

Second Reading Briefing Paper

Pension Schemes Bill

July 2025



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Introduction

The Law Society of Scotland is the professional body for over 14,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Pensions Law sub-committee welcomes the opportunity to consider the Pension Schemes Bill (**Bill**). In summary;

- we request further clarity is provided (preferably through primary legislation) on scheme liabilities and member benefit levels following the Court of Appeals determination in *Virgin Media Limited v NTL Pension Trustees II Limited (2024)*¹ (**Virgin Media**);
- we welcome the requirements for defined contribution pension schemes to demonstrate they deliver Value for Money (**VfM**) to savers. We believe this will encourage better practice and strengthen competition in the pensions market;
- we support the provisions aimed at consolidating “forgotten” pension pots across the UK and Scotland. We believe this will increase the amount available to pension savers upon retirement;
- we would welcome further detail is provided on the associated secondary legislation and regulations that are required to implement the Bill. This includes those relating to the regulation of direct benefit superfunds.

We have the following detailed comments to put forward for consideration. Whilst these do not address every part of the Bill, they do provide our thoughts on matters which are of more immediate interest to our members. As further detail is provided alongside the Bill, we expect to provide additional commentary on other areas.

General Comments

The Bill was introduced to the House of Commons on 05 June 2025. It comprises 102 clauses and 1 schedule containing amendments to the Pensions Act 2004.

We note that certain provisions of the Bill do not apply to Scotland, most notably certain provisions contained within Part 1 (Local Government Pensions Schemes).

¹ *Virgin Media Limited v NTL Pension Trustees II Limited and others (2024) EWCA Civ 843*

We have therefore restricted our comments only to those clauses of the Bill which apply to Scotland.

In general, we would welcome further clarity on scheme liabilities and member benefit levels required following the case of *Virgin Media*. We note that, sitting alongside the Bill, the Government have subsequently confirmed that it will legislate to allow pension schemes to “*retrospectively obtain written actuarial confirmation that historic benefit changes met the necessary standards*”² (which relate to scheme rule changes that impact the ability for schemes to meet contracting out requirements). However, we question whether (if this is the intention) the use of primary legislation would be the most effective way to introduce these new provisions.

Dealing with this through Department of Work and Pensions (**DWP**) regulations could allow the new measures to be introduced quicker. Although *Virgin Media* is a decision of the English Courts (and so not directly binding on pension schemes subject to Scots law), it nevertheless remains highly persuasive in Scots law. Therefore, the need for certainty on this area in Scotland is now evident.

Notwithstanding this point, we believe that until either primary or secondary legislation is passed, the risk of possible future litigation remains. Therefore, this risk sits with trustees and sponsoring employers of schemes within scope and means they are faced with a decision to proactively review past amendments or risk waiting for further legislative guidance on the point.

We therefore believe that making available additional detail on the Government’s proposed measures for addressing *Virgin Media* issues retrospectively is now needed to assist schemes to understand the process of achieving retrospective confirmation. Alongside this, it will provide welcomed information on any scheme data the actuary may require in order to provide this confirmation.

Finally, we view the Pensions Scheme Bill as representing a significant reform which requires careful planning in terms of its implementation. We therefore welcome that a timeline has been provided by Government on the Bill’s implementation which will enable savers (and pension providers alike) to ensure they have sufficient time to prepare for the reforms. We note that while the Schedule to the Bill refers to the “Pension Schemes Act 2025”, the June 2025 Roadmap from the DWP indicates that the Bill will be enacted in 2026. We therefore assume this to be the timetable the Government is working to for the implementation of the Bill.

² [Government Response: Retrospective Actuarial Confirmation of Benefit Changes](#)

Specific Comments

Application and Return of Surplus Funds to Employers (Part 1, Chapter 2)

We note provisions contained under Part 1, Chapter 2. These provide a statutory power for trustees to modify their Defined Benefit (**DB**) scheme rules or remove constraints in an existing power. This provides for surplus sharing with scheme employers, even when their existing scheme rules prohibit this. Whilst we acknowledge that this will provide greater flexibility for scheme providers to contribute to wider economic initiatives and growth in the UK, a number of issues remain or arise with this approach.

First, trustees still need to consider their fiduciary duties when exercising the proposed powers. This generally encompasses acting in the best interests of its members (although it is generally recognised that a scheme employer can be a beneficiary of the scheme in respect of a surplus arising). This duty could place trustees in a difficult position where a surplus does exist, particularly if employers are exerting pressure to release any such funds.

Second, we are also concerned that surplus funds could be at risk of being used for purposes that are not pension related and that do not advance the purposes identified by the Government, unless effective oversight mechanisms are in place. We would therefore welcome further detail on how any such oversight might work.

We also have the following specific points for consideration under this Chapter;

- **Power to modify scheme to allow for payment of surplus to employer (Clause 8)**
 - **Subsection (1):** we would suggest that the inserted Clause 36B (1) is amended to state (*.....in accordance with subsection (2) or (3) “or both”*);
 - **Subsection (2):** we welcome the repeal of s251 Pensions Act 2004. This is in consideration of the difficulties that have been noted in ensuring that pensions schemes pass a valid resolution under this section to enable a refund;
 - **Subsection (4):** we are of the view that a scheme in wind-up should not be automatically excluded and point to the fact that the process of winding up often takes a significant amount of time. We would therefore suggest that the thought articulated in this subsection is moved into further regulations, with possible wording to allow the extraction of surplus *“only in excess of buyout funding, if the scheme is in wind-up”*.

The Value for Money Framework (Part 2)

We note that requirement under Part 2, Chapter 1 of the Bill (Clauses 10-17) that requires Defined Contribution (**DC**) Pension Schemes to demonstrate they deliver good value for money via a VfM Framework. We also note that the Secretary of State may make regulations for the purpose of evaluating and promoting best practice with regard to the provision of VfM.³

We believe that the VfM Framework will help demonstrate how certain schemes are performing. For this reason, we see the approach as a positive step forward that will improve retirement outcomes for savers in the pensions market. Pension savers have the opportunity to evaluate whether their scheme offers good value, alongside providing them with the ability to compare their scheme against its competitors. We believe that this approach will encourage underperforming funds to act if their scheme falls short of expected standards and strengthen competition in the pensions market.

More specifically, we note the provisions detailed at Clause 17 which outline the penalties that can be imposed for failure to comply with a VfM provision. In this, we note that regulations are to prescribe that these penalties will not exceed £10,000 for individuals and £100,000 for corporate entities. This contrasts with existing the £5,000 and £50,000 limits (respectively) under section 10 of the Pensions Act 1995.

Whilst accepting that these penalties have not been reviewed in the past 30 years, we would suggest it worthwhile to include provision within the Bill to make the revised amounts reviewable to ensure that they remain both fair and proportionate within the pensions market.

Consolidation of Small Pension Pots (Part 2, Chapter 2)

We note the provisions contained at Part 2, Chapter 2 enabling the Secretary of State to legislate for the consolidation of small pension pot schemes. We understand the aim of this it to make it easier for individuals to merge multiple pension pots into one place which have been accumulated through time spent with various employers.

We see certain strengths in this approach. This consolidation will help to address the issue of the 13 million⁴ “forgotten” pension pots under £1,000 found throughout the UK (and in Scotland). Targeting these will likely lead to a corresponding increase the amount available to a pension saver upon retirement. However, given that much of the detail regarding this provision will be implemented via Small Pot Regulations (**Regulations**), we await further detail as to how these provisions will work in practice.

³ [Pensions Schemes Bill, Part 2, Chapter 1 \(Clause 10\)](#)

⁴ [GOV.UK Press Release 24 April 2025](#)

In the interim, we have the following specific points for consideration under this Part;

- **Transfer Notices (Clause 22)**
 - **Subsection (1):** the wording here seems unusually prescriptive, and could be read as requiring only a one-off notice to be sent. It would read better if adjusted to say that regulations *"must at times or intervals that are specified require"* trustees or managers to serve transfer notices on pots that are not exempt.
 - **Subsection (3) (c) + (d):** we believe that these provisions are too prescriptive and suggest that they may be better entrusted to the Regulations for greater flexibility.
- **Effect of Transfer on Membership of Scheme etc (Clause 25):** we note that this states a person shall become a member of the arrangement to which a small pot is transferred. However, we note the absence of wording that gives effect to his or her entitlement to the small pot under the previous arrangement being extinguished. In view of this, we believe that this should either be stated expressly, or alternatively the language adjusted to make it clear that these transfers qualify as a transfer under relevant provisions of the Pension Schemes Act 1993 (thereby bringing a statutory discharge of the transferring scheme's liability under that Act into effect).
- **Meaning of "pension pot" (Clause 35):** we believe this clause should be amended. At present, a "small pot" simply refers to (some) money held by a scheme for a person. However, we consider that in order for the definition of a small pot under Clause 20 (2) to be meaningful, this would need to refer to all such funds held under the relevant scheme (or in a segregated part of that scheme).

In delivering the consolidation of "small pot schemes", we also note the planned introduction of a "Small Pots Data Platform" which aims to automatically transfer small, inactive pension pots into a single, authorised pension scheme for an individual. We believe that this platform will go some way to tackling the estimated £225 million⁵ that is spent in the pensions industry each year in unnecessary administrative costs.

However in doing this, we recognise the Government's aim to create various "DC Mega-Funds" (**DCMF**) which we understand as being large scale pension funds which manage at least £25 billion in assets. We note the stated policy intention for these DCMF's is to encourage schemes to invest in major infrastructure and private sector projects throughout the UK. It is hoped that this will boost the economy while driving higher returns for savers.

However, we question whether this policy objective will provide better outcomes for savers, particularly those schemes linked to large government infrastructure

⁵ [GOV.UK Press Release 24 April 2025](#)

projects. We are keen to avoid a situation where political influence affects the decision making process underpinning a schemes choice of investment. Therefore, whilst we support investment in both the UK and Scottish economies, we believe that it is important that pensions schemes remain committed to investing in assets that benefit their members first and foremost.

Competence of Pensions Ombudsman in Repayment Cases (Part 2, Chapter 2)

We welcome the “Competent Court” provisions contained within the Bill. We see this as restoring the Pensions Ombudsman's ability to make enforceable determinations in pensions overpayment cases without requiring a court order.

Default Retirement Options (Part 2, Chapter 5)

We note that the Bill provides a requirement for DCPS to improve retirement outcomes by ensuring that members who do not actively choose how to access their pension savings are still supported with appropriate, sustainable default options. This is designed to provide a better rates and regular income at retirement. Examples include annuities, drawdown products (or a combination of both).

We believe that such measures will have a positive impact on less sophisticated savers who may not fully understand the options available to them at retirement. We believe that this will also offer a layer of protection for savers experiencing poor outcomes due to inaction when they reach the age of retirement.

Superfunds (Part 3)

Linked to DCMF's are the relatively new DB Superfunds (**DBS**). These are commercial consolidators of Direct Benefit pension schemes which allow for employers to transfer their DB obligations to third-party entities.

In terms of the way these DBS's are to be regulated, we note the introduction of permanent statutory regulatory regime which aims to address the way in which these funds are authorised and approved. Alongside this, we note the provisions outlining the requirements as to the way that such funds should operate (Part 3, Chapters 2, 3 and 4⁶).

Given that DBS's are relatively new to the pensions market, we welcome that steps are being taken to ensure that the regulation of these funds is placed on a statutory footing. However, once again we note that much of the detail surrounding this is to be prescribed through further regulations. We would therefore ask that further detail is provided as soon as practically available.

⁶ [Pensions Schemes Bill \(Part 3, Chapter 2, 3 and 4\)](#)

Miscellaneous Provisions (Part 4)

We have the following specific points for consideration under Part 4;

- **Terminal illness (Clause 94):** we note the Bill's intention to adjust the compensation or assistance rules available under the Pensions Protection Fund (**PPF**) and Financial Assistance Scheme (**FAS**). We see this as bringing the PPF and FAS rules into line with the general position that pension schemes offer members with 12 months to live the possibility to commute their whole pension entitlement for a cash payment. We therefore consider that this change is long overdue. It is worth noting (should this reform seem unnecessary) that even with a 12 month limit, the time taken to undertake the necessary checks that underpin the assistance can significantly impact the time a member has to enjoy such assistance.
- **Pension protection levies (Clause 95):** in relation to the changes that allow the PPF to set a levy of zero, we cannot see that the provisions here remove the 80/20 ratio between a risk-based levy and scheme-based levy. We consider this as potentially affecting the ability of the Bill to meet policy intention.
- **Pension Dashboards (Clause 96):** we welcome the further amendments made to the Pensions Act 2004 which aims to improve the information provided to savers under Pension Dashboards. We believe that this will better serve savers by enabling them to actively manage their pensions on an ongoing basis. Furthermore, we consider that the provisions intended to enable PPF and FAS compensation data to be made available to members on pension dashboards is long overdue. We also note that the PPF have welcomed their being "allowed" to take part in this initiative. However, we are of the view that for this to work, the PPF should be required to do so and held to the same standards as all other participants.



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