Pension Schemes Bill Briefing

Unlock UK investment by clarifying the existing scope of fiduciary duties

Executive Summary

The Pension Schemes Bill is intended – amongst other things – to help pension schemes to play a greater role in supporting the UK economy and deliver larger pensions at retirement.

The Bill has received broad support in the Commons, but its most controversial element is the proposed "reserve power", allowing government to set binding asset allocation targets for pension schemes. MPs from all major parties have raised concerns that this would undermine trustee independence, risk lower returns, and politicise pension investment.

At the same time, there is strong cross-party appetite for enabling schemes to invest more in UK priorities such as housing, decarbonisation, regeneration, education and care. The **key challenge for Parliament is to find a solution that unlocks such investment without government direction of assets**.

The Pension Schemes Bill provides a rare opportunity to **clarify in statute the existing scope of pension scheme fiduciary duties**, dispelling widespread uncertainty and giving trustees confidence to invest in productive assets, such as infrastructure, that support both member outcomes and the UK.

The effect of such clarification would:

- **Unlock UK investment without mandation**. Clear fiduciary duties would enable diversified and productive investment into UK assets without the negative impacts of mandatory asset allocation targets. Independent modelling suggests this could move over £100bn into UK assets within the next decade, significantly boosting GDP.

- **Support member outcomes**. We need pensions that deliver real value in retirement. Trustees need clarity that they can consider members' living standards, like housing, energy, healthcare, regeneration and education: priorities already highlighted by MPs at Second Reading.

- **Clarify that systemic risks can be financial risks**. Issues such as climate change, poor housing, and weak infrastructure can directly affect long-term financial returns. Making this clear would support trustees in their long-term investment decisions.

A proposed amendment is included in the **Annex**. It is permissive legislation that clarifies existing duties; it does not impose any new duties. Unlike the Bill's reserve power, fiduciary duty clarification could be in force within 12 months and apply to all schemes, not just 25% of assets.

"We support the proposal to expand fiduciary duty to consider wider financially material factors while maintaining trustees' discretion[…] This would empower pension schemes, giving them greater confidence to invest in UK projects and help foster a more ambitious pensions industry that best serves savers and communities." – **Ian Cornelius, CEO of NEST**

Background and problem: why legislative clarification of fiduciary duties is needed

Pension schemes have fiduciary duties to act in members' interests, which govern how pension schemes should act to fulfil the scheme's goal of providing retirement benefits. However, these fiduciary duties are only partly codified in statute (e.g., trustee duty to act in members' best interest) and rooted in older case law (e.g., *Cowan v Scargill*, 1985), much of which predates modern investment practices and understanding of systemic risks, such as climate change. As a result, trustees often receive conflicting advice, with many interpreting the case law as limiting or discouraging consideration of non-financial factors unless they can be clearly linked to financial returns.

Although there have been numerous guidance, consultations and legal opinions advocating for a wider scope for pension trustees' fiduciary duties, trustees remain uncertain about what the law currently allows them to do. This uncertainty arises for three main reasons:

1. **Current law and regulation impede proper assessment of the full range of "financially material" factors.** Since 2018, trustees have been required to explain in their Statement of Investment Principles how they consider "financially material considerations, including environmental, social and governance considerations." However, because the legislation is framed narrowly around financial materiality, many trustees assume that factors not expressed in monetary terms – such as local employment, public health, or climate resilience – fall outside their remit unless they can be directly linked to financial outcomes. As a result, financially material considerations are often treated as little more than broad asset allocation choices, despite government guidance expressly encouraging a wider interpretation.
2. **Existing guidance and commentary are non-binding.** Over the past decade, the Law Commission, the Department for Work and Pensions (DWP), The Pensions Regulator, the Financial Markets Law Committee and industry taskforces have all issued commentary or guidance. For example, in its 2022 Call for Evidence on Social Risks and Opportunities, DWP emphasised that trustees should consider all financially material risks, including social ones. The same year, DWP's Stewardship Guidance encouraged trustees to keep under review non-financial factors that may not immediately present as financially material but could become so over the long term. While helpful, none of this guidance has the force of law. Trustees cannot rely on it in court if their investment decisions are challenged.
3. **Uncertainty continues to persist across the market.** The Financial Markets Law Committee confirmed in 2024 that fiduciary duty uncertainty remains a live "legal issue". Legal opinions obtained by schemes vary widely, from restrictive to expansive interpretations. For example, NatWest Cushon felt compelled to commission its own legal advice, but this was not published in full, leaving other schemes unable to rely on it. Smaller schemes cannot afford to obtain their own legal opinions, and in any event, the lack of legal clarity means that trustees will continue to receive divergent opinions from lawyers, consultants and asset managers.

Taken together, these problems leave trustees without a clear or consistent legal basis for considering systemic risks and opportunities, the impacts of organisations, or members' living standards. **Only a statutory change can provide the necessary certainty**, available equally to all schemes regardless of size or resources, to support members' interests and unlock investment in the UK economy.

Proposed amendment to the Pension Schemes Bill

The proposed amendment to section 36 of the Pensions Act 1995 (set out in full in the **Annex**) would amend primary legislation to clearly state that, "*when interpreting the best or sole interests of members and beneficiaries*" trustees "*may*" take account of: (i) "*system-level considerations*"; (ii) "*reasonably foreseeable impacts*" on members' "*standards of living*"; and (iii) *the view of members*. The legislation will thus expressly allow for the consideration of the impact of pension schemes' investments on financial systems, the economy, the community and the environment, as well as on members' and beneficiaries' standards of living.

This is not a mandatory requirement. The proposed amendment does not change the proper purpose of a trust, nor does it fetter the discretion of pension fund trustees when making investment decisions. Instead, the proposed amendment acts as a facilitating measure to confirm the scope of investments a pension fund trust is able to make. **Schemes would not be required to invest in a particular way, only enabled to do so.**

The proposed amendment would also clarify existing law, which provides that trustees must exercise their investment powers in relation to "*system-level considerations*" and members "*standards' of living*", in circumstances where they are "*financially material*". This sub-clause **does not alter or augment existing requirements on pension schemes**, which today already provide that trustees must consider all "*financially material considerations*" when making investment decisions.[1]

Why will this amendment encourage UK growth?

An express clarification that pension schemes can take account of **system-level considerations** (and must do so in circumstances where they are financially material) would improve returns by enabling investment that strengthens the wider economy on which pension portfolios depend.

Clarifying that trustees may consider **members' real living standards –** not just the nominal value of their pensions – would further improve outcomes. Members who retire into a world of unaffordable housing, high energy prices or climate shocks will see their pensions eroded unless schemes are empowered in law to act on these risks. The ability to take account of **member views** could also help drive investments that support local economies, communities and businesses.

Together, these measures would encourage new investment in UK priorities such as clean energy, homebuilding, healthcare, transport and local employment – boosting growth and strengthening the tax base. Unlike the Bill's reserve power, fiduciary duty clarification could be in force within 12 months and apply to all schemes, not just 25% of assets.

Independent modelling for this proposal suggests that if clarifying fiduciary duty closed even half the gap with Canada on occupational pension fund allocations to domestic investments, it could shift over £100 billion into UK real and productive assets such as infrastructure. If this investment is additional to existing sources of funds for UK businesses, then it would **boost GDP by 0.3% by 2029**. Additionally, plausible increases in green investments could reduce emissions by 19 million tonnes a year, equivalent to the UK's three largest power stations. These impacts could be even larger if the clarification caused a greater change in behaviour, with **an estimated boost to GDP of up to 1.4% in 2029** with a more dramatic shift in best-practice asset allocations.

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[1] See Regulation 2(3)(b)(vi) of the Occupational Pension Schemes (Investment) Regulations 2005 (as amended by the 2018 Regulations).

Potential counterarguments: anticipated and addressed

Counter-Argument	Response
Pension schemes are already clear on their legal duties	No, the law is not clear. The Financial Markets Law Committee confirmed the ongoing uncertainty is a 'legal issue'. Schemes continue to receive conflicting legal advice. Only legislation can resolve this.
Guidance and regulation are sufficient	Government guidance is not law. Schemes are not required to follow non-statutory guidance and cannot rely on it with confidence if their investment decisions are challenged, particularly when the legal position is uncertain. Only primary legislation can provide the necessary certainty.
Schemes can seek their own legal advice	With 6,000 schemes this would be costly, inconsistent, and inconclusive. A single statutory clarification is more efficient and fairer.
Fiduciary duty clarification will be too complex for schemes	The proposed amendment is mostly permissive. Mandatory considerations (see Annex) are limited to circumstances that are financially material, which must already be considered by pension schemes under existing law.
Only reserve powers can deliver productive private market investment	The reserve power in the Bill focuses on private investments. However, many investments support UK growth, including publicly traded investments in UK infrastructure ("infrastructure investment trusts") and – for firms with operations in the UK – corporate bonds (borrowing by listed firms) and shares in listed companies (by supporting valuations and allowing new borrowing). Under Government's proposals, a private equity buyout of a listed UK company would be considered "productive" despite having no effect on UK investment. Fiduciary duty clarification would help schemes evaluate assets on their real benefits to the UK economy, rather than by a technical distinction between public or private that does not take into account real-world impacts.
Clarification risks unintended consequences	This is not at all likely. Schemes which are already carrying out the measures would not need to change approach. Fiduciaries who would like to do more would receive more certainty. Schemes which are behind the curve would see a clear motivation for action. The status quo itself has unintended consequences – fiduciary confusion, unintended regulatory burdens, regulatory risk, costs to schemes, and a hit to member outcomes and economic growth – as could the proposed reserve power.
This will sort itself out with consolidation of pension schemes	It won't. Larger schemes still face uncertainty about whether and how they can or should act on system-level risks and opportunities, impacts, members' standards of living and members' views.

Annex: Proposed amendment

This amendment has been developed by Stuart O'Brien and Andy Lewis, partners at leading pensions law firm Sackers, in consultation with a broad range of pension sector and other key stakeholders.

Proposed amendment to the Pension Schemes Bill 2025 To move the following new clause: **"Clarification of pension scheme investment duties** (1) Section 36 of the Pensions Act 1995 is amended by inserting the following after subsection (9) of that section: "(10) Regulations under subsection (1) coming into force no more than one year after the date on which Royal Assent is received must provide:	This amendment would clarify fiduciary duties to trust-based occupational schemes. See subsections (2) and (3) for the local government scheme and workplace personal pensions.
(a) that when interpreting the best interest or sole interests of members and beneficiaries for the purposes of this section and the regulations, the trustees of a trust scheme may (amongst other matters) take the following into account: (i) system-level considerations; (ii) the reasonably foreseeable impacts over the appropriate time horizon of the assets or organisations in which the trust scheme invests upon prescribed matters, including upon members' and beneficiaries' standards of living; and (iii) the views of members and beneficiaries;	Currently, to take these matters into account, trustees need to establish direct financial materiality (which may be disproportionately costly) or instead use a burdensome "two-stage test" developed by the Law Commission, which is supported by limited case law. This measure would prescribe that where trustees follow a proper decision-making process in line with the general law, this would be sufficient.
(b) that investment powers or discretions must be exercised in a manner that considers and manages the matters specified in subsection (10)(a)(i) and (ii) where they are financially material; and	Consistent with existing investment duties, where these matters are demonstrably financially material to member outcomes, schemes must take account of them.
(c) a prescribed definition of the term "appropriate time horizon" for these purposes.	Extending investment time horizons from savers' expected membership of the scheme to savers' whole lifetime will mean that the growing number of schemes which anticipate consolidation or buy-out in the next decade maintain and increase their focus on long-term outcomes, benefitting the UK economy and savers themselves.
(11) For the purposes of this section, "system-level considerations" means, over the appropriate time horizon, risks and opportunities relevant to the scheme that: (a) cannot be fully managed through diversification alone; and (b) arise from circumstances at the level of one or more economic sectors, financial markets or economies, including but not limited to those relating to environmental or social matters.	System-level risks cannot be *fully* diversified, otherwise they cannot be system-level – e.g. every company depends on employees being able to find housing nearby, and every firm will be affected by climate change. However, they can *managed* by making positive investments, e.g. in new housing, or in climate mitigation or adaptation.
(12) In complying with requirements imposed by this section and regulations, a trustee or manager must have regard to guidance prepared from time to time by the Secretary of State.".	Statutory guidance is required to explain to schemes how to manage and take account of these issues. However, it could only be a guide and could not overrule Parliament, e.g. by giving schemes new duties.
(2) The Financial Conduct Authority must make general rules with effects corresponding to the provisions of subsection (1) for providers of pension schemes to which Part 7A of the Financial Services and Markets Act 2000 (as amended by this Act) applies.	FCA make rules for workplace personal pensions. This is needed to ensure a level playing field between occupational and personal pension schemes, which are both used for automatic enrolment
(3) The Secretary of State must make regulations with effects corresponding to the provisions of subsection (1) for scheme managers of the Local Government Pension Scheme. (4) The rules and regulations under subsections (2) and (3) must come into force no later than the date on which regulations pursuant to section 36(10) of the Pensions Act 1995 (as amended by this Act) come into force.	The Secretary of State for MHCLG would need to make corresponding arrangements for the LGPS.

Explanatory statement

This clause gives the Secretary of State a duty to make regulations clarifying certain aspects of the investment duties of occupational pension schemes, including the consideration and management of system-level risks and opportunities and the ability to take account of other matters (for example including impacts of investee firms, scheme beneficiaries' standards of living and beneficiaries' views). It also imposes duties on the FCA and the Secretary of State to make corresponding rules and regulations for workplace personal pension schemes and the Local Government Pension Scheme respectively.

Please be in touch with Sophia Omar at Sophia.Omar@impactinvest.org.uk if you would like to learn more about this work.