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Dear Sirs

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

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I write in response to the Department's consultation on amendments to the statutory underpin which commenced in July 2020.

As agreed by the Scheme Advisory Board we have referenced some of their responses to the consultation in answer to some of the questions.

Question 1 – Do you agree with our proposal to remove the discrimination found in the McCloud and Sargeant cases by extending the underpin to younger scheme members?

Yes. To avoid discrimination all scheme members need to be treated equally and therefore the fairest way is to extend the underpin to younger scheme members.

Question 2 – Do you agree that the underpin period should end in March 2022?

Yes. In order to obtain the benefits of changing the LGPS to a Career Average Revalued Earnings (CARE) scheme.

Question 3 – Do you agree that the revised regulations should apply retrospectively to 1st April 2014?

Yes. This does seem the obvious date as this was the date of the introduction of the CARE scheme however by making the regulations retrospective to 1 April 2014 it needs to be acknowledged that this will lead to administrative complexities and heavy additional workloads for both employers and administrators as outlined in the consultation paragraphs 134-136.

Question 4 – Do the draft regulations implement the revised underpin which we describe in this paper?

Partially. There are outstanding issues requiring further clarification such as the impact on pension sharing orders, scheme pays debits and the default regarding missing data. Also technical issues detailed in Annex A.

Question 5 – Do the draft regulations provide for a framework of protection which would work effectively for members, employers and administrators?

Yes. The draft regulations provide a framework however the changes are so complex that clear communications will be needed in respect of all parties. To implement the changes by April 2022 will involve huge amounts of extra work for administrators, employers and pension administration system providers in order to collect the data required and that correct calculations can be made.

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 concur with those highlighted by the Scheme Advisory Board and 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. A requirement for members to have an immediate entitlement to a pension to receive the underpin protection would not remove discrimination.

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

It is possible that members who joined the scheme between 1 April 2012 and 31 March 2014, and therefore have membership based on final salary may challenge why they are not included in the remedy.

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

Yes. If this were to be extended to multiple periods of unaggregated membership it would be inconsistent with other aspects of the scheme and would add to the complexity.

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. With the understanding that communicating this option to scheme members who have previously decided not to aggregate periods of membership will be problematical and as with all option exercises may lead to appeals in the future.

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?

We consider that the proposals would not have a ‘significant adverse effects’ however may affect scheme members that are unable to aggregate, e.g. concurrent members leaving membership on same day, members who opted out on or after 11 April 2015 etc

Question 12 – Do you have any comments on the proposed amendments described in paragraphs 56 to 59?

No comments

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

Yes. Although we believe that the 2 stage underpin process is necessary in order that a true comparison of final salary and CARE benefits takes place member communication at the underpin date of the provisional assessment with no adjustment to the member’s benefits at that time will be complex.

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

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

Technical issues regarding the proposed approaches are included in Annex A. Regarding paragraphs 65-102:

Para 66 Each year, a qualifying member’s annual benefit statement will include an estimate of how the underpin would have applied to them if they had left the scheme at the end of the scheme year (i.e. as if their underpin date had been 31st March in that year). In these estimates, no account would be taken of actuarial adjustments relating to a member’s age.

As the Pensions Regulator asks for annual benefit illustrations to be more succinct and easily understandable is this necessary as will be complex to provide and very difficult to explain the provisional assessment.

Para 67 This implies that for those qualifying members that remain in the scheme beyond their 2008 scheme NPA date that at the underpin date a comparison of their benefits will be triggered and the member will be informed of the results of the comparison with the information that a further check will be undertaken when they reach their underpin crystallisation date. This will incur additional work in obtaining their pay details from their employer at their 2008 scheme NPA date, carrying out calculations and

explaining the reason for the comparison at that date when the final comparison will not be undertaken until they leave.

Para 71 As for response to Para 66 question as to whether this information really is necessary on deferred benefit annual illustrations.

Annex A

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

Amended regulation 89 of the LGPS 2013 Regulations

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

1) Inserted regulations 89(5) and 89(7) refer to 'a 2008 Scheme normal retirement age', which is not defined in the 2013 regulations. Therefore, it might be helpful to include a definition of the term in the 2013 Regulations.

2) Inserted regulation 89(5) to (10) will come into force on the same date that the Amendment regulations take effect. The Amendment regulations do not specify the first scheme year that the annual benefit statements (ABS) will need to include the additional information. For example, if the regulations come into force on 30 June 2021, will the requirements apply to the ABS for active members in relation to Scheme year 2021/22 or 2020/21? It would be helpful to set this out in the regulations.

3) An active member who has taken benefits in relation to the relevant scheme membership on flexible retirement does not have any further underpin/crystallisation dates. However, the wording of inserted regulations 89(5) and 89(7) would still capture these cases and thus administering authorities would need to provide the additional information on the benefit statements following the flexible retirement. This outcome does not appear intended. We would suggest that an amendment is made to inserted regulations 89(5) and 89(7) explicitly excluding active members who have drawn their benefits in relation to the relevant scheme membership on flexible retirement. Consideration will need to be given as to what to show on an ABS for a member who has taken partial flexible retirement.

4) Regulation 89 of the 2013 Regulations assumes that each statement relates to a Scheme year. The statement relating to a Scheme year must then be issued no later than five 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 is given. Currently, as long as the statement is issued before the end of 31 August following the end of the previous Scheme year, it doesn't matter. However, inserted regulation 89(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 to. For example –

- If the ABS 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 ABS 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.

5) Inserted regulation 89(6) says that the provisional underpin amount and provisional assumed benefits, calculated at the underpin date, must be adjusted by the appropriate index rate adjustment to the end of the scheme year to which the statement relates. However, in the year the member leaves the Scheme the provisional assumed benefits should be treated like CARE benefits and will be due a revaluation adjustment (including the tweak to avoid double indexation) for the period from the beginning of the Scheme year to the underpin date – this will be applied on 1 April following the Scheme year in which the member leaves or reaches their 2008 scheme normal pension age. They will also be due part year PI for the period from the underpin date to the end of the Scheme year.

We recommend that the wording is amended to reflect the final part year revaluation adjustment that applies in the year of leaving.

6) The wording in regulation 89(6) 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 revaluation adjustment (including the tweak) for the period from the previous 1 April to the date of leaving 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 provisional underpin amount and provisional assumed benefit amounts as at the end of the relevant Scheme year (or £nil where the assumed benefits are more than the underpin amount).

7) Regulation 89(7) provides that, in relation to active members who have met their 2008 Scheme NPA, the provisional underpin amount and provisional assumed benefits should 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 pensions increase; however, it is unclear 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, with part year revaluation adjustment (the tweak) applying on 1 April following the date of leaving and then PI from the date of leaving? Or does the revaluation adjustment apply to the provisional assumed benefits up to the underpin date (with tweak applied on 1 April following the underpin date) and PI thereafter?

8) The wording in regulation 89(7) 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 above. 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 provisional underpin amount and provisional assumed benefit amounts as at the end of the relevant scheme year (or £nil where the assumed benefits are then more than the underpin amount).

Draft regulation 6 New regulation 4(1B) of the Transitional Regulations 2014

9) 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.

10) Inserted regulation 4(1B) says that a member who has had a break in service/concurrent employment 'only has' a relevant scheme membership if the benefits containing 31 March 2012 membership are aggregated with the 2014 CARE account. This wording appears to cause problems where the member was active on 31 March 2012, left after 31 March 2014 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 2014 benefits; however, 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?

11) 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 2014 Scheme pension account. However, we do think these regulations should be listed in relation to 4(1C) and (1D) – see below.

12) 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:

- where a member who was active on 31 March 2012 left with a frozen refund, re-joined before 1 April 2014 and then subsequently joined the 2014 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 active on 31 March 2012, left with a deferred benefit before 1 April 2014, re-joined on or after that date without a disqualifying break and aggregates under reg 5(5) of the Transitional Regulations.

13) Also, inserted regulation 4(1B) appears to cover a member who was active on 31 March 2012, left with a frozen refund (before 1 April 2014), 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.

New regulation 4(1C) of the Transitional Regulations 2014

14) If regulation 5(5) of the Transitional regulations is inserted in regulation 4(1B), it will also need to be included here.

15) Do the words 'in respect of the active account or the deferred account' need to be added after 'relevant scheme membership' in regulation 4(1C)(a) as the member may have relevant scheme membership for a different account? This would ensure the effect of the aggregation is to qualify the particular deferred or active account as relevant scheme membership.

New regulation 4(1D) of the Transitional Regulations 2014

16) Again, do the words 'in respect of the active account or the deferred account' need to be added at the end after 'relevant scheme membership', as the member may have relevant scheme membership for a different account. This would ensure the effect of the aggregation is to qualify the particular deferred or active account as relevant scheme membership.

17) We understand that the account to which previous benefits will be added under the extended aggregation window under inserted regulation 4(1D) should be at deferred or active status. This means that the potential receiving account can't be at pensioner status, frozen refund status, deferred pensioner status or at no status as a result of the benefits being transferred out or trivially commuted. However, it is not clear what status of previous scheme membership can be aggregated under the extended window. The wording of regulation 4(1C) and the previous provisions suggest that the previous membership must have been capable of being aggregated with the active record or the deferred record at some point. We understand that the intention is that the previous membership must be at deferred status at the point of the aggregation (to avoid unwinding pensions in payment). If so, the current wording does not explicitly say that benefits that could have been aggregated to the active/deferred account at some point but have since become pensioner benefits cannot now be aggregated.

18) 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 eg CARE or final salary and that a transfer payment is due if the benefits are being aggregated with a different fund.

19) The current wording of inserted regulation 4(1D) would allow certain members to take advantage of the extended aggregation window, when we do not believe that it is the intention for them to be able to do so:

- We understand that the intention is not to allow members to use the extended window to aggregate benefits with 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 – this member holds a separate period of membership that includes 31 March 2012. In this case, the member could use the extended window to combine the separate period of membership with the new period of membership. The flexible retirement calculation would then need to be recalculated, taking into account both the newly acquired underpin protection and the aggregated period of membership.
- A member on 31 March 2012 who left after that date and re-joined after their 2008 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 2008 scheme NPA, those benefits would not attract underpin protection.

20) We believe that the intention is for an extended opportunity to aggregate to be offered to those members who would benefit from underpin protection on a pension record if the aggregation were to take place. We believe a change of wording is required to ensure that the extended opportunity to aggregate is not offered to those members to whom this does not apply.

21) 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 on to 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?

Amended regulation 4(2) of the Transitional Regulations

22) We understand that the intention is that the underpin calculation is done at the end of the following, as appropriate:

- last day of active membership
- the day before the member's 2008 NPA
- the day before the member reduces hours/grade for flexible retirement cases
- 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 2008 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.

23) Also, in relation to flexible retirement, it would be more appropriate for the regulations to specify the underpin date is the day before the member reduces their hours /grade, as the date the member elects to receive immediate payment will, in most cases, not be the date the benefits become payable from.

New regulation 4(2A) of the Transitional Regulations 2014

24) This regulation says:

'(2A) A member's date of death shall be their underpin date in a relevant Scheme membership where that date is earlier than the date provided for by paragraphs (2)(a) or (2)(b)'

We think this should be (2)(a), (2)(b) or (2)(c). This is because the current wording causes confusion for a member whose underpin date is their flexible retirement date but then dies in service before attaining their 2008 Scheme normal retirement age. Under regulation 4(2), the member's underpin date is the flexible retirement date. However, regulation 4(2A) says that the underpin date is the date of death as it is earlier than the date of leaving or the date the member attained their 2008 Scheme normal pension age.

Amended regulation 4(5)(a) of the Transitional Regulations 2014

25) It would be helpful if the regulation made it clear that the period is 1 April 2014 to 31 March 2022 inclusive.

Amended regulation 4(5)(b) of the Transitional Regulations 2014

26) The use of 'between' before 1 April 2014 suggests that the remedy period does not include 31 March 2022 or the underpin date. Again, it would be helpful if the regulation made it clear the period is inclusive of the start and end dates.

27) This regulation sets out that additional contributions paid by the member are to be disregarded when working out the provisional assumed benefits other than contributions paid to cover a period of absence from work with no pensionable pay. It does not set out that additional contributions paid by the employer should also be disregarded (other than contributions to cover absence/leave).

28) There is an issue where a member pays additional contributions to buy lost pension to cover a period of absence from work with no pensionable pay if the period of leave occurs during the remedy period but some or all of the additional contributions are paid after the remedy ends, or after the member attains their 2008 normal pension age. The lost CARE pension is credited in the Scheme year it is paid for, meaning that the whole period will be counted for the underpin amount but not for the assumed benefits. To ensure a fair comparison the lost pension purchased should be included in the assumed benefits, although this would pose problems in reassigning lost pension acquired after the remedy period into a scheme year during the remedy period.

29) The above will also be an issue where an absence spans the period before and after the remedy period.

30) This regulation sets out that AVCs paid by the member are to be disregarded when working out the provisional assumed benefits. It also needs to set out that AVCs paid by the employer should also be disregarded.

Amended regulation 4(5)(d) of the Transitional Regulations 2014

31) Where a member aggregates previous LGPS final salary benefits and those benefits are converted to CARE benefits on aggregation we understand the resulting CARE benefits should be excluded from the calculation of provisional assumed benefits. We do not think the regulations deliver this. We recommend including a provision that explicitly disregards the transferred in CARE benefits in this circumstance.

Regulation 4(5)(f) of the Transitional Regulations 2014

32) Regulation 4(5)(f) and corresponding 4(6)(f) 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 taking 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, MHCLG 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.

Amended regulation 4(6) of the Transitional Regulations 2014

33) The draft regulation reads:

‘The provisional underpin amount is calculated by assessing the benefits the member would have had an immediate entitlement to payment of under the 2008 Scheme in a relevant Scheme membership if-‘

The word ‘immediate’ should be removed to deliver policy intent.

Amended regulation 4(6)(a) of the Transitional Regulations 2014

34) Again, it would be helpful if the regulation made it clear the period is inclusive of the start and end dates.

Regulation 4(6)(b)(ii) of the Transitional Regulations 2014

35) The wording of this regulation suggests that where the APC contract is not completed (or deemed to be completed on a tier 1 or tier 2 ill health retirement) none of the absence/leave period would be included. However, the equivalent provision on the provisional assumed benefits for a case where the APC contract was partially completed would include the additional pension acquired. Therefore, for the sake of a fair comparison, does regulation 4(6)(b)(ii) need to include some of the membership where the APC contract is not completed? 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.

36) Where an APC contract is incomplete due to death in service, regulation 16 of the 2013 regulations does not provide for the APC contract to be deemed to be completed, in the way that it does for tier 1 or 2 ill health retirements. The reason for this is that the APC does not feed into death-in-service benefits. However, where a member dies in service, should an incomplete APC contract that was taken out to cover a period of absence from work with no pensionable pay be deemed to be complete for the purposes of the underpin?

Amended regulation 4(6)(b)(iii) of the Transitional Regulations 2014

37) Should this regulation clarify that a member who is eligible under regulation 35 of the 2013 regulations for an ill health pension is also deemed to meet the equivalent conditions in the 2007 Benefit Regulations (i.e. the ill health conditions, the tier 1 or 2 conditions, the conditions where reductions in pay/hours are ignored)?

38) An ill-health enhancement is only added if the provisional assumed benefits include an adjustment under regulation 39 of the 2013 regulations. Therefore, if the member, because of a previous ill-health award, is denied any enhancement under regulation 39, no enhancement would be added under regulation 20 of the 2007 Benefit Regulations to the provisional underpin benefits, notwithstanding that, had the 2007 Benefit Regulations applied at the underpin date, the member potentially would have received an enhancement. Is this intended?

New regulation 4(6A) of the Transitional Regulations 2014

39) The regulation requires a comparison of the enhancements that are worked out under regulation 24(2) of the 2007 Benefit Regulations and 41(4)(b) of the 2013 Regulations. The enhancements under these regulations are worked out using 1/160ths; however, for the purpose of this underpin we think the enhancement should be calculated with reference to the member's benefits i.e. 49ths and 60ths, and then proportioned for the relevant survivor benefit(s) as set out in draft regulation 4(21).

New regulation 4(7) of the Transitional Regulations 2014

40) In relation to the payment of pensions, regulation 4(7)(a) to (c) all represent the first date on which the pension becomes payable; however, 4(7)(f) is different because the crystallisation date is the date a member dies and the survivor pension becomes payable the day after the date of death. Is this intended?

41) In relation to flexible retirement, would it not be more appropriate to set out that the crystallisation date is the date of the relevant reduction in hours or grade, rather than saying 'the date from which the member elects to receive payment'?

42) Regulation 4(7)(c) refers to 'an ill-health retirement pension' which is not defined in the regulations. Regulations 35 and 38 refer to a 'retirement pension' so we think the words ill-health could be deleted.

43) Regulation 4(7)(c) - should the wording also include 'entitled to receive payment' to align with the other provisions and to make clear that the crystallisation date is the same as the date from which the pension becomes payable.

44) Regulation 4(7)(d) says that the crystallisation date is the date the member receives payment of a trivial commutation/small lump sum. It would be more appropriate to change the wording to the date the administering authority makes the payment.

45) Regulation 4(7)(e) says that the crystallisation date is the date the member transfers their benefits out. We would suggest that the crystallisation date should align with the date at which the transfer value is worked out (in most cases, the guarantee date), rather than when the member transfers out. If this is accepted, an amendment would need to be made to the wording of regulation 4(17) as the transfer payment would not be due at the crystallisation date (i.e. the guarantee date).

46) This regulation does not cover members whose pension automatically comes into payment on their 75th birthday. In which case, we would assume that the crystallisation date would be their 75th birthday.

New regulation 4(8) of the Transitional Regulations 2014

47) In relation to the possible subsequent events, we don't think that (b) and (e) are possible.

48) What is the policy intent where a tier 3 ill health pension is uplifted to a tier 2 at the 18-month review? Should this be a further underpin date? If it is, you will need to consider that a guarantee amount awarded on the first crystallisation date could be wiped out by the enhanced service awarded when the benefit is uplifted.

49) Also, where a deferred pensioner member received a final guarantee amount at the first crystallisation date, this should be removed from the CARE account when the pension is suspended. Otherwise the member could have two underpin additions in their account after the second crystallisation date.

New regulation 4(9) of the Transitional Regulations 2014

50) We think the regulation should specify that the 'retirement pension account' must be increased by the final guarantee amount. Currently it just says 'pension account'.

51) 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.

New regulation 4(11) of the Transitional Regulations 2014

52) If the member elects for partial flexible retirement, what happens to the percentage of the final guarantee amount not transferred into the flexible retirement account? Should this stay in the active pension account? How should it be revalued? We assume it would receive revaluation adjustment (with tweak) to the day before the flexible retirement benefits become payable and then PI?

New regulation 4(12) of the Transitional Regulations 2014

53) 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.

54) 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.

New regulation 4(14) of the Transitional Regulations 2014

55) This regulation provides that the provisional underpin amount is updated to the underpin crystallisation date by applying the pension increases that would have applied under the 2007 Benefit Regulations from the underpin date. This does not cover cases where a previous year's final pay is used and there is no PI date between the underpin date and crystallisation date. In this situation, it appears that no pensions increase would be applied which would be incorrect. Does regulation 4(6) need to provide that where a previous year's pay is used, PI should be included in the provisional underpin amount?

New regulation 4(15) of the Transitional Regulations 2014

56) Paragraph (b) assumes that there are no actuarial reductions applicable to CARE benefits payable on redundancy. However, additional pension purchased to cover a period of absence/leave with no pensionable pay is included in provisional assumed benefits and is actuarially reduced for early payment on redundancy. However, the pension for the equivalent period of membership is not actuarially reduced in the provisional underpin amount (see comments above in response to draft regulation 4(6)(b)(ii)).

New regulation 4(16) of the Transitional Regulations 2014

57) This regulation provides that the provisional underpin amount is updated to the underpin crystallisation date by applying the pension increases that would have applied under the 2007 Benefits Regulations from the underpin date. This does not cover cases where a previous year's final pay is used and there is no PI date between the underpin date and crystallisation date. In this situation, it appears that no pensions increase would be applied which would be incorrect. Does regulation 4(6) need to provide that where a previous year's pay is used, pensions increase should be included in the provisional underpin amount?

New regulation 4(17) of the Transitional Regulations 2014

58) 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.

59) Should regulation 7(e)(ii) be excluded on the basis that the value of the bulk transfer payment is decided by agreement between an actuary appointed by the Fund and an actuary appointed by the new scheme.

New regulation 4(20) of the Transitional Regulations 2014

60) As we are revaluing the provisional guarantee amount it will not cover cases where a previous year's final pay is used. Does regulation 4(6) need to provide that where a previous year's pay is used, pensions increase should be included in the provisional underpin amount?

New regulation 4(22) of the Transitional Regulations 2014

61) This regulation provides that the provisional guarantee amount must be used when calculating a death grant under regulation 43(3) and 46(3). We assume this means that any final guarantee amount the pensioner was receiving is excluded; however, we think it would be more appropriate for the final guarantee amount to be used when calculating the death grant for a pensioner.

We think this because the death grant calculation is based on 10 times the amount of pension the pensioner would have been entitled to receive less any amounts of commuted lump sum and pension already paid. The member's pension would have included the final guarantee amount, where appropriate, not the provisional guarantee amount. The provisional guarantee amount is used in the calculation of survivor benefits because survivor benefits are not subject to a reduction. However, this does not apply to death grants