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SPC Dinner

The SPC Dinner takes place on November 3rd 2005 at the Savoy Hotel, London WC2. The keynote speaker is Lawrence Churchill, Chairman of the Pension Protection Fund. Steve Bee of Scottish Life will respond to the toast to the guests. The third speaker will be Robert Birmingham, the SPC President.

At the time of preparing this issue of SPC News, bookings were moving towards 400.

Tickets are £135 per head. For second and subsequent tables, the price is just £125 per head. If your organisation is new to the SPC Dinner, we are pleased to offer an even more special price of £115 per head for you and one other person.

The closing date for applications is October 7th.

A booking form is available by clicking [here](#). ■

SPC Annual Conference - November 16th 2005

This year's SPC Conference will, once again be one of the most prestigious events of the year, and will take place in one of the best central London conference venues, the London Stock Exchange. We have arranged the Conference in partnership with FT Business.

This year's Conference will focus on the value and benefits of offering occupational pensions versus the damaging costs. We will have some of the leading names in the industry sharing their views on the future relationship between the company and the pension scheme.

The Conference will examine:

- The member value of pensions
- The recruitment & retention value of company pension schemes
- The succession planning, management, industrial relations, and morale value of pensions
- The actuarial cost of company pension schemes
- The accounting cost of pensions
- The financial risk of pensions
- The market value cost of pensions

We have secured the most senior industry speakers for this event. Currently confirmed participants include:

- **Stephen Timms**, Minister of State for Pensions Reform, **DWP**
- **Sir David Miers**, Chairman, **Society of Pension Consultants**
- **Dr. Ros Altmann**, Pensions Consultant
- **Brendan Barber**, General Secretary, **Trades Union Congress**
- **Sir Tim Chessells**, Chairman, **BT Pension Scheme Trustees and Hermes Pensions Management Ltd.**

- **David Laws MP**, Pensions Spokesman, **Liberal Democrats**
- **Adrian Waddingham**, Senior Representative, **Barnett Waddingham** and Chairman, **Association of Consulting Actuaries**
- **Raj Mody**, Pension Strategy Consultant, **Hewitt Associates**
- **Stuart Stephen**, Pensions Director, **Barclays Bank**
- **Peter Thompson**, Independent Trustee, **BESTrustees**
- **Charles Beazley**, Head of Global Institutional and Alternative Investment, **Gartmore**
- **Mark Rowlands**, Business Development and Workplace Director, **AXA Corporate Benefit Solutions**
- **Miles Templeman**, Director General, **Institute of Directors**
- **David Harris**, Managing Director, **Tor Financial Consulting Limited**

- **Rob Collinge**, Senior Vice President – Benefits, **GlaxoSmithKlein**
- **Adrian Boulding**, Pensions Strategy Director, **Legal and General**
- **Robert Birmingham**, President, **Society of Pension Consultants**

The day will be accredited with 7¹/₄ hours PMI CPD.

For full details of the conference see <http://www.ftbusinessevents.com>.

There is a special ticket deal for SPC members, under which a number of complimentary seats are available. SPC members are invited to apply for these on a first come first served basis. These free places are limited to one per SPC member, but, if you would like to send more than two delegates, there is a discounted delegate rate of £399 + VAT per delegate. This is a discount of £100 on the normal delegate rate.

To obtain these complimentary and specially priced tickets, please contact finance.events@ft.com.

SPC Compliance Forum

The SPC Compliance Forum met on July 20th when its guests for informal discussion were Mark Hunnabell, Revenue Manager at FSA, and his colleague, Chris Rice, who discussed with us FSA's fee arrangements, taking into account that SPC has a substantial number of members who are either being regulated for the first time or whose regulated activities have been extended, as a result of the Insurance Mediation Directive. ■

SPC London Evening Meetings

We have the following SPC London Evening Meeting coming up.

DATE	SUBJECT	SPEAKER(S)	VENUE
Oct. 19 th	Learn About Money (A briefing on the Pre-Retirement Association's much praised financial education package)	Stuart Royston (Chief Executive, The Pre-Retirement Association)	Jardine Lloyd Thompson Benefit Solutions, London

The meeting is hosted by Jardine Lloyd Thompson Benefit Solutions at 6 Crutched Friars, London EC3N 2PH.

It begins at 5.30 p.m. preceded by drinks from 5.00 p.m. It is planned to end at 6.45 p.m.

For a booking form, click on the subject above.

We are very grateful to Jardine Lloyd Thompson Benefit Solutions for hosting this meetings. More hosts would be welcome and, if your organisation would be interested in hosting a meeting, please contact John Mortimer in St. Bartholomew House. ■

SPC North West Evening Meetings

We have the following SPC London Evening Meetings coming up.:-

DATE	SPEAKER(S)	VENUE
October 4 th	Christina Barnes (Equal Opportunities Commission)	Pincent Masons, The Chancery, 58 Spring Gardens, Manchester M2 1EW
December 1st	Jim MacLachlan (Standard & Poors)	Pincent Masons, The Chancery, 58 Spring Gardens, Manchester M2 1EW

If you would like to attend, please contact the Chairman of the SPC North West Committee, Stephen Scholefield (email: stephen.scholefield@pinsents.com tel: **0161 250 0147**). ■

SPC Yorkshire Evening Meetings

The last SPC Yorkshire Evening Meeting was on **September 19th 2005**, when the speaker was Graham Tricker, previously with the Pensions Regulator, now with Hammonds. The venue was Hammonds, Leeds. ■



We welcome to SPC membership:

- **Irwin Mitchell, solicitors,** London EC1
- **Standard & Poors Pension Services,** London E14.

HM Revenue & Customs business brief on recovery of VAT input tax by employers in respect of funded pension schemes

HM Revenue & Customs has issued a business brief on the rules on the recovery of input tax by employers, which provide funded pension schemes. In particular, it deals with the application of the rule commonly known as the 30/70 split. The business brief is stated to address increasing HM Revenue & Customs concerns that businesses are applying the 30/70 split more generously than it intended. The new arrangements are due to come into effect on October 1st 2005.

At the time of preparing this issue of SPC News we had the business brief under consideration.

For a copy click [here](#). ■

SPC seeks relaxation of tax spreading rules on employer contributions to address scheme deficits

One of the main reasons for large employer contributions to schemes at present is to reduce funding deficits in defined benefit schemes. SPC recently held a high level Roundtable for its members and an important discussion topic was how one dealt with past service deficits. It was observed that, given the desirability on public policy grounds of addressing past service deficits, it was surprising that the tax relief spreading rules made no exception for large contributions paid with a view to reducing these deficits. As far as we can see, these contributions will be treated in exactly the same way for spreading purposes as any other large contributions.

From time to time, the Occupational Pension Schemes Joint Working Group, in its discussions with Revenue, has asked for a reconsideration of the rules, so that tax relief on special contributions

to reduce deficits does not have to be spread, but the rules have remained unchanged.

We believe that this would be the right time to urgently re-examine policy in this area. One of the key problems can be where the active membership of a scheme is small, so the deficit, and hence deficit repair contributions, can appear large and so fall to be spread in the first place. If the liabilities are largely for pensioners, the need for immediate funding is higher, and we do not see any justification for spreading tax relief. On the basis of the discussion at our Roundtable the requirement to spread the relief can on occasions be a significant disincentive to making the deficit reduction contribution at all.

We have asked Revenue to change the spreading rules to recognise deficit reduction contributions. ■

SPC comments on June draft Pension Taxation Regulations

SPC submitted comments to Revenue on the draft pension taxation regulations which it issued in June.

Comments covered:-

- The Pension Schemes (Enhanced Lifetime Allowance) Regulations 2005.
- The Registered Pension Schemes (Authorised Payments) Regulations 2005.
- The Finance Act 2004 (Transitional Provisions) Order 2005.
- The Pension Schemes (Transitional Provisions) Order 2005.
- The Finance Act 2004 (Part 4) (Transitional Provisions) Order 2005.
- The Pension Schemes (Transitional Provisions) Order 2005.

You can obtain a copy of our comments by clicking [here](#). ■

OVERSEAS ASPECTS

In this article we summarise HM Revenue & Customs (HMRC) requirements on all overseas aspects of UK pensions.

THE POSITION BEFORE 6 APRIL 2006

Personal pensions/stakeholders

Under UK tax law, an individual is eligible to join a personal pension or stakeholder pension scheme if he or she is under 75 and one of the following applies:

- He or she has been resident and ordinarily resident in the UK at some point in the tax year, or is living overseas as a Crown Servant (e.g. a member of the armed forces or a diplomat) or as the husband or wife of a Crown Servant.
- He or she has UK net relevant earnings in the tax year of joining. This could apply even if he or she has non-

resident status. The individual would have to supply proof of earnings.

An individual who, after joining a scheme, becomes resident outside the UK is eligible to contribute to a personal pension/stakeholder during any tax year in which he or she has net relevant earnings. If he or she has no net relevant earnings, he or she is still eligible to contribute to a personal pension/stakeholder in that tax year if one of the following applies:

- He or she was resident and ordinarily resident in the UK at some time in the tax year.
- He or she was resident and ordinarily resident in the UK at some time in the five preceding tax years.
- He or she is a Crown servant serving abroad, or the spouse of a Crown servant serving abroad.

In either case, they may contribute up to the £3,600 earnings threshold or, if higher, the relevant percentage of their net relevant earnings from a basis year in the same way as UK resident individuals. In some circumstances, individuals can continue to contribute for more than five years.

All contributions by individuals are paid net of UK basic rate income tax, even if the individual has no UK earnings or is claiming a foreign earnings deduction and does not actually pay tax (since 17 March 1998, only seafarers are eligible for a 100% foreign earnings deduction).

In all cases, HMRC requires members to tell the scheme administrator as soon as they cease to be UK resident, and if they become UK resident again. ➔

➔ Employer contributions for overseas employees

If an individual is still eligible for his or her personal pension/stakeholder scheme whilst abroad, their UK employer may contribute to the scheme providing the contract of employment is still with the UK company. Contributions may be allowed as business relief from corporation tax. An overseas employer, which is a subsidiary of a UK company, may also contribute, but will not be eligible to claim tax relief on its contributions.

Occupational pension schemes

Employees working overseas for a UK resident employer may be members of an approved occupational pension scheme. They must have a contract of employment with the UK resident employer and they must also receive remuneration from the employer (unless they are an officer or director of it, or manage its affairs). The employee may contribute to the scheme, providing benefits are within HMRC limits and their contributions do not exceed those which would have been payable had their earnings been chargeable to UK tax. If the employee is permanently transferred abroad and their earnings cease to be chargeable to UK tax, no further benefits may accrue and the employee is treated as having left pensionable service.

Secondments abroad

Employees seconded abroad to an overseas resident employer may continue to accrue benefits in the UK scheme while abroad on secondment if:

- The employee has a contract of employment with the overseas resident employer and receives remuneration from that employer.
- Either there is a definite expectation to return to the UK to retire or work for an employer participating in the scheme, or the employee's earnings remain chargeable to UK tax because they work overseas for less than 365 days in any year.
- Unless otherwise agreed with HMRC, the UK employer continues to pay the employer's contributions to the scheme but is reimbursed by the overseas employer.
- Benefits are based on remuneration commensurate for a similar employment in the UK.

Before September 2004, a further condition was that the period of secondment could not exceed 10 years.

However, this was removed by Pensions Update 148.

An employee may continue to accrue benefits whilst on secondment, even if he or she becomes a member of an overseas scheme. In addition, if he or she qualifies under the concurrency rules, the employee can also pay up to the earnings threshold into a personal pension (or stakeholder) for up to five years.

THE POSITION FROM 6 APRIL 2006

Subject to scheme rules, there will be no limits on how much can be paid to a registered pension scheme whether by a member, their employer, or a third party. However, a member may only claim tax relief on their own contributions (or contributions paid on their behalf by a third party) if they are under 75 and one of the following applies:

- He or she has been resident in the UK at some point in the tax year, or is living overseas as a Crown Servant or as the husband or wife of a Crown Servant.
- He or she was both UK resident when joining the scheme and UK resident at some time during the last five tax years
- He or she has earnings chargeable to UK income tax for that tax year.

In any tax year, an individual can claim tax relief on their own or on any third party contributions up to the greater of 100% of their relevant UK earnings chargeable to income tax or £3,600 gross. See later for details of employer contributions.

The £3,600 limit will only apply under relief at source schemes. For those earning less than £3,600, gross contributions of up to £3,600 can be made to schemes operating relief at source, regardless of whether the member pays any tax.

All schemes (apart from occupational pension schemes) must give tax relief by 'relief at source', where contributions are paid net of basic rate UK income tax and the scheme collects basic rate tax relief directly from HMRC (higher rate tax relief is reclaimed from HMRC through the individual's self-assessment return, as at present). Under an occupational pension scheme, an employer may choose to operate net pay instead of relief at source, providing it does so for all the scheme members. A net pay

scheme is one where the tax relief is given through the PAYE system.

Non-UK residents

Non UK residents may contribute to a registered pension scheme. However, they will only get tax relief on their contributions up to £3,600 gross, and only if both the following apply:

- The scheme operates relief at source.
- They were UK resident or had earnings chargeable to UK income tax in the last five years.

Employer contributions

There is no limit on the amount employers can pay into a registered scheme and there is no set limit on the tax relief which can be given. This depends on whether the contributions can be treated as a business expense. Such an expense must be incurred wholly and exclusively for the purposes of the employer's trade or profession. However, the employee will pay a 40% tax charge on their total contributions (their own contributions, third party contributions and their employer's contributions) above the annual allowance.

So far as secondments abroad are concerned, it is thought that the same criteria will apply as now; if those criteria are met, continuing employer contributions will be treated as a business expense.

Migrant member relief

Migrant member relief allows individuals who come to the UK to work, and have earnings chargeable to UK tax, to claim UK tax relief on their contributions to an overseas scheme which they joined before coming to the UK. The lifetime allowance applies in respect of the funds built up in the overseas scheme which have benefited from UK tax relief since A-Day. The annual allowance applies to the extent to which the annual increase in the individual's rights in the overseas scheme has benefited from UK tax relief.

This replaces the existing 'corresponding relief' rules, which only allow tax relief to be claimed on contributions to overseas schemes when an individual is not domiciled in the UK and is employed by an overseas employer. The existing rules also require the overseas scheme to correspond to a UK scheme and be established either in a country where the employee was working or was resident immediately before coming to the UK, or in a country where the employer has an operating presence. The new rules no longer take account of

➔ the individual's domicile and there is no restriction on where the scheme has to be established.

Overseas citizens in the UK (state pensions)

Overseas citizens working in the UK have to pay UK National Insurance (NI) contributions like any UK citizen. They cannot pay a reduced rate, or reclaim NI contributions they have paid. Paying NI contributions normally builds up rights to UK state pensions.

To be entitled to any basic state pension, individuals need to pay NI contributions for at least 11 qualifying years. However, it may be possible that UK NI contributions can count towards a state pension in the individual's home state. The UK has Social Security Agreements with a number of countries, under which contributions or residence in one country can be used to help a claim to benefit in the other country. See for example Leaflet SA29 covering nationals within the European Economic Area http://www.dwp.gov.uk/international/sa29/benefits_09.asp

TRANSFERS ABROAD - BEFORE 6 APRIL 2006

In general, HMRC allows the transfer of pension funds to all overseas schemes, subject to a number of conditions. However, this does not mean that all overseas countries allow a transfer from the UK. In particular, the USA generally does not allow transfers in from abroad, and there are special considerations for transfers to Australia. In addition, many countries may not have pension arrangements which allow transfers in from other countries.

So far as the UK is concerned, the following general conditions apply:

- Transfers can only be made to overseas arrangements capable of receiving them. Transfers therefore cannot be made to book reserve schemes (common in Germany), unfunded schemes, pay as you go schemes, or US 'qualified' retirement plans. These retirement plans, which include individual retirement accounts, are not permitted to accept funds transferred or 'rolled over' from UK or other overseas schemes.
- No part of the benefits may have come into payment.
- The transfer must be made directly from the UK scheme to the administrator/ trustees of the overseas arrangement.

- If protected rights are included in the transfer, form CA 1895 must be completed and sent to NICO.
- For transfers from occupational pension schemes, the transfer value plus other aggregable funds must not be more than is required to provide maximum approvable benefits, there must be no outstanding loan and, if the member is within one year of normal pension age (and therefore does not have a cash equivalent right to a transfer) the scheme rules must permit a transfer of the member's rights overseas.

As long as these conditions are satisfied, transfers can be made to anywhere with a reciprocal agreement (Jersey, the Isle of Man, Guernsey and the Republic of Ireland) without HMRC consent.

If the conditions are satisfied, but there is no reciprocal agreement, and the member is not a controlling director or 'high earner', the transfer can go ahead without HMRC consent as long as all the following conditions are met:

- The member provides written confirmation that he or she has left the UK on a permanent basis, with no intention of returning to work or retire. Where the transfer is to a scheme for EU staff, the member must have left the UK, but need not have done so permanently.
- Evidence is obtained that the member is already in employment or self-employment overseas.
- Evidence is obtained that the member is not employed in the UK or overseas for a UK employer and is not self-employed in the UK.
- Evidence is obtained that the member and overseas scheme are resident/established in the same country (unless the transfer is to a scheme for EU staff).
- Evidence is obtained that the overseas scheme is recognised as a pension scheme by the country in which it is established, and that it is capable of receiving the transfer.

If the member is a controlling director or 'high earner' at the date of the transfer request, the transfer cannot be made without HMRC's prior consent. The transferring scheme will need to provide evidence that all the above requirements apply, together with evidence (with an English translation if necessary) from the overseas country that the member is resident there for tax purposes.

All evidence obtained must be kept for six years from the date of transfer.

TRANSFERS ABROAD - FROM 6 APRIL 2006

A registered pension scheme will be able to transfer benefits to a 'recognised overseas pension scheme'.

This is a scheme (other than a state social security scheme) which:

- Established in an overseas country, being an EEA country, a country with which the UK has a double taxation agreement providing for exchange of information and non-discrimination, or any other country (provided the scheme is open to local residents and provides at least some benefits in the form of lifetime income starting no earlier than the minimum age allowable under a UK registered scheme).
- Regulated as a pension scheme in the overseas country.
- Recognised for tax purposes, in that tax relief is given either on contributions or benefits or it is recognised or registered with the overseas country as a pension scheme. The scheme also has to tell HMRC it qualifies and provide certain information.

Such a transfer will be treated as a benefit crystallisation event, which means that the funds will need to be tested against the lifetime allowance and any recovery charge paid before the transfer is made. The overseas scheme will also have to provide certain information, and HMRC may impose an unauthorised payment charge if the eventual benefits do not meet UK benefit rules.

A transfer to a scheme which is not recognised will be treated as an unauthorised payment.

TRANSFERS-IN FROM AN OVERSEAS SCHEME

Currently, transfers-in from an overseas employer's scheme, or from an overseas equivalent of a UK personal pension scheme, may only be made with HMRC's prior written agreement. Before giving its agreement, HMRC will need to be satisfied that the following conditions are met:

- There is evidence from the member that he or she has been a member of the overseas scheme for at least two years (this is to ensure that the proposed transfer is not part of an artificial arrangement to transfer from an unapproved UK scheme).

- ➔ ● The transfer is unconditional and made directly between the two schemes.
- Where the transfer is into a personal pension scheme, the benefits from the transfer are in accordance with the personal pension scheme rules and the member is making current contributions to the scheme (based either on net relevant earnings or the earnings threshold). The only exception - where member contributions are not required - is where the member cannot contribute because of the concurrency rules.

Benefits in overseas schemes are not treated as retained benefits for maximum benefit purposes, but they are once transferred to a UK scheme.

From 6 April 2006, HMRC agreement is not required. A transfer into a registered scheme from a 'recognised overseas pension scheme' will not be treated as a contribution and will not count towards the annual allowance of the year in which the transfer is made. The individual may claim an enhanced lifetime allowance in respect of the transfer value so that, effectively, benefits from the transferred-in funds are given in addition to the normal lifetime allowance.

Conversely, sums received from schemes, which are not recognised as pension schemes in the country where they are established, will be treated as contributions. Such transfer values will count towards a member's annual allowance and the benefits arising from the transfer value will count against the member's normal lifetime allowance.

RETIRING ABROAD

UK pensions are normally paid through a UK bank account. If the pensioner emigrates, most pension providers (whether schemes or insurers) are prepared either to continue payments to the UK bank, or to send sterling cheques to the foreign bank or the pensioner's home address.

Where the pension is from an approved UK pension arrangement, the provider must continue to deduct tax at the basic rate from the whole of each instalment, unless it is authorised by the HMRC to make payments without deduction of tax.

The UK has double taxation agreements with more than 80 countries. Most of these agreements make it possible

to draw pensions gross from the UK; tax is then paid once, in the country of retirement. If an individual is considering emigrating, he or she should contact their local Inspector of Taxes to check the HMRC's requirements concerning whether pensions can be paid gross. If the individual is already abroad, or if the local inspector is unable to advise, they should write to the Financial Intermediaries and Claims Office, Foreign Division. Where a non-resident pensioner subsequently becomes UK resident, their pension will become liable to UK tax.

Payment of UK state pensions whilst abroad

Individuals retiring abroad can check the amount of State pension they can expect by contacting their local social security office and completing Form BR19. Specific enquiries about claiming a State pension abroad should be sent to the Department for Work and Pensions, Tyneview Park, Benton, Newcastle-upon-Tyne NE98 1BA (Tel. 0191 218 7777).

The Department for Work and Pensions can pay State pensions into the individual's overseas account or into their UK account, or it can send a sterling cheque to the individual, their overseas bank or to someone else outside the UK chosen by the individual.

Yearly increases to State pensions will only be paid where the individual lives in one of the countries with which the UK has reciprocal social security agreements. ■

HMRC publish more information on the pension taxation regime

HM Revenue & Customs (HMRC) has published more information relating to the new pensions tax regime.

Pensions Update 154 states that HMRC will investigate schemes and arrangements intended to artificially inflate an individual's pre A day rights, in order to register for primary or enhanced protection. It gives an example of a small self-administered scheme being set up to provide defined benefits, which are then registered for protection without actually being funded. The Update states that 'There is no objection to individuals legitimately maximising their benefits in the run-up to A day, where they are able to do so'.

HMRC has also published the second in its series of Pensions Tax simplification Newsletters. The newsletter publicises workshops on the operational (as opposed to technical) aspects of the new

regime, of the type on October 4th, co-sponsored by SPC. We understand that, since the newsletter was published, the dates for the publication of the remaining chapters of the Registered Pension Scheme Manual have slipped. Two chapters are now expected in August. These are on Pension Age and Registration. The other chapters will be published in September and October.

HMRC has now published a promised discussion paper on inheritance tax. It invites comments on how the tax should be applied to the new situations arising under the new regime (such as death during alternatively secured income), how chargeable cases should be identified and how any charge should be qualified.

Comments are invited by Friday 30 September 2005 and SPC is preparing a response. ■

DWP provides guidance on indexation regulations

SPC News No. 3, 2005 reported that we had asked DWP for guidance on some aspects of government policy on indexation, in the light of the Personal and Occupational Pension Schemes (Indexation and Disclosure of Information)(Amendment) Regulations 2005. Our questions mainly related to hybrid schemes. You can see a copy of our questions [here](#).

DWP has provided a detailed and helpful response which is available [here](#).

This has prompted a few further supplementary questions, which you can obtain by clicking [here](#). ■

SPC RESPONSE...

... to draft investment regulations

We summarised the draft Occupational Pension Schemes (Investment) Regulations 2005 in *SPC News No. 2, 2005* on page 8.

We submitted a response to the draft. For a copy click [here](#).

Following our response, we have attended a meeting with DWP to discuss our main concerns. ■

... to draft code on reasonable periods in respect of early leavers

We summarised the Pensions Regulator's draft code of practice on reasonable periods in respect of early leavers from occupational pension schemes in *SPC News No. 3, 2005*.

We have now submitted a response to the draft code, a copy of which is available by clicking [here](#). ■

... to draft scheme administration and audited accounts regulations

We summarised these draft regulations in *SPC News No. 3, 2005*.

For a copy of our response, please click [here](#). ■

... to draft code of practice on reporting late payment of contributions to occupational money purchase schemes

We summarised the Pensions Regulator's draft code of conduct on reporting late payments to occupational money purchase schemes in *SPC News No. 3, 2005*.

For a copy of our response, please click [here](#). ■

... to draft code of practice on late payments to personal pension schemes

SPC News No. 3, 2005 briefly summarised the above code of practice.

SPC has now submitted a response, which is available by clicking [here](#). ■

Internal control regulations

The EU Pensions Directive requires occupational pension schemes to have adequate internal control mechanisms. DWP has therefore issued draft regulations to implement the Directive.

The draft regulations insert a new Section (Section 249A) into the Pensions Act 2004. This will require the trustees/managers to "establish and operate internal controls which are adequate for the scheme to be administered and managed in accordance with the scheme rules, and in accordance with pensions legislation and any other relevant legislation". What this means is not specified, but the Pensions Regulator will be issuing a Code of Practice for consultation.

The only schemes exempted from the requirement for internal controls are public sector schemes with a Government guarantee and unfunded schemes. There is no exemption for 'small' schemes, which means that even one member EPPs would have to comply.

Stakeholder pension schemes (but not GPPs) have always had to demonstrate that they have adequate internal controls, and have to complete an annual declaration, signed by the scheme's reporting accountant. This can involve considerable time and effort to put in place, and there is now the threat that this work will now be required for all occupational pension schemes (other than those exempted). ■

Trustees' knowledge and understanding (TKU)

The Pensions Act 2004 introduces a requirement that trustees of occupational schemes should be "conversant with" their own scheme documents and have appropriate "knowledge and understanding" of trusts and pensions law and of the principles of funding and investment. This article looks at this requirement in more detail.

SUMMARY

- The new rules require trustees to understand better the workings of their scheme and some aspects of the law relating to it.
- Trustees are not expected to turn themselves into experts – the aim

is to promote high standards of pensions administration, not to set unrealistic goals for trustees.

- All trustees fall within these provisions, irrespective of scheme size or how trustees classify themselves. Stakeholder pension

schemes established under trust are included.

- The provisions do not apply for six months from the date of appointment for a newly-appointed trustee, unless the trustee is a corporate, professional or expert trustee.

EXEMPTIONS

No trust-based schemes are exempt from the requirements. This means that the trustees of one-man insured

→ schemes must satisfy the requirements as much as the trustees of large self-administered schemes.

The requirements shall not apply to a newly-appointed trustee for a period of six months from their appointment unless:

- They are a corporate, professional or expert trustee.
- They were appointed as a consequence of holding themselves out as having expertise in any of the matters listed in the requirements.

Corporate trustees have no six month period of grace for satisfying the requirements. Thus, if a company itself is appointed as a corporate trustee, the director will not have the period of grace that he or she would have had in his or her individual capacity.

REQUIREMENT FOR KNOWLEDGE AND UNDERSTANDING

The 2001 Myners Review of Institutional Investment, commissioned by the Chancellor of the Exchequer, discussed in great detail the level of skill and care to be expected of trustees. It was

recommended that trustees should take investment decisions “with the skill and prudence of someone familiar with the issues concerned,” and this requirement was subsequently extended to trustees’ duties generally.

The rules below were devised in response to the report, and apply to individual trustees and to individuals within corporate trustees of occupational pension schemes who exercise any function which the company has as a trustee.

Trustees must be conversant with:

- The trust deed and rules of the scheme.
- Any statement of investment principles (most recently prepared).
- Any statement of funding principles (most recently prepared).
- Any other document recording policy relating to the administration of the scheme generally.

To be “conversant with” scheme documents is taken to mean to be familiar with, and able to make use of them, to carry out trustee functions.

Trustees must have knowledge of:

- The law relating to pensions and trusts.
- The principles relating to the funding of occupational pension schemes, and the investment of the assets of such schemes.

THE SCOPE OF THE BODY OF KNOWLEDGE

The Pensions Regulator has published a draft code of practice which clarifies a number of issues:

- The legislative requirements for individual and corporate trustees.
- The scope of the required level of knowledge.
- Guidance for the learning activities of existing trustees and newly-appointed trustees in the future.
- The need for trustees to update their knowledge and understanding.
- How trustees can demonstrate that they can meet the requirements of the legislation.

The level of knowledge required under these legislative sections is set out in the Code of Practice in the form of high-level principles. This is reproduced below:

	Type of knowledge/understanding	Scope of knowledge required (broad outline)
1	The law relating to trusts	An understanding of the special nature of a pension trust and the duties, obligations and powers of trustees to operate pension schemes in accordance with the law and with the trust deed documents
2	The law relating to pensions	Occupational pensions legislation (in outline) and the key provisions of related legislation which affects pension schemes and impacts on the role and activities of trustees
3	Investment: defined benefit and money purchase scheme occupational arrangements (including AVCs)	Investment: defined benefit and money purchase occupational arrangements (including AVCs)
4	Funding: defined benefit occupational arrangements	The principles relating to the funding of occupational defined benefit schemes and the way in which funding is dependent upon the financial circumstances of the sponsoring employer and the value of the liabilities of the scheme
5	Contributions: defined benefit occupational arrangements	The principles relating to the funding of occupational defined benefit schemes and the way in which contribution levels are dependent upon the funding of the scheme
6	Strategic asset allocation: defined benefit occupational arrangements	The principles relating to the suitability of different asset classes to meet the liabilities of the scheme
7	Funding: money purchase occupational arrangements (including AVCs)	The principles relating to the funding of occupational money purchase arrangements and the risks borne by scheme members
8	Investment choices: money purchase occupational arrangements (including AVCs)	The principles relating to the choice of investments
9	Fund management: occupational defined benefit and money purchase scheme arrangements (including AVCs)	Fund management: occupational defined benefit and money purchase scheme arrangements (including AVCs)

Recognising that the precise areas are likely to change over time, and that codes of practice can only be amended through a statutory process, the Regulator has set out more detail in separate guidance to the high-level principles. Two ‘scope’ documents expand on the high-level principles, and list the items which trustees need

to understand and the documents with which they should be conversant. There are two separate guidelines:

- For trustees of defined benefit schemes, including those with money purchase arrangements.
- A shorter version for trustees of money purchase schemes with no defined benefit element.

These provide a “checklist” for both new and experienced trustees to review their current level of knowledge and determine their learning needs.

Mindful of the fact that many trustees are unpaid volunteers, the government has not introduced a mandatory qualification for trustees. The degree of →

→ knowledge and understanding required is that appropriate for the purpose of enabling trustees to exercise their role as trustees of their own schemes. Thus the level will vary according to the role of the trustee and the nature and complexity of the scheme.

At the most basic level, for example, some investment knowledge is required. At a more advanced level, where a trustee has a specialist role, broader and more technical knowledge is required. In all instances, the trustees need to know enough to be able to ask challenging questions of their advisers.

The Regulator is currently working on an "e-learning" programme for trustees, which will be free and open to all trustees, and will cover the material set out in the scope documents. The programme will consist of modules, totalling 20 hours, and the cost will be borne by the general pension scheme levy.

The scope documents, and further information on trustee knowledge and understanding, are available at: <http://www.thepensionsregulator.gov.uk/trustees/trusteeKnowledge/index.aspx>

SPC's comments on the draft code of practice are available by clicking [here](#).

TIMETABLE

The requirements in the Pensions Act come into force on 6 April 2006. The Regulator expects trustees to be fully compliant by 6 April 2007, by which time trustees will have to explain in the annual scheme return how they have met the legal requirements. The Regulator has stated that it will expect trustees to tell them, for example:

- What active steps they have taken to review their learning and fill in the gaps in their knowledge.
- What records relating to learning

activities have been kept, for example, training plans and individual performance appraisals.

- Documentary evidence of decision making processes, particularly in challenging situations.

PENALTIES

The code of practice on trustee knowledge and understanding is not a statement of the law, and there is no penalty for failure to comply with it. However, such codes do have legal status, and must be taken in to account by the Regulator or a court or tribunal, if failure to comply with the code is relevant to the matter in hand.

Therefore, alternative approaches to the code may be taken, providing they meet the underlying legal requirements of the code, and it is not necessary for the code to be followed in every circumstance. ■

FSA clarifies Handbook Notice 36

At the end of 2004 we raised two questions with FSA on the material in Handbook Notice 36. These concerned amendments in relation to the definition of "pension transfer".

The questions were as follows:-

1. If a personal investment firm, at the point of winding-up of an occupational pension scheme, recommends to the trustees that a "bulk transfer" is effected would that fall within the definition of a pension transfer?

2. If a pension provider offers a pension transfer product through an adviser (i.e. the provider itself is not giving advice) does, under COB 5.3.26R, that constitute conducting pension transfer business by the provider and, if so, is it reportable?

Very belatedly, FSA has responded.

Question 1

A key element of the definition of "pension transfer" is that it must be "a transaction resulting from a decision made ... by a

customer who is an individual". In this context it is the members of the scheme who are the customers.

Where the trustees of an occupational pension scheme in wind-up agree to a bulk buy-out of members' benefits, then for the purposes of definition, the focus is on whether the member has a choice to make over what to do with deferred benefits on the wind-up of the scheme.

FSA refers to paragraph 3.66 of the Handbook Notice, where an occupational pension scheme is being wound up, the trustees will often offer to buy-out members' benefits in deferred annuities, but, until the scheme is wound up, members will also have the statutory right to take a transfer of their deferred benefits. In these circumstances the member will have a choice. If the member decides to take a transfer, for example to a personal pension or other arrangement as specified in the Glossary definition, this transaction would be a pension transfer.

Clearly, where the member is not offered a choice by the trustees on wind-up, then the transaction will not be a pension transfer as there will be no decision for the member to make.

Where a personal investment firm provides advice to the trustees of a scheme, the firm will be subject to normal FSA Conduct of Business rules in relation to that advice.

Question 2

The FSA Board has removed COB 5.3.26R retrospectively with effect from 1 April →

SPC writes to FSA on rules for third party processors

FSA is changing its rules for third party processors (TPPs) carrying on regulated insurance mediation activities (in relation to non-investment insurance contracts) for another authorised firm (the main firm) under an outsourcing agreement.

FSA rules used to require a TPP to disclose to the consumer its existence and involvement in the transaction, but this has now been changed in the new rules.

Many members of SPC are pension administrators and may well hold

themselves out in some cases as being the client to pension scheme members, so the change in the rules might have been useful to them. However, it only applies to non-investment contracts of insurance. We see no reason why TPPs who are pension administrators should not be able to take advantage of this.

We have strongly requested that FSA also changes the rules in respect of investment contracts of insurance. Otherwise, we suggest a General Waiver (which previously existed for general insurance TPPs). ■

→ 2005 to avoid duplication with similar information required in the form of Product Sales Data (PSD) 7. Handbook Notice 43 gives further details of this change.

For the purposes of reporting, the responsibility lies with the product provider to report pension transfer truncations made through intermediaries. ■

FSA consult on removing RU64

FSA has issued Consultation Paper 05/8 'Suitability Standards for advice on Personal Pensions'. The Paper proposes to remove COB 5.3.16R(3). This is the part of the FSA COB (Conduct of Business) rules, which says that advisers selling personal pensions must explain why the personal pension is at least as suitable as a stakeholder pension. It originated from the PIA's RU64 rule introduced six years ago in the run up to the introduction of stakeholder pensions, to prevent consumers being locked into high-charging and inflexible personal pensions.

FSA recognises that, in the longer term, the market for personal pensions might have been adversely affected by the rule, as advisers were forced to benchmark all personal pensions against Stakeholder Schemes. Fewer sales of personal pensions are advised on, especially to lower-income consumers. FSA fears that RU64 has prevented a group of consumers from saving for their retirement in a tax-efficient way. Although removing the requirement might lead to higher pension prices in the future, it is hoped that this will be offset by giving greater access to personal pensions. In any event, FSA will be monitoring the market to see how it develops.

The consultation ends on 28 October 2005. SPC is preparing a response. ■

Employers to be allowed to promote their pension schemes

As part of the review of the Financial Services and Markets Act, HM Treasury has amended the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001. The new order came into force on 1 July 2005.

Article 72 includes a new exemption, which should allow employers with group personal pension schemes (GPPs) or stakeholder pension schemes to promote their scheme without needing to be authorised by FSA, and without needing to be approved by a person who in turn has been authorised by FSA. This change is designed to bring GPPs/stakeholder pensions into line with the rules for occupational schemes, the promotion of which is outside FSMA regulation.

For a communication by an employer to its employees in relation to a GPP/Stakeholder to be exempt, the employer must:

- Contribute to the scheme for each member, and tell the members (before they join) how much it will contribute for them.
- Not receive direct financial benefit from the scheme (e.g. commission from the scheme provider, or any reduction in the premium in respect of insurance policies issued by the scheme provider).

- Provide a statement informing the member of their right to seek advice from an authorised person or appointed representative.
- A new guide, replacing the current FSA guide 'Helping your employees with their pension options - a guide for employers offering stakeholder pensions or group personal pensions', is being prepared. Its publication date is not yet known. ■



response on money laundering

Earlier this year the Joint Money Laundering Steering Group issued a draft revised version of its money laundering guidance, in the form of a consultation paper entitled "Prevention of Money Laundering: Taking Account of Risk".

SPC submitted a detailed response, a copy of which you can obtain by clicking [here](#). ■

Age discrimination

DTI has issued long-awaited draft regulations for consultation <http://www.dti.gov.uk/er/equality/draftregulation.pdf>, designed to bring the UK into line with the European Employment Directive, by prohibiting age discrimination in employment and vocational training by 1 October 2006. The consultation period ends on 17 October 2005. At the time of preparing this issue of SPC News, SPC's response was under preparation.

As far as pension schemes are concerned, most, if not all, age-related rules or practices are specifically exempted. This means that pension schemes will still be able to have:

- A normal pension age - an age at which a member normally becomes entitled to receive retirement benefits.
- Minimum and maximum ages to determine eligibility, and have different entry ages for different

groups of employees.

- Different contributions or benefits attributable to a member's age, length of pensionable service, seniority or remuneration received. Although the regulations do not specify by whom age-specific contributions may be paid by, the consultation paper suggests that only age-related employer contributions would be exempt.
- Age criteria in actuarial calculations.
- Adjustments to death benefits where there is a difference of more than a given number of years between the member and the spouse.
- Age limits on pensions to dependent children.

It will also be possible to provide different pension schemes to employees of different ages or with different →

lengths of service, and to close pension schemes to new members. In the Government's own words: "We expect pension schemes to be able to operate largely as they do now".



response to EXD 54

SPC News No. 3, 2005 reported that the Actuarial Profession had issued a revised draft of GN 11, the Guidance Note which actuaries follow when calculating transfer values.

The draft revised guidance was set out in Exposure Draft 54, on which SPC has submitted a response. This is available by clicking [here](#). ■



comments on EXD 55

The Actuarial Profession has also issued, as Exposure Draft 55, proposed revisions to its Guidance Note 9, on the presentation of actuarial advice for funding defined benefits.

SPC also submitted some comments on this Exposure Draft.

For a copy click [here](#). ■

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The one big uncertainty is how far these exemptions apply. The regulations specifically refer to occupational pension schemes, although the definition appears wide enough to include group personal pensions and stakeholders. The consultation paper says: "Personal pensions (i.e. pension schemes other than those provided by the employer) are not covered, except for any employer contributions into such schemes".

Subject to these exemptions, there is an overarching requirement on the scheme trustees/managers making it illegal to harass or discriminate against any member or prospective member on the grounds of age. And every scheme will be treated as containing a non-discrimination rule.

More widely, the draft regulations:

- Prohibit unjustified age discrimination in employment and vocational training.

- Require employers who set their retirement age below the default age of 65 to justify or change it.
- Introduce a new duty on employers to consider an employee's request to continue working beyond retirement.
- Require employers to inform employees in writing, and at least 6 months in advance, of their intended retirement date.
- Remove the upper age limit for unfair dismissal and redundancy rights, giving older workers the same rights to claim unfair dismissal or receive a redundancy payment as younger workers, unless there is a genuine retirement.
- Remove the age limits for Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay. ■

Reform of the law against perpetuities and excessive accumulations

The Courts Service has written to us advising us that a draft Bill is under preparation to implement, essentially, the Law Commission's recommendations on changing the law on perpetuities and excessive accumulations.

Among the planned content of the draft is a provision specifically excluding most pension schemes from the rule against perpetuities.

For a copy of the Courts Services letter, 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 14,000 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.