

No Deal, No PPF?

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Brexit insolvency issues for trustees of pension schemes with overseas sponsors

You might remember that before 2016, in the world before the EU referendum (which did exist!), it was effectively not possible for the insolvency of an overseas sponsor of a UK pension scheme to trigger entry into the PPF unless the overseas sponsor had a branch or office (an “establishment”) in the UK (for legal geeks you might remember this was the issue discussed in the *Olympic Airlines* case which was heard by the Supreme Court in 2015).

Following the *Olympic Airlines* case, in 2016 the PPF entry regulations were amended so that trustees can trigger entry into the PPF where an overseas sponsor with no “establishment” in the UK is unlikely to continue as a going concern.

Problem solved? Well, Brexit might yet throw a spanner into the works (and it might not be the last time that sentence is written...).

In January 2019, the Government passed the “Insolvency (Amendment) (EU Exit) Regulations 2019”, the majority of which is due to come into force on “exit day” (effectively on a no deal Brexit).

These regulations make a whole raft of different changes, largely to obscure (and not-so-obscure) insolvency laws. However, hidden in these regulations is an amendment to the PPF entry regulations which would remove the amendments which were made in 2016.

The explanatory notes to the regulations say that they are intended to address “deficiencies that will arise” from the absence of mutual application of the EU Regulation on insolvency proceedings.

It looks like the effect of this change is an unintended consequence of the new regulations (and the Parliamentary record doesn’t anticipate this effect) and we are aware that it has been brought to the DWP’s attention. But as it stands, if the regulations do come into force, the issue which was solved after *Olympic Airlines* will become live again for trustees of pension schemes with overseas sponsors.

It’s a technical problem that could have serious consequences for certain UK pension schemes. It also begs the question, are there other unintended consequences hidden in hastily drafted legislation?

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