Rules for all

Pensions Age asks the industry which international regulations are having a significant impact on UK pension funds

GDPR
The General Data Protection Regulation introduced significant changes to data protection law from 25 May 2018. The key changes are an expanded definition of 'personal data', increased rights for individual data subjects, an explicit duty of accountability on those processing personal data, more stringent breach reporting requirements and headline-grabbing fines of up to €20 million.

As data controllers, pension fund trustees are responsible for ensuring the security of members' personal data. The principle of accountability means documenting, often for the first time, how and why fund data is processed, by whom and for how long; and ensuring that each act of processing has a lawful basis. This data mapping exercise has been a significant project for many pension fund trustees.

The other significant change is a higher level of transparency for data subjects about how their data is processed and the rights they have in relation to that data. This has resulted in a proliferation of updated privacy, or 'fair processing' notices.

DLA Piper pensions partner Tamara Calvert

The General Data Protection Regulation (GDPR) has had a significant impact on employers and trustees of pension schemes. GDPR was implemented as a regulation for the collection and processing of personal information. The merits of protecting one's personal information are valid and should be done with care. GDPR holds institutions accountable with stiff penalties of up to EUR 20 million or 4 per cent of annual turnover.

GDPR has forced pension schemes to review seven areas of compliance for GDPR: record of processing, data protection principles, data subject rights, privacy notices, third-party contracts, data security, and other requirements specifically concerning data impact assessments and data protection officers. In addition to reviewing these areas, pension schemes will need to implement controls and processes to ensure compliance. The implementation and maintenance of GDPR is no small task and, as a result, it will consume resources of pension schemes, which will increase the cost of running each plan.

Mesirow Financial Currency Management chief executive officer Joseph Hoffman

GDPR replaces the Data Protection Act that was introduced over 20 years ago largely because of the way personal data is used has changed beyond recognition as globalisation and technology has developed.

Trustees have been using much of their governance bandwidth on issues relating to GDPR, conducting data audits to understand what personal data is held in relation to their pension schemes and also assessing whether any third parties who process data on their behalf (e.g. scheme administrators) are meeting the new GDPR requirements. Trustees will also have been working with scheme administrators to implement GDPR changes. For example, ensuring administrators can process the 'right to be forgotten' and remove all members data as well as ensuring they can comply with members who wish to enforce a subject access request and obtain all personal information held about them.

Redington senior vice president of DC and financial wellbeing Jinesh Patel

IORP II Directive
IORP II is the revised EU Directive on occupational pension schemes. EU directives do not take direct effect, but have to be transposed by EU member states into their domestic legislation. The main elements of the original IORP Directive, for example funding requirements and measures on cross-border pension schemes, were implemented in the UK in the Pensions Act 2004. IORP II revises the

earlier pensions directive, building on the original provisions and focusing on governance, risk management, national supervision, member communications and ethical investments (ESG) for occupational pension schemes. Member states have until 13 January 2019 to amend their own legislation to ensure it incorporates the IORP II rules.

The UK will still be in the EU on 13 January 2019, and is expected to implement the terms of IORP II despite Brexit. Some of the new provisions are already met under current UK requirements. Others, such as the requirement for mandatory annual pension statements, will probably need new legislation – currently in the UK only DC schemes have to automatically produce annual member statements.

Mercer's Policy, Professionalism and Research Team DB consultant Anne Bennett

MiFID II

Pension schemes are not subject to MiFID directly, unless they have an FCA regulated trustee or in-house manager, but it does directly apply to investment managers and brokers in the EU. So it is important for trustees to understand what their managers' responsibilities are and how the legislation may affect the environment in which their investment managers operate.

MiFID II (which came into force on 3 January 2018), seeks to ensure even greater transparency and management of conflicts of interest, whilst further enhancing market integrity, investor protection and accountability. It also aims to extend the original MiFID framework to include a broader range of asset classes, including assets in both equities and non-equities classes (such as bonds, structured finance e-products, derivatives).

Amongst the key features of MIFID II for pension schemes are the extended reporting and disclosure requirements on managers and custodians. Managers will also be required to have a greater focus on managing conflicts of interest, rather than just telling clients about the conflicts of interest that they may face.

Pre and post-trade reporting requirements that apply to trading venues and investment firms have been extended beyond equities to bond and derivatives that are traded on a trading venue. The objective here is greater transparency in the market. It remains to be seen what impact these requirements have on the trading environment.

MiFID II also places caps on trading in 'dark pools', which are private forums / exchanges allowing institutional investors (such as pension schemes) to trade large blocks of equities discreetly at non-public prices, with the aim of limiting over the counter crossing. However, as trading in dark pools decreases it is likely that the use of other venues that allow block crossing or auction based mechanisms will increase.

Sackers partner Paul Phillips

EMIR

The European Market Infrastructure Regulation (EMIR) lays down rules on OTC (over the counter) derivatives, central counterparties and trade repositories. EMIR requires parties involved with derivatives transactions to obtain a Legal Entity Identifier (LEI) code for reporting those transactions to a trade repository. Some pension schemes may be legally required to obtain an LEI. Investment firms subject to MiFID II are unable to provide investment services, including executing trades, on behalf of any client that is required to have an LEI but does not have one.

An important exemption for pension schemes from a key obligation under EMIR known as the clearing obligation expires on 17 August 2018. This will create challenges for schemes with OTC derivative contracts.

Aries Insight director Ian Neale

EMIR regulates the derivatives market, and broadly seeks to make derivatives

more standardised and centralised. It requires certain categories of derivative contract to be cleared centrally, with a central counterparty (CCP) interposing itself between every buyer and seller. In effect, the CCP guarantees the trade if one party defaults, thus bearing parties' credit risk. Firms entering into non-centrally cleared derivatives, known as over the counter (OTC) derivatives, are required to put risk management procedures in place.

The main effect of EMIR is margining requirements. Counterparties can be required to post either initial margin or variation margin, depending on the type of derivative contract in question and the identity of the counterparties. Margining has undoubtedly pushed up the costs of entering into derivatives, in exchange for creating a 'safer' market environment.

Typically pension funds do not deal directly in derivatives, but may be exposed indirectly. For example, pension funds' LDI strategies will be underpinned by derivative contracts. Increased costs of derivatives may feed through in higher costs to the fund, and accordingly make it more difficult to meet the target return.

Another example is de-risking through the insurance market. Any increase in derivative costs to insurers may ultimately feed through to costs borne by pension funds looking to insure certain risks. That said, pricing in the insurance market is relatively favourable at the moment, which may offset some of this cost increase.

DLA Piper partner and head of financial services regulation Michael McKee

Equality measures

While the EU equality framework directive of 2000 covers a much broader area than just pensions, it does have a very important impact on many aspects of occupational pension schemes. The equal treatment directive does not take direct effect in individual member states, and each country's legislation must be brought into line with the directive's provisions. In the UK, the majority of equality legislation was consolidated in the Equality Act 2010. Under the UK's Equality Act occupational pension scheme rules are deemed to include a non-discrimination rule, a sex equality rule and a maternity equality rule. The Act lists those characteristics that are protected against discrimination. The list comprises age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. There are some provisions in the Act specific to pension schemes, for example some limited exemptions in relation to age. An example of the interaction of UK and EU legislation is the 2017 UK Supreme Court's ruling in the *Walker vs Innospec* case. Here the Supreme Court upheld the claimant's challenge that a same sex partner's pension should be based on all service, rather than just service from December 2005 (the date when civil partnership became available in the UK). The Court held that the 2010 Act was not in line with the Equal Treatment Directive, and the ruling effectively disapplied the relevant exemption in the Equality Act 2010.

Mercer's Policy, Professionalism and Research Team DB consultant Anne Bennett

VAT on pension services

VAT rules in the UK are largely based on the EU VAT directive. In some circumstances UK pension schemes can recover VAT charged on services supplied to the scheme. However, how entities are classified, and how the relationships between service users/buyers and providers are structured, is complex. Interpretation of the directive and the UK legislation is not always clear. In the case of how this applies to pension schemes rulings on various cases by the Court of Justice of the European Union has led HMRC to revise its guidance at several points. In particular HMRC issued revised guidance last year setting out its position concerning VAT recovery for defined benefit schemes.

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