DWP Surplus Consultation Team
Department for Work and Pensions

Your ref
Our ref CY/JMR
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By email: pensions.surplusconsultation@DWP.gov.uk

Dear Surplus Consultation Team

USS response: *Surplus Flexibilities for Defined Benefit Pension Schemes: Unlocking Value for Employers and Scheme Members*

We are pleased to respond to the Department for Work and Pensions' consultation on *Surplus Flexibilities for Defined Benefit Pension Schemes: Unlocking Value for Employers and Scheme Members*, published on 10 June 2026.

As we have set out in previous responses to the Call for Evidence and consultation on *Options for Defined Benefit schemes*, USS differs materially from many defined benefit pension schemes given its open status, scale, and multi-employer, mutually funded structure. In that context, we have first set out some broader observations on how the proposals may apply to open schemes, followed by responses to selected consultation questions where we have specific comments.

About USS

Universities Superannuation Scheme (USS) was established in 1974 as the principal pension scheme for universities and Higher Education institutions in the UK. We work with around 320 employers to help build a secure financial future for almost 599,000 members and their families. We are one of the largest pension schemes in the UK, with total assets of around £84bn (at 31 March 2026).

USS is a hybrid pension scheme, which means we have both a defined benefit (DB) part (which provides average salary benefits) – the Retirement Income Builder – and a defined contribution (DC) part – the Investment Builder. USS is open to new entrants and new accruals, representing about a third of those accruing DB benefits in the private sector, based on information in tPR's Purple Book.

Broader thoughts

The defined benefit pension landscape has changed materially in recent years. The consultation notes that around four in five schemes are now in surplus, with aggregate surplus estimated at around £160 billion. USS is similarly well funded: the provisional results of our 31 March 2026 valuation indicate a technical provisions surplus of £16.9 billion, representing around 10% of that estimated industry-wide

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figure. Since the turn of the year, we have engaged constructively with stakeholders to understand their views on how any emerging surplus could be used.

Two central themes underpin our response:

1) First, for schemes that remain open to new members and future accrual, the considerations relevant to surplus release are materially different from those applying to many closed schemes. A closed scheme may ultimately expect to crystallise any surplus. In contrast, an open scheme may continue to run an investment strategy that involves material risk, even where it is in surplus on a low dependency basis. In addition, risks and costs in an open scheme are shared across generations, and surplus can play an important stabilising role in managing the impact of financial market volatility from one valuation to the next.

2) Second, as drafted, the regulations would create a number of practical challenges for a large, non-associated multi-employer scheme such as USS. Processes that may be straightforward for a single-employer scheme could become significantly more complex, and potentially impracticable, for a scheme with more than 300 non-associated participating employers.

Response to the consultation

We have no comments to make in respect of questions 1 to 4, 10, 12, 14, 17 and 18.

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

We recognise that the proposed funding test, based on the existence of surplus on the low dependency funding basis, is intended to be permissive rather than automatic. In other words, the fact that a scheme has a surplus on that basis should not, of itself, imply that surplus ought to be released.

That distinction is particularly important for schemes such as USS, which remain open to new entrants and future accrual. In such cases:

1) the scheme may be running an investment strategy with objectives that are materially different from a low-risk strategy designed to minimise risk or release surplus in a predictable manner; and

2) surplus may serve other important purposes, including supporting intergenerational smoothing and helping manage the distribution of cost and risk between cohorts of members and employers.

In either case, the presence of surplus on a low dependency funding basis does not necessarily mean that releasing surplus would be appropriate.

We therefore suggest that the regulations should make clear that trustees must consider relevant scheme-specific factors before any surplus is released. Whilst we wouldn't expect these to be listed in the regulations, these would likely include scheme maturity, investment strategy, ongoing accrual, and the extent to which low dependency represents a contingency position rather than the scheme's current funding objective.

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.

Our comments in this section are made as a large multi-employer scheme with more than 300 non-associated participating employers.

The process of making material payments from the Scheme to all employers would be new for USS and would require payments to be made to a large number of employers within a very short timescale. Some elements of the process would of course be planned and set up in advance, but other elements, particularly the finalisation and checking of payment amounts, uploading of the approved payment schedule to the payment system, and sending the payments through BACS, would all have to be completed within the proposed 5 day period. BACS payments themselves can take up to 3 days to complete, so any slight delays or system issues are likely to cause the 5 day timescale to be breached.

There may also be other issues which are outside a trustee's control but which would extend the time required to make such payments. The USS Trustee uses Barclays as its payment agent and Barclays has confirmed that there is a £100m limit on the total payments the Trustee can make within any 2-day period: this could therefore mean that significant surplus payments (bearing in mind the provisional results of our 31 March 2026 valuation indicate USS had a technical provisions surplus of c£16.9 billion) would have to be paid over a period of days (each with an up to 3-day payment period under BACS). It could also impact other normal business payments required to be made in that period. We could seek to negotiate higher payment limits if necessary but again this would add time to the process.

Importantly, if HMRC treated payments received outside the prescribed payment period as unauthorised payments, this would potentially act as a deterrent for schemes in making surplus payments given the risk of incurring significant sanction charges. While we understand and support the policy intention that payments should be made promptly once the certification requirements have been satisfied, the unauthorised payment penalties make on-time payment critical and so it is vital that a practical and reasonable timescale for payments is allowed. USS normally operates a 30-day payment timescale for payments, which allows for a well-ordered payment process with strong governance and oversight: we would strongly encourage you to adopt a similar timescale for payments under this legislation.

Finally, in recognition that issues can occur for reasons outside a trustee's control (for example related to financial and payment systems, reliance on employer information and processes, etc) some further contingency wording in addition to the 30-day timescale for payment would be useful: for example adding "where reasonably practicable" after the payment timescales would maintain the intent of prompt payment whilst providing significant practical easement.

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

The regulations are generally clear on the process for obtaining actuarial certification and making payments, subject to the specific points raised in our responses to Questions 6, 13 and 19.

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

We agree that, in principle, a three-year forward-looking assessment is a reasonable approach.

We note that the proposed threshold is that the scheme is "at least as likely as not" to remain fully funded on the low dependency funding basis. Schemes will need to determine what this means in their own circumstances.

However, as currently defined, the test does not expressly take account of the cost of future accrual in open schemes, nor does it require consideration of how that cost is expected to be met.

The projected funding position over a three-year period could differ materially depending on whether the cost of new accrual is expected to be met through additional contributions, or instead from existing surplus. We therefore suggest that the assessment should explicitly capture future accrual and any corresponding contribution expectations for open schemes.

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?

Consideration should also be given to circumstances in which employers and trustees agree a schedule of surplus release over time, similar in concept to a recovery plan. It would be helpful for the regulations or accompanying guidance to clarify whether each payment under such an arrangement would require separate certification, or whether and how a single certificate could cover a defined series of payments.

A potential example of a series of payments would be where an amount of surplus was identified to be shared between members and employers, with the member element providing X% p.a. above the guaranteed increases over an actuarial valuation cycle, subject to testing affordability still permitted it at the time of each payment. Given the phasing of the member element, the employer element should be equally phased rather than paid up front to avoid a situation where the member discretionary increases became unaffordable but the employers had the full amount up front. The intention could be notified to members at the start, consistent with the statutory timetable, rather than needing a full notification process each year. The payments would be subject to an annual funding test and could be supported by a light touch certification process confirming the original intention was still affordable

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

As drafted, the regulations require members to be notified at least three months before the intended payment date. It is unclear how this requirement would apply to individuals who join the scheme after the notification has been issued but before the surplus payment is made. This could be addressed by clarifying that the notification requirement applies to those individuals who are members at the point of notification or by providing that the payment to the employer must be made no earlier than three months from the date of the notification (in a similar way to Regulation 10(c)(ii) of the Occupational Pension Schemes (Payments to Employer) Regulations 2006).

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

As drafted, Regulations 13(1)-(5) appear to apply only to schemes that are sectionalised, so would not include USS. It is therefore unclear if Regulation 13(6), which addresses employer consent or nomination, is intended to apply to non-sectionalised multi-employer schemes such as USS. This is a very important practical point and we would welcome clarification within the final regulations that Regulation 13(6) applies to non-sectionalised multi-employer schemes. For a large non-associated multi-employer scheme such as USS, it would be highly impractical, and potentially unworkable, to obtain consent or a fresh nomination from each individual participating employer before making a surplus payment.

To avoid uncertainty and ensure that the process is workable for schemes of this nature, we suggest that the regulations should expressly permit that, in the case of a scheme where there is more than one employer, the employers and / or the scheme rules can nominate a representative to act on the employers' behalf. This would be consistent with the approach taken for scheme funding purposes under section 229 of the Pensions Act 2004 and regulation 19 and paragraph 2 of Schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (**"Funding Regs"**). It could be achieved by using similar drafting to that in the Scheme Funding Regs, e.g.: "*references to the employer in Regulation 9(4)(c) have effect as if they were references to a person nominated by the employers, or by the rules of the scheme, to act as the employers' representative for the purposes of Regulation 9(4)(c)*".

This would preserve the policy objective of ensuring employer involvement, while avoiding a process which, for schemes with a large number of non-associated employers, could be disproportionate or impractical if individual consent, or a fresh nomination process, were required from each participating employer.

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

The requirement to use the final salary method of revaluation may place an unnecessary restriction on schemes. It may also create practical and communication challenges where members have a surplus lump sum that revalues differently from the remainder of their benefits. We suggest that the policy intention could instead be achieved by permitting any revaluation method applicable to DB benefits under section 84 of the Pension Schemes Act 1993. It would also be helpful if it could be made clearer whether for deferred members the new requirements are intended to replace the current statutory regime or act as a minimum level or underpin.

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

The amendments are clear, but we would suggest a small change to draft Regulation 17A(1) of the Occupational Pension Schemes (Transfer Value) Regulations 1996 to mirror the wording in Chapter 1 of Part 4ZA of the Pension Schemes Act 1993. We would propose this could be done by adding a couple of words to Regulation 17A(1) so that it reads as follows (additional words in bold and underlined):

"(1) In Chapter 1 of Part 4ZA of the 1993 Act (transfer rights: general), a member will not be construed as accruing <u>**rights to**</u> benefits as a result of any actual or prospective entitlement to an authorised member surplus payment."

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

The certificate referred to in regulation 9 appears to require a separate certificate for each participating employer. Given the number of employers within USS, this could impose a significant administrative burden. The policy objective could be achieved more efficiently by allowing schemes, where appropriate, to use a single certificate accompanied by a schedule setting out the names of, and payments to, individual employers.

We hope the above responses set out above are helpful. If it would be useful to explore or discuss any of these points further as you shape the regulations, we would be pleased to assist.

Yours sincerely

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Group Chief Executive