Sackers

TPR consults on draft surplus release guidance

Alert | 26 November 2026

Introduction

Hot on the heels of the DWP's response to its surplus flexibilities consultation, on 26 November 2026 TPR launched a consultation on its draft surplus release guidance.

Key points

- The draft guidance is intended to help trustees make "well-informed, balanced and scheme-specific decisions" about the use of any surplus under the new surplus framework, which is expected to come into force on 6 April 2027.
- The guidance sets out the options available for the use of surplus, including paying scheme expenses, funding future accrual, releasing surplus to employers and enhancing member benefits. Retaining surplus should be a "conscious choice" rather than a default position.
- TPR expects trustees to work with the employer "collaboratively" in developing a surplus policy (to record their approach to surplus release) and in reaching any decision on how surplus will be used. Trustees should also maintain a clear audit trail.
- Key considerations when deciding whether to release surplus include the scheme's funding level, the size of any buffer, the size of the scheme and the employer covenant. Other relevant factors include the investment strategy, how surplus might be shared between employers and members, and potentially member views.
- The guidance also includes some illustrative case studies, showing how surplus might be used in different situations.

Background

Under the 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.

Most of the current regime governing surplus payments on an ongoing basis will be repealed and replaced by a revised regulatory framework. The DWP consulted on draft regulations over summer 2026 and published a

response on 24 November 2026, setting out its intended revisions. The new framework is expected to come into force on 6 April 2027, subject to Parliamentary approval.

Purpose of the guidance

As the new framework is permissive, meeting the minimum requirements will not oblige trustees to release surplus. Trustees will 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.

Noting that there is "no one-size-fits-all approach", the guidance aims to help trustees make "well-informed, balanced and scheme-specific decisions" about the use of any surplus that arises in their DB scheme. It sets out:

- the role of the trustee and preparatory steps to take (see below)
- the options available for use of surplus (including paying scheme expenses, funding future accrual or employer contributions to a DC section and enhancing member benefits). Retaining surplus to provide additional security to members should be a "conscious choice" rather than a default position
- the main factors that trustees should take into account when making a decision on use of surplus (see below)
- the process for releasing surplus to the employer (as set out in "Key revisions to the framework" in our recent Alert)
- five illustrative and very different case studies to show how the guidance might be applied in practice.

Preparatory steps

To properly consider what options may be appropriate, TPR expects trustees to:

- check what the scheme rules say about surplus use, the discretionary powers conferred on the trustees (eg to enhance member benefits) and, if the scheme is a multi-employer scheme, which employer(s) the surplus should be released to
- take legal advice to ensure that they have a clear power to carry out their preferred option and, if they do not, on the scheme amendments needed to achieve this
- review the quality of scheme data and administration
- have up-to-date information on the scheme's funding level (on a low dependency funding basis) and check that the scheme's funding and investment strategy aligns with its long-term objective
- involve advisers early in the process
- consider how conflicts of interest will be managed
- assess whether the trustee board has the expertise and resources needed to consider the issues associated with run-on and the use of surplus.

TPR expects trustees to work with the employer "collaboratively" and record their approach to surplus in a surplus policy.

Record keeping

As a matter of good governance, trustees should retain sufficient evidence to demonstrate how they reached their decision and how the statutory conditions were assessed. Maintaining a clear audit trail will help trustees to demonstrate that they have followed an appropriate decision-making process and taken account of relevant factors.

Relevant factors to consider

When deciding how to use scheme surplus, trustees need to consider a range of factors and apply them to the specific circumstances of their scheme. Not all factors will be relevant for all uses of surplus. TPR expects the funding level, the size of any buffer, the size of the scheme and the assessment of the employer covenant to be **key considerations** when deciding whether releasing surplus is appropriate.

The remaining factors may help determine the "nature and characteristics" of the release. However, if trustees are concerned that releasing surplus is not appropriate for their scheme based on the key considerations, TPR would not generally expect the other factors to require significant further consideration.

Relevant factors, many of which are interlinked, include:

- **funding level** – this will be the "main driver" of any request to use surplus. When deciding whether to use the surplus, trustees should consider what steps could be taken to reduce both the likelihood of funding risks materialising and the scale of their potential impact
- **suitability of the investment strategy** – trustees should ensure that the investment strategy supports the scheme's long-term objective while maintaining appropriate protection for members' benefits
- **use of a buffer** – retaining a buffer above a specific level may help the scheme to withstand downside scenarios. It may provide protection against residual risks that relate to the scheme's investments, such as longevity and scheme experience
- **employer covenant** – the covenant assessment undertaken in preparation for any use of surplus discussion should be proportionate to the circumstances of the scheme and the employer. Trustees should use relevant sections of TPR's covenant guidance when considering use of surplus. Any contingent assets should be factored into the covenant assessment, and trustees are encouraged to consider TPR's contingent asset guidance
- **sharing surplus between employers and members** – when considering what may be an appropriate outcome, trustees may want to consider: whether the scheme is "shared cost" (members and employers share the risk), the extent to which different cohorts of members have contributed to the scheme, whether benefit provision has been increased (or capped) for different groups of members in the past, whether members have a reasonable expectation of benefiting from the surplus and the potential accounting impact on the employer of using surplus to augment members' benefits or to fund a one-off lump sum
- **member views following notification** – trustees are required to notify members if they intend to release surplus to the employer and members may raise concerns. While there is no legal requirement to consult with members, trustees should consider "whether and if so, how and when" they might take these views into account as part of their final decision.

Arrangements for surplus release should be monitored, with trustees identifying when changes to strategy or implementation may be needed. They should also consider in advance what they would do in certain scenarios and it is “good practice” to agree actions with the employer in advance that will be “triggered by certain events”.

Next steps

The consultation closes on 22 January 2027. Feedback received will help ensure the final guidance is “practical, proportionate and clear for schemes considering whether surplus release is appropriate in their circumstances”.

TPR intends to publish the guidance to coincide with the revised surplus framework coming into force on 6 April 2027.

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