



GMS Flash Alert

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United Kingdom - Brexit and Social Security for Mobile Employees

In the final days of 2020, the United Kingdom and the European Union agreed on a Protocol on Social Security Coordination (“the Protocol”) to take effect from 1 January 2021, intended to govern the social security position of individuals who move between the U.K. and the EU from that date.¹ Individuals who had exercised their right to freedom of movement prior to the end of the Brexit transition period on 31 December 2020, in some circumstances, will remain eligible for coverage under EU Regulation 883/2004 on the Coordination of Social Security Systems (“the EU Regulations”), based on grandfathering provisions contained within the Withdrawal Agreement.²

WHY THIS MATTERS

Employers will need to understand the correct rules to apply to their mobile employees, and the implications for social security contributions and benefits. This is a new and complex “landscape” with a high potential for error.

Employees who were mobile prior to 31 December 2020, may be able to obtain A1 certificates and A1 extensions based on the EU Regulations.

Employees who become mobile between the U.K. and the EU for the first time after 2020 will be subject to the rules contained in the new Protocol, which are less comprehensive and potentially more complex to navigate, particularly in the first few months.

Previously, mobility between the U.K. and the European Economic Area (EEA) states of Norway, Iceland and Liechtenstein, as well as mobility between the U.K. and Switzerland was covered by the EU Regulations. As of 1 January 2021, for newly mobile employees, this is no longer the case and either bilateral agreements with each country or domestic rules will apply (for coverage of social security matters in post-Brexit cross-border work situations between the U.K. and Switzerland, see the following issues of *GMS Flash Alert*: [2020-494](#) (14 December 2020) and [2020-492](#) (11 December 2020)).

“Grandfathering” under the Withdrawal Agreement

Individuals who had exercised their right to freedom of movement prior to the end of the transition period on 31 December 2020 should be eligible to obtain A1 certificates and A1 extensions under the EU Regulations for so long as their situation continues “without interruption.” This should facilitate ongoing social security coverage in the home country for at least two years and potentially up to five years (subject to both home and host country agreement in the latter case), and should also enable individuals to protect their accrued social security benefits in line with the terms of the EU Regulations.

The key phrase “without interruption” is not defined in the Withdrawal Agreement, but guidance³ issued by the EU Commission in May 2020 indicates that it may be construed quite broadly, such that the following situations may not constitute an interruption:

- An individual with an Article 12 A1 certificate (for a posting/detachment) who becomes a multi-state worker under Article 13;
- An individual who moves from the U.K. to the EU or vice versa, thus changing his or her social security residence;
- An individual who changes employer but continues to work in the same location.

KPMG NOTE

The EU guidance on what does and does not constitute an interruption is welcome. Given the limitations of the new Protocol, employers are likely to find it beneficial to continue to rely on the EU Regulations wherever possible so the broad construction the EU Commission gives to the phrase is helpful. However, it remains to be seen how each country will apply this in practice, creating uncertainty and complexity for employers in the meantime.

New Protocol on Social Security Coordination

What Is Covered?

The new Protocol applies to U.K. and EU nationals, and to third-country nationals who are or have been subject to the social security system of either the U.K. or an EU country. It applies to the U.K. and all EU countries but does not apply to Norway, Iceland, Liechtenstein or Switzerland.

The Protocol sets out the basic rules to the effect that an individual should be subject to social security in one country only and stipulates that the default rule is “pay where you work.” These mirror the core principles of the EU Regulations.

The Protocol essentially replicates the rules for multi-state workers contained in Article 13 of the EU Regulations. An individual who works substantially (defined as 25 percent or more of working time or remuneration) in his or her country of residence should be subject to social security in that country. An individual who does not meet this test should be subject to social security in the country where the employer is established. The rules for more complex cases relating to self-employment and multiple employments have also been replicated.

From a benefits perspective, the Protocol provides for the protection of a number of benefits, including aggregation in respect of pensions, access to reciprocal health-care, and some unemployment provisions.

KPMG NOTE

The Protocol provides welcome certainty to employers whose employees have multi-state travel patterns, including both commuters and regular business travellers. It appears to preserve access to reciprocal health-care both for short trips and for longer-term arrangements, indicating that the circumstances in which the U.K. will impose the National Health Service surcharge on EU nationals coming to the U.K. to work may be more limited than originally thought.

What Is Potentially Covered?

The Protocol contains an article which enables a detached worker to remain within his or her home country social security system for up to two years, which is worded very similarly to Article 12 of the EU Regulations. However, the Protocol enables each country to opt in or out of this Article; thus it may not be possible to obtain a certificate to maintain home-country coverage for detached workers in all countries.

An initial list of those countries which have opted in should have been provided by the date on which the Protocol entered into force, i.e. presumably 1 January 2021. However, this list currently contains only four countries: Austria, Hungary, Portugal and Sweden. In the longer term, countries have until 31 January to notify the EU Commission whether they intend to opt in or out of this article.⁴ As of 1 February 2021, a final list of countries which have opted in, and for which certificates maintaining home country coverage for up to two years should be available, should be published by the Commission.⁵

Where countries have opted out, the default rule in the Protocol applies, and a liability for social security contributions will arise in the work location.

In the first month, prior to the publication of the final list of countries opting in, it appears to be possible to obtain a certificate which will remain valid for the duration of the “detachment” even if the host country subsequently opts out. There are also provisions enabling countries which have initially opted in to opt out at a later date (again with grandfathering of existing certificates).

KPMG NOTE

The “opt-in” approach was not envisaged in either the U.K. or the EU’s draft agreement and it is not clear why the Protocol has been finalised in this way. It means that employers do not yet have certainty as to whether they can maintain home country coverage for detached employees, albeit the uncertainty will hopefully be of short duration. There is a clear risk that a number of countries will opt out, with the result that U.K. employees posted to their location will have to make social security contributions there from the start of the assignment, potentially increasing costs and fragmenting benefit entitlements.

What Is Not Covered?

There is no equivalent to Article 16 of the EU Regulations in the Protocol. Article 16 of the EU Regulations permitted home and host authorities to agree a position if it was deemed to be in the best interests of the employee. Most frequently, this was used to obtain home-country coverage for postings/detachments of up to five years.

There is also no protection of family benefits (including, e.g., child benefit), and no facility to export unemployment benefits.

KPMG NOTE

The absence of a provision facilitating mutual agreement between home and host authorities in the interests of the employee is a loss.

It is possible that in the fullness of time, this issue, together with the “opt-in” nature of the article governing detachments, may prompt EU countries and/or the U.K. to agree to separate bilateral arrangements specifically covering state-to-state situations, leaving the Protocol to cover true multi-state (including pilot and mariner) scenarios.

Norway, Iceland, Liechtenstein and Switzerland

HM Revenue and Customs have indicated that mobility between the U.K. and Switzerland, Iceland and Norway should be governed by the terms of the existing bilateral agreements between the U.K. and each of these countries. There is no agreement between the U.K. and Liechtenstein, thus this becomes a “non-agreement” country for the U.K., and U.K. domestic rules will apply (including, where appropriate, 52-weeks continuing liability or exemption).

FOOTNOTES:

1 For the full agreement, see Trade and Cooperation Agreement Between The European Union and The European Atomic Energy [Community](#), of the One Part, and The United Kingdom of Great Britain and Northern Ireland, of the Other Part.

2 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 2019/C 384 I/01, *OJ C 384I*, 12 November 2019, pp. 1-177. For related coverage of Brexit and the Withdrawal Agreement and tax, social security, labour, and immigration matters for U.K. nationals, see our other Brexit reports in *GMS Flash Alert* at: <https://home.kpmg/xx/en/home/insights/2015/09/flash-alert-brexit.html> .

For more on the EU-U.K. Withdrawal Agreement, click [here](#).

3 See “[Commission Notice: Guidance Note relating to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#)” (12 May 2020).

4 Article 11 of the Protocol.

5 *Ibid.*

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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
Director

Tel. + 44 (0) 20 7694 1568

Tel. + 44 (0) 7920 568793

Laura.hutton@kpmg.co.uk

The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom.

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