals in future has not yet been determined.

    At the same time there is a disagreement on the export of other benefits (such as child benefit) where the EU expects lifetime exporting of all benefits, and not just those that were already being exported at the 'specified date'.

iii. **Equal treatment:** During negotiations ended 20 July, parties agreed that it is their mutual intention to ensure equal treatment, as set out under current EU law. The technical note also acknowledges uncertainty on the approach to the status and treatment of third country nationals. The UK does anticipate third country nationals in the UK to continue to benefit from the previous EU coordination regulations.

Note: (1) The 'specified date' is yet to be determined. As of now, it is defined only as a date somewhere after 29 March 2017 and before the date the UK withdraws from the EU.

iv. **Aggregation:** The UK will continue to aggregate periods of relevant insurance, work or residence within the EU accrued before the UK's exit from the EU, to help meet the entitlement conditions for UK contributory benefits and State pension, even though entitlement to such a benefit may not arise until after the UK has left the EU. It is worth noting that the Policy paper is silent on what will happen to contributions made after the UK's exit from the EU and whether these will continue to be aggregated in the future. TF50 states that the UK is currently considering whether it will continue to recognise contributions made after exit, which suggests this will be subject to further negotiation.

What is still unknown?

i. **Social security contributions:** The main question which is still not clear is whether EU Regulations 1408/71 and 883/2004 will continue to apply between the EU and UK. These rules have been used for many years to determine in which country an individual, and their employer, are liable to pay their social security contributions.

   This, in turn, results in significant uncertainty in relation to contributions made after the UK's exit from the EU, both in terms of where these will be payable, and whether benefit accrual and entitlement will continue to apply in the same way. As contribution rates vary significantly across the EU, changes may result in additional costs for UK employers posting employees to other EU countries.

ii. **Regulatory:** In accordance with the Policy document released by the UK Government, it has been made clear that the Court of Justice of the European Union (CJEU) will not have jurisdiction in the UK after Brexit. The technical note states that the role of CJEU and its case law is to be further discussed by the Governance Group.

   As the CJEU currently governs any matters arising in relation to the EU social security regulations, it remains unclear whether the UK intends to completely withdraw from these regulations following the UK's exit from the EU. Similarly, for employees currently covered under the EU regulations, it is not yet known whether any transitional period or 'grandfathering' will be available. This is an area of particular uncertainty for employers and internationally mobile employees.

Why this matters

Social security is likely to be one of the key areas affected by Brexit for employers with internationally mobile employees working between the UK and other EU countries. For many years, EU social security regulations have governed where employees, and employers, pay their social security contributions when an individual moves within the EU to work. As the UK has already made clear that it will no longer be governed by EU law after it leaves the EU, this brings uncertainty for employers and employees on where their social contributions will be paid after 29 March 2019.

It is noticeable that the initial negotiations and Policy paper did not focus on where contributions will be paid, but on the ongoing provision of benefits, particularly those which employees have already accrued and are entitled to under current EU law.

These negotiations are the first real indication given by the UK Government that a distinction is likely to be made between existing individuals already covered by the EU regulations at the date the UK leaves the EU, and any new cases or moves that take place thereafter.

Employer Considerations

Employers should be reviewing global mobile workforce for moves to/from the UK and EU, particularly those individuals who are covered under the existing EU social security regulations now and ensuring that their 'house is in order' ahead of any further announcements from the UK and EU. It may be prudent to apply for any extensions to A1 certificates or make new applications now, in case any further limits are introduced ahead of the 'specified date'. In our experience, employers do not apply in all cases for A1 certificates for employees working across the EU, particularly those who are not on formal secondment terms, but may be multi-state workers (i.e. those working in 2 or more EU countries).

It remains to be seen if this may afford individuals further protection if documentation is in place ahead of the 'specified date'. It is also important for the employers to understand the actual cost of social security in different EU/EEA countries before planning any new moves.

Employers of globally mobile workers will need to be aware of the potential changes ahead. From a policy perspective, both international assignment and tax policies may need to be updated to reflect the new rules once they are agreed. This may also impact on future cost projections and may affect salary negotiations where employees could be worse off as a result.

KPMG Note

We are already seeing a change in approach from the competent authorities in some EU countries. In particular, Germany has previously announced that they are limiting the duration of A1 certificates for UK/Germany moves in certain circumstances to 29 March 2019. Other EU member states, such as Belgium and Denmark, have confirmed that they are continuing to apply normal EU rules until further notice.

KPMG's International Social Security team is closely following the developments of the negotiations and will provide more insight as more information becomes available.

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