



Importance ★★☆☆

## Surplus refunds

The deadline for a trustees' resolution to preserve power to refund surplus is 5 April 2016.

But, in practice, a decision whether to pass a resolution needs to be made by the end of 2015 to allow three months' advance notice to be given to members and employers.

If a resolution is not passed in time, the power will cease to exist.

The legislation is permissive: it allows trustees to pass a resolution but does not require them to.

The question only comes up if the power is to make a refund while the scheme is ongoing. It does not arise over a power that operates on winding up.

Many client schemes have already dealt with this issue but some may not have.

Trustees should alert the sponsoring employer to the issue. From there, it is for the employer to take the initiative and make the case to the trustees for passing a resolution.

### Employer

An employer will often be able to argue a resolution would benefit all parties by making points like these:

- a resolution does not mean there will be a refund; it merely keeps open an existing possibility there might be one in future,
- tough statutory conditions must be met before surplus can be refunded e.g. trustee consent is required and surplus can only be declared if the scheme is funded above buy-out level,
- an ability to refund excess assets is consistent with the scheme's basic aim of delivering the benefits set out in its rules,
- without the safety valve of a possible refund, the employer might take a tougher line in funding negotiations for fear

of trapped surplus and might be less willing to let accrual continue in future and

- an employer's ability to benefit from surplus can have an impact on its accounts.

### Trustees

Trustees must take an independent view whether to agree to the employer's proposal for a resolution.

Moreover, the legislation specifically requires that they be satisfied a resolution would be in members' interests.

Many sets of trustees have found it relatively straightforward to make a decision, not least because of the strong statutory conditions for any refund.

### Why the hurdle?

At one time, legislation required schemes to reduce surplus. This led them to introduce refund rules tied to the statutory definition of surplus (a weaker one than now). When that legislation was repealed, these refund powers would have become ineffective without a saving mechanism.

### More information

If you would like more information, please get in touch with your usual contact in our pensions team or:



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