

60-second summary

Surplus 2.0 requirements



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The Department for Work and Pensions has [published](#) eagerly awaited draft legislation on the conditions for payment of defined-benefit (DB) surplus to employers. It, and a [statement](#) from the Pensions Regulator, paint a picture of how the process is expected to work in practice.

The draft secondary legislation, which would become the *Occupational Pension Schemes (Payments to Employer) Regulations 2027*, is being produced under the auspices of reforms contained in the *Pension Schemes Act 2026*. Subject to the consultation outcome and parliamentary approval, they would come into force on 6 April 2027.

Proposed process

Under the proposals, trustees would commission from their scheme actuary an ‘*actuarial assessment*’, for which they would choose the effective date, of the existence and extent of a surplus. It could be done as part of a scheme funding valuation exercise, or as a standalone assessment.

For the purposes of the assessment, the actuary would determine the value of the scheme’s liabilities on a low-dependency funding basis (LDFB), rather than (as applies currently) an estimate of the cost of buying out benefits with an insurance company. The value of the scheme’s assets would be determined by the trustees, after taking advice from someone with suitable expertise in financial matters, and the management of scheme investments and liabilities. The asset value would not have to be audited.

Assuming that the assessment confirms that the scheme is in surplus on the LDFB, the trustees would then take advice from their actuary, and consult with the scheme sponsor on the timing and provisional amount for any employer surplus payment. However, there would be additional conditions to be met and steps to be taken before they could proceed to payment.

The trustees would have to provide scheme members with details and at least three-months’ notice of the proposed surplus-payment plans.¹ Those plans would include not only the provisional employer surplus payment, but also details of any proposed benefit augmentations and one-off authorized member surplus payments (more on which later). Notification could be given electronically.

¹ This appears to be a *notification*, rather than *consultation*, exercise. There would be no (statutory) requirement to solicit and consider members’ views.

For the employer payment to take place, the actuary would have to provide a certificate giving various details of the scheme and the trustees' plans for the surplus. They would include statements of the actuary's opinion that a LDFB surplus still exists at the certification date, after taking account of asset and liability changes since the original actuarial assessment, plus benefit augmentations and authorized member surplus payments. The actuary would also have to believe there's at least a 50/50 chance that the surplus funding position will persist for three years.

The surplus payment would have to be paid within five working days of the date of the actuary's certificate. The trustees would have to notify the Pensions Regulator about their surplus-release arrangements within a week of the payment to the employer. The surplus-release 'journey' is [set out in an annex](#) to the consultation.

Out of scope

The new employer-surplus-payment rules would not apply to schemes benefitting from a Crown guarantee. Nor would they apply to DB superfunds; the DWP consultation document says that separate provision for surplus payments will be made within the new statutory framework for superfunds.

Authorized member surplus payments

The consultation document also confirms the Government's plans to amend the tax legislation to facilitate the making of one-off awards to members out of surplus. Although such '*authorized member surplus payments*' (AMSPs) could be *awarded* to members at any age, they could only be *paid* once those members have reached '*normal minimum pension age*' (currently 55, rising to 57 on 6 April 2028). Deferred AMSPs would be revalued until paid in line with inflation, capped at 2.5% per annum. The Government plans to make the necessary changes to the pensions-tax rules to coincide with the commencement of the new employer-surplus changes, on 6 April 2027.

Next steps

Responses to the consultation proposals should be submitted by 2 September 2026. The Regulator has issued a statement on how trustees can prepare for surplus-release discussions, with factors to consider, and some illustrative case studies. The statement and consultation document say that the Regulator will consult on further supporting guidance later this year, after the DWP has announced the consultation outcome.

A picture of a new surplus-release process begins to emerge. To support run-on as a long-term prospect, it should be as frictionless as possible (albeit with safeguards). However, a reasonable estimate of the time required for the full exercise sketched out in the consultation seems to be around six months. That will naturally constrain the potential frequency of surplus distributions.

The sub-heading for the consultation paper is '*Unlocking Value for Employers and Scheme Members*'. The Regulator's case studies reinforce this message by assuming that sponsors and members will both expect to benefit from any surplus, in proportions influenced by historical factors, on a scheme-specific basis.

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