Unite submission to the DWP Surplus Flexibilities for Defined Benefit Pension Schemes: Unlocking Value for Employers and Scheme Members consultation – 2nd September 2026

Introduction

This response is submitted by Unite the Union, the UK and Ireland's largest trade union representing over one million members across all sectors of the economy including transport, manufacturing, financial services, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our Union.

Unite has facilitated and negotiated pension benefit changes, agreed between members and employer, for many schemes. It is a key part of our role to balance the benefits provided, cost of that benefit provision and the risk that the scheme can afford to take, recognising the impact that this has on the funding level, investment strategy and affordability.

Surplus is currently determined by the rules in each indivdiual scheme and will be the decision of the trustees.

Any surplus in an open scheme should remain in the scheme and if the trustees deem that it is appropriate to enhance members' benefits or more likely reinstate members' benefits that have been detrimentally changed in the years previous then this is a valid option, as is making improvements to pensioner increases and giving greater consideration to discretionary increases.

Employers must not be be given free reign to a surplus in an open scheme. There are laws preventing this, for good reason since Maxwell. The funding levels that will allow this must be appropriate and upon the correct advice, which should always remain the decision of the trustee.

For a closed scheme again this is currently determined by the rules in each indivdiual scheme but it wouldn't be right if over-prudent funding in previous years means that due to the rules of a certain scheme that the employer or an insurer is the only one to potentially benefit. Members have contributed too and trustees should be given the power where needed to improve member benefits where it is appropriate to do so.

Members should be consulted rather than just notified.

When Defined Benefit schemes close to future accrual, many schemes remove Member Nominated Trustees from the Trustee Boards because legally they no longer have to have them on the Trustee Board.

So there is real danger that our members will not have a place at the table when surplus use is being discussed in their Defined Benefit schemes.

Thus it is vital that regulation is introduced so that trade unions can be consulted on members behalf.

Question 1: Draft regulation 2 defines 'appropriate advice'. Do you agree with this definition?

The broad wording leaves it unclear what specific competencies are strictly required, potentially increasing fiduciary risk for trustees. The definition should incorporate covenant or risk-management expertise rather than just general investment and liability knowledge.

Question 2: Is the scope of the power sufficiently clear?

The draft regulations do not explicitly outline how or if trustees can amend existing scheme rules to facilitate surplus payments if the current governing framework prohibits them.

Explicit provisions or greater regulatory guidance confirming whether the statutory powers extend to overriding or amending restrictive scheme rules would be welcome.

Question 3: Regulatory own funds schemes were included in the 2006 Regulations; is there a continued need for their inclusion within the Regulations?

Although regulatory own funds (ROF) schemes do not have an employer to whom surplus can be paid, meaning there is generally no continued need for their inclusion within the active scope of the new surplus payment regulations for employers, these schemes do have members.

So, if they need to be included in order to allow members to receive surplus and potential benefit improvements then they should be included. If it isn’t required to allow this to happen then we are content with it being excluded.

Question 4: Do you have any comment on the considerations of factors to be taken into account for the assessment of assets and liabilities?

The move from the 2006 Regulations' buy-out basis to full funding on a low-dependency basis aligns with the 2024 DB Funding Code regime. Actuaries must certify that assets will likely exceed liabilities over a three-year period following the assessment. Market volatility means asset and liability values can fluctuate rapidly, making clear guidance essential for consistent investment valuations.

Assessing the sponsor's corporate covenant strength is vital to ensure that releasing a surplus does not compromise long-term security. Trustees need room to adjust provisional payment amounts if market conditions shift without restarting the entire notification process. Trustees must retain overarching fiduciary responsibilities to balance member protection with employer value, independent of specific statutory constraints.

A reasonable opening position for any scheme where release of surplus is proposed could include:

- An independent assessment of the employer covenant before any decisions are taken regarding the surplus.
- A funding buffer above the ‘low dependency’ floor.
- Benefit improvements such as restoration of lost indexation.
- An ongoing member-majority share of future releases.
- Provision of contingent assets or specification of claw-back arrangements in case of funding deterioration.

Question 5: Do you have views on the proposed funding test, based on full funding on the low dependency funding basis?

Reaching full low dependency funding does not mean surplus extraction is automatically appropriate. Trustees must still exercise independent judgment and ensure adequate buffers exist above the legal minimum.

Question 6: Do you have any views on the proposed payment process as proposed in the regulations, including whether it is workable in practice and sufficiently clear? Please provide details.

The proposed payment process in the draft regulations is overly rigid and tailored primarily to one-off payments rather than practical, ongoing run-on scenarios.

Trustees cannot reduce a provisional surplus payment amount without restarting the entire notification and certification process.

Question 7: Are the regulations clear on the process of obtaining actuarial certification and paying the employer within 5 working days?

The strict five-working-day window between actuarial certification and actual payment is too short for a practical operational timetable. Requiring an exact monetary figure rather than allowing a formula-based calculation reduces responsiveness to fast-changing market conditions.

The framework needs explicit provisions to accommodate regular or phased surplus releases smoothly. Extending the post-certification window will give trustees and administrators adequate time to complete necessary governance checks.

Question 8: Do you have any comments on the proposed 3-year forward-looking assessment in Condition 2?

The proposed 3-year forward-looking assessment in Condition 2 aligns with the triennial valuation cycle, but it may create practical hurdles for regular or phased surplus distributions.

Tying the forward-looking assessment to a three-year period makes sense because it matches standard triennial valuation cycles. However, the current framework leans toward one-off releases, meaning regular or ongoing phased payments could become administratively heavy if a new certification is rigidly required for every single distribution.

Question 9: Do you agree that the process proposed in the regulations is sufficiently flexible to enable a phased release of scheme surplus over a number of years, while preserving member benefits via certification of each individual payment?

The proposed regulatory process provides a solid foundation for well-funded schemes, but as currently drafted, it is overly rigid and treats phased or regular payments as multiple standalone transactions rather than a continuous strategy.

However, one thing that must remain key is the consultation of members either by a mandatory three-month member notification or allowing a single overarching member notification to cover a pre-approved, scheduled series of phased payments.

Question 10: Should earmarked schemes be included in the scope of these regulations?

Yes, including earmarked schemes within the scope of the Department for Work and Pensions regulations should be allowed if the intention is as much about sharing surplus with members as it is with the employer.

Question 11: Do you think the notification requirements in regulation 11 are sufficiently clear?

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Question 12: Do you think the notification requirements in regulation 12 are sufficiently clear?

The requirement adds necessary detail compared to older rules that only acknowledged a release occurred without specific figures. Reporting rules need broader clarity regarding long-term record keeping, deferred entitlements, and member communications.

Question 13: Are the proposed rules for sectionalised schemes and employer consent workable and clear?

While trustees remain the primary decision-makers, the mechanics of gaining consent and balancing employer versus member interests in sectionalised designs require more detailed guidance.

When Aberdeen became the sponsor of the Stagecoach pension scheme in late 2025, the deal that unlocked surplus gave members an immediate 1.5% uplift and improved inflation protection. It involved a framework under which members receive the majority of future surpluses with the employer taking a minority share.

Question 14: Are the draft regulations clear for excluded schemes? If not, where would further clarity be helpful?

The blanket exclusion of schemes backed by a Crown Guarantee acts as a blunt catch-all. Further clarity is needed on private-sector arrangements where Crown Guarantees exist but are not factored into day-to-day funding decisions, with arguments that these should potentially be allowed to participate.

While initial draft provisions correctly exclude superfunds operating under an interim regime, the industry needs clarity on how the future statutory framework will handle transitional conditions and stricter funding tests when surplus releases are eventually enabled for these vehicles.

Question 15: Are the draft Regulations clear on revaluation of deferred awards?

As currently drafted, the revaluation of a deferred surplus award appears to always cease at NMPA, even if the member is still in active service or hasn't yet drawn the benefit. The drafting does not explicitly explain how revaluation rules apply if a member passes away before hitting NMPA. Pre-97 rules fail to clarify whether revaluation for older deferred awards will actively restore historical value lost from past withheld discretionary increases or simply perpetuate past erosion.

Question 16: Are the draft Regulations clear on how deferred awards affect members' statutory right to take a transfer value?

The draft Regulations lack sufficient clarity regarding how deferred surplus awards are treated across their lifecycle, including their impact on a member's statutory right to take a transfer value, death benefits or divorce.

Question 17: Do you foresee any issues or concerns arising from proceeding without transitional provisions following the revocation of the 2006 Regulations? If so, please provide details.

Schemes currently in active discussions or advanced negotiations for a surplus release under the legacy 2006 Regulations risk hitting a legal vacuum or paralysis if their completion straddles the 6 April 2027 commencement date.

Because the 2006 Regulations continue to apply to winding-up (section 76) while ongoing schemes shift to the new low-dependency and certification rules under section 37, complex or sectionalised schemes undergoing simultaneous restructuring could face confusing compliance boundaries.

Any shortfall or administrative logjam leading up to April 2027 could cause sponsors and trustees to temporarily pause surplus projects until the new statutory framework is fully bedded in.

Question 18: Do you foresee any issues with revoking regulations 36 to 39 of the 2014 Regulations?

Regulations 36 to 38 only applied to historic transitional provisions. These covered schemes that made surplus payments before the definition of "money purchase benefits" changed in July 2014. Regulation 39 simply cross-referred to older definitions in the Pension Schemes Act 1993.These provisions are outdated and no longer active for current scheme operations, making their removal safe.

Question 19: Does the proposed certificate in the Schedule capture all the relevant details that will be required?

Adding the scheme's registration number to improve tracking and identification.

The certificate should capture data regarding historical or prospective pre-1997 pension increases/indexation to ensure full transparency before surplus extraction.

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John Neal – National Pensions Officer, Unite the Union 2nd September 2026