Summary
• Before Brexit, UK pension rules followed principles enshrined in EU law.
• Since Brexit, regulations have remained broadly aligned with EU and UK regulators sharing many common goals.
• There are some signs of divergence in areas such as sustainability and insurers' insolvency rules.
• In the future, there could be increasing divergence as UK objectives continue to influence the focus of regulators.

Five years after Brexit: Impact, opportunities, and challenges for the pensions industry

In the five years since Brexit, UK pension law has remained broadly aligned with EU rules. However, we could see small moves towards divergence in the future

This January marked five years since Brexit took place, following the 2016 referendum finding the UK in favour of leaving the European Union (EU). During that period, UK pension regulations have largely mirrored EU rules. However, some small but significant differences are now emerging.

Minimal immediate impact

Before Brexit, UK regulators aligned pension laws with EU principles, explains Eversheds Sutherland partner, Vanessa Wells, with policies on key areas like discrimination shaped by EU standards.

"Discrimination laws follow the principles of the EU. We've adopted those into UK legislation. Many of the requirements that we incorporated in the

Pensions Act 2004 were directly to comply with the first Institution for Occupational Retirement Provision (IORP) Directive."

Wells does not expect a widespread policy divergence in the future, with UK regulators working to align with the EU post-Brexit. "The UK pensions regulator signed a cooperation agreement at the point of Brexit with the European Insurance and Occupational Pensions Authority (EIOPA) to share information, policy and thinking about how it was regulating schemes that were previously operating cross border."

Pinsent Masons partner, Mark Baker, highlights how the UK and the EU share common goals on key issues, including climate, data protection, and governance, which means significant alignment between UK and EU pension regulations is likely to persist in the future.

We probably won't see many EU rules set aside, says Baker. He also notes that there is a distinct trend towards more regulation. "We would want to adopt best practice. In most of these areas, the trend is towards more regulation, rather than less."

Keeping watch on the EU rules

Despite Brexit, providers still need to monitor the EU rules, particularly if they have cross-border operations, says Wells. "Just because we're no longer in the EU we are still going to be caught by some EU regulations – things like the Digital Operational and Resilience Act (DORA) and the Pay Transparency Directive."

Wells also expects the Financial Conduct Authority to look towards the EU when it updates regulations. Most pensions in the EU are insurance-based rather than trust-based, so EU regulations could influence the direction of regulation on DB pensions.

Emerging divergence on sustainability

However, despite broad regulatory alignment, some areas of divergence are beginning to emerge. Sustainability is a key area where UK regulators have followed EU principles but are now introducing subtle differences, explains Barnett Waddingham chief investment officer, Matt Tickle.

"Despite broad alignment with the EU, some areas still provide additional administrative burdens for providers post-Brexit"

"The UK's Sustainability Disclosure Requirements (SDR) regime was brought in slightly after the EU's Sustainable Finance Disclosures Regulation (SFDR) rules," says Tickle. "Regulators built on and took the opportunity to learn from existing rules. In practice, this means that UK funds applying for an SDR label have different and arguably more stringent reporting requirements than their EU equivalent."

"They are fundamentally different regimes," adds Tickle, which can make things complicated for trustees who are selecting and reporting on funds. "SDR is more about disclosure and process, with a focus on what the fund is aiming to do, for example, achieving impact. SFDR has ended up as a hierarchical regime applying to all funds, but with levels for how sustainable each fund is. SFDR is more about what the fund is doing in practice. Some funds meet the SFDR bar but then don't quite meet the UK's very high SDR bar."

Modest divergence on solvency

Another area where the UK is diverging post-Brexit is insurer solvency rules, which are crucial in shaping investment strategies and are key factor for defined benefit pension schemes considering de-risking options.

4Most head of BPA market services, Colin Haines, explains: "We are seeing some divergence in insurance regulation. The UK's introduction of Solvency UK marked a departure from Solvency II, with reforms such as the Matching Adjustment and Risk Margin changes enhancing bulk purchase annuity pricing and asset sourcing."

Haines believes this is an area where we could see increasing divergence over time as the UK pursues increased flexibility. "Staying ahead of evolving regulations on both sides of the Channel will be critical for schemes, insurers and regulators alike."

Reducing barriers to productive finance

The reasons for regulatory divergence for insurers are two-fold, says Barnett Waddingham partner, insurance and longevity, Craig Turnbull. "Much of policy development has been focused on the pension buyout business, partly because it's a big part of the UK market, while it isn't a big part of the EU market."

But reforms will also make investing in UK assets and infrastructure easier for the sector. Turnbull adds: "Reforms are also driven by the UK government's productive finance agenda and ensuring that there are no disproportionate barriers to investing in illiquid assets. The Prudential Regulation Authority will have additional tools to supervise complex and less vanilla assets such as private asset classes. Insurers will have a bit more flexibility around what kind of investments they can make, relative to the EU Solvency II regulations."

Baker agrees that new insolvency rules could make it easier for schemes to invest in illiquid assets. "If you're an insurer that provides bulk annuity

deals. The matching adjustment rules give a small amount of extra flexibility, which might mean it's easier for insurers to move over illiquid assets from DB pension schemes."

Increased regulatory burden

Of course, despite broad alignment with the EU, some areas still provide additional administrative burdens for providers post-Brexit. For example, complying with rules for two regimes has added administrative burdens for asset managers, ultimately impacting efficiency and returns for pension schemes and members.

GSB partner, Paul Waterman, says schemes must be aware of practical issues that could affect members retiring in the EU. Members moving to the EU may now face extra challenges in accessing advice, annuities, and even bank accounts.

"Pension providers should actively assess the client's situation and ensure that advice remains suitable, transparent, and in the client's best interest, particularly in cases where clients are moving abroad."

Ripping up the rule book?

However, despite the growing challenges for pension providers, some experts see Brexit as an opportunity for substantial reform. College of Lawmakers chairman, Robin Ellison, argues that one of Brexit's key benefits is the chance to reduce the volume of regulation in the UK, allowing for the possibility of a more streamlined and effective pension system.

"The main advantage of Brexit is the opportunity to reduce the sheer volume of regulation in the UK. There are now over 200,000 pages of regulation on pensions in the UK. There is an opportunity to cut back," he says.

With Brexit giving UK regulators more flexibility, Ellison sees this as an ideal time to rethink pension policy direction. "We have missed an opportunity to make UK pensions more cost-effective and give better benefits by not rethinking intelligent regulations," he explains.

The road ahead

Looking ahead, although divergence has been minimal so far, we may see more noticeable differences as the UK begins to chart its own path.

The former Lang Cat director of public affairs, Tom McPhail, says that the continuing focus on UK objectives is likely to increase regulatory differences over time. "There will be occasions where the UK government takes different views on regulatory policymaking, which will likely lead to divergence."

Baker agrees and highlights that Brexit presents an opportunity to craft a pension system specifically designed for the UK. "Brexit means we don't have to put energy into lobbying on future EU rules – we can just design our own in a way that works for us," he explains.

The UK has a blank sheet of paper, says Baker. "It's the fundamental question for the UK, what we want the pension system to look like – the shape of DC. That's the fundamental question that needs to be answered in the UK, and it feels that it's a question we as a country are looking at ourselves, completely separate from the rest of Europe."

Written by Alice Guy, a freelance journalist