HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number CBP-7629, 22 December 2020

Brexit and private pensions

By Djuna Thurley

Contents:

1. Introduction
2. Workplace pensions
3. Personal pensions

Contents

Summary **3**

1. Introduction **4**
1.1 What is the legal framework? 4
1.2 What did the industry want post-Brexit 5

2. Workplace pensions **7**
2.1 Cross-border schemes 7
2.2 Payment 8

3. Personal pensions **10**

Summary

EU legislation has an impact on pension schemes directly, through legislation such as Directives which are transposed into UK law and indirectly, because the costs of complying with investment markets legislation are passed to pension fund clients by asset managers, brokers and banks.

UK Government guidance on pensions and benefits for UK nationals in the EEA or Switzerland advises individuals in receipt of a pension to check with their pension provider to make sure they can still get payments following the UK leaving the EU:

> **Annuities and personal pensions from a UK pension provider**
>
> Your pension provider should have made plans to make sure you can still get payments from your annuity or personal pension following the UK leaving the EU.
>
> Your pension provider should contact you if they need to make changes to your annuity or pension or the way you are paid. The Financial Conduct Authority has published information on what pension providers need to do because the UK has left the EU.
>
> If you have any questions, contact your pension provider.
>
> **UK workplace pensions**
>
> UK law allows for workplace pensions to be paid overseas. The government does not expect this to change after Brexit.
>
> If you have any questions, contact your pension provider.
>
> If your workplace pension is paid into a UK bank account, your bank should contact you if they need to change the way you receive your pension after Brexit.

For the impact of the UK leaving the EU on State Pensions, see Commons Library Briefing Paper CBP 7894 (December 2020)

1. Introduction

1.1 What is the legal framework?

There are two categories of pension scheme:

- **Trust-based** – often linked to a single employer, but managed by a board of trustees, who have full responsibility for the management, administration and investment of the plan. The trustee's fiduciary duty is to act in the interests of members;
- **Contract-based** - where a pension provider, often an insurance company, runs the scheme. The scheme members will sign a contract with the provider who will make the majority of decisions about the way the scheme is run; or

The overwhelming majority of occupational pension schemes operate domestically. Of cross-border schemes operating in the UK, the majority relate to the UK-Irish border.[1]

The design of pension systems is largely the responsibility of Member States. The regulatory framework at EU level covers:

- establishing an internal market for funded occupational pension schemes and the minimum standards to protect scheme members;
- minimum guarantees concerning accrued rights in occupational pension schemes in case of the insolvency of the sponsoring employer; and
- anti-discrimination rules.[2]

The rights of pensioners of cross-border schemes to receive their pensions without discrimination is theoretically dependent on protections established in EU law. However, in practice many of the relevant matters are handled on a bilateral basis. For example, the UK has a set of arrangements for 'qualifying recognised overseas pension schemes (QROPS).[3]

EU legislation has an impact on them directly and indirectly:

- directly, through pensions-specific EU legislation such as the Directive on Institutions for Occupational Retirement Provision (IORP), that have been transposed into UK law; through the regulatory activities of EIOPA; and through EU employment law, such as the Equal Treatment Directive; and
- indirectly, because the costs of complying with the EU's investment markets legislation (such as EMIR, MIFID, the draft Money Market Funds Regulation and the potential Financial

A Qualifying Recognised Overseas Pension Scheme (QROPS) is a pension scheme established outside the UK that is broadly similar to a UK registered pension scheme.

The purpose of the QROPS regime is to "ensure that the scheme is treated as a pension scheme for regulatory and tax purposes in the country in which it is established." (HMRC Pension tax manual, QROPS: introduction).

For more detail, see Gov.UK Overseas pension schemes and Library Briefing Paper CBP-7937 (June 2017)

1 HM Government, Insurance and Pensions Sector Report, December 2017, para 14
2 European Commission Memo 10/302 Green Paper on Pensions, July 2010; European Commission, Green Paper. Towards adequate sustainable and safe European pension systems, Brussels 7 July 2010, SEC (2010)830
3 HM Government, Insurance and Pensions Sector Report, published December 2017, para 24-5; Gov.UK Overseas pension schemes

Transaction Tax) are passed to pension fund clients by asset managers, brokers and banks.[4]

The Government said it would continue to fulfil its obligations as an EU Member State until its exit from the EU. This included the transposition into UK law of IORP II January 2019.[5]

Existing law would continue to apply until changed by the UK Government.[6] On 19 July 2016, the then head of the FCA, Andrew Bailey, said there would be no "great bonfire of regulations" – many were either stipulated on a global level or were laws the UK would in any case want to keep.[7]

1.2 What did the industry want post-Brexit

The Pension and Lifetime Savings Association (PLSA) explains that although UK workplace pension schemes tend to operate on a national basis, they want access to investment opportunities and service providers in the EU:

> 1. Workplace pension schemes in the UK are not generally looking to provide pensions to workers in other Member States. So, in this respect, there is little interest in taking up the opportunities that might - in theory at least – be provided by an effective EU-wide Single Market.
>
> 2. However, workplace pension schemes do want ready access to investment opportunities and service providers in EU and across the world, and this is where a strong Single Market has a role to play. Having ready access to the widest possible range of service providers helps schemes to invest their assets and administer their schemes with a minimum of cost in order to provide the best value to their members.[8]

In February 2019, it said a successful outcome from the Brexit negotiations would include the following:

> a) **for a strong economy**: replication of both the current UK-EU framework for free trade in goods and existing EU free trade agreements with third countries. Also, a new immigration policy that continues to allow flows of talent and labour from the EU for the good of the wider economy in general and pension schemes in particular.
>
> b) **for the right regulation**: the maximum possible access to the Single Market in services – while also exempting pension schemes that operate only in the

---

4 Ibid

5 PQ 177666, 18 October 2018;PQ194692, 21 November 2018; PQ 191898, 21 November 2018; Correlation table: Transposition IORP II (DEP 2019/0052);

6 FCA Statement on European Union referendum result, 24 June 2016;TPR warns trustees against knee-jerk reactions to market volatility, 14 July 2016; Market volatility following the EU referendum: guidance statement from TPR

7 'Financial watchdog calls for access to EU single market', *Financial Times,* 20 July 2016

8 PLSA response to HM Treasury's review of the balances of competences: Single Market – financial services and the free movement of capital, January 2013; More detail about the legislation that currently applies is on the Europe and International section of the PLSA website

UK from damaging EU pensions regulation, such as a potential solvency-based regime for pension funds.

c) **for strong financial services**: a framework that allows continued free flows of investment services across UK-EU borders and grandfathering of existing contracts so that pension funds can invest and manage their liabilities efficiently.[9]

In December 2016, the Association of BI set out 'five key asks' for UK insurers:

- Securing a regulatory environment that is appropriate for the UK market.
- Retaining the ability to passport out of and into the UK.
- Closely mirroring the EU data protection regime to avoid a quagmire of complexity around how personal and non-personal data is protected.
- An improved future migration policy that enables the employment of high-skilled professionals from both within and outside the EU.
- A strong focus on regulatory dialogue and international agreements in overseas financial services markets, especially in India and China.[10]

[9] PLSA, Brexit and Pension Schemes: Getting the right deal for Britain's Savers, Feb 2019

[10] ABI calls for 'clear commitment' to a transitional implementation period following Brexit, ABI, 12 December 2016

2. Workplace pensions

The Pensions Regulator, which is responsible for regulating work-based pension schemes,[11] said in January 2019 that it did not expect Brexit to have a significant effect on the legislative environment:

> Because workplace pensions are largely domestic in nature, we do not expect the UK's departure from the European Union (EU) to have a significant effect in respect of the legislative basis under which schemes operate or trustees' ability to continue to administer their scheme effectively. This is the case in respect of the immediate effects which may arise from the UK's departure from the EU, on either a negotiated settlement or 'no deal' scenario.[12]

It issued guidance to defined benefit (DB) schemes, advising them to keep under review the potential impact of Brexit on their investment strategy and the employer covenant (i.e. its willingness and ability to support the scheme).[13] It advised schemes to review their contingency plans.[14] The Pension and Lifetime Savings Association (PLSA) produced a Pension Trustee's Brexit to-do list.

Current TPR guidance states that, during the transition period i.e. until 31 December 2020, trustees of:

- Defined benefit (DB) schemes should focus on areas such as investment, employer covenant and administration.
- Defined contribution (DC) schemes should focus on areas such as investment, member communications and administration.

2.1 Cross-border schemes

Cross-border occupational pension schemes (i.e. schemes located in one Member State that have members working and contributing in another) are subject to particular requirements under the first European Occupational Pensions Directive ('IORP').[15] This was transposed into UK law under the *Pensions Act 2004* and the regulations made under it. [16]

There are very few cross-border schemes across the EEA – around 83, of which only 73 are active. There are around 40 that operate between the UK and the EU/EEA.[17]

The background to this is that, before IORP, there were schemes operating across the border between the UK and Ireland under a

[11] MoU Financial Conduct Authority and Pensions Regulator, April 2013, para 6
[12] TPR, Statement on the UK's exit from the EU (Brexit), 24 January 2019
[13] TPR, Market volatility following the EU referendum: guidance statement from TPR, July 2016; TPR, Annual funding statement for defined benefit (DB) pensions 2018, April 2018
[14] TPR, Statement on the UK's exit from the EU (Brexit), 24 January 2019
[15] Directive 2003/41/EC
[16] Explanatory Memorandum to the Occupation Pension Schemes (Cross-Border Activities) Regulations 2005 (SI 2005 No. 3381)
[17] TPR, Cross-border schemes – guidance in the event of a no-deal Brexit, October 2019 (updated December 2020)

reciprocal agreement.[18] Under IORP, they need to be authorised by the national regulator (in the UK, the Pensions Regulator).[19]

Under the first IORP Directive, cross-border schemes were subject to stringent funding requirements, in that they were required to be "fully funded" at all times.[20] This is in contrast to schemes operating within the UK which are able to put in place "recovery plans" to achieve full funding over a period of, say ten years.[21] IORP II effectively removed the requirement for full funding at all times. Although article 14.3 still requires this, the text now continues:

> if this condition is not met, the competent authority of the home Member State shall promptly intervene and require the IORP to immediately draw up appropriate measures and implement them without delay in a way that members and beneficiaries are adequately protected.[22]

However, there is still a risk of increased regulatory complexity post-Brexit for schemes operating cross-border.[23]

In October 2019, alongside publication of the UK/EU Withdrawal Agreement, TPR issued guidance to cross-border schemes explaining that the law governing UK-EU/EEA cross-border occupational pension scheme arrangements would cease to apply at the end of the transition period (i.e. from 1 January 2021).This would have an impact for all cross-border schemes. UK-based schemes would need to check whether EEA employers were still able to contribute to their scheme. UK employers using a scheme based in the EEA would need to check it complied with UK rules. There will be revised guidance in 2021 on how to manage the cross-border aspects of schemes post-transition.[24]

2.2 Payment

The Pensions Advisory Service explain that although practice varies, pension scheme and annuity providers do not typically pay pension benefits directly into an overseas bank account, leaving the individual to transfer the money from a UK bank account – which may mean there are transfer fees and exchange rate variations on the money they

18 Explanatory Memorandum to SI 2005/3381
19 CEIOPS, Protocol Relating to the Collaboration of the Relevant Competent Authorities of the Member States of the European Union in particular in the Application of the Directive 2003/41/EC etc, October 2009
20 EU Occupational Pensions Directive 2003/41; Occupational Pension Schemes (Cross-border activities) regulations 2005 (SI 2005 No. 3381),
21 For more detail, see Defined benefit pension scheme funding July 2020, Commons Library Briefing Paper, CBP 4877 section 2.3
22 PLSA, Brexit and Pension Schemes, Getting the right deal for Britain's savers, January 2017; PLSA website/Europe/IORP Directive; Directive EU 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPS) – pre-amble, para 18
23 PLSA, Brexit and Pension Schemes, Getting the right deal for Britain's savers, January 2017
24 TPR, Cross-border schemes – guidance in the event of a no-deal Brexit, October 2019 (updated December 2020)

receive. When and how any benefits are exchanged may make a big difference to how much an individual gets.[25]

For DB schemes where the pension is paid directly by the scheme it is usually a case-by-case decision for the trustees as to whether they will agree to pay a member's pension into an overseas bank account. This applies regardless of whether the member has moved to an EU/EEA or third country. There are administration costs for the scheme so it is typically only the larger schemes that will consider it, and such decisions are primarily dependent on the ease with which their scheme systems can connect with those of the bank in the particular country the member has moved to. Trustees frequently insist on paying the pension into a UK bank account and leaving the member to arrange moving the money abroad. This passes currency costs from the scheme to the recipient and there may be less onerous regulatory requirements, such as a lower level of due diligence under the anti-money laundering regime, by not paying the money abroad.

UK Government guidance on pensions and benefits for UK nationals in the EEA or Switzerland in the event of a 'no deal' Brexit states that people should check with their provider to make sure they can still get payments post-Brexit:

> **Annuities and personal pensions from a UK pension provider**
>
> Your pension provider should have made plans to make sure you can still get payments from your annuity or personal pension following the UK leaving the EU.
>
> Your pension provider should contact you if they need to make changes to your annuity or pension or the way you are paid. The Financial Conduct Authority has published information on what pension providers need to do because the UK has left the EU.
>
> If you have any questions, contact your pension provider.
>
> **UK workplace pensions**
>
> UK law allows for workplace pensions to be paid overseas. The government does not expect this to change because the UK has left the EU.
>
> If you have any questions, contact your pension provider.
>
> If your workplace pension is paid into a UK bank account, your bank should contact you if they need to change the way you receive your pension because the UK has left the EU.

There is similar guidance on workplace pensions for EEA and Swiss Citizens in the UK (updated 29 January 2020).

25 Gov.UK, Benefits and pensions for UK Nationals in the EEA or Switzerland, updated October 2020

3. Personal pensions

Under the October 2019 Withdrawal Agreement, EU law continues to apply during the transition period, so until 31 December 2020, and EU-derived protections and rights associated with financial products and services do not change.[26] In guidance for consumers updated on 15 December 2020, the FCA explains what has been done to enable UK financial services to continue working after the end of the transition period:

> The Government has made laws so that providers of financial services from the European Economic Area (EEA) can continue to provide services to UK customers, and their customers are still protected when we leave.
>
> In particular the Government has put in place a temporary permissions regime to allow EEA providers to operate in the UK for a period after the UK has left the EU while they get permanent FCA authorisation. They have also created a financial services contract regime enabling firms that do not enter the temporary permissions regime to carry on serving customers under existing contracts while they wind down their UK business in an orderly fashion.
>
> These steps should limit the impact on financial products and services provided to UK-based customers from EEA firms as a result of the end of the EU passporting regime. However, when dealing with firms from the EEA, you should be aware that they haven't yet been authorised or assessed by us or the Prudential Regulation Authority (PRA) while they are in these temporary regimes. Complaints and compensation schemes might not apply to them (or not in the same way as for UK firms).
>
> We expect your provider to tell you if your products are affected in any way including, for example, their position on compensation schemes.[27]

For the UK Government's plans to enable EEA-based firms to operate in the UK post-Brexit, see 'Equivalence with the EU on financial services', Commons Library Insight, 19 November 2020

UK citizens living in the EEA are advised to check their position with the provider:

> If you're an EEA citizen, or a UK citizen living in the EEA, you could be affected if you have a UK provider who can't continue to operate in the EEA after the transition period ends, although many UK providers are planning to continue providing you services. For example, many firms have transferred business to an EEA part of their group of companies, so they can continue to do business with you.
>
> If you're an EEA resident currently using your UK bank account, your bank will let you know if it plans to close your account because of Brexit. If you've been told that your UK account is set to close, you should look to make alternative banking arrangements.
>
> You may be using your UK bank account to pay into or receive payments in relation to a pension, annuity, income drawdown,

26 FCA/consumers/how Brexit affect you, July 2019 (archived webpage)
27 FCA, How Brexit could affect you, updated 15 December 2020

> insurance, investment or savings product. If this is the case, and your bank has told you it will close your account, you should get in touch with your relevant product provider (insurer, pension or savings provider, etc) to check what arrangements need to be made. This includes telling your provider about your new bank details, so they can transfer (or receive) the relevant payments. We understand that many providers have the facilities to pay into or receive contributions from overseas accounts. […]
>
> We expect firms to contact you if you are affected or need to make any changes. If you have any concerns about whether you might be affected, you should contact your financial product providers.[28]

See also its guidance on dealing with EEA firms after the end of the transition period.

European Insurance and Occupational Pensions Authority (EIOPA) guidance for people with a UK personal pension who live in EU country, includes questions to put to their provider about the measures in place to ensure that the pension can continue to be serviced.[29]

FCA guidance to financial services providers, last updated on 14 October 2020, states that firms should already have decided on their approach to servicing their existing contracts with customers. Not all the arrangements put in place during the transition period would continue to apply at the end of it. Whether a firm would need regulatory permissions in a local EEA jurisdiction would depend on local law and the approach of the local authorities in that jurisdiction. For customers purchasing a product after the end of the transition period, firms should set out the limitations at the point of sale:

> They should make it clear to customers that moving to the EEA may affect their ability to continue to benefit fully from their cover, although it may vary according to the particular EEA state. More broadly, firms need to make sure they pay due regard to customers' information needs, and be ready to answer customers' queries accurately and fairly.[30]

Regarding the potential for bank accounts to close, firms were expected to take steps to avoid disruption for customers:

> Some UK banks are notifying EEA-based customers that they will be closing their bank accounts after the transition period because of Brexit. As a result, EEA residents receiving or making a payment into a pension, annuity, income drawdown, insurance, investment or savings product may be affected. We understand that many providers have the ability to pay into and collect monies from an overseas account. We expect firms to take steps to avoid disruption for their customers and ensure that customers can continue to receive payments and contribute into their products.
>
> We expect firms to send clear and timely communications to affected consumers and provide dedicated support taking account of individual needs and circumstances. Firms should also make sure they have sufficient operational capacity to support potentially higher volumes of customer activity (such as change of

28 FCA, How Brexit could affect you, updated 15 December 2020; dealing with EEA firms after the end of the transition period

29 EIOPA, Brexit consumer guide, 18 December 2020

30 FCA, Preparing your firm for Brexit – end of the transition period, updated 14 December 2020

account requests or other queries) as we approach the end of the transition period and beyond. Firms should also remain vigilant and mitigate against any new sources of fraud risk.[31]

[31] Ibid

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer

BRIEFING PAPER
Number CBP-7629
22 December 2020