

# PSB DB – proposed Virgin Media remedy

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On 18 September 2025, the Government published the latest draft of the **Pension Schemes Bill** (“the PSB”). It now includes provisions aimed at addressing issues arising from the Virgin Media case.

## Background



- With effect from 6 April 1997 until contracting-out on a DB basis ended on 6 April 2016, contracted-out schemes had to satisfy an overall quality test known as the “reference scheme test” in relation to contracted-out rights known as “section 9(2B) rights”.
- Alterations which affected benefits relating to section 9(2B) rights could only be made where certain requirements were met (“the Requirements”). The Requirements included written actuarial confirmation that, if the alteration were made, the scheme would continue to meet the RST (“the s37 Confirmation”).
- In Virgin Media, confirming the High Court’s earlier **decision**, the Court of Appeal **held** that, where the Requirements applied, an amendment made without a s37 Confirmation would be void.
- Recognising “that schemes and sponsoring employers need clarity around scheme liabilities and member benefit levels in order to plan for the future”, on 5 June 2025 (the day the PSB began its Parliamentary journey) the Government published a **ministerial statement** indicating that it would take retrospective action to address the industry uncertainty caused by the Virgin Media case.
- Measures have now been included in the PSB.

## Proposed remedy

### 1 What’s in scope?

A purported amendment will be “potentially remediable” if:

- the alteration could not be made unless the Requirements (as they stood at the time) were met
- the scheme trustees or managers treated the amendment as valid
- no “positive action” has been taken by the trustees or managers on the basis that they consider the alteration to be of no legal effect due to its non-compliance with the Requirements, and
- it is not otherwise excluded from the scope of the proposed remedy.

### 2 What is “positive action”?

Trustees or managers will have taken “positive action” where, broadly, they have:

- given any scheme members written notification that they consider an alteration to be void (for non-compliance with the Requirements) and the scheme will be administered on that basis, or
- taken any other step in relation to the scheme’s administration in consequence of their considering an alteration to be void, which has (or will have) the effect of altering payments to or in respect of scheme members.

As currently drafted, simply investigating a scheme’s position, even if potentially invalid amendments are identified, should not fall foul of this exclusion.

### 3 Other exclusions

An alteration will also be excluded from the scope of the proposed remedy if any question regarding its validity in relation to the Requirements:

- has been determined by a court before the provisions come into force in legal proceedings to which the trustees or managers were a party
- was in issue on or before 5 June 2025 (the date of the Government’s remedy announcement) in legal proceedings to which the trustees or managers were a party, but has been settled by agreement between the parties at any time before the remedy comes into force
- was in issue on or before 5 June 2025 in legal proceedings to which the trustees or managers were a party and remains in issue when the remedy comes into force.

As “legal proceedings” is not defined, it could be interpreted broadly, possibly encompassing professional negligence actions for failure to meet the Requirements and member complaints to TPO.

## 4 Conditions which will need to be met

A potentially remediable alteration will be treated as valid if the following conditions are met:

- the trustees or managers write to the scheme actuary asking them to consider whether or not, on the assumption that it was validly made, the alteration would have prevented the scheme from continuing to satisfy the RST
- the scheme actuary provides the trustees or managers with written confirmation that, in their opinion, it is reasonable to conclude that, on the assumption it was validly made, the alteration would not have prevented the scheme from continuing to satisfy the RST (“the RST Confirmation”).

The scheme actuary can be the current actuary appointed to the scheme or another actuary appointed for this purpose.

## 5 Special cases

Where a scheme has wound up or gone into the PPF or FAS before the measures come into force, any potentially remediable alteration will be treated as having met the Requirements and, as such, as having always been valid for those purposes.

## Areas of uncertainty



Whilst regulations and actuarial guidance are likely to be on their way, under the current drafting, the following areas of uncertainty remain:

- ✓ **Investigation** – to use the remedy, trustees or managers will need to determine whether any of their scheme’s amendments are “potentially remediable”. This may not be straightforward in all cases.
- ✓ **Obtaining an RST Confirmation** – it is not clear how easy it will be for actuaries to provide the required confirmation, nor what information they will require to do so.
- ✓ **Schemes which took transfers-in of section 9(2B) rights** – although subject to an extent to the terms of the transfer, where the transferring scheme is still ongoing (so the winding-up special case provision doesn’t apply), the receiving trustees may be dependent on the transferring trustees taking steps to address any potentially remediable alterations. Similar considerations might also arise for insurers where a scheme has bought out but not yet wound up.

## Actions



The PSB is not expected to receive Royal Assent until early 2026, with the provisions due to come into force two months later. We are also awaiting judgment in the *Verity Trustees* case, which is expected to clarify a number of issues, including the evidence required to demonstrate compliance with the Requirements and whether the Requirements had to be met in respect of a closure to accrual.

In the meantime, trustees and managers should discuss with their advisers how the proposed remedy might apply to their scheme. Possible areas for action include:

- + identifying any scheme alterations which might be in scope, if this is not already known
- + if potential legal proceedings and/or settlements are in train, determining whether any steps can be taken now to ensure the remedy remains available
- + where a scheme is in the process of winding-up, whether it will be possible to complete the process before the remedy comes into force (so that any potentially remediable alterations will be automatically deemed to have been valid).

