LCP's response to the DWP consultation on Surplus Flexibilities for Defined Benefit Pension Schemes

Issued on 27 August 2026

This document sets out LCP's response to the DWP consultation on Surplus Flexibilities for Defined Benefit Pension Schemes, first published on 10 June 2026.

Who we are

LCP is a firm of financial, actuarial, and business consultants, specialising in pensions, investment, insurance, energy, health and business analytics. We have over 1,200 people in the UK, including over 180 partners and around 250 qualified actuaries.

The provision of actuarial, investment, covenant, governance, pensions administration and benefits advice, and directly related services in relation to DB pension schemes is our core business. We also provide DC pension scheme consultancy services. About 80% of our work is advising trustees and employers on all aspects of their DB and DC pension arrangements, including investment strategy. The remaining 20% relates to insurance consulting, energy, health and business analytics. LCP is authorised and regulated by the Financial Conduct Authority for some insurance mediation activities only and is licensed by the Institute and Faculty of Actuaries for a range of investment business activities.

Our comments on your proposals

We have set out below our answers to the specific questions that you have set. From this you will see that we are supportive of the key policy objectives, however we have some concerns around the proposed process and would like to see simplification especially for schemes looking to set up a framework for annual surplus usage. We also have some comments on technical areas.

We are happy for LCP to be named as a respondent to the consultation and happy for our response to be in the public domain. We are happy for you to reference our comments in any response.

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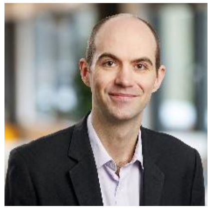

About Lane Clark & Peacock LLP

LCP's response to the questions in the Consultation

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

   We broadly agree that trustees should take appropriate advice when determining asset values for these purposes.

   However, it is unclear why a person providing advice on the value of scheme assets must also have knowledge and experience of the management of scheme liabilities. This could unintentionally restrict the range of advisers able to provide suitable asset-valuation advice, particularly where an investment adviser or asset manager is best placed to advise on the value of particular holdings.

   We suggest either removing this additional requirement, so that the definition aligns with comparable provisions elsewhere in pensions legislation, or explaining clearly why knowledge of scheme liabilities is necessary in this context.

2. **Is the scope of the power sufficiently clear?**

   The scope of the power to make a payment of surplus to an employer is clear.

   However, the regulations do not address the situation where schemes would need to amend their rules to permit a surplus payment. Some scheme rules may not currently provide the relevant power, and some may specifically prohibit return of surplus to the sponsor. Others may specifically prohibit scheme amendments relating to surplus use. Clarity on the interaction between the new regime and scheme amendment powers would assist trustees and employers in assessing whether the flexibility is available to them in practice.

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

   We have no strong view on whether regulatory own funds schemes should remain specifically referenced. We are not aware of any such schemes currently operating in the UK. If there is no continuing practical role for them, removing redundant provisions would improve clarity and simplify the legislation.

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

   We welcome the flexibility to use unaudited asset values. Requiring a formal audited valuation could otherwise add unnecessary cost and delay to a surplus release process.

   However, the regulations should be clearer about what "appropriate advice" is expected to cover. As one example, the assumptions made when determining an appropriate value for an asset may depend on the nature of the proposed surplus release. This is particularly the case for illiquid assets where an asset value for a large, immediate payment could take into account a "haircut" for forced sale, whereas for a series of smaller payments over time the asset value might more reasonably assume holding to maturity with no haircut.

   We do not consider that these issues need to be prescribed in detail in the regulations. Instead, we would welcome practical guidance from TPR on the factors trustees should consider, including the treatment of less liquid assets, assets which may incur costs on disposal, and the relationship between the timing and structure of the release and the asset valuation adopted.

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

   We support the use of full funding on a low dependency funding basis as the minimum funding condition for surplus release.

We do not think an additional prescribed buffer above the low dependency basis is necessary. The appropriate margin in each case will depend on scheme-specific circumstances, including the strength of the employer covenant, investment strategy, maturity, liquidity needs and the trustees' longer-term plans for the scheme. In practice, trustees are likely to seek an appropriate margin before agreeing to any payment, even where this is not mandated in legislation.

The draft regulations refer to "**a** low dependency funding basis", rather than "**the** low dependency funding basis" included in the scheme's latest Statement of Strategy. Is this deliberate? If so, DWP and TPR should clarify the intended relationship between the two bases, including when (and in what way) it would be appropriate for the basis used for a surplus release assessment to differ from that in the latest Statement of Strategy.

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.

We broadly support the proposed staged process. Agreement between trustees and the employer, actuarial assessment and certification, member notification, and final confirmation before payment together provide an appropriate governance framework.

However, the process appears principally designed for a one-off payment. It is likely to be unnecessarily burdensome for schemes that intend to run on and make regular or phased surplus payments under an agreed long-term framework. Requiring the full process to be repeated for each payment, in particular including a three-month member-notification period, could encourage larger one-off payments instead of smaller, more manageable payments that can be adjusted or stopped if circumstances change.

We suggest a more proportionate framework for regular or phased payments where trustees and the employer have agreed an overarching decision framework and there has been no material change in circumstances.

Actuarial certification should remain necessary for each payment, but other steps — particularly the member-notification requirements — could be shortened or not repeated in full.

We also suggest that the "provisional amount" referenced in draft regulations 8 and 9 should be explicitly described as a maximum amount. Trustees and the employer should be able to decide to pay a lower amount at the end of the process without needing to restart it. This would be a sensible safeguard where circumstances have changed between the initial agreement and the intended payment date.

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

The actuarial certification process is broadly clear.

Requiring certification close to the point of payment is an important protection, as it ensures that the funding conditions remain satisfied before surplus leaves the scheme.

However, the requirement to make payment within five working days of certification is an unnecessarily short window. Trustee execution processes, banking arrangements, administrator timetables and other operational matters can all create delays.

We suggest extending this period, for example to 20 working days, or allowing payment within a "reasonable period" (which may be defined by TPR in its guidance) provided that trustees remain satisfied that there has been no material change affecting the appropriateness of the payment.

It should also be clear that actuarial certification does not remove trustees' responsibility to decide whether to proceed with a payment (or a payment in full) as currently suggested by draft regulation 9 (5). Trustees should be able to pause, reduce or cancel a payment if there has been a material change in the scheme's or employer's circumstances.

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

We broadly support including a forward-looking assessment as part of the certification process, on the grounds that it should provide members with additional comfort that foreseeable scheme-specific issues have been considered before surplus is released.

However, the current drafting risks creating unnecessary uncertainty in the expected approach to meeting this condition. In particular, the requirement for the scheme to be "at least as likely" to satisfy the funding condition "at any given time" during the three-year period could be interpreted inconsistently and may lead to detailed stochastic modelling becoming the expected approach. This would add cost and complexity without necessarily improving member protection, particularly for smaller schemes.

We consider that the assessment should be a proportionate, actuarial judgement focused on material foreseeable issues — for example, unusually high expected expenses, significant known benefit events or other scheme-specific circumstances. It should not become a requirement for extensive modelling in ordinary cases, especially as the low dependency funding basis already includes prudence.

We welcome the Financial Reporting Council's intention to provide guidance for actuaries. However, it is important that the regulations themselves are sufficiently clear and do not inadvertently impose a more onerous test than intended.

One possible alternative would be to require the actuary to certify that the scheme can reasonably be expected to have assets at least equal to its liabilities on a low dependency funding basis at the end of the three-year period, more akin to the current certification for a Schedule of Contributions.

As a further point, any three-year forward-looking test should take account of developments up to the certification date, so it would be better if regulation 9(3)(a) were to reference 2(a) to (d) (rather than 2(b) to (d)).

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?

Not fully. As noted above, the draft regulations appear to be more naturally suited to a single, one-off surplus payment than to phased or regular payments over a number of years.

We support retaining actuarial certification for every individual payment. However, where trustees and the employer have already agreed a framework for a series of payments, it would be disproportionate to require the full governance and member notification process to be repeated each time, particularly if circumstances have not materially changed.

A more practical approach would be to require the full process, including member notification, when the overall framework is agreed, with further notification only if there is a material change. This would still preserve the important safeguard of actuarial certification before each payment.

As suggested above, trustees should also be able to pay less than the provisional amount without restarting the process. This flexibility would be particularly valuable for phased payments, where circumstances may evolve over time.

The position should also be made clear in relation to authorised member surplus payments. Where such payments form part of an agreed framework, it would be inappropriate for the process to result in repeated lengthy notifications to members that they will receive a payment.

10. **Should earmarked schemes be included in the scope of these regulations?**

    Yes. Earmarked schemes can have more than one member, and excluding them could leave surplus assets trapped in relation to former members where those assets cannot practically be used to improve the position of the remaining members. Including these schemes is therefore appropriate and consistent with the overall policy objective.

11. **Do you think the notification requirements in regulation 11 are sufficiently clear?**

    The notification requirements are generally clear and appropriately promote transparency for members.

    However, as noted in our response to Questions 6 and 9, the three-month notification period would be onerous if applied in full to every payment under a regular or phased surplus release arrangement. We suggest a more proportionate approach where members have already been notified of an agreed framework and there has been no material change in circumstances.

    An alternative approach may be for the regulations to refer to "reasonable notice" allowing some element of Trustee discretion and/or forthcoming guidance from The Pensions Regulator.

    It would also be helpful for guidance to clarify trustees' expected approach where members raise concerns or complaints following notification. In particular, trustees should be able to proceed with a payment where they remain satisfied that it is appropriate, while dealing with individual complaints through the usual processes where necessary. This may be a matter for TPR guidance.

    We also suggest that the drafting is reviewed to make clear that the amount notified at this stage is provisional, and to ensure that the provisions operate consistently with the permitted methods for providing information to members. A further drafting suggestion is to make reference within draft regulation 11 (1) (c) to authorised member surplus payments.

12. **Do you think the notification requirements in regulation 12 are sufficiently clear?**

    Further clarification would be helpful.

    In particular, it should be clear whether the assets and liabilities to be notified are those at the date of the actuarial assessment or at the date of final actuarial certification. These dates may be some time apart, and it is the position at certification that is most relevant to the payment actually made.

    It would also be helpful to clarify whether the figures should be shown before or after allowing for any authorised member surplus payments or benefit improvements.

    More broadly, we would welcome clarity on the purpose for which TPR will use these notifications. If the notification is intended principally for supervisory oversight, the required information should focus on the matters most relevant to the security of members' benefits and the trustees' overall funding and investment strategy.

    Trustees and employers would also benefit from reassurance that, where they have followed the regulations and relevant guidance, notification will not ordinarily lead to unnecessary regulatory engagement after a payment has been made.

    Lastly, we see no reason for the notification period to be only one week – two weeks would surely suffice given the purpose.

13. **Are the proposed rules for sectionalised schemes and employer consent workable and clear?**

    We agree that the relevant funding tests and conditions should apply at section level where a section is treated separately for funding and employer-covenant purposes. This is important to ensure that surplus attributable to one section is not assessed by reference to assets or liabilities belonging to another section.

However, further clarity is needed on the employer-consent requirements in draft regulation 13(6) for multi-employer schemes that are not sectionalised. As drafted, there is a risk that the requirements could be difficult or impossible to operate in practice for such schemes. The regulations should clearly identify whose consent is required in these circumstances and how the requirements apply following corporate restructurings or changes in participating employers.

There is need for tax legislation to align with pensions legislation for segregated schemes that wind up on a section-by-section basis. Pensions legislation permits a section to wind up separately, but the corresponding tax treatment of a surplus payment is not sufficiently clear. This uncertainty risks preventing surplus payments even where trustees and employers are otherwise comfortable that the relevant conditions have been met. DWP should work with HMRC to address this gap.

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

We broadly understand the types of scheme intended to be excluded or subject to modified requirements. However, further clarification would be helpful in several areas.

In relation to schemes with Crown guarantees or other public-sector support, the blanket exclusion may not fully reflect the range of arrangements seen in private-sector schemes. In some cases, such support is not taken into account in funding decisions. It would therefore be helpful to consider whether an exclusion is appropriate in every case, or whether a more tailored approach could be adopted.

The regulations should also be clearer for cases where a Crown guarantee, ministerial approval requirement or other support arrangement applies only to part of a scheme. This is particularly important for schemes with multiple sections, employers or different categories of benefits. Guidance should address how trustees determine whether a scheme, or part of a scheme, falls within an exclusion and what evidence they should obtain.
Finally, we suggest reviewing the drafting for inconsistencies, including the references to guarantees in draft regulations 14(2) and 15(2) which refer back to 14(1) (b) and 15(1)(b), which actually use “approval of the Minister of the Crown” rather than “guarantee”. There is also a missing reference to “assets” in draft regulation 15(1) (a).

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

We welcome the additional flexibility to make authorised member surplus payments. This gives trustees a further route to share surplus with members without necessarily increasing ongoing scheme liabilities.

Our preference would be for these payments not to be limited to those members who are over Normal Minimum Pension Age, and instead be payable to all members regardless of age.

If retaining the proposed approach instead, the revaluation provisions could be clearer. As drafted, revaluation appears to always operate between the date of award and normal minimum pension age. This may not produce the intended outcome where a member dies before that age, or where a scheme chooses to pay the award after normal minimum pension age for legitimate administrative reasons.

We suggest that revaluation should continue until the earlier of the member’s death and the date on which the award is paid. This would avoid members being disadvantaged simply because payment is made later than normal minimum pension age.

It would also be helpful for the associated tax provisions to clarify the treatment where a member dies before payment, including whether the amount can be paid to an appropriate beneficiary. A statutory overriding power for trustees to make authorised member surplus payments would also reduce the need for scheme rule amendments and avoid unnecessary delay.

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

Yes.

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.

We do not foresee any issues. The changes appear to replace the existing framework with the proposed new regime, and we do not consider that additional transitional arrangements are necessary.

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

We do not foresee any issues.

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

Broadly, yes.

However, in light of our comments on the three-year forward-looking assessment, it would be helpful for the certificate or accompanying guidance to clarify the level of detail expected. For example, where authorised member surplus payments or benefit improvements are relevant, it should be clear what information the actuary is expected to include.

If (as per our response to question 5) the intention is to allow the low dependency basis used for the purpose of surplus release to differ from the low dependency funding basis included in the scheme's latest Statement of Strategy, then there should also be a mechanism for TPR to be informed of the basis used for the purposes of the surplus release to the extent it differs.

It may also be helpful for the certificate to include the scheme's pension scheme registration number, to support straightforward identification and regulatory administration.