

GMS Flash Alert

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United Kingdom - Update on Social Security Aspects of Brexit Negotiations

Negotiations between U.K. and European Union (EU) officials took place in July to discuss terms for the U.K.'s exit from the EU. A Technical Note was released following the recent round of talks that encapsulates and compares the two sides' positions.¹

The negotiations and the Technical Note² have included points relating to EU social security coordination, including the ongoing provision of benefits, health-care, and pensions. (For prior coverage, see *GMS Flash Alert 2017-065*, 11 April 2017.)

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 U.K. 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 U.K. has already made clear, 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 noteworthy 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 U.K. government that a distinction is likely to be made between existing individuals already covered by the EU regulations at the date the U.K. leaves the EU, and any new cases, or moves that take place, thereafter.

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, which will need to be updated, and may affect salary negotiations where employees could be worse off as a result.

Background

On 26 June 2017, almost a year after the Brexit referendum result, the U.K. government published its Policy paper *"Safeguarding the position of EU citizens in the U.K. and U.K. nationals in the EU"*, which sets out its starting position and approach to the Brexit negotiations with EU.³ While 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 U.K. and EU on 17-20 July 2017, that was followed by the release of a Technical Note by Task Force 50 (TF50 - the EU's group of negotiators) which summarizes and compares the U.K. 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, health-care, and pensions are detailed below:

- (i) **Health-care coverage:** The U.K. government intends to seek an ongoing agreement with the EU that health-care coverage under the existing EU regime (such as the European Health Card (EHIC)) – which broadly allows citizens to receive free or reduced cost health-care on a needs-arising basis while living in the EU – can continue after the U.K.'s departure from the EU. The U.K. expects to protect these arrangements for EU citizens in the U.K. and U.K. nationals living in the EU. However, this treatment will only continue to apply for those individuals who arrived in the U.K. before the *specified date*.⁴
- (ii) **Exporting of benefits:** Existing rights for U.K. and EU citizens to export U.K. benefits are to be preserved. In particular, parties agreed on the common approach to the lifetime exporting and "up-rating" of state pensions for those individuals who already export U.K. 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 U.K. nationals in future. The position for U.K. 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 the negotiations that 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 U.K. does anticipate third country nationals in the U.K. to continue to benefit from the previous EU coordination regulations.
- (iv) **Aggregation:** The U.K. will continue to aggregate periods of relevant insurance, work, or residence within the EU accrued before the U.K.'s exit from the EU, to help meet the entitlement conditions for U.K. contributory benefits and state pension, even though entitlement to such a benefit may not arise until after the U.K. has left the EU. It is worth noting that the Policy paper is silent on what will happen to contributions made after the U.K.'s exit from the EU and whether these will continue to be aggregated in the future.

TF50 states that the U.K. is currently considering whether it will continue to recognize contributions made after Brexit, which suggests this will be subject to further negotiation.

What Is Still Unknown

(i) **Country where contributions are due:** The main question which continues to be unclear is whether EU Regulations 1408/71 and 883/2004 will continue to apply between the EU and U.K. – these Regulations are currently used to determine in which country an individual and his or her employer are liable to pay their social security contributions.

This, in turn, results in significant uncertainty in relation to contributions made after the U.K.'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.

(ii) **Jurisdiction of CJEU:** In accordance with the Policy document released by the U.K. government, it has been made clear that the Court of Justice of the European Union (CJEU) will not have jurisdiction in the U.K. 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 U.K. intends to completely withdraw from these regulations following the U.K.'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.

Employer Considerations

Employers should be reviewing their existing EU/U.K. globally mobile workforce and their coverage under the existing EU social security regulations now and establishing to what extent their "house is in order" ahead of any further announcements from the U.K. and EU. It may be prudent to apply for any extensions or make new applications now, in case any further limits are introduced and ahead of the *specified date*. 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 employers to understand the actual cost of social security in different EU/EEA countries before planning any moves.

KPMG NOTE

We are already seeing a change in approach by the competent authorities in some EU countries. For example, Germany has announced that it is limiting the duration of A1 certificates for U.K./Germany cross-border workers, in certain circumstances, to 29 March 2019 (see GMS [Flash Alert 2017-090](#), 16 May 2017). Other EU member states, such as Belgium and Denmark (see GMS [Flash Alert 2017-100](#), 7 June 2017), have confirmed that they are continuing to apply normal EU rules until further notice.

FOOTNOTES:

1 See: https://ec.europa.eu/commission/sites/beta-political/files/eu-uk_table_cr.pdf . Also see: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/631038/Joint_technical_note_on_the_comparison_of_EU-UK_positions_on_citizens_rights.pdf .

2 Ibid.

3 See: <https://www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu/the-united-kingdoms-exit-from-the-european-union-safeguarding-the-position-of-eu-citizens-living-in-the-uk-and-uk-nationals-living-in-the-eu> . For prior coverage, see GMS *Flash Alert 2017-112* (28 June 2017).

4 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 U.K. withdraws from the EU.

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Read this new article published in KPMG's *The Expatriate Administrator*:

"Budgeting for an Assignment? Look out for Those 'Goodbye' Taxes"

Departure taxes, sometimes known as "exit" taxes, are too frequently an "after-thought" for employees taking an international assignment, and for the global mobility managers who oversee their assignments. Failure to properly prepare an employee on international assignment for his tax obligations and potential liabilities when he leaves the host country, can expose that employee, and very likely his company, to a higher-than-expected tax bill.

To learn more, click [here](#).

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