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Pension Schemes Bill -

Briefing for House of Commons Committee stage

This briefing is on behalf of ShareAction, the responsible investment charity, ahead of consideration by the Public Bill Committee which begins on 2nd September.

We encourage Committee members to table and speak in support of amendments to clarify pension schemes' fiduciary duties. A recommended amendment is included in the Annex.

Clarification would support improved outcomes for UK pension savers and boost investment in UK growth. It would also support investment by pension schemes on housing, decarbonisation, regeneration, education and care – all matters raised by MPs at 2nd reading.

This could be achieved without invoking any Government power to set asset allocation targets on pension schemes, such as that contained in the current Bill.

Summary of activity in the Commons

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

The Bill received broad support in the Commons. By far the biggest area of controversy was the proposed "reserve power" to set binding asset allocation targets. Government is proposing to take powers via clause 38, and new section 28C inserted into the Pensions Act 2008, to block schemes from receiving new funds if they do not meet certain levels of "private market" investments (those in businesses not traded on a stock exchange) including private markets investments in the UK. This would be the first time that Government has ever taken powers to direct pension schemes (which have a duty to invest in savers' interests) to put money into particular asset classes.

This power was criticised by MPs of all three main parties, on the grounds that it: could lead to asset price bubbles; suggested that Government knew better than industry where to achieve superior returns, and would reduce returns if it did not; could be used to direct schemes into state-favoured investment vehicles; and was not Government's money to direct anyway.

It was highlighted that the so-called "opt-out" from mandatory targets (section 28F) merely gave Government the power to make regulations allowing schemes to ask The Pensions Regulator (answerable to, and funded by, DWP via a levy) to consider an exemption.

Outside Parliament, the Governor of the Bank of England has reported that "I do not support mandating. I don't think that's appropriate", whilst the OBR's latest Fiscal risks and sustainability report has warned of "pressure on the state to support savers in the face of low or volatile returns …. if government involvement in DC investment strategies were seen as material in future."

MPs of multiple parties spoke in favour of positive investments which had been or could be made by pension schemes, including in housing, decarbonisation, town centre regeneration, education and care. However Government's proposed reserve power could not support these investments unless they were made via unlisted (private market) vehicles – typically more expensive for savers.

With consensus on most other measures, finding a satisfactory solution which supports positive investment in the UK is the key task for Government and the Commons. Fiduciary duty clarification - whilst separate to, and independent from, the proposed reserve power – would enable and facilitate UK investment without upending schemes' autonomy and their duty to invest in members' best interests.

The challenge with interpreting pension schemes' fiduciary duties

Trustees of occupational pension schemes have fiduciary duties to act in savers' interests, similar to the duties that company directors have to their shareholders. The governance bodies of the Local Government Pension Scheme and personal pensions, which do not have trustees, have similar duties.

These duties govern how pension schemes should act to fulfill the scheme's goal of providing retirement benefits, but are only briefly covered in statute. They are mainly understood through case law which has evolved over centuries, with many key cases being more than 100 years old and other more recent cases widely misunderstood.

Why clarify pension scheme fiduciary duties?

An explicit duty to manage financially material **system-level risks and impacts** would improve returns by encouraging investments that lift the returns of other companies in which the scheme is invested. For example, the success of most companies operating in the UK will be affected by the extent to which the UK has a healthy and well-educated and -trained population with good housing, low-cost energy and good transport infrastructure, all of them resilient to the negative impacts of climate change.

Taking account of pension scheme **member standard of living** by considering the real-world buying power of that pension – not just its nominal value – would also improve saver outcomes. Savers who retire into a world of high inflation, where goods such as housing, energy, food or water are more expensive, would experience a worse standard of living than if schemes had been clearly enabled in law to help tackle those risks.

The ability to **take account of member views** would also help drive investments that are good for the UK economy, including boosting local economies, communities and businesses.

Each of these measures would support new investment in the delivery of UK clean energy, homebuilding, local employment, healthcare and transport infrastructure, as well as investments which make it easier for Government to provide these services by boosting growth and enhancing the UK tax base.

Unlike the proposed reserve power, this investment in savers' and the UK's interests would be delivered within a continued duty on schemes to focus solely on savers' financial interests. It would not remove or undermine existing scheme investment duties, including for trust-based schemes to "ensure the security, quality, liquidity and profitability of the portfolio as a whole".

With new powers, fiduciary duty could be clarified by Government in regulation and guidance in less than 12 months, applying to all pension scheme assets with immediate effect, rather than the 5-10 year lifespan anticipated by the reserve power. Also in contrast to the reserve power, fiduciary duty clarification would apply to all pension schemes, rather than the 25% of assets in multi-employer defined contribution schemes. It therefore has the potential to increase allocations by UK pension funds to the UK economy, further and faster, whilst protecting savers and without undermining trustee independence. Independent modelling prepared to support this proposal suggests that if clarifying fiduciary duty closed half the gap in the allocation of assets to domestic investments compared to Canada it has the potential to move well over £100bn into UK assets. If this investment is additional to existing sources of funds for UK businesses, it would boost GDP by 0.3-1.4% by 2029. Plausible increases in green investments could reduce and reducing emissions by 19 million tonnes a year, similar to the annual emissions of the UK's three largest power stations.

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Potential counter-arguments – anticipated and addressed

- **Pension schemes are already clear on their legal duties –** No, the law is not clear. The Financial Markets Law Committee concluded that it needed to publish a paper on climate change risks given the legal uncertainty, whilst NatWest Cushon paid for a legal opinion to allow them to take account of members' standard of living. Neither of these papers resolve the confusion as they are not legally binding and do not cover all areas, schemes or circumstances addressed by our proposals – and the NatWest Cushon opinion has not been published in full.

- **We can clarify this through guidance, or regulation –** Government has no powers to issue statutory guidance; schemes are not required to follow non-statutory guidance and cannot defend their decisions with confidence by pointing to it, particularly where the legal position is unclear. Regulations on their own are also inadequate – with no statutory guidance in plain English on Government's expectations, trustees would still face uncertainty in relying on the bare letter of the law alone for complex investment matters.

- **Schemes can seek their own legal advice.** If all 6,000 UK schemes seek their own legal opinions they will pay 6,000 different times and still not arrive at a consensus, as many lawyers have divergent views. Only clarification in statute can provide this.

- **Fiduciary duty clarification will be too complicated for schemes –** Our proposal is mostly permissive. Mandatory considerations (see Annex) are limited to those issues that are financially material, which ought to be considered anyway. Industry participants agree that schemes ought to be managing financially material risks – this proposal simply makes clear that system-level risks and impacts, including standards of living, can also be material.

- **Only the reserve power can deliver productive private market investments –**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.

- **Fiduciary duty clarification could have 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 fewer, larger, better governed 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.

ShareAction is an independent charity and an expert on responsible investment. We work to build a world where the financial system serves our planet and its people. For further information please contact Claire Brinn, ShareAction's Senior UK Policy Manager, at claire.brinn@shareaction.org

Annex: proposed amendment

This amendment has been developed by Stuart O'Brien and Andy Lewis, partners at leading pensions law firm Sackers, working with ShareAction and in consultation with the pensions 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 how 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.	The Secretary of State for MHCLG would need to make corresponding arrangements for the LGPS.
(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.	

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.