Written evidence submitted by ABI to the Pension Schemes Public Bill Committee (PSB55)

About us

The ABI is the definitive voice of the UK's world-leading insurance and long-term savings industry, which is the largest sector in Europe and the third largest in the world. We represent more than 300 firms within our membership including most household names and specialist providers, providing peace of mind to customers across the UK. Our sector is productive, inclusive and essential to the UK economy and together, we are driving change to protect and build a thriving society.

Introduction

1. The ABI welcomes the opportunity to provide written evidence to the Pension Schemes Public Bill Committee, and we look forward to engaging with the government and Parliament as this important legislation progresses.

2. Our members are major investors who play a crucial role in supporting UK economic growth. In May, the ABI, alongside Pensions UK and the City of London Corporation, were pleased to co-ordinate the Mansion House Accord, signed by 17 of the largest Defined Contribution (DC) pension providers, committing to investment in private markets, half of which will be in the UK. In addition, as a result of changes to the Solvency UK framework, ABI members, particularly those in the bulk purchase annuity market, have committed to invest £100 billion in productive assets over the next 10 years.

3. Our 'Powering UK Growth Through Pensions' report shows that in 2023, £178 billion (65%) of total assets held by participating firms providing bulk and individual annuities were invested in the UK. This compares favourably to the Defined Benefit (DB) schemes these insurers take on, as DB schemes broadly invest 55% of their total assets into the UK economy.

Executive Summary

About us

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Find out more at **abi.org.uk**

4. The Pension Schemes Bill is a wide-ranging Bill with substantial proposals for scrutiny. Taken together, these proposals are set to usher in the biggest pension reforms since auto-enrolment and pension freedoms. We broadly welcome these proposals and want to ensure that the Bill, in tandem with the Pension Investment Review and the Pensions Commission, puts the long-term interests of savers first and boosts economic growth.

5. We **firmly believe there is no need to mandate investment from pension funds**, particularly in light of the industry initiatives outlined above. A mandation reserve power would undermine trust in the pension system and create a risk of political interference in capital allocation, which would undermine the UK's reputation as a predictable and rules-based investment environment. Instead, providers and trustees should retain the power to make investment decisions in the best interests of pension scheme members. The government should seek to ensure that the UK is an attractive destination for investment, including through reforms it is already pursuing to enable co-investment in infrastructure.

6. We are supportive of the proposals for contractual override and Value for Money reforms. However, to ensure these reforms are implemented as effectively and efficiently as possible, **contractual overrides will need to happen first**. This is so that contract-based providers can move customers to better value arrangements, as trust-based providers can currently do, **ahead of the Value for Money framework and authorisation of small pot consolidators coming into place.** Similarly, the announced ministerial market review on fragmentation must only commence once providers have had sufficient time to implement all these changes**.**

7. We **welcome the duty on trustees to offer 'default pension benefit solutions'** for their members, but **more clarity is needed on the timings and deadline** by which providers must comply and offer one or more default pension benefit solutions to their customers. Providers will need time to build appropriate solutions for their customers, and therefore, appropriate deadlines are needed to allow firms to ensure they get it right.

8. The Bill should take the opportunity to **iron out a significant problem with rules which stop auto-enrolment pension customers from receiving useful information digitally from their pension scheme or provider**. An amendment to the Privacy and Electronic Communications Regulations (PECR) would address this and this Bill is a good opportunity to give the Secretary of State powers to make these changes, with scheme members being able to opt out of such communication if they choose**.**

9. We support a **legislative framework for Superfunds**, which are sophisticated and for-profit commercial consolidators of DB pension schemes responsible for paying the promised benefits of scheme members. The Bill should prioritise scheme member security and ensure a robust framework, comparable to the more stringent standards governing insurers, with the exception of capital requirements which need to be weaker to enable schemes that can't afford buyout to find an alternative solution for their members.

10. However, the **proposed Superfunds regime is not nearly as rigorous as Solvency UK is for insurers**. It is therefore **crucial that schemes must assess whether they can afford buyout of members' core benefit entitlements** within the scheme before going to a Superfund – this is known as the "Gateway test". Removing this important safeguard would create moral hazard

risks, where schemes go to a cheaper – but less safe – option, despite being able to afford the most secure option for members. It would also frustrate the original policy intent of targeting Superfunds at schemes which are unable to afford insurance buyout and creating "clear blue water" between them and insurers, as the Department for Work and Pensions (DWP) put it at the time.

11. The Bill also proposes flexibility to 'safely' release **surplus from DB schemes**. However, **extreme caution must be taken before surplus is paid to the sponsor**, as this could put member benefits at risk**.** We therefore **call on the government to urgently move away from their current plans to reduce the surplus extraction threshold from buyout funding (the most secure) to "low dependency" (less secure)** in the secondary legislation. The interaction between DB surplus, and the Superfunds Gateway test must also be carefully considered; any gaming of the Gateway test must be prevented. This means a scheme should not seek to reduce its funding level by extracting surplus or augmenting benefits, close to its endgame activity, so that as a result the scheme can no longer afford buyout and so goes to a Superfund instead.

12. All of these provisions have the potential to transform the pensions market, and so, care should be taken to get the delivery right. **Much of the detail of these reforms will be left to secondary legislation and we urge the government to set out as much detail on the secondary legislation measures during the passage of the Bill, to provide certainty to providers and the savers they serve.** A pragmatic approach to timing and sequencing of the implementation of the Bill is also necessary. This is especially needed, given the complexity of the issues to be addressed through secondary legislation and rules, ongoing operational demands and the existing pipeline of important initiatives such as pensions dashboards.

13. There are also several provisions in the Bill that allow Statutory Instruments to amend sections of the Bill. We urge due consideration of when such powers are appropriate and to ensure that any changes are subject to due parliamentary scrutiny and industry consultation before they are made. Examples include the powers to alter the definition of "small pot" and amend the "best interests test" in relation to the contractual override.

Priorities for the Pension Schemes Bill

Defined Contribution Schemes

Value for Money framework (Part 2, Chapter 1, from Clause 10)

14. The Bill introduces a new Value for Money (VfM) framework, which seeks to provide comparable metrics on how workplace pension schemes are performing.

15. We are supportive of the VfM framework, as this has the potential to transform the market by driving a more holistic assessment of the overall value of pension schemes, rather than just focussing on cost and not on investment returns or quality of service. However, care must be taken to ensure that forward-looking metrics are successfully implemented in order not to penalise firms that are pushing to invest more in global and UK private markets, including infrastructure. Without an appropriate balance between past and future investment performance, firms may be dissuaded from private market investments, which often experience 'J-curve' investment growth, due to fears of failing the VfM test.

16. We also welcome the close collaboration between the Financial Conduct Authority (FCA), the DWP and The Pensions Regulator (TPR). It is essential that the regulators continue to act together, so that the framework is applied across contract and trust-based schemes at the same time. It is also important for the framework to not create requirements that either duplicate or supersede existing Consumer Duty outcomes with a knock-on impact on governance requirements and how the two regimes interact.

17. We support the approach to use primary legislation to provide a high-level legal framework for VfM, with the detail to be decided on following further consultation by the FCA, DWP and TPR. This approach will be especially beneficial to ensure flexibility to update the VfM framework in the first few years of implementation. It remains critical however, that secondary legislation is progressed early enough to allow firms enough time to build systems to track the final metrics and begin capturing data in 2027. Given the concern about the current timeline, we continue to call for the first year of VfM implementation to therefore be done on a trial basis whereby data is collected on a best endeavours basis, but no formal sanctions are given. This would allow any problems to be ironed out before enforcing sanctions in the second year of reporting.

18. We propose that the Bill also include **a requirement to periodically review the VfM framework** and make sure it is still functioning as intended. An arrangement successfully being assessed as value for money is contingent on comparing favourably with other arrangements. Therefore, there is likely to be a point after the megafunds reforms are implemented where the workplace pension market is sufficiently consolidated that the VfM framework should be only used to rate arrangements rather than to seek to wind them up. The concern here is that if left unchanged, over time, the VfM framework would continue to wind up arrangements until only one is left – this is due to the rating system being comparative rather than absolute, so not all remaining schemes would be considered value for money and receive a green rating.

Contractual override (Part 2, Chapter 4, from Clause 41)

19. We welcome the legislation to enable bulk transfers or fund switches for members of contract-based schemes when it is in their interests, with no worse outcome for other scheme members.

20. These provisions are essential to delivering the Value for Money, scale, and small pot reforms. It is therefore **imperative that this is put in place ahead of the VfM framework** being implemented, so that funds can be merged ahead of the first year of VfM assessments. The government's proposed sequencing does not provide for enough time to allow for this. Contractual override should also be in place before the ministerial review into market fragmentation.

21. We recognise that some firms de-couple savers from their employers' schemes once they leave employment. As they are still treated as workplace customers, they should still be in scope for contractual override.

22. We understand that further detail will be included in the subsequent secondary legislation and guidance from regulators on how the contractual override will work in practice. We are supportive of certification happening at a framework level and not each individual bulk transaction.

23. However, the conditions required to enable the transfer or switch of customers may still be fairly onerous and it is not clear how they will interact with other regulatory requirements (i.e. Consumer Duty). As the FCA develops rules on this, it must remain proportionate.

Clauses which require scrutiny

- The ABI is seeking external advice on how well the Bill is likely to address the policy intent in practice, so that providers do use them and they provide some finality. Therefore, we are likely to submit additional evidence to the Committee, with a particular focus on:
  - Whether the Bill is proportionate in terms of what firms must do for each part of the business it intends to transfer;
  - Whether the definitions are broad enough;
  - Whether cancellation rights apply to a new contract that has been set up as a result of the transfer; and
  - The nature of unilateral change notices.

Suggested amendment:

- Furthermore, the ABI proposes amending clause 117D to remove line 2(a) *"a better outcome for the directly affected members of the scheme (taken as a whole), and"* and delete "other" from line 2(b) *"no worse an outcome for the other members of the scheme (taken as a whole)"*. The intention of this amendment is to make these rules more similar to the equivalent for master trusts, and for Part VII transfers of insurance business.

Scale tests and thresholds (Part 2, Chapter 3, from Clause 38)

24. The Bill will require pension providers to have at least £25 billion in assets under management (AUM) by 2030. The requirement will only apply to multi-employer schemes.

25. Consolidation alone is unlikely to drive substantial investment diversification. How sophisticated an investment strategy will be depends less on the default fund size and more on the broader ecosystem in which it operates. Shifting the focus from lower costs to value, such as through the VfM framework, is key to driving asset diversification and better risk-adjusted net returns for savers.

26. Consolidation is already happening at pace in the DC market, so **a pragmatic approach to the scale tests is needed** to ensure those providers that are on course to scale are recognised, and that the market remains open to new entrants.

27. We are pleased with the objective to use a broad definition of 'default' for scale, that can be clearly understood and that it is uniquely identifiable within the industry, rather than mandating a single fund or single price, which would have been unnecessary to achieve the goal, overly restrictive and not necessarily in savers' interests.

28. Further clarity on the transition pathway is needed to provide certainty. First, when and how pathways would be granted – they should be granted early to support an orderly transition. Second, what is intended by the example requirement for schemes on the transition pathway to “satisfy investment related conditions such as a target level of investment in productive / UK assets”. There is a risk that this provision (28D 5(b)) becomes another instrument of mandation without any of the safeguards the come with the reserve power.

29. It is helpful that the thresholds accommodate schemes with a clear trajectory to scale, but there still needs to be scope for competition in a future market of megafunds, avoiding excessive barriers to new entrants or to innovation.

30. However, as it stands, the Bill excludes certain types of relevant workplace pensions, such as group stakeholder pensions. For instance, if a provider’s group personal pensions (GPP) and group stakeholder pensions are under the same investment strategy (main default arrangement), their AUMs should be cumulatively counted towards the scale threshold of £25 billion. The government should also consider including the AUM of multiple master trusts of the same provider in the scale test (28A (4)). Due to accelerated consolidation, it is likely to be increasingly common for providers to run multiple master trusts. This would need changes to clause 28A (4).

Reserve power on asset allocation (pension investment – Part 2, Chapter 3, from Clause 38)

31. The Bill also includes a reserve or backstop power to allow the government to set minimum targets for schemes that are subject to megafund requirements (£25 billion in AUM) to invest in private assets and the UK. This reserve power has a 2035 sunset provision. We do not support this power on asset allocation and do not see it as necessary. The government must be clear that this power is only a backstop, and not intended to be used.

32. Instead, we are pleased to see the government welcome the industry’s voluntary agreements to invest, including through the recent Mansion House Accord, where seventeen of the UK’s biggest pension funds committed to invest 10% of their main default funds in private assets. We are in strong agreement with the **government’s conclusion, that in light of this industry progress, it is not necessary to mandate pension funds to invest**. Instead, the best ways to encourage investments in certain areas are by:

    - Making them more attractive, including via co-investments and blended finance instruments, as well as where appropriate, reduction of fees; and
    - via voluntary agreements, such as the Mansion House Compact and the Mansion House Accord.

33. International counterparts have expressed concern about this reserve power and that it could be used as a blueprint by their own governments. They emphasised the need for pension funds and insurers to make independent investment decisions. Mandating specific assets or geographies is indeed incompatible with fiduciary duty and the Consumer Duty. It would also create an unfortunate precedent and therefore a risk of political interference in capital allocation, which would undermine the UK’s reputation as a predictable and rules-based investment environment.

34. In our research, the only democratic countries we came across where the government had intervened in the independence of private pensions were Hungary, where the government nationalised its private pensions in 2010, and Poland, which transferred a part of the private pension assets to the state and banned schemes from investing in bonds in 2014. Other examples included imposing capital controls during periods of instability, which regulators already have the power to do, while there are already rules in existence which allow us to avoid such interventions.

35. Depending on the detail of any potential secondary legislation on the reserve power, asset prices may artificially increase as a result, which could affect the value of pension pots and erode the trust of savers in the pension system and investment products. This could lead to unadvised and otherwise unengaged savers leaving default funds, which could open them up to future risks such as investment strategies that do not reflect their financial needs and objectives.

36. The inclusion of safeguards is important to ensure consistency with fiduciary duty. If a future government were to ever go ahead with a power to mandate, it is crucial that this power is limited to ensure that the outcomes for consumers are not negatively impacted and that asset allocations are not subject to political cycles. For example, clause 28C(11) could be broadened so that a report on proposed regulations also covered the impact on the pensions market, and the market for assets that are proposed to be mandated. However, even with safeguards, we still remain concerned with the reserve power as a whole.

Clauses which require scrutiny:

- The definition of a "group personal pension" (GPP) to be set for the first time in legislation in section 38(14) excludes schemes where members have the power to direct how their contributions are invested. This can be interpreted as the ability to self-select, which GPPs offer all their members. In addition, it could be argued that the definition as it stands would apply to all open personal pension schemes, even if they do not offer GPPs, as these would be available to individual employees of an employer. The definition also refers to GPPs as if each collection of contracts for the same employer was a 'scheme'. In practice, each employer with a GPP will not have their own Registered Pension Scheme.

- The current wording of clauses 28C(1) and (2) does not reflect the intended policy and requires amending. As drafted, the asset allocation requirement measures the proportion of qualifying assets (e.g. UK private assets) in the default fund against the total assets of the entire scheme. This is incorrect – the denominator should be the total assets within the default fund itself. Workplace schemes include both default fund assets and those held by members who have self-selected investments. Moreover, schemes are often structured at the employer level, while a large-scale default fund may be shared across multiple, or even all, participating employers.

- Clause 28C(11) could be broadened so that a report on proposed regulations also covers the impact on the pensions market, as well as the market for assets that are proposed to be mandated.

Guided retirement ('Default Pension Benefit Solutions' – Part 2, Chapter 5, from Clause 42)

37. The Bill aims to simplify retirement choices, by requiring all DC pension schemes to offer default routes to an income in retirement.

38. We **welcome the introduction of guided retirement solutions for trust and contract-based providers, although it is important to understand how these proposals will work in practice**, including for contract-based providers. It is now crucial for the government, TPR and the FCA to be broadly aligned in their approach for these proposals so as to avoid distortion being created between the regimes, which could lead to savers having different experiences when entering retirement.

39. Default solutions will not work for everyone, and so we agree that schemes should consider a saver's circumstances, needs, interests and characteristics when building appropriate default pension benefit solutions or partnering with other providers. When making a decision on the suite of default solutions to offer, trustees should act in the members' best interests to provide value and improve the retirement income for their scheme members, whether this be via in-scheme solutions or through a partnership(s).

40. Further thought should be given to assessing how appropriate it may be for scheme members entering a default solution when their pot value may not warrant such an approach. It may also be worth considering the implementation of a de minimis pot value to prevent members from entering a longevity protection solution that may not align with their individual circumstances or provide meaningful benefit.

41. Savers would also benefit greatly if the retirement solutions were coupled with additional support for savers due to the complex decisions that are required when entering decumulation. This **support could be informed by the targeted support proposals being developed as part the FCA's Advice Guidance Boundary Review (AGBR)**, acknowledging that the guided retirement and the targeted support proposals are distinct in nature. The section on the Privacy and Electronic Communications Regulation (PECR) at the bottom of this document is also relevant to this issue.

Clauses which require scrutiny

- The ABI is seeking further clarity on clause 44 *Provision and gathering information*. In particular, subsection (3) in relation to the presentation of the default pension benefit solution. It should not be the case that customers are discouraged from shopping around post-accessing of their pension. For subsection (7), we are requesting clarity about what information trustees will be expected to request from scheme members to then determine the appropriate default pension benefit solution.

- The ABI is seeking further clarity on clause 45 *Information etc in connection with selection of benefit solution*. We would like public assurances or an amendment to clarify that subsection (3) drafting was incorrect or unclear, such that trustees set a default withdrawal rate for all scheme members in the default solution, and not for trustees to monitor individual withdrawal rates.

- More information is required on clause 50 to understand whether default pension benefit solutions will be required for retail pensions, or if it will only apply to workplace pensions.

Small pots (Part 2, Chapter 2, from Clause 20)

42. The government intends to bring together savers' small pension pots worth £1,000 or less into one pot via default consolidators that are certified as delivering good value. Individuals will retain the right to opt out.

43. We are **supportive of the objective to consolidate small pots and are keen to work with the government, Parliament and savers on this, although we have reservations about the chosen multiple default consolidator model**.

44. Nevertheless, we welcome the emphasis on improving data sharing. We believe that pensions dashboards will be transformational, enabling everyone to see all their pension pots in one place (including the State Pension), while private dashboards, in particular, will equip greater numbers of people with the necessary information and tools to take action. We are therefore keen to see both the state-backed and private dashboards delivered as a priority.

45. Work is still required to make transferring small pots cheaper and more efficient, so it is right that this initiative will be implemented at a later date in the government's timeline. We remain supportive of refunding savers for the very smallest pension pots. Having a minimum pot value to be consolidated could be one way of achieving this – this means that any pot below this minimum will be refunded, or where scheme members are untraceable, the pot would go into an arrangement similar to the Dormant Assets Scheme. This would ensure that very small pots that are below either the value of the cost of transferring or the administrative reserve fee could go to good use and would no longer create costs in the pension system.

46. However, we are concerned about the Bill giving the Secretary of State the power to increase the maximum pot size up from £1,000 (Clause 32) – this negates the clause (Clause 20(2)) in the Bill that limits the maximum pot for consolidation. Any change to the maximum pot size should only come after extensive consultation with industry and with a clear reasoning as to why the current size is insufficient. It should also include a review of the impact on the market, and a

two-year lead-in time, as a bigger increase in the maximum size could have an impact on market dynamics and the economics of being a consolidator.

47. Similarly, the end point of small pot default consolidators needs to be considered. When the scale requirements are in place and the VfM framework is implemented, we anticipate that the workplace pension market will be significantly smaller. Therefore, as these other policy interventions have time to bed in, the relevance of default consolidator small pot solution should be kept under review.

Clauses in the primary legislation for scrutiny as they are barriers to automatic consolidation:

- Two clauses could limit the effectiveness of the policy, and DWP could usefully clarify their intent and tighten the wording:
    - Clause 20(3) defines a pension pot as dormant if no contributions have been made in over 12 months and an individual has not taken any steps to determine how the pension pot is invested. This second part, Clause 20(3)(b), is disproportionate – if any investment decision has been made on this small pot, it can never be moved. One solution could be to put a time limit so if investment decisions are made more than 10 years prior, for example, this exemption would expire.
    - Clause 23(1)(b) on exempt pots on the basis of members' best interests could prove a significant barrier to pots being ceded by schemes and hinder the government's objective to automatically move pots. The future small pots regulations referenced in 23(3) will need to be very carefully considered to avoid a requirement for trustees to make determinations of relative value that risk undermining the policy intent.
    - If the objective of the above clauses is intended to address religious investment preferences – e.g. Sharia funds - it would be more appropriate to have an exemption on the grounds of protected characteristics, rather than on any investment choices.
- Clause 32 enables the Secretary of State to increase the pot threshold from £1,000. As noted above, we would support amendments to ensure there is a suitable notice period of this increase (for instance two years), and to ensure there is sufficient consultation, including a review on the market impacts.
- Given the timeframe the government estimates the small pots consolidator framework to be implemented (i.e. not until 2030 at the earliest), the government should commit to a periodic review of the consolidator framework and whether it is still necessary given wider reforms (i.e. scale tests, pensions dashboards). There should be a formal checkpoint as part of the government's official roadmap to give industry confidence that the consolidator model is relevant in the future.
- Clause 22(3)(b) makes reference to alternative proposals to the default proposal when giving customers transfer notices. It is not currently clear what is meant by 'alternative

proposals' and how this would work in practice. We therefore request further clarification on this line of the Bill.

Defined Benefit Schemes

48. The detail on Superfunds, and on surplus extraction, in regulations must ensure that protection for scheme members is not weakened. The interaction between Superfunds, surplus extraction and the Pension Protection Fund needs scrutiny, particularly when it comes to secondary legislation. We also welcome the government's intention to bring forward legislation to address the implications of the Virgin Media case.

Surplus extraction (Part 1, Chapter 2, from Clause 8)

49. The government has proposed new flexibilities for DB schemes that are in surplus, where the value of their assets exceed that of the promised pension benefits due to members. The Bill permits pension trustees and the sponsoring employers of these DB schemes to be allowed to 'safely' release some of this surplus, if their rules do not enable them to do so already.

50. Through secondary legislation, the government has said that it is minded to lower the funding threshold schemes would have to meet before they are able to share surplus with the sponsoring employer. This will change from the current buyout funding threshold to a threshold set at full funding on the "low dependency" funding basis – i.e. where it is expected that there will be enough resources to pay the member benefits in full without any further support being required from the sponsoring employer. This is not a specified amount and is only set out in guidance.

51. We do not support this, as it would reduce protection for scheme members. Extracting surpluses from schemes should only be enabled once the core purpose of the scheme – to pay members their pensions – is able to be met. The safest funding threshold for members, before surplus is extracted, is buyout levels (which TPR estimates 54% of schemes to have reached). **Buyout is the safest way to secure members' benefits, and employers are able to – and indeed do – access surplus funds once this security has been bought for their scheme members.**

52. It also cannot be taken as a given that schemes will invest the surpluses into productive assets or into the employer's DC schemes, as there are no conditions to the payment of surplus. This means the surplus could be used for dividends or share buybacks instead. Given the recent economic turbulence, it is also not guaranteed these surpluses will remain as they are valuations which have not yet been crystallised. Any volatility to the market could therefore pose risks to the ability to secure member benefits.

Clauses in the primary legislation for scrutiny:

There is no detail in the primary legislation for appropriate safeguards for scheme members on surplus extraction. The Committee should consider:

- Whether the primary legislation should include specific reference to guardrails which should be deployed before surplus can be extracted. Clause 9(2)(2C) only introduces a power to make regulations.

- While Clause 9(2)(2C)(d)(i) enables the power to prohibit a Superfund scheme from making surplus payments (which we support), there is no clause to prevent a scheme extracting surplus close to its endgame goal. This could mean that endgame options are "gamed", with schemes extracting surplus or augmenting benefits to reduce their funding levels so that they can pass the Gateway test to a superfund, therefore accessing a cheaper – and less secure – endgame for their scheme members. This should be prohibited, and could be achieved by a lookback clause for the regulator to block a superfund transaction if surplus extraction has taken place within a certain timeframe of the transaction (for instance, one year).

Suggested amendment:

Clause 9, page 9, insert after (2C) (d)

"(e) Where regulations under subsection (2A) lower the funding threshold for a surplus payment to below the full buy-out funding level, it will require the Secretary of State to —

(i) publish an actuarial 'guardrails assessment' setting out:

prescribed stress scenarios and their impact on funding, a maximum permissible extraction percentage for each scenario, and contingencies to restore funding should the guardrails be breached.

(ii) consult The Pensions Regulator, the Financial Conduct Authority, and such actuarial bodies as may be prescribed; and

(iii) lay the assessment before Parliament, subject to the affirmative procedure."

Explanatory Memorandum

This amendment imposes statutory guardrails when the Department for Work and Pensions calibrates any extraction threshold below buyout, ensuring that robust stress testing, limits and remediation paths are hard-wired into secondary legislation.

Superfunds (Part 3, Chapter 1, from Clause 51)

53. The Bill introduces the long-awaited legislative framework for Superfunds, which are defined as trust-based occupational pension schemes that accept DB liabilities from other schemes, are backed by a capital buffer, and are not supported by a substantive employer covenant.

54. Superfunds are for-profit financial institutions – as are insurers – and they will be providing services very similar to what insurers provide (i.e. transferring the liabilities of a scheme from the employer for a premium). However, they will be doing so in a less robust regulatory regime and so can provide these services more cheaply. We therefore support a **robust Superfunds legislative regime** that prioritises member security and is comparable to the more stringent regulatory standards governing insurers so that trustees are able to assess the level of security they are purchasing on behalf of their scheme members.

55. Scheme members should be in the most secure regime possible when their benefits have been moved to a commercial third party, and so where a scheme can afford to buyout their members with an insurer, they should choose this option as it is in the best interests of members. That is why **we also support the government's requirements for schemes to make an assessment of whether they could have afforded buyout, before going to a superfund – known as the "Gateway tests".** This is a vital mechanism to prevent the moral hazard risk of regulatory arbitrage, and ensure members have their benefits looked after by the most secure vehicle their scheme could afford.

56. However, it is imperative that the Gateway tests are not gamed to allow superfund entry and re-risking the scheme – i.e. allowing surplus extraction close to a scheme's endgame activity, which would reduce their funding level down to low dependency and would make buyout unaffordable, and therefore lead to the scheme being eligible to enter a superfund instead.

Clauses in the primary legislation for scrutiny:

- The Gateway clause 58(2)(a) only applies to schemes who cannot afford to buyout today and does not include the "foreseeable" future, which has been the government's policy. This appears to be a change in government policy, and a potential reduction in member security. An additional sub clause in this section could be added to include the foreseeable future test, or more specific time horizon.
- As referenced in the previous section on scheme surplus extraction, the interaction between surplus extraction, superfunds and insurers needs greater clarification.

Suggested amendment:

Clause 58, page 67, lines 32-35, amend (2) and (a) as follows:

(2) For the purposes of this Part, "the onboarding conditions" in relation to a superfund transfer are—

(a) that, as at the date of the application, the financial position of the ceding scheme is (i) not strong enough to enable the Trustees to arrange an insurer buyout on the date of application; or (ii) not affordable in the next 36 months having made an assessment of all funding options to become strong enough, that is certified by the Scheme Actuary.

Explanatory Memorandum

This amendment deals with the unintended consequence of the onboarding condition only looking at a 1-day snapshot of a scheme's funding position.

Privacy and Electronic Communications Regulations

56. Under the Bill, trustees will be required to provide information to scheme members to inform them of the default solution (clause 44) and to help them decide how to take their benefits (clause 45). This information will be most effective where schemes can communicate in language that aids consumer understanding and prompts decision-making – for example, using a non-neutral tone and actively promoting or encouraging courses of action or other helpful

services. Indeed, the FCA's Consumer Duty requires firms to support their customers by helping them to make informed decisions about financial products and services and to avoid foreseeable harm. Similarly, under the TPR's Code of Practice and Guidance, trustees of pension schemes are expected to provide their members with support to help them make important decisions about their retirement.

57. However, despite the above, pension scheme providers are also subject to the Privacy and Electronic Communications Regulations (PECR), which requires scheme member consent to send direct marketing in the form of electronic communications (e.g. email), as well as the Information Commissioner's Office's (ICO's) direct marketing and regulatory communications guidance, which establishes that a message is likely to be direct marketing if it "actively promotes an initiative" or utilises a "non-neutral tone" – this can include "highlighting the benefits and encouraging people to participate or take a course of action". Indeed, if even "a routine communication has marketing elements, then it is direct marketing" regardless of its main purpose.

58. This therefore leads to customers who have not opted in to direct marketing missing out on more persuasive and engaging electronic communications from their pension providers, even where these are deemed to be "regulatory communications" (which is how we expect guided retirement communications to be categorised).

59. Automatically enrolled pension scheme members do not provide personal data directly to their pension provider nor otherwise communicate directly with their provider at the point of sale. As a result, there is no opportunity for these individuals to opt in, or for providers to satisfy the requirements for the soft opt-in rule which would allow providers to contact a customer with direct marketing without an explicit opt-in. Pension providers are also unable to request customers' marketing permissions in any follow-up electronic communication (e.g. within a wake-up pack via email) as this would be construed as direct marketing in its own right.

60. To encourage engagement with Default Pension Benefit Solutions information and to increase the likelihood that consumers reach outcomes appropriate to their circumstances, we recommend that the **Bill includes a clause to give the Secretary of State powers to in effect extend the soft opt-in to workplace pensions** (within Regulation 22 of the Privacy and Electronic Communications Regulations). The suggested amendment is below.

Suggested amendment:

After Clause 44(12), insert the following new Clause -

(1) The Secretary of State may by regulations make provision to determine that the conditions contained in Reg 22(3) of the Privacy and Electronic Communications (EC Directive) Regulation s2003 shall be deemed to be met when a person is issuing an electronic communication to an occupational pension scheme member or group personal pension scheme member and the following conditions are met:

a. *The electronic communication is in respect of the recipient member's pension or similar products and services only; and*

b. *The recipient member's contact details were provided or made available to that person by or on behalf of the employer of that recipient, in pursuance of the employer's requirement to enrol employees in line with the Pensions Schemes Act 2008.*

(2) The requirement in Reg 22(3)(c) of the Privacy and Electronic Communications (EC Directive) Regulation s2003 to provide a person with a simple means of refusing the use of their contact details at the time of each subsequent communication shall continue to apply.

(3) Where paragraph 1 is exercised and applied, the conditions contained in Reg 22(3) shall be deemed to be met in respect of a recipient who was a member of the occupational pension scheme or group personal pension scheme:
a. immediately before the delegated regulation came into force, or
b. after the delegated regulation comes into force.

(4) Regulations under this section are subject to the negative resolution procedure.

Explanatory memorandum

The UK has a workplace pensions system designed around automatic enrolment where it is employers who set up pension arrangements. Individuals, therefore, often have not been given the opportunity to consent to receive communications for that product, meaning that they may be losing out on engaging and helpful content from their pension provider (for example, regarding increasing their contributions, withdrawing from their pension, or finding lost pension pots). This amendment extends the soft opt-in rule to cover this scenario, giving that individual the opportunity to opt out of direct marketing where previously they did not have the opportunity to opt in.

The relationship to Default Pension Benefit Solutions is that trustees will be required to provide information to scheme members to inform them of the default solution (clause 44) and to help them decide how to take their benefits (clause 45). This could include information on any partnership arrangements, options to annuitise in later life, and promotion of useful tools and calculators available. To encourage engagement with this information and to increase the likelihood that consumers reach outcomes appropriate to their circumstances, this Bill could provide the Secretary of State with powers to extend the soft opt-in to workplace pensions. This would give pension schemes the ability to communicate in more engaging, non-neutral language and to actively suggest courses of action, tools and services to those pension scheme members and customers who never had the opportunity to opt-in to direct marketing. The pension scheme would be required to provide the customer with an opportunity to opt out, in the first, and every successive, marketing email to the customer.

If the Secretary of State utilises these powers, pension schemes will be able to market to new automatically enrolled pension customers, as well as existing customers that have never expressed a marketing preference (neither opted in nor out). However, it would not allow schemes to market to customers that have expressly opted out in the past, nor does it prevent customers opting out in future.

61. This amendment would also increase the proportion of automatically enrolled customers that could receive targeted support in relation to their pension upon introduction of the new framework in April 2026. However, the Bill is also an opportunity to ensure that the targeted support proposal can operate on a mass-market, 'opt-out' basis as envisaged by the FCA, across long-term savings products (not just workplace pensions). We would support any similar amendment to enable long-term savings customers to receive targeted support suggestions, even where they have previously opted out of direct marketing.

62. Of course, many customers will choose to opt out of direct marketing even where the soft opt-in is extended in these circumstances. This is understandable and should be enabled. But as a consequence, these individuals will miss out on useful information delivered in a way that may be more likely to help them achieve their financial objectives. As explained above, the FCA's Consumer Duty and TPR's Code of Practice and Guidance, which asks firms to do more, conflicts with a combination of PECR and ICO direct marketing guidance, which restricts the use of non-neutral language and suggestions of courses of action to those customers that have opted in to direct marketing.

63. In the longer term, to resolve this conflict, we feel it is necessary to amend PECR to clarify that regulatory communications should not be treated as direct marketing in the context of pension products more generally.

64. For example, with respect to Regulation 22 of PECR, the government could include a new 22(5): *In paragraph (2), unsolicited communications for the purposes of direct marketing shall not include regulatory communications. In this paragraph, "regulatory communications" means a communication sent by or on behalf of a regulated entity and which is consistent with legal or regulatory obligations applicable to the regulated entity and/or regulatory guidance issued by a statutory regulator with oversight of the regulated entity.* The ICO would need to subsequently amend their guidance on regulatory communications.

August 2025.