SPC news

ISSUE NO. 2, 2006

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Tax relief on employer contributions - final guidance

HMRC has issued final guidance regarding the deductibility of employer contributions to Registered Pension Schemes for corporation tax purposes. This guidance confirms that:

- Salary sacrifice arrangements can continue (new and existing);
- Section 75 debt payments by an employer will (generally) be deductible;
- Contributions made in respect of overseas members of a UK registered pension scheme are deductible;
- Deficit contributions applied for "orphan" members will generally be deductible.

Further guidance regarding contributions by third parties is included, emphasising that where an investor makes a contribution on behalf of the company in which it is has invested, no relief will be available. Where a trading relationship exists between the parent and subsidiary, deductibility may be possible (i.e., where the contribution is made for the purposes of the third party's trade, as opposed to its investment activity).

The guidance is at http://www.hmrc.gov.uk/practitioners/emp-contributions.htm ■

Member-nominated trustee/director and trustee knowledge and understanding legislation finalised

MNTs / MNDs

The MNT/MND legislation has been changed as follows in comparison with its most recent draft form:

- Current MNTs / MNDs, who were properly appointed under the Pensions Act 1995 (other than via the employer opt-out route), are allowed to continue until their period of office expires, during which they will count as MNTs/ MNDs under the new regime.
- If a scheme has no active or pensioner members the nomination process must involve at least such deferred members as the trustees determine.
- There are some additional exemptions, such as for small insured schemes, i.e. schemes which have fewer than 12 members, and where all scheme benefits are secured with an insurer.

Trustee Knowledge and Understanding

The six month period of grace for newly appointed individual trustees remains (as long as they are not independent trustees or have been appointed by virtue of holding themselves out as having specialist expertise). The period of grace has not been extended despite suggestions that it should be during consultation.

The final legislation, however, extends the period of grace to newly appointed directors of corporate trustees.

Exemption from the new requirements has been extended, in order to be consistent with other small scheme exemptions across pensions legislation, to schemes with fewer than 12 members, where all members are trustees and either the scheme rules require all trustee decisions to be unanimous by those trustees who are scheme members, or the scheme has a registered independent trustee. Similar requirements apply to schemes with fewer than 12 members which have a corporate trustee. ■

UPDATE to cross border regime

The Pensions Regulator has amended the form which trustees must use to apply for authorisation to operate as a cross border scheme. Trustees of schemes receiving contributions from a 'European employer' no longer have to formally commit to be fully funded by 28 September 2008 when they complete the form. A "European employer" is, broadly, an employer which employs qualifying persons and makes contributions to the scheme. Qualifying persons are employees based in an EU country, other than the UK, unless they can be treated as being seconded from the UK.

The Regulator has revised its interpretation of the word 'contributions', in respect of the cross border legislation, so that it excludes past service contributions (including contributions in respect of deficit, statutory revaluation on deferred benefits and section 75 debt). Thus, provided employers do not make contributions on behalf of the future accrual of members who are 'qualifying persons', or increase deferred benefits in excess of statutory revaluation, a scheme will not need to be authorised to operate on a cross border status. This means that:

- employers can participate in a UK pension scheme, even if they have employees who work in an EU country other than the UK, who are deferred members of the pension scheme;
- employees who are 'qualifying persons' can continue to be deferred members of a pension scheme, even though their employer participates in the scheme and pays contributions;

without the scheme being a 'cross border' scheme. ■

Security of Occupational Pension Schemes - Report by the Parliamentary Ombudsman "Trusting in the Pension Promise"

The Parliamentary Ombudsman has published her report on her investigation into complaints about the security of final salary occupational pension schemes and alleged delays in the winding-up of certain such schemes.

The complaints were brought primarily by former members of pension schemes, who had suffered financial loss as a result of the closure of their pension scheme, with insufficient resources to pay full entitlements. In many case the losses were significant.

At the time in question the key source of protection was the Minimum Funding Requirement (MFR). A large part of the investigation concerns a misunderstanding by members and trustees as to what degree of security MFR provided, and the extent to which the government and OPRA contributed to that misunderstanding.

The investigation has focused on the period from January 1996 to April 2004 and the position of four representative complainants.

The Parliamentary Ombudsman has made three findings of maladministration:

- that official information – about the security which members of final salary occupational pension schemes could expect from MFR, provided by the bodies under investigation – was sometimes inaccurate, often incomplete, largely inconsistent and therefore potentially misleading, and that this constituted maladministration;
- that the response by DWP to the Actuarial Profession's recommendation that disclosure should be made to pension scheme members of the risks of wind-up – in the light of the fact that scheme members and member-nominated trustees did not know the risks to their accrued pension rights – constituted maladministration; and
- that the decision in 2002 by DWP to approve a change to the MFR basis was taken with maladministration.

The Parliamentary Ombudsman has also found that the maladministration identified was a significant contributory factor in the creation of financial losses suffered by the individuals concerned, along with other systemic factors. She has also found that "injustice", in the forms of a sense of outrage, lost opportunities to make informed choices or to take remedial action, and distress, anxiety and uncertainty, was caused by maladministration.

Recommendations by the Parliamentary Ombudsman

The Parliamentary Ombudsman has recommended that the government should:

- consider whether it should make arrangements for the restoration of the pension promise to the individuals concerned by whichever means is appropriate, including, if necessary, by payment from public funds;
- consider whether it should provide for the payment of "consolatory payments" to the relevant individuals, as a "tangible recognition of the outrage, distress, inconvenience and uncertainty they have endured";
- consider whether it should apologise to scheme trustees for the effects on them of the maladministration she has identified; and
- conduct a review with the pensions industry and other stakeholders, to establish what can be done to improve the time taken to wind up final salary schemes.

Also, on grounds of equity between different classes of scheme member, and noting that the focus of her investigation stopped in April 2004, the Parliamentary Ombudsman recommends that the Government should consider whether those scheme members who have lost a significant proportion of their expected pensions, but in circumstances where their scheme began wind-up in the year before April 2005 (when the PPF came into effect), should be treated in the same manner as those scheme members whose schemes wound up before April 2004, and who are therefore fully covered by her recommendations.

Less formally, the Parliamentary Ombudsman has also suggested that a fundamental review be undertaken of the Financial Assistance Scheme (FAS).

Government's response

The Government has fiercely resisted the findings of the Parliamentary Ombudsman, stating that the evidence she has found in justification does not support them. ■

Contracted out rebates for 2007 announced

The Government has announced that the rebate it intends to pay to employers with defined benefit contracted out pension schemes from April 2007 will increased from 5.1% to 5.3%.

The Government Actuary's original proposals for the rebates, which would apply between 2007 and 2012, would have meant a rebate of 5.2%, but he revised the mortality assumptions used in his original report, leading to the 5.3% rebate.

The rebates paid to money purchase schemes will also be increased, relative to those proposed in the Government Actuary's original report, but they will be capped at 7.4%. The rebates are currently capped at 10.5%. This means that the increases only apply to younger people, where the rebates are in any case relatively poor value for money relative to the benefit foregone by contracting out. The effect of the cap is that, at all ages, the rebates are less than a conservative estimate of the cost of providing the contracted out benefit via an insurance company.

The rebates might be reviewed again, once the Government has decided what its policies for state pensions are likely to be following publication of the Pensions Commission's report last year. Full details of the rebates are available by clicking here, here and here.

We view the rebates as inadequate. The rebate for defined benefit schemes is actually less than the 5.8% recommended by the Government Actuary following comments from the Occupational Pension Schemes Joint Working Group, of which SPC is a member, that the originally proposed 5.2% was too low. ■

PPF final levy rules published

The Pension Protection Fund published on 28 February the final levy rules for 2006/7 and its response to the final PPF levy consultation.

The rules are substantially in line with the proposals already announced.

PPF highlights the following adjustments to the proposals consulted on, all of which had already been announced:-

- For the 2006/7 levy year, Section 179 valuation certificates can be submitted more than one year after the effective date of the valuation.
- The insolvency risk of UK branches of foreign registered companies will now be calculated in respect of the failure score of the foreign company.
- The parental severe risk override feature of the D & B Failure Score methodology will be ignored for the 2006/07 risk based levy calculation. ■

"Final" age discrimination regulations published

The Employment Equality (Age) Regulations 2006 will come into effect on 1st October 2006. Although the majority of the exemptions for occupational pension schemes outlined in the draft regulations issued in July 2005 have been retained, there are some areas of concern. For example, in some cases the lawfulness of a practice, such as age-related contribution scales, will depend on the subjective intention of the employer or trustees in putting the scale in place. The regulations also restrict the enhancements which may be given to members who retire early (although this appears to impact only on members who are not active or prospective members at 1st October 2006). ■

Modification of subsisting rights ("section 67")

The Occupational Pension Schemes (Modification of Schemes) Regulations 2006 were laid on 16 March. They include amendments, which should mean that many rule amendments to retain Inland Revenue limits or make unauthorised payments discretionary will not be subject to the section 67 actuarial certification regime.

Most of the provisions come into effect on 6 April, with the exception of the power for trustees to pass a resolution to maintain the pre A-day Inland Revenue limits. Trustees can exercise this power from 30 March, although resolutions in respect of tax simplification changes could not be effective before A-day. ■

BUDGET 2006:

Inheritance tax, anti-recycling and financial promotions by employers

Inheritance Tax

Following its consultation in July 2005, HMRC has adopted an approach which focuses on those over 75 who choose Alternatively Secured Pension (ASP).

For under 75s, the same rarely-applied inheritance tax rules, which apply at present, will continue. This means that HMRC may seek to apply the tax where there is clear evidence that a member is acting with the intention of increasing the fund, which he or she leaves on death (for example, by deferring the purchase of an annuity in order to retain an intact money purchase fund). In practice, HMRC seems likely to act only where a member defers pension entitlement (and as a consequence death benefits are enhanced) while in such poor health that his or her life is uninsurable or while suffering from a terminal illness, and subsequently does not survive for two years. Where the benefit goes to a spouse, civil partner, financial dependant or charity, no inheritance tax will be payable.

Inheritance tax will be payable upon the remaining funds of those who choose ASP and die after age 75, unless paid to charity. Where the fund is used to buy spouse's, civil partner's or a financial dependant's benefits, the charge is deferred to any funds left over when they die (or become too old to be eligible in the case of child dependants).

Changes to tax-free cash and recycling anti-avoidance provisions

Changes have been announced to the "anti-recycling" provisions being introduced to stop scheme members using tax-free lump sums to fund additional tax-relieved contributions. Proposed guidance now automatically exempts alleged recycling where it involves less than 30% of the lump sum being taken (previously 20%). In addition, contributions made or benefits accrued will only be considered if they fall within a period from 2 tax years before to 2 tax years after the tax year in which the lump sum was taken. For example, if a lump sum is paid on 30 June 2009 only contributions/accruals from 6 April 2007 to 5 April 2012 will count.

SPC remains critical of the fundamentals of these proposals, while welcoming improvements on points of detail.

Two of the defining principles of the new pension taxation regime are meant to be that (a) schemes should not have to build systems to deal with potential manipulations of the tax regime, which will actually be carried out by only a tiny minority, and (b) that individuals take more direct responsibility for their tax position. The proposed approach goes against the grain of both principles.

Under the proposed approach, it is of no comfort that HMRC expects that very few lump sum payments would be affected by the recycling rule, and that scheme administrators would be able to apply to HMRC to ask it to discharge their liability in respect of a scheme sanction charge.

Scheme administrators will not be prepared to run the risk that, should they be subject to such a charge, and apply for a discharge, HMRC will presume in their favour, and grant a discharge, unless it can prove knowing collaboration by the scheme administrator with the member. Too much would hinge on whether the scheme administrator had accurately read the intention of the member in question. If the member indicated that he or she did not intend to manipulate the rules, it is difficult to see how they can do other than accept the reassurance, but would HMRC view this as sufficient?

We fear that scheme administrators will be left with little choice but to design systems and procedures, mirroring HMRC's guidance, so as to demonstrate that they are taking steps to thwart the manipulation.

The outcome will be that schemes generally will have to add complication to their systems and procedures in anticipation of a manipulation of the tax system which hardly anybody will perpetrate, while those few determined to manipulate the rules will find a way of sidestepping the proposed anti-avoidance measures.

For defined benefit schemes there would be an added practical problem, since they typically could not identify employer contributions paid in respect of a particular member. For scheme administrators generally, the proposals present difficulties in making a section 153 declaration – that scheme instruments or agreements do not entitle anyone to any unauthorised payments – thus deemed unauthorised payments ought to be clearly excluded.

Any deemed unauthorised payment should, in our view, be excluded as a scheme chargeable payment. HMRC has power to exempt these deemed amounts from the scheme sanction charge. Crucially, it would also remove these payments from the calculation of the de-registration threshold.

If HMRC considers that this is an area in which significant problems are likely to arise, we suggest that HMRC monitors and addresses manipulation directly with individual taxpayers through self-assessment. Potential manipulators will almost certainly be subject to it. This would be much more in line with the principles of the new tax regime.

Financial Promotions by Employers

HM Treasury has issued a **consultation document**, which sets out the Government proposals to provide further exemptions from financial regulation for financial promotions made to employees by employers and, in some circumstances, by third party pensions administrators. ■

Draft directive on portability

We reported in SPC News No. 1 2006 that, following informal consultation on the European Commission's draft Directive, aimed at improving the portability of pension rights, DWP had issued a formal consultation document, which you can obtain by clicking here.

SPC has now submitted a response to the formal consultation document, which we summarise in the following paragraphs.

We are not in a position to comment on the impact of the proposed Directive on freedom of movement between all the member states. How well the proposed Directive facilitates freedom of movement will depend to a significant extent on the eventual requirements of the Directive, and perhaps in particular on any exemptions which various member states might negotiate, so as to leave significant parts of their pension system outside the scope of any finalised Directive.

From a UK point of view there is already a well-developed framework, permitting portability within the UK and to and from the UK. We see one of the main tasks of the UK's negotiators on the draft Directive as ensuring that any eventual Directive requires the minimum of changes to the current UK framework.

From the point of view of UK usage, it does not appear that the Directive would apply to group personal pension schemes and employer nominated stakeholder pensions. We would encourage the UK's negotiators to ensure that this is the outcome in negotiations on the draft. The definition of "supplementary pension scheme" in article 3(b) refers specifically to occupational pension schemes. Group personal pension schemes and employer nominated stakeholder schemes are not occupational schemes in UK terms.

The reference to "any benefits" in article 3(d) is potentially too broad in a UK context. The reference should be to pensions and dependants' benefits after retirement. "Any benefits" could encompass death in service benefits, which we do not consider should be covered by the Directive.

In relation to article 4(a), our understanding is that short service refunds would have to be equal to the actual amounts paid by or on behalf of the member. Where the value of the fund is less than the actual amount of contributions paid, the Directive would entitle the member to a return of the contributions paid. We have previously stated our position on this in response to consultation on the draft early leaver regulations under the Pensions Act 2004, i.e. that schemes should be permitted to return the current value of contributions paid where that is lower than the actual contribution.

It should be made clear that article 4(a) does not relate at all to employer contributions.

The wording of this article also needs to remove any possibility that premiums paid for life cover for the member would have to be returned.

The impact on UK schemes could be significant if the Directive ruled out a typical UK approach of allowing membership of a money purchase feeder scheme, which leads on to membership of a main scheme. Part of the approach to keeping defined benefit schemes open can be to raise the minimum entry age (very probably so it is greater than the age 21 referred to in the draft Directive), and to offer membership of a feeder scheme in the interim.

It is not at all clear to us why the draft Directive seeks to interfere in the minimum age for entry into schemes voluntarily set up by UK employers, particularly in a measure concerned with portability. We strongly suggest the removal of this provision from the draft. At the very least there must be wording which clearly permits the continuation of the UK's feeder scheme approach.

It is not clear why article 4(b) is included. It appears to have more relevance to age discrimination than to portability. The Directive should essentially be concerned with the treatment of pension rights once they have been acquired, not with specifying a minimum age at which they must start to be acquired. If a worker has not acquired pension rights before the age of 21, by definition, pension rights cannot then be a factor influencing his or her mobility.

Again, article 4(c), which is concerned with when rights are acquired, does not seem to sit easily in a Directive on portability.

It is in any case inconsistent with practice in some UK schemes, of specifying a waiting period of one year, followed by joining at the next scheme anniversary. The article could be read as requiring that there be no waiting period at all once a worker has reached age 21.

It is not clear whether the Directive would require schemes to accept all incoming transfers. We suggest that it should be an aim of the UK negotiators of the Directive to ensure that any final text unambiguously does not require schemes to accept incoming transfers.

From a practical point of view it is difficult to envisage how a contracted-in UK scheme could reasonably be required to accept a transfer which included contracted-out benefits and schemes should not be required to accept or make transfers which would constitute unauthorised payments under the new pension taxation regime.

We believe that the circumstances covered in existing UK legislation, relating to reduction of transfer values, adequately match the circumstances of UK schemes and should be accommodated within any finalised Directive.

If UK pension schemes could not reduce transfer values in any circumstances, the already high cost of defined benefit provision would be further increased. There would also be a reduction in the security of benefits of members.

Where investments are in with profits insurance policies, there should be no provisions which prevent the application of market value adjustments

We assume that schemes within the Pension Protection Fund will be exempt from the Directive and schemes in wind-up should also therefore be exempt, particularly since the costs of compliance would have a direct impact on members' benefits.

For a copy of the full SPC response please click here. ■

SPC comments on draft payments to employer regulations

In January 2006 DWP consulted on a draft of the Occupational Pension Schemes (Payments to Employer) Regulations 2006.

The new regulations replace the Occupational Pension Schemes (Payments to Employer) Regulations 1996 and take effect on April 6th 2006, to coincide with the date that new HMRC requirements on payments of surplus to sponsoring employers come into force.

For a copy of the consultation document please click here.

For a copy of the response submitted by SPC please click here. ■

SPC meets pensions regulator to discuss scheme funding

Members of the SPC Actuarial Committee have had a meeting with officials from the Pensions Regulator to discuss scheme funding, particularly in the light of the Regulator's consultation, reported in SPC News No. 1 2006, on how it will regulate the funding of defined benefits. ■

Enhanced/primary protection form APSS200

We are concerned that the new form APSS 200 will prove to be misleading.

In relation to enhanced protection, the first question (3.1) is: ***"Have you been an 'active' member of a registered scheme at any time after 5 April 2006?"*** The use of the term active member here is likely to be misinterpreted by the vast majority of those individuals within defined benefit arrangements completing the form, since it is likely they will assume this means they cannot apply for enhanced protection if they continue to accrue **any** benefits. This is because of the way 'active member' is understood in general pensions usage.

The separate APSS 200 Notes do point out that, for the purposes of question 3.1, a person will be an 'active' member when 'relevant benefit accrual' occurs, and refers to various pages of the Registered Pension Schemes Manual (RPSM) for further guidance on 'relevant benefit accrual'. However, only by trawling through the RPSM, and in particular the example on page RPSM03104610 (which is not explicitly referred to) will it become clear to an individual that he or she might be able to continue in pensionable service after 5 April 2006 without necessarily prejudicing enhanced protection.

While the original draft of the forms for protection had the same wording, the original intention was for the forms to be available on-line. A simple click would have brought access to the notes and a further click would have given the RPSM explanation. Now that we only have paper forms and a separate document containing the notes, with no direct link to RPSM, it would be much easier to be misled by the wording on the form.

We have suggested to HMRC that 3.1 would be clearer if it instead asked: ***"Have you had any 'relevant benefit accrual' as a member of a registered scheme at any time after 5 April 2006?"*** The Notes would then just have to explain what is meant by 'relevant benefit accrual' - in particular, they should **explicitly** state that, for a defined benefit or cash balance arrangement, this does not mean having to cease being in pensionable service from 6 April 2006 as a prerequisite for applying for enhanced protection.

HMRC has undertaken to keep these points in mind when it reviews the form. ■

FRAUD WARNING

FROM THE PENSIONS REGULATOR

The Pensions Regulator has issued a specific fraud warning about suspicious activity in relation to pension transfers. The Pensions Regulator has identified a series of illegal transfers or attempted transfers and is investigating the activity.

For details please visit http://www.thepensionsregulator.gov.uk/regulatoryActivity/fraudWarning/index.aspx ■

SPC submits written evidence to Commons Select Committee

The House of Commons Select Committee on Work and Pensions is carrying out an inquiry into pensions reform.

SPC has submitted written evidence, focusing on the Pensions Commission's proposals for a National Pension Saving Scheme.

In summary, our evidence suggests that:-

- The Pensions Commission has overstated the extent to which voluntary employer-sponsored pension provision is in irreversible decline.
- The Commission has given insufficient consideration to the risk, that the new settlement it proposes could damage and distort existing provision.
- The outcome for the National Pension Saving Scheme could be an apparently impressive membership, but with many of the members having already been members of other schemes. The Pensions Commission's aim of broader coverage by funded arrangements might be achieved, but with little improvement in the overall quantum of provision.
- The next step would be compulsion of private pension saving, which we do not believe offers a foundation for a durable and robust pension system.

For a copy of the full evidence please click here. ■

SPC questions FSA financial risk outlook

SPC has welcomed the publication of FSA's Financial Risk Outlook for 2006, but has warned that it must not lead to more regulation in the already over-regulated pension arena.

FSA has suggested that trustees are becoming over-reliant on their consultants. We disagree, given the increased complexity and pressure of their position, trustees will often view it as essential, or indeed feel duty-bound, to seek and to follow specialist advice. There is at the same time evidence from the Myners Review of Trustees' Decision Making that they do challenge, and sometimes take a different view from, the advice they receive.

FSA also commented on the concentration of investment consultancy among a relatively small number of firms and on the fact that some consultants advise both pension funds and asset managers. Myners looked into concentration in the investment consultancy market and concluded that, while there was concentration, this was not due to market failure but to the fact that the services offered are specialised and relevant to a relatively small number of users. FSA points to potential conflicts of interest between consultants advising both asset managers and pension scheme trustees. We suspect that the scope for conflict is in practice limited, since the two sets of advice would typically come from very separate parts of the business. Furthermore, if there are conflicts of interest, in the new environment we can expect trustees to be extremely aware of the need to identify them.

FSA invited comments on its risk outlook and SPC has pursued these areas. ■

SPC has added a new member:

- **EPIC Investment Advisers Limited,** London EC3 ■

Financial services round-up

FSA Consultation Paper 05/15: Review of Compensation Scheme and Ombudsman Service Limits and Miscellaneous Amendments to the Compensation Source Book

Most of the questions in the consultation paper were not directly relevant to SPC. We did, however, have comments on two of them.

Question 4 – Do you agree with the FSA's proposals to retain the current FOS award limits?

We supported FSA's proposal to retain the current award limits.

Question 11 - Do you agree with the FSA's proposal that the FSCS and FOS limits should be reviewed at appropriate regular intervals and that the next review should take place after three years?

We agreed that the limits should be reviewed at regular intervals and that the next review should take place after three years.

We suggested that the aim should be to maintain the value of the current limits, both in terms of their monetary amounts and in terms of drawing a realistic distinction between the various categories of eligibility and compensation.

Finalisation of FSA Consultation Paper 179

SPC has welcomed the finalisation of FSA's revised guidance on activities related to pension schemes. This has long been in draft as consultation paper 179. Once the guidance formally comes into effect on May 6th it will form chapter 10 of the FSA Perimeter Guidance Manual (http://fsahandbook.info/FSA/html/handbook/PERG/10).

SPC played a large part in FSA's consultation and, as a result, the guidance is more relevant to SPC Members and easier to understand.

SPC Compliance Forum

SPC's Compliance Forum met on April 25th. The Forum's guest was Jackie Doyle–Price (Head of Communications on FSA's Treating Customers Fairly Team), who gave a very helpful insight into the Treating Customers Fairly initiative.

Problems of Being Regulated as a 'Pensions Administrator'

Pensions administrators became regulated by FSA from 14 January 2005. Following lengthy exchanges with FSA, it was determined that pensions administrators would generally need to be regulated with the following permissions:

- Arranging (bringing about) deals in investments;
- Making arrangements with a view to transactions in investments; and
- Assisting in the administration and performance of contracts of insurance.

The permissions are required because in the course of administering a pension scheme, administrators get involved in:

- Arranging for new members of the scheme to effect any group life or group PHI arrangements;
- Investing and disinvesting scheme assets (including, for some insured schemes, contracts of insurance such as Bonds, Trustee Investment Plans and Pooled Exempt Funds); or
- Arranging for scheme members to effect annuities and to make claims on group life contracts.

Pensions Administrators have faced a number of problems in navigating the FSA handbook and deciding how it should apply.

We have submitted a paper to FSA setting out the problems, so that it can consider how to address them. ■

Delay in coming into force of the disclosure regulations

As far as we know, DWP has not publicised the answer by Stephen Timms on March 6th to a parliamentary question relevant to the Occupational Pension Schemes (Disclosure of Information) Regulations 2006.

In his answer he indicated that these regulations, scheduled to come into force in April 2006, will now come into effect in October 2006. This is because "consultation on the regulations raised a large number of helpful technical comments which need to be carefully considered".

The existing disclosure regulations will apply until the new ones come into effect.

The Pension Regulator's supporting codes of practice cannot be published until the disclosure regulations themselves have been made and laid. ■

Pensions Act 2004, Section 255 - Death in service benefit only members

DWP has provided us with a note, explaining its implementation of Article 7 of the EU Pensions Directive by way of section 255 of the Pensions Act 2004. It flows from the Department's agreement to consider the position further, following representations from the pensions industry.

This was circulated to SPC Members as General Circular 1078. You can obtain a copy by clicking here.

The Pensions Regulator intends to issue guidance on this subject.

We have suggested to the Regulator that the guidance should be heavily influenced by DWP's statement to SPC in September of last year, that it was not the over-riding policy intention to unsettle current arrangements, and by DWP's conclusion that s.255 properly implements the relevant parts of the EU Directive.

DWP's guidance has described the basis on which one could argue that most aspects of current practice could continue, but has qualified its remarks in a way which could be taken to suggest that it thinks these arguments are just as likely to be wrong as to be right.

Guidance from the Regulator which took a similar stance could actually be worse than no guidance, in that it would spread a wholly unnecessary message, that to provide death in service only benefits to a member of an occupational pension scheme was to risk breaking the law, when nobody thinks that that should be the position.

We need guidance from the Regulator which gives a clear direction, is risk-based `and which is as least disruptive to existing practices as is possible. In our view, provision of death benefits (provided they are properly funded / insured) does not put other members' benefits in the scheme at risk and the rationale for preventing them being provided is flawed.

While we recognise the care with which DWP has prepared its note, we believe there is also a strong argument for an interpretation, that, under the Directive and the Pensions Act, the situation should be considered from a scheme wide perspective rather than an individual member perspective. Following this line, it should be acceptable to have a category of membership in the scheme which is included for death benefits only, provided that those benefits are ancillary and supplementary to the overall retirement related benefits being provided to other categories of membership.

Finally, we would very much hope that the guidance would not cause schemes to refuse to settle any claims for life cover only members for fear of sanction from the Regulator.

We have now joined in discussions with the Regulator on the subject of guidance. ■

DWP Pension Regulation update

DWP has provided us with an update on its timetable for making regulations, mainly under the Pensions Act 2004.

Details have already been circulated to SPC members but you can see the update at http://www.spc.uk.com/2006/GC1081.xls ■

Council elects SPC's new president

The SPC Council has elected **Mark Ashworth** to be SPC's next President. He will succeed Robert Birmingham when he completes his two-year term of office on May 31.

Mark Ashworth – a Director of The Law Debenture Pension Trust Corporation p.l.c. – said:

"I am proud to have been invited to take on this role for the SPC. The SPC, through its members and staff, is making a very valuable contribution to the challenging debate about the future of pensions. I am looking forward to representing the SPC in that debate.

There is a great deal of good in the current system, which we should strive to preserve or re-invigorate. We must also be realistic about how far legislation can provide good pension outcomes. There are too many cases where well intentioned legislation has mainly resulted in disincentives to employer involvement in pensions. My aim is that the SPC should continue to offer not only constructive criticism but also constructive suggestions." ■

DWP response to consultation on contracted-out benefits

We contacted DWP on a few areas of its response to consultation on contracted-out benefits, which you can obtain by clicking here.

Pensions on Divorce: Pensions Credit Benefit

We are among the commentators who considered that it should be possible to take safeguarded rights at the same time as other contracted out rights (in general from age 50). We have never found the reasons for setting the minimum age at 60 particularly convincing and we believe that the differentiation is indirectly discriminatory, since it would affect significantly more women than men.

However, we recognise that the government has decided to have a differentiation between the payable ages.

We feel bound to observe, however, that, as far as we are aware, there remains nothing in DWP legislation which specifies that Pension Credit rights under personal pension schemes are restricted to not commencing before age 60. It remains the view of many of our Members that, in the absence of legislation specifically stating this, the ability for them to come into payment from the normal minimum pension age of 50/55 remains.

Additionally, permitting protected rights to be taken from 50, but restricting safeguarded rights to 60, or later, will make it almost impossible for Courts to apply the requirement of Section 25(2)(h) Matrimonial Causes Act 1973, because the ex-spouse will now be losing the benefit of possible earlier payment of the benefit.

Allowing Other Lump Sums

We welcome the view in DWP's response, that protected rights could be used to provide an annuity protection lump sum death benefit, given the queries about whether lump sums other than those covered by the amending regulations would be allowed. We would, however, have been more confident of the position if the intention was to specifically cover the position in DWP legislation.

We also welcome the intention, referred to in the response, to consider legislation on short service refund lump sums in contracted out money purchase schemes.

DWP's response

DWP responded that there has been no change to the policy for pension sharing on divorce and therefore it has not made any changes to the pension sharing legislation. The changes introduced by Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 are as a result of policy changes to contracting out and this has resulted in some minor

Investment regulations

In the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2006 DWP has corrected a number of errors in the Investment Regulations, on which we have been in correspondence with it. In particular (see **SPC News No. 1, 2006**, page 7), the problem relating to the definition of "specified qualifying insurance policy", which had been limited to unit linked policies, has now been corrected to include references to life and annuity business (paragraph I of Part II to Schedule I of the Regulated Activities Order). This corrects the anomaly in relation to wholly insured schemes, requiring a Statement of Investment Principles, so that such schemes, which also have annuity policies or provide life insurance under a group term arrangement, can use the simplified statement of investment principles route under Regulation 8 of the Investment Regulations.

The other changes are largely corrections of drafting errors. All of the amendments are to be found in Regulation 9 of the amending regulations.

For details of all the correspondence which SPC has had with DWP on the investment regulations, since we published **SPC News No. 1 2006**, please click here, here and here. ■

consequential amendments for some of the pension sharing regulations. (The Order mentioned took forward the amendments originally contained in the draft Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2005).

DWP comments that it was the intention to abolish safeguarded rights and make one or two tidying up amendments in the Pensions Act 2004. As it happened, all the pensions on divorce amendments had to be dropped from the Pensions Bill because other more pressing legislation had to be included. It is still the intention to abolish safeguarded rights, but in order to do this an amendment is needed to the Welfare Reform and Pensions Act 1999. DWP hopes that the amendments needed will be included in the next suitable legislative vehicle.

One of the amendments dropped from the Bill was to put beyond doubt the payable age for pension credit benefit. DWP is not aware that Ministers have changed their views as far as pension sharing is concerned and the policy is still that pension credit benefit is not payable before age 60. This fits with the wider government policy e.g. Shared Additional Pension cannot be claimed before age 60 and state pension age for women is rising to 65 in 2020. DWP agrees that the earliest age for payment of pension credit benefit is not clear in the legislation as far as personal pensions are concerned.

Regarding our comment relating to section 25(2)(h) of the Matrimonial Causes Act 1973, it is DWP's understanding that the court is required to consider the impact of divorce on a pension scheme member's pension when it becomes payable. Had the couple not divorced, the wife would have had no entitlement to the member's pension. She may have benefited indirectly when the pension came into payment. The court needs to put a value on the extent to which she may have benefited. There is no provision in the pension sharing legislation for early payment of pension credit benefit, except in the case of serious ill health, where the pension credit benefit can be wholly commuted and paid as a lump sum at any age, or on the grounds of incapacity where part of the pension credit benefit can be commuted, providing that the former spouse has reached age 50. The former spouse cannot lose something not provided for in the legislation. If there is a pension sharing order the former spouse will gain pension rights in her own name. If the benefit from these rights is paid early, the payable rate will be reduced significantly. This is contrary to what Ministers want. ■

HMRC clarification on enhanced protection and continuing life cover

In **SPC News No. 1 2006** we reported that we had asked HMRC to confirm our understanding of the interaction of enhanced protection and continuing life cover (as addressed in Pension Taxation Simplification Newsletter 8).

HMRC has now confirmed that our understanding of the classification of arrangement "types" for life cover is correct.

HMRC refers to provisions in the Finance Bill, intended to extend the protection payable under enhanced protection where certain lump sum death benefits are paid. ■

SPC raises concerns on draft transfer reorganisations and winding-up transitional provisions

SPC raised two questions on the draft Pension Schemes (Transfer Reorganisations and Winding-up) (Transitional Provisions) Order 2006.

Firstly, we now understand that the HMRC view is that, if an insurance policy was assigned to an individual on the wind-up of a scheme, rather than benefits being provided under a separate buy-out policy, the assigned policy would not be eligible for protection under these regulations. This is on the basis that regulation 15 requires an annuity to be "purchased" and HMRC does not consider that an assignment meets this condition even though ownership changes and the value of the policy (the consideration) is transferred from the trustees to the member. We were not aware that this was the intended policy position and fail to see why such a different treatment is applied. We asked HMRC for an early change in legislation, so that assigned policies on wind-up qualify for this protection.

Secondly, on a scheme wind-up AVC benefits might be dealt with separately from other benefits. For example, the main scheme benefits may be administered on a self administered money purchase basis, whereas AVC benefits may well be insured on a money purchase basis. We are concerned that regulation 15(2), with its reference to the rights of the member being discharged by purchasing one annuity, could remove the member from the protection of these regulations if his or her AVCs were dealt with separately. If so, we would strongly request that the regulations are amended to accommodate the existing separate treatment of AVCs and other benefits.

HMRC has confirmed that it does not consider that an insurance policy assigned to the member on wind-up meets the annuity purchase condition at article 15.

However, it will be reviewing the Order – alongside its other secondary pensions legislation – after that date, and will take our points into consideration then. There may be an opportunity to amend the legislation later this year – although that will be subject to the approval of Ministers. ■

Refunds of contributions

We have been in touch with HMRC to observe that DWP has responded helpfully to consultation on the Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006. Regulation 3 recognises that the refund of member's contributions, to which the member is entitled, can be more or less than the actual contributions paid, where linked to investment values or interest.

This contrasts with the administratively more complicated approach taken in the Finance Act 2004, where any amount in excess of the actual contributions paid is regarded as a scheme administration member payment and not a short service refund lump sum. This issue has been raised with HMRC many times before, but we believe the more pragmatic approach taken in the DWP regulations merits a reconsideration of the Finance Act position.

Additionally, Regulation 7, which defines the information with which members must be provided, requires notification of any deduction from the contribution refund (which can include interest or increase in fund value) to reflect the certified portion of a CEP.

If the Finance Act definition is to remain unchanged, we asked HMRC for clarification of the tax position of the refund to the member. One interpretation of the Finance Act is that, provided the amount returned to the member, nett of any CEP deduction, is less than the contributions actually paid, the refund is taxable as a short service refund lump sum. However, RPSM 09104730 and 05101530 indicate that in these circumstances the CEP deduction should be made from the refund (not the interest element). Given the way in which the DWP regulations are framed, which is in accordance with the way schemes are currently operated, no distinction is made between the refund and interest element and the deduction is made from the total refund. It would therefore appear consistent if the taxation of the actual amount paid to the member is solely on the basis of a short service refund lump sum, where the amount refunded to the member is no more than the contributions paid.

HMRC has confirmed that the Finance Act 2004 position is to remain unchanged and the RPSM guidance explanation of the position is correct. The CEP deduction should be made from the refund element not the interest element. So while the DWP regulations may well not distinguish between the refund and interest elements, the tax rules do, with only the actual contributions of sum (paragraph 5, part 1, schedule 29, Finance Act 2004) and any interest added, being treated as a scheme administration member payment (section 171, Finance Act 2004). ■

SPC calls for change in twelve month prior membership requirement

SPC was pleased to note that periods of membership in a personal pension scheme, relating to contracted-out membership only, are excluded when determining the twelve month prior membership period under the Registered Pension Schemes (Block Transfers)(Permitted Membership Period) Regulations 2006. However, by restricting the easement to the period of membership before April 6th 2006, and to existing members immediately before this date, rather than before the date of transfer, the easement is only effective until April 6th 2007.

We have asked HMRC to consider extending the easement in regulation 2(2) and 2(3) to remove the limitation on the period for which the easement is valid. ■

Pensions regulator's trustee toolkit

The Pensions Regulator has launched an e-learning programme for pension scheme trustees. The programme is a free, interactive, on-line training programme offered by the Regulator.

For further information please visit:
http://www.thepensionsregulator.gov.uk/trustees/trusteeKnowledge/index.aspx

SPC London Evening Meetings

The handout is available from the following meeting:-

Date	Subject	Speaker
April 4 2006	Why we can afford to retire	Phil Mullan (Economist and Author of "The Imaginary Time Bomb")

You can obtain a copy by clicking on the subject.

We have the following forthcoming SPC London evening meeting.

Date	Subject	Speaker	Venue
May 24 2006	Safeguarding Members' Interests in Contract-based schemes.	Julian Webb (Fidelity)	City Conference Centre, 80 Coleman Street, London EC2R 5BJ

For a booking form, please click on the subject. ■

SPC Yorkshire evening meetings

The most recent SPC Yorkshire meeting took place on May 8th 2006 at the offices of Hammonds, 2 Park Lane, Leeds LS3 1ES.

The subject was "Scheme Funding in the New Environment" and the speakers were Keith Lewis and James Patten of Watson Wyatt, who summarised the recent changes in the scheme funding regime, the likely views of industry and how they see funding developing in the future.

Conference discount for SPC members

SPC Members qualify for a 10% discount on delegate rates for the 2006 Commodity Investment Summit on July 4th – 6th at the Park Lane Hotel, London.

For details, click here. Please quote code **SPC-10** when booking. ■

Consultation by employers

The Pensions Act 2004 introduces the first pensions-specific consultation obligations, independent of any other duty to consult. The new requirements for employers to consult members before making major changes to their scheme comes into force in phases, starting on 6 April 2006.

Summary

- From 6 April 2006 it will no longer be possible for employers to make major changes to their pension schemes without first consulting scheme members, either directly or through employee representatives.
- The obligation is only in relation to those who are, or could become, scheme members. It has no retrospective effect.
- Employers must provide information and consult on any proposed "listed change".
- The employer is under specified obligations with regard to the election of representatives.
- Employers with less than 50 staff will be exempt, as will employers in respect of certain schemes.

For more details, please click here. ■

Early leavers

Members who leave an occupational pension scheme before having preserved rights will receive a refund of their own contributions. In future, those who have completed at least three months' pensionable service will have to be given the choice of either a transfer value or a refund. The government hopes that this should give a "kick start" to the savings of persons who work for short spells and who are unable to build up their savings under the current vesting requirements. It estimates that between 30,000 and 50,000 people a year will benefit from this.

Summary

- From 6 April 2006, early leavers with at least three months' pensionable service, whose rights have not yet vested, are able to opt for a cash transfer out of the scheme into another registered pension scheme.
- The member will still be able to opt to take a refund of his or her own contributions instead if he or she so wishes. The trustees will be able to make a refund the default where members do not make a decision within a "reasonable period".
- Cash transfer sums will be calculated in a similar way to cash equivalent transfer values.
- Refunds of contributions will be taxable at 20% on the first £10,800 and at 40% on any excess.
- Cash transfer sums and refunds may be reduced if scheme holdings are insufficient to meet requirements. Conversely, they may be increased if the trustees fail to comply with their duties.
- Members will have to be given a written statement of their rights as early leavers within two months of leaving.

For more details, please click here. ■

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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