



Post-Brexit Immigration and Social Security

The Trade and Cooperation Agreement's impact

January 2021



On 24 December 2020, the UK and EU agreed upon a trade deal laying out the terms of their economic relationship after the transition period. On the night of 31 December 2021, the transitional period for EU legislation ended, leaving little time to review and begin the heavy task of implementing the new deal. We've examined the Trade and Cooperation Agreement's impact from an immigration and social security perspective.



Immigration

As expected, the Trade and Cooperation Agreement between the UK and the EU did not include immigration specifically. As a result, UK nationals intending to stay in an EU Member State for periods exceeding 90 days and for any purpose (e.g. work, research, study, training), will be subject to the same rules applicable to third country nationals, as set under EU law and Member States' national laws. EU citizens intending to move to the UK will need to comply with the new immigration scheme established by the UK government.

Who?

The Trade and Cooperation agreement covers nationals from all EU Member States as defined by their respective national laws, as well as British citizens.

What ?

The agreement provides some protection for short term business visitors, business travelers performing company establishment activities, as well as intra-corporate transferees, and requires that all countries are prohibited from implementing limitations such as quotas or economic needs tests for these individuals. It is important to note that there are currently several country specific restrictions for business visitors obtaining a business work permit exemption, which may be corrected by Member States in the future. The details of the agreement must be implemented in national law, and it is likely that some variation will occur in the practical application of the measures agreed upon in the trade deal.

Visa free travel: From 1 January 2021, the EU will allow UK nationals short-term visa-free visits of up to 90 days within any 180-day period. The UK will also allow visa-free short-term visits for EU citizens for up to 6 months. The EU rules are dependent on reciprocity, hence are conditional upon the UK continuing to allow equal visa-free travel for short-term visits from all EU countries, without any discrimination against certain EU nationals. If the UK introduces a visa requirement for nationals of at least one Member State in the future, the visa-free status of UK nationals could be revoked by the EU.

Short Term Business Visitors: Under the Agreement, UK business travelers will be allowed visa-free visits to the Schengen Area for up to ninety days within a six-month period. The UK will be bound by this provision as well; however, the UK will allow EU nationals to visit its territory on business for stays of up to six months without any visa requirement. The UK and the EU will be prohibited from imposing a work permit requirement, an economic needs test or other pre-travel approval on business visitors (performing approved business activities) from one another's territories.





Some of the approved business activities listed in the Agreement differ from those included in current EU Member State and UK national legislation. It is unclear whether all countries will in practice allow all activities included in the Trade Agreement to be undertaken by business visitors.

Permitted activities included in the agreement include, but are not limited to :

- a) meetings and consultations: attending meetings or conferences, or engaging in consultations with business associates;
- b) research and design: technical, scientific and statistical researchers conducting independent or other research;
- c) commercial transactions: management and supervisory personnel, and financial services personnel (including insurers, bankers and investment brokers) engaging in a commercial transaction;
- d) training seminar;
- e) trade fairs and exhibitions;
- f) sales: representatives of a supplier of services or goods taking orders or negotiating the sale thereof, or entering into agreements to sell services or goods for that supplier, but not delivering goods or supplying services themselves. Short-term business visitors should not engage in making direct sales to the general public;
- g) purchasing: buyers purchasing goods or services for an enterprise, management or supervisory personnel, engaging in a commercial transaction;
- h) after-sales or after-lease service;
- i) tourism personnel: tour and travel agents, tour guides or tour operators attending or participating in conventions, or accompanying a tour;
- j) translation and interpretation

Activities not falling within the scope of the exemption may require prior authorisation, even for short visits. The Agreement also provides some protection for senior level UK and EU business travellers, visiting the other territory respectively, and performing company establishment activities.

Intra-company transfers: The agreement allows for managers, specialists or graduate trainees to be temporarily transferred from one group company to a representative office, subsidiary, branch or parent company, which belongs to the same group entity and is established in the UK or EU Member State.

UK ICTs will be allowed for work in the EU for up to three years for managers and specialists, and up to one year for graduate trainees, which is consistent with the EU ICT framework.

The UK will be bound by this provision as well; however, UK law currently allows ICT permit holders to remain in the country for up to five years in a six-year period, **or** nine years in any ten year period if the ICT will be earning GBP 73,900 or more per year.



Social Security

The Trade and Cooperation Agreement also includes 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 existing EU coordination rules on social security.

Whilst many of the provisions in the Protocol are similar to existing EU social security coordination rules in Regulation 883/2004, and will be familiar, there are several key differences of which employers should be aware.

Who ?

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

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

What (not)?

One single applicable legislation: workers covered by the Protocol will be subject to social security in only one country at a time, which will generally be the country in which work is performed, although there are specific provisions for 'detached workers' (assignees) and multi-state workers. Consequently, double or no coverage remains impossible for EU/UK situations.

Assignments of maximum 2 years: specific rules for assignees cover assignments of up to 24 months, and these essentially mirror existing posted/seconded worker rules in EU





Regulations that allow continued home country coverage for up to 24 months. However, each EU Member State needed to notify whether they would abide by this rule or opt-out, having until 31 January 2021 to confirm their position. Meanwhile, all EU Member States and the UK have opted to apply the secondment rule.

The absence of an “exceptional agreements” clause in the Protocol, equivalent to Article 16 in EU Regulation, is noteworthy. As such, the UK and an EU Member State cannot agree to override normal provisions, which would mean that certification and home country social security coverage would not be available for assignments exceeding two years in duration.

Identical rules for simultaneous employment: The provisions on multi-state working arrangements mean that individuals should be covered on the same basis as that under existing EU Regulation.

Most social security benefits still covered: There are provisions in the Protocol regarding the coordination of most social security benefits (benefits in case of unemployment, sickness, invalidity, pre-retirement, old-age, maternity/paternity, death, accidents at work and occupational diseases) between the UK and the EU, so that they apply on largely the same basis as under EU Regulation, and so that individuals largely preserve their social security benefit rights through key principles such as equal treatment, aggregation of periods and export of benefits. However, unemployment and invalidity benefits are explicitly excluded from the export principle.

Some benefits now explicitly excluded: some benefits will no longer be coordinated in EU/UK situations, such as family benefits (e.g. child allowances), long-term care (schemes related to institutional and informal care for dependent persons), special non-contributory benefits (social benefits often linked to minimum subsistence) and assisted conception services. Access to these benefits will be dependent on domestic legislation, which may not offer (similar) entitlements.

Health care still covered: Reciprocal healthcare arrangements will be in place, largely mirroring current arrangements (EHIC, S1, S2, etc.) despite several quirks in practice. For example, the UK stated that it will issue Global Health Insurance Cards (GHICs) – replacing EHICs 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 remain valid until their expiry date. For longer stays, additional health care requirements and costs may apply (such as the Immigration Health Surcharge in the UK).

What about UK-EFTA situations?

The Protocol does not cover EFTA countries Norway, Iceland, Liechtenstein and Switzerland, as the territorial scope of the TCA is limited to the UK-EU relationship. Therefore, the social security position between the UK and these countries going forward will be covered by previous bilateral social security agreements (except for Liechtenstein where there is no agreement, and therefore likely that the domestic legislation of both the UK and Liechtenstein will apply). Accordingly, there is 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 potentially acceding to the TCA.

Deloitte's view

Employers and employees will welcome the fact that an agreement has been reached on social security and reciprocal healthcare and benefits, with further clarifications that can be expected over the weeks following the time of writing. However, the fact that home country coverage is limited to 2 years for assignees will likely be challenging.

Employers should therefore consider taking action for future assignments, such as:

- Keeping close track of business travelers between the UK and EU to ensure business visits are truly limited to the allowed 90 days within 180 day periods in the EU, or limited to the 6 months allowed in the UK;
- Reviewing internal policies regarding business travel, and ensure that the changing rules are taken into account. Activities currently being performed in the EU and UK without work authorisation may now require formal permissions, and must be reviewed to ensure compliance with the shifting rules;
- Planning new assignments and transfers well in advance of proposed start dates, to account for processing times of work permit and visa applications as required;
- Limiting UK touching assignments to/from EU Member States, at least at the outset of a maximum 24 months, to keep individuals under home country social security coverage for as long as possible; Assessing the impact of different applicable rules for UK moves to/from EFTA countries, and whether this leads to increased costs; and
- Any actions that need to be taken to prevent the loss of benefits (particularly family benefits) for assignees, such as benefit equalisation.

Employers will also want to consider the need to budget for any potential additional costs, the ongoing challenges of payroll compliance and what their future assignment policies should be, including whether they want to equalise affected employees on any additional costs they may face. Employers may also want to look at how these and any other necessary changes can be communicated to their employees in the best possible way.





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