Trustee Agenda

SUMMER | 2026



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Welcome to our Summer Edition of Trustee Agenda.

The big news this quarter is, of course, that the Pension Schemes Bill has finally received Royal Assent to become the Pension Schemes Act 2026. The Act will bring a host of changes to the UK pensions landscape over the next few years, and there is plenty for trustees to get to grips with.

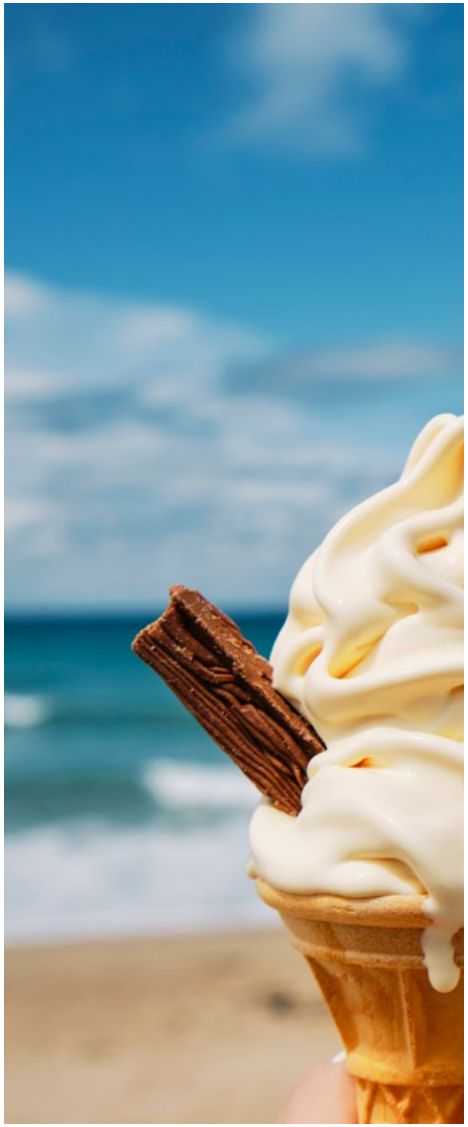
Our first article provides an overview of the new legislation, while the second and third articles take a more detailed look at two key areas: the *Virgin Media* legislative fix, and the provisions making it easier for trustees of defined benefit schemes to release surplus back to employers and members.

As always, we have also rounded up the other key developments on the horizon to keep you up to speed.

Do please let us know if there are any areas which you would like us to explore in future editions of Trustee Agenda.



Claire Petheram



Pension Schemes Act 2026 brings opportunities and challenges

Following an extended period of ping-pong between the House of Commons and the House of Lords, the Pension Schemes Bill has finally received Royal Assent to become the Pension Schemes Act 2026.

The Act represents a significant package of reforms to the UK pensions system. Many of the changes will be welcomed by trustees, particularly the provisions giving schemes affected by the *Virgin Media* decision the ability retrospectively to obtain actuarial confirmation. Provisions making it easier for trustees of defined benefit (DB) schemes to release surplus back to employers and members will also present new opportunities for schemes and employers to explore.

However, the reforms will also bring challenges for some schemes, particularly defined contribution (DC) schemes faced with a raft of changes including new value for money, guided retirement and small pots requirements. Meanwhile, DC master trusts will now need to focus their attention on growth and consolidation, as well as the possibility of mandated asset allocation in the future.

What are the key measures included in the Pension Schemes Act 2026?

For **DB schemes**, the key provisions include the following:

- *Virgin Media*: the legislative fix enables scheme actuaries to provide retrospective confirmations for most amendments where Section 37 confirmations are missing or absent, subject to some limited exceptions. You can read more in our detailed article on page 9.
- *Surpluses*: changes will make it easier for trustees of DB schemes to release surplus back to employers and members. You can read more in our detailed article on page 6.
- *Superfunds*: a legislative framework for DB superfunds is included. This will replace the Pensions Regulator's current interim approach to regulating superfunds.
- *Pension Protection Fund (PPF) and Financial Assistance Scheme (FAS)*: the definition of "terminal illness" for the purposes of the PPF and FAS is being extended. CPI-linked increases, capped at 2.5% a year, will also be introduced on pre-1997 pension accruals for members of the PPF and FAS where their original schemes provided this benefit.
- *PPF levy*: restrictions that previously prevented the PPF from reducing the PPF levy will be removed.
- *Pensions Ombudsman*: the legal standing of the Pensions Ombudsman to act as a competent court in overpayment cases will be re-established.

For **DC schemes**, the key provisions include the following:

- *Scale*: master trusts will need to have at least £25bn of assets in their main default arrangement by 2030, unless they are exempt from the requirement, or they qualify for either a transition or new entrant pathway.
- *Asset allocation*: the Act includes the highly contentious asset allocation mandation power, although this was subject to substantial amendments during the final stages of the Bill's passage through Parliament.
- *Small pots*: a legislative framework for master trusts to be authorised to act as consolidator schemes for small DC pots is included. A new consolidation process will provide for small pots worth £1,000 or less and where no contributions have been paid for at least 12 months to be consolidated into those schemes.
- *Value for money*: a value for money framework for DC schemes is included. The framework will require trustees to measure and publicly disclose investment performance, costs and service quality, using metrics which aim to assess value for money.
- *Guided retirement*: trustees of DC schemes will be required to design and make available one or more "default pension benefit solutions". These solutions must deliver DC benefits to scheme members by providing them with a regular income in retirement.

You can read more about the changes relating to DC schemes in the Summer 2026 edition of DC Agenda.

What is not included in the Act?

The Government sought to include a provision that would have allowed it to develop statutory guidance on trustees' investment duties. This was intended to provide practical support to trustees about how to comply with their existing duties in considering factors such as system-level considerations, impacts on members' standards of living, and the views of members. This provision was rejected by the House of Lords and is not included in the final Act. The Government has, however, said it is reviewing next steps to ensure this objective continues to be progressed.

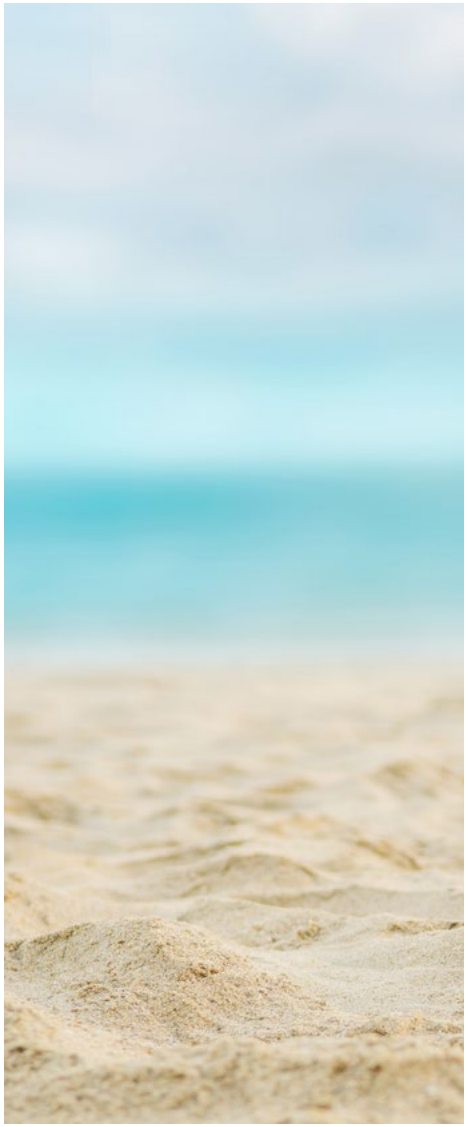
When will the Act come into force?

With the exception of the *Virgin Media* legislative fix, which came into force immediately, most of the measures are expected to come into force in the period from 2027 to 2030. We are expecting the Government to publish an updated roadmap setting out the proposed timings for the various measures in due course.

In the meantime, we can expect a busy period of reviewing and responding to consultations on the many sets of regulations that will be needed to flesh out the details. We will keep trustees updated on developments.



Claire Collier



Pension Schemes Act 2026: an update on surplus release in ongoing schemes

The Pension Schemes Act 2026 modifies existing legislation governing trustees' powers to pay scheme surpluses to the scheme sponsor in an ongoing scheme. In our Autumn 2025 edition of Trustee Agenda, we reported on the surplus release provisions as originally drafted in the Pension Schemes Bill. Although the provisions have now been enacted, it is important to note that these surplus provisions are not yet in force, and the regulations clarifying them have yet to see the light of day. The surplus provisions are due to come into force in 2027.

Changes introduced by the surplus provisions of the Pensions Schemes Act 2026

- *Trustee power to modify their scheme rules:* Under the powers introduced by the Act, trustees are able to pass a resolution to modify their scheme rules to provide for surplus payments to be made to the sponsor. This applies regardless of whether the scheme rules have ever permitted the return of surplus or contain any restrictions on surplus return and regardless of whether any resolution was passed prior to 6 April 2016 under Section 251 of the Pensions Act 2004. Section 251, which is repealed by the new surplus provisions, provided that a resolution was required to preserve any existing scheme rule permitting the payment of surplus out of an ongoing scheme. However, any pre-April 2016 resolution that was passed will remain valid and therefore any restrictions included in that resolution will still apply, although the new trustee resolution can remove or relax any restriction previously imposed.
- *Anticipated reduction in funding threshold required to permit release of surplus:* The Pension Schemes Act provides that payment of surplus is prohibited unless an actuary "is satisfied that the prescribed conditions are met in relation to the value of the scheme's assets and the amount of liabilities". Under the existing legislation, surplus cannot be paid from an ongoing scheme unless the scheme is fully funded to the level at which benefits can be secured with an insurer (the buy-out level). The new threshold has not been explicitly set out in the new legislation and will instead be set out in draft regulations, which the Government has yet to consult on. However, it is expected that the required funding level for surplus release will be the "low dependency funding basis" – this is essentially where scheme assets are invested in such a way that the value of assets relative to the value of the scheme liabilities is highly resilient to short term adverse changes in market conditions such that further sponsoring employer contributions are not expected to be required. This should mean that a higher surplus amount than currently permitted is available for payment to the sponsor.

- *Trustee duty to take members' interests into account – no longer a statutory duty:* The Pension Schemes Act removes the statutory requirement for trustees to be satisfied that it is in the interests of members for surplus to be paid to the sponsor. However, trustees will still need to act in accordance with their fiduciary duties when making decisions about surplus payments, so in effect trustees will still need to take the interests of members into account.

Further conditions surrounding surplus release from ongoing schemes

The following conditions have not changed by virtue of the new legislation, and are included to give a full picture of the legislation surrounding surplus release:

- The power to pay a surplus to the sponsor can only be exercised by the trustees.
- There is no restriction on what the sponsor may do with any surplus payment.
- Surplus payments will continue to be taxed at 25%.
- Payment of surplus will be subject to actuarial certification.
- Members still need to be notified in relation to a payment before it is made.

What is the law now?

As noted above, although the Pension Schemes Act has now passed into law, the provisions governing surplus release have not yet been brought into force. Furthermore, one of the key conditions under the surplus release legislation, which is the level at which surplus can be released from an ongoing pension scheme, has not yet been specified, although the Government has indicated that the regulations will reduce the threshold at which surplus extraction will be permitted. It is possible that regulations will include further conditions that must be met before a surplus payment can be made, although the Government has not so far indicated that any new restrictions will be introduced. The regulations are expected to come into force at the end of 2027.

Any proposal seeking to release surplus from an ongoing scheme prior to the surplus release provisions and the underlying regulations being brought into force would need to comply with the existing legislation. This means that the following conditions need to be met:

- The trustees need to have passed a resolution before 6 April 2016, preserving any existing scheme rule permitting the payment of surplus out of the ongoing scheme. Without such a resolution, return of surplus cannot occur.
- The trustees, alongside their fiduciary duties, have a statutory duty to consider if it is in the members' interests to extract surplus from the scheme.
- The surplus has to be measured against the buy-out funding level.

What can we expect next?

The Pensions Regulator has said it will shortly publish a statement outlining early views on the issues trustees should consider around surplus release. The Government is also expected to consult on draft regulations relating to surplus release around the same time. Later this year, the Regulator plans to consult on more detailed surplus guidance to sit alongside the final regulations, which are expected to come into force in 2027.

In addition, the Government announced in the Autumn 2025 budget further changes to related tax legislation to take effect from April 2027 to make it easier for schemes to make one-off surplus payments to members aged over the normal minimum pension age, where the scheme rules and trustees permit it. Currently such payments are unauthorised payments and taxed accordingly.

What can trustees do to prepare for the forthcoming changes?

Trustees of well-funded DB schemes can expect that, if the sponsoring employer has not already raised the subject, the question of surplus extraction from their scheme will arise in future. A likely time for such a discussion to arise is in the course of the scheme's next triennial valuation, when considering the scheme's long term funding objective as part of the funding and investment strategy. The Regulator has suggested that in order to anticipate any such discussions trustees should consider putting in place a policy on surplus extraction, appropriate to the context of their individual scheme.

Any such policy may need to set out the trustee's position with regards to:

- benefit augmentations for members in return for agreeing to pay surplus; and
- putting downside protection in place, so as not to prejudice existing benefits.

The existence of a policy on surplus extraction may put trustees on the front foot when their scheme sponsor broaches the subject. However, it remains reasonable to consider any such policy to be a work in progress given that the proposed legislation is not yet in force.



Gabrielle Holgate



The *Virgin Media* legislative fix: next steps for trustees

In our Spring 2026 edition of Trustee Agenda, we provided an update on the draft legislation designed to address the issues arising from the *Virgin Media* case. We also summarised the technical actuarial guidance produced by the Financial Reporting Council (FRC) to assist scheme actuaries in considering whether to provide a confirmation under the new regime.

Since then, the Pension Schemes Bill has received Royal Assent to become the Pension Schemes Act 2026 and the *Virgin Media* provisions are now in force. The Pensions Regulator has also published draft guidance for trustees, which sets out the background to the issue, the Regulator's views on trustees' roles and responsibilities, and includes some practical tips.

Key features of the legislative fix: a reminder

By way of reminder, there are three key features of the legislation:

- *Potentially remediable alterations*: the regime applies to "potentially remediable alterations" – these are past amendments that required actuarial confirmation at the time, were treated as valid by the trustees, and where trustees did not take any "positive action" (such as notifying members that the amendment was void or altering benefit payments) as a result of the missing actuarial confirmation. Some amendments, such as those which have already been the subject of a determination by the courts in relation to this issue, are out of scope.
- *Remediation process*: to validate the amendment, trustees need to follow a two-stage process. The first step is to make a request in writing to the scheme actuary for the actuary to consider whether they can provide retrospective confirmation. The second step is for the scheme actuary to provide retrospective written confirmation that, in the actuary's opinion, it is reasonable to conclude that the amendment would not have prevented the scheme from meeting the statutory standard (as it applied at the time of the amendment). The actuary can reach their decision using any appropriate professional approach (including making assumptions or relying on presumptions), on the basis of the information available to them.

The FRC guidance encourages a proportionate approach to this exercise, which should make it easier for actuaries to provide the retrospective confirmations, even where there are gaps in the data due to the passing of time.

- *Special cases*: for schemes already wound up, transferred to the Pension Protection Fund or qualifying for the Financial Assistance Scheme (in each case before 29 April 2026), amendments will be validated automatically provided the alteration is "potentially remediable".

What should trustees do now?

The legislative fix will enable scheme actuaries to provide retrospective confirmations for most amendments where Section 37 confirmations are missing or absent, subject to some limited exceptions. Although there is no deadline for obtaining the actuarial confirmations, we recommend that trustees complete the process as soon as realistically and practically possible. Trustees should be aware that the passing of time may make the remediation process more difficult to complete. As a minimum, trustees should ensure that document retention policies will not cause the destruction of relevant records until all necessary confirmations have been obtained.

Some trustees may wish to wait for the outcome of the *Verity Trustees v Wood* case before proceeding. Our earlier blog post outlined the background to this case and some of the questions which the High Court was asked to consider, including in relation to the scope of amendments which required Section 37 confirmations. However, we think most trustees can and should proceed to obtain retrospective confirmations without waiting for the decision.

We recommend that trustees undertake a step-by-step process, with legal advice at each stage as required:

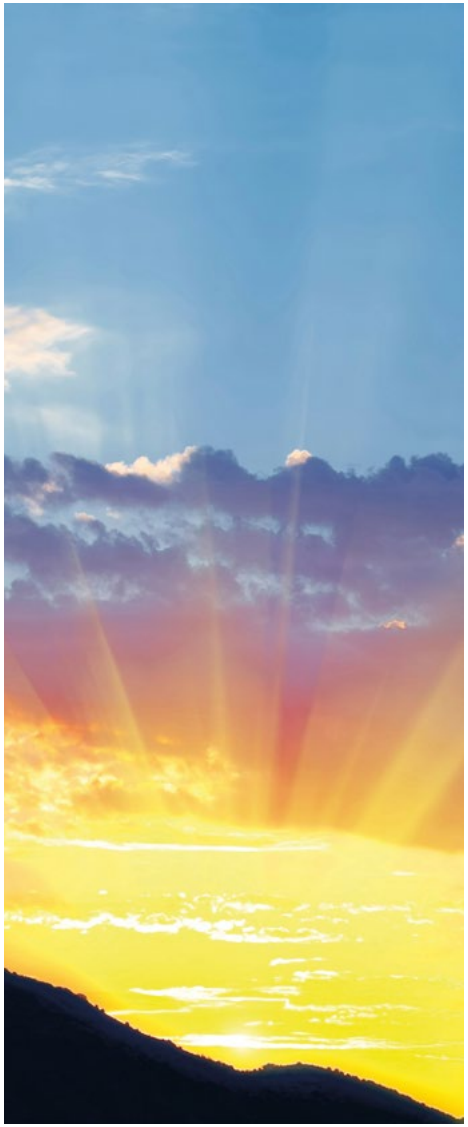
- Was the scheme contracted-out on a salary-related basis at any time during the period from 6 April 1997 to 5 April 2016? If not, there was no requirement to obtain Section 37 confirmations and no further action is required.
- Were any amendments made to the scheme during the period from 6 April 1997 to 5 April 2016? Trustees should prepare a list of amendments made during this period, noting that amendments may have been made by replacement scheme rules as well as by deeds of amendment.
- Are any of the amendments missing a Section 37 confirmation? In many cases, the confirmation will have been appended to the deed of amendment and no further action will be required if this is the case.
- Did the amendment require actuarial confirmation in the first place? Some amendments will not have required actuarial confirmation at the time the amendment was made (for example, where the amendment had no impact on benefits) and can therefore be disregarded.

- Was the amendment treated by the trustees as valid? In most cases, the trustees will have proceeded on the basis that the amendment was valid and so this requirement will be easily satisfied. However, if trustees have taken any action which indicates that they consider the amendment to be void (such as notifying members or altering benefit payments), it may not be possible to reverse this by obtaining retrospective actuarial confirmation.
- Have there been any legal proceedings relating to this issue? If so, and the trustees were a party to those proceedings, it may not be possible to obtain retrospective actuarial confirmation. This is unlikely to apply to many schemes, particularly since it is only legal proceedings before a UK court (and not, for example, proceedings before a tribunal or a complaint to the Pensions Ombudsman) that are caught.
- Is it possible to conclude, on the basis of the rule amendment alone, that the amendment would not have prevented the scheme from continuing to meet the statutory standard? This might be the case, for example, where the amendment only affected benefits not connected to meeting the statutory standard. In these cases, the actuary can be asked to provide retrospective actuarial confirmations without the need for any further information.
- Are there any amendments remaining which are missing actuarial confirmations? If so, trustees will need consider whether any further information is needed to allow the actuary to provide retrospective actuarial confirmations and how best to obtain this information. In many cases, the actuary will have confirmed every three years that the scheme continued to meet the statutory standard and this is likely to provide compelling evidence that any prior amendment would not have prevented the scheme from meeting the statutory standard. If such confirmation is not available, other evidence might be needed, such as trustees' meeting minutes, member communications or other documents relating to the rule amendment.

Trustees should ensure that any actuarial confirmations obtained through the remediation process are kept with the rest of the scheme's governing documents.



Claire Collier



On the horizon

Subject	Changes	Next key date
Pension Schemes Act 2026	The Pension Schemes Act includes measures relating to: > defined benefit (DB) surpluses; > retrospective actuarial confirmation for schemes affected by the *Virgin Media* decision; > DB superfunds; > defined contribution (DC) scale and asset allocation; > small pots; > value for money; and > guided retirement.	Most of the measures are expected to come into force in the period from 2027 to 2030. We are expecting the Government to publish an updated roadmap setting out the proposed timings for the various measures in due course.
Finance Act 2026	The Finance Act includes: > changes to the inheritance tax (IHT) treatment of pensions from 6 April 2027; > provisions to allow the Government to make technical amendments to the legislation that abolished the lifetime allowance with retrospective effect from 6 April 2024; and > provisions dealing with the tax treatment of collective defined contribution (CDC) schemes.	The Government is expected to publish draft regulations on IHT information sharing requirements for technical consultation imminently. Draft templates for withholding and payment notices and draft guidance on evidence of personal representative identity are also expected. The Government is expected to introduce regulations making technical amendments to the legislation that abolished the lifetime allowance with retrospective effect from 6 April 2024.

Subject	Changes	Next key date
National Insurance Contributions (Employer Pensions Contributions) Act 2026	The National Insurance Contributions (Employer Pensions Contributions) Act will mean that, from April 2029, the amount that is exempt from national insurance contributions will be capped at £2,000 a year for employee contributions made to pension schemes via salary sacrifice.	The change will take effect from April 2029.
Pensions Commission	The Pensions Commission has published its interim report on the state of retirement saving in the UK, setting out the key challenges facing the current system and where it will focus its work next.	The Commission is seeking views on its findings so far and these can be submitted until 14 July 2026. The final report with recommendations to Government is expected in spring 2027.
State Pension age review	The Government is undertaking a review of the State Pension age, which will consider future State Pension age arrangements based on the latest life expectancy data and other evidence.	The review will be published in due course.
CDC schemes	Regulations will extend CDC provision beyond single or connected employer schemes to accommodate unconnected multi-employer schemes (UMES). The Pensions Regulator's existing CDC code of practice has been amended to cover the authorisation and supervision of UMES. The Government has published a consultation on retirement CDC schemes.	The UMES regulations will come into force on 31 July 2026. The code has been laid before Parliament and is expected to come into force in mid-October 2026. The consultation on retirement CDC schemes closed on 4 December 2025 and a consultation on draft regulations is expected this year.
Transfer conditions	The previous government published a review of the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021. The review recognised that the incentives red flag and the overseas investments amber flag were causing delays and issues for members and trustees.	The Department for Work and Pensions is working with the FCA, the pensions industry and HM Treasury to consider these issues, and the Government intends to consult on the outcome of this work in the coming months.

Subject	Changes	Next key date
Trusteeship, governance and administration	The Government has consulted on improving the standards of pension scheme trusteeship, governance and administration.	The consultation closed on 6 March 2026 and a response is awaited.
Pensions dashboard	Schemes with 250 or more relevant members should already be connected to the pensions dashboard in accordance with the staged timetable for connection.	Schemes with between 100 and 249 relevant members have connection dates between 30 June and 30 September 2026. All schemes in scope must be connected by 31 October 2026 at the latest. Confirmation of the date on which the dashboard will be accessible to the public has not yet been confirmed.
Enforcement strategy	The Regulator has consulted on a proposed new version of its enforcement strategy. The Regulator says it expects to revisit its wider regulatory and enforcement policies to ensure they are aligned with the new strategy; in the meantime, the current policies remain in effect.	The consultation closed on 11 November 2025 and a response is awaited.
Normal minimum pension age	The Finance Act 2022 provides for normal minimum pension age (NMPA) to increase from age 55 to age 57 from 6 April 2028. HMRC has confirmed that work on transitional regulations that will support the implementation of the NMPA increase is ongoing.	HMRC says it will share further details as soon as the draft transitional regulations are ready for technical consultation.



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