SPC News No. 3, 2011 Issued in July, 2011

THE NEWSLETTER OF THE SOCIETY OF PENSION CONSULTANTS

contents

SPC

SPC Conference October 6th 2011, Hyatt Regency Churchill, London W1: Save the date

This year's SPC conference will be at the Hyatt Regency Churchill on October 6th 2011.

The theme of the conference will be "A Future Without Retirement: Embracing the Opportunities and Meeting the Challenges". The intention is to look positively at the opportunities created by, and responses to, an environment in which retirement age becomes a matter of personal choice, in which increasing longevity means that many people no longer choose to make financial plans on the basis of complete cessation of economic activity hitherto associated with retirement and in which defined contribution provision offers the flexibility of a pot of money, rather than a pension. We are assembling a high level panel of speakers from business, political, academic and pensions backgrounds.

Steve Webb, the Pensions Minister, will be our principal speaker.

We are looking forward to repeating the success of last year's conference, when comments from those present included.

- Possibly the best one-day conference I have participated in: engaging and informed speakers, congenial company, well organised
- Very good overall, no disappointing sessions
- A great overview of the key issues in pensions. Extremely pleased with the interaction with delegates
- An excellent overview of the landscape and challenges in workplace savings from an employer and employee perspective.
- Excellent speakers – thought provoking content – good participation

The delegate rate is £299 plus VAT, but with a discount to £249 plus VAT for bookings received by August 31st 2011.

To book, please click here www.conferencesandtraining.com/spc-conference.

We look forward to seeing you at this important SPC event.

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.

SPC contacts

SPC has met June Mulroy, following her appointment as Executive Director, DC, Governance and Administration at the Pensions Regulator. Discussion focussed on the Regulator's discussion paper on enabling good member outcomes in work-based pension provision.

The SPC President, Kevin LeGrand, represented SPC at the most recent meeting of the Pensions Regulator's stakeholder forum, on May 17th 2011. The meeting included sessions on regulating the changing defined benefit and defined contribution landscapes and communicating the new employer duties under the 2012 pension changes.

SPC continues to participate in pension technical meetings, hosted by HMRC, preparing the way for separate rates of income tax in Scotland and in England and Wales.

SPC London Evening Meeting Handouts

Hand outs are available for the following meetings, and can be obtained by clicking on the subject:

Date	Speakers	Subject
28 March 2011	Hugh Gittins and Philip Davies (Eversheds)	Practical Responses to an Open-ended Workplace
4 April 2011	Morten Nilsson (ATP)	Adding Value for Employers and Members
17 May 2011	Graham Cooke (JLT)	Pension Taxation - Where Next?

SPC News issues for 2010

SPC News issues for 2010 are now on the SPC website (www.spc.uk.com), in the Archive section.

HMRC publishes draft regulations on Annual Allowance Information Requirements

HMRC has published draft regulations on information requirements associated with the annual allowance.

For a copy please CLICK HERE .

SPC responds to HMRC: Collecting Real Time Information

We have responded to HMRC on its consultation document on collecting real time information.

A copy of our response is available - please CLICK HERE .

We reported the publication of the consultation document in **SPC News no. 2, 2011**.

Drawdown Pensions Tables

On February 15th, 2011 HMRC published the 2011 Drawdown Pension Tables and guidance for calculating the maximum income from drawdown pension funds.

These can be found on the HMRC website at http://www.hmrc.gov.uk/pensionschemes/gad-tables.htm.

House of Commons Work and Pensions Select Committee

The House of Commons Work and Pensions Select Committee held an evidence session with the Pensions Minister on the government's pensions reforms on 9/3/11.

In advance, it invited submissions on the subjects it intended to cover and we provided a submission, which is available - please CLICK HERE .

PPF publishes consultation on Assumptions to be used for Section 143 and 179 Valuations

PPF has published a consultation document on assumptions to be used for section 143 and 179 valuations.

The consultation document is available - please CLICK HERE .

We have submitted a response, which is available - please CLICK HERE .

SPC responds to PPF consultation document on GMP Equalisation

We have responded to PPF's consultation document on the calculation of PPF compensation and FAS assistance in the context of equalisation for schemes contracted out on a GMP basis.

A copy of our response is available - CLICK HERE .

SPC responds to DWP's consultation on offering a default option for Defined Contribution Automatic Enrolment Pension Schemes

We have responded to DWP's consultation document on offering a default option for defined contribution automatic enrolment pension schemes.

A copy of our response is available - CLICK HERE .

We reported the publication of the consultation document in **SPC News no. 2 2011**.

The government's response to the consultation has now been published. For a copy please CLICK HERE .

Abolition of defined contribution contracting out

HMRC, through National Insurance Services to Pensions Industry, plans to publish a series of bulletins as the abolition of defined contribution contracting-out approaches.

The first three such bulletins are available at: http://www.hmrc.gov.uk/nic/countdown-bulletins.htm.

A State Pension for the 21st Century: government consultation

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 6th 2011.

The Government is consulting on its proposals for simplifying the State Pension system. It puts forward two options:

- to speed up the transition to a two-tier flat-rate pension; or
- more radically, to create a single-tier flat-rate pension above the Pension Credit standard minimum guarantee.

Option 1 is based on an acceleration of the current legislation, which provides for the State Second Pension ("S2P") to gradually become a flat rate benefit:

- A full entitlement to Basic State Pension ("BSP"), as now, to be based on 30 qualifying years; it is proposed that "in the longer term people with 30 years of contributions in both the BSP and S2P could expect to retire on a state pension of around £145 a week".
- Contributions for S2P can be paid for all years of working life (from 16 to State Pension Age). Entitlement rules would broadly continue as now.
- The earnings-related component of S2P to be withdrawn over the period from 2013 to 2020 (more rapidly than under the Pensions Act 2007, which would achieve transition to flat rate by the early 2030s). This would be achieved by lowering the upper band for earnings from £40,000 down to the lower band of £14,000, presumably removing the earnings band altogether over 7 years.
- From 2020, a flat-rate of S2P (currently £1.60 a week) will be earned for each qualifying year, revalued by earnings until State Pension age.
- Contracting-out to be retained for defined benefit (DB) members, with S2P reduced accordingly; the consultation document says that the value of the rebate would reduce over time.
- BSP, as now, uprated by the "triple guarantee" (that is, the higher of earnings, CPI or 2.5% per year); S2P, as now, uprated by CPI each year.
- Savings Credit to be retained.
- If introduced, it is proposed that this option could be further refined to align the BSP and S2P elements, subject to the flat-rate pension being set at an affordable amount.

Option 2 combines BSP and S2P into a single-tier state pension. For future pensioners:

- A full entitlement of around £140 per week, to be based on 30 qualifying years of contributions or credits; there would be a seven year minimum qualifying rule. There would be no special rules for marriage, bereavement or divorce, and the self-employed can qualify.
- Uprated by the triple guarantee.
- An end to S2P.
- An end to DB contracting out. The single-tier state pension would be reduced to reflect previous contracting-out. The legislative requirement to provide a certain level of scheme benefits would no longer apply.
- An end to the Savings Credit, as most people could be expected to retire on state pensions in excess of that level.

The Government is also consulting on the most appropriate mechanism for determining **future changes to State Pension age**. It proposes two possible approaches, or a combination of the two:

- A formula linked to life expectancy and automatically updated to reflect revisions in projected life expectancy; or
- A regular review at pre-determined intervals to weigh up wider concerns and evidence.

At the time of preparing this issue of SPC News, SPC had the consultation under consideration. SPC has also had an informal meeting with DWP officials working on the paper, in advance of its formal response.

SPC responds to Pensions Regulator discussion paper on Enabling Good Member Outcomes in Work-Based Pension Provision

We have responded to the Pensions Regulator's discussion paper on enabling good member outcomes in work-based pension provision.

For a copy of the response, please CLICK HERE.

SPC responds to FSA paper on Platforms

We have responded to FSA on its consultation paper on Platforms: Delivering the RDR and other issues for Platforms and Nominee Related Services (CP10/29).

For a copy of our response, please CLICK HERE.

A copy of the consultation paper is available - CLICK HERE.

New Approach to Financial Regulation: Building a Stronger System

The Treasury has published a consultation document on A New Approach to Financial Regulation: Building a Stronger System.

We have responded to Chapter 4, on the Financial Conduct Authority, and a copy of the response is available - CLICK HERE.

FSA publishes consultation on Product Disclosure: Retail Investments

FSA has published a consultation document on Product Disclosure: Retail Investments – Changes to Reflect RDR Adviser Charging and to Improve Pension Scheme Disclosure.

For a copy please CLICK HERE.

Our response is available - CLICK HERE.

European Commission call for advice on the IORP Directive

The European Commission has issued a call for advice to the European Insurance and Occupational Pensions Authority (EIOPA) for the review of the IORP Directive. This follows last year's consultation on measures to deliver adequate, sustainable and safe pensions.

For a copy, please CLICK HERE.

The Commission wants to achieve greater harmonisation in the way and transparency of how members' benefits are protected in funded occupational pension schemes across Europe – with particular focus on solvency standards.

The proposals will affect both defined benefit (DB) and defined contribution occupational schemes, although those relating to harmonising solvency requirements for DB schemes will attract most attention, with the greatest scrutiny likely to fall on the 'capital adequacy' element as described below. However, there is also the prospect of significant change in relation to:

- Rules on governance and regulatory oversight.
- Disclosure requirements to both members and the Pensions Regulator.

EIOPA is urged to consider how the comparable provisions in the Solvency II Directive could be applied to all but seven out of the 23 topics covered by the call for advice. A further two draw on the disclosure measures set out in the UCITS IV Directive – including Key Investor Information Documentation, familiar to financial services providers.

Although the full rigours of the capital adequacy requirements of Solvency II are reserved for pension funds termed "regulatory own funds" - which are believed not to exist in the UK - it nonetheless remains the starting point for other pension schemes.

The Commission is keen to apply certain principles from Solvency II – including market-consistent valuations, with technical provisions being calculated as a best estimate of future cash flows, discounted at a risk-free rate – together with a risk margin across the board. The call refers to the creation of a single balance sheet recognising as an asset the strength of the

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European Commission call for advice on the IORP Directive

employer's covenant and, within the UK, considering the Pension Protection Fund as a form of 'reinsurance'.

The call for advice asks EIOPA to advise how to achieve greater harmonisation across the EU on:

- Governance – including risk management and the 'fit and proper' status of scheme managers.
- Investment rules – supervision of asset allocations and operation of lifestyle and default funds.
- Disclosure of information to the Regulator and members – including the content of Statements of Investment Principles.

For DC schemes, particular attention will be paid to managing and supervising 'operational risk' – especially administration risk from the late payment of contributions - and cost control. The Commission has set a target of December 16th 2011 for a response to the call, in part to allow EIOPA to consult with stakeholders and carry out a Quantitative Impact Study – a term which, again, is familiar to those used to Solvency II.

SPC responds to EU consultation Paper on UCITS Depositary Function

We have responded to the European Commission on its consultation paper on the UCITS Depositary Function and on the UCITS Managers Remuneration.

A copy of our response is available - CLICK HERE .

We reported the publication of the consultation paper in **SPC News no. 2 2011**.

Judgment in the European Court case on Actuarial Factors: Test-Achats Case

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 5th 2011.

The Test Achats case was initiated by a consumer association in Belgium, which claims that an exception to EU non-discrimination law, to allow for unequal actuarial factors for men and women when pricing insurance products, is unlawful, because it contravenes the fundamental EU rights of equal treatment and non-discrimination between men and women.

Article 5 of the Directive, which governs equal treatment for men and women in relation to the access to and supply of goods and services, prohibits the use of sex based factors, which would result in different premiums and individual benefits for men and women.

The Article includes an exception, which gave Member States the option of deciding before December 21st 2007 to permit proportionate differences in individuals' premiums and benefits, where the use of sex is a determining factor in the assessment of risk, which can be substantiated by relevant and accurate actuarial and statistical data.

Under the Directive, a Member State which decided to make use of that option had to review it every five years after December 21st 2007, provide data on it to the European Commission and take account of the Commission's report to the European Parliament, which could recommend changes to the Directive. The Directive is otherwise silent as to the length of time, during which those differences may continue to be applied, and there is no restriction as to how long Member States, which have made use of the option, are permitted to allow insurers to apply the unequal treatment. Belgian legislation made use of this exception as does UK legislation.

The European Court of Justice gave judgment that the exception in the Directive is invalid with effect from December 21st 2012. The Court did not view favourably the risk that EU law may permit an exception from the equal treatment principle, for an indefinite period. The Court commented that this provision works against the purpose of the Directive and is incompatible with the Charter of Fundamental Rights of the European Directive.

This means that unisex rates will have to be used for insurance products from December 21st 2012 (or earlier if the UK government decides to make changes to the law). The costs of buying annuities are usually more expensive for women (because of higher life expectancy) and death cover is usually more expensive for men.

The sex based actuarial factors used in pension schemes are not directly affected by this decision, as they are governed by a different Directive and the provisions are different. The use of such factors was allowed, as sex based actuarial factors were considered to be outside the scope of the Treaty in a previous European Court case in 1993 (Neath v Hugh Steeper). However, the interaction between the Directive and the Charter of Fundamental Rights was not specifically considered.

We understand that the Association of British Insurers is working closely with the Treasury on the issues arising out of this case and that the Treasury is likely to make a statement in April stating that unisex factors are not required for insurance contracts entered into before December 21st 2012. The government will probably issue draft legislation in relation to insurance products by the end of 2011 and the government might propose changes to occupational pension schemes at that time.

Phasing out the default retirement age

We have corresponded with the Department for Business, Innovation and Skills on phasing out the default retirement age.

Page 4 of the government's response to consultation on phasing out the default retirement age, at paragraph E, refers to unintended consequences on the availability of risk benefits and to the government's intention to introduce an exception to the principle of equal treatment on the grounds of age for "Group Risk Insured Benefits". There was no reference to whether this exception would be extended to "self insured" risk, which would extend to larger occupational pension schemes, which choose not to insure risk benefits.

We sought confirmation of whether the intention is for the exception to cover "self insured" risk.

The Department has replied that the regulations, which it laid on February 16th, introduce an exception to the principle of equal treatment on the grounds of age, where group risk insured benefits are provided by an employer. This includes where an employer is itself a provider of such insured benefits. The exception is not intended to cover other forms of self-insurance.

The Department's overall policy approach on age discrimination in employment has been to make narrow exceptions where they can be justified, but there is already a general exception which means that age discrimination is permissible if it can be objectively justified.

We raised some questions relating to this response by BIS and to new paragraph 14 of schedule 9 to the Equality Act 2010, introduced by regulation 2 of the draft Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011.

Aspect 1: Trust-based arrangements

We sought clarification of whether the exemption within the above draft Regulations applies to the following scenarios:

> Scenario (a): A death-in-service lump sum is provided as one of the benefits under an occupational pension scheme. The trustees insure the benefit.
>
> Scenario (b): A lump sum death benefit is provided under a stand-alone group life scheme. This is written under trust, to avoid an inheritance tax liability on the death benefit. The trustees insure the benefit.

In other words, where the insurance is taken out in the name of trustees, rather than the sponsoring employer. The vast majority of death-in-service benefits are provided in this way and it would be perverse if such cases were not exempt, given the statement on page 15 of the Government's January 2011 response to last year's consultation on phasing out the default retirement age.

We noted that the inserted (draft) paragraph 14 to schedule 9 of the Equality Act 2010 refers to it not being an age contravention if:

- The employer makes "arrangements for, or affords access to, the provision of insurance or a related financial service to or in respect of an employee ..." subject to "the insurance or related financial service is, or is to be, provided ... in pursuance of an arrangement between the employer and another person, or where the employer's business includes the provision of insurance or financial services of the description in question, by the employer".

We do not believe that the meaning of the terms "related financial service" and "another person" in the above is sufficiently clear. However, it seems to us that this could encompass the two scenarios (a) and (b) above, as a result of the following analysis:

i) The Equality Act itself arises as a direct consequence of the EU requirements on non-discrimination

ii) Directive 2003/41/EC on "the activities and supervision of institutions for occupational retirement provision" states, in recital (20), that "institutions for occupational retirement provision are financial service providers ..."

iii) So, the provision of death-in-service benefits under an occupational pension scheme – as in scenario (a) – would clearly seem to be a "related financial service"

iv) The trustees would count as "another person"

v) If scenario (a) is therefore exempt, why not scenario (b) too?

Aspect 2: "Self-insured" risk

The BIS letter states that the exemption is not intended to cover self-insurance.

However, it seems to us that the provision of death-in-service benefits under an occupational pension scheme could be exempt, even if not insured at all, on the grounds (as noted in (iii)

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Phasing out the default retirement age

and (iv) above) that this is a "related financial service" and the arrangement is between the employer and the trustees (as "another person"). Whilst pension schemes do generally insure lump sum death benefits, they often do not insure death-in-service dependants' pensions.

In response, BIS made the general point that, in considering whether any particular scheme or scenario will fall within the scope of the exception, much will depend on the detailed operation and/or structure of the scheme in question. It would of course ultimately be for the Employment Tribunal or for the courts to decide whether the exception applies in any given situation.

That said, for Aspect 1 of our letter, it is BIS's view that group risk insurance benefits provided through a trustee-held policy (such as pension trustees), and forming part of an employee's overall pay and benefits package, would fall within the scope of the exception.

With regard to Aspect 2 of our letter, BIS suggests that it is difficult to see how the exception could apply when there is no insurance involved at all, given that the essential point that the exception is intended to cover situations where insurance premiums would become so expensive - owing to age-related factors - that cover would be withdrawn.

However, on the assumption that the (insured) lump sum death benefit is inextricably tied into a single scheme with (uninsured) death-in-service dependants' pensions, this would seem to fall into the category of partially insured benefits. BIS's view on this is that such a scheme would probably fall within the exception because, crucially, there is at least an element of formal insurance cover involved.

SPC responds to Treasury consultation: Early Access to Pension Saving

We responded to The Treasury on its consultation document on early access to pension saving. Of the early access options described there, as the call for evidence suggests, the option of early access to the 25% tax free lump sum has the attraction of going with the grain of the current system and protects final retirement income by capping the withdrawal level.

It does, however, raise the question of whether, if one had exercised early access to the tax free lump sum, and was thereby barred from further access at any point in the future, there would be any attraction in saving through a pension scheme rather than through an ISA.

For a copy of our response please CLICK HERE.

The Treasury has now published its response to its call for evidence. This is available CLICK HERE.

Treasury consults on treatment of pensions on compulsory transfers of staff from the public sector

The Treasury has published a consultation document on the treatment of pensions on compulsory transfers of staff from the public sector.

For a copy please CLICK HERE.

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

About SPC

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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