Trustee Agenda

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Welcome to our Autumn Edition of Trustee Agenda

Welcome back, I hope you managed some time off over the summer.

As always, the pensions world hasn't paused for the holidays. With several major consultations closing in September and the DB surplus reforms continuing to take shape, the Autumn is shaping up to be another busy period for trustees.

In this edition, we look at two of the most significant developments on trustees' agendas at the moment: the draft regulations on releasing surplus from defined benefit schemes, and the forthcoming changes to the treatment of pensions under the inheritance tax regime from April 2027.

We also round up the wider landscape in our "on the horizon" tracker, covering everything from DC scale and small pots consolidation to the Pensions Commission's ongoing review and the expected guidance on trustees' fiduciary duties. As ever, do get in touch if you'd like to talk through what any of this means for your scheme.

Finally, we hope to see many of you at our half-day conference and drinks event on Tuesday 22nd September: "From surplus to security – balancing opportunity and risk". Please contact any of our pensions team if you would like to attend.



Phil Goss



Releasing surplus from defined benefit pension schemes

Changes expected to take effect from April 2027 will make it easier for trustees of defined benefit (DB) pension schemes to release surplus back to employers and members. The framework for these changes was included in the Pension Schemes Act 2026 and we covered this in detail in the Summer 2026 edition of Trustee Agenda. The Government has now published a consultation on draft regulations setting out further details. The Pensions Regulator has also published a statement on the upcoming changes.

Trustees of well-funded DB schemes should familiarise themselves with the changes and start thinking about the implications for their scheme. In particular, trustees should consider adopting a surplus policy.

Background

The Pension Schemes Act 2026 introduces a new overriding statutory power for trustees to make surplus payments to employers. Once the provisions are in force, trustees will be able to pass a resolution to modify their scheme rules to provide for surplus payments to be made to employers where the rules do not already allow for this. Trustees will also be able to remove or relax any restrictions on an existing power to release surplus under their scheme rules.

The draft regulations set out the conditions that will need to be met for trustees to make surplus payments to employers.

What are the conditions for surplus release?

The draft regulations set out five conditions for surplus release to employers:

1. **Funding threshold:** trustees may only pay surplus to the employer where the value of the scheme's assets exceeds its liabilities on a low dependency funding basis, and the actuary is satisfied that this is as likely as not to remain the case for the **next three years**. Trustees must obtain an actuarial assessment, and the actuary must provide a certificate to that effect.
2. **Notification to members:** at least **three months** before the proposed payment date, trustees must provide members with a written statement confirming that they have decided to make the payment, the proposed date and amount of the payment and, where applicable, that the trustees have decided to improve member benefits.
3. **Employer consent:** the employer must consent to the payment of surplus. In the case of a multi-employer scheme, either the employers' representative must consent, or, if there is no such representative, all employers must consent.
4. **Timing of payment:** the payment to the employer must be made within **five working days** of the actuarial certificate being given.

5. **Notification to the Pensions Regulator:** trustees must notify the Regulator within **one week** of the date on which the surplus payment is made. The notification must include details about the scheme's funding level, the amount of the payment to the employer, and any improvements to member benefits.

What about surplus payments to members?

The Government intends to make changes to tax legislation through the Finance Bill 2026–27 to allow trustees to make lump sum payments to members as authorised member surplus payments. The draft legislation, together with a policy paper and explanatory note, has already been published by the Government. This confirms several important points:

- the scheme must not be in winding up, so it will only be possible to make lump sum payments to members while the scheme is ongoing;
- payments to members must meet the same conditions for surplus release as employer surplus payments (as outlined above); and
- payments will be restricted to members above normal minimum pension age (NMPA) or who meet the ill health condition, or to dependants following the member's death. Trustees will still be able to award authorised member surplus payments to members below NMPA, but such payments will need to be deferred until the member reaches NMPA. The draft regulations provide that deferred authorised member surplus payments must be revalued during the period of deferment.

The Pensions Regulator's statement

Alongside the consultation, the Regulator has published a statement providing its early views on the principles trustees should consider when releasing surplus, together with high-level illustrative examples of how trustees should approach surplus release now, and how this may change once the regulations come into force.

In relation to the question of whether members should benefit from any surplus, the statement notes that the policy intent is not to mandate the use of surplus for any particular purpose. However, the Regulator anticipates that both the employer and the members may expect to benefit from the release and that this will feature in discussions. In doing so, the Regulator suggests trustees might consider:

- the extent to which members have contributed to the scheme;
- whether benefit provision has been reduced, capped or enhanced in the past;
- the impact of inflation on members' standards of living and the extent of indexation provided under the scheme rules; and
- whether members have a reasonable expectation of sharing in the surplus.

Next steps

The consultation closed on 2 September 2026.
The regulations, the relevant provisions of the Pension Schemes Act 2026 and the changes to the tax legislation are all intended to come into force on 6 April 2027.
Any release of surplus between now and that date remains subject to the existing regime.

The Regulator is expected to consult later this year on further guidance elaborating on the principles set out in its statement and the requirements set out in the regulations. The Financial Reporting Council is also expected to develop technical actuarial guidance to help scheme actuaries certify that surplus payments to employers meet the legislative requirements.

What does this mean for trustees?

Trustees of well-funded DB schemes should familiarise themselves with the proposed new regime for surplus release. If the sponsoring employer has not already raised the subject, trustees can expect that the question of surplus release will arise in future. In order to anticipate any such discussions, the Regulator is encouraging trustees to consider putting in place a policy on surplus release, appropriate to the context of their scheme. Any such policy may need to set out the trustee's position in relation to:

- benefit improvements for members in return for agreeing to pay surplus to the employer; and
- the level of downside protection (which may include an appropriate funding buffer) that needs to be in place, so as not to prejudice existing benefits.



Claire Collier



Changes to inheritance tax on pensions

From 6 April 2027, most unused pension funds and death benefits will be brought within the value of a deceased person's estate for inheritance tax (IHT) purposes. The Government has said the aim of the change is to prevent pension schemes from being used and marketed as tax planning vehicles to transfer wealth, rather than for their intended purpose of funding retirement, and to remove inconsistencies in the IHT treatment of different types of pensions.

For trustees, the changes will have an impact on their administration processes following the death of a member, as there will be new requirements in relation to the information they will be required to provide to HMRC, personal representatives (PRs) and beneficiaries. Some trustees may also wish to consider, together with the sponsoring employer, whether any changes to death benefit design are appropriate or desirable.

How does IHT currently work?

In a nutshell, IHT is a tax on a person's estate (including their property, money and other possessions) when they die. It is not charged on an estate if its value is below £325,000, or if everything above that threshold is left to the person's spouse or civil partner, or to a charity. The standard inheritance tax rate of 40% is charged on parts of the estate above the threshold.

Currently, pensions and lump sums payable from a registered pension scheme after a member's death are not generally part of the member's estate or chargeable to IHT. The main exception is where lump sum death benefits are not discretionary, although this is unusual.

When will IHT be payable on pension benefits from 6 April 2027?

From 6 April 2027, any property held under a registered pension scheme that is available for paying a benefit on the deceased's death (referred to as "notional pension property") will be treated as part of the person's estate for IHT purposes. This will be the case whether or not payment of the benefit is discretionary and will apply to deaths on or after 6 April 2027. If the member dies before 6 April 2027, the current rules will apply even if benefits are paid after this date.

All pension death benefits and lump sum death benefits will be in scope, except:

- a dependants' scheme pension;
- a trivial commutation lump sum death benefit whose payment to a person extinguishes the person's entitlement to a dependants' scheme pension;
- a dependants' annuity, or a nominees' annuity, which was purchased together with a lifetime annuity payable to the member; and
- death in service benefits.

Death in service benefits are defined in the legislation as benefits (in any form) payable in respect of a member who is in employment (or other work of a particular description) immediately before their death. HMRC has clarified that it is only benefits paid from the member's current employment (or other type of work) that qualify as death in service benefits; payments from schemes related to previous jobs where the deceased was a deferred member do not meet the conditions for this exclusion.

It is also worth noting that, if the benefit would have been paid under other circumstances, it will not meet the conditions to be a death in service benefit and will not therefore be excluded. For example, if beneficiaries receive a three times salary lump sum plus a refund of contributions, but the refund of contributions is also payable on death in deferment, only the three times salary lump sum will count as a death in service benefit.

The exemptions for spouses, civil partners and charities will continue to apply.

What are the new information sharing requirements?

Following the death of a member, the PRs will need to contact each of the deceased's pension schemes to request both:

- the value of the notional pension property; and
- the split between exempt and non exempt beneficiaries.

Trustees will need to provide the valuation of notional pension property within 28 days of receiving the request. The percentage which will be allocated to exempt beneficiaries must be provided by the later of 28 days from the request or 14 days after the beneficiaries are determined. Estimates may be provided, in which case the trustees must explain the reason for the estimate and the final value must be provided within 14 days of being ascertained.

Once the PRs become aware that an IHT account is required, they will need to request further information required to complete the account from each pension scheme where there is notional pension property. Trustees must provide the requested information by the later of either:

- 28 days beginning with the date the request is received; or
- 14 days beginning with the date the beneficiaries are determined.

The information to be provided for each beneficiary is their full name, address and national insurance number, where known. The trustees must also provide the value of the notional pension property payable to each beneficiary, to enable the calculation of each beneficiary's IHT liability.

In addition, the trustees must provide details about the amount of any pension and lump sum benefit payments which are not in scope (i.e. dependants' scheme pensions, trivial commutation lump sum death benefits, joint life annuities, and death in service benefits).

Within 3 months of making the final payment of a relevant lump sum death benefit, the trustees must notify the PRs and provide details of the amount of the lump sum death benefit paid. If requested by the PRs, the trustees must, within one month of receiving the request, provide details of the amount paid to each individual and of any adjustment due to IHT being paid by the scheme directly to HMRC (see below for details of when such adjustments may be made).

Will trustees be liable for paying IHT?

The starting point is that PRs are responsible for paying any IHT due on pensions. From the point that any notional pension property is vested in a beneficiary, they become jointly and severally liable with the PRs for any IHT attributable to that property.

In normal circumstances, trustees will not be liable for any IHT. However, trustees will become jointly and severally liable with the beneficiary and PRs if they fail to action a valid withholding notice or payment notice.

What are withholding notices?

A withholding notice allows the PRs (or prospective PRs) to instruct the trustees to withhold up to 50% of an individual's benefit entitlement under the scheme. This applies even where the scheme rules would not otherwise permit withholding, but does not apply to excluded benefits or benefits being paid to exempt beneficiaries. During the period when a withholding notice has effect, no benefit may be paid if more than 50% of a beneficiary's entitlement has already been paid, or if making the payment would result in more than 50% of that entitlement being paid. The purpose of withholding is to protect PRs and other estate beneficiaries from having to use non pension assets to meet the IHT liability.

The notice applies to a beneficiary's "benefit entitlement". This is the portion of the value of the deceased's notional pension property under the scheme that is attributable to that beneficiary. Where there are multiple beneficiaries, that portion must be determined on a just and reasonable basis, having regard to appropriate actuarial assumptions, and reflect benefits that have been paid, or are payable (or expected to be payable), to that beneficiary. HMRC says it would expect a scheme to be able to demonstrate that any apportionment made was just and reasonable.

A withholding notice can be given at any time between the date of death and 15 months after the end of the month in which the deceased died. It will cease to have effect when it is withdrawn by the PRs, the relevant IHT (and interest) is paid, or 15 months after the end

of the month in which the deceased died, whichever occurs first. Once a notice ceases to have effect, withheld benefits become payable immediately.

Trustees must acknowledge receipt of a withholding notice and confirm whether the notice is valid (or explain why it is invalid) within 14 days of receipt. If the trustees accept that the notice is valid, they must provide the following information within 28 days of receipt of the notice:

- the total amount withheld;
- whether the amount is based on a provisional estimate of the value of the notional pension property; and
- where beneficiaries have been determined, the name of each beneficiary and the amount withheld in respect of each.

Trustees must also notify each beneficiary that a withholding notice is in place by the later of either:

- 14 days from the date the withholding notice is received; or
- 14 days from the date each beneficiary is determined.

If trustees pay a benefit that breaches the conditions of a valid withholding notice, they become jointly and severally liable for the IHT on the deceased's notional pension property in the scheme.

What are payment notices?

PRs and beneficiaries will be able to issue a payment notice requiring the trustees to pay the IHT and interest due on the notional pension property held within the scheme directly to HMRC. This applies even where the scheme rules would not otherwise permit the payment or the consequential adjustment to benefits.

There are no restrictions on when a payment notice can be given. In particular, payment notices can be given beyond the 15-month period during which withholding notices have effect.

Where a valid payment notice is received, the trustees must pay the amount specified in the notice within 35 days beginning with the day on which they receive the notice, unless the notice is withdrawn during that period (and before the amount is paid). To be valid the notice must:

- specify the amount of tax and interest the taxpayer wants the trustees to pay;
- be for at least £1,000;
- be for an amount that does not exceed the amount of tax and interest for which the taxpayer is liable in respect of the notional pension property of the deceased in the scheme; and
- be for an amount that does not exceed the amount of the benefits payable (and not yet paid) under the scheme on the deceased's death (not including excluded or exempt benefits).

Where trustees pay an amount of tax in accordance with a payment notice, they may make a consequential adjustment to benefits on a just and reasonable basis. HMRC says this means they are expected to deduct the tax from those beneficiaries receiving the benefits, in relation to which the tax charge arose. It would not be considered reasonable to deduct the tax from excluded benefits or from benefits paid to exempt beneficiaries. Where a beneficiary gives the notice, the adjustment can only be made to that beneficiary's benefits.

Trustees must confirm to the PRs and beneficiaries that payment has been made within 14 days. If payment is not made within 35 days of receiving a valid payment notice, the trustees become jointly and severally liable for the amount specified in the notice.

What does this mean for trustees?

Trustees should ensure they understand the changes to IHT on pensions. In particular, they should clarify which pension and lump sum death benefits provided by their scheme are in scope and which are excluded.

Some trustees may wish to consider, together with the sponsoring employer, whether any changes to death benefit design are appropriate or desirable. This might include, for example, considering whether death benefits should be provided in pension or lump sum form, and whether lump sum benefits should continue to be provided on a discretionary basis.

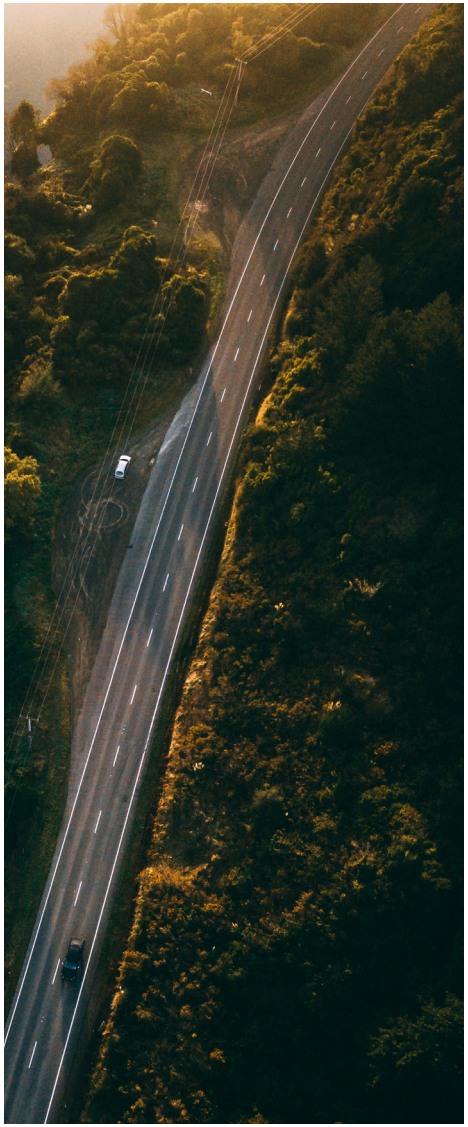
Trustees will need to update their administration processes to ensure they meet the new information sharing requirements following the death of a member. As well as making sure they meet the legal requirements, they will also need to build in practical steps, such as verifying the identity of the deceased member's PRs. HMRC has provided some initial guidance on this in its technical note, but further guidance is expected in due course.

Trustees will also need to put in place new arrangements for dealing with any withholding or payment notices they may receive from PRs or beneficiaries. This should include considering the basis on which they will make any consequential adjustments to benefits where they pay any tax directly to HMRC.

Finally, trustees should consider any updates that may be required to their member and beneficiary communications.



Claire Collier



On the horizon

Subject	Changes	Next key date
Defined benefit (DB) surplus	The Government has published a consultation on draft regulations which set out the conditions that must be met for trustees of DB schemes to make surplus payments to employers under the new Pension Schemes Act 2026 regime. HMRC has published draft legislation, a policy paper and an explanatory note relating to an amendment to the tax legislation to allow trustees to make lump sum payments to members as authorised member surplus payments. The Pensions Regulator has published a statement, which provides early views on the principles trustees should consider when releasing surplus, as well as some high-level illustrative examples of how trustees should go about surplus release now, and how this could change when the regulations come into force.	The consultation closed on 2 September 2026, and it is intended that the regulations will come into force on 6 April 2027. HMRC is asking for feedback on the draft legislation by 7 September 2026. The draft legislation is expected to be included in the Finance Bill 2026-27, which will be introduced to Parliament later this year. The changes will have effect in relation to payments made on or after 6 April 2027. The Regulator is expected to consult later this year on guidance elaborating further on the principles laid out in the statement and the requirements set out in the regulations.
DB superfunds	The Pension Schemes Act 2026 includes a framework for DB superfunds.	The Government intends to consult on draft regulations early next year, with the full regime expected to come into force in 2028.
Defined contribution (DC) scale	The Government has published a discussion paper seeking industry views on key elements of the DC scheme scale policy.	The period for responding to the discussion paper ends on 7 September 2026. The responses to the discussion paper and other stakeholder engagement will help inform the Government's development of the detailed regulations, on which it plans to consult in autumn / winter 2027.

Subject	Changes	Next key date
Small pots	The Pension Schemes Act 2026 includes a framework for master trusts to be authorised to act as consolidator schemes for small DC pots. A new consolidation process will provide for small pots worth £1,000 or less and where no contributions have been paid for at least 12 months to be consolidated into those schemes.	A policy consultation is expected imminently.
Value for money (VFM)	The Government has published a consultation on draft regulations and draft FCA rules relating to the VFM framework.	The consultation closes on 15 September 2026. It is intended that the regulations will come into force early next year, with the first VFM assessments due in 2028.
Guided retirement	The Government has published a policy paper, which sets out its guiding principles for default pensions under the guided retirement provisions of the Pension Schemes Act 2026. The principles are intended to help shape the detailed framework for guided retirement as implementation progresses through secondary legislation, regulatory guidance and industry engagement.	A policy consultation is expected in autumn 2026.
CDC schemes	The Government has consulted on retirement CDC schemes.	The consultation closed on 4 December 2025 and a response is awaited. A consultation on draft regulations is expected in autumn 2026.

Subject	Changes	Next key date
Transfer conditions	The Government has consulted on proposed amendments to the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021.	The consultation closed on 21 July 2026 and a response is awaited.
Trusteeship, governance and administration	The Government has consulted on improving the standards of pension scheme trusteeship, governance and administration.	The consultation closed on 6 March 2026 and a response is awaited.
General levy	The Government has published a consultation on proposed changes to the structure and rates of the general levy on occupational and personal pension schemes for the period from April 2027 to March 2030.	The consultation closes on 8 September 2026 and the Government plans to implement the changes from April 2027. The Government also intends to undertake a broader review of the levy over the coming years, which will look at whether there are more effective, proportionate, or sustainable approaches to levy structure that better reflect the evolving pensions landscape whilst meeting the costs of the levy-funded bodies.
Pensions Commission	The Pensions Commission is currently considering the long-term future of the pensions system, having published its interim report in May 2026.	The Commission is expected to provide its final report with recommendations to Government in early 2027.
State Pension age review	The Government is undertaking a review of the State Pension age, which will consider future State Pension age arrangements based on the latest life expectancy data and other evidence.	The review will be published in due course.

Subject	Changes	Next key date
Transfer of Undertakings (Protection of Employment) Regulations (TUPE)	The Government has published a call for evidence on the Transfer of Undertakings (Protection of Employment) Regulations 2006, with a view to strengthening the existing rights and protections for employees subject to TUPE transfers. The call for evidence asks to what extent employee pension rights are sufficiently protected under a TUPE transfer.	The call for evidence closed on 1 July 2026. Responses will inform the development of policy proposals, which the Government will consult on in due course.
Flexible apportionment arrangements (FAAs)	Torsten Bell MP has confirmed that the Government intends to review the legislation relating to FAAs to ensure the regulatory standards and safeguards evolve and keep pace with innovation in the market.	A consultation on whether and how the legislation can be strengthened will follow in due course.
Trustees' fiduciary duties	The Government is developing guidance on trustees' fiduciary duties relating to investment decision-making.	A consultation on the guidance is expected imminently.
Inheritance tax (IHT) on pensions	The Finance Act 2026 provides for most unused pension funds and death benefits to be brought within the value of a deceased person's estate for IHT purposes. Regulations to specify the information that trustees will be required to provide to HMRC, personal representatives and beneficiaries have been made.	The changes will take effect from 6 April 2027.
Salary sacrifice	The National Insurance Contributions (Employer Pensions Contributions) Act 2026 will mean that, from April 2029, the amount that is exempt from national insurance contributions will be capped at £2,000 a year for employee contributions made to pension schemes via salary sacrifice.	The change will take effect from April 2029.

Subject	Changes	Next key date
Normal minimum pension age (NMPA)	NMPA will increase from age 55 to age 57 from 6 April 2028. HMRC has published a technical consultation on draft regulations which will make transitional provision in relation to this change. The draft regulations aim to ensure that, where a member is aged 55 or 56 on 5 April 2028 and has become entitled to a pension or lump sum as of that date, the pension or lump sum can be paid on or after 6 April 2028 as an authorised payment.	The consultation closes on 28 September 2026.
GMP conversion	HMRC has published a consultation on draft regulations to ensure deferred members do not lose the benefit of the deferred member carve-out for annual allowance purposes as a result of GMP conversion.	The consultation closed on 13 July 2026 and the regulations are expected to take effect from 6 April 2027.
Enforcement strategy	The Regulator has consulted on a proposed new version of its enforcement strategy. The Regulator says it expects to revisit its wider regulatory and enforcement policies to ensure they are aligned with the new strategy; in the meantime, the current policies remain in effect.	The consultation closed on 11 November 2025 and a response is awaited.
Pensions dashboard	Most schemes should already be connected to the pensions dashboard in accordance with the staged timetable for connection.	All schemes in scope must be connected by 31 October 2026 at the latest. The MoneyHelper pensions dashboard is expected to be made available to the public in financial year 2027/28, with an update on launch plans due to be provided around the time of the 31 October 2026 connection deadline.

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