THE SOCIETY OF PENSION PROFESSIONALS
making pensions work

The Society of Pension Professionals (SPP) response to the DWP consultation "*Surplus Flexibilities for Defined Benefit Pension Schemes: Unlocking Value for Employers and Scheme Members*"

1. Executive summary

1.1. **The Society of Pension Professionals (SPP) welcomes the draft Regulations, which provide an appropriate framework for enabling well-funded defined benefit schemes to release surplus while maintaining important protections for members.**
We support the overall policy approach and believe the combination of trustee decision-making, actuarial certification and regulatory oversight provides a robust set of safeguards.

1.2. **The SPP supports the use of a low dependency funding basis as the minimum funding test.**
We also agree that decisions on the level of surplus to be released should remain a matter for trustees, taking account of covenant strength and scheme-specific circumstances, rather than being prescribed through additional regulatory margins.

1.3. **The SPP believes the draft Regulations are principally designed around one-off surplus payments and could prove unnecessarily burdensome for schemes intending to operate on a long-term run-on basis.**
We therefore encourage the government to consider introducing a more proportionate framework for regular surplus distributions, reducing unnecessary repetition of governance and member notification requirements where circumstances have not materially changed.

1.4. **We believe that the actuarial certification requirements would benefit from refinement.**
In particular, we have concerns that the proposed three-year forward-looking test and the requirement that schemes be "at least as likely" to satisfy the funding condition may create unnecessary uncertainty and make certification more difficult in practice. We therefore suggest wording that more closely reflects existing actuarial certification requirements elsewhere in pensions legislation.

1.5. **Greater flexibility should be built into the payment process.**
In particular, trustees should be able to release less than the provisional amount originally agreed without restarting the entire process, and the proposed five working day period between actuarial certification and payment should be extended to provide a more practical operational timetable.

1.6. **The SPP supports a principles-based approach to Regulations, with detailed operational matters left to guidance from The Pensions Regulator and the Financial Reporting Council.**
Clear guidance will be essential to ensure consistent application of the new regime, particularly in relation to investment valuations, regular surplus release, actuarial certification and trustee governance.

1.7. **Alignment between DWP regulations and tax legislation is needed for segregated schemes.**
Current tax legislation does not explicitly recognise a segregated section winding up in isolation, creating ambiguity that risks stalling surplus returns. The government should therefore amend tax regulations to treat individual sections as separate schemes upon section wind-up.

1.8. **There are a number of drafting and technical points where further clarification would improve certainty.**
These include the treatment of Regulatory Own Funds schemes, sectionalised and multi-employer schemes, notification requirements and tax considerations, Crown Guarantee schemes and authorised member surplus payments.

1.9. **Subject to these targeted amendments, the SPP believes the proposed framework strikes an appropriate balance between enabling productive use of DB surpluses and protecting members' accrued benefits.**

2. Consultation response

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

2.1. The definition aligns with other references where investment advice is required (e.g. in the 2005 Investment regulations reg 2(2)(a) relating to SIPs), apart from the requirement to have 'knowledge and experience of the management of the liabilities of trust schemes'.

2.2. It is not entirely clear why an adviser would need to have knowledge of the liabilities of trust schemes in order to provide an asset value. Most investment consultants will have some knowledge as the majority of schemes will have some element of liability matching/hedging in place. However, there may be circumstances where the investment advisor providing the asset valuation is a 'pure' asset manager and hence may not meet this definition. While this element may be well intentioned, perhaps due to an expectation that asset value might include a buy-in policy, in these circumstances a valuation would usually be provided by the scheme actuary or the insurer (albeit the latter is likely to become less common under the new SORP). There may be unintended consequences of including the requirement for knowledge of the liabilities and therefore either the reason for including it should be clear or it should be excluded so that the definition fully aligns with the definition elsewhere in legislation.

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

2.3. The SPP believes that the scope of the power is clear in terms of payment of surplus to the employer. However, the regulations do not appear to cover amending scheme rules to enable this where it is not currently possible. Greater clarity on this would therefore 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?

2.4. We suggest that the drafting in the draft Payments to Employer Regulations 2027 to exclude Regulatory own funds (ROF) schemes from scope of the power in section 37(1)(a), to make payments to the employer out of funds, is fine as it stands.

2.5. More broadly the question of 'continued need' is shaped by the presence (or absence) of ROF schemes in the UK market.

2.6. Here, we note that the then Pensions Minister (Steve Webb) told the House of Commons Public Bill Committee on 28 October 2014 that: *"While ROFs are recognised in UK legislation, the Pensions Regulator has advised that currently it does not regulate any schemes as ROFs".* We suggest that it would be appropriate for the DWP to check with the Pensions Regulator whether there are any existing ROF schemes in the UK.

2.7. ROF schemes were originally referenced in the 2006 Regulations as there was a UK regime specifically created for them to satisfy the requirements of Article 17 of the European first IORP Directive 2003/41/EC. The second IORP Directive 2016/2341 has the relevant provision for ROF schemes at Article 15.

2.8. However, the UK left the European Union and we note that the Occupational and Personal Pension Schemes (Amendment etc) (EU Exit) Regulations 2019 attempted to update section 42 of the Pension Schemes Act 2015 to a post-EU membership situation for ROF schemes, but that the provision was repealed from 1 August 2022 by s.128(c) of the Pension Schemes Act 2021 with its explanatory notes stating that: *"This section repeals uncommenced sections of the Pension Schemes Act 2015 which have been superseded by the provisions in Part 1 of the Act.".* Part 1 of the 2021 Act was that introducing Collective Money Purchase Benefits (commonly referred to as CDC schemes). All that stated, we recognise that the Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005 are still in force.

2.9. In the circumstances there may be some uncertainty over the future role of ROF schemes in the UK pensions arena and therefore the answer to this question must depend on, first, whether there are any such schemes in the UK currently (or have been in the last 20 years) and, second, whether it is still the policy intention to allow them in future.

2.10. If there is no utility to the current legislation, then it would be better to repeal it for simplicity.

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

2.11. The SPP supports the flexibility of allowing the use of unaudited asset values in the actuarial assessment. The draft regulations instead require the trustees to take “appropriate advice” and define this in broad terms. However, it is not clear what the appropriate advice should cover. The SPP would expect Trustees to seek advice from either their appointed investment consultant or directly from the investment managers. In some circumstances the value of a holding could be different depending on the circumstances (e.g. immediate realisation could incur a penalty, so may have a different value compared to holding to maturity).
The appropriate value to use may depend on circumstances surrounding the surplus release – if surplus release is to occur over a period of time an assumption of holding to maturity may be appropriate, but a larger one-off release may point to a more short-term analysis. The SPP expects further consideration of this may be better left to TPR guidance rather than attempting detailed specification in regulations.

2.12. As a general comment, the SPP might have expected the requirement for the calculation of liabilities to be explicitly aligned with that required for the low dependency basis under the scheme funding and investment regulations[1], and this could a better approach (see Question 5 below). However, this response comments below on the draft regulations as they stand.

2.13. The description of the liabilities to be included in the actuarial assessment appears to mirror that used for the employer debt regulations[2].

For such valuations, accrued rights are normally taken to mean the rights as if a member had left the scheme at the valuation date (a discontinuance approach). The SPP presume this is the intention behind the description used in the regulations, although we would note that a low dependency funding basis is likely to include provision for future salary increases where past service benefits still retain some element of link to current salary.

2.14. The draft regulations require certain assets and liabilities in the process of being transferred to be excluded from the actuarial assessment which again appears to be consistent with the approach taken in the employer debt regulations[3]. Whilst this is appropriate for the calculations of employer debts (a certification at a point in time), the surplus release process will in some circumstances be a forward looking one, so the impact of any transfers in progress could be more relevant. However, the approach may still be reasonable as the SPP notes that the actuary is able to reflect other matters they consider relevant when deciding on whether a certificate can be provided.

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

2.15. The SPP think the use of a low dependency basis is a reasonable approach, assuming the intention is to set a minimum funding level for consideration of surplus release. To provide some protection the DWP could consider requiring a margin (for example at a defined margin above a low dependency basis) before surplus can be released but, on balance, the SPP believes this is something that should be determined by trustees on a case-by-case basis. Trustees are likely to require more comfort in some cases, but in others may be comfortable at levels close to a low dependency level. The availability of covenant support will be a key factor in trustees’ decisions, and in practice trustees are unlikely to consent to release without the presence of some margin. TPR has indicated that it will prepare guidance for the trustees and this will be key for them.

[1] **The Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations, Department for Work and Pensions, April 2024:**
https://www.legislation.gov.uk/uksi/2024/462/contents/made
[2] **The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations, Department for Work and Pensions, April 2008:**
https://www.legislation.gov.uk/uksi/2008/731/contents
[3] **Ibid**

2.16. In practice, whilst the regulation 5 sets out a test for determining whether surplus release is possible, it will be the advice received by trustees (in relation to funding, investment, covenant, balance of powers and other legal matters) during the subsequent negotiation that will drive how much surplus is considered for release.

2.17. The SPP notes there is potentially a range of assumptions that can be used for a low dependency funding basis under the 2024 Funding and Investment Strategy regulations[4], and the level of prudence will vary from scheme to scheme.

2.18. In isolation this might suggest that there would be scope for manipulation, but in conjunction with other safeguards, including the requirement for the valuation be prepared by the scheme actuary, required agreement between the trustees and the sponsor, the member notification requirement, proposed guidance from TPR, and proposed guidance for actuaries from FRC, the SPP believes the whole process contains appropriate safeguards. There is a risk of setting the minimum too high to remove the chance of any meaningful level of surplus release being possible.

2.19. The draft regulations refer to "a low dependency funding basis" rather than "the low dependency basis" set out in a scheme's latest Statement of Strategy. The SPP recognises that this wording provides flexibility, allowing the actuary to reflect changes in circumstances and the different purpose of a valuation undertaken to assess surplus release. However, the absence of any explicit link to the Statement of Strategy also raises questions about the governance of this approach. In particular, it is unclear what constraints apply in determining "a" low dependency funding basis and who is responsible for agreeing it. While we would expect the basis adopted to be broadly consistent with the scheme's low dependency funding basis in most cases, it would be helpful for the regulations or accompanying guidance to clarify the intended relationship and the principles that should govern any differences.

2.20. An alternative approach would be to specify that the basis to be used should be the low dependency basis set out in the most recent Statement of Strategy[5], but with the facility for an alternative to be agreed if circumstances have changed since it was prepared.

2.21. In practice, the SPP would expect most schemes to carry out an assessment at the last full valuation date, updated to a more recent date in a consistent manner if necessary. As noted above, it will then be advice under draft regulation 8. (2) that will be critical to the agreement of the provisional amount.

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.

2.22. The SPP broadly supports the structure of the proposed payment process. In particular, the staged approach of agreement in principle between trustees and employer, actuarial assessment, member notification, final actuarial certification and then payment provides a sensible governance framework and appropriately reflects the significance of any surplus release decision.

2.23. However, the SPP believes there are some practical issues which would benefit from further clarification or that should be expanded on in the drafting of the regulations. The framework as currently proposed appears less suited to more regular or frequent surplus distributions (e.g. annual distributions within an agreed framework) given that the full process, in practice, effectively stretches to around six months. For schemes intending to operate on a long-term run-on basis, repeated surplus releases should not require unnecessary duplication of governance processes where circumstances have not materially changed. This is likely to be viewed as a disproportionate governance barrier to using the new surplus flexibilities. Whilst "regular" surplus payments are theoretically possible under the proposed regulations, in practice the draft requirements and timescales surrounding payments would be materially cumbersome for regular distributions.

[4] **The Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations, Department for Work and Pensions, April 2024**:
https://www.legislation.gov.uk/uksi/2024/462/contents/made

[5] **Example statement of strategy, The Pensions Regulator, April 2024:**
https://www.thepensionsregulator.gov.uk/en/document-library/consultations/statement-of-strategy-consultation/example-statement-of-strategy

2.24. The SPP therefore suggests that consideration is given to an alternative, more workable framework for regular distributions. For example, this might require the actuarial certificate to be given before each surplus release but the rest of the process (in particular the 3-month member notification requirement before every surplus distribution) is pared down where a framework for regular distribution is agreed between trustees and employer e.g. a shorter member notification requirement. TPR guidance might then include expectations of what a governance framework would look like for any agreements regarding regular distributions.

2.25. Trustees might be more comfortable and therefore more likely to agree to smaller regular surplus payments that could be 'switched off' if circumstances change, as opposed to large one-off lump sum payments to the employer. The combination of a disproportionate process for regular payments and trustee reluctance for one-off payments could potentially mean fewer schemes choose to run-on and instead opt for the insurance route.

2.26. Similar points apply for those trustees and schemes wishing to release a large surplus in a series of payments rather than in one lump sum (a so called reverse recovery plan). As currently drafted, the process will encourage a smaller number of larger payments, to reduce the governance burden, which we do not believe is optimal. It would be helpful to cut down the governance burden. For example, some steps of the process such as the member notification requirement, could be changed to being a requirement **per decision** rather than **per payment.** So, for example trustees wishing to release £100m back to the employer in 5 equal chunks of £20m over 5 years, would only have to notify members once of their intentions (and then again if anything changed).

2.27. The SPP suggests that the "provisional amount" is either expressed in the regulations as a maximum amount for the proposed surplus release, or that flexibility is expressly catered for to enable trustees to decide to distribute less surplus (than the "provisional amount") at the end of the process. Otherwise, unless they decide to pay the "provisional amount" that is notionally agreed at the beginning of the process, our reading of the regulations as they stand is that the process would have to start again from the beginning, which we do not think is what the government intends.

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

2.28. The actuarial certification process is generally clear (though see response to question 8 in relation to the proposed forwarding-looking assessment).

2.29. Requiring certification immediately before payment to the employer provides an important safeguard that the funding conditions continue to be satisfied at the point surplus leaves the scheme. However, the regulations should be clear that even with an actuarial certificate, it is still the trustees' decision whether or not to go ahead with the payment and how much surplus to release. FIS regulations require trustees to review FIS *"after any material change in the circumstances of the scheme or of the employer in relation to the scheme."* These regulations could also state that trustees should consider whether there have been any material changes since the assessment and whether it was still appropriate to release the surplus.

2.30. The SPP has significant concerns regarding the requirement that payment must be made within five working days following certification. Whilst the intention is understandable, this may prove unnecessarily restrictive in practice.

Administrative processes, banking arrangements, trustee execution requirements, or unexpected operational issues could prevent payment being made within five working days despite there being no change to the scheme's funding position.

2.31. It would therefore be preferable to extend the period to 20 working days or alternatively permit payment within a "reasonable period" provided the trustees remain satisfied that no material change has occurred which would invalidate the actuarial certification.

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

2.32. Overall, the SPP thinks it is sensible to include some form of requirement for a three-year forward-looking assessment as part of the actuarial certification process. Paragraph 3(b) of Section 9 allows the actuary to consider any other matters which are viewed as appropriate when carrying out this assessment.

2.33. However, the SPP is concerned that use of the phrase “at least as likely” and the requirement for it to be satisfied at any given time within the three year period.

2.34. The SPP wants to avoid scenarios where trustees, employers and their respective actuaries disagree over whether a given level of surplus release means that Condition (2) is satisfied, due to differences in actuarial assumptions that might be made. Any such disagreements could lead to delays in any surplus being released and potentially to scenarios where any plans to release surplus are not taken forward. We also have a concern that what may be intended to be a simple check for “anything very out of the ordinary” (e.g. a high level of anticipated expenses in the near term, or some scheme specific event) could be interpreted as a requirement for detailed stochastic analysis which could result in additional unnecessary costs, especially for smaller schemes where this is not proportionate.

2.35. On the other hand, there is one interpretation of the current phraseology (and arguably the most natural interpretation) which would make this test completely unnecessary – if a scheme is fully funded at the start of a period on a low dependency basis, which is required by law to be prudent, then by definition it is at least as likely to improve in funding position than deteriorate and hence this test will always be passed.

2.36. An alternative formulation of Condition 2 that would help to address the above concerns is that actuaries must certify that scheme “can be expected to have assets greater than or equal to the value of the scheme’s liabilities on a low dependency funding basis at the end of the three-year period beginning with the date that the actuarial certificate is given”. This alternative wording is intended to be consistent with the certification that a scheme actuary must give in relation to a Schedule of Contributions where a scheme has a deficit following a triennial actuarial valuation.

2.37. The SPP notes that the Financial Reporting Council (FRC) intends produce some guidance to support actuaries who will be providing the certification required under these regulations, which is welcome. However, guidance will not have the same standing as the law and so it is very important that the law does not act as a barrier or impose unnecessary burdens.

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?

2.38. The SPP believes the regulations as they stand appear The SPP believes the regulations as they stand appear to most naturally cater for scenarios where there is a decision to release surplus as a single payment, and there would still be a substantial surplus against the low-dependency funding basis post release.

2.39. For cases where a release of surplus would leave the scheme with a more modest margin above the low dependency basis, the SPP believes it could be appropriate to allow flexibility for the amount released to change between agreement of the provisional amount and the payment. In particular we think it would be reasonable for the Trustees and the Employer to agree a lower amount to be paid at the final stage, given that there is likely to be a significant amount of time between the original agreement (and the actuarial assessment under regulation 5) to the payment being certified.

2.40. This flexibility would allow a lower amount to be paid without requiring the process to restart. This could be achieved by amending the draft regulations to specify that the provisional amount is the maximum that will be released.

2.41. For cases where a staged release of surplus is anticipated the SPP has concerns over whether the draft regulations offer sufficient flexibility as they stand. The point raised above is relevant here – the time from the agreement to later payments will be even longer so the facility to pay a different (lower) amount if the situation changes without restarting the process could be helpful.

2.42. It is not clear whether the regulations as they stand would require the trustees to obtain a new actuarial assessment under regulation 5 each time they wish to exercise their power, or whether the same assessment could be used for multiple exercises. The SPP also notes that there is no requirement around how recent the actuarial assessment must be. At the very least the SPP would expect the Trustees will want to update this to reflect the most recent funding valuation, and we suggest the draft regulations are amended to clarify this. Alternatively, the regulation could require that the low dependency basis used to reflect the latest statement of strategy (subject to any departures agree between the parties for the purpose of surplus release). If the regulations do not include any further requirements, the SPP would expect this to be something TPR would cover in guidance to trustees, and the FRC in its proposed guidance for actuaries.

2.43. It appears from the draft regulations that where a staged release is proposed there is a requirement on trustees to provide notification to members before each payment. We expect this will encourage a smaller number of larger payments, to reduce the governance burden, which we do not believe is optimal. It would be helpful to cut down the governance burden – for example some steps of the process (e.g. the member notification requirement) could be changed to being a requirement **per decision** rather than **per payment**. So, for example, trustees wishing to release £100m back to the employer in 5 equal chunks of £20m over 5 years, would only have to notify members once of their intentions (and then again if anything changed).

2.44. We note that for a summary funding statement under the disclosure regulations[6] information on payment of surplus to the employer is required each year.

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

2.45. Yes, they should. The provisions are largely carried over from the 2006 Payments to Employer Regulations 2006 with the addition of a notification to the Pensions Regulator in line with the policy intention. Earmarked schemes can have more than one member and to leave a trapped amount of money in relation to one or more former members while the other remaining members are deferred in the scheme but cannot benefit from that money is an unproductive use of money. It might as well be paid to the employer.

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

2.46. The notification requirements are generally clear and appropriately recognise the importance of transparency where surplus is released from a pension scheme. However please see the response to Question 6 in relation to issues regarding an agreed framework for regular surplus release – the SPP has concerns that the 3-month notification requirement would be very cumbersome to carry-out on a regular (e.g. annual) basis, with no clear benefit in practice if there is no material change in scheme circumstances.

2.47. The SPP notes that the requirement is for notification, rather than consultation (which we support). However, where there is feedback from members to the notification, trustees might understandably decide to pause the process whilst they consider the feedback. This could potentially push timings back and mean that the target date is not met. It would be helpful if clarification could be included as to whether there can be any flexibility in the ultimate payment date (beyond the communicated “target date”) provided that the Regulation 9 actuarial certificate has been provided.

2.48. The SPP also has some specific drafting comments in relation to regulation 11:

- Should regulation 11(1)(b) include the word “provisional” immediately before “amount of the payment to the employer” given, at this stage in the process, it is provisional?
- Should regulation 11(1)(c) also refer to “and any authorised member surplus payments”?
- Regulation 11(3) appears to be at odds with 11(4) given that regulations 26 to 28 of the Disclosure of Information Regs 2013 (as referred to in (4) for how the written statement “may” be provided) do not cater for what is proposed in regulation 11(3). And is the word “may” in 11(4) intentional? The current drafting, taking regulations 11(3) and 11(4) together, is not clear regarding how trustees may and may not notify members.

[6] **The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, Department for Work and Pensions, April 2014:**
https://www.legislation.gov.uk/uksi/2013/2734/contents

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

2.49. There are some points that require further clarification:

- For 12 (a) and (b) is this the assets/liabilities at the date of the actuary's assessment (reg (8)) or the date of certification (reg 9)? The date of the assessment is likely to be sometime (6 months?) before the date of the certification and the payment of surplus to allow time for negotiation, notification etc.
- In addition, are these liabilities before or after allowing for any benefit improvements/authorised surplus payments given these are set out separately in (e) and (f)?
- Should 12(c) be the date of the actuarial certificate rather than the actuarial assessment or should both be included? The draft actuary's certificate suggests including both dates. Also, it is the position at the date of certification that is key in whether or not the surplus can be paid.
- The Notifications for TPR in the draft Regulations do not require commentary as to how the trustees have satisfied themselves that the security of members' accrued benefits has been appropriately considered (in the context of the overall strategy). If the notification is intended to offer reassurance that there will not be regulatory engagement, then the notification requirements should cover the points that TPR would potentially engage on.

2.50. A wider question might be to consider what TPR is going to do with the information in the notification given it is submitted after the surplus payment has been made to the employer? The consultation also states TPR will provide further guidance on this but in most cases where trustees and sponsors have followed the steps in the regulations we would not expect TPR to need to respond to such a notification and a response should be limited to cases where there are regulatory concerns. Trustees and sponsors will want some reassurance that where they are acting in line with the regulations and any guidance there will not be additional regulatory engagement after the event unnecessarily taking up time and expense. Alternatively, the regulations could require TPR to be notified at the same time as the members which would provide it with an opportunity to engage with trustees if it had any concerns.

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

2.51. The SPP agrees that the new framework and relevant funding tests and conditions to pay surplus to an employer should be applied at a section level where a section is treated as a separate scheme for funding and employer covenant purposes. This will help to ensure that surplus attributable to one section is not released by reference to assets or liabilities belonging to another section, and that members in each section remain appropriately protected.

2.52. The SPP agrees that the proposed provisions for sectionalised schemes under draft Regulation 13(1) to 13(5) reflect the current provisions of Regulation 18 of the 2006 Regulations on sectionalised schemes as that Regulation currently applies to section 37 (and section 76) of the Pensions Act 1995 (1995 Act). The relevant provisions of draft Regulation 13 (i.e.13(1) to 13(5)) are intended to capture schemes which have more than one employer and more than one section where the rules of such schemes prohibit cross subsidy between sections and the assets of a section being attributed or used for the purposes of any other section.

2.53. These are the "hallmarks" of sectionalised (or segregated) schemes for the purposes of several pieces of pensions legislation which recognise the concept of a sectionalised scheme, although there is no single definition of sectionalised schemes across pensions legislation.

2.54. Regulation 13 therefore achieves the policy intention to allow amendments to separate sections of sectionalised schemes which have restrictive rules on sharing surplus without the need to amend the wider scheme rules.

2.55. However, we would note that the application of Regulation 13(6) to the requirement for employer consent under Regulation 9(4) could apply to both sectionalised schemes and non-sectionalised schemes with more than one employer. We assume that is the intention of Regulation 13(6).

2.56. The SPP would therefore suggest that the scope of the application of Regulation 13(6) is clarified to make this clear on the face of the legislation as there is a risk that the consent requirement under Regulation 9(4) could seem unworkable to non-sectionalised schemes with more than one employer.

2.57. Although the response to the specific consultation question on Regulation 2 has been provided separately above, Regulation 2(2) is relevant to schemes which have, or have had, more than one statutory employer.

2.58. The SPP notes that Regulation 2(2) appears to be drafted to apply to schemes where there is a single event which closed a scheme to future accrual in respect of all members and therefore that the current statutory employer will be the employer which historically employed active members before closure to future accrual.

2.59. The SPP has some concern as to whether Regulation 2(2) recognises that there are also schemes where the current statutory employer was not an employer of active members before the "main" event which closed the scheme to future accrual. In some cases, following corporate restructurings, disposals or other corporate group activity, the employer which last employed active members may no longer be in the employer group, while the current statutory employer only became a statutory employer a considerable period after the closure to future accrual.

2.60. For those schemes, a typical process involves reopening and closing of the scheme to accrual by allowing a limited number of employees to become active members for a short period of time, and usually this occurs a considerable period after the "main" event which closed the scheme to future accrual (to the majority of members).

2.61. It may be that Regulation 2(2) is intended to operate adequately in those circumstances on the basis that an employer would have become a post-closure statutory employer through the established process described above. However, if that reflects the policy intention, it would be helpful for the drafting to expressly clarify that Regulation 2(2) also applies to statutory employers who did not historically employ active members before the scheme closed to future accrual, but who became statutory employers through post-closure arrangements. Without such clarification, there may be uncertainty for schemes where the current statutory employer is not the same entity as, and is no longer connected with, the employer that last employed active members.

2.62. The wording at the end of Regulation 2(2) could be amended to add the words "***or the last event (where applicable)***" after the words "before the occurrence of the event" and before the words "after which the scheme ceased to have such members".

2.63. In addition to our comments on Regulation 13 above, the SPP wishes to highlight a crucial tax legislation gap for segregated schemes that are winding up on a section-by-section basis.

2.64. Under pensions legislation (Regulation 12 of SI 1996/3126), a single section of a segregated scheme can wind up, release surplus to its sponsoring employer, and allow the remaining sections to continue. However, tax legislation (*SI 2006/574*) and HMRC guidance (*PTM145300*) do not currently recognise the concept of a segregated section winding up in isolation.

2.65. This creates legal tax uncertainty that is currently stalling surplus returns, even where trustees are comfortable meeting all statutory and fiduciary requirements. The SPP wrote to HMRC in June 2026 to alert them to this issue but we believe it is worth highlighting here too.

2.66. The SPP believes aligning DWP regulations and tax legislation could be achieved by amending Regulation 2 of SI 2006/574 (or equivalent tax regulations) to insert explicit provisions treating each section of a segregated scheme as a separate scheme for authorised surplus payment purposes upon a section wind-up (matching Regulation 12(1), (1A), and (1B) of SI 1996/3126).

2.67. Alternatively, HMRC guidance at PTM145300 could be updated to reflect this. This would be helpful in providing clarity to the industry but would not eliminate the underlying statutory ambiguity, because HMRC's guidance cannot override legislation. It would therefore be a less preferred solution.

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

2.68. Regarding the exclusion of schemes with a Crown Guarantee, we believe there is a risk this catch-all policy risks missing the nuance around how such guarantees are treated within relevant private-sector schemes. In many cases for example these guarantees are not allowed for when making funding decisions, and so there are arguments for allowing such private-sector Crown guaranteed schemes to also be able to participate in the new DB surplus release regime. There is also a risk that excluding such schemes could be taken as a signal that the government has concerns around this policy and the risks posed to DB scheme security, which could serve to undermine the new regime. We would also note that if the policy went ahead as per the draft regulations, then for any schemes with a Crown Guarantee but where the sponsor is entitled to the surplus on wind-up, the members might be better off if the Crown Guarantee were scrapped – as it would enable the trustees to try to negotiate member benefit improvements in exchange for the sponsor receiving some surplus sooner than wind-up.

2.69. That point aside, we broadly understand the categories of scheme intended to be excluded or subject to modified requirements. However, we think the regulations and accompanying explanation would benefit from further clarity in a number of areas.

2.70. For example, Regulation 15 excludes superfund schemes from section 37, but regulation 14 does not exclude them from the section 36B scheme modification power. It would be helpful to confirm whether this distinction is intentional and, if so, how this will interact with the intended future regulations governing surplus release by authorised superfunds.

2.71. Further clarity would be helpful where Crown support or a ministerial approval requirement applies to only part of a scheme. Regulations 14(2) and 15(2) appear to envisage a relatively simple division between a protected part and an unprotected part. In practice, schemes may have multiple sections or support arrangements that apply only to particular employers, liabilities, or benefits. The drafting should make clear how the provisions apply in those circumstances, including where the relevant section is treated as a separate scheme under regulation 13. References to “that part and the other part” may also be too narrow for schemes comprising more than two relevant parts.

2.72. We would also welcome clarification of the scope of a Crown guarantee or “any other arrangements” for securing that a scheme has sufficient assets.

2.73. In particular, it would be useful to explain how the provisions apply to support that is capped, conditional, time-limited or limited to particular liabilities. The regulations or guidance should identify who is responsible for determining whether a scheme falls within these exclusions and what evidence trustees should obtain.

2.74. Finally, we suggest that the drafting is reviewed to address some minor points. In particular, regulations 14(2) and 15(2) refer to a “guarantee” mentioned in paragraph (1)(b), although paragraph (1)(b) concerns ministerial approval rather than a guarantee. Regulation 15(1)(a) also appears to omit the word “assets”.

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

2.75. The SPP welcomes the additional flexibility of authorised member surplus payments, which will give trustees another option to ensure that members can benefit from surplus distributions without increasing scheme liabilities.

2.76. We have the following observations in relation to how the proposed deferred awards will operate in practice:

i) As drafted, revaluation of a deferred award appears always to cease at normal minimum pension age (NMPA). We do not think this produces the intended outcome in all cases.

First, where a member dies before reaching NMPA, the legislation should make clear how revaluation applies to any amount subsequently payable to a beneficiary.

Secondly, schemes may, for legitimate reasons such as administrative simplicity, choose not to pay a deferred award immediately on a member reaching NMPA, instead paying it at a later date (for example, on retirement). In those circumstances, we consider revaluation should continue until the payment is made, so that members are not disadvantaged by the timing of payment.

We therefore suggest amending new regulation 5A(2)(c) so that revaluation applies from the date the deferred award is made until the earlier of the member's death or the date the award is paid, rather than automatically ceasing at NMPA.

ii) When the definition of an “authorised member surplus payment” is introduced into the Finance Act 2004, the legislation should make clear: (i) that such a payment is not a money purchase benefit; (ii) the treatment where a member dies before the payment is made, including whether it may be paid as a lump sum death benefit to a beneficiary; and (iii) the intended inheritance tax treatment where such a payment is made following the member's death.

iii) It would also be helpful if the Finance Act included an overriding statutory power enabling trustees to make authorised member surplus payments. Without such a provision, schemes may need to amend their rules before trustees are able to make these payments, creating unnecessary cost and delay.

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

2.77. The SPP is of the view that the draft Regulations are clear on how deferred awards affect members’ statutory right to take a transfer value.

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.

2.78. The revocation and amendments to the relevant parts of the 2006 Regulations disapply the 2006 Regulations to section 37 of the 1995. We would not expect this to cause any issues, or require any transitional provisions, because the proposed changes to the 2006 Regulations reflect the new framework for payments under section 37 of the 1995 Act introduced by the Regulations.

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

2.79. The SPP does not foresee any issues with revoking Regulations 36 to 39 of the 2014 Regulations.

2.80. This is because Regulations 36 to 38 of the 2014 Regulations set out transitional provisions for schemes (including sections of a sectionalised scheme) which were treated as a money purchase scheme or section and made a payment of surplus to an employer before the definition of "money purchase benefits" in the Pension Schemes Act 1993 changed (on 24 July 2014) without complying with the conditions set out in section 37 or 76 of the 1995 Act.

Regulation 39 amended the definition of "money purchase benefits" in the 2006 Regulations (from 24 July 2014) so that it cross-refers to the updated definition in the Pension Schemes Act 1993. Revoking Regulations 36 to 38 of the 2014 Regulations would therefore not cause any issue.

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

2.81. In the SPP’s view the proposed certificate in the Schedule captures most of the relevant details. The proposed certificate could also include the pension scheme registration number, as this is required on most notifications to TPR

3. About The Society of Pension Professionals

3.1. The SPP is the representative body for a wide range of providers of advice and services to pension schemes, trustees and employers. Our work harnesses the expertise of our membership, striving for a positive impact on pension scheme members, the pensions industry and its stakeholders.

3.2. The breadth of our members is a unique strength for the SPP. Our membership of 90 corporate organisations employs over 20,000 pension professionals including actuaries, lawyers, professional trustees, DC consultants, investment managers, providers, administrators, covenant assessors, and other pension specialists.

4. Further information

4.1. For more information about this consultation response please contact SPP Director of Policy & PR at: phil.hall@the-spp.co.uk or telephone the SPP on 0207 353 1688.

4.2. To find out more about the SPP please visit the SPP web site: https://the-spp.co.uk/

4.3. Connect with us on LinkedIn at: https://www.linkedin.com/company/the-society-of-pension-professionals/

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