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GMS Flash Alert

Brexit edition

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United Kingdom – Updates on Social Security for Mobile Employees Post-Brexit

The U.K. government has recently published a number of updates on the international social security arrangements that will apply for individuals moving between the U.K. and the European Union (EU) after Brexit (the U.K.'s withdrawal from the EU, which is currently expected to happen on 31 October 2019).[1] These updates cover access to U.K. state pension and health care for U.K. nationals living in Europe. They also give the U.K. authorities' view of the rules which determine where individuals and their employers should make contributions when working temporarily outside their home countries.[2]

WHY THIS MATTERS

At present, the social security position of individuals exercising their right to freedom of movement within the EU (including the European Economic Area (EEA) and Switzerland) is determined in accordance with European Social Security Coordination Regulations. These stipulate where social security contributions should be paid, and also protect the individual's entitlement to social security benefits, such as pensions and health care.

In the event that the U.K. leaves the EU with a deal, it is anticipated that these rules will continue to apply until 31 December 2020, but in the event of a "no deal" Brexit, the existing arrangements may end immediately. This creates a great deal of uncertainty, both for employers concerned about compliance risk and for employees concerned about loss of benefits. The U.K. government's recent announcements therefore provide a welcome measure of clarity in some key areas, while leaving some open questions still to be resolved.

Key Updates

Determining Where Contributions Should Be Paid

The government has indicated that existing A1 Certificates issued by the U.K. authorities (which confirm an individual's liability to pay U.K. National Insurance Contributions while working temporarily elsewhere in Europe) will remain valid until the end date recorded on the Certificate. The government recommends that employers check with the overseas authorities in the EU country where their employees are working to ascertain whether contributions may also become due there – if, for example, that country no longer recognises the validity of the A1.

The government has advised that for new assignments from the U.K. to an EU country after Brexit, applications to continue to pay U.K. National Insurance Contributions should continue to be made on the same form as at present. A replacement for the A1 Certificate is under development.

The only country where the situation will be entirely "business as usual" is Ireland, as the U.K. and Ireland recently entered into a new bilateral agreement on very similar terms to the EU Regulations, to apply from the date of Brexit.[3]

For inbounds from the EU to the U.K., there is much less clarity on the U.K. authorities' position. The recent guidance suggests that EU nationals who work wholly or mainly in the EU and who work on a limited basis in the U.K. will not have to pay U.K. National Insurance Contributions if certain conditions are met. (To add to the confusion, the conditions themselves will be published only after Brexit has occurred.)

KPMG LLP (U.K.) NOTE

The U.K. government's position risks the imposition of dual liabilities for those employees who are working in the EU and are covered by a U.K. A1 at the date of Brexit. It will be for each EU country to decide the stance it will take vis-à-vis the U.K. going forward, so an employer's risk of encountering this situation is likely to differ depending on the EU countries in which the business operates.

HM Revenue and Customs has started to issue letters to A1 applicants advising them that their A1 remains valid post Brexit until the end date on the Certificate, that National Insurance Contributions will continue to be due, and that they should contact the host country social security authorities to find out if contributions will be due in that location also. It is clearly not optimal to transfer this responsibility from government to business, and relatively few countries' social security authorities appear to have a definitive position on their approach post-Brexit, so employers are unlikely to gain much certainty from this exercise. HMRC's approach could result in increased costs and administrative burden for companies with mobile employees in Europe.

While clarity on the process for A1 applications post-Brexit is welcome, it is not clear on what basis the U.K. will process the applications it receives. The U.K. has essentially transposed the EU Coordination Regulations into U.K. law, and has asked EU countries to continue to apply these Regulations until at least 31 December 2020, even if there is a no-deal Brexit. However, as noted previously, it will be for each EU member state to decide whether to do so, and there are indications that some are not willing.

U.K. State Pension

The key question for individuals who have made social security contributions in both the U.K. and the EU is whether they will be able to benefit from "aggregation" in calculating their pension. This allows an individual to take account of contributions paid in all EU countries to satisfy any vesting threshold for receipt of pension, such as the requirement to have made a minimum of 10 years of contributions in the U.K. to receive a state pension.

The EU Commission and the U.K. have confirmed that aggregation will apply to contributions paid and benefit rights accrued prior to the date of Brexit. Importantly, however, there has been no agreement in respect of contributions paid following Brexit. Responsibility falls to each individual member state to negotiate with the U.K. on a bilateral basis.

With respect to U.K. nationals who are living in Europe, they are currently able to receive their U.K. state pension in the country where they live. This is known as the right to "export" the benefit. They are also entitled to "uprating" – the annual increase to the pension benefit payable – on the same basis as pensioners living in the United Kingdom. The U.K. government has confirmed that U.K. nationals will continue to be eligible to export their pension benefit when living in an EU country, but it has only guaranteed to continue uprating the amount paid each year until April 2023.

Health Care

At present, the European Health Insurance Card (or for longer-term moves, form S1) enables individuals to receive health care in another EU country on the same basis as locals in that country.

The U.K. government has made a unilateral decision to continue to fund health-care benefits for U.K. nationals living in the EU for six months post-Brexit. They estimate that this covers 180,000 U.K. nationals who currently hold an S1. It will also fund health care for those who are temporarily in Europe at the date of Brexit, who hold a European Health Insurance Card, and who require medical treatment.

The only countries where more generous provisions apply are Spain, with whom the U.K. has agreed a transitional period for health care until 31 December 2020, and Ireland where, as explained above, the current arrangements will continue to apply indefinitely. The U.K. has stated that it is trying to negotiate an extension to the health-care arrangements, in line with the agreement made with Spain, with all EU countries.

KPMG LLP (U.K.) NOTE

These updates provide some welcome clarity on the U.K. government's position with regard to social security contributions and benefits for those moving between the U.K. and the EU after Brexit. However, there is ongoing uncertainty arising from the fact that the U.K. has to agree rules with each country on a bilateral basis going forward. This is expected to not be a quick process and the outcome could be a "patchwork" of different rules that may be more complicated for employers and individuals to navigate.

FOOTNOTES:

1 See the following government publications, "Healthcare after Brexit: visiting the EU, Norway, Iceland, Liechtenstein and Switzerland" and "Healthcare after Brexit: living in the EU, Norway, Iceland, Liechtenstein or Switzerland." For guidance aimed at health-care and medical services providers, click here.

Also, see "Planning for a no-deal Brexit: information for the health and care sector."

2 For prior coverge of social security-related matters tied to Brexit, see GMS *Flash Alert* 2018-168 (21 December 2018).

3 For related coverage, see GMS *Flash Alert* 2019-065 (1 April 2019).

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in the United Kingdom:

Kathryn Harding
Partner
Tel. + 44 (0) 161 246 4170
Tel. + 44 (0) 7841 561992
Kathryn.harding@kpmg.co.uk

Laura Hutton
Senior Manager
Tel. + 44 (0) 20 7694 1568
Tel. + 44(0) 7920 568793
Laura.hutton@kpmg.co.uk

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