

What have EU done?

As Brexit negotiations begin, James Walsh reviews the EU regulations that currently affect the UK pensions market

If there were a prize for great political misnomers of our time, then the Repeal Bill that formed the centrepiece of the recent Queen's Speech would surely be a strong contender.

The name implies that Brexit will lead to a mass repeal of EU-derived legislation – a 'bonfire of regulation', as some would have it. In fact, the Bill is nothing of the sort. Its main purpose is to copy reams of EU law across into the UK statute book in order to avert the legislative lacunae that would otherwise result.

Not so much a 'Repeal Bill', more a 'Continuity Bill' – in my view at least.

Of course, parliament will then be able to remove or amend EU-derived legislation at its leisure. But the post-Brexit starting point will be pretty much the legislative status quo as at the moment of departure.

Perhaps that explains why the editors of *Pensions Age* have decided in their wisdom that now – the first week of the official Brexit negotiations [*at the time of writing*] – is the time to remind ourselves what the EU legislation on pensions is. After all, it's set to continue providing the framework for our industry for some while to come.

One of the curious features of this exercise is that the EU does not actually have any 'competence' (to use an EU jargon word) over pensions at all. Pensions policy is still a matter for national governments.

What the EU does have is a power to set the rules for the Single Market, and it is this 'competence' that it has used as the basis for its interventions in pensions – chiefly through the Directive on Institutions for Occupational Retirement



Provision or 'IORP Directive'.

This main EU law on workplace pensions is intended – as part of strengthening the Single Market – to make it easier to set up and operate cross-border pension schemes. The objective is a good one: if workers are to move freely around the EU, and if companies are to run just one pension scheme for all their European operations, then some common standards are required.

In practice, the existence of 28 different national tax regimes across the EU's Member States remains a major barrier to EU-wide pension provision, and this is probably the main reason why there are still only 79 cross-border schemes – half of them between the UK and Ireland. Nevertheless, the IORP Directive provides the framework within which national pensions law must fit, and key building blocks of our pensions regulatory regime – such as legal separation between scheme and sponsor, triennial valuations of DB schemes, provision of annual reports and restrictions on employer-related investment – have their basis in the 'IORP' text.

With just 24 Articles, the original IORP Directive (IORP I) was relatively

concise, but the new version finalised in January of this year (IORP II) is a far more detailed piece of work. Its 67 articles introduce new requirements for an annual Pension Benefit Statement to be sent to all members (including deferred members) and a new Own Risk and Solvency Assessment that schemes must compile.

Member States have two years to implement IORP II, with the deadline falling in January 2019. Whether and how the UK complies is a matter tied up with the Brexit negotiations, but my personal prediction is that we will implement those elements of IORP II that are seen as positive aspects – such as the Pension Benefit Statement.

Central to EU pensions law as the IORP Directive might be, it's not the whole story. We should also note the Insolvency Directive, which provided the basis for the creation of the Pension Protection Fund, and the Equal Treatment Directive, which is the origin of our rules on gender and pensions. Then there is the impact of European Court of Justice rulings – most notably the Barber judgement, which underpins the requirement for equalisation of Guaranteed Minimum Pensions.

Unfortunately (or fortunately, depending on your point of view) I do not have space for a detailed survey of the mass of EU directives and regulations that provides the framework for the investment markets – other than to name-check the giant MIFID II legislation, EMIR (on derivatives) and AIFMD (hedge funds and more).

The key issue here is what happens post-Brexit. My personal prediction is that the likely political deal on stability in financial market regulation and the continuity provided by the 'Repeal Bill' means that these ground rules for investors – and most of the other EU laws highlighted in the brief survey – are likely to remain germane to pension schemes for the foreseeable. Plus ça change....

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