XPS Group

June 2026

XPS Insights

From Principles to Practicalities: Draft surplus regulations and TPR's statement

What you need to know

- On 10 June 2026, the Department for Work and Pensions (DWP) published draft regulations on surplus flexibilities for defined benefit pension schemes, with the consultation open until 2 September. The final regulations are expected to come into force from April 2027.
- The draft regulations set the threshold for surplus extraction at a minimum of full funding on a low dependency basis, consistent with the DWP's consultation response last year.
- To release surplus, the Scheme Actuary must confirm that the scheme is 'as likely as not' to remain at least fully funded on the low dependency basis for the following three years. The trustees and the employer must also agree to any payment being made from the scheme.
- The Pensions Regulator (TPR) has issued an accompanying statement providing practical guidance for trustees ahead of surplus release discussions, setting out the key factors that should be considered.
- This statement also includes two case studies illustrating how schemes in different circumstances might approach surplus release under the draft regulations.

Actions you can take

- **Review the balance of powers** in the scheme rules and how the new surplus legislation would apply.
- **Understand the current low dependency funding position** and the full range of strategic options available, including what running on for surplus could look like for both members and employers.
- **Where appropriate, begin initial discussions with key stakeholders,** including gaining an understanding of the employer's motivations for surplus release. Consider **establishing a surplus policy** if one is not already in place.
- **Respond to the consultation**, either directly or via your usual XPS contact.

The surplus release process

	Actuarial assessment & negotiation	Notification to members	Actuarial certification	Payment	Notification to TPR
WHO	Scheme Actuary, trustees and employer	Trustees	Scheme Actuary	Trustees	Trustees
WHAT	Carry out funding tests, agree provisional amount and sharing splits	Communicate provisional amount and intended use	Certify final amount to be released	Make payment	Notify payment
WHEN	T - 6 months to T - 3 months	T - 3 months	T - 5 days	**Time T**	T + 1 week
DETAIL	Majority of advice at this stage. Collaborative process.	Consultation required but final decision with trustees	Update initial assessment and formalise surplus amount	-	-

The finer detail: Surplus flexibilities in more detail

Draft regulations:

Aim of the new framework	The draft regulations support the Government's aim of improving flexibility of surplus use. Notably, there is **no mandation** of any particular use for released surplus.
The funding tests	To release surplus, the Scheme Actuary must confirm that two funding tests are met: • Assets exceed liabilities assessed on the low dependency funding basis. • The scheme's assets are '**as likely as not**' to remain above the low dependency liabilities over the following three years.

TPR's statement:

Surplus for members	TPR understands that both employers and members may expect to benefit from surplus release. Trustees should keep in mind: • Members' **reasonable expectations** – for example, where members have contributed to the scheme or there is an established practice of granting discretionary benefits. • **Inflationary protection** and standard of living – the extent to which scheme benefit increases due under the rules have kept pace with inflation. • **Previous changes to benefits** - whether benefits provided have been reduced, capped or enhanced in the past.
Conscious decision	TPR emphasises that surplus release should be a conscious decision and trustees should be satisfied it is appropriate. Trustees should consider: • An **additional buffer above low dependency** to protect against downside risk. • The planned length of running on, taking into consideration **scheme maturity**. • **Strength of the employer covenant**, future prospects and ongoing support. • **Contingent assets** and other protections that could be negotiated. • **Investment strategy changes** needed to reduce volatility in future funding.
Case studies	TPR's statement contains two case studies, both relating to a £1bn scheme currently 110% funded on a buyout basis. In both case studies, TPR highlights the factors that trustees should consider in assessing and agreeing a surplus release framework. The key elements of the surplus release framework set out in the case studies are as follows:

	Case study A	Case study B
Surplus release threshold	Full surplus above buyout funding is released.	A 5% buffer above low dependency funding is agreed.
Surplus sharing approach	80% to the employer and 20% to members.	50% to the employer and 50% to members. The employer's share is paid over three years with each payment being subject to actuarial certification.
Downside protections	The trustees did not pursue a contingent asset as the scheme remained fully funded on a buyout basis. A binding agreement provides a contingent asset if the buyout funding level falls below 100%.	Contingent asset security is provided to cover the scheme's buyout position in the event of future deteriorations in the employer covenant.

Find out more

For further information, please get in touch with Annabel Dodd, Sarah Vanhouse or speak to your usual XPS Group contact.



Annabel Dodd
Consultant
annabel.dodd@xpsgroup.com



Sarah Vanhouse FIA
Senior Consultant
sarah.vanhouse@xpsgroup.com

xpsgroup

© XPS Group. XPS Pensions Consulting Limited, Registered No. 2459442. XPS Investment Limited, Registered No. 6242672. XPS Pensions Limited, Registered No. 3842603. XPS Administration Limited, Registered No. 9428346. XPS Pensions (RL) Limited, Registered No. 5817049. XPS Pensions (Trigon) Limited, Registered No. 12085392. Penfida Limited, Registered No. 8020393. Polaris Actuaries and Consultants Ltd, Registered No. 9640309. All registered at: Phoenix House, 1 Station Hill, Reading, RG1 1NB.

XPS Investment Limited is authorised and regulated by the Financial Conduct Authority for investment and general insurance business (FCA Register No. 528774).

This communication is based on our understanding of the position as at the date shown. It should not be relied upon for detailed advice or taken as an authoritative statement of the law.