



# GMS Flash Alert



2024-029 | January 30, 2024

## United Kingdom - Social Security Convention with EEA / EFTA

The United Kingdom (U.K.) and the countries of the European Economic Area (EEA) and the European Free Trade Association (EFTA) (Iceland, Liechtenstein, and Norway) reached agreement on a new social security convention (“the Convention”)<sup>1</sup> on 30 June 2023. The Convention entered into force on 1 January 2024, after each state completed the statutory and constitutional requirements and issued notification of the completion of these procedures.

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### WHY THIS MATTERS

Following the departure of the U.K. from the European Union (EU) – “Brexit” – Regulation (EC) No 883/2004<sup>2</sup> on the coordination of social security systems ceased to apply to workers moving between the U.K. and the EU, Iceland, Liechtenstein, Norway, and Switzerland (except for cases grandfathered by the provisions contained within the Withdrawal Agreement<sup>3</sup>).

To limit the negative and extensive impact of Brexit and to govern the social security position of individuals moving between the U.K. and the EU in a post-Brexit environment, the U.K. and the EU agreed on a Protocol on Social Security Coordination (“the Protocol”)<sup>4</sup> which entered into force on 1 January 2021.

However, the Protocol is limited to the U.K. and EU countries. As a result, the social security position for moves between the U.K. and EEA / EFTA countries and Switzerland was governed by the terms of existing bilateral agreements between the U.K. and Iceland, Norway, and Switzerland, each of them with different provisions, and no agreement was in place between the U.K. and Liechtenstein.

The Convention is welcome as it provides a standard set of rules for individuals moving between the U.K. and EEA / EFTA countries, while moves between the U.K. and Switzerland remain governed by a renewed bilateral agreement<sup>5</sup>.

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## Key Points of the Convention

The Convention mirrors the provisions of Regulation (EC) No 883/2004, and it is more comprehensive than the Protocol that had been in place since 2021.

### Highlights

- **Persons covered:** persons who are or have been subject to the legislation of one or more states, including their family members and survivors (not limited to nationals of the contracting parties).
- **Aggregation of periods:** periods of insurance, employment, self-employment, or residence completed under the legislation of any other state shall be taken into account by a competent state as though they were completed under the legislation of that state.
- **Exportability of benefits:** rights to cash benefits shall not be subject to any reduction, amendment, suspension, withdrawal, or confiscation on account of the fact that the person or his or her family reside in a state other than the one in which the institution responsible for providing benefits is situated.
- **Overlapping benefits:** the right to several benefits of the same kind for one and the same period of compulsory insurance shall not be conferred or maintained. This means that there is a ban on receiving double benefits that refers to the same insurance period.

### Basic Provisions

#### *General principles<sup>6</sup>*

- Persons to whom the Convention applies shall be subject to the legislation of a single state only.
- A person pursuing an activity as an employed or self-employed person in a state shall be subject to the social security legislation of that state (*lex loci laboris* – pay where you work).
- Civil servants are subject to the legislation of the state to which the administration employing them is subject.

*Detached worker<sup>7</sup>:* a person who normally pursues an activity as an employed person in a state for an employer that normally carries out its activities there and who is sent by that employer to work in another state shall continue to be subject to the legislation of the first state, provided that:

- (a) the anticipated duration of such work does not exceed 24 months; and
- (b) that person is not sent to replace another detached worker.

A person who normally pursues an activity as a self-employed person in the territory of a state who goes to pursue a similar activity in the territory of another state shall continue to be subject to the legislation of the first state, provided that the anticipated duration of such activity does not exceed 24 months.

*Work in more than one country<sup>8</sup>:* a person who pursues substantial activity (25 percent or more) in the state of residence is covered by the social security legislation in that state. When a person does not perform a substantial part of his or her working activity in the state of residence, the legislation for social security in the state where the employer is located shall apply.

*Exceptions to the general rules<sup>9</sup>:* the authorities of two or more states can agree on exceptions to Articles 13 to 17 in the interest of certain persons / categories of persons. This recalls the provisions of Article 16 of Regulation (EC) No 883/2004, which allows that, in exceptional circumstances, a continued coverage in the home state is possible even for periods of work in another state longer than 24 months. This provision was not included in the Protocol.

*Voluntary insurance*<sup>10</sup>: where a person is subject to compulsory insurance in a state, in respect of invalidity, old-age and survivors' benefits, the person may join the voluntary or optional continued insurance scheme of a state, provided that that person has been subject, at some stage in his/her career, to the legislation of the first state because or as a consequence of an activity as an employed or self-employed person and if such overlapping is explicitly or implicitly allowed under the legislation of the first state.

*Employer's obligations*<sup>11</sup>: an employer that is not established in a state whose legislation for social security applies must comply with the legislation in that state as if the employer was established there.

*Health care*<sup>12</sup>: an insured person and his or her family shall receive benefits-in-kind (health care) in the country of residence even if the country of residence is not the competent state and said person shall receive benefits-in-kind in the competent state even if he or she does not reside there.

Specific provisions are available for persons working on continental shelves (with regards to the U.K. and Norway only)<sup>13</sup>, on board of a vessel at sea, and flight crew and cabin crew members<sup>14</sup>.

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## KPMG LLP (U.K.) INSIGHTS

It is expected that PDA1 certificates will continue to be issued by the competent authorities as per the Protocol.

Each state has the option to withdraw from the Convention by means of written notification. The withdrawal would take effect 12 months after the date on which the notification is received. If the U.K. withdraws, the Convention is terminated when the withdrawal becomes effective.

Employers will need to understand the correct rules applicable to their mobile employees and the implications for social security contributions and benefits. The complexity is increased by the fact that different rules with different provisions apply to employees moving between the U.K. and EEA / EFTA countries, depending on the start date of their work arrangements:

- Regulation (EC) 883/2004 – moves started before 1 January 2021, by virtue of the Withdrawal Agreement;
- Bilateral agreements (where applicable) – moves started between 1 January 2021 and 31 December 2023, except for Liechtenstein;
- Convention – moves started on or after 1 January 2024.

Additional complexities can arise in 'triangular' situations, where a person's work arrangements and/or residency touch the U.K., one or more EEA / EFTA states, and one or more EU countries.

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## FOOTNOTES:

1 Full text and explanatory memorandum: [Convention on Social Security Coordination between Iceland, Liechtenstein, Norway and the United Kingdom of Great Britain and Northern Ireland](#).

2 See on the EUR-Lex website: [Regulation \(EC\) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems \(Text with relevance for the EEA and for Switzerland\)](#).

3 For more on the EU-U.K. Withdrawal Agreement, see on the EUR-Lex website: [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](#).

4 For a KPMG analysis, see [GMS\\_Flash Alert 2021-010](#), 8 January 2021. Also see [GMS Flash Alert 2021-005](#), 5 January 2021.

5 For a KPMG analysis, see [GMS Flash Alert 2021-263](#), 19 October 2021.

6 Article 13 of the Convention.

7 Article 14 of the Convention.

8 Article 15 of the Convention.

9 Article 18 of the Convention.

10 Article 17 of the Convention.

11 Article 19 of the Convention.

12 Article 21 of the Convention.

13 Article 16 of the Convention.

14 Article 13.4 and 13.5 of the Convention.

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## Contact us

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