

Government sets its course to unlock DB surpluses



What you need to know

- On 29 May 2025, the Government published its response to the Department for Work and Pensions (“DWP”) February 2024 consultation on ‘Options for Defined Benefit schemes’.
- The Government response sets out a clear intention to make it easier for “well-funded DB schemes to release resources back to businesses and scheme members” where “trustees agree it is safe”.
- Key points are an intention to provide a statutory override to give trustees the discretion to change their scheme rules to allow surplus to be paid on an ongoing basis, and a change in the minimum threshold for surplus extraction from buyout to low dependency (subject to further consultation).
- The Government’s intended flexibilities will now be taken forward into the Pension Schemes Bill, which is set to be introduced later in 2025. The Government has also committed to publishing a full impact assessment of the costs and benefits to businesses.
- The Government also confirmed it will further review the possibility of the PPF operating as a ‘public sector consolidator’ for schemes less able to access commercial solutions, but did not signal any imminent plans to take this forward and this will not be in the upcoming Pension Schemes Bill.



Actions you can take

- **Review your long-term strategy in light of the changes.** In particular, consider whether running on to build and use surplus could be of value to your members or your business.
- **For those schemes that are already considering long-term run-on, assess whether the changes could introduce new opportunities or risks** that you will need to address when designing and implementing your run-on strategy.
- **Review your Scheme rules.** In particular, consider the extent to which the proposed overrides will affect the balance of powers between trustees and employers.

Key elements of the Government’s intended changes to surplus rules

Element	Brief summary of what this means
1. Introduction of a statutory override	Government intends to provide a statutory override for releasing surplus. This will give trustees the discretion to change their scheme rules to allow DB surplus to be paid to the employer on an ongoing basis.
2. Conditions for extracting surplus	Government intends to change the threshold for surplus release from buyout to low dependency. This will be subject to further consultation. Government also intends to amend the requirement for surplus distribution to be in the “interests of the members” and instead align with trustees’ overarching duties.
3. Other safeguards for member benefits	Government intends for The Pensions Regulator (“TPR”) to issue DB surplus guidance for trustees, including considering employer covenant. Surplus distribution also subject to trustee agreement and actuarial certification.
4. Tax	Government to maintain the 25% tax charge on DB surplus refunds. Government will continue to review whether the tax system could be amended to allow one-off payments to members, though no firm details published.

The finer detail:

Government response to the 'Options for DB schemes' consultation

Statutory override for surplus release

The DWP consultation had considered whether it would be better to introduce a statutory power for trustees to amend their scheme rules to provide for surplus sharing, or to introduce a statutory power for trustees to make payments out of schemes. The Government landed on the first approach, and will repeal the previous requirement for trustees to have previously passed a Section 251 resolution under the Pensions Act 2004.

Threshold for surplus distribution

The DWP consultation had considered four thresholds for the minimum funding threshold above which surplus could be extracted. These included three flavours of 'low dependency plus a margin', and a fourth measure of buyout. The consultation response confirmed that Government is "minded" to use low dependency as the minimum threshold. However, this is lower than any of the four thresholds from the original DWP consultation and the Government has said it will consult further on this.

Clarification of Trustee duties

The Government's consultation response identified that the current requirement (under Section 37 of Pensions Act 1995) for surplus extraction to be in the "interests of the members" was a potential barrier to surplus extraction. The Government therefore announced it will amend Section 37 to remove this wording, clarifying instead that trustees must act in accordance with their overarching duties to scheme beneficiaries (as is the case now).

Safeguards for members

The Government's consultation response emphasised the importance of trustees taking into account the scheme's circumstances before deciding to pay out surplus, calling out the importance of employer covenant strength and upside for members. The Government also signalled supporting TPR guidance for trustees (see next point).

Supporting TPR guidance

Alongside introducing legislation to permit surplus extraction above the minimum funding threshold (expected to be low dependency), the Government confirmed it will work with TPR to develop and publish guidance for trustees on the wider factors they should be considering as part of any decisions on extracting surplus under the new surplus legislation.

Tax on DB surplus

The Government's consultation response commented that they believe the pensions tax framework to be broadly balanced and fair, and confirmed that the tax rate on surplus paid out of DB schemes would remain at 25%. The Government said it would keep this under review, as well as continuing to review whether the tax system could be amended to allow one-off payments to members, though no firm details were published on this.

No extension of PPF protection

The Government confirmed it would not take forward the possibility of PPF benefit coverage being extended to cover 100% of members' benefits in exchange for schemes paying a 'super levy', which had been considered in the DWP consultation.

Public sector consolidator

The Government also confirmed that it will review the idea of the PPF operating as a 'public sector consolidator' for schemes unable to access commercial solutions, but did not signal any imminent plans and this will not be taken forward in the upcoming Pension Schemes Bill.

Find out more

For further information, please get in touch with **Tom Froggett**, **Charlotte Yuen** or speak to your usual XPS Group contact.



Tom Froggett
Senior Consultant



tom.froggett@
xpsgroup.com



Charlotte Yuen
Senior Consultant



charlotte.yuen@
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.