

PENSIONS BILL - COMMITTEE STAGE - SUBMISSION OF EVIDENCE BY BP PENSIONER GROUP

Who we are and what is our interest

We represent the BP Pensioner Group, (BPPG) an informal association of members of the BP Pension Scheme - one of the largest in the UK with some 55,000 members and a substantial surplus of c. £3.8 billion and a funding ratio of c.129.5%.

The Group – comprising more than 3,000 members - was formed during the recent period of high inflation, to protest against a failure to honour a longstanding policy, issued by the trustee and the employer, to increase pensions fully in line with the cost of living “provided the Fund has sufficient resources”. The employer has blocked ‘actuary approved’ Trustee recommendations on pension increases in four consecutive years.

BPPG therefore has a particular knowledge of some of the potential issues for UK pension fund members in general that may arise from the Bill as currently drafted which we believe have relevance to many of the UK’s Defined Benefit pension schemes which are in surplus. In short, legislative measures that facilitate the making of payments to an employer have the potential to impact the capability of a Fund to support discretionary awards to members and in particular in circumstances where the value of an accrued pension has been eroded by inflation.

Summary

We welcome the Bill and DWP’s aim that: *“The proposed legislation seeks to remove barriers preventing DB schemes from accessing surpluses, which can then be used productively across the UK economy and to the benefit of millions of members.”*

However, we believe there are three fundamental barriers to securing this aim which we believe can and should be addressed in the Bill and proposed regulations.

Interests of Fund Members

- I. There is no provision in the Bill that requires consideration of any payment to members, or that the interests of members be taken into account.** Despite DWP assumptions in its Bill Impact Assessment of a 50/50 split of extracted surplus between employer and members, the Bill only provides for the possibility of payment to the employer. Moreover, the sole protection for members in the 1995 Act S. 37(3) (d) is proposed to be deleted.

We propose that the interest of scheme members should be made equally explicit in the Bill requiring that member interests must be taken into account and Trustees must have regard to certain factors – in particular circumstances where pensions have been eroded by inflation.

We propose regulations should require timely notification to members prior to any modification of the Scheme pursuant to the amended S.36B of the Pensions Act 1995.

Employer Veto

- II. **The Bill permits the Regulations to contain what is essentially a veto by the employer preventing a payment from surplus.** This would, if Trustees stand firm, frustrate the government's aim of promoting growth in the UK economy and prevent any enhancement or restoration of members' accrued benefits.

We propose that the Bill prohibits such a veto power and we welcome the Pension Minister's statement in the House during the 2nd Reading that he will look into the issue.

Trustee Conflict of interest

- III. **To succeed in its aims, new regulatory measures are required to accompany the Bill aimed at strengthening the independence and the professionalisation of trustee boards to deal with new challenges and conflicts of interest.** The Government has noted: "The distribution (of surplus) will likely be subject to the relative bargaining power of employers and members (represented by trustees)." Furthermore, The Pension Regulator has noted that "surplus extraction may create new risks and place further duties on trustees" and that "this new Bill will demand more of them". "We must also ensure that any conflicts are managed..."

We propose that:

- *the Secretary of State uses her existing powers to increase the proportion of member nominated trustees/directors from one third to one half by issuing an Order under Pensions Act 2005 s.243*
- *regulations be introduced that:*
 - o *require that the chair of the trustees/board of directors should be an independent, professionally qualified trustee with no prior links to the Employer/Sponsor and should have a casting vote.*
 - o *Member Nominated Trustees should be selected by a panel comprising only MNTs who are not employees of the Sponsor together with the Independent Chairman.*

Interests of fund members

1. The 1995 Pensions Act currently requires that “the trustees are satisfied that it is in the interests of the members that the power (to pay surplus to an employer) is exercised in the manner proposed”¹.
2. Despite assurances given in Parliament by the Pensions Minister², the Bill proposes to remove this current explicit recognition of the duty of Trustees towards the interests of pension scheme members when exercising proposed new powers to make payment of ‘surplus’ funds to employers from their pension schemes.
3. Reliance on the common law fiduciary duty of Trustees does not offer members sufficient protection. The Work and Pensions Committee has previously noted concerns about the differing interpretations of fiduciary duties, albeit in the context of sustainability and climate change. It has been variously quoted as being to act “in the best interests of members” and also to act “in the best interests of beneficiaries”. The Pension Regulator in its “Trustee Guidance” states the fiduciary duty is to act in the best interests of beneficiaries, noting that the Employer is also a beneficiary if it has an interest in the surplus or on winding up. The Regulator also goes on to state that acting impartially does not mean that you should “treat all classes of beneficiary in the same way”. This may suggest that preference can be given to the interests of the employer.
4. The interest of the employer in a release of surplus is ‘front and centre’ of the new Bill. Given the Government’s emphasis that its policy on surplus release is aimed at benefits to scheme members as well, the interest of scheme members should be equally explicit with a requirement that the interests of members be, at least, taken into account, and having regard to certain factors discussed under the heading Allocation (below).

Erosion of pension by inflation

5. The Pensions Minister stated during the 2nd Reading of the Bill: “One thing I would encourage them (Trustees) to prioritise if they are considering a surplus release is the indexation of those that have not received it on their pre-1997 accrual.” We endorse that sentiment but believe the Bill and Regulations can go further than simply encouragement. This also has more recent resonance for pensions accrued post-1997. The recent high level of inflation experienced in the UK between 2021-2024 saw prices rise by 24.1% (CPI) - well above the legislative mandatory increase figure of 2.5% p.a or 10% across the 4 year period. The Bill makes no mention of the desirability of making good any of this permanent loss of value in purchasing power with the consequence that the most financially vulnerable pensioners will need to

¹ <https://www.legislation.gov.uk/ukpga/1995/26/section/37>

■ ² “When it comes to fiduciary duty, the legislation we are putting before the House absolutely explicitly recognises the duty of Trustees towards their members.” and “(Trustees) will agree to a release only where it is in members’ interests.” Pensions Minister, House of Commons, 2nd Reading of Pensions Bill 8th July 2025

seek state welfare benefits. The DWP reported that 75% of UK DB pension funds were in surplus in 2024. In contrast, a 2024 survey by Pensions UK (Pensions and Lifetime Savings Association) found that only 32% of (principally) DB pension funds surveyed made any form of discretionary payment during the recent cost-of-living crisis.³

6. Trustees opting to take a power under the Bill's provisions to release and make payment to the employer of pension fund surplus must be obliged to first take fully into account scheme member interests with due weight given where pensions have been eroded by inflation and in particular where Trustee recommendations for increases, supported by scheme actuaries, have been previously refused by employers and that these factors should be the subject of Regulations as proposed in paragraph 14.

Notification

7. Regulations are required to provide for notification to members prior to the making of any payment of surplus. Presumably this is to allow objections/representations to be made to the Trustee. Given that DB pension schemes are now largely closed, the members (unless in previously publicly owned industries with unions) will for the most part be elderly and not organised, making it difficult to make an effective response.
8. Sufficient time is required to allow members to come together and seek professional legal/financial advice. In our own case the Trustee has refused to make members aware of the existence of the BP Pensioner Group by a simple mention of a contact address in pension newsletters or on its website. This has significantly delayed our ability to make effective representations to the Trustee. Our organisation has only been possible by individuals contacting former colleagues with whom they are still in touch – a slow process.
9. Existing notification and consultation legislation in respect of certain listed changes would not apply in the case of a modification relating to payments of surplus, because members do not have a subsisting right, but only the possibility of a discretionary award.
10. Regulations should also require notification to members prior to any modification of the Scheme pursuant to the amended S.36B of the Pensions Act 1995. This would alert members to the possibility of a future payment of surplus and allow them sufficient time to come together to seek professional advice in advance of any proposal to make a payment.

³ Provisions for increases to DB pensions are a mixture of mandatory legislative minimum annual increases, scheme specific guaranteed but often capped increases linked to RPI or CPI and increases at the discretion of the employer, trustee or both.

Employer veto

11. The Bill includes - in the permissible issues for the Regulations, S. 37 (2)(C), a provision prohibiting the making of a surplus payment without the employer's consent. This veto would remove or greatly fetter the discretion that the Bill seeks to provide to the Trustee in determining if, how and to whom a surplus should be released. It will increase the relative bargaining power of employers. Such a veto may well act to stymie the Government's aim of releasing funds into the economy
12. There is a case for the Bill and/or Regulations to prohibit such a veto power and we welcome the Pension Minister's statement in the House during the 2nd Reading that he was willing to look into the issue in answer to the Member for New Forest East.
13. Clarification is required as to whether an existing Scheme provision requiring employer's consent to making of a surplus payment constitutes a restriction which may be removed by resolution pursuant to S.36 (3)(B)

Allocation of surplus

14. The Dept. of Work & Pensions impact assessment of the Bill⁴ states: "Schemes will only modify their scheme rules and undertake surplus extraction if this is deemed to be beneficial for sponsoring employers and members" and makes an assumption that "benefits would be equally split between sponsoring employers and members" – a view it bases on "discussions with industry" and "emerging evidence from an industry survey."
15. While each scheme will have individual relevant factors for Trustees to weigh when considering surplus release, the DWP impact assessment assumption provides a useful 'neutral' starting point for this consideration and an important counterweight to any inappropriate presumption regarding 'ownership' of Fund surplus.
16. We recommend that Regulations accompanying the Bill provide guidance to Trustees on adopting a starting position envisaging an equal division between employers and members - from which position any relevant factors may then be applied to derive a final allocation position between employer and member.
17. Regulations should identify key relevant factors to be taken into account: Trustees' recommended increases which have been refused; the extent to which inflation has eroded the pension value.

Composition of Trustee boards

18. Trustee boards are critical to achieving the policy aims of the Pensions Bill not least of which is securing "better outcomes for Fund members". The pensions landscape is becoming more complex. The Pensions Regulator (TPR) recently noted that the

⁴ https://publications.parliament.uk/pa/bills/cbill/59-01/0255/impact_assessment.pdf

duties and expectations of trustees will grow, bringing new challenges including in the area of conflicts of interest.

19. The closure of DB pension funds to new members has led to an inevitable and progressive change in the composition of trustee boards, from trustees (whether company nominated or member nominated) who had a personal interest in the pensions to be paid by the fund, to trustees who have no personal interest in the future pension.
20. Many of these trustees will have a strong financial and career interest in the employer/sponsor. The scope for conscious or unconscious bias in decision-making is a deep concern. Given the scale and financial importance to employers of the opportunity to extract millions and in some cases billions of pounds of surplus funds from pension schemes, the conflict of interest facing both company nominated trustees AND member nominated trustees who are also employees, will be of an order not encountered before. Such conflicts will become particularly acute where a trustee, who is also an employee and/or senior manager of the sponsoring company, is required to consider the merits of surplus release to an employer.
21. The CEO of The Pension Regulator, in a recent speech⁵, noted that “surplus extraction may create new risks and place further duties on trustees” and that “this new Bill will demand more of them”. “We must also ensure that any conflicts are managed and that decisions are always made purely in the interests of savers.” “I know the value of the member voice. Member nominated trustees, often supported by trade unions, or committees help bring that all important view from members to decision making”. She also noted that TPR was “increasingly seeing trustee models where the commercial model may present potential conflicts between the trustee’s responsibilities to the members and their relationship with the sponsoring employer or scheme funder.”
22. The Government’s Impact Assessment of the Pensions Bill noted: “It is unclear how surplus payments would be shared between members and sponsoring employers, and what form surplus sharing will take. The distribution will likely be subject to the relative bargaining power of employers and members (represented by trustees).”
23. In light of the above, new regulatory measures are required to accompany the Bill aimed at strengthening the independence and the professionalisation of trustee boards to deal with these challenges and conflicts and to ensure that the “relative bargaining power” of Trustee and employer is not skewed from the outset.
24. The provisions of the Pensions Act 2004 S.241 and S.242 permit member nominated trustees/directors to be selected with minimum involvement of members. It allows a process whereby the Trustee invites individuals to put themselves forward as

⁵ <https://www.thepensionsregulator.gov.uk/en/media-hub/speeches-and-speakers/the-changing-nature-of-trusteeship-2025>

candidates backed by the nomination of as few as 5 active and/or pensioner members and for the “member nominated trustee/director” to then be selected from those candidates by the existing Board. The provision that the selection process involves “some or all of the members” permits selection by the existing board as long as that comprises 2 trustees/directors who are themselves members. This process carries the very real risk that the selection of member-nominated and employer-nominated trustees is highly susceptible to what TPR CEO called “group think” just at a time when the Bill places much greater responsibility on Trustee boards to demonstrate diversity and independence of thought and appropriate challenge to employers as part of the “bargaining power” on which the Bill places great reliance if it is to meet its objectives.

25. To address this, we believe the provisions of the Bill, Regulations and TPR Guidance should require that trustee boards which opt to take a power under the new Bill to release and allocate surplus must ensure that their board composition meets a new, higher regulated standard of independence and professionalisation.
26. In this regard, we propose that the Secretary of State uses her existing powers by issuing an Order under Pensions Act 2005 s.243 to increase the proportion of member nominated trustees/directors from one third to one half.
27. We further propose that new regulations be introduced that require that:
 - the chairman of the trustees/board of directors should be an independent, professionally qualified trustee with no prior links to the Employer/Sponsor and should have a casting vote.
 - Member Nominated Trustees should be selected by a panel comprising only MNTs who are not employees of the Sponsor together with the Independent Chairman.

Members of the BPPG would be glad to elaborate on any of the points above, should that be of help to the Pension Schemes Bill Committee.