Sackers

DWP responds to consultation on surplus release

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Introduction

On 24 November 2026, the DWP published its response to its consultation on the draft Occupational Pension Schemes (Payments to Employer) Regulations 2027. The revised draft regulations were not published with the response, so we will have to wait until they are laid before Parliament to see the final version.

Key points

- The new framework, which will enable trustees of well-funded DB schemes to make surplus payments to sponsoring employers and members provided certain conditions are met, is expected to come into force on 6 April 2027, subject to Parliamentary approval.
- With the framework permissive, meeting the minimum requirements will not oblige trustees to release surplus. Trustees remain responsible for deciding whether a payment is appropriate and how much surplus can be safely released, taking account of their scheme's circumstances and their existing duties.
- Following consultation feedback, the DWP has made a number of changes to "support effective implementation", including allowing a series of phased payments on the basis of a single actuarial assessment and member notification, although each payment would still require an actuarial certificate.
- Other more practical changes include extending the payment window to 10 working days from the date of the actuarial certificate and allowing 20 working days to notify TPR after payment.
- As initially proposed, the minimum threshold for surplus release will be the scheme's low dependency funding basis, with no prescribed buffer. Trustees may apply a more prudent standard where they consider it appropriate.
- The DWP has confirmed that employers in all multi-employer schemes may nominate a person to act as their representative for the purpose of consenting to a surplus payment.
- As confirmed in the Budget 2026, payments of authorised member surplus payments to members below NMPA will not be permitted, unless because of ill-health. However, awards to younger members which are deferred until NMPA will now need to be revalued up to NPA.
- Finally, as expected, TPR will consult on guidance for trustees, to help them "apply the framework to the circumstances of their individual scheme".

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 new 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.

Key revisions to the framework

Following feedback, the DWP will make changes to the draft regulations to ensure the surplus framework is "more proportionate and workable".

Actuarial assessment and funding threshold

Trustees will have to obtain an actuarial assessment 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.

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, as initially proposed. 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 "expected to" remain fully funded on that basis for the following three years. This "expected to" wording replaces the "at least as likely as not" that was initially proposed, to make the test "easier to understand".

The actuarial assessment establishes a minimum threshold above which surplus may be released but it does not need to be released at that level. Trustees can apply a buffer (or other more prudent standard) if they consider it appropriate – TPR's guidance will set out relevant considerations, including scheme maturity, investment strategy, covenant and long-term objectives.

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.

Series of payments

The DWP has clarified that a series of phased surplus payments will be possible, carried out over a set timeframe (up to three years from the first payment). When making a series of payments, the trustees will need to decide the maximum amount that may be released over the series. However, trustees must always ensure that their scheme's latest low dependency funding basis is met before any release of surplus (by

obtaining an actuarial certificate – see below) and, if circumstances change, they can pay less, postpone or stop any planned payments.

Actuarial certificate

Before any surplus payment to an employer can go ahead, trustees must obtain a certificate from the relevant actuary. The actuary may use a "proportionate roll-forward calculation" from the last actuarial valuation "where this produces a sufficiently reliable and fit-for-purpose assessment", rather than needing a full new valuation. The FRC will publish guidance to support actuaries in taking a "proportionate approach" to the calculations for the certification of surplus.

Any surplus payment must be made within 10 working days of the date of the actuarial certificate (five working days were originally proposed), so that it reflects the scheme's most up-to-date funding position.

Further "practical changes" will be made to the actuarial certificate, including enabling multiple employers to be recorded, in addition to clarifying how the framework applies to multi-employer schemes.

Multi-employer schemes

Employers will be able to nominate a person to act as their representative for the purpose of consenting to a surplus payment in *all* multi-employer schemes, not just sectionalised schemes. Where no-one is nominated, all employers must consent. However, there is no intention for the regulations to "prescribe in further detail how multi-employer schemes should handle the surplus share or internal decision-making arrangements". Schemes should therefore "have regard to their own rules on how to proceed".

Notification requirements

As initially proposed, trustees must provide members with a written statement at least three months before the target payment date (or initial payment date in the case of a series of payments) 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 20 working days (up from the original one-week window) of making the surplus payment, trustees must also provide TPR with certain information, including 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.

Authorised member surplus payments

As surplus payments to members are "intended to provide a pension benefit", the DWP believes that it is "right" that payments awarded before a member reaches NMPA (or earlier ill-health) are deferred until at least that age. However, where an authorised member surplus payment is awarded before NMPA, such benefits will need to be revalued up to NPA rather than NMPA, as initially suggested.

The treatment of deferred awards during a PPF assessment period, where a scheme enters the PPF, will "depend on the circumstances of the individual case" and will be considered separately.

HMRC has consulted separately on the changes required to tax legislation to enable these payments, with the changes also due to come into force under the Finance Bill 2026/27 on 6 April 2027.

TPR guidance

TPR is due to consult on guidance for trustees later this year, which is expected to:

- set out the options for use of surplus
- remind trustees of their role and how to prepare for surplus release discussions. This will include the role of advisers in the process and the importance of managing conflicts of interest
- include relevant factors trustees should consider when deciding whether and how surplus should be used, including member benefit considerations (eg pre-1997 pension accrual that does not receive increases), member communications, appropriate advice, employer covenant and any funding buffers
- support trustees in providing members with appropriate information in respect of a series of phased surplus payments
- emphasise the importance of maintaining records of advice received and how trustees reached any surplus-related decisions, and
- provide illustrative case studies.

The final guidance will be published alongside the regulations coming into force.

Next steps

The revised draft regulations are expected to be laid before Parliament early in 2027. Subject to Parliamentary approval, the regulations will then come into force on **6 April 2027**, alongside the related-tax changes for authorised member surplus payments. TPR guidance for trustees and FRC guidance for actuaries is due to come into force alongside the final regulations.

Once the regulations come into force, all surplus payments from DB schemes not in wind-up will be subject to the new framework, including any surplus exercises already underway. Trustees currently considering a surplus release should factor this into their timetable.

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