

## Employment: Social Welfare

### *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019*

#### Most relevant to

- Companies with cross-border employees (particularly between UK and Ireland)
- Cross-border employees



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One of the four freedoms enjoyed by EU citizens is the free movement of workers across the EU.

EU policy has evolved over time to promote this freedom. For example, individuals insured for social security purposes in the EU Member State in which they work are entitled to be treated on an equal footing with nationals of that member state when it comes to availing of social welfare benefits. This principle is particularly relevant on the island of Ireland where an estimated 23,000 to 30,000 people cross the Irish border daily to go to work and others cross the Irish Sea weekly to work. This cross-border existence means that it is essential that social welfare contributions made in both jurisdictions are aggregated when it comes to availing of social welfare benefits.

The ability to aggregate cross-border contributions is governed by EU social security rules which protect the social security rights of mobile workers. These rules will no longer automatically apply after Brexit because the UK would be outside the EU. For that reason, the British and Irish governments recently entered into the Convention on Social Security between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland, which ensures continuity of Common Travel Areas social protection arrangements for Irish citizens living in the UK and UK citizens living in Ireland.

#### What does the Act say?

The Act provides for a number of amendments to Ireland's Social Welfare (Consolidation) Act 2005, the majority of which are technical in nature.

The most material amendment proposed is the granting of the power to the Minister for Employment Affairs and Social Protection to make an order to provide for the implementation of the Convention on Social Security, if that is required in circumstances where the bilateral ratification process has not been completed by Brexit day.

The recently agreed Convention on Social Security is to be welcomed, at least insofar as it confirms the current position as regards the social welfare entitlements of UK citizens working in Ireland and vice versa. It effectively ensures social security contributions paid by UK and Irish citizens can be used to meet entitlement criteria for accessing social welfare benefits in either State. However, the position in respect of other EU nationals remains unclear. The 2019 Act effectively does no more than ensure that this Convention can be implemented by Ministerial order if, whatever reason, the Convention ratification process has not been completed in time.

Irish-based employers with multinational workforces will need to keep track of political and legislative developments as the situation evolves. If a no-deal Brexit arises, employers might find that non-Irish citizens are unwilling to work in the UK as their ability to avail of social welfare benefits could be adversely impacted.