

DWP consults on conditions for surplus release



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Introduction

On 10 June 2026, the DWP published a [consultation](#) on the draft [Occupational Pension Schemes \(Payments to Employer\) Regulations 2027](#) (“the Regulations”), as well as an [illustrative surplus journey](#) highlighting the typical stages trustees and employers are likely to follow when considering a surplus release.

Key points

- Aiming to “strike the right balance between strong protection for members and appropriate flexibility for trustees, while unlocking value for both employers and scheme members”, the Regulations set out the conditions and “clear safeguards” that will need to be satisfied before surplus can be released from a DB scheme on an ongoing basis. With a view to bringing the Regulations into force in **April 2027** (much earlier than anticipated), the consultation closes on **2 September 2026**.
- As expected, the threshold at which trustees will be able to share surplus with sponsoring employers will be shifted downwards, from the current buy-out level to the low dependency funding basis.
- Where the conditions for making a surplus payment to the employer are met, the Government expects trustees to consider how members might also benefit.
- Subject to certain conditions being met, the new trustee modification power under [PSA26](#) (and the Regulations in general) will apply to multi-employer schemes as though each section were a separate scheme. This will ensure that multi-employer schemes with a substantial surplus are not prevented from using it. It will also allow “legacy” rules (eg from past mergers) that restrict surplus sharing to be amended without rewriting the whole scheme.
- TPR intends to consult later this year on guidance outlining factors for trustees to consider when releasing surplus and how to comply with the Regulations. In the interim, it has published a statement designed to support discussions between trustees and employers on surplus release options.
- **Policy on surplus** – TPR seems keen on DB schemes having a policy on surplus. TPR’s statement therefore centres on planning ahead, and the advice and factors that will need to be taken into account.
- **One-off lump sums on or after NMPA** – in future, direct surplus payments to members who have reached NMPA will be treated as authorised for tax purposes. It will also be possible to award payments to members yet to reach this age, provided actual payment is deferred until NMPA.

Background

Under PSA26, trustees will have the power to modify an ongoing DB scheme by resolution:

- to permit surplus payments to an employer where no such power exists, or
- where trustees already hold such a power, to remove or relax any restrictions imposed.

These new powers form a key part of the Government's plans to boost UK investment. They are intended "to remove barriers" to extracting DB surplus "while maintaining stringent funding safeguards to protect member benefits".

Most of the current regime governing surplus payments on an ongoing basis will be repealed and replaced by PSA26 and the Regulations. The Regulations therefore contain the detailed restrictions which will apply to such payments, designed to protect both the scheme's integrity and members' interests.

Conditions and process for paying surplus

Actuarial assessment and funding threshold

Trustees will have to obtain an actuarial assessment from the "relevant actuary" (in most cases, the scheme actuary), confirming that the scheme meets the required funding threshold for releasing surplus. Intended to give trustees greater flexibility over surplus release, the relevant actuary's assessment may be obtained either as part of the triennial valuation or at any other time.

As expected, in line with existing funding requirements, the threshold at which trustees can share surplus with sponsoring employers will be reduced, from the current buy-out basis to a low dependency funding basis. The funding test also has a forward-looking element, with the actuarial certificate (see below) needing to confirm that the scheme's funding is above this threshold when surplus is released and that it "is at least as likely as not to be greater than" that amount for the following three years.

Process for proposing a payment

Once it has been confirmed that the scheme meets the funding threshold, trustees must take advice from the relevant actuary and consult with the employer to agree a provisional surplus amount for release. The amount remains provisional until the actuarial certificate is signed. Agreement with the sponsoring employer will be required here, reflecting its ongoing funding responsibilities to the scheme. At this stage, the consultation notes that trustees may also wish to consider and agree how any surplus could be used to improve member benefits.

The actuarial assessment establishes a minimum threshold above which surplus may be released but it does not need to be released at that level. In agreeing any amount of surplus to be released, trustees and employers will need to "determine the level of buffer they consider appropriate above the minimum funding threshold".

Actuarial certificate

Before a surplus payment to an employer can go ahead, trustees must obtain a certificate from the relevant actuary. Whilst the Regulations prescribe the information to be included in the certificate, there are no particular requirements governing its format.

Any surplus payment must be made within five working days of the date of the actuarial certificate, so that it reflects the scheme's "most up-to-date funding position".

Notification requirements

Trustees must provide members with a written statement at least three months before the target date for paying surplus to an employer. This statement must set out the trustees' decision to make a payment to the employer, the proposed amount and payment date and, if applicable, any decision to improve member benefits.

Within one week of making the surplus payment, trustees must also provide TPR with certain information. This will include details about the calculation of the surplus, the effective date of the actuarial assessment, the amount paid to the employer, and any member benefit improvements (including authorised member surplus payments – see below).

TPR guidance

TPR intends to consult later this year on guidance covering the factors trustees should consider when releasing surplus and how to comply with the Regulations.

In the interim, it has published a [statement](#) designed to support discussions between trustees and employers. Unsurprisingly, this emphasises the need for trustees to “be satisfied, in the proper exercise of their fiduciary duties, that a surplus release is appropriate”. Whether releasing surplus is appropriate will very much depend “on the specific circumstances of the scheme”, which will involve having regard to a range of factors, including those set out by TPR.

To help “demonstrate the decision-making process and rationale, in case of any future challenge by the sponsoring employer or scheme members”, TPR highlights the importance of documenting discussions and considerations around surplus release. The governance of the decision-making process will therefore be key, with both legal and actuarial input needed (alongside covenant advice) in relation to any plans to release surplus to employers and members.

While the Regulations focus to a large extent on the actuarial input needed, TPR rightly hones in on the wider planning and decision-making process, with the aim of helping schemes avoid regret risk and ensuring that all stakeholders understand the parameters to work towards to get surplus released.

Further guidance on the requirement to notify TPR of a surplus payment (see above) is likewise expected in spring 2027.

Authorised member surplus payments

Where the conditions for making a surplus payment to the employer are met, the Government expects trustees to consider how members might also benefit from any surplus release. The consultation makes clear that this is in addition to trustees' existing option to use surplus to improve member benefits, for example, by awarding pre-1997 indexation where this is not already provided.

The Government's original surplus flexibility proposals, set out in its [Options for DB schemes consultation](#), considered the possibility of allowing trustees to make one-off lump sum payments to members without baking in long-term liabilities. Such payments are currently unauthorised under the pensions tax rules.

As part of its [Autumn Budget 2025](#), the Government confirmed that tax legislation would be amended to enable direct surplus payments to members to be treated as authorised payments where certain conditions are met. Those conditions will include the need for the scheme to meet the required (low dependency) funding threshold

and that payments can only be made to members who have reached NMPA. Trustees will also be able to award authorised member surplus payments to members yet to reach that point, but payment must be deferred until NMPA.

HMRC is expected to consult separately on the required changes to tax legislation.

Next steps

The current consultation closes on **2 September 2026**, with the Regulations now due to take effect in **April 2027**. Provisions to cater for the new authorised member surplus payments will be included in the **2026/27 Finance Bill** and are likewise expected to come into force in **April 2027**. Until then, any plans for releasing surplus to employers will remain subject to the existing surplus regime.

Whilst the accelerated timescale for bringing the new surplus regime into force may not change the amount of surplus ultimately released, it will certainly help inform discussions about buy-out or purposeful run-on with a view to generating a surplus to share.

Sacker & Partners LLP
20 Gresham Street
London EC2V 7JE
T +44 (0)20 7329 6699
E enquiries@sackers.com
www.sackers.com

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