The Underpin – (version 1.3~~2~~)

The following process represents what the LGPC Secretariat currently understands to be the policy intention behind the underpin set out in regulation 4 of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 (but see the Annex to this note).

Step 1: Determine whether the member will meet the criteria when their benefits are paid i.e. the member:

(a) was an active member of the 2009 Scheme on 31 March 2012 and was, on 1 April 2012, 10 years or less from their normal retirement age under the 2009 Scheme;

(b) was an active member immediately before the underpin date and receives payment of benefits under the 2015 Scheme on or after the underpin date;

(c) does not have a disqualifying break in service; and

(d) has not, prior to the underpin date, drawn benefits under the 2014 Regulations in relation to an employment

[regulation 4(1) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014].

The underpin date is the earlier of:

(i) the date the member attained their normal retirement age under the 2009 Scheme, or
(ii) the date the member ceased to be an active member of the 2015 Scheme with an immediate entitlement to a pension
(iii) the date the member dies in service

[regulation 4(2) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014].

A disqualifying break in service is a continuous break after 31 March 2012 of more than 5 years in active membership of a public service pension scheme [regulation 4(3) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014].

Note:
Regulation 4(1)(b) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 provides that regulation 4 only applies to a member at the point they <u>receive</u> payment of benefits. Where a member meets all the other criteria for entitlement to an underpin calculation on the underpin date, the underpin addition is not applied until such time as the benefits are paid. Thus, a member leaving with a deferred benefit who, at the date of ceasing active membership, meets all the other criteria for entitlement

to an underpin[1], is not actually credited with the underpin amount until the point the member draws those deferred benefits.

If the member meets the Step 1 criteria, move to Step 2.

Step 2: Determine whether the member is an active member immediately before the date the member attained their normal retirement age under the 2009 Scheme or, for a member ceasing to be an active member before their normal retirement age under the 2009 Scheme, whether the member ceased to be “an active member of the 2015 Scheme with an immediate entitlement to a pension”. This would include:

a) retirement on the grounds of permanent ill health [under regulation 34 of the LGPS (Scotland) Regulations 2014]

b) retirement under regulation 29(7) of the LGPS (Scotland) Regulations 2014 on the grounds of redundancy or business efficiency when aged 55 or over;

c) retirement under regulation 29(7) of the LGPS (Scotland) Regulations 2014 on the grounds of redundancy or business efficiency when aged 50 or over if the person was a member of the LGPS on 5 April 2006 and

   i) was an active member on 31 March 2015 and 1 April 2015, and

   ii) has not had a break in membership after 1 April 2015

   [see regulations 24(1) and (5) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 and regulation 19(3) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008]

d) voluntary retirement under regulation 29(5) of the LGPS (Scotland) Regulations 2014 when aged 60 or over [see regulation 4(2)(b)(i) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014]

e) voluntary retirement, with employer permission, under regulation 29(5) of the LGPS (Scotland) Regulations 2014 when aged 55 or over and under age 60 [see regulation 4(2)(b)(ii) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014]

f) flexible retirement, with employer permission, under regulation 29(6) of the LGPS (Scotland) Regulations 2014 when aged 55 or over [see regulation 4(2)(b)(iii) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014].

[1] Being a member leaving at or after age 60 with a deferred benefit (or at or after 55 if has a protected right to draw benefits on or after that age i.e. former NHS scheme members, Civil Servants transferred to the Scottish Environment Protection Agency, Former employees of the Scottish Legal Services Ombudsman, of the Scottish Administration’s Learning Connections Division, of the Care Commission, of the Social Work Inspection Agency, and of Her Majesty’s Inspectorate of Education, and employees formerly entitled to membership of the SDS Scheme).

It should be noted that a member who opts out of membership prior to attaining their normal retirement age under the 2009 Scheme will not have an immediate entitlement to a pension (because they are still employed in the employment in respect of which they had been a member). They will, therefore, not meet the requirements of step 2 and so not be subject to the underpin calculation.

If the member meets the Step 2 criterion, move to Step 3.

Step 3: At the earlier of the date the member ceases to be an active member or the member's normal retirement age under the 2009 Scheme, calculate the underpin amount in accordance with regulations 4(4) to (6) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014.

The first stage is to calculate what pension would have built up in the member's pension account at the underpin date on the following assumptions:

- the member had been in the **main** section of the 2015 Scheme between 1 April 2015 and the underpin date (excluding any breaks and any absences/strike periods not paid for but including any Tier 1 or Tier 2 ill health enhancement under the LGPS (Scotland) Regulations 2014)
- the amount calculated above includes any increase due to the member's CARE pension in accordance with any Certificate of Protection of pension benefits that applies [see regulation 93 of the LGPS (Scotland) Regulations 2014]
- any additional pension bought via APCs/SCAPCs (other than to cover pension 'lost' due to absence or strike) is ignored
- any AVC payments are ignored
- any pension purchased by a transfer in is ignored*
- any adjustment due to a pension debit or annual allowance scheme pays election is made to the account
- the balance in the account includes revaluation up to the beginning of the Scheme year in which the underpin date falls

*If the relevant date (i.e. date joined the scheme or the date the transfer is received if more than 12 months later) for a non-Club transfer in was post 31 March 2015, or a transfer from a public service pension scheme is treated as a non-Club transfer (because the person has had a continuous break of more than 5 years in active membership of a public service pension scheme) and the relevant date was post 31 March 2015, the transfer would have purchased an amount of pension in the member's post-15 pension account (as would the transfer payment in respect of post 31 March 2015 CARE pension from a Club Scheme and any transfer in respect of final salary benefits in a non-public service Club scheme where the transfer is treated as a non-Club transfer because there was a break between leaving the sending scheme and joining the LGPS of more than 5 years) – see regulations 9(3A), (3B) and (4) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014.

If the relevant date for a non-Club transfer in was pre 1 April 2015 the transfer would have purchased pre 1 April 2015 membership. Similarly, any final salary membership from a Club scheme transferred in as a Club transfer under the Club rules would have purchased pre 1 April 2015 membership.

If a transfer has purchased an amount of pension in the member's post-15 pension account that amount of pension is, as indicated in the fourth bullet point above, excluded from the first stage calculation. If, however, a transfer has bought pre 1 April 2015 membership, there is no need for an equivalent exclusion to be incorporated into the second stage calculation below because the calculation under that stage is based on post 31 March 2015 membership only (and the transfer had bought pre 1 April 2015 membership).

The second stage is to calculate the final salary pension the member would have accrued and had an immediate entitlement to under the 2009 Scheme if the member had stayed in the 2009 Scheme between 1 April 2015 and the underpin date, based on the following assumptions:

- the membership to be used in the calculation is the period between 1 April 2015 and the underpin date (excluding any breaks and any absences/strike periods not paid for but including any Tier 1 or Tier 2 ill health enhancement under regulation 20 of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008)
- any adjustment due to a pension debit or annual allowance scheme pays election is made to the pension

If the amount calculated at the second stage is higher than the amount calculated at the first stage the difference is the underpin amount. This should be held as a separate "guarantee amount" and, if the member is continuing in membership beyond the member's normal retirement age under the 2009 Scheme, hold the accrued post 2015 CARE pension at that age as a separate amount of CARE pension from the CARE pension accruing thereafter.

Note:
In performing this calculation:

- the post 2015 CARE pension calculated under regulation 4(5) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 will be revalued up to the beginning of the Scheme year in which the member ceased to be an active member or attained their normal retirement age under the 2009 Scheme [as required by regulation 4(5)(e) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014], and

- the post 2015 notional final salary pension calculated under regulation 4(6) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 will be based on the final pay[2] under regulations 9 to 12 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 (or, where appropriate, regulation 43 of the LGPS (Administration) (Scotland) Regulations 2008 or regulation 93 of the

[2] Or, in the case of a councillor member, career average pay calculated in accordance with paragraph 1 of the Schedule to the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008.

LGPS (Scotland) Regulations 2014 where a Certificate of Protection of pension benefits has been issued in respect of a reduction or restriction in pay) including, where an earlier year's pay has been used, PI under the Pensions Increase (Review) Order for the April of the Scheme year in which the member ceased to be an active member or attained their normal retirement age under the 2009 Scheme. Although PI is technically not a "benefit the member would have been entitled to under the 2009 Scheme", because it is payable under the Pensions (Increase) Act 1971, it would be illogical not to include it in the calculation given that the 2009 Scheme specifically allowed an earlier year's pay to be used in the benefit calculation which meant it became an intrinsic part of the 2009 Scheme and the purpose of the underpin is to compare the member's post 2015 CARE pension (which does include revaluation) with the post 2015 pension the member would have received had they remained in the 2009 Scheme. It is important that the calculation compares apples with apples and not apples with pears.

If there is an underpin "guarantee amount" calculated at Step 3, move to Steps 4 to 9. To all intents and purposes where an underpin "guarantee amount" is paid, both

a) the underpin "guarantee amount", and
b) the amount of the pension in the member's post-15 pension account accrued prior to the member's 2009 NPA, but excluding any element of that post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence)

are treated as if they were pension accrued under the 2009 Scheme for the purposes of determining the actuarial reduction or actuarial increase due on them.

Furthermore –

c) any amount of pension in the member's post-15 pension account accrued after the member's 2009 NPA, and
d) any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence)

is treated as pension accrued under the 2015 Scheme for the purposes of determining the actuarial reduction or actuarial increase due on them (related to the member's NPA in the 2015 Scheme).

The rationale for (c) is that the underpin guarantee only applies for benefits accrued up to the member's NPA under the 2009 Scheme. The rationale for (d) is twofold. Firstly, regulations 4(5)(b)(i), 4(5)(c) and 4(5)(d) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 exclude the elements in (d) from the underpin calculation (and so they must, therefore, be paid in addition). Secondly, the amount of pension credited to the member's account from a transfer in and the amount of the additional pension purchased via the APC / SCAPC were based on the member's NPA under the 2015 Scheme.

Step 4: If, on or before attaining their normal retirement age under the 2009 Scheme, the member draws benefits on the grounds of permanent ill health, or on the grounds of redundancy or business efficiency, the underpin "guarantee amount" is added to the accrued post 2015 CARE pension and is payable without actuarial reduction (and the PI date attaching to the **total** pension is the day following the last day of the final pay period used to calculate the underpin amount).

Step 5: If the member

(a) draws benefits under sub-paragraphs (d) to (f) in **Step 2**, and
(b) this is before the member's CRA / NRA under the 2009 Scheme

the underpin "guarantee amount" **and** the accrued post 2015 CARE pension (excluding any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC, other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) are subject to an actuarial reduction to the member's CRA / NRA under the 2009 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers). The PI date attaching to that **total** pension is the day following the last day of the final pay period used to calculate the underpin amount.

Any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) is subject to an actuarial reduction to the member's NRA under the 2015 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers). The PI date attaching to that element of the pension is, in the case of retirement under sub-paragraphs (d) and (e) in **Step 2** above, the day following the last day of membership and in the case of retirement under sub-paragraph (f) in **Step 2** above, the day the flexible benefits are payable from.

Step 6: If the member

(a) draws benefits under sub-paragraphs (d) to (f) in **Step 2**, and

(b) this is on or after the member's CRA but before the member's NRA under the 2009 Scheme

the underpin "guarantee amount" **and** the accrued post 2015 CARE pension (excluding any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC, other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) are subject to an actuarial reduction, **if any**, by reference to the member's CRA / NRA under the 2009 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers). The PI date attaching to that **total** pension is the day following the last day of the final pay period used to calculate the underpin amount.

Any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) is subject to an actuarial reduction to the member's NRA under the 2015 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers). The PI date attaching to that element of the pension is, in the case of retirement under sub-paragraphs (d) and (e) in **Step 2** above, the day following the last day of membership and in the case of retirement under sub-paragraph (f) in **Step 2** above, the day the flexible benefits are payable from.

Step 7: If the member

(a) draws benefits under sub-paragraphs (d) to (f) in **Step 2**, and
(b) this is on the member's NRA under the 2009 Scheme

the underpin "guarantee amount" **and** the accrued post 2015 CARE pension (excluding any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC, other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) are payable in full. The PI date attaching to that **total** pension is the day following the last day of the final pay period used to calculate the underpin amount.

Any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) is subject to an actuarial reduction to the member's NRA under the 2015 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers). The PI date attaching to that element of the pension is, in the case of retirement under sub-paragraphs (d) and (e) in **Step 2** above, the day following the last day of membership and in the case of retirement under sub-paragraph (f) in **Step 2** above, the day the flexible benefits are payable from.

Note:
If a member takes flexible retirement under regulation 29(6) of the LGPS (Scotland) Regulations 2014 on the member's NRA under the 2009 Scheme then the underpin calculation will be performed and applied at the member's NRA under the 2009 Scheme [regulations 4(1)(b) and 4(2) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014]. An underpin does not apply to the benefits from the ongoing employment.

Step 8: If the member

(a) ceases membership before or on attaining the member's normal retirement age under the 2009 Scheme, and
(b) draws benefits after that age

the underpin "guarantee amount" **and** the accrued post 2015 CARE pension (excluding any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC, other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) are subject to an actuarial increase for the period of deferment beyond the member's NRA under the 2009 Scheme (in accordance with the guidance on late payment of benefits issued by Scottish Ministers). The PI date attaching to that **total** pension is the day following the last day of the final pay period used to calculate the underpin amount.

Any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence)

(i) is subject to an actuarial reduction to the member's NRA under the 2015 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers) if drawn before the member's NRA under the 2015 Scheme, or
(ii) is subject to an actuarial increase (in accordance with the guidance on late payment of benefits issued by Scottish Ministers) if drawn after the member's NRA under the 2015 Scheme.

The PI date attaching to that element of the pension is the day following the last day of membership.

Step 9: If the member

(a) ceases active membership after attaining the member's normal retirement age under the 2009 Scheme and draws benefits, or

(b) draws benefits upon flexible retirement under regulation 29(6) of the LGPS (Scotland) Regulations 2014 after attaining the member's normal retirement age under the 2009 Scheme

the underpin "guarantee amount" **and** the post 2015 CARE pension accrued to the member's normal retirement age under the 2009 Scheme (excluding any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC, other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) are subject to an actuarial increase for the period of deferment beyond the member's NRA under the 2009 Scheme (in accordance with the guidance on late payment of benefits issued by Scottish Ministers). The PI date attaching to that total pension (accrued to the member's normal retirement age under the 2009 Scheme) is the day following the last day of the final pay period used to calculate the underpin amount. It receives no subsequent Treasury Order increases.

The post 2015 CARE pension accrued after the member's normal retirement age under the 2009 Scheme and any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence)

(i) is subject to an actuarial reduction to the member's NRA under the 2015 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers) if drawn before the member's NRA under the 2015 Scheme, or
(ii) is subject to an actuarial increase (in accordance with the guidance on late payment of benefits issued by Scottish Ministers) if drawn after the member's NRA under the 2015 Scheme.

This element of the CARE pension accruing after the member's normal retirement age under the 2009 Scheme is subject to Treasury Order increases to the date of cessation of active membership and PI Orders thereafter (with the normal tweak being made to the Treasury Order increase in the year of leaving in order to avoid double indexation). The PI date attaching to that element of the pension is, in the case of (a) above, the day following the last day of membership and in the case of (b) above, the day the flexible benefits are payable from.

Note: If a member takes flexible retirement under regulation 29(6) of the LGPS (Scotland) Regulations 2014 after the member's NRA under the 2009 Scheme then the underpin calculation will be performed at the member's NRA under the 2009 Scheme [regulations 4(1)(b) and 4(2) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014]. The underpin amount will be applied at the date of the flexible retirement. An underpin does not apply to the benefits from the ongoing employment.

General

Any underpin “guarantee amount” which is calculated will need to be apportioned to Part C” and Part D2 as appropriate in order that the correct actuarial reduction can be applied (if drawn before the member’s NPA under the 2009 Scheme). For example, if the member has membership from 1 April 2015 to 31 March 2021 (6 years), has final pay (2009 Scheme definition) of £40,000 and has an underpin “guarantee amount” of £91.67, the underpin amount would be allocated as follows:

	C2					D2	
	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
CARE accrued (revalued)	£850.00	£650.00	£600.00	£650.00	£625.00	£650.00	£550.00
Total CARE	£3,375.00					£1,200.00	
2009 Scheme comparison	5/60 x £40,000 = £3,333.33					2/60 x £40,000 = £1,333.33	
Difference	-£41.67					+£133.33	
Total	£3,333.33					£1,333.33	

This method of allocation ensures that where a member is subject to the 85 year rule the actuarial reduction applicable to Part C2 and Part D2 membership is applied to the amount of pension the member would actually have earned as Part C2 or Part D2 membership had they remained in the 2009 Scheme.

If a member subject to the underpin:

- leaves with a deferred benefit with an underpin “guarantee amount” attached,
- does not opt to draw those benefits
- rejoins the LGPS, and
- elects to retain separate benefits

the relevant administering authority should seek guidance from SPPA as to how / when the underpin “guarantee amount” is ultimately to be calculated / applied.

As any underpin amount, once calculated, will be held as a “guarantee amount”, the amount should not be shown on Annual Benefit Statements (or Annual Allowance Statements for members who have not commenced drawing their benefits prior to the end of the Pension Input Period to which the Annual Allowance Statement relates). This is because, by virtue of regulation

4(1)(b) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, the underpin is only due when a member actually receives payment of their pension. At the relevant 31 March to which the Annual Benefit Statement relates the member is an active member and so no underpin amount would actually be payable on that date. Similarly, if a member has not commenced drawing their benefits prior to the end of the Pension Input Period to which the Annual Allowance Statement relates, no underpin payment will have been paid and so should not be included in the Statement.[3]

[3] If the member ceases active membership of the scheme and immediately draws their benefits any "underpin" amount paid will be taken into account in calculating the Pension Input Amount for that Pension Input Period. However, the question arises as to how to take account of the "underpin" amount if the member leaves with a deferred benefit and draws the benefit later in the same Pension Input Period or in a subsequent Pension Input Period and the pension, when brought into payment, includes an "underpin" amount. In such a case the deferred benefit will, at the point of payment, have increased by more than the "relevant percentage" which section 234(5C) of the Finance Act 2004 defines as -

(a) where throughout the pension input period the arrangement (or a predecessor arrangement) includes provision for the value of the relevant rights of the individual to increase at an **annual rate** specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 14 October 2010, that percentage [i.e. CPI in the case of the LGPS].

This could lead to the annual allowance being exceeded in the Pension Input Period in which the deferred benefits, including the "underpin", are paid (because the "underpin" amount results in the benefits having been increased by more than CPI). This in turn could result in an annual allowance tax charge if there is not enough carry forward of unused annual allowance from previous 3 years to offset the tax charge. That might not have been the case if the LGPS had allowed the member to remain in the 2009 Scheme (as the other Public Service Pension Schemes have done for their protected members) rather than providing an "underpin", as the value of the member's benefits would have increased incrementally rather than having an "underpin" amount applied at the time the pension is brought into payment. Conversely, it is possible that if the member had been left in the 2009 Scheme with an incremental Pension Input Amount each year, the member might have been subject to an Annual Allowance tax charge in respect of one or more of those years but not be subject to a tax charge, or be subject to a lesser tax charge, under the "underpin" approach. If the outcome from the "underpin" approach is that the member suffers an Annual Allowance tax charge that they would not have been subject to had they been allowed to remain in the 2009 Scheme:

a) this does not run contrary to Section 18 of the Public Service Pensions Act 2013(because that section is only a permissive section enabling, but not requiring, schemes to allow older members who were in a public service pension scheme on 1 April 2012 to remain in their old schemes), and

b) it is arguable that this does not run contrary to the Chief Secretary to the Treasury's statement on 2 November 2011 that "I can also announce that scheme negotiations will be given the flexibility, outside the cost ceiling, to deliver protection so that no-one within 10 years of retirement will see any change in when they can retire nor any decrease in the amount of pension they receive. Anyone ten years or less from retirement age on 1 April 2012 are assured that there will be no detriment to their retirement income." This is because their pension under the LGPS is not less but, rather, the person is having to pay more tax on the pension due under the LGPS.

The underpin ad survivor benefits

The appropriate proportion of any underpin calculated for the member flows through to any survivor benefits subsequently payable.
[Regulations 39(4)(vi), 40(4)(vi), 40(5)(vi), 40(9)(vi), 40(10)(vi), 42(4)(g), 43(4)(g), 43(5)(g), 43(9)(g), 43(10)(g), 45(4)(g), 46(4)(g), 46(5)(g), 46(9)(g) and 46(10)(g).

Normal Pension Age

For the purposes of this note a member's Normal Pension Age under the 2009 Scheme is:

a) age 65, or
b) age 60 if the member is a person to whom regulation 24(4)(a) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 applies – which provides that the normal pension age for a person to whom regulations 16A to 16D of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 applies (normal retirement age: Learning and Teaching Scotland, Skills Development Scotland, Scottish Legal Complaints Commission, Social Care and Social Work Improvement Scotland) shall, for the purposes of the underpin, be age 60.

Disclaimer

This document has been prepared based on the LGPC Secretariat's understanding of the information presently available including the relevant Statutory Instruments governing the Local Government Pension Scheme, associated overriding legislation and relevant draft legislation. It represents the views of the Secretariat and should not be treated as a complete and authoritative statement of the law. Readers may wish, or will need, to take their own legal advice on the interpretation of any particular piece of legislation. No responsibility whatsoever will be assumed by the Local Government Association for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained herein.

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~~10th April~~16th October 2015

Annex

Current issues concerning the underpin

1. Underpin for a member with deferred benefits who does not aggregate membership

Where:

a) a member re-joins the Scheme on or after 1 April 2015 (e.g. on 1 February 2016),
b) chooses to retain separate deferred benefits in the LGPS in Scotland, and
c) meets the criteria for the underpin i.e.:
   - they were an active member of the 2009 Scheme on 31 March 2012 (i.e. in respect of their deferred benefit record) and were, on 1 April 2012, 10 years or less from their normal retirement age under the 2009 scheme and
   - they were an active member immediately before the underpin date (i.e. in their active pension account), and
   - they receive payment of benefits under the 2015 Scheme on or after the underpin date, and
   - they do not have a disqualifying break in service (i.e. a continuous break in active membership of public service pension schemes of more than 5 years), and
   - prior to the underpin date have not drawn benefits under the 2014 Regulations in relation to an employment (which they haven't because the deferred benefit do not relate to the new employment)

then is it the policy intention that they should have the underpin applied to their further benefits built up in the career average scheme?. The LGPC Secretariat's conclusion is that, for the reasons set out below, the underpin would apply to the further benefits built up in the career average scheme.

The wording of regulation 4(1)(a) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 says the member has to have been an active member on 31 March 2012 (which the member was in relation to their deferred benefit) but was not in their current period of membership. However, regulation 4(1)(a) does not require the person was an active member in relation to the current period of membership and so this suggests that the underpin applies.

Regulation and 4(6)(a) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 says that the underpin is calculated based on membership between 1 April 2015 and the underpin date (based on periods of membership for which the person has paid contributions under regulations 9 or 10 and ignoring unpaid leave of absence for which the member has not paid an APC/SCAPC). There are three scenarios the LGPC Secretariat can think of:

i) if the member had left with a deferred benefit pre 1 April 2015 and rejoined post 31 March 2015 without a disqualifying break of more than 5 years, they would get an underpin on the post 31 March 2015 membership (regardless of whether or not they had aggregated the pre 1 April 2015 membership)

ii) if the member had left post 31 March 2015, rejoined post 31 March 2015 (without a disqualifying break of more than 5 years) and aggregated membership, they would get an underpin on the aggregated post 31 March 2015 membership

iii) if the member had left post 31 March 2015, rejoins post 31 March 2015 (without a disqualifying break of more than 5 years) and does not aggregate membership, they would get an underpin on the deferred benefit. It appears that they would also get an underpin on the second period of membership as, even if the deferred benefits had been paid prior to the underpin date that applies to the new employment, the benefits that had been paid were not in relation to the new employment. Regulation 4(1)(d) only debars an underpin if the member has already received benefits "in relation to an employment" (e.g. on flexible retirement). However, technically, the LGPC Secretariat believes an amendment to regulation 4(6) is needed in this case to debar the membership from the unaggregated period being taken into account when assessing the underpin in relation the new period of employment (as, currently, regulation 4(6) does not seem to do so).

2. Underpin where a member was in another public service pension scheme on 1 April 2012

It may be that an underpin calculation will need to be performed if the member was:

- an active member of a public service pension scheme immediately before 1 April 2012 (regardless of whether or not a transfer is made from that scheme to the LGPS), or
- eligible to be a member of a ***public service pension scheme*** immediately before 1 April 2012 (see section 18(5)(a) of the Public Service Pensions Act 2013). This can apply to those who were:
    - deferred members of a ***public service pension scheme*** who re-join without a without a disqualifying break of more than 5 years ending on or after 1 April 2012; and
    - those eligible for a ***public service pension scheme*** immediately before 1 April 2012 who had opted out before that date, but subsequently join the scheme [4], and
- within 10 years of their Normal Pension Age under that public service pension scheme on 1 April 2012 and would have been within 10 years

[4] Note that some schemes, such as the TPS, LGPS and NHS have chosen to limit the protection to those covered by the 1st bullet point i.e. those in pensionable service in the TPS, LGPS or NHS pension scheme immediately before 1 April 2012 (i.e. not opted out) unless any opted out member re-joins pensionable service on or after 1 April 2012 without a disqualifying break of more than 5 years.

of their Normal Pension Age under the LGPS had they been in the LGPS on 1 April 2012.

It seems to be HMT policy that such members should have the right to stay in an open final salary scheme. However, the LGPS doesn’t have an open final salary scheme, as such, only an underpin and, whilst the LGPS should provide an underpin if we were to follow HMT policy, there is (as far as the LGPC Secretariat is aware) no legal reason to do so. Section 18 of the Public Service Pensions Act (PSPA) 2013 says that it is for Scheme Regulations to specify which older members should be able to remain in a final salary scheme (or, in the case of the LGPS, have an underpin). The Scheme Regulations for the LGPS - i.e. regulation 4 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 – are quite specific in saying that for the underpin to apply the member had to be an active member of the LGPS on 31 March 2012 and within 10 years of their NPA under the 2009 Scheme on 1 April 2012. The LGPC Secretariat is of the view that an underpin should not be provided. However, if it is decided by SPPA that it is necessary to provide an underpin, then an amendment to regulation 4 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 will be required.

3. <u>Is the comparison pre or post actuarial reduction?</u>

If a member retires with immediate benefits at age 64 with an NPA of 65 in the 2009 Scheme and an NPA of 66 in the 2015 Scheme, should the underpin calculation which is performed to be a comparison between:

a) the unreduced Final Salary (FS) benefits at the date of cessation of membership and the unreduced CARE benefits at the date of cessation of membership, or
b) the FS benefits at the date of cessation of membership with a 1 year reduction to 65 and the CARE benefits at the date of cessation with a 2 year reduction to 66?

At the present time, the underpin calculation would be performed as in (a) above and, if the FS benefit was higher, that would be the amount of pension payable to which a 1 year reduction would be applied (as the member is drawing immediate benefits at age 64). However, this can produce inequitable results. For example, the amount of CARE pension calculated under (a) could be marginally higher than the amount of FS pension, so the CARE pension would be payable. However, when the 2 year reduction to age 66 is applied to that pension, it reduces the pension to below the level of the FS pension with a 1 year reduction to age 65. As the intention is to give the member no less than they would have received had they remained in the 2008 Scheme it appears that, whilst the Regulations require the comparison to be performed as per (a) above, the calculation ought to be as per (b) above. This would require an amendment to regulation 4 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014.

Similarly, where a member has an NPA of 66 in the 2015 Scheme and an NPA of 65 in the 2009 Scheme retires and draws immediate benefits at 65½, should the underpin calculation which is performed be a comparison between:

a) the unreduced Final Salary (FS) benefits at the member's 2009 Scheme NPA (65) and the unreduced CARE benefits at the member's 2009 Scheme NPA (65), or
b) the unreduced FS benefits at the member's 2009 Scheme NPA (65) and the actuarially reduced CARE benefits at the member's 2009 Scheme NPA (65) (i.e. with a 1 year actuarial reduction to 66), or
c) the actuarially increased FS benefits at the date of drawing the benefits (including the increase for 6 months deferment beyond age 65) and the actuarially reduced CARE benefits at the date of drawing the benefits (i.e. a 6 month reduction in respect of the period from 65½ to 66)?

At the present time, the underpin calculation would be performed as in (a) above and, if the FS benefit was higher, that would be held as the underpin amount (which would receive an actuarial increase for the 6 month period of deferment beyond age 65) and the CARE benefit accrued post age 65 would be subject to an 6 month actuarial reduction (for the period from 65½ to 66)[5]. However, as in the previous example, this can produce inequitable results. As the intention is to give the member no less than they would have received had they remained in the 2009 Scheme it appears that, whilst the Regulations require the comparison to be performed as per (a) above, the calculation ought to be as per (c) above. This would require an amendment to regulation 4 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014.

4. <u>When is the calculation performed if, after 31 March 2015, a member continues in active membership beyond the 2009 Scheme NPA?</u>

Should the underpin guarantee be calculated as soon as is practicable after the NPA or should this calculation not be performed until the member leaves service?

The LGPC Secretariat's view is that the underpin should, currently, be calculated ASAP after the member's 2009 Scheme NPA. This is because regulation 4(4) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 says the member's pension account is to be increased at the underpin date i.e. at the member's 2009 Scheme NPA. However, this answer would change if option (c) in 3 above were to be adopted.

[5] Or, if the member had remained an active member beyond their NPA in the 2015 Scheme, an actuarial increase for the period of deferment beyond their NPA in the 2015 Scheme.