

New legislation is on the horizon to provide DB scheme trustees with **greater flexibility** “to safely release surplus” so as “to support employers’ investment plans and to benefit scheme members”.

Background



- DB surpluses were a significant theme of the 1990s but have generally been in hibernation in the decades since.
- The reappearance of DB surpluses over the last few years has reignited interest in their possible use (see our **Hot Topic**), with Government estimates suggesting that they are currently “worth collectively £160 billion”.
- Subject to “stringent funding safeguards”, under the **Pension Schemes Bill** (“PSB”),¹ DB trustees will be given power to amend their scheme rules to pay surplus to sponsoring employers.
- The Government is also minded to lower the minimum statutory funding threshold at which trustees can release surplus, from current buy-out levels to a requirement based on a low dependency measure (see also comments under “Important role ahead for DB trustees”).

Proposed powers in brief



- In future, trustees will be able to amend their scheme rules by resolution to:
 - allow payment of surplus to a sponsoring employer where no such power currently exists, or
 - “remove or relax any restriction” currently imposed where trustees already hold such a power (whether by virtue of the above or otherwise).
- The new resolution powers do not apply to schemes in winding-up, and any power to distribute assets to a sponsoring employer on winding-up is likewise disregarded for the above purposes. (If triggering winding-up is a possibility, trustees and sponsoring employers may wish to factor this in.)
- Most of the existing legislative requirements for the payment of surplus before winding-up are being repealed and replaced by the new requirements.

New legislative requirements



Much of the detail of the new requirements will be set out in regulations, which have not yet been published in draft. However, the PSB provides that they must:

- prohibit a payment being made unless the “relevant actuary” (presumably the “scheme actuary”) is satisfied that prescribed conditions are met in relation to the value of the scheme’s assets and liabilities
- provide the basis for determining the value of scheme assets and liabilities, and
- require an actuarial certificate to be given, and scheme members to be notified, before any payment is made.

In addition, the PSB provides that the regulations may:

- set out other conditions for making a payment
- make provision about the form and content of the actuary’s certificate, and
- prohibit the making of a payment without the sponsoring employer’s consent.

What else might be on its way?

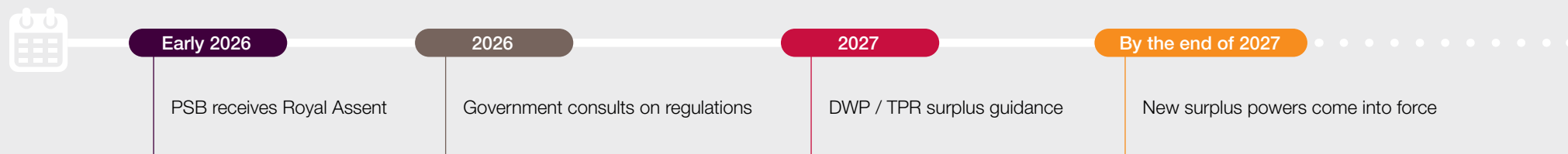


- Given their pivotal role in providing the necessary certification to enable payments from surplus to go ahead, actuarial guidance seems likely.
- Joint DWP and TPR guidance “to facilitate trustee comfort” in distributing surplus is also expected.
- But it is unclear whether the Government’s plan to permit one-off member lump sums from surplus without baking in long-term liabilities (as outlined in its **Options for DB schemes** consultation) remains on the table. Such payments would currently be “unauthorised” (and therefore subject to penalty charges) under the pensions tax rules.

¹ Based on the PSB dated 18 September 2025

When will the new surplus powers come into force?

Published alongside the PSB, the Government's [roadmap](#) suggests the following indicative timescales for the new resolution powers coming into force:



What about existing surplus discussions?



- The new resolution powers will complement, rather than remove, existing surplus options.
- Subject to scheme rules and other relevant considerations, these include allocating surplus to subsidise future accrual, paying DC contributions, covering scheme expenses, and/or providing benefit enhancements.
- TPR's June 2025 guidance, [New models and options in DB pensions schemes](#), makes clear that it is "good governance practice" for DB schemes to have an appropriate surplus policy in place.
- We are seeing trustees and sponsoring employers actively considering this, especially if run-on is on the cards. Things to think about include:
 - what the framework document should cover?
 - what is the surplus likely to be used for?
 - having a funding buffer / guardrails if using DB surplus for DC contributions
 - taking covenant advice and setting triggers if funding and covenant vary (to avoid regret risk should downside risk materialise).

Important role ahead for DB trustees



The new regime will make it possible to release surplus in many situations where it is currently impossible. Trustees will take centre stage as the gatekeepers of these powers, and will have the responsibility of deciding whether, and if so how, to use them.



Existing case law surrounding distribution of surplus and the exercise of trustee duties may provide some useful guidelines. However, many of the cases were decided in the context of a very different pensions law and regulatory framework, which may limit their relevance going forward.



The fact that trustees will have the legal power to pay surplus to their sponsoring employer doesn't mean that they should. Moreover, where it is proposed that some of the surplus be used to provide additional member benefits, the trustees will need to form a view on the appropriate division of surplus between sponsoring employers and members, and how to structure the additional member benefits. Trustees will need to consider these questions very carefully.



Trustees must take account of all relevant factors, many of which will be scheme specific. In addition to meeting the new funding threshold, the reliance being placed on the sponsoring employer covenant will be key. Elements of the scheme's history (such as contributions, benefit changes and the evolution of the existing surplus provisions) may likewise play a part.

