Baker McKenzie.

Legal Update

May 2026

United Kingdom: Virgin Media Fix Comes Into Law

Update on the Pension Schemes Act 2026.

In brief

The Pension Schemes Act 2026 ("**Act**") came into force on 29 April 2026. This means that pension schemes can now benefit from the so-called *"Virgin Media* fix*"*. The *Virgin Media* court case found that certain pension plan amendments that were not accompanied by the legally-required confirmation from the plan's actuary were not effective. The new statutory provisions address this and broadly allow an actuary to confirm now that specific historic rule amendments would have met the minimum contracting-out standard in place at that time. This enables trustees to treat the relevant amendments as having been validly made and to avoid any possible increase in plan liabilities that would be associated with a void historic rule amendment. Trustees and employers should now work promptly with their advisers to identify relevant amendments that may require an actuarial confirmation under the Act.

In this issue

In more detail

- The Virgin Media "fix": Background
- The Virgin Media Fix: What should trustees do now?
- The Virgin Media Fix: Is there anything not covered by the new legislation?
- Other changes introduced by the Act
- Developments relevant to DC schemes
- Investment mandation power

The Act also introduced other important changes, relevant to both defined benefit (DB) and defined contribution (DC) arrangements, including in areas such as surplus extraction, DC "scale" requirements and DC "guided retirement" requirements.

In more detail

The Virgin Media "fix": Background

The Government has introduced new legislation in the Act to provide a "fix" ("**Fix**") to address widespread concerns in the pensions industry relating to the potential impact on pension plans of the *Virgin Media* court litigation. The Fix came into law when the Act received Royal Assent on 29 April 2026 and so is now available to trustees. The proposed detail of the Fix was summarised in our September 2025 alert.

For background, certain rule amendments to contracted-out pension schemes that were made between 6 April 1997 and 5 April 2016 had to obtain confirmation from the scheme's actuary that the scheme would continue to meet the "reference scheme test" after the amendment was made. The "reference scheme test" (RST) was, broadly, a statutory minimum benefit standard that applied from 6 April 1997. These confirmations were often referred to as "Section 37" or "Regulation 42" confirmations or certificates, named after the relevant provisions in the contracting-out legislation that required such actuarial confirmations.

The *Virgin Media* case (which reached the Court of Appeal in 2024) confirmed that a rule amendment was not valid if a confirmation was not obtained from the scheme actuary. However, the Government acknowledged that this decision of the courts could have affected a large number of pension schemes, and so it agreed to pass legislation enabling trustees to effectively obtain retrospective confirmation from the scheme actuary, provided that certain conditions were met.

As noted in our earlier alert, the Fix provisions operate in a similar way to the original contracting-out legislation that required actuarial confirmation in relation to proposed amendments. In terms of process, trustees will have to formally request that the scheme actuary considers whether or not the relevant alteration would have prevented the scheme from continuing to satisfy the statutory contracted-out standard that applied at the time of the amendment (i.e., the RST referred to above). The actuary will then have to confirm to the trustees in writing that it is reasonable to conclude that the relevant alteration met these requirements.

The Financial Reporting Council (FRC) issued helpful guidance to actuaries in January this year concerning the relevant steps that need to be taken. In particular, the FRC guidance sets out what trustees and actuaries should do in certain scenarios, e.g., where

there may be missing membership data and how to approach cases where further information will be needed for the actuary to reach a conclusion.

The Virgin Media Fix: What should trustees do now?

Many pension schemes will already have carried out some level of analysis of whether their schemes had Section 37/Regulation 42 confirmations in relation to all applicable amendments, although many may not have carried out a ‘full’ analysis, e.g., they have not looked through hard copy files to see whether the requirements were met.

Now that the relevant legislation has passed through Parliament and is in force, we believe it is time for pension schemes seeking to rely on the Fix to go through the statutory process under the Act. Helpfully, pension schemes that were wound up before 29 April 2026 will be deemed under the Fix provisions to have complied with the relevant contracting-out legislation at the time (i.e., to have sought effective confirmation under Section 37/Regulation 42). No further steps will therefore be required in relation to schemes wound up before this date.

Whilst each pension scheme will need to consider its own circumstances, we see the broad process that trustees will need to undergo as follows:

- Review previous deeds (principally deeds of amendment in the relevant period and identify which ones already have a Section 37/Regulation 42 confirmation;
- For those that do not have a confirmation, legal advisers determine whether the relevant deed amended RST benefits; and
- If RST benefits were amended without a confirmation being located, the actuary to proceed with the Fix process.

When carrying out this analysis, our recommendation is that trustees take a prudent approach, e.g., if it is debatable whether an actuarial confirmation is needed, then trustees should err on the side of seeking to obtain an actuarial confirmation. The FRC guidance supports this approach and states that a scheme actuary may still be able to provide a relevant confirmation even if they consider that the rule alteration does not fall within the scope of amendments that are capable of being “fixed” under the legislation (for example, if there is limited evidence of a previous actuarial confirmation being given or where there is doubt that the amendment affected RST rights).

Trustees and employers may need to provide information to the actuary to confirm the nature of the amendment, and this will often require prior legal advice. This should enable the scheme actuary to provide the Fix confirmation, which we would envisage as being provided on a deed-by-deed basis (i.e., rather than a “blanket” confirmation), although this can be discussed with the individual actuary.

The Virgin Media Fix: Is there anything not covered by the new legislation?

There are several areas where the effect and scope of the Fix may need to be considered in more detail and specific professional advice sought:

- **Transfers-in**: Consideration will be needed on how the Fix will apply in the context of a previous transfer-in of assets and liabilities (mergers) and where the transferring pension scheme did not wind-up.
- **Outcome of the *Verity Trustees* case** – This hearing for this case took place last year but we await judgment; several Section 37-related compliance questions were put to the judge, including in relation to the effect of non-compliance with Section 37 in the context of a closure to accrual deed.

If you have any queries about implementing the Fix and how it might apply to your scheme, please get in touch with your normal contact at Baker McKenzie.

Other changes introduced by the Act

We covered the principal proposals of the Act (then the Pensions Bill 2025) in this DB update and this DC update last year. Below we set out a brief summary of each change, with a particular focus on areas of the new legislation which were amended during the course of the parliamentary process.

The Act has introduced several important changes that will be relevant to DB scheme trustees and employers.

1) Refund of surplus

The main change in this area is to introduce a statutory resolution power for trustees to modify their scheme rules to pay surplus to the employer, or remove/relax any existing restrictions in a current power - use of this power will be at the discretion of the trustees. Much of the detail around the surplus extraction changes will be set out in regulations. This will include further information on the actuarial threshold to remove surplus (although the Government has said that it is “minded” for the basis to be the “low-

dependency" basis – i.e., lower than the current "buy-out" basis prescribed in legislation). In terms of timing, this new power is expected to come into force in 2027, and there will also be guidance provided by the Pensions Regulator to support the changes. We also expect consultation on the relevant regulations in the coming months.

In the 2025 Autumn Budget, the Government also announced that legislation will be introduced to enable surplus payments to be made to members. This change will be part of the next Finance Bill and will come into force from 6 April 2027.

2) Superfunds

The Act codifies the superfund regime into law, but only introduces a "skeleton" framework for the authorisation and ongoing supervision of DB superfunds, drawing on the regulatory regime already in operation under the Pensions Regulator. The vast bulk of the detail around the regime will be set out in secondary legislation, with consultation starting later this year and the legislation (and the Regulator's accompanying Code of Practice in this area) coming into force in late 2028.

3) Confirming the Pensions Ombudsman status in overpayment recoupment cases

As noted in our previous DB alert, following the Court of Appeal's decision in the CMG case, it was clear that a Pensions Ombudsman's determination would not be sufficient under Section 91 of the Pensions Act 1995 to resolve a dispute between a member and trustees in relation to overpayment "recoupment" cases (i.e., repayment via deductions from future pension instalments). This has led to practical difficulties of trustees having to go through the further step of having to get a Pensions Ombudsman's determination effectively "rubber stamped" by a County Court. The Government has now addressed this in the Act as it is now confirmed that an Ombudsman's determination in favour of trustees will "count" to resolve such a dispute, thus enabling trustees to proceed with the relevant recoupment exercise more quickly. This provision will come into force on 29 June (i.e., two months after Royal Assent).

4) Pension Protection Fund (PPF) levy flexibility

The Act has amended the existing PPF legislation set out in the Pensions Act 2004 to provide the legal flexibility for the PPF to set a zero levy (as it has already done so for this levy year).

5) Indexation of pre-97 PPF compensation

Finally, the Act also amends the PPF compensation regime to provide for increases to pensions accrued prior to 6 April 1997. The Government aims to introduce this change from January 2027.

Developments relevant to DC schemes

Significant reforms were introduced in the Act to the operation of DC pension arrangements. As noted, we detailed many of these reforms in our June 2025 alert. In the Government's press release covering the passing of the Act, the Pensions Minister, Torsten Bell, commented on the overall policy objectives of these DC changes, noting "the Act aims to transform the pensions landscape, ensuring every pound saved delivers stronger returns while driving investment in the economy."

The DC reforms will not impose any new legal duties directly on employers. Employers will, however, need to be aware of them to ensure that they continue to meet their existing duties (for example in relation to automatic enrolment) and can make appropriate decisions about pension provision for their workforce.

Trustees of "own trust" DC occupational arrangements will need to take action to ensure that they can comply with those aspects of the reforms which apply to them - notably, "guided retirement" and "value for money" (see more below).

Investment mandation power

One particular aspect of the new legislation over which the Government and the House of Lords disagreed, and that was what has been commonly referred to as the investment "mandation" or "reserve" power, or, within the legislation itself, the asset allocation requirements.

If used, this power would enable the Government to mandate that up to 10% of the assets of commercial Master Trusts' or Group Personal Pension Schemes' (GPPs) default funds are invested in particular types of "productive" assets, including up to 5% in UK assets. Failure to comply with these requirements, should they be brought in, would result in the arrangement ceasing to meet the quality requirements under the automatic enrolment legislation (and employers would be at risk of being in breach of their own automatic enrolment duties if they continued to make contributions to the arrangement).

It was this aspect of the Act which caused the House of Commons and the House of Lords to enter into a parliamentary process known as "ping-pong", during which the House of Lords continued to oppose the scope of the Government's proposed mandation power, on the basis that it would undermine trustees' fiduciary investment powers and duties. Eventually, the day before the Bill received Royal Assent, both Houses reached agreement whereby the mandation power remained in the legislation, but with additional limits placed on it. These include a safeguard so that the power cannot apply to a scheme where the trustees can show

that “meeting the asset allocation requirement is likely not be in the best interests of members of the scheme”. Specific caps on the total percentage of assets which can be subject to the power are also now included in the legislation; which align with the aims set out in the 2025 Mansion House Accord. The power will now fall away in 2032 if it has not be used by then (originally this was due to be 2035).

The Government’s hope is that the possibility of future mandation, coupled with voluntary agreements such as the Mansion House Accord, will encourage providers to make changes to asset allocations within default funds to “productive” investments, without the need to exercise the power. Many providers have already signed up to the Mansion House Accord.

There are also several other key developments relevant to DC funds that have been introduced by the Act (and will each have relevant regulations setting out more detail consulted on in due course):

- **DC scale requirements**– From 2030, with certain exceptions, commercial DC Master Trusts and GPPs used for auto enrolment must have a default arrangement with minimum assets of GBP 25 billion. This is the so-called “scale requirement”. The exemptions to this requirement are relatively limited, but the new scale requirement does not apply to Collective Defined Contribution (CDC) arrangements, nor where the provider can show that it meets certain conditions to be on a “transition” to meet the requirement or where it is a new entrant to the market which, again, can meet certain conditions, such as proving strong potential to grow. Failure to comply with the scale requirements would result in the arrangement ceasing to meet the quality requirements under the automatic enrolment legislation.
- “**Guided retirement**” **for members with DC funds** – These new requirements will be phased in for the largest schemes from early 2027 (with draft regulations expected during 2026 and 2027) and will require DC trustees (including trustees of “own trust” DC occupational arrangements) and providers to offer default decumulation solutions to members, referred to in the legislation as a “default pension benefit solution”. The aim is for relevant members to be provided with a regular income during retirement. In practice, trustees of own trust arrangements are likely to “partner” with a provider to meet this requirement.
- **Value-for-money (VFM)** – The Act will enable future VFM requirements to be introduced to provide a framework to assess value for money in DC schemes. Draft regulations governing the detail of VFM for occupational arrangements are expected to be consulted on during 2026 and 2027 and the first VFM assessments are likely to be due in 2028. The requirements will apply to most DC arrangements, including “own trust” occupational arrangements.
- **Small pot consolidation** – The Government is also establishing a framework to allow for the automatic transfer and consolidation of DC “small pots” (currently GBP 1000 or less). Much of the detail will be set out in regulations and the new regime is unlikely to come into effect before the “scale” requirements are introduced in 2030.
- **Contractual override for GPPs** – This change will enable FCA-regulated providers to make unilateral changes in relation to a scheme or member (such as amending the terms of a scheme or transferring a member to a different scheme with the same provider of another scheme with a different provider), provided that certain conditions are met (some of which are not yet clear and will be set out in regulations). Such a unilateral change can only be made if the provider concludes that a member’s “best interests” test is satisfied and that this conclusion is reasonable. There is an additional requirement for an independent expert appointed by the provider to certify the change and to confirm that the best interests test has been met.

Contact us

Jonathan Sharp
Partner
jonathan.sharp@bakermckenzie.com

Victoria Thompson-Hill
Knowledge Lawyer
victoria.thompson-hill@bakermckenzie.com

Sarah Hickling
Knowledge Lawyer
sarah.hickling@bakermckenzie.com

© 2026 Baker & McKenzie. **Ownership:** This site (Site) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms, including Baker & McKenzie LLP). Use of this site does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion:** All information on this Site is of general comment and for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulation and practice are subject to change. The information on this Site is not offered as legal or any other advice on any particular matter, whether it be legal, procedural or otherwise. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any information provided in this Site. Baker McKenzie, the editors and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this Site. **Attorney Advertising:** This Site may qualify as "Attorney Advertising" requiring notice in some jurisdictions. To the extent that this Site may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. All rights reserved. The content of the Site is protected under international copyright conventions. Reproduction of the content of this Site without express written authorization is strictly prohibited.