

GMS Flash Alert

2018-168 | December 21, 2018



United Kingdom – Social Security Implications of “No Deal” Brexit

As recently announced by the U.K. government and the European Union (EU), the potential for a “no deal” Brexit is increasing.¹ One of the highest-priority concerns for global mobility professionals is the effect it would have on EU and U.K. citizens’ social security rights, where they are or have been living or working in both the U.K. and another EU country.

On 13 December 2018, the U.K. published draft secondary legislation, setting out its proposed approach to protecting individuals’ social security rights post 29 March 2019, in the event of there being no deal. On 20 December 2018, the European Commission followed suit, with detailed guidance for EU member states.²

WHY THIS MATTERS

For employers of globally mobile employees, social security can represent a significant cost and a compliance risk. For the employees themselves, social security may be a sensitive subject, and any perceived threat to their benefits should be carefully managed.

The U.K.’s draft legislation and the EU’s guidance to member states helps employers (i) to understand the likely outcomes of a no deal Brexit from a cost, risk, and benefits perspective for their mobile employees and (ii) to start planning accordingly, subject to that legislation being enacted.

U.K. Proposals

The draft legislation issued by the U.K. government aims to protect citizens’ and legal residents’ existing rights to the greatest extent possible, but makes caveats given that cooperation and reciprocity may not be forthcoming from EU member states.

The legislation takes as its basis the existing EU Social Security Coordination Regulations³ and makes a series of amendments. If passed as currently drafted, these would appear to:

- confirm that U.K. social security is payable when an individual is working as an employee or self-employed person in the U.K., with the acknowledgement that this may give rise to situations where an individual incurs liabilities in more than one country at a time;
- set out an intention to apply rules similar to Articles 12, 13, and 16 of the EU Regulations, enabling home country coverage for assignments of up to two years (or potentially longer by mutual agreement), and replicating the EU “multi-state” rules, but with the backstop of U.K. contributions being due on U.K. “sourced” income if other member states do not reciprocate with similar arrangements;
- continue to apply rules analogous to the previous EU Regulations to third-country nationals, including permitting employees to remain in their home country social security for up to 12 months, with a 12-month extension possible;
- imply that postings between the U.K. and an EU member state do not give rise to any 52-week continuing liability to, or 52-week exemption from, U.K. social security, even where no bilateral agreement exists;
- specify that any bilateral social security agreement between the U.K. and an EU member state should take precedence over this proposed legislation, insofar as the bilateral agreement is in force on or after 29 March 2019, and results in a different outcome;
- enable the U.K. to request information from individuals claiming social security rights in the event that authorities in a European member state are non-responsive, and, if the individual lacks sufficient information to evidence their rights, to decline to fulfil the U.K.’s obligations under the Coordination Regulations;
- withdraw the U.K. from the proposed system of Electronic Exchange of Social Security Information (EESSI)⁴, under which social security authorities are shortly to move to paperless communication;
- retain reciprocal health-care arrangements;
- retain benefit totalisation/aggregation principles on the full “suite” of social security benefits.

KPMG LLP (U.K.) NOTE

The apparent intention to give precedence to any bilateral agreements in force on or after 29 March 2019, could give rise to some unfortunate consequences. For example, the U.K./Italy bilateral agreement permits home country contributions to continue for assignments of up to six months only, instead of the proposed 24 months in the current draft proposals.

The proposal to retain reciprocal health-care arrangements conflicts with the approach set out in the Immigration White Paper, published by the U.K. government on 19 December 2018 (see *GMS Flash Alert* 2018-166, 20 December 2018), wherein it is proposed to apply the NHS Health Surcharge to European nationals with U.K. work permits as it currently applies to non-European nationals with U.K. work permits.

EU Guidance

The EU has confirmed that the EU Social Security Coordination Regulations will cease to apply to the U.K. as of 29 March 2019, in the event of a no deal Brexit.

However, in a similar vein to the U.K. government's approach, the EU Commission has emphasised the importance of protecting citizens' and legal residents' social security benefits.

The Commission has highlighted the need for individuals to obtain and retain sufficient documentation to evidence their social security rights in the future, based on periods of insurance prior to 29 March 2019.

KPMG LLP (U.K.) NOTE

The Commission's decision to leave the future social security rules for individuals living or working in the U.K. and the EU to individual member states may result in a complex patchwork of arrangements which could turn out to be difficult for both employers and employees to understand and manage.

Next Steps

It is expected that a number of more detailed documents and consultation papers will be released by the U.K. government and the EU over the coming weeks.

KPMG LLP (U.K.) will endeavour to keep readers informed of any further developments that concern individuals, including those on international assignment, and their multinational employers.

FOOTNOTES:

1 See "Brexit: EU reveals no-deal plans," BBC (online) (20 December 2018) and "The government has dropped its claim that a no-deal Brexit is 'unlikely'," in Politics Live with Andrew Sparrow in the Guardian (online) (20 December 2018). For prior coverage of social security issues tied to Brexit, see GMS [Flash Alert 2017-125](#) (4 August 2017).

2 See European Commission, "Brexit: European Commission implements 'no-deal' Contingency Action Plan in specific sectors," (19 December 2018) at: http://europa.eu/rapid/press-release_IP-18-6851_en.htm .

3 See "EU rules on coordination of social security systems," at: <https://www.consilium.europa.eu/en/policies/rules-social-security-systems/#> .

Also see, "EU social security coordination" at: <https://ec.europa.eu/social/main.jsp?catId=849&langId=en> .

4 For prior coverage of EESSI, see the following issues of GMS *Flash Alert*: [2018-143](#) (1 November 2018) and [2018-115](#) (30 August 2018).

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