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3 September 2026

By email to policypensions@hmrc.gov.uk

Dear Sir or Madam

Defined benefit pension scheme surplus payments to members

I am writing on behalf of the Association of Consulting Actuaries (ACA) in response to the consultation on Defined benefit pension scheme surplus payments to members[1].

The ACA welcomes the opportunity to provide input. We are responding in the capacity of a representative body for professional advisors who provide advice to a range of occupational pension schemes.

The ACA welcomes the introduction of an authorised member surplus payment (**AMSP**). This would permit trustees to distribute surplus to members as a fully taxable defined benefit (**DB**) lump sum outside the annual allowance (**AA**) and lump sum allowance/lump sum and death benefits allowance (**LS(DB)A**) regimes. Payments may only be made once the member has reached normal minimum pension age (**NMPA**). This NMPA restriction may discourage some trustees from distributing surplus, which could undermine the wider policy intent in relation to the release of DB surplus. That said, we appreciate the current proposals are consistent with the wider principle that pensions tax legislation is designed to incentivise payments on retirement or death.

However:

- Some of the proposed authorisation criteria for the AMSP may be overly restrictive – specifically, we request that HMRC spell out requirements instead of cross-referencing Condition 5.
- Schemes winding up should have the option of paying AMSPs.
- Clarification is required on how these amounts are treated if individuals seek to transfer their benefits or the benefits need to be bulk transferred/secured on winding up.
- We hoped that the regime would go further – particularly to make it easier for both trustees and employers to use the surplus to contribute to defined contribution (**DC**) pots outside of the scheme.

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[1] https://www.gov.uk/government/publications/defined-benefit-pension-scheme-surplus-payments-to-members

The first Appendix covers comments and questions on the policy proposals. The second Appendix covers other options to use surplus that we would like to see.

We would be happy to discuss this response further and would welcome the opportunity to review any draft guidance, if that would be helpful. Please contact Kirsty Cotton on 01737 274496 or Kirsty.cotton@wtwco.com or Robbie Smith on 020 7178 3823 or Robert.Smith@mercer.com.

Yours sincerely

Kirsty Cotton FIA C.Act

Chair of the Pensions Taxation Committee

On behalf of the Association of Consulting Actuaries Limited

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1 Authorised member surplus payments

1.1 Condition 5

Condition 5 is 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."

We believe this means that DWP rules as set out in Section 37 of the Pensions Act 1995 will apply to AMSPs in the same way as to employer payments, but elements of this can be interpreted in a number of ways and it would be preferable if Condition 5 set out the required conditions directly rather than refer to entirely separate legislation (which may also be amended over time with unintended consequences in their application to AMSPs).

For example, it is not clear if "provisional amounts" of AMSPs need to be agreed between the scheme sponsor and trustee, then notified to members before an actuarial certification. If this is the case then the process would not be workable. A particular problem is that the notification to members being prior to actuarial certification means that trustees won't have certainty that they will be able to pay the AMSPs when communicating them to members with the risk that members won't receive the amounts they expected.

It is also not clear how to interpret the requirement to make any payment within 5 working days of certification where deferred payments are awarded (for those under NMPA) or trustees do not have bank details.

The requirements are even more problematic where different members might receive different amounts, or there is intended to be a regular stream of payments over time. How many actuarial certifications and notifications would be needed? Would member notifications need to include details of amounts being paid to other members?

We note that other forms of payments from DB schemes, such as discretionary pension increase payments, beyond the promised benefits, do not require any process as onerous as this. Trustees may be incentivised to share surplus via alternative routes such as one-off pension increases, even though lump sum payments are often preferable from a risk and cost perspective, because they do not increase the size of, and risks associated with, future DB liabilities.

However, we note that the policy intention for AMSPs as set out in HMRC newsletter 175[2] appears to be constrained to where schemes are "in surplus on the same funding basis as applies to payments to employers". DWP's recent proposals would mean that the scheme would need to remain fully funded on a low dependency funding basis. In order to meet this policy intention, we understand that some rules are needed which are broadly consistent with the funding element of the requirements for a surplus refund to the employer (with consistency being more important if AMSPs are made at the same time as an authorised employer surplus payment). However, this needs to be legislated for in the context of AMSPs, not authorised employer surplus payments.

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[2] https://www.gov.uk/government/publications/pensions-schemes-newsletter-175-november-2025

The member notification, the form of the actuarial certification and the payment timescales after actuarial certification should all be reviewed with AMSPs in mind. A simpler process could still deliver the policy intention while being practical to implement.

1.2 Interaction with pensions tax legislation

1.2.1 AA and LS(DB)A regimes

The ACA warmly welcomes the policy intention that "such payments are excluded from pension input amounts for the purposes of the annual allowance and do not affect an individual's entitlement to lump sum allowances."

Please could HMRC explicitly confirm that this includes that the award of an AMSP will not lose the deferred member carve out and neither will pre-A-day deferreds be brought into the annual allowance regime.

1.2.2 Enhanced and fixed protection

We would welcome confirmation that there will similarly be no impact on other areas of the pensions tax legislation.

In particular, that an AMSP will not lead to loss of enhanced or fixed protection given that the primary advantage of these protections is to enable members to increase their tax-free cash and there is no tax-free element to these lump sums. These lifetime allowance (**LTA**) protections can only be lost if they were applied for on or after 15 March 2023, so this issue may only affect a small group of people. Is HMRC able to give an indication of how many such applications have been made? (Ideally, it would be helpful to know whether any such individuals still have uncrystallised rights, but we expect that HMRC would not know that.) Pending confirmation of the above, and given the short period for consultation, we have not looked in detail at the interaction between existing pensions tax legislation and this draft legislation.

1.3 Individual transfers

The DWP legislation includes a modification designed to "ensure that the award of a deferred direct payment does not affect the members' statutory right to take a transfer value." Therefore, the DWP policy intention seems to be that deferred members awarded an AMSP payable at NMPA or after retain a statutory right to transfer their benefits.

Members only have a statutory right to transfer all of their DB rights[3], and they must identify a scheme that is able and willing to accept those rights[4]. We doubt if many providers would be willing to offer an arrangement which paid out a fully taxable lump sum from NMPA as the associated costs of setting up such an arrangement are likely to be disproportionate. As such, we expect that it would only be possible to transfer in practice if the receiving arrangement could offer a standard DC arrangement with the right to take 25% tax-free (subject to available LS(DB)A on retirement). We also doubt that many occupational pension schemes would be willing to retain the liability for the AMSP and transfer the remaining benefits as a non-statutory transfer.

How would a transfer of an AMSP to a DC arrangement be treated for tax purposes? Is the policy intention that 25% would then be available tax-free (subject to available LS(DB)A on retirement)? Would it then be treated as a 'contribution' (rather than a 'transfer') to the

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[3] Unless they include contracted out rights
[4] https://www.legislation.gov.uk/ukpga/1993/48/section/95

receiving scheme with associated annual allowance (and possibly LTA - see 1.2.2 above) consequences? Is this achieved by the legislation?

1.4 Bulk transfers

On bulk transfers, the receiving scheme might be willing to set up arrangements for active or deferred members to receive a fully taxable DB lump sum payable no earlier than NMPA. In this case, it would seem appropriate for tax legislation to allow the receiving scheme to pay the AMSP in the same way as the transferring scheme. The AMSP would need to be authorised when paid from the receiving scheme. We note Conditions 1 – 5 need to be met "at the time an actual or prospective right to receive the payment was first acquired" – does this carry through a transfer? It would also be appropriate to treat the transfer of the AMSP as a 'transfer' (not a 'contribution') and hence with no annual allowance implications. Is this achieved by the legislation?

There may also be DB-DB bulk transfer cases where the receiving scheme would be willing to accept funds relating to prospective AMSPs but provide them in a different defined benefit form, 25% of which might be available tax-free. Superfund entry could be one example. We might expect that these would be treated as a 'contribution' rather than a 'transfer' as suggested for Individual Transfers in 1.3 above.

1.5 Pension sharing on divorce

Where a member gets divorced and a pension entitlement including a deferred AMSP is shared with their ex-spouse, the considerations would be similar as those outlined in 1.3. However, given that individuals will be unlikely to intentionally use pension sharing on divorce to maximise tax relief, there will be less of a case to treat any credit derived from the value of an AMSP as a 'contribution' with annual allowance consequences for the ex-spouse.

1.6 Winding up

1.6.1 Lump sum payments before benefits are secured

Winding up can take many years. During that period, trustees might want the option to distribute surplus to members. They may wish to do this as an additional lump sum. However:

- Condition 4 specifies "if the pension scheme was not being wound up." Our understanding is that this means that the scheme has triggered the winding up process; and
- Condition 5 might also present a barrier (in addition to the issues highlighted in 1.1 above). As drafted Condition 5 may link the authorisation criteria to S76 of PA95 under which one of the requirements is that "the liabilities of the scheme have been fully discharged". Before benefits are secured, liabilities won't have been fully discharged. After they have been secured, this may mean that there would be no members in the scheme able to receive AMSPs.

We are not sure of the reason for Condition 4. Is the Government hoping that it would encourage more schemes to run on for longer (and invest in growth-orientated assets)? We do not believe that a significant number of schemes would be incentivised to run on for longer nor to invest more productively as a result of Condition 4.

Typically in a wind-up process surplus distribution to members would only be made late in the process, once benefits have already been bought-in, due diligence has been completed and the trustees have a certain idea of any remaining surplus (See 1.6.3 below). This would generally be after the wind-up process has commenced. It would be unattractive to schemes to defer the commencement of winding up just to be able to pay AMSPs to members. Condition 4 may therefore encourage schemes winding up to instead share surplus with members by insuring higher benefits. The result would be deferred tax revenues for the Treasury and slower relief from cost-of-living pressures for recipients.

During the winding up period, it would also be possible to pay winding up lump sums (**WULSs**), subject to the other conditions being met. However, the purpose of winding up lump sums is different - to enable schemes to dispose of small amounts which might otherwise be disproportionately costly, or even impossible, to buyout. It would need to be clear which type of lump sum was being paid, but otherwise we are not sure why Condition 4 is required.

As such, we suggest that Condition 4 is removed and Condition 5 reviewed.

1.6.2 Securing AMSPs

It is essential that schemes are able to pay/secure AMSPs already granted for deferred pensioners if a scheme commences winding up. For members with larger benefits, similar questions would arise to those under Individual transfers in 1.3 above. For those with smaller benefits, we ask that an AMSP could be paid as part of a WULS (subject to the usual conditions). We suggest that it would be most straightforward if the AMSP could be treated as crystallised (fully-taxable) for this purpose and therefore, we assume, with no implications for the annual allowance etc.

1.6.3 Lump sum payments after benefits are secured

It would make earlier surplus distribution decisions easier and would assist schemes that are winding up if there was an ability to distribute any residual surplus **after** benefits have been bought out, but **prior** to wind-up being completed, as a single lump sum payment to the bought-out members and their beneficiaries.

This would be useful, as it is difficult to determine the amount of surplus to share in a wind-up scenario with certainty, particularly where advisor and administrative fees are met from scheme funds – as these amounts cannot be determined with precision in advance and there is a need to fully exhaust scheme assets.

There are two ways this could be achieved.

Modify WULS definition

It may be that the easiest solution is to allow the payment of a lump sum similar to a Winding Up Lump Sum (WULS), but:

- **Member definition:** There would no longer be any members of the scheme, so a different definition of who could be entitled to the quasi-WULS would be required., and
- **Extinguish:** In these cases because the core benefit entitlement has already been extinguished, so the payment needn't extinguish an existing benefit entitlement in the scheme.

This has the advantages of allowing payments to members of all ages, and retains restrictions on the payment size to ensure that it is only used for its intended purpose.

Similar changes could be made to the definition of a trivial commutation lump sum death benefit so that payments could also be made to dependants.

Extend definition of AMSP

In section 1.6.1 above we advocated for the ability of schemes in wind-up to pay an AMSP. We expect that the most common use of this would be to distribute surplus after wind-up has been triggered, but before benefits are assigned to an insurer. However, a second potential use would be to allow a lump sum payment to members after benefits have been assigned to an insurer, but before the wind-up process has completed.

1.7 Death benefits

What is the policy intention if the member dies with an entitlement to a AMSP but before the payment date? Where a scheme provides a death benefit, for example, the accrued AMSP, then would the payment to a dependant be treated as a AMSP or a Defined Benefit Lump Sum Death Benefit (**DBLSDB**)? For a death before age 75 (likely to be the case here), an AMSP is taxable, whereas a DBLSDB is usually non-taxable. Is the policy intention that the payment would fall under notional pension property in IHTA 150A?

If there is no dependant, then could the payment be made as a DBLSDB?

1.8 Means tested benefits

Unlike other pension benefits, the timing of receipt of AMSPs will be outside of members' control. Trustees may be concerned about inadvertently making members worse off by increasing their income unexpectedly. What is the policy intention as to whether receipt of an AMSP should affect means tested benefits? Please could this be covered in guidance as pension schemes may receive queries from recipients.

1.9 Income tax thresholds

Similarly to 1.8 above, what is the policy intention as to whether receipt of an AMSP should affect income tax thresholds such as those related to the annual allowance taper, the high income child benefit charge and personal allowance taper? Again, please could this be covered in guidance.

2 Appendix 2: Other options to use surplus

In this Appendix we concentrate on changes to the tax rules. The payments would also need to be permitted by the scheme rules and changes might also be required to DWP legislation.

2.1 Trustee contributions to members' DC pots

If the scheme includes both DB and DC rights, then trustees could decide to distribute surplus by reallocating surplus to members' DC pot. Such a contribution would usually be treated for annual allowance purposes as a reallocation of an employer contribution under FA2004 S233(3) and so included as pension input when reallocated. At retirement, the proceeds from such a contribution would be treated in the same way as proceeds from any other contributions to the member's pot with the same options and LS(DB)A tests on retirement. However, because the scheme already provides DC rights, there would be no additional DC governance requirements.

If a scheme includes only DB and not DC rights, then it would be possible to first grant the member rights in the current pension scheme and then transfer them to another pension scheme. However, that is likely to require a new type of benefit (cash balance, DC – or the new AMSP[5]). This in turn could require changes to the scheme rules and, if not DC, additional long-term liabilities. If the benefit is DC, then there is the risk that the scheme would fall under additional governance requirements. Any ongoing transfer is likely to require consent (and potentially advice if safeguarded rights are being transferred), with the risk that this consent is not given and so the benefits remain in the scheme.

It would therefore be much easier if the trustees could instead opt to make a DC contribution directly to a member's DC pot held in another scheme. Tax legislation would need to allow such a "contribution" to be an authorised payment. It would also need to be clear how this was treated for annual allowance purposes. Perhaps something along the lines of FA2004 S233(3) could cover this situation?

2.2 Employer wishes to redirect DB surplus to fund DC benefits in other schemes

If the scheme includes both DB and DC rights, then the employer may ask the trustees whether they would agree to use that surplus to fund the employer's contributions to individuals' pots in the DC section of the scheme. These individuals may not all have benefits in the DB section. If the trustees agree, then the tax treatment is outlined in 2.1 above at the point that the surplus is allocated to members' pots.

Employers would like the option to use surplus to fund DC contributions for individuals in a different scheme. We are aware of some schemes that have decided not to move their DC rights to a master trust/group personal pension, and indeed one scheme that has created a DC section in their DB scheme, in order to be able to use the DB surplus to fund DC contributions. The difficulties with using surplus to fund DC contributions in a different scheme are therefore creating real barriers to DC pension consolidation and potential friction with wider policy aims.[6].

Ideally, we would like tax legislation to permit both

- Payment on an ongoing basis of surplus from pension scheme A to pension scheme B to meet that employer's (*) contributions to a different pension scheme; and
- a significant one-off refund of surplus to another pension scheme to be kept in a holding account in the receiving scheme and then allocated to member's pension pots over time.

(*) We hope that the legislation could accommodate contributions to individuals who are not members of the DB pension scheme and/or individuals who are employed by other members of the same corporate group, but we are not experts on corporation tax.

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[5] See comments in Individual transfers in 1.3 regarding transfer of these sums

[6] For example "Schemes must provide value for money – and demonstrate high standards of operational resilience, data quality, cyber security and professionalism. Where schemes cannot meet these expectations, timely improvement or consolidation is essential to protect members. TPR's corporate plan 2026 to 2027: https://www.thepensionsregulator.gov.uk/document-library/corporate-information/corporate-plans/corporate-plan-2026-27