Brexit – The impact on pensions

In this briefing we consider the impact of the UK vote to leave the European Union on employers and trustees of occupational pension schemes as well as members of personal pension schemes.

The short term impact

The immediate impact of the vote was extreme market volatility, although to some extent, this has now stabilised. As a result of the volatility, trustees of defined benefit pension funds, and members of other schemes, such as group personal pension plans, may have experienced a fluctuation in the value of their funds. Depending on how pension funds and pension savers determined their asset allocation and investment strategy, the market volatility resulting from the vote may have had an unwelcome effect on the value of those funds.

The medium to long term impact

The UK has not yet left the European Union under the Article 50 process and at present it is unclear on exactly what terms it will leave the European Union. Some models for exit entail varying degrees of adoption of EU law. Furthermore it is currently unclear how long it will take to bring about that exit.

During the period of time prior to exit, the UK will remain subject to EU law. We will consider the possible impact on UK pensions legislation post exit in Part 3 below.

In the medium term, while the uncertainty regarding the terms of exit persists, it is generally accepted that some market volatility will remain. This may affect the funding position of defined benefit pension schemes, depending on the underlying investment strategy. Trustees and employers (to the extent they can) may wish to revisit investment strategy. Scheme valuations which take place in this period may result in larger deficits than expected. A consequence of this could be greater strain on the sponsoring employer to fund that deficit. Equally, depending on the impact of the market fluctuations and uncertainty on the sponsoring employer's business, its covenant may be weakened which may also have a knock-on effect on scheme funding and investment decisions.

With regards to personal pension schemes, the value of pension savings may, depending on investment strategy, be adversely affected by the volatility.

The long term impact

A proportion of UK pension law has its roots in EU law, and a great deal of that law has been written into UK legislation. This legislation includes:

- Equality legislation protecting against discrimination on a number of grounds, including sex, race, age and sexual orientation, and is covered by the Equality Act 2010.
- Scheme funding legislation requiring defined benefit pension schemes to be adequately funded, covered by Part 3 of the Pensions Act 2004.
- Protection of employment and some pension rights on business transfers covered by the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- Protection by the Pension Protection Fund of employee pension benefits where their employer becomes insolvent, introduced under the Pensions Act 2004.

When the UK leaves the European Union these laws will remain part of UK legislation unless and until they are repealed. It is not expected that these laws will be repealed wholesale, as much of the fabric of these laws is enshrined in the overall UK statutory approach to pensions legislation. However, where aspects of this legislation, or indeed its interpretation by the European Court of Justice, have caused difficulties it may be that the legislation is amended. For example, difficulties for UK pension schemes include the application of age discrimination legislation (as pension benefits are fundamentally determined by age) and examples of difficulties for employers include the extent to which certain benefits under defined benefit pension schemes transfer with employees on business transfers.

It is however unlikely that changes to this legislation will be high on the list of the priorities of the government of the day because schemes and employers have broadly now adapted to the issues posed by the legislation.

If, following the UK's departure from the European Union, it is no longer subject to EU law, then UK pension schemes may avoid certain issues which have caused concern such as:

- Equalising benefits for the effect of different guaranteed minimum pensions payable to men and women.
- Further European law introducing stringent scheme funding requirements.

If you have any questions on these or any other issues relating to pensions and Brexit, do please contact Gabrielle Holgate, Partner and Head of Pensions, who will be happy to discuss.

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