

EU regulations: Same rules apply

✓ **Natalie Tuck examines the European regulations and laws that are still applicable to UK pension schemes**

Politicians love a catchphrase. These short snappy phrases have come to define the UK's departure from the European Union. Former Prime Minister, Theresa May, loved "Brexit means Brexit", whilst current Prime Minister, Boris Johnson, just wanted to "get Brexit done". Prior to the referendum, one of the Vote Leave campaign's key slogans was "take back control", so the UK could reclaim its sovereign power.

After several years of elections, new Prime Ministers and negotiations, the UK formally left the EU on 31 January 2020 and is now in a transition period until the end of the year. However, despite voting to "take back control", the UK is currently, and will remain, subject to most EU laws and regulations after 31 December 2020, including European pension rules.

Linklaters pensions practice partner, John Sheppard, says: "Subject to some exceptions, existing EU law that applies to the UK at the end of the Brexit transition period will continue to apply." As Sackers partner, Ferdy Lovett, notes, this is because anything remotely EU-related is translated into domestic law and will remain in force until it is repealed.

The key EU regulation affecting UK pension schemes is the Institutions for Occupational Retirement Provision (IORP) II Directive, which was finalised at the end of 2016, with member states expected to transpose the directive into domestic law by January 2019 (although some member states are yet to do this).

It has four specific objectives, which include clarifying cross-border activities of IORPs, ensuring good governance and risk management, providing clear and relevant information to members

and beneficiaries, and ensuring that supervisors have the necessary tools to effectively supervise IORPs.

Sheppard explains that in practice, the directive has largely already been implemented in UK domestic law and this UK law will continue to apply at the end of the transition period. "What we are still waiting for on IORP II is The Pensions Regulator's consolidated code of practice, which is expected to include the detail of how schemes need to comply with the additional governance requirements brought in by IORP II."

He notes that whilst Brexit does potentially give the government the flexibility to reconsider some of these issues (and other areas of EU law that affect pension schemes), "the new requirements are consistent with the regulator's broader aims of improving pension scheme governance and a substantial change in approach seems unlikely at this stage".

Of course, other EU regulations and laws will also still affect pension schemes in the UK. Lovett highlights the General Data Protection Regulation (GDPR), which came into effect in May 2018 and introduced significant changes to data protection laws. As with the IORP II Directive, once the transition period is over GDPR will still apply.

Looking back further, there is the Barber judgment, an iconic pensions case from 1990 in which the European Court of Justice (ECJ) ruled that men's and women's pension rights must be equal. This has long been a part of UK domestic law, creating the unique



issue of guaranteed minimum pension equalisation in the UK, which was more recently clarified by the UK's High Court.

Another European case law involves the *Pensions-Sicherungs-Verein VVaG v Günther Bauer* ruling, in which the ECJ ruled that pension lifeboat funds, such as the Pension Protection Fund (PPF), should ensure that ex-employees of insolvent companies do not fall below the poverty line.

Despite this ruling coming as recent as December 2019, it is still expected that the UK will adopt the judgment. The PPF says it is in discussions with the Department for Work and Pensions on the ruling. Sackers senior associate, Katharine Swire, explains: "I believe the position to be, regarding future compliance, that case law handed down by the end of the transition period will, in effect, form part of the EU law that will be 'retained' by the UK as part of its domestic law – but it could then be disapplied following Brexit."

So while leaving the EU does allow the UK to "take back control", for the foreseeable future, at least, the same rules apply.

✎ **Written by Natalie Tuck**