

Surplus Flexibilities Consultation Launched

June 2026

Introduction

On the back of the Pension Schemes Act 2026, the government has now published a consultation (10 June 2026) regarding the use of surplus in defined benefit (DB) pension schemes. This sets out draft regulations to enable greater flexibility in accessing surplus, alongside an accompanying statement from The Pensions Regulator (TPR).

Following a sustained improvement in funding levels, the majority of DB schemes are now in surplus on a low dependency basis and, in aggregate, hold substantial excess assets. As a result, policy is moving away from a traditional focus on reducing deficits and balance sheet risk, towards a model in which DB schemes can be seen as potential generators of value.

Within this context, the government is seeking to encourage some trustees and sponsoring employers to consider running schemes on for longer, rather than proceeding to buyout and wind up, by allowing surplus to be accessed in a controlled way. This links to a wider objective of enabling pension schemes to retain investment in growth assets and support “productive finance”.

The Proposed Framework for Surplus Release

The consultation focuses on draft regulations that would govern when and how surplus can be extracted from DB schemes. A key change is the introduction of a statutory override enabling trustees to modify scheme rules to permit surplus payments, even where existing rules would otherwise prevent this. This is intended to unlock surplus that is currently inaccessible in many schemes.

The proposed conditions for release are then centred on a revised funding test, based on low dependency rather than buyout. This minimum threshold is designed to ensure that schemes are still sufficiently well funded to meet their obligations with minimal reliance on the employer over the long term, and it is expected that in most cases trustees would determine a suitable margin above this level before releasing surplus.

Importantly, the test is not purely point in time. Trustees would need actuarial certification that the scheme is above the low dependency threshold at the point of release and that it is more likely than not to also be above this level at any point over the next three years. This introduces an explicit consideration of funding resilience and investment risk.

The draft regulations also establish a structured release process. Trustees would be required to

- obtain actuarial assessment and appropriate advice,
- agree a provisional payment with the employer, and
- notify members

in advance of any payment. Following release, trustees must notify TPR of the transaction and its details.

The framework is designed to support both one off and phased releases, and to ensure decisions are taken on up to date funding information. It does not place restrictions on how the surplus must be used.

The consultation will run until early September 2026, with regulations expected to come into force from April 2027, subject to parliamentary approval.

TPR Statement and Emerging Guidance

Alongside the consultation, TPR has issued a statement outlining its initial views on how trustees should approach surplus release under the new regime. They plan to consult on supporting guidance towards the end of this year, following the DWP's response to its consultation.

TPR emphasises that, notwithstanding the new flexibilities, trustees remain the key decision makers. Decisions must be taken in accordance with fiduciary duties, supported by appropriate advice, and with a clear evidential basis. The regulator places particular stress on the need for robust governance, thorough documentation, and the careful management of conflicts.

As usual, TPR highlights the need for clear alignment between funding, investment and covenant considerations. In particular, trustees are expected to consider the size of any buffer above the low dependency threshold, the resilience of the investment strategy, and the strength and sustainability of employer support. For investments, Trustees may need to strike a balance between maintaining sufficient upside to generate future surplus and reducing volatility to protect funding levels following release.

Ultimately, a central theme is that release of surplus should be a deliberate and explicitly justified decision, consistent with a scheme's funding and investment strategy. Trustees are expected to consider whether continuing the scheme with the aim of generating and distributing surplus is appropriate in light of its maturity, funding position, and employer covenant. This signals that run-on will not be suitable in all cases.

Unsurprisingly, TPR also signals that member outcomes will be a key consideration. While the draft regulations specifically provide no requirement to allocate surplus in a particular way, trustees are encouraged to consider whether members should benefit as part of any negotiation. Trustees are encouraged to take account of factors such as historical contributions, past benefit changes and inflation impacts and two case study examples are provided that both use a proportion of the surplus to enhance benefits.

Finally, the guidance underscores the importance of operational readiness for schemes that are minded to utilise the new flexibilities. Trustees are encouraged to review data quality, ensure key benefit issues (such as GMP equalisation) are resolved prior to considering any surplus release, and to establish clear surplus policies and governance frameworks in advance of any decision.

In addition to TPR's broad industry guidance the Financial Reporting Council (FRC) will be working on technical actuarial guidance for the certification process.

Broadstone Comment

This new flexibility is welcome and will be of huge benefit to some. The potential for member upside will add an interesting dynamic for schemes considering their end game options, although smaller schemes (e.g. those below £50m of assets) will need to carefully assess their ability to generate sufficient investment return to cover running costs and maintain adequate surplus, without taking undue risk.

A notable feature of the regulations is the breadth of potential uses of surplus and lack of any restrictions. The policy intent is not to prescribe outcomes, but to enable trustees and employers to determine how surplus should be applied. That said, the Regulatory guidance clearly nods towards the fact that sharing any surplus with members is likely to make it easier to reach an agreement. The framework explicitly supports the possibility of direct payments to members (subject to accompanying tax changes), benefit enhancements or other mechanisms such as reduced contributions in open schemes.

For those keen to explore this route, several themes emerge from the consultation and TPR's statement that are likely to prompt debate and may prove contentious:

Is the bar really set at low dependency? - The move to a low dependency threshold, combined with continued exposure to growth assets under run-on, increases the risk that the remaining surplus could subsequently be eroded by adverse market movements.

In reality, margins will be needed above this level and sponsors will need to be mindful of this when considering the size of potential surplus release. It will be interesting to see how trustees and their actuaries approach this as the choice of low dependency basis, adequacy of buffers and the robustness of forward-looking tests could all be key areas of scrutiny. The outcome of the tests is highly sensitive to the scheme's stated future investment strategy and employer covenant should also shape the debate.

Will members be in favour? - The new framework creates significant flexibility in how surplus is shared but members will be notified prior to any payment to the employer. The extent to which trustees expect members to benefit is likely to be a central point of negotiation and potential contention whilst member reactions may also be significant in shaping the debate.

A difficult decision for Trustees? - The reforms place considerable responsibility on trustees to assess complex trade-offs between funding, investment, covenant and member fairness. Demonstrating and documenting robust decision-making as well as suitable management of conflicts of interest will be a challenge, even if a documented surplus policy is agreed. As payments are irreversible, there is significant potential for regret risk and for public scrutiny with the benefit of hindsight if funding deteriorates after payment.

Finding a balance for covenant risk: - Flexibility to extract surplus on a funding basis less prudent than buyout increases the reliance on the employer covenant and on contingent protections, raising questions about how these risks should be managed over time. The danger of a member ending up with less than full scheme benefits is likely to be a concern for trustees making surplus payments, particularly where buyout is currently affordable. The potential for member upside (now and/or in the future) would appear to be a significant factor for trustees balancing their fiduciary duties.

Practical constraints - The Regulator is already warning that issues such as data quality and benefit rectification, which can often throw up additional liabilities when schemes embark on a buyout project, should be resolved prior to releasing surplus. Embarking on this review process and agreeing a suitable surplus policy appears relatively time consuming so interested parties may want to start work now if they are to be ready to take advantage of the new flexibilities when they are introduced next year.

Ultimately, it is no great surprise that the attractive headline grabbing concept introduced by the Pension Schemes Act is hard to implement in practice. We expect significant debate within the industry over the coming months as these guidelines and guidance are consulted on and finalised but this is undeniably an exciting new area that could extend the lifespan of some larger DB schemes.

Please contact us if you would like to discuss this further.

Find out more

For more information on how Broadstone can help you, please contact your Broadstone consultant or use the details below.



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