



**THE NEWSLETTER OF
THE SOCIETY OF
PENSION CONSULTANTS**

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SPC London Evening Meetings

The hand out for the following London evening meeting is available and can be obtained by clicking on the link on the speaker's name.

| Date | Speakers | Subject |
|-------------|---|-----------|
| 16 May 2012 | Janice Lambert (The Pensions Regulator) | EU Issues |

The meeting was kindly hosted by Eversheds.



SPC Dinner 2012

November 7th 2012, Dorchester Hotel, London W1

The SPC Dinner promises to provide excellent food and entertainment and, in keeping with one of SPC's key roles, represents a peerless networking opportunity to meet with fellow industry professionals.

Key information is:

➤ Principal Speaker

Principal guest and speaker will be Gregg McClymont, MP (The Shadow Pensions Minister)

➤ Presentation of the "SPC Journalists of the Year Awards"

These awards will recognise one journalist from each of the national press and pensions trade media, who has made an outstanding contribution to pensions journalism in 2012, as voted by SPC Members.

➤ Sponsorship

This year, we are again offering SPC Members the opportunity to associate themselves with the prestige and success of the Dinner, through sponsorship.

We would welcome your sponsorship of one or more of the following:

- The printed list of those attending, available to the 300+ diners on arrival
- The menu at each place at the Dinner *Sponsorship agreed*
- The SPC National Pensions Journalist of the Year Award
- The SPC Pensions Trade Journalist of the Year Award
- The sponsorship amount for each is £1,500 (VAT is not chargeable). Please contact John Mortimer as soon as possible to seize these opportunities.

Tickets are available at £175.00 per head and feedback from previous years' Dinners indicates that this is a modest cost, which can be repaid many times over in terms of the useful networking opportunities, which exist to strengthen your business relationships. The price includes pre-dinner cocktails, a five-course meal, half a bottle of wine with dinner, and a liqueur with coffee.

As ever, we are keen to encourage "new blood" at the Dinner and ensure that it continues to offer the broadest possible range of networking opportunities for those attending. To that end, if your organisation has never previously been represented at the Dinner, the person making the booking will benefit from a discounted special price of £150.00, as will one additional guest.

The closing date for applications for tickets is October 10th.

For a booking form [CLICK HERE](#) 

SPC Contacts


The SPC Investment Committee has had a meeting with Tim Riddington (Co-Head of Policy at the UK Debt Management Office). The principal subjects covered were the general remit to DMO from the Treasury and an expected consultation on extremely long-dated and/or perpetual gilts.

SPC has hosted a briefing from HMRC on its planning for the introduction of Real Time Information, relevant to pension payments.

SPC participated in the most recent HMRC Pensions Industry Stakeholder Forum meeting, on May 1st, 2012.

Subjects covered included the continuing need for clarification of aspects of the new annual allowance / lifetime allowance requirements, focusing on Scheme Pays and Fixed Protection; changes to the QROPS regime; Real Time Information; easing difficulties with taxation of trivial commutation payments and HMRC concerns over so-called Pension Early Release Schemes.

What's being read on the SPC website?

[CLICK HERE](#)  for the latest summary of hits on the SPC website, presented to the PR Committee.

Who's writing about SPC?

[CLICK HERE](#)  for the latest summary of SPC press coverage, also presented to the PR Committee.

New members

The latest new Members of SPC are **Shepherd and Wedderburn**, Edinburgh and **Helm Godfrey Partners**, London EC3.

HMRC update on pensions regulations

HMRC has supplied an update and its pension regulations.

For a copy please [CLICK HERE](#) .

HMRC consultation on authorised employer payments made by NEST

We reported the above consultation in **SPC News no. 3, 2012**.

Our consideration of the consultation document gave rise to some e-mail correspondence between the Chairman of SPC's Legislation Committee, Duncan Buchanan and Stephen Webb at HMRC.

This is likely to be of interest to providers of and advisers on master trusts and an edited version is available.

For a copy please [CLICK HERE](#) .

DWP workplace communications and information forum

The President, Kevin LeGrand, represented SPC at a meeting of the DWP Communications and Information Forum on February 17th 2012.

This was the latest in a series of meetings, in which DWP and the Pensions Regulator meet with employers and their representatives to discuss communication issues related to auto enrolment, and at which both sides share progress in their respective areas. At this meeting, the presentations were mostly from DWP, concerning progress with their public information campaign.

Key points were:

- DWP has started its advertising campaign in some newspapers and billboards and a limited number of radio stations; this was due to be expanded.
- A substantial amount of information is now on the DWP website, and a call centre is also operational.
- The website <http://www.dwp.gov.uk/policy/pensions-reform/workplace-pension-reforms/> has a number of downloadable documents for employers to use.
- DWP is keen for employers to incorporate its material and approach generally into their own, so that employees receive consistent and clear messages that, for example, tie in with official advertisements they see and hear.
- In this same vein, DWP drew attention to its glossary of terms, which they would like to see used across the industry, when talking about pensions and auto enrolment.
- DWP's Key Facts booklet, version 3 is now out; version 4 was due in May.
- DWP seeks feedback on how its material has been used and how it has been received; it would be very pleased to hear from anyone who has any comment or experience to share.
- DWP is happy to visit individual employers to discuss communications.
- DWP is planning to produce a slide presentation for use by advisers.
- The next meeting in the series is due to take place in summer 2012.

DWP consultation: Automatic Enrolment and European Employers

We have responded to DWP's consultation document on automatic enrolment and European Employers.

A copy of our response is available. Please [CLICK HERE](#) .

We reported DWP's consultation in **SPC News no. 3, 2012.**

Pensions Regulator consultation: Determinations Panel Procedure

The Pensions Regulator has published a consultation document on its Determinations Panel procedure.

This is available [CLICK HERE](#) .

At the time of preparing this issue of **SPC News**, we had the consultation document under consideration.

Pensions Regulator consultation: Case Team Procedure

The Pensions Regulator has published a consultation document on its Case Team procedure.

This is available [CLICK HERE](#) .

At the time of preparing this issue of **SPC News**, we had the consultation document under consideration.

SPC responds to DWP consultation: Improving Transfers and Dealing with Small Pension Pots

We have responded to DWP's consultation document on improving transfers and dealing with small pension pots.

A copy of our response is available [CLICK HERE](#) .

In summary, the government has made a number of proposals aimed at facilitating more transfers and reducing the number of small pension pots, by making changes to the current system. In our view, all have their limitations.

The government has also proposed two new models. Both have attractions and both raise significant challenges.

Pot follows member

In principle, a system, whereby pension pots follow people from job to job, has the attraction of keeping an individual's pension savings together in one place (thus avoiding the small pot problem) and keeping the individual in direct contact with them. There would, however, need to be a reliable means of the member's existing scheme being informed of to where his or her fund should be transferred when they change jobs. One could not necessarily rely on the individual to inform the scheme.

An additional complication would be that a pot might follow the member to an employer, in whose scheme the employee chose not to auto-enrol.

It would also be necessary to take into account that an individual might not move to another employer. He or she might become self-employed or might leave the employment market completely, whether temporarily or permanently.

It also might not be in the individual's best interest for their pension fund to follow them to their next job.

Aggregation

An aggregator would remove the problem of identifying the destination of the member's small pot, provided that there was only one aggregator. However, we have significant doubts about whether the single aggregator approach would be feasible from a competition point of view. For example, would a single state-mandated aggregator be compatible with EU state support rules?

If there was more than one aggregator, the problem of fragmentation could reappear, if an individual's different small pots went to different aggregators. Even if there was a single aggregator, if an individual had pension arrangements, some of which fell within the definition of a small pot, and some of which did not, the objective of keeping all the individual's pension saving in one place might not be met, if some of the saving would continue to be held outside the aggregator.

In practice, we have considerable reservations about the desirability or feasibility of mandating a single aggregator.

On the assumption that a single aggregator would also be able to accept pots, other than small pots, it would have a major commercial advantage, since employers might be attracted to it, on the basis that it would minimise difficulties issues in dealing with small pots which arose among their employees, if they were already enrolled into it.

Our view is that there would be relatively few participants in the aggregator market (because these schemes would need to be very large to be commercially viable), but that, provided that they met any criteria which might be established to act as aggregator, they should be allowed to do so.

Other possible approaches

The government sought other suggestions for a process to overcome problems associated with small pots and improved transfers. One possibility we suggested, was to achieve the member engagement effect of automatically amalgamating small pots by using IT to collect multiple data into a single place, which would be a virtual aggregation without the costs of actual transfers. The benefits of this approach have already been recognised in Wrap platforms, which present an investor's financial assets in a single view.

This virtual aggregation could also include most legacy pensions, retaining valuable guarantees.

The inclusion of State pensions into a single view could be a key component in providing individuals with a picture of their total pension savings, leading to informed and engaged individuals.

The virtual aggregation could replace the Pension Tracing Service and it could support the Pensions Regulator in its monitoring of automatic enrolment.

It could also help facilitate transfers at or before retirement, crucially allowing for informed consent and advice.

DWP consultation: Draft Regulations on, and Possible Equalisation Method of, GMPs

We have responded to DWP's consultation document on the above subject, which we reported in **SPC News no. 2, 2012**.

We made the following general points:-

The consultation document, which accompanies the draft regulations, states that DWP's intention is to amend the Equality Act 2010:-

"so that the sex equality rule operates without the need to find an opposite sex comparator, where any difference in treatment between men and women results from the application of the GMP provisions" (paragraph 17a)

Similar amendments are also to be made to the PPF compensation provisions of the Pensions Act 2004 (section 171). (There is no separate reference to FAS and we assume that this is because it has been concluded that it is unnecessary.)

The document also states that DWP understands the current situation to be that schemes are already under an obligation to equalise the unequal effects of GMPs "This flows from Barber and current domestic legislation" (paragraph 12a).

A concern with the draft regulations is that they go far further than the stated intention of DWP.

As drafted, the Regulations would impose a separate and additional obligation on trustees of occupational pension schemes to operate their schemes, so as to equalise the effects of unequal GMPs. For example, draft Regulation 3(3) would amend the Equality Act 2010, so that the implied sex equality rule requires trustees to equalise the effects of unequal guaranteed minimum pension provisions.

If, as stated, DWP's intention is solely to remove the need for a comparator, when considering the effects of GMPs, the draft Regulations should be rewritten to make this clear. The redraft of Regulation 3 could be along the following lines:

"3 (1) Chapter 3 of Part 5 of the Equality Act 2010 is amended as follows.

(2) In section 67 (sex equality rule), after subsection (10) insert –

"(11) When considering whether the sex equality rule is offended by benefits provided under an occupational pension scheme by reason solely of compliance with the guaranteed minimum pension provisions it is not necessary for A to identify a comparator B, rather for this purpose A can be compared to a notional comparator as if A were of the opposite sex.

(12) "Guaranteed minimum pension provisions" means so much of the Pension Schemes Act 1993 and of any other enactment as relates to guaranteed minimum pensions (within the meaning of that Act)."

A similar amendment could be applied to the PPF provisions of the Pensions Act.

The Equality Act 2010 (Sex Equality Rule) (Exceptions) Regulations 2010 contain three existing exceptions to the sex equality rule, namely:

- Bridging pensions (Regulation 2)
- Indexation (Regulation 3)
- Actuarial Factors (Regulation 4).

The wording of the Indexation exception in Regulation 3 is very unclear in its scope and is perhaps outdated. We understand that DWP considers that the exception does permit contracted out schemes to provide different increases to pensions in payment.

We asked that DWP consider amending the wording of Regulation 3 and at the same time explain how the exception in Regulation 3 is designed to apply to contracted out schemes.

A number of schemes (including public sector schemes) may wish to rely on Regulation 3, in order to be excluded from the need to equalise the effects of GMPs, and therefore the provision needs to be clearer and updated.

We would mention that, as currently drafted, that regulation applies where "the scheme is a salary-related contracted-out scheme...". This should be changed, so that the "is" is replaced by "is or was".

We would also mention here our understanding that there is a perception that the challenges posed by adjustment for the effect of unequal GMPs, in essence, do not apply to public sector schemes. In our view, this perception is mistaken and we explained our view in detail.

DWP consultation: Draft Regulations on, and Possible Equalisation Method of, GMPs

The Regulations seek to amend primary legislation where the primary legislation itself does not provide a power for modification by regulation. Jurisdiction for the amendments is sought under the provisions of Section 2(2) of the European Communities Act 1972. Section 2(2) allows regulations to amend primary legislation for the purposes of implementing any EU obligation (and ancillary purposes).

The power under section 2(2) is subject to the protections set out in Schedule 2 to the 1972 Act. In particular, Paragraph 1(1)(b) of Schedule 2 states that the power to make regulations under Section 2(2) shall not include a power:

“to make any provision taking effect from a date earlier than that of the making of the instrument containing the provision”

Guaranteed minimum pensions accrued during the period 1978 to 1997 (with the period from 17 May 1990 to 5 April 1997 being relevant for the purposes of equal treatment).

This raises the following issues with the proposed changes:

Does the Minister have the necessary power to pass the Regulations under section 2(2) of the European Communities Act 1972? In particular is the European Court’s decision in Allonby a “European obligation” for the purposes of the 1972 Act?

Do the changes take effect from an earlier date? Recognising that GMPs relate to historic benefits already accrued under occupational pension schemes?


We asked that DWP consider these jurisdictional points and covers them as part of its response to the consultation. In our view, amendments to primary legislation of the type proposed should themselves only be made by primary legislation.

An alternative approach, and our preferred approach, would be to proceed on the basis that that English law should be interpreted in accordance with European law and that the English Courts would have to interpret the current provisions of both the Equality Act and the Pensions Act as if there is no need to identify a comparator when considering the unequal effects of GMPs (so as to satisfy the decision in Allonby). We understand that DWP has received strong legal advice that this is the case.

This alternative approach would not require any amendments to the existing legislation – rather that legislation would need to be interpreted with Allonby in mind. DWP’s consultation (together with action by PPF and FAS) will have highlighted that this is the case and schemes will then have to respond accordingly.

For our response in full [CLICK HERE](#) .

Contracted-out Transfer Values from 6 April 2012

This article is derived from Mercer Select, Mercer’s subscriber service offering news and analysis of UK pension developments on-line and by email. For further information please [CLICK HERE](#) . This article was correct on April 17th 2012.

“Protected rights” were abolished from 6 April 2012, along with associated restrictions on where these benefits may be transferred.

Contracted-out salary-related benefits – “GMPs” and “s9(2B)” rights – may now be transferred, with appropriate member consent, and, provided the transfer documentation meets the new requirements, to any occupational or personal pension scheme.

Where there is a statutory right to a transfer-out, this will override any restrictions in scheme rules, so, if the receiving scheme satisfies the statutory requirements and will accept the transfer-out, it must be paid.

For non-statutory transfers-out and transfers-in, scheme documentation may include restrictions, so will need to be reviewed and may need amending to take full advantage of these changes in the law.

Background

The last major changes to the transfer regulations in relation to contracted-out rights were made in 1996. From 6 April 2012 protected rights were abolished, simplifying the combinations of transferring/receiving schemes, which need to be separately considered. At the same time the transfer regulations have been amended, to permit, subject to certain consent and documentation requirements, members of contracted-out salary-related schemes (“COSRS”) to transfer their benefits to contracted-in arrangements. This article summarises the regulations relating to the transfers of contracted-out rights on or after 6 April 2012.

Contracted-out transfer values from 6 April 2012

Abolition of protected rights

Before 6 April 2012, the following schemes could hold “protected rights”:

- Appropriate Personal Pensions (“APPs”),
- Contracted-Out Money Purchase (“COMP”) schemes,
- Those sections of Contracted-Out Mixed Benefit (“COMB”) schemes that were contracted-out under the money purchase method, and
- Contracted-out Money Purchase Stakeholder Pension (COMPSHP) schemes.

Protected rights arose from the minimum payments and National Insurance rebates in respect of employees contracted-out of the earnings-related part of the additional state pension (“SERPS” then “State Second Pension”). Protected rights also arose when GMPs or any benefits from schemes contracted-out under the reference scheme test (i.e. contracted-out salary-related rights) were transferred into the above schemes. **Please note, although contracted-out salary-related rights could become protected rights if transferred to the above schemes, strictly they were not protected rights. In this article we use the strict sense.** On 6 April 2012 these rights lost their protected rights legal status and became ordinary rights. Since then, there are no legal restrictions on to where those former protected rights can be transferred, beyond the general restrictions applying to any other ordinary pension rights.

However, existing trust deeds and rules may restrict the schemes, to which members may take a transfer value, or specify that transfers-in from contracted-out salary related schemes must be set up with transfer credits in a certain way. In general, if a scheme is legally able and willing to receive the transfer, the member has a statutory right to take their entire CETV to it, and it is understood that the statutory right will override transferring scheme rules’ restrictions on to which types of scheme a transfer value may be paid. However, in the case of transfers-in, the member has no overriding statutory right to force a scheme to receive any particular kind of transfer. Schemes would therefore need to review their own documentation, to establish whether they can automatically take advantage of the legal relaxations or will be bound by the older requirements (in the absence of further rule amendments). Member documentation is also likely to need reviewing, e.g. member booklets and transfer value forms. These matters are covered in the administrative implications section below.

Contracted-Out Salary-Related Schemes (“COSRS”)

It is important to note that the COSR definition used in the contracting-out transfer regulations [1] – and used in this article – refers to schemes, which are contracted-out and therefore does not cover formerly contracted-out schemes. In general, formerly contracted-out schemes fall under the category of “not a salary-related contracted-out scheme, an overseas scheme or overseas arrangement”, and transfers of contracted-out rights to these schemes are again [2] possible from 6 April 2012. However, transfers of contracted-out rights into such schemes, if permitted, will not become contracted-out rights in the receiving scheme.

From 6 April 2012 there is only one way to contract out of the additional state pension, viz. through a contracted-out salary-related scheme. Similarly, after the abolition of protected rights there will only be two types of contracted-out rights to consider:

Section 9(2B) rights (“s9(2B)”)

Named after the relevant section of the Pension Schemes Act 1993, this term describes rights accrued in relation to post 6 April 1997 service in schemes, which have contracted-out by meeting the “reference scheme test”. Although most schemes contracted-out on this method are defined benefit schemes, a number of defined contribution schemes are also contracted-out on this method (usually by including a defined benefit underpin equal to the reference scheme benefits). It is important to note that any benefits accrued from contracted-out employment while a scheme is contracted-out in this way will be s9(2B) rights, not just the “reference scheme benefits” [3].

Guaranteed Minimum Pensions (“GMPs”)

From 6 April 1978 to 6 April 1997 members in a contracted-out salary-related scheme built up a GMP entitlement. Benefits built up in excess of the GMP entitlement are ordinary rights. This is in contrast to post 6 April 1997 COSR accrual, where all the benefits being built up would be contracted-out “s9(2B)” rights.

Contracted-out transfer values from 6 April 2012

Summary of permitted transfers

In general, transfers from registered pension schemes are only permitted to other registered pension schemes (apart from to certain retirement annuity contracts) or qualifying recognised overseas pension schemes. GMPs and s9(2B) rights remain as such if they are transferred from one COSRS to another, but otherwise become ordinary rights.

The following summary sets out the position for ordinary transfer values at the member's request. The position is more complicated where benefits are in payment, being bought-out, or transferred without member consent. These complications are covered later in this article.

| Existing benefit | Transferring scheme | Receiving scheme | New benefits |
|---|---|--|-----------------|
| Ordinary rights (including former pre and post 1997 protected rights) | Any registered pension scheme | Any registered pension scheme [4] | Ordinary rights |
| | | Annuity contract | Ordinary rights |
| | | Qualifying recognised overseas pension scheme or arrangement. | Any |
| GMP not in payment | COSRS Former COSRS Appropriate policies (appropriate policy of insurance or annuity contract) | COSR | GMP |
| | | Not a COSR and not an overseas arrangement or scheme. Former COSRS fall in this category. | Ordinary rights |
| | | Qualifying recognised overseas pension scheme or arrangement | Any |
| S9(2B) not in payment | COSR or former COSR | COSRS | S9(2B) |
| | | Not a COSRS and not an overseas arrangement or scheme. Former COSRS fall in this category. | Ordinary rights |
| | | Qualifying recognised overseas pension scheme or arrangement. | Any |

Transfers of GMPs

GMPs may be transferred only in the following circumstances.

To a salary related contracted-out scheme, provided

- the member consents in writing (exemption for connected employers schemes – see below)
- the member is employed by an employer which is a contributor to the receiving scheme, or the member previously has been a member of the receiving scheme (exemption for connected employers' schemes)

Contracted-out transfer values from 6 April 2012

- If the member is not in an employment which is contracted-out under the receiving scheme, the receiving scheme must:
 - where transfer is from an occupational scheme
 - provide for pensions equal to the GMP to be paid
 - contain the same provisions for commencement and continued payment of the pensions in (i)
 - comply with the contracting-out commutation, suspension and forfeiture provisions
 - allow for the same rate of revaluation to apply on the transferred in GMP as would have applied under the transferring scheme
 - where transfer is from an insurance policy/annuity contract
 - provide for pensions at least equal in value to the value of the annuity which would have been payable, in respect of the GMP, by the transferring policy.

To a scheme which is not a salary-related contracted-out scheme, an overseas scheme or overseas arrangement, provided

- the member consents in writing
- the transfer payment in respect of the GMP represents at least its cash equivalent [5]
- the member has acknowledged in writing to the transferring scheme that the member has received a statement from the receiving scheme showing the benefits to be awarded in respect of the transfer payment, and that the earner accepts that-
 - the benefits to be provided by the receiving scheme may be in a different form and of a different amount to those which would have been payable by the transferring scheme, and
 - there is no statutory requirement on the receiving scheme to provide for survivor's benefits out of the transfer payment.

To an overseas scheme or arrangement, provided

- the member consents in writing
- the trustees (or transferring insurer) have taken reasonable steps to satisfy themselves that where the receiving scheme is an occupational scheme, the member is in employment to which the receiving scheme applies
- the transfer payment in respect of the GMP represents at least its cash equivalent
- the member has acknowledged in writing that the receiving scheme may not be regulated by UK law and as a consequence of this there may be no obligation for the receiving scheme to provide any particular value or benefit in respect of the transfer payment
- the trustees (or transferring insurer) have taken reasonable steps to satisfy themselves that the member has received a statement from the receiving scheme, showing the benefits to be awarded in respect of the transfer and the conditions, if any, on which these could be forfeited or withheld.

Transfers of GMPs between connected employer schemes

Bulk transfers of GMPs between COSRs of connected employers are permitted. The normal provisions above apply, except members' consents will not be needed and members will not necessarily have to have been employed by an employer, which is a contributor to the receiving scheme, or previously have been a member of the receiving scheme. Such a transfer is subject to actuarial certification.

For the purposes of the regulations a connected employer transfer is where either:

- the transferring scheme and the receiving scheme apply to employment with the same employer; or
- the transferring scheme and the receiving scheme apply to employment with different employers, the earner or person concerned is one of a group of persons in respect of whom transfers or transfer payments are being made from the transferring scheme to the receiving scheme and either;

Contracted-out transfer values from 6 April 2012

- the transfer or transfer payment is a consequence of a financial transaction between the employers, or
- each of the employers is one of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 736 of the Companies Act 1985.

The meaning of “apply to employment” is not entirely clear. Also, in November 2011, DWP acknowledged in an informal consultation that under the current legislation bulk transfers without consent were allowed from formerly contracted-out schemes but not to formerly contracted-out schemes, and it was considering allowing such transfers.

If a GMP has already come into payment from an occupational scheme, a transfer may only be made to another COSR, either by individual consent or by a connected employer transfer. In either case the normal requirements for transfers between such arrangements apply.

If the GMP has already come into payment, payments from the receiving scheme must commence from the date liability is assumed and the same provisions for spouses’ benefits, and suspension and forfeiture, as applied in the transferring scheme must pass over to the receiving scheme.

Transfers of Section 9(2B) rights

Transfers of accrued section 9(2B) rights can only be made in the following circumstances.

To a COSRS, provided

- the member consents in writing (exemption for connected employers schemes – see below)
- the member is employed by an employer who is a contributor to the receiving scheme, or the member has been a member of the receiving scheme (exemption for connected employers – see below.)
- the transfer payment is used to provide section 9(2B) rights for the member
- the receiving scheme has provision to treat the transferred rights in the same way as any section 9(2B) rights accrued within the scheme
- the transfer payment in respect of the 9(2B) rights represents at least its cash equivalent

To a scheme which is not a salary-related contracted-out scheme, an overseas scheme or overseas arrangement, provided

- the member consents in writing
- the transfer payment in respect of the 9(2B) rights represents at least its cash equivalent
- the member has acknowledged in writing to the transferring scheme that the member has received a statement from the receiving scheme showing the benefits to be awarded in respect of the transfer payment, and that the earner accepts that:
 - (i) the benefits to be provided by the receiving scheme may be in a different form and of a different amount to those which would have been payable by the transferring scheme, and
 - (ii) there is no statutory requirement on the receiving scheme to provide for survivor’s benefits out of the transfer payment.

To an overseas scheme or arrangement, provided

- the member consents in writing
- the trustees have taken reasonable steps to satisfy themselves that, where the receiving scheme is an occupational scheme, the member is in employment to which the receiving scheme applies
- the member has acknowledged in writing that the receiving scheme may not be regulated by UK law and as a consequence of this there may be no obligation for the receiving scheme to provide any particular value or benefit in return
- the trustees have taken reasonable steps to satisfy themselves that the member has received a statement from the receiving scheme showing the benefits to be awarded in respect of the transfer and the conditions, if any, on which these could be forfeited or withheld.
- the transfer payment in respect of the 9(2B) rights represents at least its cash equivalent.

Contracted-out transfer values from 6 April 2012

Transfers of Section 9(2B) rights between connected employer schemes

Bulk transfers of Section 9(2B) rights between COSRs of connected employers are permitted. The normal provisions above apply, except members' consents will not be needed and members will not necessarily have to have been employed by an employer which is a contributor to the receiving scheme, or previously have been a member of the receiving scheme. Such a transfer is subject to actuarial certification. The actuary will need to have certified that the transfer credits to be acquired by each member are, broadly, no less favourable than the rights to be transferred. This last requirement used to be called the "GN16" certificate requirement. This is not directly specified in the GMP transfer regulations referred to above, but any connected employer transfers without member consent will also need the actuarial certificate. The former GN16 provisions now fall under regulation 12(3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991.

As for GMPs above, for the purposes of the regulations, a connected employer transfer is where either:

- the transferring scheme and the receiving scheme apply to employment with the same employer; or
- the transferring scheme and the receiving scheme apply to employment with different employers, the earner or person concerned is one of a group of persons in respect of whom transfers or transfer payments are being made from the transferring scheme to the receiving scheme and either:
 - the transfer or transfer payment is a consequence of a financial transaction between the employers, or
 - each of the employers is one of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 736 of the Companies Act 1985.

Section 9(2B) rights in payment

Where section 9(2B) rights have already come into payment, transfer may only be to a COSRS under the connected employer route above. As above, this will involve:

- the transfer payment being used to provide section 9(2B) rights for the member
- the receiving scheme having provision to treat the transferred rights in the same way as any section 9(2B) rights accrued within the scheme
- actuarial certification

Partial transfers

In general, from "A Day" 6 April 2006, HMRC no longer has any objections to partial transfers (so long as it is a recognised transfer of uncrystallised rights). Previously, partial transfers were only permitted in certain circumstances, such as opting-out members and the receiving scheme being unable to accept the contracted-out portion of a member's rights. However, there are other legal requirements to consider.

First, with limited exceptions (such as when the receiving arrangement will not accept the contracted-out part of the benefits) members do not have statutory rights to partial transfers, so such transfers would have to be permitted under a scheme's own rules and a non-statutory discharge sought.

Second, the scheme's own trust deed and rules may not permit partial transfers, so these might need to be amended – and legal advice taken – before partial transfers could take place.

Contracted-out rights

In general, scheme members are entitled to a statutory transfer of their entire scheme benefit. Where the receiving scheme is willing or able to accept only the non-contracted-out rights, the member's statutory transfer rights are restricted to their ordinary rights (i.e. pre-1997 rights in excess of their GMP).

Schemes may, if their rules permit, choose to allow transfers of other than members' statutory entitlements.

Until recently, there were additional restrictions in relation to partial transfers of contracted-out rights, and these may have been particularly important in relation to members who might want to use drawdown. This is because a member might want to leave part of their pension benefits where they are to provide an income to meet the Minimum Income Requirement, but then transfer the rest to the drawdown arrangement.

Contracted-out transfer values from 6 April 2012

The problems, relating to partial transfers of pre and post 1997 protected rights, fall away from 6 April 2012, with the possible exception of those restrictions remaining in schemes' own rules (see above).

We understand that in response to a change in DWP's interpretation of the underlying legislation, NISPI is now willing to permit greater flexibility in partial transfers of contracted-out rights. In summary, any part of the contracted-out rights may be transferred to any other scheme, whilst leaving residual contracted-out rights (of whatever derivation) in the transferring scheme. However, scheme trustees may wish to seek their own legal advice on this point of law. However, we understand that NISPI is now amending its processes, to allow such transfers to be recorded in its National Insurance record systems and therefore the previous practical obstacle of NISPI rejecting such transfers would be removed. Whether an individual scheme can permit such transfers is thus, we understand, a trustee decision dependent on their own rules. Schemes receiving partial transfers of contracted-out rights must still comply with the usual requirements in receiving such rights. When notifying NISPI of a partial transfer of contracted-out rights, the scheme must attribute it to a particular period of service e.g. 6 April 2000 to 5 April 2005 – NISPI cannot record a transfer of, for example, 40% of the s9(2B) rights.

Post 5 April 1988 opt-outs

For completeness, if a member's pensionable service commenced before 6 April 1988 and they later opt-out of the scheme ("pensionable service...terminated at the member's request"), but remain in employment to which the scheme applies, the member only acquires a statutory right to a transfer value in relation to their benefits attributable to their post 5 April 1988 service. In this scenario it would be possible to take a transfer of the post 1988 GMP and leave the pre 1988 GMP in the transferring scheme. Individual schemes are permitted, if their rules allow, to pay the whole transfer value.

If the member later leaves the relevant employment they may then be entitled by statute to a transfer value in respect of the remaining benefits.

Administrative implications

Scheme rules, member booklets and announcements, transfer forms and other documentation may include some restrictions that will fall away or are unnecessary from 6 April 2012.

A contracted-in scheme may prohibit transfers relating to contracted-out rights into the scheme, even though from 6 April 2012 the law allows it to, with the transferred-in rights becoming ordinary rights.

A COSR scheme might not allow transfers to be taken to schemes, which are not contracted-out, even though these are permitted from 6 April 2012. However, in general, if a scheme is legally able and is willing to receive the transfer, the member has a statutory right to take their entire CETV from the transferring scheme, so the statutory right will override scheme rules' restrictions on the types of scheme to which a transfer value may be paid. That said, in the case of transfers-in, the member has no overriding statutory right to force a scheme to receive any particular kind of transfer.

A former COMP scheme's rules may define certain benefits as "protected rights" and prohibit them from being transferred to contracted-in schemes.

To take advantages of the additional flexibility from 6 April 2012, rules, member booklets and announcements, transfer forms and other documentation may need to be amended.

Administrative processes should also be considered as current processes may be unnecessarily restrictive. Equally, schemes should not assume they can automatically receive transfers from any scheme, as their rules may not permit it.

[1] *The Contracting-out (Transfer and Transfer Payment) Regulations 1996 (SI 1996/1462)*

[2] *It was possible to transfer contracted-out rights to former contracted-out schemes (known as "section 53 schemes") until 6 April 1997, but not then until 6 April 2012.*

[3] *AVCs are not usually contracted-out benefits even if the main scheme benefits are. An exception might be where AVCs accrue an additional benefit in the scheme, although this would be very dependent on the exact scheme rules. One should also note that "AVCs" paid through a salary sacrifice arrangement are not strictly AVCs because they are regarded as employer contributions.*

[4] *Except a scheme which was immediately before 6th April 2006 approved under Chapter 3 of Part XIV of the Income and Corporation Taxes Act 1988 III ("Retirement Annuities")*

[5] *"Cash equivalents" under the transfer value regulations are after any reductions to the "initial cash equivalents"*

Pensions Regulator's statement on pension scheme funding in the current environment

This article is derived from Mercer Select, Mercer's subscriber service offering news and analysis of UK pension developments on-line and by email. For further information please [CLICK HERE](#). This article was correct on May 14th 2012.

On 27 April 2012, the Pensions Regulator published its [statement](#) on funding for valuations with effective dates between September 2011 and September 2012. This sets out its views on acceptable responses to the current economic environment. Whilst the statement carries no legal weight, adhering to its principles will help to minimise the risk of Pensions Regulator intervention.

TPR subsequently published three illustrative scheme scenarios on 9 May 2012. These cover the following:

- Scheme with slightly increased deficit
- Scheme with materially increased deficit, but strong employer covenant
- Scheme with materially increased deficit and weak employer covenant, but where the trustees are confident that there is a reasonable likelihood that both the business and the scheme funding position will improve in future.

The Regulator expects trustees and employers to take its statement into account for valuations with effective dates between September 2011 and September 2012. It says it will seek to identify schemes, where approaches are not in line with the statement, and intervene where it will have the greatest impact. It also plans to check that feedback given at previous valuations has been taken into account.

In the covering press release, the Regulator says it will segment the market and look in particular at schemes posing the greatest risk to the PPF and that it will seek to engage proactively with them. These schemes can be segmented as follows:

- schemes which are significantly underfunded, with employers for whom affordability is not a barrier. It will be expecting employers of these schemes to make larger contribution increases and/or to provide additional security ([scenario 2](#) gives an example of how this might work);
- schemes with deficits, with employers for whom affordability will be a challenge. The Regulator is expecting that these schemes will need to significantly increase their recovery plan length and/or make use of other flexibility in the framework; ([scenario 3](#) is relevant);
- schemes which are significantly underfunded, with weak employers, for whom a viable funding plan is not possible. Whilst it expects few schemes to fall in this group, the Regulator urges trustees in this position to contact it as early as possible in the valuation process.

The remaining group of schemes, those which are relatively well funded, should expect to need to make only modest adjustments to their deficit contributions and/or recovery plan lengths and should expect little intervention from the Regulator. However, it seems likely to consider how trustees have responded to concerns it raised following previous valuations, in determining whether it considers that the process followed this time is adequate.

If trustees follow the guidance set out in its statement, the Regulator says that the need for regulatory intervention should be reduced. However, if it identifies approaches which are not in line with its statement, it will seek to engage before completion of the valuation process. How it intends to identify these schemes before the valuation is submitted is currently unclear, as is its position as regulator following conclusion of the valuation process, where it has previously been party to valuation discussions.

FSA consultation on pension transfer value analysis assumptions

We reported the above correspondence in [SPC News no. 3, 2012](#).

Our response is available. [CLICK HERE](#).

Treasury consultation: Gender Neutral Insurance Benefits and Premiums

We have responded to The Treasury on its consultation document on the UK's response to the ECJ ruling that insurance benefits and premiums should be gender neutral.

The response is available. [CLICK HERE](#) 

We had two general comments:-

There is uncertainty, arising from the Communication from the European Commission (Guidelines on the Application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case-236/09 (Test Achats)), published in December, 2011.


The uncertainty arises from paragraph 22 of the Communication. This states that, where occupational pension schemes provide for the payment of a benefit under a specific form, such as an annuity, even if it relies on an insurer to pay out the benefit, it will fall under Directive 2006/54/EC, which allows for the setting of different levels of benefits between men and women, when justified by actuarial calculation factors.

It is not clear, however, whether the Commission views its comments as extending to all annuities purchased from occupational pension scheme funds or whether the situation differs, depending on whether the trustees are (a) buying an annuity in their own name or (b) in the member's name, for example as a result of the member exercising an open market option.

It is important that, in its response to its current consultation, the government leaves no doubt on the position in UK law.

Confirmation that group personal pension arrangements (GPPs) also fall within the definition of an "occupational pension scheme" from the perspective of Directive 2006/54/EC would be welcome. (Paragraph 21 of the Communication referred to above seems to support this.)

Indeed, as regards UK legislation, GPPs seem to be covered by the exemption in paragraph 20 of Schedule 3 to the Equality Act 2010. Consultation question 6 explicitly asks whether respondents agree that no amendment is needed to that paragraph.

The consultation document is available [CLICK HERE](#) 

ASB Exposure Drafts: Financial Reporting Standards

We reported the publication of the above reporting standards in **issue no. 3, 2012**.

We made a brief response, which is available [CLICK HERE](#) 

About

SPC is the representative body for the providers of advice and services needed to establish and operate occupational and personal pension schemes and related benefit provision. Our Members include accounting firms, solicitors, life offices, investment houses, investment performance measurers, consultants and actuaries, independent trustees and external pension administrators. Slightly more than half the Members are consultants and actuaries. SPC is the only body to focus on the whole range of pension related functions across the whole range of non-State provision, through such a wide spread of providers of advice and services. We have no remit to represent any particular type of provision.

The overwhelming majority of the 500 largest UK pension funds use the services of one or more of SPC's Members. Many thousands of individuals and smaller funds also do so. SPC's growing membership collectively employ some 15,000 people providing pension-related advice and services.

SPC's fundamental aims are:

- (a) to draw upon the knowledge and experience of Members, so as to contribute to legislation and other general developments affecting pensions and related benefits, and
- (b) to provide Members with services useful to their business.

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