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22 October 2020

Dear Sir or Madam

**Local Government Pension Scheme (LGPS) - Response to consultation:  
Amendments to the Statutory Underpin**

Thank you for the Agency's consultation document inviting comments on on amendments to the statutory underpin.

I respond on behalf of the Local Government Pensions Committee (LGPC) of the Local Government Association (LGA).

The LGA is a politically led, cross-party membership organisation that works on behalf of councils to ensure local government has a strong, credible voice within national government. The Local Government Pensions Committee (LGPC) is a committee of councillors constituted by the LGA, the Welsh Local Government Association (WLGA) and the Convention of Scottish Local Authorities (COSLA). The LGPC considers policy and technical matters affecting the LGPS in the UK.

This letter sets out the LGPC's view on the matters covered in the consultation from both a policy and technical perspective.

**Question 6 – Do you have other comments on technical matters related to the draft regulations?**

Our comments on technical matters related to the draft regulations are at Annex A.

**Question 7 – Do you agree that members should not need to have an immediate entitlement to a pension at the date they leave the scheme for underpin protection to apply?**

Yes. Requiring members to have an immediate entitlement to a pension at the date they leave the scheme for underpin protection to apply would not remove the unlawful age discrimination.

**Question 8 – Are there any other comments regarding the proposed underpin qualifying criteria you would like to make?**

The proposed remedy does not extend the underpin to younger members who joined the Scheme after 31 March 2012. These members will have final salary membership in the Scheme but will not qualify for the new protection because the Scheme changes were already publicised when they joined. We think this could be an area of future challenge given that younger members are likely to see the cost of the remedy passed onto them via the cost cap arrangement.

**Question 9 – Do you agree that for underpin protection to apply, members should meet the underpin qualifying criteria in a single scheme membership?**

Yes. This is the approach taken on the 85-year rule and the final salary link. Allowing members to meet the qualifying criteria in respect of multiple periods of unaggregated membership is inconsistent with how the Scheme operates and would be administratively complex.

**Question 10 – Do you agree with our proposal that certain active and deferred members should have an additional 12-month period to decide to aggregate previous LGPS benefits as a consequence of the proposed changes?**

Yes, despite the administrative burden, it seems proportionate to allow active and deferred members this opportunity where they would lose their right to underpin protection if their benefits were not aggregated.

**Question 11 – Do you consider that the proposals outlined in paragraphs 50 to 52 would have ‘significant adverse effects’ in relation to the pension payable to or in respect of affected members? (as described in section 23 of the Public Service Pensions Act 2013, ‘Achieving a fair and consistent underpin’)**

We do not consider that the proposals would have significant adverse effects in relation to the pension payable to or in respect of affected members as:

- LGPS administrators are unlikely to have taken unaggregated membership into account when calculating the current underpin for members that have retired since 2015
- most members who have retired since 2015 are better off under the CARE scheme because of the significantly better accrual rate.

Going forward, the members that are most likely to be affected are concurrent members where membership ends on the same day, so it is not possible to aggregate.

**Question 13 – Do you agree with the two-stage underpin process proposed?**

Yes. In our view the two-stage process is necessary to ensure that a true comparison of final salary and CARE benefits takes place because it takes account of the different normal retirement ages in the two schemes as well as any future changes to State Pension age.

**Question 14 – Do you have any comments regarding the proposed approaches outlined above?**

As set out in our response to question six, for trivial commutation/small pot payments where the date of commutation is the underpin crystallisation date, we think that the final guarantee amount should be calculated by comparing the assumed benefits and underpin amount benefits themselves (rather than the commutation sums due) and adding the final guarantee amount to the pension account before the trivial commutation/small pot sum is calculated. This is simpler administratively and allows for the increase in benefits to be taken into account for the annual allowance.

In relation to the proposals for non-club transfers, we agree with the principle of the approach outlined; however, it is not clear how any increase in value will be taken into account for the annual allowance. This issue will need further consideration.

**Question 15 – Do you consider there to be any notable omissions in our proposals on the changes to the underpin?**

Other than the omissions raised in our response to question six, the only aspects of the proposals that are not clear are whether the operation of the new underpin will involve awarding the 2009 Scheme NPA to relevant benefits and the provisional guarantee amount if a member qualifies for a provisional guarantee amount on the underpin date. This is how the current underpin operates (as provided for in statutory guidance); however, the issues with adopting this approach going forward are:

- it is inconsistent with the approach being adopted for the new underpin ie that there will be no adjustment to a member's pension at their underpin date
- the provisional guarantee amount will need to be split across different tranches of benefits for Group one members and could be negative for a particular tranche. This is administratively complex and will be very difficult to explain to members
- the provisional guarantee amount will be treated as arising in the year of the underpin date for revaluation / PI purposes, but to an earlier year for the purposes of working out the normal pension age and associated actuarial adjustment, which is again administratively complex

- it could potentially lead to a lower strain cost on the early release of pension benefits.

For the reasons set out above, we recommend that the relevant benefits and provisional guarantee amount are not awarded a 2009 Scheme normal pension age on the provisional underpin date.

**Question 16 – Do you agree that annual benefit statements should include information about a qualifying member’s underpin protection?**

When considering when the requirements will apply to annual benefit statements (ABS) we recommend giving administering authorities a lead in period of at least one year. If a lead in time is not provided, authorities will have to prioritise correcting active and deferred member records for the purposes of complying with the new ABS requirement over revisiting pensions in payment / recalculation of death benefits etc.

We do not agree that ABS for active members under NPA 2009 should include information about a qualifying member’s underpin protection. Instead, we think qualifying members should receive a separate communication setting out the notional final salary service membership that will be used in the underpin calculation. Members already find the ABS difficult to understand and adding further complexity will only make it more difficult. The concept of simpler ABS is supported across the pensions industry and backed by DWP, as evidenced by the [simpler annual benefits for workplace pensions consultation](#) issued last year.

The underpin consultation proposes that ABS include the provisional guarantee amount, the provisional assumed benefits and the provisional underpin amount. The provisional assumed benefits figure represents the CARE pension the member has built up during the remedy period, it is this figure that is used to compare with the benefits the member would have built up had they remained in the final salary scheme. By necessity, the figure does not include any pension bought by a transfer in, any additional pension the member /employer has bought (except if it is bought to buy back pension lost in a period of authorised leave) and it is assumed the member is always in the main section. For some members, the provisional assumed benefits figure could be very different to the actual CARE benefits they have built up during the remedy period and this could lead to further confusion.

**Question 24 – Do you have any comments to make on the administrative impacts of the proposals outlined in this paper?**

The administrative impact of these proposals will be significant and meeting them will depend to a great extent on the timing of regulations and the certainty around the changes required to systems and processes. In particular, the changes to

administrative systems will require months to complete and could be further delayed if changes are also required to Fire and police schemes at the same time.

In this regard we would strongly urge SPPA to bring forward final regulations as soon as possible even if their implementation date is in line with other public sector schemes (ie 2022). Doing so would provide the certainty and notice needed to ensure the disruption to systems and processes is minimised and provide authorities with the ability to effectively implement the remedy for members.

Authorities will be required to collect and record a significant amount of backdated data in order to recreate final salary service for members in scope. This will be a challenge in of itself but will also undoubtedly lead to situations where the data is either difficult or impossible to obtain.

In these circumstances we would urge SPPA to provide the following clarity:

- what would constitute 'reasonable efforts' by the authority to obtain the data, and
- what the default position should be in relation to members for whom the data is not able to be obtained. For example, to assume full service without breaks if no break information is available and to calculate part time service using pensionable and final pay figures if no hours information is available.

### **Question 25 – What principles should be adopted in determining how to prioritise cases?**

Authorities should be provided with guidance in the following areas:

- the priority to be afforded to the calculation and payment of back-dated cases, for example should the order be pension in payment, survivor benefits, deferred benefits, other benefits (e.g. sharing) then transfers
- any timescales by which such cases are expected to have been completed

any timescales by which the recording of notional final salary service is expected to have been completed for active members in scope – for example by the time ABSs are issued for 2023


### **Question 26 – Are there material ways in which the proposals could be simplified to ease the impacts on employers, software systems and scheme administrators?**

As set out in our response to question 16, we do not agree with the requirement to include information about the underpin on active ABS for members under the 2009 Scheme normal pension age. If the requirement remains, we think there should be a

lead in time of at least 12 months to ensure that administering authorities can prioritise retrospectively recalculating benefits.

I am of course happy to meet with you to discuss this in more detail if you think that would be helpful.

Yours faithfully

A handwritten signature in black ink, appearing to read 'John Fuller'.

Cllr John Fuller

Chair of LGPC

## Annex A

### Question 6 – Do you have other comments on technical matters related to the draft regulations?

#### Regulation 1(1) of the draft regulations

1. The regulations are called the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2020. As the regulations are amending the provisions in other instruments, we would suggest that “amendment” is added to the title so that it more accurately conveys the instrument’s purpose.

#### Regulation 1(2) of the draft regulations

2. Regulation 1(2) says that regulation 3 comes into effect from 1 April 2015. Regulation 3 inserts a new requirement to include information about the underpin on annual benefit statements. Because the amendments will take effect back to 1 April 2015, the current wording suggests that administering authorities will need to revisit all CARE annual benefit statements they have previously sent and reissue each statement including the underpin information. We assume that this is not intentional and recommend that, firstly, the additional information should only be included on future annual benefit statements. Secondly, we would also recommend that administering authorities are given a lead-in time. Otherwise, if the information must be included on the next set of statements, administering authorities will be forced to prioritise amending active/deferred records, over recalculating death cases and pensions in payment.

\*See also comments on ABS in answer to questions 16 and 17.

#### Inserted regulation 84(5) of the 2018 Regulations (regulation 3 of the draft regulations)

3. Inserted regulation 84(5) refers to a member’s “2008 Scheme normal retirement age”. Firstly, we presume it should say “2009” rather than “2008”. Secondly, this term is not defined in either the 2018 Regulations or the 2014 Transitional Regulations. The term is also used in the 2014 Transitional Regulations after the amendments. We would therefore recommend that the term is defined in the 2014 Transitional Regulations. For example, it could mean “the normal retirement age applicable to the member under the 2009 Scheme”. The 2018 Regulations could then define the term by cross-referencing to the definition in the 2014 Transitional Regulations.
4. The amended wording of the 2014 Transitional Regulations for a member who has taken flexible retirement says that the member does not have any

further underpin or crystallisation dates. Where the member remains an active member after the flexible retirement, the membership still falls within the meaning of “relevant scheme membership”. Therefore, inserted regulation 84(5) would appear to capture these cases and require administering authorities to include the underpin information (using the relevant 31 March as the notional underpin date) on the statements that relate to the continuing active benefits. We would therefore recommend that inserted regulation 84(5) is amended so to not cover such cases, as the member will not have underpin protection on the benefits built up between the flexible retirement date and the end of the remedy period. Consideration will need to be given as to what to show on an ABS for a member who has taken partial flexible retirement.

### **Inserted regulation 84(6) of the 2018 Regulations (regulation 3 of the draft regulations)**

5. Regulation 84 of the 2018 Regulations assumes that each statement relates to a scheme year. The statement relating to a scheme year must then be issued no later than 5 months after the end of the scheme year. The wording does not bar the statement being issued before the end of the relevant scheme year. When it comes to statements for deferred members, most administering authorities will issue the statement, including the latest Pensions Increase (PI) Order. This means that the statement includes up-to-date figures at the point of issue. However, it is not always clear whether the statement “relates” to the previous scheme year or the scheme year in which the statement was given. At the moment, as long as the statement is issued before the end of 31 August following the end of the previous scheme year, it doesn’t really matter. However, inserted regulation 84(6) says that the underpin figures shown on the statement must include the index adjustment to the end of the scheme year to which the statement relates. If this becomes law, administering authorities will need to understand what scheme year the deferred statement relates. For example –
  - if the statement relates to the previous scheme year, the underpin figures would need to be revalued to the end of the previous scheme year (so, will not include the PI applying in the April between the end of the scheme year and the date of issuing the statement). If the administering authority includes the latest PI in the other figures, the underpin figures will be a year behind the main figures
  - if the statement relates to the scheme year in which the statement is issued, the underpin figures will need to be adjusted to the end of the



scheme year (so, will include the latest PI). In this case, the deadline for the statement would be the following August.

6. Inserted regulation 84(6) says that the underpin amounts must be revalued by “index rate adjustment” to the end of the scheme year. In terms of the CARE part of the underpin benefits, these will have been revalued by the revaluation adjustment applying at the beginning of the scheme year in which the underpin date fell. This means that the CARE part will be due part-year revaluation adjustment on 1 April that follows the end of the scheme year in which the underpin date fell. Therefore, we would recommend that the wording is amended to reflect the final part-year revaluation adjustment that applies between the underpin date and the end of the scheme year to which the statement relates.
7. The wording also suggests that you revalue the “provisional guarantee amount” from the underpin date to the end of the relevant scheme year. This assumes that the difference between the provisional assumed benefits and the provisional underpin amounts remains the same over time. But this may not be true. For example, in the year of leaving, the provisional assumed benefits will be due the part-year revaluation on 1 April that follows the underpin date and then PI thereafter. The provisional underpin amount will be due PI between the underpin date and the end of the relevant scheme year. Therefore, the gap between the two amounts may change. We recommend that the “provisional guarantee amount” should equal the difference between the underpin amounts as at the end of the relevant scheme year (or nil where the assumed benefits are more than the underpin amount).
8. Inserted regulation 84(6) refers to “deferred pensioner members”, which do not exist in the 2018 Regulations.

#### **Inserted regulation 84(7) of the 2018 Regulations (regulation 3 of the draft regulations)**

9. Inserted regulation 84(7) says “where regulation 5 of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 applies”. We recommend that “regulation 5” is replaced by “regulation 4”.
10. The amended wording of the 2014 Transitional Regulations for a member who has taken flexible retirement says that the member does not have any further underpin or crystallisation dates. Where the member remains an active member after the flexible retirement, the membership still falls within the meaning of “relevant scheme membership”. Therefore, inserted regulation 84(7) would appear to capture these cases and require

administering authorities to include the underpin information (using the flexible retirement underpin date) on the statements that relate to the continuing active benefits. We would therefore recommend that inserted regulation 84(7) is amended so to not cover such cases, as the provisional figures quoted will have already been used at the flexible retirement crystallisation date.

11. At the member's 2009 Scheme NPA, the administering authority will have worked out the provisional assumed benefits, provisional underpin amount and the provisional guarantee amount. Inserted regulation 84(7) says that each of these must be "revalued to the end of the Scheme year to which the statement relates". It does not set out how this should be done. We assume that the provisional underpin amount is increased by PI orders. But it is unclear as to how the provisional assumed benefits are increased. Do these continue to receive revaluation adjustment after the underpin date while the member is an active member? Or do we increase the provisional assumed benefits using the part-year revaluation adjustment on the 1 April following the underpin date and then normal PI orders thereafter?
12. Inserted regulation 84(7) refers to their "2009 Scheme normal retirement age". This term is not defined in either the 2018 Regulations or the 2014 Transitional Regulations. The term is also used in the 2014 Transitional Regulations after the amendments. We would therefore recommend that the term is defined in the 2014 Transitional Regulations. For example, it could mean "the normal retirement age applicable to the member under the 2009 Scheme". The 2018 Regulations could then define the term by cross-referencing to the definition in the 2014 Transitional Regulations.
13. The wording also suggests that you revalue the "provisional guarantee amount" from the underpin date to the end of the relevant scheme year. This assumes that the difference between the provisional assumed benefits and the provisional underpin amounts remains the same over time. But this may not be true. For example, the provisional assumed benefits will be due further revaluation adjustments, as described in paragraph 7 of this document. The provisional underpin amount will be due PI between the underpin date and the end of the relevant scheme year. Therefore, the gap between the two amounts may change. We recommend that the "provisional guarantee amount" should equal the difference between the underpin amounts as at the end of the relevant scheme year (or £nil where the assumed benefits are then more than the underpin amount).

**Amended regulation 4(1) of the 2014 Transitional Regulations (regulation 6 of the draft regulations)**

14. To qualify for underpin protection, at the very least, the member must have been an active member of the LGPS (Scotland) on 31 March 2012. This means that where a member was an active member in a different public service scheme on 31 March 2012 and later transfers those benefits into the Scheme, the member will not qualify for underpin protection. This outcome remains unchanged after the proposed amendments. In LGPS (England and Wales) provision is made, by an amendment to regulation 9 (transfers) of their 2014 Transitional Regulations, for members in different public service schemes on 31 March 2012 to potentially qualify for underpin protection where they transfer those benefits to the LGPS. Is the Scottish Government still content to not extend underpin protection to members who transfer in from a different public service scheme in which they were active on 31 March 2012?

**Inserted regulation 4(1B) of the 2014 Transitional Regulations (regulation 6(e) of the draft regulations)**

15. Inserted regulation 4(1B) references regulations 16 and 17 of the Administration Regulations. However, these should instead cross refer to regulations 13 and 14 of the Administration regulations.
16. Inserted regulation 4(1B) does not appear to cover members who leave and re-join without a break. This could be interpreted as meaning that such a member would meet the requirements of regulation 4(1)(a) to (c) even if they do not aggregate their benefits which would not deliver the policy intent.
17. Inserted regulation 4(1B) says that a member who has had a break in service (that is not a disqualifying break) or concurrent employments “only has a relevant scheme membership” if the period of membership including 31 March 2012 is aggregated with a 2015 Scheme account under the listed regulations.
18. This wording appears to cause problems where the member was in on 31 March 2012, left after 31 March 2015 with a deferred benefit or pension and later re-joins. In this case, at the point of originally leaving, the member had relevant scheme membership. But the member has had a break in service. Which means that the member only has relevant scheme membership if the period including 31 March 2012 has been aggregated to a CARE account as a result of the provisions listed in (a) to (c). In our case, it is true that the benefit including the 31 March 2012 is aggregated to 2015 benefits, but this was not a result of the provisions listed in (a) to (c). So, if the member does

not aggregate (or is not able to aggregate) the original benefit with the new benefit, it would appear that the member can't have a relevant scheme membership. Where does this leave the original benefit that was considered to be relevant scheme membership at the point of originally leaving?

19. Inserted regulation 4(1B) specifies the regulations under which an aggregation decision must have been made for relevant scheme membership to apply when separate periods are aggregated. We do not think that it is necessary to list the regulations here – it would be enough to say that the period referred to in paragraph 1(a) has been aggregated with their 2015 Scheme pension account. However, we do think these regulations should be listed in relation to 4(1C) and (1D) – see below.

20. If regulation 4(1B) is going to list the regulations under which the aggregation has taken place they will also need to cover the following situations:

- a member who was in on 31 March 2012, left with a frozen refund and re-joined before 1 April 2015 and subsequently joined the 2015 scheme by virtue of regulation 5(1) of the Transitional Regulations. This is because the aggregation of the benefits will not be the result of a decision taken under any of the regulations listed
- a member who was in on 31 March 2012, left with a deferred benefit before 1 April 2015, re-joined on or after that date without a disqualifying break and aggregates under reg 5(5) of the Transitional Regulations.

21. Inserted regulation 4(1B) appears to cover a member who was in on 31 March 2012, left with a frozen refund (before 1 April 2015), re-joined on or after that date where the frozen refund was aggregated under regulation 10(5) of the Transitional Regulations. However, it should be noted that “no decision” was required to instigate the aggregation.

22. Inserted regulation 4(1B) refers to a “2014 Scheme pension account”. This should be changed to “2015 Scheme pension account”.

23. Inserted regulation 4(1B) refers to the “2018 Scheme”. This should be changed to the “2015 Scheme”. It should be noted that there is no definition of “2018 scheme”, we assume that there doesn't need to be.

#### **Inserted regulation 4(1C) and (1D) of the 2014 Transitional Regulations (regulation 6(e) of the draft regulations)**

24. What is the intention for a member who was in concurrent employments after 31 March 2015 where the continuing record includes 31 March 2012, but the ceased record did not, and the member did not aggregate the ceased record to the continuing record? Does this person have another opportunity to

aggregate? The wording of regulation 4(1C)(b) says that the previous scheme membership must be the membership that includes 31 March 2012. In our case, is the continuing record deemed to be “previous scheme membership”?

25. If regulation 5(5) of the Transitional regulations is inserted in regulation 4(1B), it will also need to be included here.
26. Do we need to add “in respect of the active account or the deferred account” after “relevant scheme membership” in inserted regulation 4(1C)(a), as the member may have relevant scheme membership for a different account? It might also be helpful to add similar wording to regulation 4(1D) so that the effect of the aggregation is to qualify the particular deferred or active account as relevant scheme membership.
27. The regulation does not set out how the aggregation is to be given effect. The regulation needs to be clear that the aggregation is to be treated as if it was done under the aggregation provisions that it could have originally been done under. This will then make it clear what benefits are being bought on aggregation e.g. CARE or final salary and that a transfer payment is due if the benefits are being aggregated with a different fund.
28. We understand that the intention is not to allow members to use the extended window to aggregate benefits on to benefits that are in payment. However, there is a potential case where this could be possible. This applies where the member, in relation to membership that is not relevant scheme membership, has taken flexible retirement and is still an active member on the date the regulations come into force, where the member holds a separate period of membership that includes 31 March 2012. In which case, it would appear that the member could use the extended window to now combine the separate period of membership to the new period of membership. The flexible retirement calculation would then need to be reworked out taking into account both the newly acquired underpin protection and the aggregated period of membership. Is this intended?
29. What happens where there are multiple records? For example, where the member has one current active/deferred record and multiple records that include 31 March 2012. Can the member use the extended window to aggregate all the records onto the active/deferred record? What about where the member has multiple active/deferred records and a single record that contains 31 March 2012. Can the member aggregate to one of the active/deferred records and then combine that aggregated record onto a

further active/deferred record? What about where the member has multiple active/deferred records and multiple records that include 31 March 2012?

30. We presume that the interfund GAD guidance will need to be amended to take account of members electing using the extended window. For example, we would presume that the relevant date is the date of election. But what happens if the member is deferred and final salary benefits are being converted into CARE benefits on aggregation? Should the relevant date be the last day of active membership?
31. A member on 31 March 2012 who left after that date and re-joined after their 2009 scheme normal pension age (NPA) would be given the opportunity to aggregate their earlier benefits with their ongoing pension account. As the more recent period of membership does not include any benefits built up before 2009 scheme NPA, those benefits would not attract underpin protection. This does not appear intended.
32. Inserted regulation 4(1C) refers to the “2018 Scheme pension account”. This should be changed to the “2015 Scheme pension account”.

**Amended regulation 4(2) of the 2014 Transitional Regulations (regulation 6(f),(g),(h) of the draft regulations)**

33. We understand that the intention is that the underpin calculation is done at the end of the following, as appropriate:
- the last day of active membership
  - the day before the member’s 2009 NPA
  - the day before the member reduces their hours/grade for flexible retirements
  - the date of death.

However, we do not think the wording of the regulation makes this clear. For example, inserted regulation 4(4) says ‘a member’s provisional guarantee amount in a relevant scheme membership is the amount by which a member’s provisional underpin amount exceeds the provisional assumed benefits on their underpin date’.

It is not clear whether the comparison is done at the start of the underpin date (so, not including accrual on the underpin date) or at the end of the underpin date. If it is done at the end of the underpin date, then should the regulations specify that in relation to regulation 4(2)(a) the underpin date is the day before the member attains NRA in the 2009 Scheme? If clarification is provided on the above point, consideration will be needed as to how that then interacts

with the notional underpin date of 31 March for the purposes of annual benefit statements.

34. Under regulation 4(2)(c), it says that the underpin date is “the date a member elects...to receive immediate payment under regulation 29(6)...”. Firstly, we would presume that it should cross refer to regulation 29(7)(flexible retirement), rather than regulation 29(6). Under flexible retirement, the pension comes into payment on the date of the “reduction in hours or grade”, so we would further suggest that an amendment is made reflecting this, as the date the member elects does not determine the pension start date. We think the regulations should specify that the underpin date is the day before the member reduces their hours/grade.
35. Regulation 4(2)(c) currently says that the underpin date is the date of death where the member died in service. The draft regulations repeat this point in inserted regulation 4(2A). In addition, the amendment regulations insert a new regulation 4(2)(c), which means that we have two regulation 4(2)(c). We would recommend amending the regulations so that the new regulation 4(2)(c) replaces the existing regulation 4(2)(c).
36. Regulation 4(2)(a) references “the normal retirement age applicable to the member under the 2009 Scheme”. Under draft regulations covering annual benefit statements, we suggested that the term “2009 Scheme normal retirement age” should be defined in the 2014 Transitional regulations. If that is accepted, the term used here in regulation 4(2)(a) could reflect the defined term.
37. We would recommend that the reference to the “2018 Scheme” is changed to the “2015 Scheme”.
38. The first part of regulation 4(2) sets out how to define the “underpin date” in a “relevant scheme membership”. It then talks about this being linked to various events, such as leaving the scheme with deferred/immediate entitlement to a pension, flexible retirement, etc. It would be helpful if the wording made clear that the events must be in relation to the relevant scheme membership. For example, where a member becomes entitled to deferred benefits in relation to non-relevant scheme membership, such a date would not set the underpin date on any relevant scheme membership.

#### **Inserted regulation 4(2A) of the 2014 Transitional Regulations (regulation 6(i) of the draft regulations)**

39. We would recommend that this also cross refers to regulation 4(2)(c). This is because the current wording causes confusion for a member whose underpin date is their flexible retirement date who dies in service before attaining their

2009 Scheme normal retirement age. Under regulation 4(2), the member's underpin date is the flexible retirement date. Regulation 4(2A) says that the underpin date is the date of death where this is earlier than the date member ceases to be an active member or the date the member attains the 2009 scheme normal retirement age. In our case, the member has died after the flexible retirement date but before ceasing to be an active member in the relevant scheme membership and before attaining the 2009 scheme normal retirement age, which means that the member's underpin date changes from the flexible retirement date to the date of death, which is not the intention.

**Inserted regulation 4(2B) of the 2014 Transitional Regulations (regulation 6(i) of the draft regulations)**

40. We would recommend that the reference to the "2018 Scheme" is changed to the "2015 Scheme".

41. In inserted regulation 4(2B)(b) we would recommend that ceasing the employment through which the member has an underpin date must also happen before the member's 2009 Scheme NPA. For example, if it happens after, the underpin date will remain the member's 2009 Scheme NPA. In this scenario, will the underpin figures need to be recalculated as at the member's 2009 Scheme NPA, taking into account the combined benefits? If so, how do you work out the adjusted notional final salary membership to be added to the continuing record for the remedy period bearing in mind the final pays at the point of continuing in the other job happened after the 2009 scheme NPA? Or do the underpin figures calculated as at the underpin date on the ceased record just become attached to the continuing record? What happens if there are underpin figures as at the 2009 NPA on the continuing record? What happens if the member was not in membership during the remedy period in the continuing record?

**Amended regulation 4(4) of the 2014 Transitional Regulations (regulation 6(k) of the draft regulations)**

42. The point we made under regulation 4(2) about whether the comparison is done at the end or the beginning of the underpin date also applies here.

**Amended regulation 4(5) of the 2014 Transitional Regulations (regulation 6(m) and (n) of the draft regulations)**

43. Regulation 4(5) sets out how you work out the provisional assumed benefits that the member would be entitled to on the underpin date. As part of this, the administering authority must apply various assumptions. For example, if the member was in the 50/50 section, the benefits must reflect what they would have got if they had been in the main section. It also requires administering



authorities to assume that the member did not pay contributions after 31 March 2022, or if earlier, the underpin date. This means that administering authorities will need to strip out of the CARE benefits any pension attributable to contributions paid after that date (including revaluation thereon). But what is the position on contributions paid after that date that are attributable to pay earned during the remedy period (i.e. member receives pay after leaving, underpin date falls part way through a pay period)?

44. We have previously raised concerns about how regulation 11(5) of the 2018 Regulations interacts with other provisions, including the underpin.
45. In regulation 4(5), we continue to refer to the “2014 Regulations”. In previous provisions, we refer to the “2018 Regulations”. For the sake of consistency, we would recommend referring to the 2018 Regulations throughout. It should be noted that regulation 102(2) of the 2018 Regulations says that “anything done under or by virtue of any regulation revoked by these Regulations (including the 2014 Regulations) if it could have been done under or for the purpose of these regulations, is deemed to have been done under or by virtue of the corresponding provisions of these regulations”.
46. Regulation 4(5) says that we must assume that the member paid contributions from 1 April 2015 to either the underpin date or, if earlier, 31 March 2022. We would recommend clarification as to whether the member is assumed to have paid contributions on the underpin date or, as the case may be, 31 March 2022. This point also applies to regulation 4(6).
47. Regulation 4(5) allows additional pension purchased to cover leave to be included in the provisional assumed benefits. Where the member was in the 50/50 section during the leave period and the lost pension was worked out on a 98<sup>th</sup> accrual, do we need to adjust the additional pension to reflect what it would have been if the member had been in the main section during the leave?
48. We would recommend that the references to the “2018 Scheme” are changed to the “2015 Scheme”.
49. Regulation 4(5)(b)(i) says that we must assume that the member did not pay any additional contributions under regulation 16 between 1 April 2015 to the earlier of the underpin date and 31 March 2022. This means that we must strip out any additional pension acquired by APC contributions paid by the member during that period (and any revaluation thereon). Firstly, we would recommend that you would also need to strip out any additional pension acquired by APC contributions paid by the employer during that period. The exception to this is that APC contributions paid during the period to cover

absence are not to be disregarded, which means that the additional pension acquired by these contributions is included in the assumed benefits. But what about APC contributions paid after the remedy period to cover leave that occurred during the remedy period? Is the pension acquired by these contributions included or excluded in the assumed benefits? If included, is the pension acquired for these contributions counted for revaluation purposes as occurring during the scheme year the APC contributions are paid (i.e. after the end of the remedy period) or are they deemed to occur before the end of the remedy period?

50. APCs that finish early on ill-health are deemed to be paid up under regulation 16(14) of the 2018 Regulations. However, APCs that finish early on death are not deemed to be paid up. Is this right?
51. Regulation 4(5)(b)(ii) says that we must assume that the member did not pay any AVCs during the remedy period. We would recommend that AVC contributions paid by the employer are also disregarded.
52. Regulation 4(5)(d) uses terms such as “the Scheme”, “transfer value payment”, “registered pension scheme” and “European pensions institution”. None of these terms are defined in the Transitional Regulations, though they are defined in the 2014/2018 Regulations. Transitional Regulation 1(5) says that “where an expression is used in relation to provisions in the 1998 regulations, 1998 Transitional Regulations, the Benefit Regulations, the Administration Regulations, the 2009 Scheme Transitional Regulations, or the 2014 Regulations, those expressions are to be construed in accordance with the meaning given to those expressions in the provisions referred to, unless the context indicates otherwise.” To aid with understanding the references in regulation 4(5)(d), we would recommend adding “the 2018 Regulations” to the listed regulations in regulation 1(5).
53. Under transitional regulation 10(5) and (6), a member is awarded CARE benefits on aggregating final salary benefits. The member’s CARE account is awarded additional CARE pension. Looking at regulation 4(5), it does not appear that such additional pension is stripped out to work out the assumed benefits. As the additional benefits relate to pre-April 2015 benefits and an equivalent amount of which is not included in the underpin amount, we would recommend that regulation 4(5) is amended so that the additional CARE pension is also not included in the assumed benefits.
54. Regulation 4(5)(e) says that the assumed benefits at the underpin date include revaluation up to the previous April. This means that at the underpin date, the revaluation due for the period from the last 1 April to the underpin

date is not included. So, for the purposes of comparing the benefits at the underpin date, the assumed benefits may not be fully up to date. In contrast, assuming that the final pay to work out the underpin amount is not a previous year, the underpin amount will be up to date.

55. Regulation 4(5)(f) and corresponding 4(6)(d) provide that, for the purpose of calculating the provisional assumed benefits and the provisional underpin amount, the active member's account at the underpin date, should be adjusted to take account of any pension debit or Scheme pays election the member has made. As the debits are deducted equally from both the provisional underpin amount and provisional assumed benefits, we think the same outcome could be achieved by not making the adjustment. This would be simpler from an administrative point of view. It would also avoid the potential situation where a member's calculated provisional assumed and underpin benefits are negative. This could happen where the member has a large transfer in from another pension arrangement and is subsequently subject to a pension sharing order. Because a transfer in is ignored in the calculation of the provisional underpin amount and provisional assumed benefits, but the pension debit is not, the resulting benefits could be negative. If pension debits are kept in the calculation of the provisional assumed and underpin amounts, SPPA will need to consider whether the pension debit will need to be recorded separately for the remedy period. This will be necessary if the CARE benefits calculated with reference to the provisional underpin amount and the provisional guarantee amount are awarded an NPA of 65, as is the case under the current regulations.

**Inserted regulation 4(5A) of the 2014 Transitional Regulations (regulation 6(o) the draft regulations)**

56. Inserted regulation 4(5A) says that the provisional assumed benefits "must include any adjustment under regulation 37 of the 2018 Regulations for the period up to the earlier of the member's 2009 Scheme normal retirement age and 31 March 2022". I am presuming that what this is trying to say is that the adjustment under regulation 37 to the member's actual benefits is included, with the modification that the enhanced period is not calculated beyond the member's 2009 Scheme NPA (or 31 March 2022, if earlier). If so, we would recommend making this point clearer. For example, inserting "that is added to the balance in the member's account" after "any adjustment".

### **Inserted regulation 4(5B) of the 2014 Transitional Regulations (regulation 6(o) the draft regulations)**

57. Inserted regulation 4(5B) says that where the member's underpin date is the date of death, the provisional assumed benefits must include an amount calculated in accordance with regulation 39(4)(b) of the 2018 Regulations for the period up to the end of the remedy period. Regulation 39(4)(b) of the 2018 Regulations then says that you use an accrual rate of 1/160<sup>ths</sup>. Where an underpin amount is payable to survivors, regulation 4(20) says that the addition must be pro-rated by the rate listed in the table (e.g. 49/160). Therefore, in our view, the amount that should be included under regulation 4(5B) should be worked out using a 49<sup>th</sup> accrual rate, as any amount added to the survivor account is then prorated under regulation 4(20).

### **Amended regulation 4(6) of the 2014 Transitional Regulations (regulation 6(p),(q),(r) of the draft regulations)**

58. Regulation 4(6) requires the administering authority to consider what benefits the member would have had an "immediate entitlement to payment" of under the 2009 scheme as at the underpin date. For most younger members, the answer would be £nil, due to their age. We would therefore recommend that the wording mirrors the wording of the "provisional assumed benefits" when it simply says to consider "the benefits the member would have been entitled to".
59. In regulation 4(6), we continue to refer to the "2014 Regulations". In previous provisions, we refer to the "2018 Regulations". For the sake of consistency, we would recommend referring to the 2018 Regulations throughout. It should be noted that regulation 102(2) of the 2018 Regulations says that "anything done under or by virtue of any regulation revoked by these Regulations (including the 2014 Regulations) if it could have been done under or for the purpose of these regulations, is deemed to have been done under or by virtue of the corresponding provisions of these regulations".
60. Regulation 4(6)(b)(ii) deals with including unpaid absence (not covered by APP but covered by APCs). You will need to consider how regulation 11(5) of the 2018 Regulations of the 2018 Regulations feeds into this.
61. Regulation 4(6)(b)(ii) says that any period of unpaid absence due to strike or absence with permission (excluding leave that is APP protected) is included if that period was covered by additional pension under regulation 16. This suggests that the period only counts if the entire lost pension was purchased. Therefore, if the APC contract is incomplete (for reasons other than ill-health), none of the period is included for this purpose. Looking at the assumed

benefits, it would appear that in this situation the lost pension actually purchased would be included. Therefore, to ensure a fair comparison, should a proportion of the period be included in the underpin amount? This will also require an amendment to regulation 8(4) of the Transitional Regulations and potentially Schedule 2(4)(2)(a)(iii) – 85-year rule. This issue has been raised before by the national technical group - [see APC decision dated 12/12/2014 under the decisions link.](#)

62. Furthermore, if the APC contract finishes early due to ill health, regulation 16(14) of the 2018 Regulations says that the APC contract is paid up. In which case, the entire leave period would count for the purpose of working out the underpin amount. If the contract finished early due to death in service, the APC contract would not be treated as completed. Are you happy with this outcome?
63. Unpaid parental bereavement leave does not fall within the meaning of child-related leave under the 2018 Regulations. This would suggest that this type of leave would only be included if covered by an APC contract. However, regulation 12(2) of the 2018 Regulations says that a member is treated as paying contributions under regulation 9 or 10 during any unpaid parental bereavement leave, which suggests that that leave would be covered for the underpin calculation under regulation 4(6)(b)(i). Is this correct?
64. Regulation 4(6)(b)(ii) refers to “industrial action”. We would recommend amending this to “trade dispute” which is a defined term in the 2018 Regulations.
65. Regulation 4(6)(b)(iii) says that where the assumed benefits include an ill-health adjustment, additional membership is potentially added to the underpin amount. This means that where the member is denied any enhancement (due to a previous ill health award), the member will also be denied an enhancement to the underpin amount, notwithstanding that the member would not have been denied an enhancement under the Benefit Regulations. Is this correct?
66. We assume that where the member is entitled to a tier 1 or 2 award under regulation 34 of the 2018 Regulations, the member is treated as if they would have been entitled to the respective tier 1 or tier 2 award under regulation 20 of the Benefit Regulations (as opposed to being assessed against the ill health conditions in regulation 20)? If so, we would recommend that this is made clearer.
67. Regulation 4(6)(c) sets out that final pay must be calculated in accordance with regs 9 to 11 of the Benefit Regulations (or the equivalent provisions for

councillors). None of those regulations set out that pension increase is included in this figure where the final pay figure is an earlier year's figure. Is this correct? Or is it the case that when it says the benefits the member is entitled to this assumes that the member is entitled to PI at the underpin date?

68. Certificates of protection are taken into account for this purpose in accordance with regulation 26 of the Transitional Regulations. Where certificates of protection are issued under the 2018 Regulations for the CARE benefits, do these also have effect for the final salary benefits? The regulations on certificates of protection suggest that these are worked out in accordance with guidance issued by Scottish Ministers. Where is this guidance? Will it be updated to reflect the underpin changes?

**Inserted regulation 4(6A) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

69. Inserted regulation 4(6A) says that where the member's underpin date is the date of death, the provisional underpin amount must include an amount equivalent to the enhancement that would have applied under regulation 24(2) of the Benefit Regulations for the period up to the end of the remedy period. This regulation says that you use an accrual rate of  $1/160^{\text{ths}}$ . Where an underpin amount is payable to survivors, regulation 4(20) says that the addition must be pro-rated by the rate listed in the table (e.g.  $49/160$ ). Therefore, is it correct that the amount added to the provisional underpin amount uses an accrual rate of  $1/160^{\text{ths}}$  or should it use  $1/60^{\text{ths}}$ ?

**Inserted regulation 4(7) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

70. Inserted regulation 4(7) defines the underpin crystallisation date. This regulation is subject to inserted regulation 4(8), which sets out that where regulation 7(4)(a),(b) or (c) applies, the member's account is increased by the final guarantee amount. Regulation 4(8) does not have the effect of changing when the underpin crystallisation date falls. It is therefore unclear why regulation 4(7) is subject to regulation 4(8)?
71. Inserted regulation 4(7)(a) says that the member's crystallisation date is the date the member elects to receive payment under regulation 29(5) of the 2018 Regulations. Regulation 29(5) of the 2018 Regulations sets out an entitlement to receive an enhancement if the pension commences after normal pension age. Therefore, should this cross-refer to regulation 29(3), rather than 29(5)?

72. Regulation 29(8) of the 2018 Regulations sets out a right to receive payment on redundancy/efficiency on or after 55. Inserted regulation 4(7) does not suggest that this would trigger an underpin crystallisation date. We presume that this is incorrect. Alternatively, it may be the case that redundancy is included but the cross reference is incorrectly recorded as regulation 29(7) and it is in fact flexible retirement that is incorrectly missed out.
73. Inserted regulation 4(7)(c) says that the underpin crystallisation date is the date on which the member becomes entitled to an “ill-health retirement pension under regulation 34(1) or regulation 36(1) of the 2018 Regulations”. Under regulation 34(1) of the 2018 Regulations, subject to the ill health conditions, the member becomes entitled to a “retirement pension”. Also subject to conditions, under regulation 36(1), the member becomes entitled to a “retirement pension”. Therefore, to avoid confusion, we would recommend that the reference to “ill health retirement pension” is changed to “retirement pension”.
74. Inserted regulation 4(7)(c), for ill health cases, says that the underpin crystallisation date is the date the member becomes entitled to the pension. Regulation 31(9) of the 2018 Regulations says that a member becomes entitled to payment of the pension on the day after the date on which the member’s employment is terminated. Regulation 31(10) says that a member becomes entitled to payment under regulation 36 on the date on which the member makes a request under that regulation. Therefore, it is possible that a member becomes entitled to the pension after the date from which it is payable. In the other provisions of inserted regulation 4(7), the crystallisation date falls on the pension start date. Therefore, we would recommend that it is made clear that the crystallisation date for an ill health case is also the pension start date. This can be achieved by simply adding “to receive payment of” after “becomes entitled to”.
75. Inserted regulation 4(7)(d) says that the underpin crystallisation date for a member who trivially commutes uncrystallised benefits is the date the member receives payment. Inserted regulation 4(16) says that the value of the payment due at the member’s underpin crystallisation date must be calculated in accordance with GAD guidance. When paying a small lump sum payment under the 2009 Authorised payment regulations, the lump sum is determined by the benefits as at the date of payment. When paying the lump sum under paragraph 7 of schedule 29 of the Finance Act 2004, the lump sum is determined by the amounts payable at the date of payment. In which case, we would suggest that the underpin crystallisation date should fall on the date the administering authority pays the lump sum, rather than the date

on which the member receives payment. In addition, the £30,000 test under paragraph 7 is assessed at the nominated date, which for most is the date of payment. But this can be earlier. Where it is earlier, do administering authorities include the underpin amount in the valuation at the nominated date? Is this something that the GAD guidance will pick up?

76. Inserted regulation 4(7)(e) says that the underpin crystallisation date is the date the member transfers their benefits out of the 2018 Regulations following an application under regulation 91 or by virtue of regulation 93 of the 2018 Regulations. Inserted regulation 4(16) says that the value of the payment due at the member's underpin crystallisation date must be calculated in accordance with GAD guidance. Under the Pension Schemes Act 1993, the transfer amount is determined at the guarantee date, which can be up to 6 months earlier than the date the transfer takes place. For cash transfers sums, the transfer is worked out as at the date of leaving, which can also be many months before the transfer is paid. For late payment, the transfer value is either the recalculated amount as at the date of payment or the original amount plus interest (non-Club only). Therefore, in which case, we would expect the Underpin crystallisation date to be the date on which the transfer value is calculated, rather than the date the transfer is made. Is this something that the GAD guidance will pick up? If this is accepted, an amendment would need to be made to the wording of regulation 4(16) as the transfer payment would not be due at the crystallisation date (i.e. the guarantee date).
77. Under regulation 29(4) of the 2018 Regulations, a member who has not drawn their pension must draw it no later than age 75. Inserted regulation 4(7) does not cover these cases. We would therefore recommend that the crystallisation date for these cases should be 75.
78. In the consultation document, it sets out that the underpin is only included for annual allowance calculations in the year in which the underpin crystallisation date falls. Where a member transfers out or trivially commutes uncrystallised benefits, the crystallisation date then occurs. In these cases, how would the underpin amount be included for annual allowance purposes?
79. Regulation 29(14) of the 2018 Regulations allows a deferred member to draw their deferred benefits from age 55. We have previously raised concerns that regulation 29(14) appears to duplicate regulation 29(6) in that deferred members can already use that regulation to draw their benefits early. If regulation 29(14) is to stay, then it will need to be referenced in inserted regulation 4(7).



### **Inserted regulation 4(8) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

80. Under inserted regulation 4(7), we have pointed out that the list is missing members who draw benefits at 75 and members who draw benefits upon age 55 plus redundancy/efficiency (or potentially flexible retirement). Any additions to 4(7) will need to be reflected in the wording of regulation 4(8) and the subsequent provisions that define the final underpin amount and the final assumed benefits.
81. Does the final guarantee amount (plus the remainder of the final underpin amount) act as a CARE pension once added to the pension account (i.e. part-year revaluation plus PI (PI date same as rest of CARE pension) or does it behave like a final salary benefit thereafter (i.e. no part-year revaluation, just PI using PI date linked to the final pay period used to work out the provisional underpin amount)?
82. We think that (4)(7)(d) should also be included here. This relates to trivial commutation and small pot payments. If the final guarantee amount is added to the pension account before commutation takes place it will allow for it to be taken into account for the annual allowance. The proposal to compare the trivial commutation sums of the provisional assumed benefits and the provisional underpin amount and then add the difference to the total accrued rights is administratively cumbersome. It also does not allow for the final guarantee amount to be taken account of in the annual allowance.

### **Inserted regulation 4(10) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

83. Regulation 29(7) of the 2018 Regulations allows a member to elect, with their employer's consent, to receive their retirement pension upon reduction in hours/grade (i.e. flexible retirement). Inserted regulation 4(10) cross-refers to this provision incorrectly twice: "regulation 30(6)" and "regulation 29(6)".
84. Amend the reference to "2018 Scheme benefits" to "2015 Scheme benefits".
85. Regulation 4(10) infers that the full guarantee amount is added to the member's active account under regulation 4(8) and then the appropriate proportion is transferred to the flexible retirement pension account (presumably with no further actuarial adjustment applied?). We assume that the guaranteed part remaining in the member's active CARE account just remains in that account and becomes subject to revaluation adjustment/pensions increase like the rest of the benefits? Is this correct? What happens when the member eventually draws the remaining CARE benefits (including the undrawn part of the guaranteed amount)? How is it

actuarially adjusted bearing in mind that the actuarial adjustments were factored in based on the flexible retirement date? Should the regulation set out that these issues are addressed in GAD guidance?

**Inserted regulation 4(11) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

86. It should be noted that the ‘final underpin amount’ is not technically payable to the member - it is determined simply for the purposes of the comparison and does not take into account 50/50 membership. We think this regulation only needs to provide that the final guarantee amount is not subject to a further reduction. There is no provision in the regulations to provide a second actuarial adjustment to the CARE benefits calculated with reference to the provisional underpin amount, so we don’t see it as necessary
87. Also, if you state that the CARE benefits calculated with reference to the provisional underpin amount are not further adjusted this will cause an issue with partial flexible retirements, where the benefits not taken could potentially be subject to an adjustment at a later date.

**Inserted regulation 4(12) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

88. Inserted regulation 4(12)(a) says that administrators must apply any revaluation adjustment or index rate adjustment that would have applied to the member’s pension between the underpin date and the crystallisation date. This means that for most, you will increase the provisional amount by the part-year revaluation adjustment and then by normal PI thereafter. However, it is unclear what happens if the member’s underpin date is their 65<sup>th</sup> birthday. Do administrators –
- increase the provisional amount by revaluation adjustment while the person remains an active member, then the part-year revaluation adjustment and then normal PI?
  - increase the provisional amount by the part-year revaluation adjustment in the year the member attains age 65 and then normal PI?

**Inserted regulation 4(13) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

89. As we have mentioned it is unclear whether PI is included when working out the provisional underpin amount. If it is not and there is no PI date between the underpin date and the crystallisation date and an earlier year’s pay was used, the comparison at the crystallisation date will exclude PI on the final underpin amount.

**Inserted regulation 4(14) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

90. Inserted regulation 4(14) appears to presume that regulation 14(7)(b) is referring to a member who qualifies for immediate payment upon redundancy/efficiency under regulation 29(8) of the 2018 Regulations. With this in mind, the wording of 4(14) presumes that the CARE benefits would not be subject to actuarial reductions. However, it is possible that the provisional assumed benefits contain added pension purchased to cover leave. In which case, if this is drawn before NPA, the added pension is reduced.
91. Inserted regulation 4(14)(a) says that administrators must apply any revaluation adjustment or index rate adjustment that would have applied to the member's pension between the underpin date and the crystallisation date. This means that for most, you will increase the provisional amount by the part-year revaluation adjustment and then by normal PI thereafter. However, it is unclear what happens if the member's underpin date is their 65<sup>th</sup> birthday. Do administrators –
- increase the provisional amount by revaluation adjustment while the person remains an active member, then the part-year revaluation adjustment and then normal PI?
  - increase the provisional amount by the part-year revaluation adjustment and then normal PI?

**Inserted regulation 4(15) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

92. As we have mentioned it is unclear whether PI is included when working out the provisional underpin amount. If it is not and there is no PI date between the underpin date and the crystallisation date and an earlier year's pay was used, the comparison at the crystallisation date will exclude PI on the final underpin amount.

**Inserted regulation 4(16) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

93. Under regulation 4(7), we have suggested that the underpin crystallisation date for transfers should not be the payment date. If this is accepted, an amendment to regulation 4(16) would be needed as the payment in such a case would not then be "due at a member's underpin crystallisation date".
94. Regulation 4(7)(e)(ii) says that, for a bulk transfer to a different scheme, the underpin crystallisation date is the date the member transfers out by virtue of regulation 93 of the 2018 Regulations. Under this regulation, the transfer

payment is not determined based on each individual CETVs. The bulk transfer payment is an amount as agreed by an actuary appointed by the administering authority and an actuary appointed by the trustees / managers of the other scheme. Under regulation 93, there is a requirement that, under the bulk transfer, the member must receive at least what they would have received had an individual CETV been paid. Inserted regulation 4(16) suggests that the bulk transfer payment is an amount determined in accordance with GAD guidance, which runs contrary to regulation 93. For new cases, the underpin will feed into the minimum amount that must be given had a normal CETV been paid. How should administering authorities deal with past cases where the member would benefit from an underpin addition?

95. The impact on previously paid trivial commutation lump sums needs to be considered; in particular, what happens if when the final guarantee amount is retrospectively added to the valuation at the nominated date the valuation then exceeds £30,000. It would seem unfair for the trivial commutation payment to be considered as an unauthorised payment retrospectively. [The recent HMRC newsletter on GMP equalisation](#) may be helpful in considering issues.

**Inserted regulation 4(18) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

96. How should funds deal with previous divorce cases where the valuation amount would be different because of an underpin addition? Should funds take no action as the original valuation of the other assets (house / car) cannot be an exact science and the Court, in reaching a settlement, will have based the sharing order on the information available at the time? Do administering authorities need to update the parties and leave it for them to decide whether they wish to ask the court to revisit the divorce settlement? In this issue where a cross scheme approach will be taken?

**Inserted regulation 4(19) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

97. The points we have previously made about how should assumed benefits at an underpin date of 65 where the member remains active thereafter be revalued also apply here.
98. The provisional guarantee amount equals the amount by which the provisional underpin amount exceeds the provisional assumed benefits on the underpin date. At this point, in terms of revaluation, each amount is potentially at different points in the revaluation cycle. For example, the

provisional assumed benefits do not include the revaluation adjustment for the period ending with the underpin date and beginning with the preceding 1 April. The provisional underpin amount may also not be up to date at the underpin date where an earlier year's pay has been used. Regulation 4(19) does not take this into account and appears to then increase the provisional guarantee amount from the underpin date as if it was a CARE pension.

**Inserted regulation 4(20) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

99. Regulation 4(20) says that the amount to be added to the survivor pension must equal the adjusted provisional guarantee amount multiplied by the relevant rate set out in the table. However, in each of the relevant regulations of the 2018 Regulations it says, for example for survivor partner pensions, "the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/160". Firstly, it no longer seems to be the case that the addition is added under regulation 4(4), which will define the provisional guarantee amount. Secondly, it appears that the addition (already pro-rated by the rate in the table) is further adjusted by multiplying by, for a partner's pension, 60/160. We would therefore recommend that amendments are made to the survivor pension provisions in the 2018 Regulations to ensure that they align with the amended underpin provisions.
100. Also, as the rates in the 2018 Regulations are more generous than the new rates in regulation 4(20) when determining the survivor addition, what happens if the addition to a past case is less than the underpin addition already in the survivor pension account?
101. Where a member died after drawing their pension (which included a final guarantee amount), we would presume that the final guarantee amount is not fed into the survivor pension. Is this correct (as potentially otherwise there may end up being two additions to the survivor pension – final guarantee amount and an adjusted provisional guarantee amount)?
102. When working out the provisional assumed benefits and the provisional guarantee amount, we must take into account any scheme pays offsets and any divorce debits. When working out children's pensions, such offsets / debits are disregarded. Therefore, if, by taking the offsets / debits into account for the underpin calculations, the provisional guarantee amount is different, is it intended that such difference feeds into the adjusted provisional guarantee amount added to an eligible child's pension.

**Inserted regulation 4(21) of the 2014 Transitional Regulations (regulation 6(s) of the draft regulations)**

103. When working out pensioner death grants, regulation 44(3) says that the death grant equals 10 times the annual amount the member would have been entitled to receive as retirement pension at the date of death if there had been no commutation, but the amount so calculated is reduced by the commuted lump sum and any pension paid. Draft regulation 4(21) provides that the adjusted provisional guarantee amount must be used in the determining the annual amount of pension the member would have been entitled to under regulation 44(3).

For pensioner death grants we think it would be more appropriate for the final guarantee amount to be used in the calculation of a death grant. The pension in payment will include the final guarantee amount not the provisional guarantee amount, as this is never added to the member's pension account.

104. Where a part of the death grant is paid after the end of the two years beginning with the earlier of the day on which the administrator first knew of the member's death and the day on which the administrator could first reasonably have been expected to have known of it, the death grant is a taxable payment. Therefore, where an administering authority must pay an extra amount of death grant after revisiting past cases, the balance payment will be taxable (which seems unfair, as the balance is being paid as part of a remedy). Do you agree with this outcome?