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Key UK Pension Reforms Delayed By Brexit-Distracted Gov't

By **William Shaw**

Law360, London (April 24, 2019, 8:52 PM BST) -- Key U.K. pensions reforms risk long delays as the government is consumed by the protracted Brexit process, with new powers for The Pensions Regulator and plans to centralize workers' savings data being forced to the legislative back burner.

The Department for Work and Pensions had been hoping to get the Pensions Bill through Parliament this year, implementing a series of major reforms in response to the U.K.'s changing landscape for retirement savings. The legislation is expected to help establish the so-called pensions dashboard, designed to help millions of people track their money through a single online platform, following concerns that some workers are saving nowhere near enough for retirement.

The bill would further help set up the framework for flexible pension funds offering broader "ambitions" for future annual payouts rather than guaranteed amounts, amid concerns from lawmakers that the current arrangements may have outgrown their use.

Also on the cards are new civil and criminal powers designed to toughen up TPR after a series of companies collapsed with huge pension deficits.

But pensions experts now anticipate delays, as Prime Minister Theresa May struggles to secure cross-party backing for her Brexit proposals before Oct. 31, the new deadline for Britain to leave the European Union.

"The government is trying to do two really important things: get more people to save more money, which is one of the biggest problems facing society today, and protect consumers from criminals and scammers," said Tom Selby, senior analyst at stockbroker AJ Bell. "The longer all of this stuff gets delayed, the more the chance that any one of these reforms, however popular, might not happen at all."

Lawyers say their biggest concern is the potential delay of the new legal weapons for TPR after BHS Ltd., a department store chain, and Carillion PLC, a contracting giant, both collapsed with gaping holes in their retirement funds.

The DWP in March 2018 announced sweeping proposals to hand greater powers to the regulator, including larger fines and new criminal sanctions, that would protect around 10.5 million members of defined benefit pension schemes.

The government hopes to strengthen such schemes, which manage some £1.5 trillion ($1.9 trillion) in total funds, by punishing reckless managers, including allowing the watchdog to dish out “punitive fines” to those who deliberately put a pension scheme at risk. The regulator would also receive tougher inspection powers, enabling it to inspect records, documents and electronic devices at a particular premise.

On top of this, lawmakers plan to introduce a criminal offense to punish those who have committed willful or grossly reckless behavior in relation to a savings scheme, and beef up the process for disqualifying company directors.

Strengthening the regulator’s hand should be a priority, according to Anne-Marie Winton, partner at ARC Pensions Law. The reforms are partly designed to give the watchdog an earlier warning system, especially when it may need to intervene.

“The example would be if a group is in some distress and starts restructuring itself and therefore it would be worth the regulator having a look to see what's going on, helping out the trustees and asking difficult questions,” Winton said. “It seems more important to me that we give the regulator the powers to do that.”

Questions are also being raised about how Brexit negotiations will affect the pensions dashboard, which the insurance industry is eager to see implemented. The project would allow workers to view all their savings online at the same time, helping them calculate how much they need to put away for old age.

Online campaign group 38 Degrees warned in August that 10 million people will lose more than £15,000 each if the U.K. abandons plans for the project. Government officials and insurers have been working on the project since March 2016, but progress has been rocky.

“Let’s not be mistaken about this — it is by no means a straightforward exercise, and it is complex,” said Jay Doraisamy, partner at Mayer Brown LLP. “The consultation says 2019 is a critical year but with so many other issues, including the Brexit delay, you can see the critical year being pushed back to 2020.”

Projects like the dashboard are also going to be competing against other major government priorities, such as improved rights for tenants. The sheer scale and complexity of a nationwide IT project collating personal financial data from a host of employers also sends shivers down the spines of some pensions lawyers.

“Extensive planning will be required to get it right,” Doraisamy said.

Further haggling over Brexit is also likely to put the brakes on plans to legislate for a new form of retirement fund, known as a collective defined contribution scheme. Under such schemes — which are common in the Netherlands and Denmark — managers set a target amount to pay retirees, based on a long-term, mixed-risk investment plan, with the aim of paying out an index-linked pension for life. Crucially, however, this would be an ambition rather than a contractual guarantee.

U.K. lawmakers hope they could take off after a series of major companies failed to meet their pension schemes’ expectations. The CDC reforms are designed to offer a “halfway house” between defined benefit, where the sponsor takes on all the risk, and defined contribution, where the risk is entirely on the member, according to Selby.

Royal Mail and the Communication Workers Union announced a landmark deal for the first such scheme in February 2018. And last month, the government committed to legislate to make such plans a reality, though for now, even the first deal remains in the preparation stages.

“While demand for CDC appears relatively muted across the private sector, the fact Royal Mail are keen to adopt the structure for their 140,000 U.K. staff means getting the legislation passed is a key priority,” Selby said.

Pension lawyers hope to see such reforms swiftly come to fruition. But as the U.K. grapples with the details of Brexit, they are realistic about the amount of time this may actually take, and some suspect that the government may feel the same.

“If you read the consultations they refer to the need for legislation but it’s very much phrased on the basis of ‘if parliamentary time allows,’” Doraisamy said.

“As we all know, parliamentary time — given all the other things that are happening outside of pensions specifically — is limited.”

--Editing by Rebecca Flanagan and Kelly Duncan.