

AN INTRODUCTORY GUIDE **EU BUSINESS TRAVEL**



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CHAPTER 1.

THE UK AFTER EXITING THE EU

The UK has left the EU and is now in the transition period. Whilst we are no longer a Member State, no longer a member of the Customs Union, Single Market or EEA, there will be little change until after the transition period ends on 31 December 2020. After this time the UK will receive 'less favourable treatment' as we are no longer a Member of the EU. This will lead to increased friction and administration when travelling to the EU.

Whilst we are in the transition period, we are treated like a Member State. This means complying with current EU rules concerning the mobility of workers between Member States. This also means we are obliged to meet the EU rules for the Single Market for services until 31 December 2020.

There are existing provisions that protect the rights of workers who travel to the EU but these are sometimes not adhered to and are often little known to most companies that send workers to the EU.

These existing rules will be subject to change in July 2020 and there will also be increased enforcement in the EU to ensure greater compliance.

Where there is non-compliance, fines will be issued. These are payable by the employer responsible for sending the worker to the EU.

This guide will help you understand the existing rules, the changes that will come into force in July, and what you will need to do to help prepare your company comply thereafter.

CHAPTER 2.

OVERVIEW OF EU BUSINESS TRAVEL

Travelling to the EU for work or on behalf of one's company has always been straightforward when compared to travelling to third countries outside the EU.

Therefore, it is not always obvious what the requirements for employers of EU business travelers are, but they apply to anyone who travels to a Member State on behalf of their company.

The definition of business travel includes attending meetings, conferences, research and training.

Further, it also includes those who provide services and are carrying out work whilst in the Member State(s).

At Make UK, we know the scale of the changes ahead.

The UK Government does not track the number of workers who travel to the EU for work very accurately and, it is believed that there could be over 1 million such business trips a year.

However, most companies also don't automatically track their workers who travel to the EU either and so there is little accurate data on how many UK workers are traveling to the EU.

This guide will tell you how to map your company data and help you identify how many workers and business trips you are dealing with.

CHAPTER 3. PART 1

SHORT-TERM BUSINESS VISITORS

There are two categories for workers who travel to the EU for business. They are defined by reason of not for travel, not their length of stay. The first category is a business visitor.

A business visitor means that the worker is merely visiting and will be in a Member State for meetings, conferences or training, attending a trade fair or similar activity. Under no circumstances will they be providing a service and/or working. If the business visitor is attending a conference and also providing services then they should be regarded as a service provider for the entire trip.

Compliance with EU business travel rules will be subject to increased enforcement from July and this will affect business visitors from the UK.

There are a number of common rules of compliance for business visitors that will include the following when traveling to any Member State of the EU:

- 1. Advance notification before travelling**
- 2. Providing documentary proof including, e.g. conference invitation, travel receipts and hotel bookings.**
- 3. Proof of UK NICs payment (A1 form)**

However, in order to comply with these rules, you must begin by mapping your company data. (Page 7)

CHAPTER 3. PART 2

SHORT-TERM BUSINESS VISITORS

The rules for business visitors will take time to comply with. You will need to factor in the time it takes to collate your company data and send required information to the Member State your worker is travelling to. This information will need to be provided by a specific date before travel and you will need to wait before you receive authorisation to travel.

1. Advance notification:

This requirement is to notify the host State in advance of travel and you must include the reason for travel. You will have to identify the right contact with the host State, for example, their labour inspectorate. They will be your point of contact to send the documents through.

2. Proof of travel:

It is likely that the host Member State that your worker is travelling to will need to see a conference invitation or similar meeting confirmation. This can also include travel tickets and hotel bookings and evidence of means to show that you are simply visiting the Member State, can support yourself whilst there, and intend to leave afterwards.

3. Proof of UK NICs payment:

You will need to bring, show and send in advance, your A1 form. A1 forms are issued by HMRC and can take anywhere between days to months to receive. ¹See annex A for application process for an A1 form.

¹An A1 form is a tax form. It show that you pay social security in the UK. Providing this ensures you won't be paying tax twice.

CHAPTER 4.

MAPPING YOUR DATA – BUSINESS VISITOR

Before you can prepare for the changes to the rules on the mobility of workers in July, and after the end of the transition period, you will need to find out:

1. The volume of business trips that your workforce undertakes:

You need to know how many business trips are undertaken a year. A trip is a single visit, not the number of workers undertaking these trips. For example, one worker travelling to a Member State three times is three trips; a worker during one trip travels to two Member States should be seen as taking two business visits, rather than one

2. Who is going:

You will need to identify who is travelling to EU Member States for visits and what their occupation is.

3. The reason for travel:

Within the business visitor category, you must ensure your workers are not providing services. They are travelling for example, for meetings, conferences or training.

4. Length of visit:

It is important you know how long in the EU the worker stays for.

5. Where to:

Finally, you need to know which Member State or States the worker travels to. Each Member State will have slightly different variations on the advance notification requirements and necessary proof of travel.

The sooner you are able to collate this information, the easier it will be to prepare your workforce for travel after July.

CHAPTER 5. POSTED WORKERS

The second category of business travel is a posted worker. The Member State that the worker normally works in is referred to as their home state, or country of origin, and the country that the worker is sent to temporarily for work is referred to as the host country.

This means you, as a posted worker, are travelling temporarily from one EU Member State to another, to provide a service. The service provided can be for another company as well as your own.

Agency workers sent to the EU to provide a service are also classified as a posted worker.

A service includes intra-company transfers, for example, secondments.

Compliance with EU business travel rules are subject to increased enforcement in July and they will affect posted workers.

These changes have been made to existing rules for posted workers, known as the posted workers directive² (PWD).

The new rules of compliance for posted workers include:

- 1. The calculation of remuneration for posted workers**
- 2. Limits of the duration of the posting**
- 3. Subcontracting chains, and liabilities for companies operating in them**

Proof of NICs payment (A1 form) and advance notification

²See page 9 for the PWD overview

CHAPTER 6.

MAPPING YOUR DATA – POSTED WORKER

Before you can prepare for the changes to the mobility of workers in July, and after the end of the transition period, you will need to find out:

1. The volume of your workforce that travels:

You need to know how many workers are sent from the UK to the EU a year.

2. Who is going:

You will need to find out who is travelling to EU Member States for work and what their occupation is.

3. The reason for travel:

Within the posted worker category, you must ensure your workers are providing services. They can be working for other companies and secondees.

4. Length of visit:

It is important you know how long in the EU the UK worker stays for.

5. Number of visits:

You will need to find out if your workers travel to more than one EU Member State.

6. Where to:

Finally, you need to know which Member State or States the worker will be travelling to. Each Member State will have different variations of the new rules of compliance.

The Posted Workers Directive (PWD) was originally drawn up in 1996 by the European Union, and is made up of rules and regulations regarding the temporary movement of workers within the EU.

The PWD aims to protect the rights of workers being sent to the EU to work temporarily by their employer and contains the different rules that will apply within each Member State of the EU.

The PWD ensures that the mobile worker is protected both by the labour law in their country of origin and the equivalent laws of the host country. However, employers have to be aware that there are 27 sets of rules (one for each member state of the EU) for any length of posting, even if the work lasts for a matter of days.

At the heart of the PWD is a set of 'hard core' rules of the host country that are to be met whenever a worker is sent to work temporarily. This is in order to protect mobile workers who normally work in one EU country and are sent to work in another temporarily.

The rules apply where:

- **An employer provides a service in a Member State and posts a worker(s) for work**
- **A company has subsidiaries established in different Member States and posts workers to them (intra-company)**
- **An employment agency in agreement with the employer posts a worker to a Member State**

The 'hard core' rules include the obligation for the sending employer in the home Member State to meet minimum standards in the host member state. They can be found in article 3(1) of the PWD and are as follows: minimum rates of pay, maximum work periods, minimum rest periods, health and safety at work, conditions for hiring workers through agencies providing temporary staff, employment conditions for pregnant women, women who have recently given birth and young people (under the age of 18), minimum paid holidays and equal treatment for men and women and other rules to prevent discrimination.

CHAPTER 7. PART 2

INFORMATION TO BE GIVEN TO POSTED WORKER

Before a worker is posted to another Member State, under EU law, the employer is obliged to provide the worker, in writing, and before departure with the following information.

This information must be provided to all workers who are posted for a consecutive period of more than 4 weeks. This period may be shortened by individual Member States.

The employer, in writing, must notify the worker of:

- **Country/countries where work is to be performed**
- **Anticipated duration of work**
- **Currency to be used for the payment of remuneration**
- **Where applicable, any benefits in cash or in kind**
- **Whether repatriation will be provided for**
- **Remuneration the worker is entitled to**
- **Any allowances**
- **Arrangements for reimbursing expenditure for travel board and lodge**
- **The link to the single official website of the host Member State containing posting information**

CHAPTER 8.

THE REFORMED DIRECTIVE

The Posted Workers Directive was amended in June 2018, containing extensive changes, and is now known as the Reformed Directive.

The implementation of these changes must take place by 30 July 2020 in each EU Member State's national law - this includes the UK.

Each Member State will (or already has) amend(ed) their Posted Workers' laws to comply with these changes, which cover the following topics:

- 1. Remuneration**
- 2. The duration of the posting**
- 3. Subcontracting chains**
- 4. Temping agencies**

Failure to comply with the new rules will result in substantial fines, for example, France has capped penalties at €500,000.

CHAPTER 9. REMUNERATION

The Reformed Directive states that “minimum rates of pay” will be replaced by “remuneration”. This will apply to allowances, such as travel and accommodation expenditure.

Therefore, when a worker is posted to an EU Member State, the employer will need to ensure they receive the local rate of pay, also referred to as the ‘going rate’, instead of the minimum wage. This is likely in most cases to mean that the posted worker will receive greater remuneration in this period.

Each Member State will set rules on remuneration aligned with its national law; wages may be set by each Member State and/or social partners. The local rate can be legislative, regulatory or set by a collective agreement.

Each Member State is responsible for ensuring the correct information regarding remuneration being provided on a single official national website.

Elements of remuneration must be identified in advance of travel and in detail with the local authorities in the host member state. These authorities will be carrying out the necessary checks and controls in line with the country of origin’s national law.

The EU have proposed that the essential elements of remuneration should by July, be published on the single EU website that was first provided in 2014. The site was created for service providers to ensure all employers are aware of the labour law applied in each Member State.

CHAPTER 10. PART A

THE DURATION OF POSTING

(A) Social Security considerations

Under the 2004 EU regulation 883/2004 for the coordination of EU social security systems, the maximum duration of a posting, for social security purposes, is limited to 24 months. This means that the posted worker may remain paying their social security contribution in the place where they normally work, their host country, during the time that they are posted elsewhere.

If a posted worker remains in their host country beyond that period, they are obliged to abide by that State's laws, and start paying their social security locally, where they are working during their posting. If it is known at the outset that the worker will be posted for longer than 24 months, it is advised that the worker should be subject to a local employment contract and their social security from the outset.

Options:

- 1. You pay social security in the host Member State during the entire length of posting.**
- 2. You pay social security in your country of origin up to a maximum of 24 months.**
- 3. You are posted for 18 months, and after this you are subject to the laws of the host Member State, e.g. you will receive a local employment contract. However, for the next 6 months, you can continue to pay social security in your home Member State.**
- 4. You are posted for 24 months and, subject to extending the usual 18 month limit, remain subject to your home Member State employment contract and continue to pay social security in your home Member State (see Chapter 10, Part B).**

Where a posted worker is replaced, by another worker performing that same role, (which is sometimes called a chain posting), then only the first worker may remain on their "home" country's social security system. The worker(s) that replace(s) then on the posting assignment, must pay their social security contributions locally, to the member state they are posted to.

CHAPTER 10. PART B

THE DURATION OF POSTING

(B)The Posted workers directive

From 30th July 2020, the reformed directive introduces new rules on the total duration of posting. These limits apply from the first day of work in a Member State and are not individualised; they therefore apply where posted workers are replaced by others performing the same task in the same place, or chain posting.

The total period of posting will then be the cumulative duration of all the worker(s) that have been posted in a chain and will be aggregated together. Also, there is no minimum posting period that applies to this rule, so a worker posted for a day will need to be included in the calculation and subject to all the rules for posted workers.

The rule also applies if the posted worker has been sent repeatedly to the same State and the cumulative duration is over 24 months. For example, if a posted worker is sent to work in an EU member state, and returns to their home member state at weekends, their period of posting will be unbroken by this absence of the entire period will count towards the 24 month time.

Despite this restriction, this does allow a posted worker to provide a service in the same State for up to 24 months without being affected by it's the local labour law of the host member state.

CHAPTER 11.

SUBCONTRACTING CHAINS

Member States are under the reformed directive implement specific rules for businesses in sub-contracting supply chains. This is not compulsory, but at the discretion of each individual member state. The measure applies to the remuneration rules, and are intended to safeguard posted workers and ensure that they receive the correct remuneration whilst in the host country.

Under the reform directive, a member state can ensure that posted workers receive their correct remuneration whilst posted to their member state by making all businesses in an entire supply chain liable for the worker's remuneration; this allows the worker to claim any shortfall from any business in the supply chain in which they work, whether or not they were employed by that business.

However, if the member state imposes this rule on businesses established outside of their borders, then they are required to impose the same rule on businesses established within their borders.

The measure is not limited to public procurement but can be applied to private contractual relations.

The liability for any shortfall of remuneration is shared amongst all the businesses in the supply chain and is joint and several; this means that workers can claim for any financial shortfalls against any individual business, or a number of businesses together. There is no easy way in which employers can determine whether the member state they are active in has introduced sub-contracting liability other than to check locally.

CHAPTER 12.

TEMPORARY EMPLOYMENT AGENCIES

There are existing rules for temporary agency workers that the UK has implemented through the Agency Worker Regulations. Similar rules apply in all Member States within the EU.

In general, agency workers enjoy the same employment terms and conditions as workers who perform the same work, but are directly employed.

Furthermore, posted workers, who are agency workers, must benefit from the most favourable terms and conditions that could apply. This means that posted agency workers will always receive the most advantageous terms to them whether these are terms that would apply in their host Member State or their home Member State.

The reform directive introduces a new principle of equal treatment, specifically for agency workers in addition to the principles of 'more favourable treatment', referred to above, and the provisions contained in the agency worker regulations.

A posted agency worker must also receive terms which are at least as favourable as those that apply to locally hired agency workers. Therefore, a worker posted to an EU Member State must receive terms which would apply to an agency worker who resides permanently in the host Member State.

The undertaking in the home Member State, which is responsible for posting the worker, is obliged to inform, in advance, the employment agency of the intention to post the worker to the EU.

In addition, the business in the host Member State will need to inform the temporary employment agency, of the terms of employment and remuneration that needs to be paid to the agency worker during the posting.

CHAPTER 13.

THE WIDER EU MEMBERSHIP RULES

If you post a worker to an EU Member State before January 2021, it is important to familiarise yourself with the wider EU Member State arrangements.

The posted worker;

- **Won't need a work permit.**
- **Will not need to have professional qualifications recognised; however, they may need to make a written declaration for some professions**
- **Will not have to deal with pension bodies from different countries. Social security institutions in the country(s) where the worker has been posted will not be involved. (Unless the posted worker chooses to pay social security in the host Member State).**
- **Will need to register their residence with the authorities if the posting lasts longer than 3 months.**
- **Will not accumulate rights to unemployment benefits in the host country.**
- **Will not gain rights to permanent residence in the host country.**

CHAPTER 14.

EMPLOYMENT OBLIGATIONS FOR POSTED WORKERS

There are three main employment obligations that you will need to prepare for in advance of posting a worker to an EU Member State.

1. Social Security

Posted workers are covered by the UK social security system and they can choose to continue to pay their NIC, in the UK, when posted.

Employers must provide proof of UK NIC payments with an A1 tax form, obtained from HMRC. These are usually valid for 24 months.

A1 forms are not available for chain postings, only the original posted worker (see above). Their replacements are obliged to pay their social security contribution in the host Member State from Day 1.

2. Income Tax

The UK has dual tax conventions with every single Member State. However, there are no EU-level rules that mandate where income tax is paid during a posting.

3. Advance notification

An employer needs to notify the host country in advance of a posting with at least the following information. Each Member State will have a different time limit for the provision of this information:

- i. Address of workplace(s) in the host Member State**
- ii. The duration of posting**
- iii. Contact details of the local representative of the employer**
- iv. Any other relevant documentation (employment contract)**

CHAPTER 15.

BELGIUM

Applies to all three regions; Brussels, Flanders and Wallonia.

- **Travel documents:** National Passport or ID Card.
- **Residence permit:** Inform authorities the duration of your temporary residence.
- **Employment authorisation and work permit:** Employer needs to obtain employment authorisation
- **Professional Pass:** Needed only for self-employed workers.
- **Professional Qualifications:** If you want to provide your regulated services temporarily, you will need to submit a prior written declaration. The declaration should be submitted in writing and in advance of posting. The declaration is valid for one year.
- **Transport authorisation:** This can be obtained from the host country. Apply in advance.
- **Social security:** Workers must provide their PD A1 form.
- **Tax:** Living in Belgium for at least 6 months: You have to pay tax on your worldwide income there. Living in Belgium for less than 6 months: You only pay tax on income earned in Belgium. Income from other EU countries: Make sure you never pay tax twice on the same income.

CHAPTER 16.

FRANCE

- **Travel documents:** National Passport or ID Card
- **Residence permit:** Register at the town hall in the town where you are staying within 3 months of arriving in France. You do not need a residence permit.
- **Employment authorisation and work permit:** You do not need a work permit
- **Professional Qualifications:** If you want to provide your regulated services temporarily, you will need to submit a prior written declaration. The declaration should be submitted in writing and in advance of posting. The declaration is valid for one year.
- **Transport authorisation:** This can be obtained from the host country. Apply in advance.
- **Social security:** Workers must provide their PD A1 form.
- **Tax:** You live in France for at least 6 months: you have to pay tax in France on your total income earned in France and abroad. You live in France, but for less than 6 months: you only have to pay tax on the income you earned in France. Income from other EU countries: Make sure that you don't pay tax twice on the same income.

CHAPTER 17.

GERMANY

- **Travel documents:** National Passport or ID card as well as supporting documents: employment contract, membership of a professional body.
- **Residence permit:** Apply for a 'right of residence' certificate. Only valid when shown with ID or passport. You do not need a residence permit.
- **Employment authorisation and work permit:** You do not need a work permit
- **Professional Qualifications:** Professionals of one of Germany's 60 plus regulated professions will need their qualifications recognised in Germany before they can begin work. Applications for recognition cost between €100 and €600. If you want to provide your regulated services temporarily, you will need to submit a prior written declaration. The declaration should be submitted in writing and in advance of posting. The declaration is valid for one year.
- **Transport authorisation:** This can be obtained from the host country. Apply in advance.
- **Social security:** Workers must provide their PD A1 form.
- **Tax:** Lived in Germany for more than 6 consecutive months: You are subject to unlimited tax liability and must pay tax on your worldwide income there. Lived in Germany for 6 months or less: You pay tax only on income earned in Germany. You receive income from other EU countries: Make sure you are not paying tax twice on the same income.

CHAPTER 18.

NETHERLANDS

- **Travel documents:** National Passport or ID Card.
- **Residence permit:** If you reside in the Netherlands for up to 4 months, you will receive a citizen service number. You do not need a residence permit.
- **Employment authorisation and work permit:** You will need to notify the Employment Insurance Agency by filling out a form. You do not need a work permit
- **Professional Qualifications:** Certain professions cannot be practised in the Netherlands without having professional qualifications recognised. If you want to provide your regulated services temporarily, you will need to submit a prior written declaration. The declaration should be submitted in writing and in advance of posting. The declaration is valid for one year.
- **Transport authorisation:** This can be obtained from the host country. Apply in advance.
- **Social security:** Workers must provide their PD A1 form.
- **Tax:** Resident in the Netherlands: (main personal and economic ties there) you must pay tax on your worldwide income there. Not resident in the Netherlands: You only pay tax on income earned there. Income from other EU countries: Make sure you never pay tax twice on the same income.

CHAPTER 19.

ITALY

- **Travel documents:** National Passport or ID Card.
- **Residence permit:** If posted for longer than 3 months, you must register at the Anagrafe of the town you are residing in. You do not need a residence permit.
- **Employment authorisation and work permit:** You must give notice to the Ministry of Labour at least 24 hours before the posting begins. There is a specific form to fill on the Ministry's website. You do not need a work permit.
- **Professional Qualifications:** If you want to provide your regulated services temporarily, you will need to submit a prior written declaration. The declaration should be submitted in writing and in advance of posting. The declaration is valid for one year.
- **Transport authorisation:** This can be obtained from the host country. Apply in advance.
- **Social security:** Workers must provide their PD A1 form.
- **Tax:** Living in Italy for 183 consecutive days: You must pay tax on your worldwide income there. Living in Italy for less than 183 consecutive days: You pay tax only on the income you earned in Italy. Income from other EU countries: Make sure you never pay tax twice on the same income.

CHAPTER 20.

CZECH REPUBLIC

- **Travel documents:** National Passport or ID Card.
- **Residence permit:** If your posting is more than 30 days, you must report it to the Aliens Police in the place where you are staying within 30 days of entry. If posted for longer than 3 months, you must register at the local police station in the town you are residing in. You do not need a residence permit.
- **Employment authorisation and work permit:** You must give notice to the Ministry of Labour at least 24 hours before the posting begins. There is a specific form to fill on the Ministry's website. You do not need a work permit.
- **Professional Qualifications:** If you want to provide your regulated services temporarily, you will need to submit a prior written declaration. The declaration should be submitted in writing and in advance of posting. The declaration is valid for one year.
- **Transport authorisation:** This can be obtained from the host country. Apply in advance.
- **Social security:** Workers must provide their PD A1 form.
- **Tax:** Living in the Czech Republic for at least 6 months: You pay tax on your worldwide income there. Living in the Czech Republic for less than 6 months: You pay tax only on income earned in the Czech Republic. Income from other EU countries: Make sure you never pay tax twice on the same income.

CHAPTER 21.

SLOVAKIA

- **Travel documents:** National Passport or ID Card.
- **Residence permit:** You are obliged within ten working days from entering Slovakia to report the start date and place of residence in Slovakia to the Foreign Police Department. If you remain in Slovakia for longer than three months, you must apply for registration of residence within 30 days after the first three months in the country have elapsed. The application is free of charge and should be made in person, using the official form, at the Foreign Nationals Police Department, accompanied by a valid identity card or travel document. You do not need a residence permit.
- **Employment authorisation and work permit:** You do not need a work permit.
- **Professional Qualifications:** If you want to provide your regulated services temporarily, you will need to submit a prior written declaration. The declaration should be submitted in writing and in advance of posting. The declaration is valid for one year.
- **Transport authorisation:** This can be obtained from the host country. Apply in advance.
- **Social security:** Workers must provide their PD A1 form.
- **Tax:** Living in the Slovakia for at least 6 months: You pay tax on your worldwide income there. Living in the Slovakia for less than 6 months: You pay tax only on income earned in the Slovakia. Income from other EU countries: Make sure you never pay tax twice on the same income.

LOOKING TO THE FUTURE

Make UK have worked with their European counterparts to create this EU business travel guide for UK nationals travelling to the EU for work. In July 2020, new rules and regulations will come into force for posted workers and this booklet will help employers navigate their way through what needs to be done.

The number of posted workers in the European Union increased by nearly 45% between 2010 and 2014, rising from 1.3 million people to 1.9 million. There were only 600,000 in 2007. Following the UK's exit from the EU, posted workers rules will be set to change again. Make UK aims to help prepare employers for further change by getting them up to speed with the existing and new rules before July 2020.

For further help and advice on how to prepare and comply with the new rules by July, our Immigration and Employment experts can be contacted below;

Contact Us

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USEFUL WEBSITES

Home Page

https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index_en.htm#national-websites

Belgium

https://employment.belgium.be/en/themes/international/posting/liaison-offices-and-labour-inspectorate#toc_heading_1

France

<https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/article/in-brief-posting-of-employees>

Germany

https://www.zoll.de/EN/Private-individuals/Work/Minimum-conditions-of-employment/minimum-conditions-of-employment_node.html

Italy

<http://www.distaccoue.lavoro.gov.it/Pages/Home.aspx?lang=eng>

Netherlands

<https://www.government.nl/documents/publications/2016/10/20/factsheet-terms-of-employment-posted-workers-in-the-eu-act>

Czech Republic

<http://www.suip.cz/english-documents/>

Slovakia

<https://www.ip.gov.sk/posting-of-workers/>