



Draft legislation on authorised member surplus payments

Isio response
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Draft Finance Bill measures on authorised member surplus payments

Draft Finance Bill clauses: Defined benefit pension scheme surplus payments to members

We would like to provide feedback on the draft legislation published for Finance Bill 2026-27 in relation to the clauses concerning authorised member surplus payments. We have submitted a separate response to the DWP's consultation on *Surplus Flexibilities for Defined Benefit Pension Schemes: Unlocking Value for Employers and Scheme Members*.

We support the Government's objective of making it easier for pension schemes to make direct authorised surplus payments to members. We also welcome that these authorised member surplus payments ("AMSPs") will be treated as pension income, and not as pension benefits or sums for other purposes within Part 4 of the Pensions Act 2004. The proposed AMSPs allow an easier, direct and quicker route to sharing surplus with members.

We think there are several areas where changes to the draft regulations would enable the legislation to operate more effectively:

- Condition 5 should be amended to differentiate between member surplus payments and employer surplus payments, rather than reference separate legislation. The practical application of this legislation should also be considered in respect of AMSPs. For example, will the same notification and payment timescales apply here too – we believe a lighter touch is needed for member payments.
- We think it would be appropriate for schemes to be able to make surplus payments to members even when winding up. We think condition 4 should be removed to allow such payments even after winding-up has been triggered.
- Trustees will need to consider how rights to AMSPs are to be treated upon retirement, from normal minimum pension age (NMPA) to normal pension age, and on death, transfer and divorce. The regulations should support trustees in making these decisions while retaining sufficient flexibility to tailor solutions to their schemes.

Trustee decisions

The proposed regulations intend to restrict the new AMSPs to circumstances where a member has reached their NMPA or met the ill-health condition immediately before the payment is made.

Where trustees are committed to making a surplus member payment, identifying the exact form of that payment will generate a range of issues, costs and decisions for trustees. The questions will cover benefit design issues, namely how revaluation to NMPA is applied and then how to defer payments beyond NMPA until actual retirement. Other common situations such as death, transfer out and divorce require trustee consideration.

Further considerations will include how to administer the payments (for recording/paying the benefits awarded) and how communication with members will be managed. For example, scheme administrators typically receive members' payment details at actual retirement age rather than at NMPA. Therefore, releasing surplus payments at NMPA would prove to be administratively difficult for trustees.

These complications may encourage trustees to distribute surplus to members under NMPA through other methods such as discretionary pension increases. This would increase the size of future DB liabilities, introduce further complexity and raise concerns about intergenerational fairness. Trustees should have enough flexibility to be able to design surplus release solutions for members whilst being supported by the proposed legislation.

Condition 1

We agree that the trustees and managers of the pension scheme should have the discretion to grant the right to receive the surplus payment. It seems likely that this discretion will be applied following discussion with the employer and scheme actuary, although the discretion rests solely with the trustees.

In the absence of a scheme override, it appears that trustees will have to exercise the discretion under powers already included in their Trust Deed and Rules. The changes concerning payments to employers will see amendments to s.36B of the Pensions Act 1995 to give trustees the power to modify their scheme to permit surplus payments to employers but does not appear to extend to member surplus payments. We would welcome clarification on whether HMRC has considered giving trustees a corresponding power in a similar vein to the powers introduced under s.273B in Finance Act 2004.

Condition 2

Our reading of this is that paying benefits from a defined benefit arrangement is a straightforward requirement and compatible with also paying from the DB element of hybrid arrangements.

Condition 3

We think this condition is clear and we do not expect unintended circumstances would cause a scheme to fall under the definition of "investment-regulated".

Condition 4

Condition 4 is met if the pension scheme is not being wound up. It would therefore restrict AMSPs to cases where the award is made before a scheme's winding-up is formally triggered.

Trustees who have secured scheme benefits require a clear understanding of the final surplus before deciding to make a final surplus payment to members and complete the wind up of the scheme. They may not be in a position to make that decision until after the scheme has formally triggered wind-up. The triggering of wind-up timing is also not, in the event, something the trustees may be able to practically defer. In such a circumstance we do not think there are good reasons for why the trustees at that point should not have the chance to award a final AMSP. However, as drafted Condition 4 would prevent the award of any AMSP once winding-up has been triggered.

In addition, many trustees may delay wind-up in order to take advantage of surplus release under this legislation. This may have unintended consequences in also delaying the employer's access to the surplus payment.

Condition 5

It is not clear to us how comprehensively the terms of Condition 5 are intended to apply in practice, particularly in relation to the requirement that "the payment would have been an authorised employer surplus payment if the right to receive the payment had been granted to the sponsoring employer of the pension scheme".

This appears to require trustees to apply the comprehensive provisions which have recently been consulted upon by the DWP in their [draft Occupational Pension Schemes \(Payments to Employer\) Regulations 2027](#). We think this presents two obvious problems:

- The practical application to individual member payments would be more administratively cumbersome than when applied to employers (and our response to the DWP conveyed our concerns about the practicality of meeting those requirements in relation to employers).
- There would be an ongoing risk that DWP changes related to authorised *employer* surplus payments would inadvertently alter the HMRC conditions for member surplus payments.

It is also unclear what it means to "award" an authorised payment ahead of making the payment.

Regulation 8

We support the intention to keep surplus payments (which will be fully taxable) from counting against a member's individual lump sum and lump sum death benefit allowances, and their pension input amounts for annual allowance purposes.

We would welcome confirmation that the knock-on effect of this means that the payment of a member surplus payment or the granting of a right to such a future payment would not cause a member's deferred member carve-out to be lost.

We would also welcome confirmation that, since such payments would not be treated as a lump sum for any purpose under the Finance Act 2004, it would have no implications for a member's enhanced protection or primary protection. There may be a risk that Fixed Protection could be lost (on the basis that there has been some accrual). To avoid trustees acting with an abundance of caution, we would welcome clarification, that this is not the case.

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Bringing clarity, confidence, and better outcomes for every client.

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The background of the page is a solid teal color. It features several large, three-dimensional geometric shapes that appear to be floating or stacked. On the left, there is a tall, rectangular prism. To its right, there is a large, circular ring or torus. The lighting creates soft shadows, giving the shapes a sense of depth and volume.

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