Social Security across Europe now the Brexit transition period has ended

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Eleanor Meredith looks at how Social Security contributions will be applied for UK-EU cross-border workers in a post-Brexit world

Discussions between the UK government and the European Union (EU) Commission eventually concluded in a Trade and Cooperation Agreement (TCA) including provisions on social security coordination in a Protocol issued as part of the TCA. For

most ‘new’ situations involving movement between the UK and an EU Member State from 1 January 2021, the Protocol supersedes the existing EU coordination rules on social security.

The Protocol ensures that cross-border workers who move between the UK and the EU after 1 January 2021, and who are not covered persons under the UK-EU Withdrawal Agreement, and their employers, are only liable to pay social security contributions in one state at a time. It also allows these individuals access to reciprocal healthcare cover. Further provisions apply regarding the coordination and protection of the majority of social security benefits between the UK and the EU (e.g., old-age and survivors’ pensions), so that individuals preserve their social security rights.

Whilst many of the provisions in the Protocol are similar to the existing EU social security coordination rules and will be familiar, there are some key differences that employers should be aware of, as explained below.

It is also worth noting that individuals who are covered persons under the Withdrawal Agreement should continue to be covered under the existing EU social security co-ordination rules as their social security co-ordination rights are grandfathered by the Withdrawal Agreement. In the main, this applies to continuing cross-border arrangements that started prior to 1 January 2021, but may also apply to new arrangements starting on or after 1 January 2021 for individuals who are covered by the Withdrawal Agreement, for example based on their residence rights.

What does the Protocol mean in practice?

Who is covered by the provisions on social security coordination in the Protocol?

The Protocol covers EU citizens, UK and third-country nationals, stateless persons and refugees who are legally resident in the UK or the EU and who are in a cross-border situation involving the UK and an EU Member State that starts on or after 1 January 2021, where they are not covered persons under the Withdrawal Agreement. It also covers their family members.

What does this mean for cross-border workers between the UK and the EU?

Workers covered by the Protocol will be subject to social security in only one country at a time, which will generally be in the country where work is performed, although there are provisions for ‘detached workers’ (assignees) and multi-state workers.

The Protocol mandates employer social security obligations in the same way as the existing EU social security regulations. This means that for individuals covered by the Protocol, both employee and employer contributions will be due, and the EU or UK employer has an obligation to register with the relevant authorities to remit employee and employer contributions according to domestic legislation.

The specific rules for assignees in the Protocol cover assignments of up to 24 months, and these essentially mirror the existing posted/seconded worker rules in the EU regulations that allow continuing home country coverage for assignments of up to 24 months. Although each EU member state had the choice of opting out before 1 February 2021, HMRC have confirmed that none has done so.

The provisions on multi-state working arrangements mean that individuals should be covered on the same basis as under the existing EU social security regulations, which is good news. Less helpfully, there is no exceptional circumstances clause in the Protocol equivalent to Article 16 in the current EU agreement. As such, the UK and an EU member state cannot agree to override normal provisions, which means that certification and home country social security coverage would not be available for assignments of over two years.

Reciprocal healthcare arrangements should be in place, largely mirroring the current arrangements, although there are some quirks in practice. For example, the UK has stated it will issue Global Health Insurance Cards – GHICs – going forward through which individuals should be able to access healthcare for temporary periods of stay in an EU Member State, but that existing European Health Insurance Cards (EHICs) for UK nationals should continue to be valid until their expiry date. EU citizens with a right to reside in the UK as at 31 December 2020 and UK nationals in certain situations who are also covered persons under the Withdrawal Agreement can apply for a new style UK EHIC. UK government advice is that appropriate travel insurance with healthcare coverage should be in place.

There are provisions in the Protocol regarding the coordination and protection of most social security benefits between the UK and the EU, so that they should apply on largely the same basis as under the existing EU Regulations, and individuals

should largely preserve their social security benefit rights; but there are exceptions, most notably family benefits – including Child Benefit - and long-term care benefits. Access to these benefits will be dependent on domestic legislation, which may not allow the concerned persons the same level of benefit. UK employers should be particularly aware of the impact of this on UK outbound assignees.

What does the Protocol mean for cross-border workers between the UK and Ireland?

The position is subtly different for UK and Irish nationals who are cross-border workers between the UK and Ireland, as a separate convention agreed between the UK and Ireland takes priority. This effectively mirrors the existing EU Regulations, so that the same provisions will continue for new assignments of UK and Irish nationals, which may be more generous than the Protocol. It should, for example, be possible to agree coverage for detached workers, who are UK or Irish nationals, for up to five years in exceptional circumstances for Ireland/UK assignments.

What does the Protocol mean for cross-border workers between the UK and Norway, Iceland, Liechtenstein and Switzerland (the EFTA countries)?

The Protocol does not cover the EFTA countries of Norway, Iceland, Liechtenstein and Switzerland, as the territorial scope of the TCA extends only to the relationship between the UK and the EU. Therefore, the social security position between the UK and these countries going forward will be covered by the previous bilateral social security agreements (except for Liechtenstein where there is no agreement, and therefore it is expected that the domestic legislation of both the UK and Liechtenstein will apply). There is, accordingly, a different position for movement between the UK and each of these countries. This could change in the future, depending on specific arrangements agreed between the UK and EFTA countries, or through the EFTA countries acceding to the TCA.

Conclusions

The fact that an agreement was reached on social security and reciprocal healthcare and benefits is clearly a good thing, and means that in most cases the spectre of double charges has receded. There are concerns, though, and the lack of an “exceptional circumstances” provision for longer-term assignments is likely to be challenging, in practice. There are fewer potholes than feared in the road ahead, but there remains a risk of it being a little bumpy.