J&J Pensioners Network
The J&J UK Pensions Voluntary Association

Response to DWP Consultation:

Surplus Flexibilities for Defined Benefit Pension Schemes

Submitted on behalf of members and beneficiaries of the
Johnson & Johnson U.K. Group Retirement Plan

Consultation closes: 2 September 2026
Submitted by: D. M. Taylor, on behalf of The J&J UK Pensions Voluntary Association

Covering Statement

This response is submitted by The J&J UK Pensions Voluntary Association on behalf of members and beneficiaries of the Johnson & Johnson U.K. Group Retirement Plan (scheme details on the accompanying sheet). We write as members of a closed defined benefit scheme, 133% funded with a surplus of £484 million and 11,684 members (4,943 Pensioners + 6,718 Deferred Members) as at 31 March 2025, in which pensions earned before April 1997 have received no discretionary increase since January 2014.

We support the principle that well-funded schemes should be able to put surplus to productive use. Our response addresses the design of the safeguards and draws on our scheme's documented experience to show how the draft regulations would operate in practice — in particular in schemes governed by a Professional Corporate Sole Trustee where discretionary benefits sit within the employer's control.

On members' ability to participate at all.

This response is submitted by an association of scheme members with no lawful means of contacting the members it exists to represent. Member contact details are held by the scheme administrator as processor for the trustee and cannot be released to us. The trustee has declined to circulate a neutral communication on our behalf. We therefore ask the Department to note that where a consultation, notification period or member-representation safeguard assumes members can be informed and organise, that assumption may not hold — particularly in schemes with a Professional Corporate Sole Trustee and no member-nominated trustees. Any framework that relies on member voice as a safeguard must first ensure members have a route to use it.

Three points of context inform our answers. First, Parliament has already accepted the principle that pre-1997 indexation matters, by legislating protection for members of schemes in the Pension Protection Fund; that logic does not disappear because a scheme remains solvent — a scheme holding a substantial surplus is better placed to fund such protection than one in distress. Second, the Government has itself acknowledged, in a ministerial reply of 6 July 2026 (ref MC2026/59404), that the absence of indexation on pre-April 1997 rights can erode the value of pensions over time, and that most defined benefit schemes pay some indexation on such rights. Third, the position of pre-1997 members was raised during the passage of the Pension Schemes Bill (Hansard, HC Deb, 3 December 2025), when the Minister acknowledged he was "not pretending… that solves overnight" the indexation issue for members outside the Pension Protection Fund, without committing to further action. These regulations are the Government's first practical opportunity to address that acknowledged gap through safeguard design rather than retrospective legislation — and our answers are directed to that end.

About the Scheme

Name of Scheme or Trust	The Johnson & Johnson U.K. Group Retirement Plan
Sponsoring Employers	Johnson & Johnson UK affiliated businesses (the five current Participating Employers per the Deed of Amendment dated 12 May 2025): DePuy International Limited Janssen-Cilag Limited Johnson & Johnson Medical Limited AMO United Kingdom Limited Johnson & Johnson Innovation Limited
Scheme Type	Defined Benefit - This DB scheme was closed to newly hired or rehired employees in January 2015 and closed to all further contributions by existing employees on 31 March 2023
Trustee Numbers and Board composition	Professional Corporate Sole Trustees (PCST) No member nominated Trustees.
Name of Professional Corporate Sole Trustees (PCST)	Independent Governance Group (IGG)
Name of Pension Administrator	XPS Group www.xpsgroup.com
Member Numbers (as of 31 Mar 2025)	Total 11,684 (4,943 Pensioners + 6,718 Deferred Members + 23 Options Pending)
Assets under management (As of 31 Mar 2025)	£1,965 MM
Liabilities (As of 31 Mar 2025)	£1,481 MM
Surplus % and value. (As of 31 Mar 2025)	£484 MM 133%
Last Discretionary Increase for Pre-97 Pensions	1 January 2014 (19.1% increase)
Additional point on capped increases	In addition to the pre-1997 discretionary increase issue, members have also lost spending power where pension increases were capped at 5% or 2.5% during high-inflation years.

Consultation Responses

The Association's response addresses 19 questions across the consultation document, organised by chapter. Each response draws on the documented experience of the Johnson & Johnson U.K. Group Retirement Plan to show how the draft regulations would operate in practice.

Question 1

Chapter 2 – Preliminary

Draft regulation 2 defines ‘appropriate advice’. Do you agree with this definition?

Partly. The definition should require genuinely independent advice covering investments, liabilities, employer covenant, long-term viability and member benefit options—not simply asset valuation. For a scheme governed by a Professional Corporate Sole Trustee, the process should also include an independent member perspective. In the Johnson & Johnson Group Retirement Plan, discretionary pension increases require sponsoring-company approval, so the trustee cannot secure that outcome by fiduciary duty alone. Advice should therefore include a written assessment of affordable member improvements, particularly the 12-year pre-1997 indexation gap, before any employer payment is considered. Advice should also look at the loss of value caused by statutory increase caps, such as 5% and 2.5%, during periods of high inflation. This is wider than the pre-1997 issue and should be considered before any surplus is released.

Relevance to J&J pensioners: High, advice is a core safeguard for a large release.

Question 2

Chapter 3 – Scope

Is the scope of the power sufficiently clear?

The basic scope is understandable, but the safeguards need to be clearer. Closed schemes with no active accrual or future contributions face different risks and should be expressly covered by stronger protections. Additional rules are also needed for Professional Corporate Sole Trustee schemes. The Johnson & Johnson Group Retirement Plan has one corporate trustee, no member-nominated trustee and employer control over discretionary increases. Reliance on the trustee’s fiduciary duty alone is therefore over-optimistic: an important member benefit is not within the trustee’s sole power. The regulations should require member consultation, an independent member advocate and TPR oversight for material payments.

The regulations should recognise that the issue is not limited to pre-1997 pensions. Other pension elements can also lose real value when annual increases are capped below inflation, so members need a fair opportunity to have all material benefit erosion considered. This is not hypothetical. Our scheme’s sole corporate trustee has confirmed to us in writing, in its letter of 3 July 2026, that it will engage with members only where the law requires it - which is exactly why the law needs to require it.

We are aware that the removal of the former requirement for trustees to be ‘satisfied’ that a payment is in members’ interests has been explained on the basis that the wording duplicated trustees’ existing fiduciary duty, so that members lose no protection. Our scheme provides a documented example of why that reasoning does not hold. In its formal decision of 3 December 2025, our trustee stated that, because the Rules give it no unilateral power over pre-1997 increases, it ‘has no discretion to exercise’, is ‘not required to consider any factors’, and has no need ‘to consider funding levels or surplus utilisation’. Where the power over the principal member benefit sits with the employer, fiduciary duty does not replicate the removed statutory test; it has nothing left to act on. The statutory safeguards in these regulations must therefore carry the full weight of member protection.

There is a further structural problem the regulations should address directly. Members of a scheme like ours have no lawful means of contacting one another. The administrator holds members’ details as a data processor for the trustee, and cannot lawfully release them to a member association. The trustee has declined to circulate a neutral communication on the Association’s behalf. The result is that an association formed to represent 11,684 members cannot reach the great majority of them, and those members have no way even to learn that it exists. The consultation assumes that members can be informed and can respond. For schemes governed by a Professional Corporate Sole Trustee with no member-nominated trustees, that assumption does not hold. The regulations should place a positive duty on trustees to circulate, on request and at reasonable frequency, factual communications from a bona fide member association — and should treat unreasonable refusal as a reportable matter.

Relevance to J&J pensioners: Very high, closed, non-contributing PCST scheme.

Question 3

Chapter 3 – Scope

Regulatory own funds schemes were included in the 2006 Regulations; is there a continued need for their inclusion within the Regulations?

We have no scheme-specific evidence on regulatory own funds schemes. If such a scheme has no sponsoring employer to receive a payment, exclusion appears logical. The Government should nevertheless confirm that changes of structure cannot be used to avoid equivalent funding, member-notification or regulatory safeguards. Subject to that assurance, we have no strong view on inclusion.

Relevance to J&J pensioners: Low, unlikely to apply directly.

Question 4

Chapter 3 – Assets and liabilities

Do you have any comment on the considerations of factors to be taken into account for the assessment of assets and liabilities?

The assessment should go beyond a single low-dependency valuation. It should show funding before and after payment on low-dependency, technical-provisions and buy-out bases, with stress tests for investment, inflation and longevity risk.

It should also require unresolved legal issues to be settled first. The Virgin Media v NTL Pension Trustees ruling (High Court 2023, upheld by the Court of Appeal 2024) found that historic rule changes made without the actuarial confirmation required by section 37 of the Pension Schemes Act 1993 are void, which can increase a scheme's true liabilities. This is not theoretical for us: our scheme actuary's 2025 report states that the Plan's £484m surplus has been calculated with no allowance for any Virgin Media / Verity Trustees adjustment. The Pension Schemes Act 2026 now allows schemes to obtain retrospective confirmation, and The Pensions Regulator's June 2026 statement already expects trustees to check whether past alterations and GMP issues have been resolved before releasing surplus. The regulations should say the same: no certification until the section 37 position is confirmed.

A related case, Verity Trustees Ltd v Wood, is expected to determine how far the Virgin Media ruling extends — including whether closure to future accrual, which our scheme underwent in April 2023, is itself an alteration requiring section 37 confirmation. That hearing ran over thirty-two days between February and March 2025 and, as at the date of this response, judgment has not yet been handed down. Given the scale of what may turn on it, certification under these regulations should not proceed for any scheme with unresolved historic amendments until the scope of the Virgin Media ruling has been settled by the courts.

Finally, the assessment should recognise where a surplus rests partly on an assumption of no future discretionary increases. In our scheme, pre-1997 pensions have had no increase for twelve years and the valuation assumes they never will. The cost of affordable member improvements should be assessed alongside any amount proposed for the employer.

The Minister for Pensions confirmed, in a ministerial reply of 6 July 2026 (ref MC2026/59404) to a Member of Parliament on behalf of a Plan member, that The Pensions Regulator 'expects trustees to consider whether members would benefit from a discretionary increase and to take account of any history of making such awards'. If that is the Government's expectation, it should appear in the regulations as a required consideration in this assessment, not only in guidance — because our trustee has stated formally that, absent a discretion, it need not consider funding levels or surplus utilisation at all.

Relevance to J&J pensioners: Very high, determines the true amount available.

Question 5

Chapter 3 – Funding test

Do you have views on the proposed funding test, based on full funding on the low dependency funding basis?

Full funding on a low-dependency basis is a necessary floor, but it is not enough. A scheme left at just over 100% has almost no margin for adverse experience. We support a minimum post-payment level of 110% of low-dependency liabilities, after allowing for the employer payment and all member improvements. This is especially important for the Johnson & Johnson Group Retirement Plan because it is closed, has no active accrual and receives no future contributions. Any release should also carry a five-year employer restoration obligation if funding later falls below 100%. A roughly £500 million surplus is not a reason to weaken prudence.
The funding test should be applied after allowing for affordable discretionary payments that address both the pre-1997 gap and losses caused by capping of increases during periods of high inflation.

The same ministerial reply of 6 July 2026 records that the Government 'recognises that the absence of indexation on pension rights accrued before April 1997 can erode the value of pensions over time', and notes that most defined benefit schemes pay some indexation on pre-1997 pensions. A funding test that ignores affordable correction of that erosion would entrench it.

Relevance to J&J pensioners: Very high, central protection for a £500m surplus.

Question 6

Chapter 3 – Payment process

Do you have any views on the proposed payment process as proposed in the regulations, including whether it is workable in practice and sufficiently clear? Please provide details.

The sequence is understandable, but not yet fair or complete. Members are notified only after a provisional employer payment has effectively been agreed. In the Johnson & Johnson Group Retirement Plan, discretionary increases require employer approval, so the sole corporate trustee cannot independently balance employer and member interests. That makes the Minister's reliance on fiduciary duties an insufficient safeguard. Before any provisional amount is agreed, the regulations should require a benefit-disparity assessment, meaningful member consultation and an independent member advocate. Where a scheme has a documented history of discretionary increases — ours ran from at least 1984 to 2014 — that history should count as evidence of members' reasonable expectation to share in surplus. Material payments—over £50 million or 10% of low-dependency liabilities—should require TPR pre-clearance.

The benefit-disparity assessment should cover all main sources of pension erosion, including no discretionary increases on pre-1997 pensions and the effect of 5% and 2.5% caps on other pension elements.

Relevance to J&J pensioners: Very high, current process gives members too little influence.

Question 7

Chapter 3 – Certification/payment timing

Are the regulations clear on the process of obtaining actuarial certification and paying the employer within 5 working days?

The five-working-day rule is clear, but the process is too compressed for a material, irreversible payment. The final certificate should be supplied to TPR and made available to members before payment, not afterwards. Any material change from the figures previously notified should pause the process and trigger an updated notice. For large payments, prior TPR clearance should already have been obtained. We accept the need for up-to-date figures, but speed should not remove scrutiny or prevent members from seeing the final evidence on which the payment is based.

Relevance to J&J pensioners: High, final evidence should be visible before payment.

Question 8

Chapter 3 – 3-year test

Do you have comments on the proposed 3-year forward-looking assessment in Condition 2?

The proposed three-year test at an "as likely as not" threshold is too weak. It amounts to only a 50% confidence test over a period far shorter than the remaining lives of many pensioners. Actual fund performance over 20 years shows that it can rapidly switch from surplus to deficit because of external factors. We support either a ten-year assessment at the proposed probability level or, if three years is retained, a minimum 75% confidence standard. The Johnson & Johnson Group Retirement Plan is closed and has no future contributions, so any funding deterioration after extraction would fall mainly on members. The regulations should also require monitoring and employer restoration if funding drops below 100% within five years.

Relevance to J&J pensioners: Very high, there will be no future contributions to repair any deterioration.

Question 9

Chapter 3 – Phased release

Do you agree that the process proposed in the regulations is sufficiently flexible to enable a phased release of scheme surplus over a number of years, while preserving member benefits via certification of each individual payment?

Yes, phased release is preferable to a single large extraction, but each instalment must be treated as a fresh decision. Every tranche should require updated actuarial certification, confirmation of the 110% buffer, member disclosure and evidence that agreed member improvements have been implemented. Phasing must not become an automatic pipeline. In the Johnson & Johnson Group Retirement Plan, the long-standing pre-1997 indexation gap should be independently costed and substantively addressed before the first employer payment. A five-year employer restoration obligation should apply from each tranche.

Each tranche should also test whether discretionary payments are affordable to address losses caused by capped pension increases, not only the pre-1997 non-indexation issue.

Relevance to J&J pensioners: Very high, phasing is preferable for a large surplus.

Question 10

Chapter 3 – Earmarked schemes

Should earmarked schemes be included in the scope of these regulations?

We have no detailed experience of earmarked schemes. If they remain within scope, their different structure may justify tailored rules, but member protection should not be weaker. Trustees should still take qualified independent advice, provide clear information to affected members and notify TPR of any payment. We otherwise have no strong view.

Relevance to J&J pensioners: Low, unlikely to apply.

Question 11

Chapter 3 – Member notification

Do you think the notification requirements in regulation 11 are sufficiently clear?

The requirements are clear as a notice, but do not provide adequate protection. Notification is not consultation. Members should receive funding levels before and after payment on low-dependency, technical-provisions and buy-out bases; the proposed employer and member amounts; key risks; and a costed assessment of benefit disparities, including pre-1997 indexation. They should have at least three months to respond, followed by a published trustee reply. This is vital in the Johnson & Johnson Group Retirement Plan: it has a sole corporate trustee and discretionary increases need employer approval. Fiduciary duty alone cannot guarantee a fair member outcome, so an independent member advocate is needed.

The notification requirement also assumes members can be reached and can organise a response. In practice they cannot. Members have no lawful route to one another's contact details, and the trustee has refused to circulate a neutral member communication on request. A three-month response window is of limited value if most members never learn that a decision is being taken, or if those who do have no means of consulting the wider membership before responding. The regulations should therefore require not only notification, but a practical mechanism through which members can be reached collectively and can respond as a body.

Relevance to J&J pensioners: Very high, no member-nominated trustee and employer-controlled increases.

Question 12

Chapter 3 – TPR notification

Do you think the notification requirements in regulation 12 are sufficiently clear?

The information is reasonably clear, but notification after payment is too late for effective oversight. TPR should pre-clear payments above £50 million or 10% of low-dependency liabilities. Its record should also include funding before and after payment, member benefit improvements, authorised member payments, the benefit-disparity assessment, member representations and the opinion of any independent member advocate. For the Johnson & Johnson Group Retirement Plan, TPR should be told that discretionary increases are subject to employer approval, because this limits what the sole trustee can deliver through fiduciary duties alone. Key information should be placed on a public register.

In addition, where the notification records under regulation 12(e)–(f) that no enhancement is to be provided to members, it should include a statement of reasons, covering how the scheme's history of discretionary awards and the erosion of pre-1997 pensions were considered — consistent with the Regulator's expectation as restated by the Minister on 6 July 2026 (ref MC2026/59404).

Relevance to J&J pensioners: Very high, post-payment-only oversight is inadequate.

Question 13

Chapter 4 – Multi-employer schemes

Are the proposed rules for sectionalised schemes and employer consent workable and clear?

The rules appear workable in principle, but employer consent creates an important imbalance. Surplus attributable to each section must be identified and used fairly, without cross-subsidy. More importantly, an employer should not be able to consent to a payment to itself while withholding consent to affordable member improvements. That is directly relevant to the Johnson & Johnson Group Retirement Plan, where discretionary increases require sponsoring-company approval. In our scheme the rules were also amended in 2025 so that any two of the five participating employers can sign legal documents on behalf of all five — showing how easily consent mechanics can be simplified for employers while members have no say. The regulations should require written reasons where member improvements are refused, disclosure to members and TPR review. Where several employers are involved, responsibility for any later restoration payment should also be clear and enforceable. This should include cases where the employer refuses or does not support discretionary payments to address the impact of capped pension increases during high-inflation years.

The ministerial reply of 6 July 2026 states that all trustees, expressly including 'sole corporate trustees', must act in the best interests of members. Yet the Government's own December 2025 consultation on trustee governance acknowledged that members of schemes governed by a Professional Corporate Sole Trustee 'may perceive that their voice is not being heard'. The employer-consent machinery in these regulations should not rest on a duty that, in such schemes, members cannot see being exercised; it should include the written-reasons, disclosure and review requirements described above.

The interaction with the parallel tax framework reinforces this concern. The draft Finance Bill clause published on 13 July 2026 (new section 168A, Finance Act 2004) sets out five conditions a payment must meet to qualify as a tax-advantaged authorised member surplus payment. Condition 1 requires that the decision to grant the right to receive the payment is at the discretion of the trustees or managers of the pension scheme — not the employer. In a scheme where the power to increase member benefits sits with the employer, as ours does under Rule 38, it is unclear that a member surplus payment could ever satisfy this condition. We ask the Department to confirm whether it has considered this interaction and whether it intends for schemes with employer-held discretion over benefit increases to be functionally excluded from the member surplus payment route regardless of the scheme's funding position.

Relevance to J&J pensioners: High, J&J has participating employers and employer-consent issues.

Question 14

Chapter 5 – Excluded schemes

Are the draft regulations clear for excluded schemes? If not, where would further clarity be helpful?

The exclusions are broadly understandable, although we have no specialist evidence on every category. Further clarity would help on partially guaranteed sections, schemes entering or leaving superfund arrangements and cases already moving towards wind-up. Members should be told clearly why their scheme is excluded and which alternative protections apply. An exclusion from this particular mechanism should not mean weaker protection of accrued benefits or less transparency.

Relevance to J&J pensioners: Medium/low, depends on scheme structure.

Question 15

Chapter 6 – Revaluation of deferred awards

Are the draft Regulations clear on revaluation of deferred awards?

Broadly yes. A deferred authorised member surplus award should be revalued so that delay does not erode its value, with the method explained in plain language. The award must remain separate from existing benefits and must not be used to offset any other pension entitlement. We support direct member payments as one way of sharing surplus, but they should not replace proper consideration of the 12-year loss of purchasing power on pre-1997 pensions.
A member surplus award should not be treated as a substitute for considering discretionary increases where existing pension elements have lost value because of increase caps.

Relevance to J&J pensioners: Medium, relevant to member surplus awards below NMPA.

Question 16

Chapter 6 – Transfer values

Are the draft Regulations clear on how deferred awards affect members' statutory right to take a transfer value?

The intention is reasonably clear, but members need explicit assurance that a deferred surplus award will not reduce or obstruct their statutory transfer right. The full value of the award should either follow the member on transfer or remain separately payable on clearly stated terms. Transfer quotations and member communications should show exactly how it is treated. The award must not be offset against existing accrued rights.

Relevance to J&J pensioners: Medium, relevant to deferred members considering transfer.

Question 17

Chapter 6 – No transitional provisions

Do you foresee any issues or concerns arising from proceeding without transitional provisions following the revocation of the 2006 Regulations? If so, please provide details.

Yes. Without a clear transition rule, an in-progress payment could be rushed through or structured under the old regime to avoid the stronger protections. Payments made on or after 6 April 2027 should comply with the new rules, even if discussions or a provisional decision began earlier. Where earlier member notice is materially inconsistent with the final framework, notice and consultation should be repeated. This is to prevent regulatory arbitrage and give trustees, members and TPR a clear cut-off.

Relevance to J&J pensioners: Medium/high, avoids rushed or grandfathered payments.

Question 18

Chapter 6 – 2014 regulations

Do you foresee any issues with revoking regulations 36 to 39 of the 2014 Regulations?

We have not identified a specific problem, provided the Government confirms that revocation will not remove any existing member right, transfer entitlement or protection connected with an earlier payment. Any small group affected by the historic provisions should receive equivalent protection and clear communication. Subject to that confirmation, we do not object.

Relevance to J&J pensioners: Low, historic provisions unlikely to apply.

Question 19

Chapter 7 – Actuarial certificate

Does the proposed certificate in the Schedule capture all the relevant details that will be required?

No. The certificate should show funding before and after payment on low-dependency, technical-provisions and buy-out bases; confirm a minimum 110% post-payment buffer; disclose assumptions, stress tests and unresolved legal or actuarial risks; and record the longer-term viability test. It should also state what consideration was given to member benefit disparities, pre-1997 indexation, authorised member payments and member representations. For a Professional Corporate Sole Trustee scheme it should record the independent member advocate's opinion and any sponsor approval needed for discretionary increases. This matters because fiduciary duty alone cannot protect members where the trustee lacks unilateral power. The certificate should be available before payment and identify any TPR clearance and restoration obligation. The certificate should also confirm whether the impact of 5% and 2.5% pension increase caps has been considered when deciding whether member improvements should be made before employer surplus release.

Relevance to J&J pensioners: Very high, certificate is the key evidence of protection and fairness.