



# Pensions

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Although the UK's exit from the EU on 31 January 2020 has not had an immediate impact on pension law and regulation in the UK, pension scheme sponsors and trustees should take steps to assess the potential impact of any anticipated changes in the UK's legal and trading relationship with the EU at the end of the transition period (which we are now in) on the sponsors' business and the scheme. It is critical that they prepare for all eventualities and ensure that contingency plans are in place to protect against material risks.

The UK ceased to be an EU Member State at 11pm on 31 January 2020. The UK and the EU are now in a transition period until the end of 2020 (or such later date as may be agreed). During this transition period, EU law continues to apply in and to the UK and the UK continues to trade with the EU as part of the Single Market. There will now be an intense period of negotiations to seek to finalise the details of the future relationship between the UK and the EU.

## Future relationship

There are a range of potential outcomes at the end of the transition period. These include:

- **a comprehensive free trade agreement (FTA)** - this could be based on the FTA that the EU has agreed with Canada or perhaps go even further than this (a so-called 'Super Canada' FTA)
- **a limited FTA** - this could, for example, eliminate tariffs and quotas on trade in goods and contain more limited provisions on financial services and level playing field conditions

- **a "bare bones" FTA** - a more limited deal still, this could see the introduction, rather than the removal of tariffs on goods with little, if anything, being agreed on services - at least for now. On rules and regulations, the more the UK diverges, the less market access it is likely to enjoy, or
- **no deal.**

Both sides have set out their respective [negotiating positions](#). However, there is unlikely to be much certainty regarding the outcome of the negotiations on the UK's future relationship with the EU until the end of 2020. Therefore, the adage "plan for the worst, hope for the best" continues to apply, meaning schemes and sponsors should continue to prepare for a no-deal scenario.

## Key risks

Whatever the outcome of the negotiations, there are three key risks that trustees and sponsors need to assess and, where possible, mitigate. These are the potential impact of the new arrangements or no deal on:

**The section is part of our [Brexit Legal Guide](#).**

## During transition

- The [Withdrawal Agreement](#) approved by the UK and EU Parliaments and the EU Council, sets out the arrangements that apply during transition.
- EU law continues to apply in and to the UK and the UK continues to trade with the EU as part of the Single Market, which means that during transition:
  - the UK continues to enjoy tariff free trade with the EU (and vice versa) and no new restrictions apply to the provision of financial and professional services
  - directly applicable EU legislation, such as the [Institutions for Occupational Retirement Provision Directive](#), the [Equal Treatment Directive](#) and the [General Data Protection Regulation](#), continues to apply, and
  - decisions of the Court of Justice of the European Union continue to be binding on UK Courts (including any decisions made during transition).
- There are no changes to the UK's pensions legal and regulatory regime as a result of the UK entering the transition period.

- the sponsor's business and financial strength
- scheme investments, and
- scheme funding and security arrangements.

As the negotiations unfold, trustees and sponsors should also work together to consider whether the balance of their scheme's funding, covenant and investment risks remains appropriate.

### Impact on sponsor

Pension scheme sponsors need to assess the potential impact of any changes in the UK's legal and trading relationship with the EU on their business. In particular, they need to understand the potential impact on their business of market volatility, the introduction of tariffs and other barriers to trade, disruption to supply chains, restrictions on market access (for example, in relation to financial services) and changes to immigration rules. The potential impact of changes in the UK and the EU's political landscape should also be assessed. Contingency plans should be put in place to address all material risks.

Pension scheme trustees should engage with their scheme's sponsor to understand the potential impact of any changes in the UK's legal and trading relationship with the EU on the sponsor's business and how this may affect its support for the scheme. Trustees should also ask for details of the contingency plans that are in place to address any major risks to the sponsor's business.

### Impact on scheme investments

The ups and downs of the Brexit negotiations and the resulting political fallout has already resulted in significant market volatility. This is likely to be repeated as the negotiations on the future relationship intensify. The potential economic impact of any changes in the UK's trading and legal relationship with the EU could also affect asset values and investment returns over the longer term.

Trustees of defined benefit schemes should take advice on the potential impact of the negotiations and the nature of the UK's future relationship with the EU on their scheme's investment strategy and what steps they might take to mitigate downside risks.

Trustees of defined contribution schemes should review the investment funds that are available to members and consider whether they remain appropriate in light of any material short and longer term risks to members' funds.

### Impact on scheme funding and security arrangements

Market volatility and the economic impact of changes in the UK's legal and trading relationship with the EU may impact the funding level of defined benefit schemes. Sponsors and trustees should consider how this may impact funding and security arrangements that are in place. For example, contingent payments under funding or security arrangements may be triggered where a scheme's deficit increases or there is a weakening in a sponsor's financial position. The impact of any contingencies being triggered on the sponsor's business should also be assessed.

### No deal – additional issues

#### Payments to members who live in an EU27 Member State

Concerns have been raised about the ability of UK insurers to make payments to individuals living in an EU27 Member State in the event of no deal. However, many insurers are putting in place contingency plans to enable them to continue to make these payments, where possible. In addition, certain Member States had indicated that they would continue to allow payments from UK insurers in the event of a no-deal Brexit, even if this issue was not resolved as a matter of law. It is hoped that this approach will be extended to cover the failure to reach agreement at the end of the transition period. In any event, UK insurers are taking steps to ensure that payments can continue to be made where a UK pension arrangement has been set up by someone living in the EU. Therefore, it is anticipated that any disruption to payments will be minimal.

Occupational pension schemes are not subject to the same rules as insurers in relation to payments within the EU. Accordingly, there is no reason why UK occupational pension schemes should be prevented from making such payments.

#### Sending personal data to the EU

The UK Government has confirmed that in recognition of the unprecedented degree of alignment between the UK and EU's data protection regimes, the UK would, at the end of transition, continue to allow the free flow of personal data from the UK to the EU. However, it plans to keep this under review. The UK Government also plans to recognise EU adequacy decisions made with third countries (eg Japan) prior to our exit from the EU.

- Regardless of whether or not there is a deal, the body of EU law in force at the end of the transition period will be imported into UK law (with necessary amendments) under the [European Union \(Withdrawal\) Act 2018](#) and UK legislation that has been made to implement EU law will be retained, with suitable amendments – this will be called **"retained EU law"**.
- Several regulations have already been made, which would make minor consequential amendments to UK pensions legislation, including the Pensions Act 1995, the Pension Protection Fund Entry Rules 2005 and the Occupational Pension Schemes (Investment) Regulations 2005, at the end of transition. Further adjustments may be required depending upon the terms of the future relationship.

### Deal

- There are a range of potential outcomes at the end of the transition period which involve some sort of deal being put in place. These range from:
  - **a comprehensive free trade agreement (FTA)** – this could be based on the FTA that the EU has agreed with Canada or perhaps go even further than this
  - **a limited FTA** – this could, for example, eliminate tariffs and quotas on trade in goods and contain more limited provisions on financial services and level playing field conditions, or
  - **a "bare bones" FTA** – a more limited deal still, this could see the introduction, rather than the removal of tariffs on goods with little, if anything, being agreed on services – at least for now. On rules and regulations, the more the UK diverges, the less market access it is likely to enjoy.
- Attempts to reduce or amend the UK's pension laws and regulatory requirements post-Brexit may be impacted by any agreement on the future relationship.
- The agreement will also determine whether the UK is required to follow future EU laws and CJEU decisions relating to pensions.

## Receiving personal data from the EU

The European Commission has stated that if it deems the UK's level of personal data protection essentially equivalent to that of the EU, it would make an adequacy decision allowing the transfer of personal data to the UK without restrictions. However, the Commission has said that a decision on adequacy cannot be taken until the UK is a third country and it is unclear how long it will be before any decision is made.

If the European Commission does not make an adequacy decision by, or immediately after, the end of the transition period and schemes or other organisations need to receive personal data from organisations established in the EU (including data centres), they will need to work with their EU partners to identify a legal basis for those transfers. In most cases, this will require standard contractual clauses to be put in place.

"The biggest Brexit related risks for pension schemes continue to be the impact of changes in the UK's legal and trading relationship with the EU on their sponsor, their investment strategy and the wider economy."

**SAMANTHA BROWN**

## No deal

- If the UK and the EU are unable to reach an agreement on their future relationship by 31 December 2020 and the transition period is not extended, the UK will cease to have access to the EU Single Market and it would be forced to trade with the EU on World Trade Organisation terms. The UK would also cease to be subject to EU law.
- Sponsors and trustees should assess the potential impact of this on scheme funding and security arrangements, investments and the sponsor's business and ensure suitable contingency plans are in place.
- There would be no immediate material changes to UK laws governing workplace pension schemes, including those relating to scheme funding, governance requirements, data protection, equal treatment and the protection of members on insolvency. However, the UK would be free to diverge from EU law on these issues in the future.
- Existing contracts may need to be amended to allow personal data to continue to be received from organisations or data centres within the EU.

## Key contacts



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