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## ***Brexit after TCA: update***

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*Overview of immigration, employment and social security consequences*

# Meet our expert



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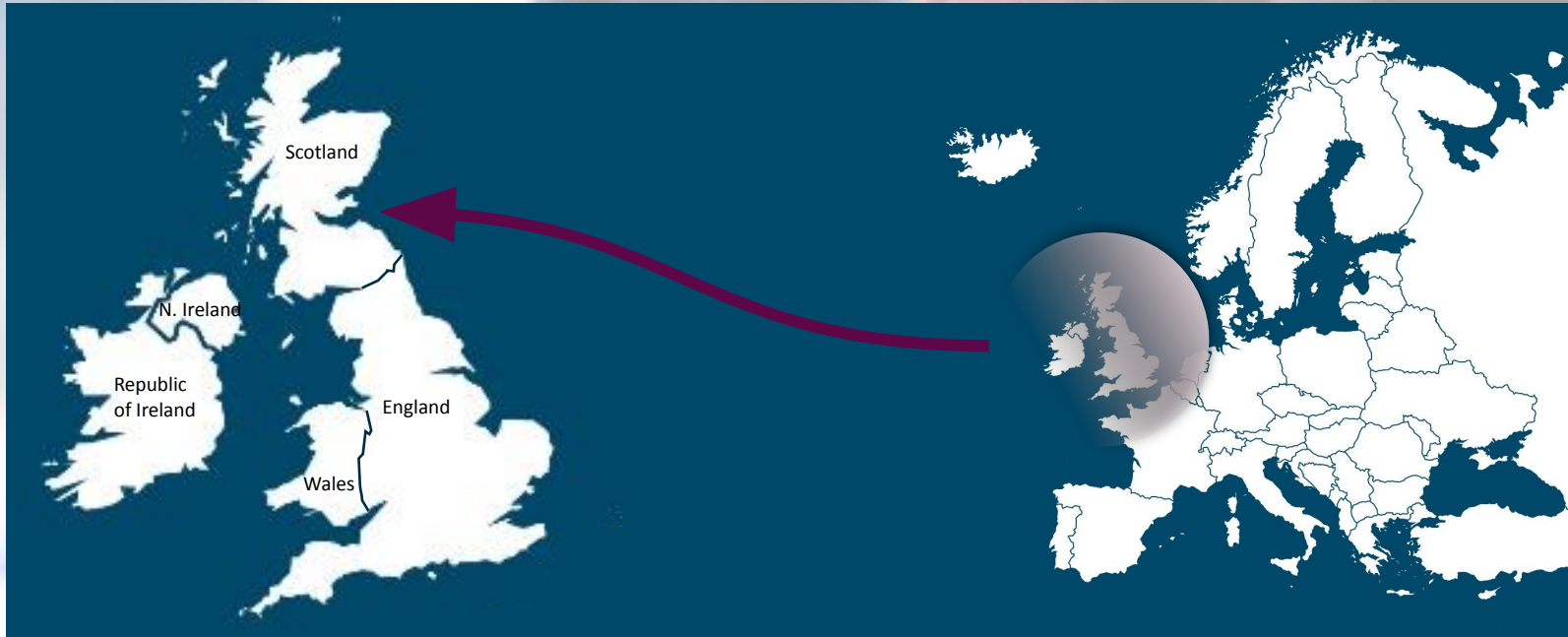
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# Introduction: the setting



# The separation...





# The separation saga....





# The Trade and Cooperation Agreement Impact

- 24 December 2020: the UK and the EU agreed upon a trade deal laying out the terms of their economic relationship after the transition period; i.e. the Trade and Cooperation Agreement (TCA) – relationship with EU
- 31 December 2020: the transitional period provided for by the Withdrawal agreement ended



# Immigration: residence and right to work



# Introduction

*In principle:*

- Until **31 December 2020** the UK and EU citizens may continue to work and live in both 'countries'; free movement of persons/workers
- As from **1 January 2021**: 'third country nationals' principle and end of free movement of persons/workers





# Right to reside and work in the EU

**31 December 2020**

UK citizens who obtained **legal residence before 1 January 2021** and **frontier workers** may in principle continue to work and live in the EU Member State



**1 January 2021**

UK citizens **wishing to reside and work (newly) as from 1 January 2021 in an EU Member State** will be considered as third country nationals



**1 January 2021**

Check deadline for applications on Withdrawal agreement or Work permit/visa Residence permit



# Right to reside and work in the UK

## 31 December 2020

- End of free movement and transition period
- EU nationals to arrive in the UK before 11pm to qualify for EUSS



## 1 January 2021

- New points-based immigration system phased in
- EU nationals not eligible for EUSS to apply for sponsored visas



## 30 June 2021

- Deadline for applications to the EU Settlement Scheme



# The Trade and Cooperation Agreement Impact

- Business trip definition:
  - Specific legislation in each Member State, if any
  - **TCA has broad interpretation**
    - Research and design;
    - Commercial transactions and Trade fairs and exhibitions
    - Sales and purchasing
    - ...
  - Not actual work
  - ‘blended assignment’ (business trip combined with teleworking)



# The Trade and Cooperation Agreement Impact

- ICT permit (Intra Company Transfer)
  - Intra-group transfer
- Residence:
  - no visa as visa waiver program is in place for 90 days stay in 180 day period in the EU
  - no visa as visa waiver program for up to 6 months in the UK



# Brexit & EU social security coordination



# Brexit & EU social security coordination





# Brexit & EU social security coordination

## Situation *present* before 1/1/2021:

EU Regulations  
determine applicable  
social security scheme  
883/2004 and 987/2009

Cross-border  
employment situation  
involving EU and UK

Situation started  
before 1/01/2021

Uninterrupted (any  
UK/EU link is  
maintained)

EU social security  
coordination rules  
continue to apply



# Brexit & EU social security coordination

Situation *commencing* 1/1/2021

TCA

New cross-border employment situation  
involving EU and UK

Interruption (no UK/EU link is  
maintained)

Legal residence in the EU and situation  
is not ruled by Withdrawal A

Similar rules as 883/2004 but different!





# Brexit & EU social security coordination

Situation *commencing* 1/1/2021: posting

Posting from EU to UK  
(employee)

TCA (all EU  
member States  
agreed)

Maximum 24  
months/no  
extension possible

Posting from UK to EU  
(employee)

TCA (all EU  
member States  
agreed)

Maximum 24  
months/no  
extension possible



# Brexit & EU social security coordination

Situation *commencing* 1/1/2021:  
simultaneous employment

Identical rules as Regulation  
883/2004

Will depend on factual  
circumstances of individual case



# Brexit & EU social security coordination

## Social security benefits (healthcare, unemployment, pensions, ...)

Previous periods of insurance, work or residence in other EU countries

**New / interrupted cross-border situations (as from 1 January 2021)**

**Withdrawal agreement  
“pre-existing & uninterrupted  
situation” (existing on 31 December  
2020)**

**Rules on aggregation of periods apply but  
with exceptions (check)**

**EU Regulations continue to apply  
(including aggregation of periods of  
insurance, work or residence)**

**Family and long term care benefits are  
excluded from coordination  
Unemployment and invalidity benefits are  
excluded from export**



# Brexit & EU social security coordination

## Tips for HR – Analyse the situation beforehand!

- For withdrawal agreement situations: make sure you can demonstrate that the situation started before 1/1/2021
  - ➔ Apply for A1 certificate or E101
- For new / interrupted cross-border situation: analyze the social security coverage!
  - ➔ Timely involve the competent social security authorities



# What impact will Brexit have on Employment Law



# The Trade and Cooperation Agreement Impact

## □ TCA: Fate of Current EU Laws after 31/12/2020

- The effect of all EU laws, that have important impact on labour law, should be preserved in a “*new body of retained EU Law*”: TUPE, Safety, Rome I, WT
- **BUT** would be unilaterally modifiable by the UK




# The Trade and Cooperation Agreement Impact

- **Fate of New EU Laws after 31/12/2020**
  - New EU laws will NOT be applicable




# Employment law within the UK as from 1/1/2021

- In  changes in some areas protected by EU laws may be expected...
- ...that would be **less protective** for workers, by two means:
  
- **Concerned areas may be:**
  - **Transfer of undertaking:** ▼ Dismissal protection ▼ Harmonization
  - **Working time: 48 hours /week** ▲
  - **Interim worker's protections** ▼





# Impact of Brexit on Cross-border Mobility

- **As from 1/1/2021:** UK Act of 29 March 2019:  
Rules of **Rome I Regulation 593/2008** are retained under UK Law ...  
...for the time being.
  - Future changes may be expected 
- **Posting directive** particularities



# Impact of Brexit on Cross-border Mobility

## Principles of EU Regulation Rome I Designating Applicable Law

Choice of law by Parties?


NO

YES

1. Habitual Performance Country's Law  
(/!\ Temporary mission abroad = no impact)

2. Failing, country where employee hired

OR, if the contract closely connected  
to another country  
 That country's Law

BUT protection of  
mandatory rules of the  
applicable law in the  
absence of choice is  
Guaranteed 



# Impact of Brexit on Cross-border Mobility



## Practical Examples

Permanent employee in Belgium



**As from 1/1/2021:**

- ❑ Rome I Regulation applies
- ❑ Belgian law
- ❑ However you might want to change some clauses mentioning the EU (including the UK)



# Impact of Brexit on Cross-border Mobility

## Practical Examples

Posting permanent worker from  to 

As from **1/1/2021**:

**Employment contract concluded...**

**...before 31/12/2020**

Rome I applies

- ☐ In principle no changes
- ☐ Belgian law applies ... under the assumption that UK Overriding

**Mandatory Rules do not apply**

**...after 1/1/2021**

Rome I rules retained for the short term

- ☐ Uncertainty about future posting rules
- ☐ Consider Adapting



**Posting Addendum!**



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# Contact



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