



Boardroom Brexit: What the deal means for mobility

BOARDROOM BREXIT

31 December 2020

By: Lisa Roberts | David Smith

Short-Term Business Travel

From 1 January 2021, freedom of movement between the United Kingdom and European Union will end. There are, however, some provisions in the TCA regarding the temporary movement of those carrying out business-related activities between the UK and EU. The provisions are specific and are separated into four areas:

- Engaging in intra-corporate activities
- Contract Service Suppliers (CSS)
- Independent Professionals (IP)
- General short-term business visitors

Each area has its own set of provisions and parameters, particularly for CSS and IP which will be further limited to certain specific sectors. Under each area, some EU countries will retain further control over the permitted activities, therefore businesses should not assume that activities which are permitted in one country, apply to another country, even if geographically close to one another. As with other provisions within the TCA, the areas must be ratified into domestic law which may mean certain countries' interpretations of the agreed principals may be narrower in application.

When seeking to rely on the above four areas, businesses must carefully examine both the EU law and domestic implementation of these provisions to ensure their business meets the qualifying criteria. In most instances, some form of approval will likely be required from the respective domestic authority prior to partaking in such activities and each area is time-bound, depending on the activity undertaken. Individuals wishing to permanently relocate to the UK or an EU member state will fall under domestic immigration law of that particular jurisdiction and legal advice should be undertaken prior to any relocation taking place.

A welcome part of the TCA is a defined list of short-term business visitor activities which may be performed within the UK and EU. As with the other areas, some countries have retained an element of control over certain activities, requiring prior authorisation or further restrictions. Like with CSS, IP and intra-corporate activities, it should not be assumed that business activities in one member state can automatically be performed in another and businesses must pay due care and attention when sending business travellers into the UK and EU. The activity list is nonetheless welcome to many businesses as it provides some clarity on the permissible activities for business visitors, once international travel resumes post-Covid. It should be noted that the 90-day rule will remain in place for business travellers, meaning individuals must restrict their travel into the EU to 90-days in any rolling 180-day period. For frequent business travellers, this will involve further administration to ensure this 90-day limit is not breached.

Social Security

The TCA contains a specific Protocol on national insurance/social security coordination to ensure that individuals who move between the UK and the EU in the future will have their social security position in respect of certain important benefits protected. This includes taking into account contributions paid into each other's social security systems for the purposes of determining entitlement to state pensions and the continuation of reciprocal healthcare cover.

Helpfully (for both individuals and businesses) the protocol confirms that contributions will only be payable in one state at a time, avoiding the concern that double contributions could have become payable for EU cross-border workers post 1 January 2021. As a general rule this will be the state in which the individual is physically working, although special rules have also been included for multi-state workers along with a continuation of the current 'detached worker' rule for individuals posted by their employer to work in an EU member state/the UK for periods of up to 24 months (although this 'detached worker' rule is only intended to operate on a transitional basis (for up to 15 years) and will only apply to those individual EU member states who opt for it to apply).

AUTHORS



Lisa Roberts

Senior Associate

London | T: +44 (0)20 7349 0296 [UK Switchboard]

lisa.roberts@dlapiper.com



David Smith

Partner

Leeds | T: +44 (0)20 7349 0296 [UK Switchboard]

david.smith@dlapiper.com
