XPS Group

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XPS Briefing

From Proposals to Practice: DWP opens door to surplus flexibility

What you need to know

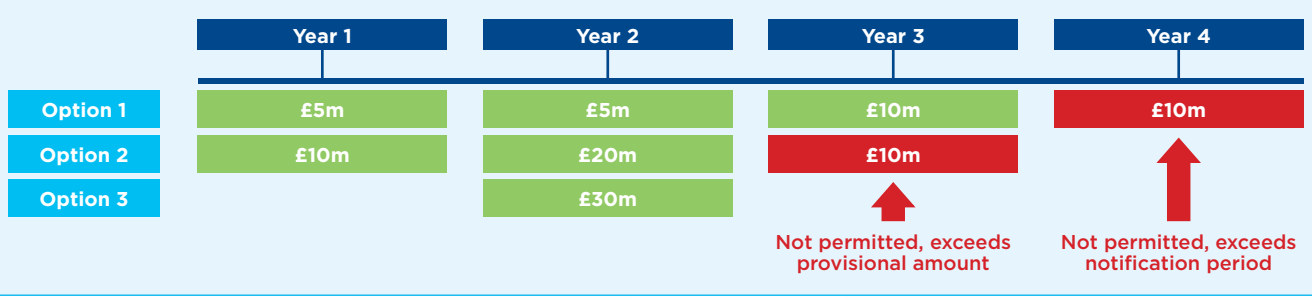
- On 24 November 2026, the Department for Work and Pensions (DWP) published its response to the consultation on surplus flexibilities for defined benefit (DB) pension schemes. This response confirms the final policy direction, and the final regulations are expected to come into force from April 2027.
- The core principles remain largely unchanged from those set out in the draft regulations issued in June. The threshold for surplus release remains at low dependency, but the response clarifies that the relevant basis is the scheme's own low dependency basis as set out in its latest funding and investment strategy.
- To release surplus, the Scheme Actuary must confirm that the scheme is 'expected to be' at least fully funded on its low dependency basis for the following three years. The trustees and the employer must also agree to any payment being made from the scheme.
- A single actuarial assessment and member notification can support a series of payments over three years, totalling up to the notified amount. Each payment requires an actuarial certificate confirming that the funding threshold continues to be met. A new assessment and member notification is required after the three-year period.
- The regulations will not prescribe how surplus is used. Guidance from The Pensions Regulator (TPR) will be critical to supporting trustee decisions, including member benefit considerations, the employer covenant, funding buffers and the need for appropriate advice.

Actions you can take

- **Get ready:** Review the balance of powers in the scheme rules and how the new surplus legislation would apply.
- **Quantify the opportunity:** Understand all strategy options available to your scheme and the implications of those options for surplus value and how risk is supported.
- **Agree the surplus strategy and policy:** Begin discussions with stakeholders on the key elements of a surplus policy, including funding, investment, employer covenant and use of surplus.
- **Prepare for release:** Agree the practical elements of surplus release, including member communications, timing and the process of surplus release.

A flexible series of payments

Under the updated regulations, a single member notification could enable a series of surplus payments for up to three years. Three illustrative options for how this could work are shown, all based on a notified surplus amount of £30m over the next three years:



The finer detail:

DWP consultation response: Key changes from the draft regulations

	Draft regulations	DWP response
A series of payments	Repeated actuarial assessments and member notifications were required for each individual payment.	A single actuarial assessment and member notification can support a series of payments for up to three years.
Flexible and maximum payments	The draft regulations had less explicit flexibility to change the proposed payment amounts from the provisional amount notified to members.	DWP has confirmed that trustees can reduce, postpone or stop payments if circumstances change. The notified amount is a maximum, not a commitment.
Forward-looking test	The scheme must be 'at least as likely as not' to remain fully funded on a low dependency basis over the following three years.	Wording changed to 'expected to be' fully funded on the scheme's low dependency basis, clarifying the nature of the actuarial test.
Surplus release window	Payment to the sponsor must be made within five working days from the date the actuarial certificate is given.	DWP has extended the payment period to 10 working days from the date the actuarial certificate is given.
Notifying TPR	TPR must be notified of surplus release to the sponsor within one week of the date of payment.	The notification period has been extended to 20 working days from the date of payment.
Member surplus payments	Authorised surplus lump sum payments awarded to deferred members receive statutory revaluation before Normal Minimum Pension Age (NMPA).	Clarified that statutory revaluation can continue to Normal Pension Age (NPA) where payment is deferred beyond NMPA.
Member notification period	The requirement to notify members of the provisional surplus release amount is unchanged and must be done three months before the proposed payments begin.	

Supporting guidance: What to expect next

Guidance from TPR

Draft guidance from TPR on how trustees should approach decisions about surplus release is expected before the end of 2026. TPR will then consult and publish the finalised guidance ahead of April 2027. The guidance will:

- Reinforce trustee responsibilities and fiduciary duties and help prepare them for discussions with scheme sponsors.
- Set out a range of options available for using surplus.
- Include a number of factors trustees should consider when releasing surplus, including covenant strength, funding buffers, investment strategies and pace of surplus release.
- Highlight the importance of documenting the process and outcome of decisions.
- Provide case studies to aid understanding.

Find out more

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