



Surplus in the spotlight

➤ **Association of Pension Lawyers chair, Matthew Swynnerton, reflects on the surplus implications of the Pension Schemes Act and The Pensions Regulator's expectations**

On 28 April, the Pension Schemes Act received Royal Assent, marking the start of a significant new phase of pensions reform.

The Act spans a wide range of areas, including productive investment, defined benefit (DB) surplus release, small pots consolidation, targeted support, guided retirement, the remedy for issues arising from the *Virgin Media* judgment, the value for money framework, DC megafunds, DB superfunds, and LGPS investment and governance.

Much of the detail, however, is still to come. With the exception of the *Virgin Media* remedy, many of the changes rely on secondary

legislation and regulatory guidance, most of which will be consulted on before being finalised. This means that, in practice, many of the reforms will not take effect for some time.

Even so, the Act provides a clear blueprint for how the UK pensions system is expected to evolve, with an updated version of the government's 2025 roadmap expected shortly. As the Pensions Minister observed at the Pensions Age Spring Conference the day after Royal Assent was granted, the scale of change may currently be underestimated, and the full impact of these changes may only become apparent over time.

On 6 April 2026, The Pensions Regulator (TPR) published its Annual

Funding Statement, highlighting that well-funded schemes should begin to consider their policy on surplus. Against this backdrop, and given the breadth of the Act, this article focuses on one aspect of the Act likely to be of particular interest to schemes and sponsors: DB surplus release.

Surplus – what is the government trying to achieve?

At its core, the government's objective is to make it easier for trustees of well-funded DB schemes to put surplus assets to use – whether by releasing surplus to scheme sponsors or potentially benefiting members – with a view to supporting wider economic growth.

The Act introduces two key changes. Firstly, it gives the government the ability to lower the funding threshold that schemes must meet before surplus can be released (moving away from a buyout standard towards a lower 'low dependency' threshold). Secondly, it introduces a statutory resolution-making power enabling trustees to amend scheme rules more easily so that surplus can be paid to an employer, even where existing rules (or the absence of a section 251 resolution) prevent this.





What does this mean for trustees?

In practice, releasing surplus may not be a single decision.

Trustees will firstly need to review their scheme rules and decide whether it is necessary to introduce or amend a rule allowing surplus to be paid to the employer.

Trustees would then need to take a separate decision on whether to exercise that power to make a payment. Where the scheme rules already allow for surplus release, only the second step is needed.

Trustees remain firmly in the driving seat. Surplus cannot be released without trustee agreement, and any payment will require actuarial confirmation that the scheme meets the relevant funding level.

This places a clear focus on trustee decision-making. While the legislation does not say that surplus decisions must be in members' interests, trustees will still need to demonstrate that they have acted properly and in accordance with their duties, taken appropriate advice, and reached a well-reasoned decision as part

"In its Annual Funding Statement, TPR has made clear that it expects well-funded schemes that are running on to consider their policy on surplus"

of a robust and well-evidenced decision-making process.

In reality, trustees are unlikely to consider surplus release in isolation. Proposals will typically originate from the sponsoring employer and may form part of wider discussions between trustees and employers around funding plans, investment risk, or the future run-on of the scheme.

What remains to be seen?

Much of the detail remains subject to consultation. Regulations will be needed to bring the provisions into force and to set the revised funding threshold,

as well as any additional conditions. As confirmed in its Annual Funding Statement, TPR also intends to publish a statement setting out its 'early views' on the issues trustees should consider in relation to surplus release, followed by a consultation on more detailed surplus guidance.

What can trustees agree to now?

In its Annual Funding Statement, TPR has made clear that it expects well-funded schemes that are running on to consider their policy on surplus. However, against a backdrop of secondary legislation and guidance

still to come, both of which will be vital in helping trustees navigate surplus decisions in practice, it currently remains difficult for trustees of ongoing schemes to commit to any future course of action in relation to surplus. Nevertheless, some schemes are beginning to explore surplus and run-on at a high level and there has been growing interest in non-binding memorandums of understanding between trustees and employers.

Whilst these can be useful in setting out shared expectations, care is needed in relation to such arrangements, which should ideally be limited to high-level principles and make clear that future decisions on surplus use will be subject to the legal and regulatory requirements in force at the time. Trustees will also need to ensure they do not fetter their discretion and that any eventual decision is taken in light of appropriate professional advice, with due regard to funding strength, employer covenant and the adequacy of risk buffers, all points underscored by TPR in its Annual Funding Statement.