

# United Kingdom: HMRC provides clarification on the post-Brexit Social Security Protocol

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## In brief

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The United Kingdom (UK) authorities have provided clarification and guidance in relation to a few points that remained unclear on the applicability of the Social Security Protocol within the new Trade and Cooperation Agreement post-Brexit.

This Insight looks at what Her Majesty's Revenue and Customs (HMRC) has stated, especially the interpretation of the concept of 'interruption' and the treatment of consecutive assignments, critical to mobile workers.

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## In detail

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HMRC has now answered some of the questions around how it will interpret the new rules. The responses, which arose from the conversations in the Expat Forum, follow HMRC's consideration of queries raised by participants at the Forum.

**1. What constitutes an 'interruption' which ends the Withdrawal Agreement treatment and means that the individual is now covered by the UK/EU Social Security Protocol?**

Where an individual has Social Security coverage issued under the preceding EC Regulations, they are able to continue relying upon those rules provided there is no 'interruption' as per Article 30(1) of the Brexit Withdrawal Agreement. The UK authorities have indicated the following: *'a gap of up to 30 days where an individual would not be in a situation set out in Article 30(1) of the Withdrawal Agreement, would not constitute an interruption. Any gap longer than 30 days will be considered on a case by case basis.'*

HMRC's guidance indicates that where an individual 'interrupts' the cross-border arrangement by having a gap in excess of 30 days, they would then come within the scope of the Protocol as opposed to the pre-Brexit rules.

An interruption of less than 30 days would suggest coverage under the EC rules would still be possible, although HMRC does reserve the right to consider on a case-by-case basis: *'a gap occurring at the end of the Transition Period (31 December 2020), even if shorter than 30 days, can result in the individual being outside the scope of the Withdrawal Agreement where they are not in one of the situations in Art. 30(1) at the end of the Transition Period (and are not in scope of Art. 30(3)).'*

The [Withdrawal Agreement](#) does have full details of the Article 30(1) criteria and who may still be able to obtain A1 coverage under the transitional rules.

**2. What is the minimum cooling off period between detachments back to the same EU Member State (in order to do a different role) for an individual to be eligible for a new certificate under the detached worker provisions and to remain insured in the home country?**

An equally important point for employees is to maintain their affiliation to the home social security scheme when undertaking various assignments. Often an individual may undertake consecutive assignments in a host location. Given the new maximum coverage period is two years for a detached worker, how long would an individual need to return to the UK before being reassigned to the same host country?

The UK authorities confirmed that: *'once a worker, who is covered by the social security coordination Protocol of the Trade and Cooperation Agreement, has ended a period of temporary work in another State, no fresh period of temporary work for the same worker, the same undertakings and the same State will usually be authorised until at least two months have elapsed from the date of expiry of the previous temporary work period. Derogation from this principle will, however, be permissible in specific circumstances.'*

In this instance, it will be necessary for an individual to have a minimum of two months working back in the UK for them to be eligible for a new certificate in respect of a new assignment in the same host location. This is in line with the EC Regulation 883/2004. HMRC does reserve the right to vary this timescale, however.

What does remain unclear is how back-to-back assignments to different locations will be treated and whether it will be possible to apply for different/consecutive A1 certificates. It would seem prudent to have a period of at least one month back in the UK between assignments governed by the Protocol to minimise risk of rejection by the authorities.

**3. Additional Clarifications provided by HMRC**

EU, EEA, EFTA and multi-state workers

HMRC confirmed that the UK is currently negotiating a new EEA EFTA wide Social Security agreement with Iceland, Liechtenstein and Norway plus a new agreement with Switzerland.

The agreements aim to confirm the liability to the Social Security scheme of one country at a time, primarily based on what is in the best interest of the individual. Nevertheless, until the new agreements are effective, we will need to rely on the bilateral agreements in place before any European Regulations came to prominence.

Where an individual is moving across borders within these countries, in addition to other EU locations, HMRC considers that it will be necessary to obtain separate certificates under the agreement signed with each country of relevance and the Protocol.

The bilateral agreements with Switzerland and Norway do not cover multi-state working scenarios so an individual may be liable to dual contributions. As such, HMRC is encouraging any worker who is carrying out an activity as an employed or self-employed person in the UK and either Switzerland or Norway to apply for an exception to ensure that they only pay into one countries' scheme at a time.

Displaced workers due to COVID-19

The UK authorities have confirmed, once again, that each case will be assessed separately to determine whether or not an individual will be eligible for an A1 certificate issued under the Withdrawal Agreement or the Protocol. The main points that will be taken into account when making this assessment, will be the person's circumstances as a whole, including

their country of residence, the country or countries where they normally work, and the impact of any COVID-19 related restrictions on their travel and work.

Generally speaking, HMRC confirmed that individuals who are or have been subject to UK Social Security legislation can apply for an A1 certificate to confirm that they remain liable to pay UK National Insurance Contributions (NIC) or were liable during a period in the past (possibility to apply retrospectively). Where these individuals are or were in one of the situations listed in Article 30(1) of the Withdrawal Agreement, they will be able to request an A1 certificate issued under the Withdrawal Agreement.

#### Miscellaneous

HMRC also provided additional clarifications on the following:

- UK touching frontier workers will continue to only pay into one country's Social Security scheme at a time. The example cited was UK-Ireland workers.
- The rules set by the SI 1992/3211 on UK nationals excluded from the scope of coverage of the UK-Iceland Agreement still apply

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## The takeaway

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Following on the clarifications and guidelines provided by HMRC, it is important that employers and employees are aware of the changes and the various facets of Social Security beyond the Transition Period and, in this context, that they are advised on the best ways to fulfil their compliance requirements..

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## Let's talk

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For a deeper discussion of how this impacts your business, please contact your Global Mobility Services engagement team or one of the following professionals:

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