

Written evidence submitted by Hewlett Packard Pension Association (HPPA) to the Pension Services Public Bill Committee (PSB27)

Part 1 – Overview, Part 2 – Full Analysis and Draft Amendments

Requested Amendments to Section 1 Chapter 2; “Powers to Pay Surplus to Employer”

8. Power to modify scheme to allow for payment of surplus to employer

Context

The Hewlett Packard Pension Association (HPPA) is a voluntary organisation representing over 2100 members. We would respectfully ask the Committee please to consider the following question:

“Given that it was mandated by our employers at the time of joining the company that employees contributed to the Defined Benefits pension fund, and therefore our contributions partly generated the funded scheme that would deliver any surplus. Is it not reasonable that pensioners should also have a statutory right to share in the distribution of any surplus?”

1. Background and Experiences

Digital Equipment Company Ltd operated a compulsory staff pension plan. The scheme was designed to offer some protection against inflation through annual discretionary increases, subject to company performance.

Recent analysis indicates that the scheme is managed conservatively to:

- ensure promised pensions are paid
- minimise risks, and
- avoid additional sponsor costs - often resulting in minimal surplus.

However, the long-standing public dispute regarding the absence of discretionary increases for Pre-1997 pensioners has resulted in an estimated 60% erosion in the real value of their pensions.

Over many years the Trustee has recommended that discretionary increases be granted. The Company has not acted on these recommendations, relying instead on the lack of any legal obligation to provide increases or indexation to pensions accrued before 1997.

“The Trustee of the HP Plan takes this matter seriously and makes representation to the Company each year seeking that it grants a discretionary pension increase. The Trustee itself is not a party to the Company’s decision whether to award a discretionary annual increase, nor does the Trustee have any direct influence or legal power in relation to discretionary pension increases.”

- Geraldine Latham, Senior Trustee Executive at Zedra (on behalf of HPE Trustee), in correspondence with Sir Oliver Dowden MP

The sense of injustice among pensioners is deeply felt. Many now receive a significantly lower pension than originally expected, with some facing severe financial hardship as inflation further erodes purchasing power.

Explanatory Notes Overview clause 9 (accompanying the Bill) states:

“Through this change, trustees will also be better placed to negotiate with sponsoring employers to get additional benefits from surplus for scheme members”.

We welcome this aspiration. However, realising such outcomes will require **legislative changes to rebalance** power between trustees and sponsoring employers, and ensure fairness for pensioners.

2. Requested Outcome and Rationale

HPPA recommends the inclusion of three amendments to Clause 8, to ensure pensioners have a statutory right to share in the distribution of surplus:

Clause 8A: Trustee power to pay surplus to members

Justification:

Surplus arises from both employer and employee contributions, along with investment performance. It does not belong solely to the employer. If legislation permits the return of surplus to companies, it must also permit return to members.

Clause 8B: Fairness assessment prior to exercising power to pay surplus

Justification:

- a) The Pensions Regulator has reported that 23% of DB schemes (17% by membership) apply no indexation to benefits accrued before 6 April 1997. HPPA’s own 2021 analysis estimates that approximately 1.8 million DB scheme members - including around 750,000 pensioners - are subject to employer discretion for pre-1997 pension increases.
- b) In many schemes, sole power over discretionary increases rests with the sponsoring employer, not the trustees. While Trustees may recommend increases, they cannot implement them without employer consent. This renders trustees powerless, regardless of surplus levels or member need.
- c) As currently drafted, the Bill reinforces this imbalance, enabling only the employer to benefit from surplus distribution.

Clause 8C – Strategy for providing all pension benefits over the longer term

Justification:

Under section 221A of the Pensions Act 2004 (as amended by the Pension Schemes Act 2021), trustees must, in consultation with the sponsor, develop and maintain a long-term funding and benefit strategy.

The Pensions Regulator should be required to publish guidance to assist trustees in interpreting fairness in the context of long-term funding and benefit provision.

3. Key Questions for Government Scrutiny

Is the Government aware that between 750,000 to 1.8 million people with pre-1997 pensions have seen their benefits stagnate and fallen significantly behind the cost of living?¹

Will the Government consider using this Pension Schemes Bill as a timely opportunity to restore fairness, at no cost to the taxpayer, by amending Clause 8 as requested?

Further evidence and more detail is included in **Part 2 – Full Analysis and Draft Amendments**, together with suggested draft amendment wording.

HPPA would be pleased to provide oral evidence to the Committee and answer any queries arising from our submission.

¹ Based on research conducted across the Pre-1997 Alliance of similarly disadvantaged pensioner groups.

Pension Schemes Bill 255 Evidence Submission to Committee Stage

By: Hewlett Packard Pension Association (HPPA)
Part 2 of 2 – Full Analysis and Draft Amendments

Date: 11 August 2025

Requested Amendments to Section 1, Chapter 2 “Powers to Pay Surplus to Employer”

Summary of Submission

1. This submission requests three amendments to strengthen the Pension Schemes Bill by ensuring that decisions regarding surplus distribution are fair, balanced, and transparent for all scheme members, including those with pre-1997 benefits subject to discretionary increases decided by sponsor companies.
2. The requested amendments relate to **Section 1, Chapter 2 “Powers to Pay Surplus to Employer”, Clause 8** and the Government’s stated intent that trustees should consider member interests when surplus is released to the employer.
3. Our requested amendments are designed to deliver balanced and fair governance:
 - **Clause 8A:** Provides trustees with the same power to pay surplus to members as they will have to pay surplus to the employer, with the same safeguards.
 - **Clause 8B:** Introduces a fairness test that trustees must conduct before approving surplus payment, and a resolution mechanism where agreement between trustees and employer cannot be reached.
 - **Clause 8C:** Strengthens the existing requirement on trustees and employers to agree a funding and investment strategy for providing pensions and other benefits, including discretionary increases, over the longer term.
4. These changes support the Government’s goals, improve scheme governance and better protect pensions that have no statutory indexation and are dependent on company approved discretionary increases. They will also promote, reinforce and deliver greater collaboration on strategy and policy between trustees and employers.
5. Further detail is provided in Appendix A (Governance Gaps Addressed by Clauses 8A-8C), Appendix B (Snapshot of Discretionary Practices).

Who We Are

6. **This submission is made by the Hewlett-Packard Pension Association (HPPA)**, a volunteer organisation representing thousands of pensioners and members within a DB scheme sponsored by Hewlett Packard Enterprise, following the split of Hewlett Packard into Hewlett Packard(HP) and Hewlett Packard Enterprise(HPE) in 2015.
7. HPPA was the co-founder of the **Pre-97 Alliance**, which now includes collaboration with members from other schemes similarly impacted by their sponsor company not granting discretionary increases to pensions accrued before April 1997. The Pre-97 Alliance

includes members within schemes sponsored by Wood Group, 3M, Amex, Pfizer, AIG, Atos/Sema, STMicroelectronics, Chevron UK.

8. HPPA has campaigned extensively to highlight the injustice facing our members whose service before April 1997 has no statutory indexation and who have not received discretionary increases for decades.
9. HPPA gave both **written and oral evidence** to the **Work and Pensions Select Committee's Inquiry into DB Pensions**, and one of our key recommendations was explicitly recognised in the Committee's final report.
10. We continue to provide constructive proposals to improve trustee powers and scheme governance practices to deliver better outcomes for all our members, particularly pre-97 pensioners subject to company discretionary power.
11. We would welcome the opportunity to provide oral evidence to the Bill Committee during its deliberations.

Justification for Requested Amendments

12. The Pension Schemes Bill aims to change the legal framework for surplus governance in support of economic investment, growth and benefit to employers and members. However, we believe it has several critical gaps that undermines its effectiveness:

Lack of Balanced Powers: While trustees will be able to pay surplus to employers (subject to safeguards), there is no equivalent power to effectively pay surplus to members. This imbalance risks favouring company benefit over member benefit. Clause 8A introduces a balance of powers, subject to safeguards.

Risk of deadlock with no effective resolution: Where scheme rules require sponsor company approval before surplus can be used to benefit members, trustees can be blocked by company veto. Clause 8B addresses this with escalation to the Pensions Regulator for both guidance and resolution.

Lack of collaboration on a strategy for discretionary pension increases: In schemes where the company has sole discretionary power, the evidence suggests most companies decline to engage with trustees in developing a strategy and policy for providing discretionary benefits over the longer term, and in those schemes that already enable surplus return to the company, it is the company that likely benefits first.

Clause 8C strengthens and enforces the requirement that companies and trustees agree a funding and investment strategy pensions and other benefits over the longer term.

13. The Bill Explanatory Notes associated with Clause 8 state:

“Through this change, trustees will also be better placed to negotiate with sponsoring employers to get additional benefits from surplus for scheme members”.

In recent communications with MPs of HPPA members, Pensions Minister Torsten Bell MP states that:

“Trustees are required to act in the interest of scheme beneficiaries, and, working with sponsoring employers, will be responsible for decisions around surplus release. Employers will have no direct access to surplus funds and trustees are within their rights to request conditions that include the payment of discretionary indexation to members as part of any agreement that leads to the release of surplus to the employer”.

“The Pensions Regulator’s guidance already requires trustees to consider members, who would benefit from a discretionary increase, and whether the scheme has a history of making such awards. Following our reforms, trustees will continue to consider the correct balance of interests between members and the sponsoring employer when making decisions about surplus funds. The Regulator will publish guidance for trustees and advisors following passage of the Pension Schemes Bill,

noting factors to consider when releasing surplus and ways in which trustees can ensure that members and employers can benefit, following the passage of this legislation.”

While these principles are welcome – they depend on non-binding guidance and voluntary trustee and company actions.

Current evidence indicates more effective safeguards are required.

- 14. Without strong safeguards, behaviour will be determined by what legislation allows. We believe the need for strong safeguards is illustrated by the following, and while specific, it is reflective of the wider landscape:**

Trustee Powers

- The legal power to approve discretionary increases lies solely with the company. Trustees are unable to approve discretionary increases unless the sponsor company agrees.
- A Senior Trustee Executive at Zedra (on behalf of HPE Trustee), in correspondence with Sir Oliver Dowden MP, stated the following:

“The Trustee of the HP Plan takes this matter seriously and makes representation to the Company each year seeking that it grants a discretionary pension increase. The Trustee itself is not a party to the Company’s decision whether to award a discretionary annual increase, nor does the Trustee have any direct influence or legal power in relation to discretionary pension increases.”

Policy on surplus benefitting the company

- In 2010 the Trustees of the Hewlett Packard Retirement Benefits Plan passed a resolution allowing payment of surplus to the company.
- This was then followed by Trustees and company agreeing a “Policy on surpluses” that any future funding surplus (compared with the Technical Provisions) will be used to reduce employer contributions.
- Within this policy, there was no consideration given to using surplus to benefit members.
- This policy is still in operation today.

Trustees are unable to use surplus for member benefit unless the sponsor company agrees.

HPE UK leadership statement on compliance with legislation

- In 2024, HPE UK leadership stated the following in a communication to an MP who urged the company to review its practice and policy on discretionary increases:

“If the law changes, HPE will of course make the necessary adjustment to the Plan to ensure we continue to remain fully compliant with the law, as we currently are”

15. The above provides clear and compelling evidence that **legislative change is the single most critical factor to help change behaviour, improve pension scheme governance and create more positive outcomes.**
16. Our requested detailed amendments below give practical legal weight to the Government’s objectives within the Pensions Bill and associated guidance.

Suggested Amendment Wording

Insert after Clause 8 “Power to modify scheme to allow for payment of surplus to employer”

Clause 8A – Trustee power to pay surplus to members

After section 37 of the Pensions Act 1995, insert:

Section 37A – Trustee power to pay surplus to members

(1) The trustees of a trust scheme shall have the statutory power to apply any surplus assets of the scheme, after provision for all accrued and prospective liabilities and subject to the statutory funding objective, to—

- (a) make payments or provide benefit enhancements to members of the scheme or their dependants; and
 - (b) increase discretionary pension benefits or discretionary pension increases to members,
- during the lifetime of the scheme.

(2) This power under subsection (1) shall be exercisable by trustees regardless of any requirement in the trust deed or scheme rules for employer consent or approval.

(3) Trustees must satisfy themselves, supported by appropriate actuarial certification, that exercising the power under subsection (1) will not prejudice the scheme’s ability to meet its liabilities and the statutory funding objective.

(4) Trustees must notify the Pensions Regulator of their intention to exercise the power under subsection (1) in accordance with regulations made by the Secretary of State.

(5) The Secretary of State may make regulations prescribing—

- (a) conditions and procedures for exercising the power under subsection (1);
- (b) requirements for actuarial certification and trustee governance;
- (c) reporting, notification, and disclosure obligations.

Clause 8B – Fairness assessment prior to exercising power to pay surplus

After section 37 of the Pensions Act 1995, insert:

Section 37B – Fairness assessment before exercising powers to pay surplus

(1) Before approving any withdrawal of surplus assets by the sponsoring employer, the trustees of a defined benefit pension scheme must formally assess and document they have considered:

- (a) the fairness of the proposed distribution of surplus assets across all categories of

scheme members and beneficiaries, including those with pensionable service accrued before 6 April 1997

(b) any material erosion in the real-terms value of pensions for such members

(c) whether any part of the surplus could reasonably and prudently be applied to improving member benefits before payment to the employer.

(2) The scheme actuary shall provide a statement confirming that such considerations have been documented and assessed as part of the surplus distribution process and the long term sustainability of the scheme

(3) The Pensions Regulator shall issue guidance to assist trustees in fulfilling their responsibilities under this section, including recommended indicators of fairness and historical under-indexation.

Clause 8C – Strategy for providing all pension benefits over the longer term

Amendment

(1) In section 221A of the Pensions Act 2004 (Funding and investment strategy), after subsection (6) insert -

“For the purposes of this section, ‘other benefits’ includes discretionary increases to pensions in payment.”

(2) In preparing or revising the funding and investment strategy under subsection (1), the trustees and the sponsoring employer must agree a policy for ensuring that all pensions and other benefits, including discretionary pension increases, can be provided over the long term.

(3) This policy must include consideration of -

(a) the real-terms erosion of pensions in payment, particularly for members with pensionable service accrued before 6 April 1997;

(b) the indicators or criteria under which discretionary increases should be considered; and

(c) the fair use and allocation of scheme surplus between different cohorts of scheme members.

(4) The Pensions Regulator shall publish guidance to assist trustees in interpreting fairness within the long-term funding and benefit context.

Why these amendments matter

17. **Amendments 8A, 8B** address a significant gap in pension scheme governance related to the distribution of surplus assets.

- **The insertion of Section 37A into Pensions Act 1995** empowers trustees to return surplus or increase discretionary benefits to members **even where trust deeds or scheme rules currently reserve approval rights solely to the employer**. This removes a legal barrier that limits trustees' ability to act in members' best interests.
- **The insertion of Section 37B into Pensions Act 1995** establishes a mandatory **fairness assessment** trustees must conduct before making any surplus payment or benefit enhancement, regardless of recipient. This ensures that members, including those adversely affected by historic erosion of discretionary increases, are fairly considered and protected.
- Together, these provisions enhance scheme governance by enabling fairer distribution of surplus assets while safeguarding the scheme's financial health and compliance with regulatory standards.

18. **Amendment 8C** clarifies that “other benefits” in section 221A(1) of the Pensions Act 2004 expressly includes discretionary increases to pensions in payment. The change removes legal uncertainty over whether trustees must consider these increases when setting their scheme’s funding and investment strategy.

Without this clarification, a significant group of pensioners - particularly those with pre-1997 service - may be left outside the scope of long-term planning, even though their incomes are vulnerable to erosion over time. This amendment does not mandate the payment of discretionary increases, nor does it impose new funding requirements. It simply ensures that these increases are explicitly considered alongside all other scheme benefits when trustees develop their long-term strategy.

By embedding this clarification into the existing statutory framework, the amendment strengthens fairness and transparency in pension scheme governance without imposing additional costs or altering the balance of trustee powers. It aligns with the policy intent of the Pension Schemes Act 2021, which was to ensure schemes are planned and funded with all benefits in mind.

Concluding Comments and Alignment with Government Objectives

19. Our requested amendments establish a comprehensive, integrated and coherent framework. Together, they create a robust governance cycle:

- **Strategy (8C)** sets the long-term policy and objectives
- **Power (8A)** grants trustees the authority to act within that strategy
- **Safeguards (8B)** ensures decisions are fair, transparent, and sustainable

This integrated approach strengthens member protections, enhances trustee accountability, and fosters greater confidence in occupational pension schemes.

20. We believe Clauses 8A–8C are tightly aligned and consistent with government expectations, policy and the role of trustees.

21. Inclusion of these clauses would help rebuild trust in the system among members who have seen their pensions decline over decades.

22. More fundamentally, we believe the Bill Committee has an opportunity - and arguably a duty - to consider how pension scheme practices can be reshaped to reflect the goals of fairness, transparency, and long-term financial security for pensioners. Without mechanisms to encourage responsible use of surplus and collaborative strategy for pensions and other benefits over the longer term, there is a real risk that the Bill will entrench the status quo.

23. We understand that there may be concerns about scope or legislative drafting. But we respectfully submit that these proposals are clearly within the spirit of the government's stated objectives. They also align closely with Government's wider philosophy of corporate responsibility and social justice. If the Bill is to improve real-world outcomes for members, it must address the systemic imbalances that have allowed discretionary pension increases to fall behind while sponsor wealth has grown.

24. We believe these amendments are practical, governance-based improvements to a critical reform.

We request that the Pensions Scheme Bill Committee:

1. **Consider and incorporate** Clauses 8A, 8B, and 8C into the Pension Schemes Bill to improve overall governance
2. **Invite** the Hewlett-Packard Pension Association (HPPA) to provide oral evidence during the Committee stage, to further inform development and progress of the Bill.
3. **Recommend that The Pensions Regulator (TPR)**, considers our evidence and proposals as a basis for improving scheme governance and pension outcomes.

Appendices

Appendix A: Legal and Governance Gaps Addressed by Clauses 8A–8C

<u>Issue Area</u>	<u>Current Position (Under the Bill)</u>	<u>Effect of Proposed Clauses 8A–8C</u>
Return of surplus to employer	Permitted, subject to funding conditions	Maintained (Clauses do not alter this)
Return of surplus to members	Only possible if scheme rules allow; company agrees, no statutory right	Statutory right granted to trustees to return surplus to members (8A)
Trustee powers	Favours employer side only, trustees have to “negotiate” to provide benefit to members	Balanced power – trustees can allocate surplus fairly subject to safeguards (8A)
Fairness considerations	No statutory requirement to assess member impact or scale of pension erosion	Statutory fairness test required before surplus return (8B)
Employer veto or deadlock risk	Trustees cannot proceed without employer consent with risk of disagreement	Regulator guidance and intervention to resolve dispute if deadlock occurs (8B)
Discretionary increase policy	No requirement for forward-looking strategy; many schemes omit pre-97 planning	Trustees and sponsor must agree and publish strategy for all pension benefits (8C)
Member communication	No obligation to report policy or explain discretionary practices	Statement of Strategy must be shared with members (8C)
TPR guidance reliance	Future TPR guidance will be advisory only	Clauses provide statutory framework with supporting guidance

Appendix B: Snapshot of Discretionary Practices

The following table presents a snapshot of the number of years members have not received discretionary pension increases for their service before April 1997 across a range of schemes, reported in UK media.

LEAGUE TABLE BASED ON RECENT PRESS ARTICLES

	Company	Years of zero since 2002
COMPANIES THAT HAVE GIVEN ZERO DISCRETIONARY INCREASES TO PRE-97 PENSIONS	Wood Group*	23
	STMicroelectronics*	21
	Hewlett Packard/Enterprise*	20
	Atos/Sema*	20
	Amex*	19
	AIG*	17
	Pfizer*	17
	3M*	16

* Companies where former employees have come together to form the The Pre-97 Alliance
Across these schemes more than 35,000 individual members are impacted by zero increases

August 2025