# BREXIT: The Legal Implications

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YOUR LEGAL COUNSEL

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# Agenda

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- Origins
- What happened on 23 June 2016?
- What happens now?
- Potential implications for the Irish Pensions Industry

# Origins

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- UK entered the EEC in 1973
- April 1975 – UK PM Harold Wilson agrees to a referendum on EEC membership
- 5 June 1975 Referendum – Remain 17.4m (67%), Leave 8.5m (36%), Turnout 65%
- 1980s and 1990s, Conservative Party increasingly divides into pro-EU and Eurosceptic factions
- Rise of Referendum Party, UKIP.


# A New Referendum

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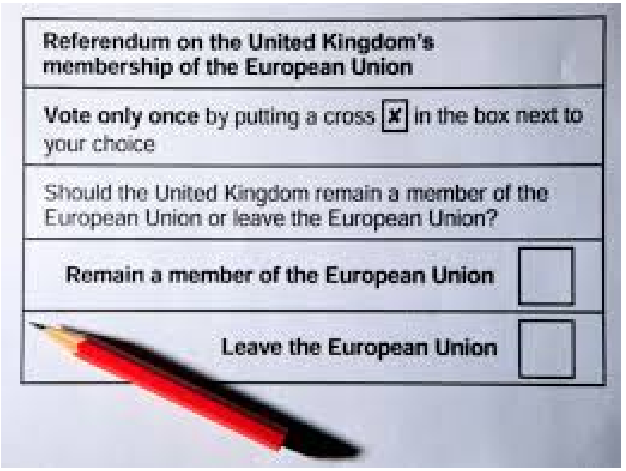
- January 2013 – UK PM David Cameron promises referendum by 2017 if Conservatives win next election
- September 2014 – Scottish Independence Referendum
- May 2015 – Conservatives win overall majority
- European Union Referendum Act 2015
- Referendum to be held on 23 June 2016



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# Brexit Campaign

- Bitter and divisive
- Project Fear v Immigration Fears/Sovereignty
- UK Government and Treasury warned of cuts to pensions in UK and threat to pensions of expats in EU
- Vote Leave warned of dangers to State pensions from TTIP and “one-off cost” of £328million from IORP II.


# Referendum Results

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- Leave: 17,410,742 (51.89%)
- Remain: 16,141,241 (48.11%)
- Turnout: 72.2%

- England/Gibraltar 53.4% for Leave
- Wales 52.5% for Leave
- NI 55.8% for Remain
- Scotland 62.0% for Remain


Source: Wikipedia

# Political Crisis!

Resigned!

Not Standing for Leadership!

Under Pressure from MPs!

Scottish Indyref 2 “Highly Likely”!

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# What has Changed Legally?

- NOTHING! The referendum is not legally binding
- To leave the EU, the UK must first invoke Article 50 of he Lisbon treaty
- Unless and until Article 50 is invoked, the UK’s legal status within the EU remains unchanged. It will be involved in all formal decisions and actions undertaken by the EU, although it may be excluded from informal discussions

# Article 50

"*1. Any* ***Member State*** *may decide to withdraw from the Union* ***in accordance with its own constitutional requirements****.*

*2. A Member State which decides to withdraw shall* ***notify*** *the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall* ***negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal****, taking account of the framework for its future relationship with the Union….*

*3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that,* ***two years after the notification referred to in paragraph 2****, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period*".

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# When and how will Article 50 be Triggered?

- UK Government says not yet.
- Conservative Party Leadership Election must happen first.
- New PM will have to decide when/if to trigger Article 50
- Likely to require legislation (legal action underway)
- Some legal commentators already speculating that it will not happen at all!

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# What will the UK Want?

- Access to the Single Market
- Limits on freedom of Movement
- Possible Norwegian model
- EU has already ruled out a similar deal to Norway

# Outlook

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- Economic uncertainty – pressure on the £GBP
- UK GDP set to shrink in 2017 – GS: recession "likely"
- Corporation tax to be cut to nearer Irish levels
- Article 50 will be triggered
- UK will end up with an "EEA minus"/trade deal
- Scottish independence possible by 2020 – JP Morgan

# How does EU law affect pensions

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- Equality/discrimination
- Social security
- Cross-border schemes
- Protections for members
- Insolvency

# UK Regulatory Reaction

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"*Firms must continue to abide by their obligations under UK law, including those derived from EU law and continue with implementation plans for legislation that is still to come into effect.*

*Consumers' rights and protections, including any derived from EU legislation, are unaffected by the result of the referendum and will remain unchanged unless and until the Government changes the applicable legislation.*

*The longer term impacts of the decision to leave the EU on the overall regulatory framework for the UK will depend, in part, on the relationship that the UK seeks with the EU in the future. We will work closely with the Government as it confirms the arrangements for the UK's future relationship with the EU*".

- Financial Conduct Authority, 24 June 2016

# Options open to the UK

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- EU legislation could be reaffirmed by UK Parliament or could cease to apply
- If the latter, UK would no longer be bound by the EU legislative requirements
- UK would be free to set own pensions investment and regulatory restrictions
- UK could keep IORP but reject IORP II!

# Cross-Border Schemes

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- UK and Ireland account for 75% of all current cross-border schemes.
- Will depend on UK/EU deal and UK attitude to existing EU legislation.
- Could see a return to a UK/Ireland protocol which existed prior to IORPs
- Existing cross-border schemes may be able to continue in current form or may be required to split

# Will it still be possible to transfer to a UK Scheme?

- Occupational Pension Schemes and Personal Retirement Savings Accounts (Overseas Transfer Payments) Regulations, 2003 refers to an overseas arrangement as being:
  - "*an arrangement for the provision of retirement benefits established outside the State*".
- Unless post-Brexit UK changes its position on inward transfer payments, it will still be possible to transfer benefits there.

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# Can an Irish Scheme still be a QROPS?

- Approval by HMRC of QROPS is governed by the UK Finance Act 2004
- To be recognised as a QROPS, a scheme must be "*established in a country or territory outside the United Kingdom*" and satisfy HMRC requirements
- Unless these provisions are amended, it appears unlikely that the status of QROPS will change as a result of Brexit.

# Passporting

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- Passporting permits financial services firms in the EEA to undertake permitted activities in other EEA states.
- Whether UK firms can continue to operate in Ireland (and vice versa) depends on the deal which is ultimately struck between the UK and the EU.
- Special arrangements are already in place for Switzerland and Gibraltar.

# Impact on Irish Pensions Legislation

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- References to “Member State” in the legislation:
  - Section 39 – schemes providing higher benefits where a member has moved to another Member State;
  - Section 44 – Member State-issued securities used in calculation of funding standard reserve
  - Sections 59 & 101 – payment of benefits in other Member States
  - Section 90 – Member State regulator can ask Pensions Authority to seek injunction from Court restraining any person from disposing or dealing with scheme assets
  - Section 91 – a CIS established in a non-Member State would require the approval of the Central Bank before use in a default investment strategy/by a standard PRSA

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# Consequences for Schemes

- Brexit is likely to herald a period of economic uncertainty and possible UK recession.
- Likely to have a negative effect on DB scheme funding due to stock market performance and annuity costs.
- Scheme employers and trustees will need to work with their actuarial and investment advisers to negotiate the likely risks.

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# Conclusions

- UK's legal status in EU has not changed yet
- Article 50 might not be triggered at all
- UK may choose to ditch or keep legislation, inc. IORP
- IORP II may not be adopted by UK prior to Brexit
- Ireland may require bilateral agreement with UK
- Changes to the Pensions Act may be required.
- Don't panic (yet!).

# Thank you

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