



Social security updates post Brexit – what do you need to know?

After months of speculation, on 24 December 2020, the EU and the U.K. concluded an agreement which entered into force on 1 January 2021 when the UK officially left the EU.

Working abroad before 1 January 2021

Workers posted between the UK, EEA countries, Norway, Switzerland, Iceland, and Liechtenstein before 1 January 2021 will be covered by the Withdrawal Agreement which states that individuals will be protected provided their circumstances **remain unchanged**.

In essence, an individual with an A1 certificate in place before 1 January 2021 will continue to be covered by that A1 and they can continue contributing to their home country's social security regime.

Moreover, it is possible to extend existing secondments under the withdrawal agreement. For example, if a secondment will end in July 2021, it is possible to extend the period of coverage for 24 months as long as the cross-border situation continues uninterrupted.

Working abroad after 1 January 2021

New protocol on social security coordination has been implemented from 1 January 2021. The protocol reinforces the principle that only one state's social security legislation shall apply and stipulates that the default rule is contributions are due "where you work". However, there are exceptions mentioned below.

Multi-state workers

Article 12

The Protocol states that individuals normally working in one country but spending at least 5% of their time working in another country (UK or EU country) is considered a multi-state worker.

The rules for multi-state workers remain broadly the same, in that social security contributions are due in the country in which the individual is habitually resident, provided they spend at least 25% of their working time in the home country.

If the 25% rule is not met, then social security will likely be due in the country in which the employer is located.

If individuals have a mixed activity (self-employment and employment), the employment takes precedence over the self-employment activity and therefore determines the applicable legislation.

Moreover, for multi-state workers, the rules regarding period of coverage remain unchanged; there is no 24-month limit on A1 certificates.

Detached workers

Article 11

All EU countries have opted into a set of rules known as the 'detached worker' rules. These rules remain broadly the same as under the previous regime with some notable changes:

- An employer can continue to send their employees to perform work in another state and the employee in question will remain under their home country's social security regime.
- The period abroad cannot exceed 24 months. Where previously there was scope to extend the 24-month period, this is no longer the case.
- This will have repercussions where employees are being posted abroad to jurisdictions with higher social security regimes for longer than 24 months.
- For employees posted to another state for more than 24 months, assuming they are not multi-state workers, social security would be payable in the other state (not the home country) from their first day of work.

There was an option to 'opt out' of these rules by 1 February 2021 but it has been confirmed that all EU countries have individually agreed to apply the detached worker rules.

Employees posted to EFTA countries are not covered under the new Protocol and separate bilateral agreements are now in force.

Iceland:

social security contributions can continue in the home country for up to 12 months if individuals are employed and are non-UK and non-EEA nationals. Under certain circumstances, this can be extended for a further year

Liechtenstein:

no existing agreement is currently in place so there may be a double liability in home and host country. Therefore, the 52-week rule will apply, and UK social security will be still due.

Norway:

social security contributions can continue in the home country for up to 36 months. Application must be made within the first 4 months of the start of posting.

Switzerland:

social security contributions can continue in the home country for up to 24 months.

Certificates of coverages must be obtained from the home countries to confirm the social security position.

Employer obligations

Employers should continue to apply for A1 certificates where applicable on behalf of their employees going to work in the UK or EU to ensure there is no social security liability in the host country.

The A1 process remains largely unchanged with the exception of some additional questions added to the form.

In cases where employees are liable to the host country social security regime then as an employer you are responsible for registering and paying employer social security contributions in the relevant jurisdiction.

Some countries allow for the employee to account for both employee and employer social security, but this would need to be evaluated on a case by case basis.

How we can help

At James Cowper Kreston, our specialist global mobility tax team can offer a wide range of assistance to ensure your employee population are not only compliant with the UK social security rules, but also the rules in overseas jurisdictions from both an employer and employee perspective.

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