No-deal Brexit: Impact on occupational pension schemes

1 September 2019
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While a range of outcomes, including a departure under the terms of the current Withdrawal Agreement, remains possible, it is important for businesses to plan for a no-deal Brexit, in which the UK leaves the EU without a withdrawal agreement or other deal. Here we look at the potential impact of a no-deal Brexit on employers and trustees of occupational pension schemes.

Potential impact

In a January 2019 guidance statement primarily aimed at trustees of defined benefit (DB) schemes, The Pensions Regulator (TPR) stated that, as workplace pensions are largely domestic in nature, it does not expect the UK's departure from the EU to have a significant effect in respect of either the legislative basis under which schemes operate or trustees' abilities to continue administering their schemes effectively. This would be the case for a negotiated settlement or a no-deal scenario.

For DB schemes, trustees should consider the impact on employer covenant, investment strategy and funding. TPR's January guidance directs trustees to previous that provide further information on issues to consider. Trustees and sponsoring employers should be able to discuss such issues in an open and collaborative way, review their position and ensure they understand the risks in the scheme's investment strategy and employer covenant. Trustees may seek increased contingent security for the scheme and employers should consider how to respond to any such requests.

For defined contribution (DC) schemes, TPR's July 2016 guidance included recommendations that, as the future implications of any withdrawal from the EU become clearer, trustees may consider it appropriate to make changes to the investments included in the default arrangement and/or other investments offered to members. This remains valid guidance.

The Department for Work and Pensions has published guidance specifying that there is nothing in UK private occupational pensions legislation that prohibits such schemes from making pension payments overseas and that they do not expect this will change as a result of the UK's withdrawal from the EU.

A significant amount of UK pensions legislation originates from the EU - for example, scheme-specific funding requirements for DB schemes and non-discrimination. However, because these provisions have been implemented into national law they remain intact. While it is possible that they could change in the future, (i) large-scale repeal or reform that goes against equal treatment or reduces the regulation or security of pension schemes may be unlikely, and (ii) even if the legislation is changed, scheme amendment powers and statutory restrictions may prevent changes to scheme rules.

Actions

- Trustees and employers of DB schemes should engage collaboratively in considering the impact on funding.
- Trustees of DC schemes should consider consulting their investment advisers about the impact on the investment funds offered by the scheme.
- Trustees should be ready to deal with queries from members about the impact of a no-deal Brexit on the scheme.
- Trustees and employers should be aware of the potential future impact on legislation and keep the position under review.
- If a scheme sponsor is relocating its headquarters out of the UK, trustees should consider whether the scheme remains eligible for entry into the Pension Protection Fund.
- Trustees should consider whether any scheme rules or procedures rely on, or are derived from, EU law and whether such rules or procedures would need to be updated accordingly.
- Scammers play on Brexit fears and so trustees should be aware of a potential increase in the number of pension scams. They should ensure that their due diligence protocols are sufficiently robust to protect members, and comply with the Pension Scams Industry Group's 'Combating Pension Scams - a Code of Good Practice'.

How DLA Piper can help

DLA Piper continues to advise clients on Brexit pensions impact. For support or to discuss further, please contact the author or your usual DLA Piper contact.

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