SPC news

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SPC is continuing to participate in meetings hosted by DWP to discuss developments on the proposed EU Portability Directive.

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SPC Members are eligible for a 10% discount on Tolley's Guide to the Pensions Act 2004.

SPC London Evening Meetings

Handouts are available for the following meetings:-

Date	Subject	Speaker
September 20 2006	Age Discrimination	Jonathan Moody / Ian Wright (Mayer, Brown, Rowe & Maw LLP)
October 17 2006	Liability Driven Investment	Joseph Moody (State Street Global Advisors UK Ltd.)
November 21 2006	Employer Covenants and Funding: Giving Trustees Real Advice About What to Do	Donald Fleming (Gazelle Corporate Finance Ltd.)
December 11 2006	"Investment Banks and their relationships with Pension Schemes"	Francis Fernandes (Citibank)

You can obtain copies by clicking on the subject.

Details of the January 2007 meeting are as follows:-

Date	Subject	Speaker	Venue
January 18 2007	"The Buy-out Market"	Isabel Hudson (Synesis Life)	Buck Consultants, 160 Queen Victoria Street, London, EC4V 4AN

Latest SPC on-line poll results

The latest SPC on-line poll question was:

"Will the White Paper proposals to reduce means testing in retirement free enough people in future from the risk of "saving for nothing".

The question produced a very clear response, with 89% voting no and 11% voting yes.

SPC produces template SIP for wholly insured money purchase schemes

Regulations published in December 2005 require trustees of certain wholly insured money purchase schemes to produce a statement of investment principles – schemes where there are 100 or more members.

The SPC Money Purchase Committee has prepared a template statement of investment principles to assist trustees of wholly insured money purchase schemes in preparing their own statement. It is not intended to be a model or a standard and trustees will need to consider whether it is appropriate in full or in part for their specific scheme.

The template is available from the home page of the SPC website (http://www.spc.uk.com/).

SPC Dinner 2006

The SPC Dinner took place on October 31st at The Savoy, London WC2.

The evening was enjoyed by an attendance close to 400.

The principal speaker was Mark Wood, Chief Executive of Paternoster.

The response to the toasts was given by Chris Holmes, a pension lawyer with Ashurst, board member of UK Sport and the Great Britain's most successful paralympic swimmer.

SPC President Mark Ashworth (Law Debenture) responded to the toast to SPC.

We look forward to welcoming you to the SPC Dinner for 2007, which takes place on November 1st. We will have a new venue – The Dorchester.

HMRC answers SPC questions on "relevant benefit accrual" under Finance Act 2004

HMRC introduced changes in the Finance Act 2005 to the calculation of the "post-commencement earnings limit", to avoid a "nil" value being applied in those cases where an individual left service some time before taking benefits. We agree that this was required and note that the amendment specifically achieving this was paragraph 53(13) of Schedule 10 of the Finance Act 2005, which altered paragraph 16(5) of Schedule 36 to the Finance Act 2004, by redefining the "appropriate three year period".

However, the Finance Act 2005 changes were not limited to just the above. Rather, paragraphs 53(14) and (15) also added new sub-paragraphs 16(5A) and 17(6) to schedule 36 to the Finance Act 2004, which provided for in-deferment revaluation within the calculation of the "post-commencement earnings limit". We wrote to HMRC on this aspect. In particular, we suggested that a similar change was required to paragraph 15 of schedule 36 to the Finance Act 2004, to permit in-deferment revaluation to be also taken into account within the calculation of the "current amount of the relevant pensionable earnings", as it is the lower of the two determined earnings figures which must be used.

HMRC indicated that it considered it unnecessary to make such a change to paragraph 15 of Schedule 36, as the alternative calculation of "the appropriate limit" already allows pension rights accrued to 5 April 2006 to be indexed from that date. This does not, however, explain why the new paragraphs 16(5A) and 17(6) were added. Indeed, HMRC could have presumably made the same "argument" for not including those paragraphs.

As the legislation now stands, the Finance Act 2005 changes, allowing for in-deferment revaluation within the calculation of the "post-commencement earnings limit", will, it seems to us, have little practical effect, due to the resulting figure having to be no greater than the "current amount of the relevant pensionable earnings" without any in-deferment revaluation. The consequence of this is that early leavers will be penalised compared to those who are able to draw their pension benefits immediately on leaving employment. Given that statutory revaluation of preserved benefits was introduced by social security legislation to protect early leavers, it appears perverse that HMRC is effectively penalising such members.

We have raised these points with HMRC.

We made a further observation, in relation to paragraph 15 of schedule 36. Sub-paragraph 15(11) allows an adjustment to be made to the calculation of the "current amount of the relevant pensionable earnings" where the individual is absent from work in connection with pregnancy, maternity, paternity or adoption. However, this only applies where that individual was so absent immediately before the first relevant event - this is due to the use of the words "at that time" in sub-paragraphs 15(10) and 15(11). For a person leaving service some time before taking benefits (the date of the first relevant event), this appears to mean that no such adjustment may be made, even if the actual pensionable earnings had been reduced due to such absence. We do not think this was intended.

HMRC policy officials are now considering our comments about the absence of revaluation increases to the relevant pensionable earnings of deferred members.

With regards to our further observation on paragraph 15 of schedule 36, HMRC has confirmed that it did not intend to restrict adjustments (in respect of earnings reductions due to a period of absence) to members who were active members when the first relevant event occurred. However HMRC is not convinced that any amendment is required to allow such adjustments to be made to earnings for deferred members. It thinks that the current wording in paragraph 15 in combination with the "normal employment requirement" in the Social Security Act 1989 can be read as allowing adjustments to the earnings of deferred members.

We have now commented to HMRC that excluding in-deferment revaluation will be age discriminatory, given that it adversely affects those who are not at an age which would permit immediate payment of pension. ■

SPC Compliance Forum

The SPC Compliance Forum had a very well-attended meeting at the end of September.

Its guest was Jim Clarke of FSA who discussed with it the relevance of MiFID to pensions. ■

Pension transfers to the USA

HMRC now publishes a list of Qualifying Registered Overseas Pension Schemes (QROPSs). This is important as, under the post 5 April 2006 rules, a member of a UK registered pension scheme, who wishes to transfer benefits to an overseas pension, may only do so if the receiving scheme is a QROPS.

Only HMRC can decide whether a scheme is a QROPS, and it bases its decision on information supplied by the overseas scheme itself. This information is prescribed in regulations, The Pension Schemes (Information Requirements - Qualifying Overseas Schemes, Qualifying Overseas Schemes and Corresponding Relief) Regulations 2006.

The list of QROPS published by HMRC is dominated by schemes based in Australia, New Zealand, the Isle of Man and the Republic of Ireland (but it only contains schemes which have consented to have their details published. There may well be a host of other schemes which are QROPS.) Surprisingly, there are two schemes listed, based in the United States.

This is curious, because it is well known that US 'qualified' retirement plans cannot accept transfers, except possibly 'rollovers' from another US qualified plan. In explaining this apparent anomaly, HMRC has said that, while it might have accepted a US scheme as a QROPS, this merely reflects the fact that the manager of that scheme has certified that it meets all the requirements to be a QROPS. It is not an acknowledgement that US legislation allows a transfer in from a UK scheme in the first place.

HMRC also points out that, since 6 April 2006, it has no discretion when it comes to overseas transfers. If a scheme in the United States meets the conditions in the regulations to be a QROPS, then it must be treated as a QROPS - even if it cannot then accept the transfer. ■

The new pension tax regime and self-assessment returns

SPC has been working with HMRC on wordings for the 2006-2007 self-assessment tax returns, needed as a result of the new pension taxation regime.

Our overriding concern is to have a return and accompanying notes which are simple, understandable and clearly identify that for the large majority of people no action is necessary. ■

Salary Sacrifice and smart pension schemes

This article summarises some of the key principles of the facility to sacrifice salary and/or bonus to boost pension saving and outlines Smart Pension Schemes, which incorporate some features similar to salary sacrifice.

What is salary sacrifice?

It is an arrangement, under which an employee agrees to a reduction in salary/bonus under their contract of employment in return for a benefit in kind. In the past this was mainly a contribution by the employer of an equivalent amount into a pension arrangement for that employee, but nowadays it is used to describe any situation where an employee gives up a right to future cash remuneration in return for a non-cash benefit. For example, employees could decide to 'sacrifice' their company car, and arrange for any compensation by the employer to be paid into their pension arrangement.

The sacrifice is achieved by varying the employee's terms and conditions of employment relating to pay, such that the employee gives up his or her contractual right to future cash remuneration of the amount sacrificed.

Why use salary sacrifice?

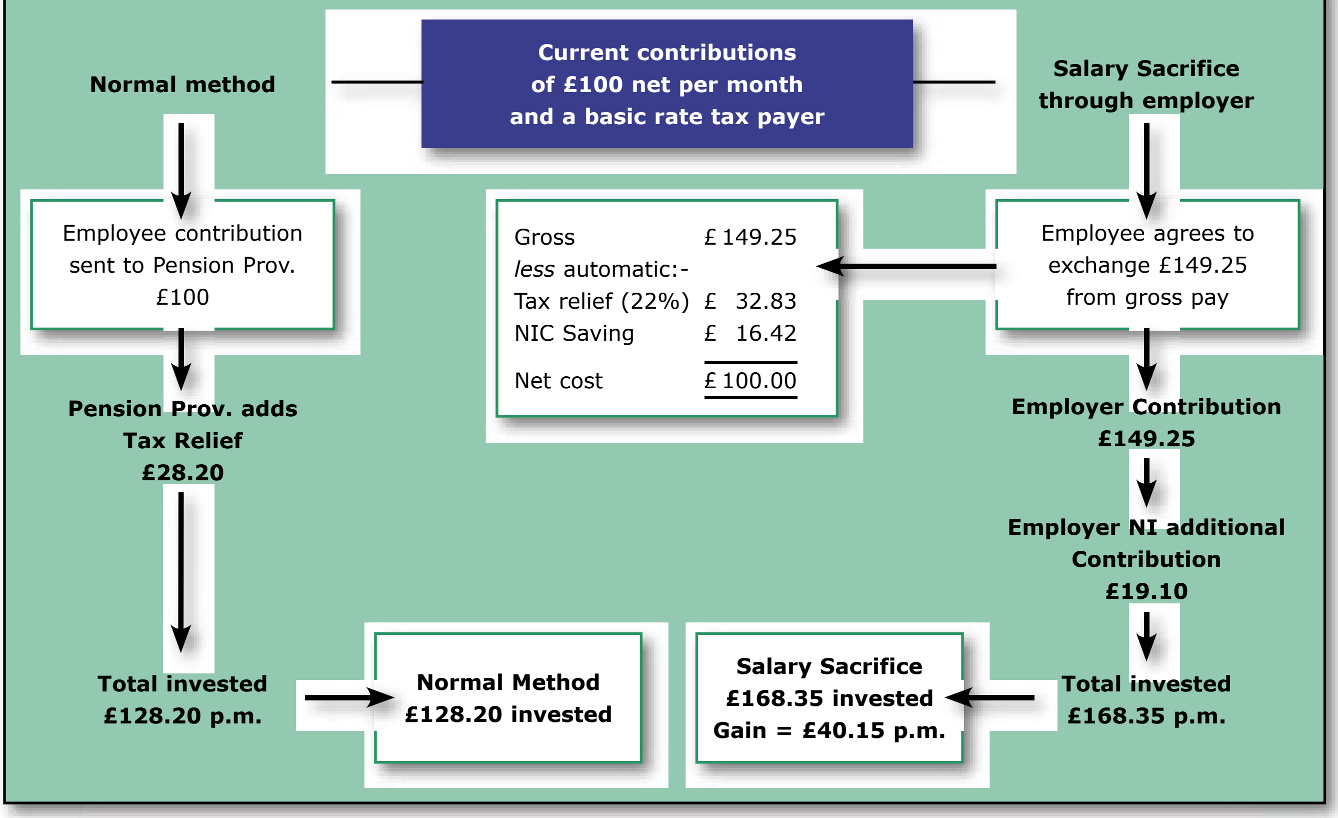
- For those earning below the Upper Earnings Limit (UEL), there is a reduction in National Insurance contributions (NICs) for both the employer (of 12.8% of the amount sacrificed) and the employee (11%). This can be used to increase the employee's take home pay and save costs for the employer, or to boost pension saving for the employee, while leaving their net spendable income unchanged.
- For employees, savings are greatest for earnings below the UEL. For earnings above the UEL, the employee only saves 1% NICs, although the employer will still save 12.8%.
- The tax position is neutral where salary is simply reduced by the amount of the pension contribution. However, there is a tax saving where salary is reduced (to reflect the NICs saving) by more than the proposed contribution.

How does it work?

The examples below show salary sacrifice in practice for a GPP/stakeholder scheme where the intention is to keep the employee's net take home pay, and the employer's NICs costs, the same. In other words, the examples show the maximum additional amounts which can be saved without any additional costs/savings.

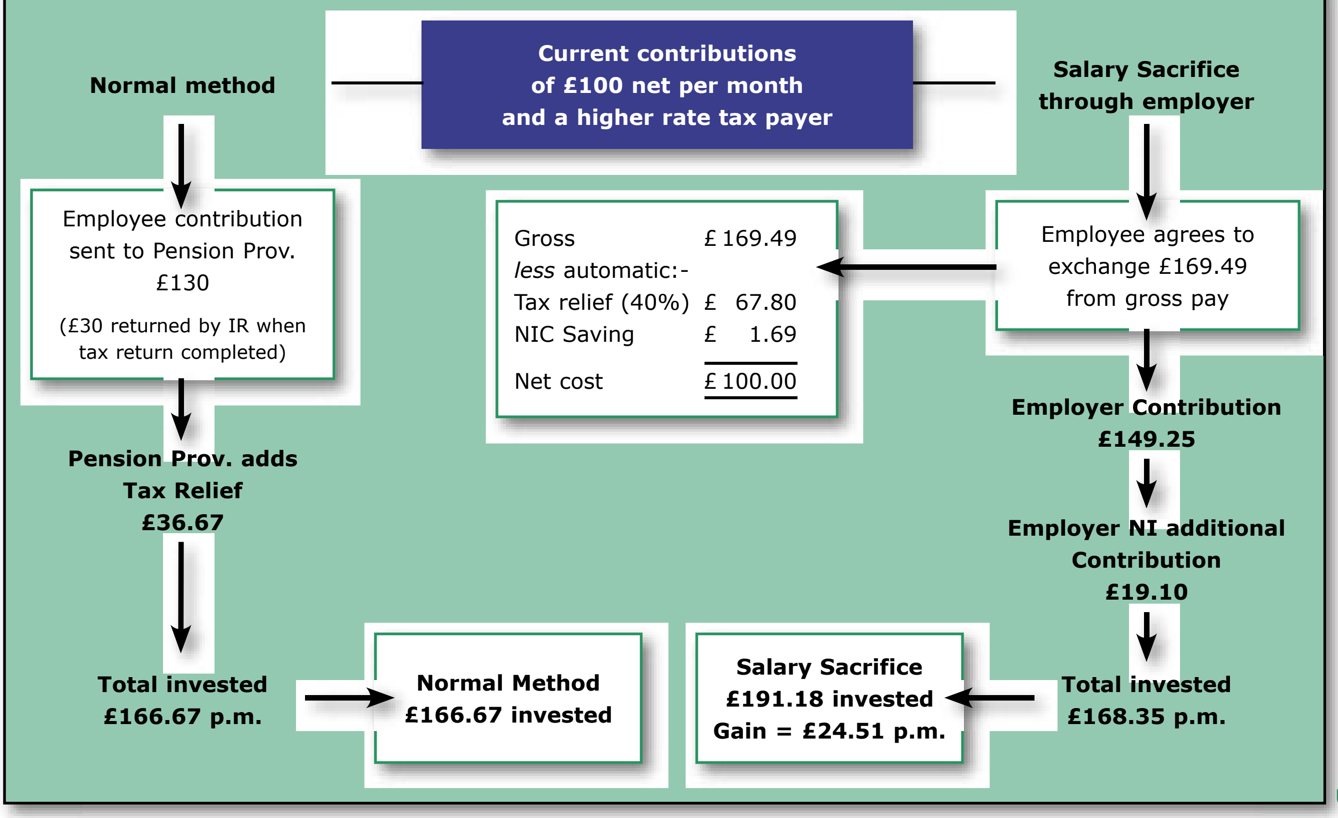
BASIC RATE TAXPAYER

Personal Contributions vs Salary Sacrifice



HIGHER RATE TAXPAYER

Personal Contributions vs Salary Sacrifice



In the above examples it is clearly shown that salary sacrifice can boost member savings, especially for the basic rate taxpayer.

How is salary sacrifice arranged?

A considerable amount of material on salary sacrifice is available on the HMRC website. See especially http://www.hmrc.gov.uk/manuals/senew/SE42700.htm where pages 42700 to 42786 are available. There are questions and answers at www.hmrc.gov.uk/specialist/sal-sac-question-and-answers and also at www.hmrc.gov.uk/specialist/salary_sacrifice.pdf.

HMRC guidance is clear that salary sacrifice can only be effective if the contractual right to cash pay has been reduced. For this to happen, two conditions must be met:

- The potential future remuneration must be given up before it is treated as received for tax or NICs purposes.
- The true construction of the revised contract of employment must be that the employee is entitled to lower cash remuneration and a benefit.

Remuneration is treated as received when the payment is actually made or, if earlier, when the employee is entitled to receive it. For example, an employee may be entitled to a payment on 31 March 2006, but actual payment may not be made until 12 April 2006. The employee is deemed to receive it on 31 March.

In the case of directors, remuneration is treated as received on the earlier of the above and the date payment is recorded in the company's accounts. Where the amount of the payment is determined before the end of the period to which it relates, it is treated as received on the date the period ends. Where the amount of the payment is determined after the period to which it relates, it is treated as received on the date the amount is determined.

HMRC gives the following example of a successful bonus sacrifice (see SE42785).

Example

An employee is contractually entitled to a bonus each year, based on the employer's profits. The employer's year end is 31 January. Accounts for the year end 31 January 2000 are finalised on 31 July 2000 so that the bonus can be calculated. The employee is not entitled to payment of the bonus until 31 October 2000. The employee is informed on 31 August 2000 that the bonus will be £10,000, and is asked to choose between receiving the bonus and giving up rights to it in exchange for an employer contribution of £10,000 to a pension arrangement for the employee.

The employee chooses the second option and returns the completed documentation to the company to this effect on 30 September 2000. The completed documentation makes it clear that the employee has given up his contractual rights to bonus based on the company's profits for the year ended 31 January 2000, and the employee does not have the right to change their mind on this decision.

This is a successful sacrifice. The bonus would have become a Schedule E emolument on 31 October 2000, but it is given up before then. The true construction of the revised arrangement between the employer and the employee is that the employee has got lower cash remuneration and a non-taxable benefit. The £10,000 is not taxable.

Salary sacrifice is not effective if the arrangement allows the employee to continue to be entitled to the higher level of cash earnings (and has merely asked the employer to apply part of those cash earnings on their behalf). Salary sacrifice is also not effective if the employee is able to give up the benefit at any time and revert to the original (higher) salary – this is the principle in Heaton v Bell. However, the principle generally does not apply if the variation in the contract is for 12 months or more.

The above example shows that the agreement should make specific reference to the benefit being given in exchange for the sacrifice. It also demonstrates that it is not necessary to sacrifice a bonus before it is earned, only before it is deemed to be received.

HMRC will not comment on how to set up a salary sacrifice arrangement nor on whether draft documentation will achieve an effective salary sacrifice. As a salary sacrifice involves an alteration of the contractual arrangements between employer and employee, the revised arrangements may later become a matter of dispute between employer and employee. HMRC would not want to be involved in such a legal dispute by having given advice on its setting up.

Since 6 April 2006, salary sacrifices no longer have to be reported to HMRC (previously, sacrifices over £5,000 under an occupational pension scheme had to be reported). However, HMRC may request copies of documents evidencing the sacrifice to see whether or not it is effective. Inspectors will not seek to challenge salary sacrifice arrangements (on the grounds that they are not contractually effective) unless there is a large amount of tax at stake. Where pension contributions are involved the income tax liability of the employee will often not be affected, whether or not the sacrifice succeeds.

Where an employer increases pension contributions as a result of salary sacrifice, this will be wholly and exclusively for the purposes of the trade and allowable as a deduction in calculating the employer's taxable profits.

Smart pension schemes

These work by getting employees to pre-commit to increasing their contributions with each pay rise, while at the same time not reducing take home pay. While employees have the choice of leaving the arrangement, experience shows that most of those who join stay in. In one US study, by giving employees the choice to automatically increase their saving rate by 3% at each future pay rise, average savings rates rose from 3.5% to 11.6% in just over three years.

DWP is piloting two case studies with employers to see if this initiative could work in the UK under the name 'Pension Increase Pledge'. If successful, DWP will consider how to promote it more widely.

HMRC refers to 'the Smart Pensions Scheme' (SPS). Rather than encouraging employees to make extra savings, the Smart Pensions Scheme is purely a device to save on employer and employee NICs. In brief, the SPS operates in the following way:

- The employee gives up an amount of cash salary equivalent to the contributions they are making to the company's registered pension scheme.
- The employer agrees to increase employer contributions to the pension scheme by an equivalent amount.
- Employees are notified that the new arrangements will apply automatically from a particular date unless they opt out in advance.
- If they do not opt out at the start, employees cannot opt out again until the first anniversary of the commencement of the scheme, unless they experience a "lifestyle change" (marriage, birth of a child, separation or divorce, death of a partner or child, change from full-time work to part-time).
- The employee's previous gross salary ("base salary") remains the yardstick for other purposes (e.g. the calculation of overtime pay, annual salary increases or salary-related benefits).

If the Smart Pensions Scheme is effective, salary on which NICs are calculated will reduce and NICs will therefore reduce for both the employer and the employee.

According to HMRC, employees do not have to consent specifically before being included in the scheme. As long as the terms are made known to all employees before the scheme is introduced, employees are deemed to have accepted the variation to their contract of employment by not opting-out. This may only apply to occupational pension schemes. Otherwise, it is at odds with the DWP guide to automatic enrolment which suggests that employee consent would always be required because of employment, contract and data protection law.

Disadvantages of salary sacrifice

The sacrifice is a permanent alteration to the contract of employment, and as such, the employee may not revert to the original (higher) salary level. This has certain consequences:

Possible reduction in State benefits

As entitlement to some State benefits is based on the amount of NICs the employee pays, and others on the amount of the employee's earnings, salary sacrifice could affect their current or future entitlement to a range of benefits.

The **contribution-based benefits** which might be reduced include:

- Statutory Sick Pay (SSP) – if earnings fall below the Lower Earnings Limit (LEL), there is no eligibility for SSP. However, Income Support or Incapacity Benefit may still be claimed.
- Statutory Maternity Pay (SMP) – if earnings fall below the LEL, there is no entitlement to SMP, although Maternity Allowance may still be claimed. Even if the employee remains entitled to SMP, the higher rate (payable during the first six weeks of maternity) will decrease.
- Incapacity Benefit – If earnings fall below the LEL, employees may not be entitled to Incapacity Benefit. They may be entitled to means-tested Income Support.
- Jobseeker's Allowance (JSA) – If earnings fall below the LEL, employees may not be entitled to JSA as this benefit is paid at a set amount. Instead, a means-tested JSA may be claimed.
- The Basic State Pension – if an employee has not paid enough NICs on their income, their State pension may be reduced on retirement.

Earnings-related benefits which might be reduced include Maternity Allowance and the State Second Pension (S2P). The employee's S2P benefits will be reduced if their reduced earnings fall below the LEL.

S2P benefits will also be reduced if the employee's reduced earnings fall between the Lower Earnings Threshold and the UEL. For the tax year 2006/07, these are £12,500 and £33,540 respectively. Because of the complexities of S2P, the position is not clear cut but, generally, employees will lose by amounts which increase, the older they are. These losses may offset the gains to be made by sacrificing salary. On the other hand, the reduction may not be significant if the salary sacrifice arrangement is not expected to last for long, as S2P benefits are calculated using lifetime average earnings. And losses are much less if the employee is contracted-out.

Salary sacrifice may also affect an employee's work-related payments, including Statutory Sick Pay and Statutory Maternity, Adoption and Paternity Pay.

A salary sacrifice may reduce relevant pay for tax credit purposes. This may in fact increase an employee's tax credit award.

Paying less NICs will not necessarily reduce benefits for everyone. This is because:

- They may still be paying enough NICs to qualify for benefits.
- Their earnings may still be between the LEL and the Primary Threshold, so that they are deemed to be paying NICs and qualify for benefits.
- They may already be earning below the LEL before the salary sacrifice.
- If they only sacrifice salary for a short period, their contribution history will only be affected for that period, so the effect on benefit entitlements will be reduced.

Possible reduction in company benefits

Employers will generally base company benefits on notional or base salary (i.e. the reduced salary and sacrificed salary together) so that there is no reduction in these benefits.

National Minimum Wage

Salary sacrifice should not reduce an employee's cash pay to below the National Minimum Wage. As from 1 October 2006 the minimum wage is £5.35 an hour for those aged 22 or more, £4.45 an hour for those aged 18 to 21, and £3.30 an hour under 18.

Because of this restriction, those earning less than around £9,000 a year should not be included in any salary sacrifice scheme.

Other possible disadvantages

Salary sacrifice may have an impact in other areas. These include borrowing levels, such as mortgage borrowing and credit card and personal loan limits, PHI benefits and redundancy entitlements.

THE FINANCE ACT 2006:

The new pensions taxation regime

For a summary of the changes to the new pension taxation regime brought about by the Finance Act 2006 and its associated regulations, please click here. We believe that all the legislation is now in place, although interpretation of the new regime is still evolving as the law is put into practice.

Changes to the Financial Assistance Scheme

At the end of July DWP issued a consultation document on draft regulations, primarily designed to extend the scope of the Financial Assistance Scheme to those in qualifying pension schemes who were up to 15 years from normal retirement age for their scheme at May 14th 2004. The prime purpose of these amendments was to extend the scope of the Financial Assistance Scheme to people in qualifying pension schemes up to 15 years from their scheme normal retirement age as at May 14th 2004.

For a copy of the consultation document, please click here.

We submitted a brief response to the consultation document. For a copy, please click here.

DWP consultation on draft PPF regulations

Also in July DWP issued a consultation paper, covering draft regulations dealing with when a Contributions Equivalent Premium is payable by the trustees of a scheme and by the board of the Pension Protection Fund. The draft regulations aim specifically to deal with schemes in an assessment period.

A second set of draft regulations deals with schemes required to wind up following an assessment period, where the trustees have been unable to obtain a full buy-out quotation. Such schemes can apply to the PPF to run as a PPF closed scheme and must then comply with specific requirements.

For a copy of the consultation document, please click here.

SPC submitted a brief response to this consultation document. A copy of the response is available by clicking here.

Continuing concerns over anti-age discrimination regulations

At the beginning of October DWP issued a consultation document, including draft regulations which aimed to address concerns over the pension related provisions of the existing anti-age discrimination regulations.

For a copy of the consultation document, please click here.

Our prime concerns on the proposed amendments are set out in the following paragraphs.

- We requested an interim "compliance window" period, during which it would be possible for trustees and employers to make retrospective amendments, levelling down benefits, rather than levelling them up, as would otherwise be required. We have explained our reasoning in detail and proposed a basis on which the government could justify allowing this interim period.

We are convinced that it is essential that an interim period is allowed. Otherwise, trustees and employers will have insufficient time to consider the action needed to comply with the new regulations and to amend scheme rules in the very short period between the finalisation of the regulations and December 1st 2006. Without a compliance window the great majority of schemes will either have failed to act in time or will be forced to execute incompletely thought-through and/or defective amendments.

As this issue of SPC News went to press, the government announced, very disappointingly that it considered that its obligations under the EU Directive underlying the regulations did not permit a compliance window.

- Secondly, the new draft regulations hugely restricted the meaning of a scheme "section" and represented a major policy change in relation to the original regulations and existing DTI guidance. The proposed new definition would have the perverse effect of accelerating the closure of final salary section of pension schemes. We consider that there are certainly circumstances, other than a TUPE transfer, when it is objectively justifiable on a national level to allow members of one section of a scheme to continue to accrue benefits on preferential terms compared to members in another section.
- Thirdly, additional wording in the draft regulations, on contributions under money purchase arrangements, was unhelpful and unnecessary. On the face of it, it required age-related money purchase schemes to have an excessively large number of contribution bands. Our understanding was that the revised regulations would reflect that age bands generally make benefits in respect of an average period of membership more nearly equal, although this is not the case on a year by year comparison, which is what the new wording seemed to require for there to be an exemption. If the new wording aimed to require schemes to have more than, say, two or three age bands to qualify for an exemption, this would create an unnecessary and excessive administrative burden for schemes.
- Finally, the proposed amendments to the regulations did not meet our earlier concern that, arguably, none of the exemptions applying to age-related benefits cover flexible retirement, i.e. benefits paid to a member who draws a pension while continuing in service. The regulations should specifically provide that schemes are not required to offer flexible retirement, rather than potentially leaving employers and trustees, who do not want to offer it, to objectively justify their decision. Further, where schemes choose to offer flexible retirement, there should be exemptions in respect of the future accrual of benefits – leaving trustees and employers the freedom to decide what should happen as regards service after benefits are drawn.

For our detailed response to the consultation document, please click here. ■

DWP begins consultation on abolition of contracting-out for money purchase schemes

In September DWP issued a consultation document, seeking views on two aspects of the abolition of money purchase contracting-out announced in the Pensions White Paper of May 2006.

The two aspects were:-

- The treatment of accrued protected rights, including conditions concerning the provision of survivor benefits.
- The operational arrangements for achieving a smooth abolition.

For a copy of the consultation document, please click here.

In our response we supported the general proposal that money purchase contracting-out should be abolished, because this will simplify administration and increase flexibility. The consultation document is right to tread carefully on the treatment of accrued protected rights, but this area needs to be dealt with proportionately. In many cases accrued protected rights comprise relatively small amounts, both in absolute terms and in terms of the member's overall benefits. Over-protecting them would greatly diminish the overall administrative gains from the proposed changes.

It is disappointing that the changes, upon which consultation is taking place, will come into effect no earlier than 2012. This will mean that the relevant schemes will have to set up the required records for members, for whom protected rights will never bite. To minimise the numbers, we suggest that contracting-out for money purchase schemes be abolished sooner than 2012, or that some of the requirements be abolished sooner, for example the requirement that protected rights must be used to provide a survivor's pension.

We strongly suggested that, whatever changes are made in respect of protected rights, are applied in the same way to safeguarded rights.

We would also warmly welcome making part of the package of changes a facility to refund or buy-back into the State scheme small amounts of protected rights left over following a refund of member contributions.

This consultation document is a reasonable first step towards making the changes, but further, more measured and detailed, consultation will be essential. For example, it will be vital to get the reconciliation process right. If this is not achieved there is a serious risk that both DWP/HMRC and the schemes concerned will become seriously bogged down. Furthermore, as far as we know, there has been no public discussion of how the proposed abolition of money purchase contracting-out will affect some substantial *defined benefit schemes*, which took up the option to contract-out on a money purchase basis. For these schemes the end of contracting-out rebates will have potentially major funding implications, which will not apply to money purchase schemes.

For a copy of our full response, please click here. ■

Continuing concern over new contracting-out rebates

In **SPC News No. 2, 2006** we reported the government's announcement that the rebate which it intends to pay to employers with defined benefit contracted-out pension schemes from April 2007 will be 5.3%. We view this as inadequate and it is 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 original proposal by the Government Actuary (5.2%) was too low. Mark Ashworth, the SPC President, who currently chairs the Joint Working Group, wrote to James Purnell, the Pensions Minister on behalf of the Group, to express its concern and commenting that the Government Actuary had recommended an increase in the contracting-out rebate to 5.8% of band earnings from 6 April 2007. Anything less than this recommendation would seem clearly not to be cost neutral.

He therefore requested that the government revisit the decision to increase the contracting-out rebate for COSRS to 5.3% for band earnings and confirm acceptance of the Government Actuary's recommendation on an increase to 5.8%, or explain why the Government is not accepting the Government Actuary's recommendation, for the first time, on the level of the rebate for COSRS.

Not to accept the recommendation would appear to us to amount to imposing an additional strain and stress on the funding of schemes. This would be highly undesirable in itself. Additionally, by undermining the security of members' benefits, when we all hope to be working towards a new pension system which is perceived as sustainable and fair, it would undermine confidence at just the wrong time.

In response, James Purnell stated that the timing of the last review of rebates meant that the government needed to make decisions on the new rates ahead of the publication of the Pensions White Paper. The Pensions Commission had made potentially significant proposals for the future of contracting out and the government had yet to publish its response to those recommendations. Taking account of this, as well as the fiscal circumstances, the government decided that it would be sensible to adopt an approach which was cost neutral for government. As part of this, it had to strike a balance between salary related and money purchase pension schemes. Rebate rates for 2007-2012 still offer an increase to salary related schemes without setting too low an age related cap for money purchase schemes.

He observed that there is a legal requirement to review rebate rates at least every five years – but the Secretary of State has an option to review them more frequently if he considers this to be necessary or appropriate. The government has considered the timing of the next rebate review in the light of the decisions announced in the White Paper, taking into account, as before, the current fiscal circumstances. It does not have any immediate plans to review the rebate rates in the short term and has ruled out a review of the rates which will apply from 2008. However, it does intend to monitor the impact on contracting out of the White Paper announcements and the new rebate rates from 2007. This will then be taken into account in the consideration of the timing of future reviews.

The Joint Working Group will continue to pursue this matter, but does not expect early success. ■

Government wants to speed up pension scheme wind-ups

DWP has published a report looking at how the winding up of defined benefit occupational pension schemes can be speeded up (the report had been recommended by the Parliamentary and Health Service Ombudsman). (For a copy, please here.) It has concluded that the key activities of winding up a pension scheme should be completed within two years.

The report sets out the actions which the DWP, Pensions Regulator and HMRC plan to take to help achieve this. For example, DWP will be legislating to require schemes in wind up to report to the Pensions Regulator after two rather than three years, and to give trustees more discretion to discharge trivial pension rights through lump sum payments (there is no detail as to what is meant by this). HMRC plans to streamline the Deemed Buy Back process. SPC will be commenting on the report. ■

Demise of web-based retirement planner

The government announced its intention to develop a web based retirement planner in its 2002 Pensions Green Paper. Mention was made again in the DWP Paper 'Informed Choices for Working and Saving' issued in February 2004 and provisions were included in the Pensions Act 2004. The planner was intended to be launched in Spring 2006.

The planner was to be targeted at people on low to medium incomes, who did not readily have access to financial advice, and was intended to inform planning and saving for retirement by (it seems) accessing all an individual's pension savings, from whatever source.

Citing the changes proposed in the Pensions White Paper and the uncertainty about the exact shape of future pension provision, the government has decided to suspend further development of the web based planner.

The Pensions Minister James Purnell said: "We remain committed to the principle of providing people with information to support retirement planning but are clear that this now needs to be set in the context of the wider White Paper developments". ■

SPC response to FSA's proposed changes to the approved person's regime

SPC has submitted a response to FSA consultation paper 06/15 on reforming the Approved Persons Regime. We were generally supportive of the proposals.

For a copy of the response, please click here.

For a copy of consultation paper 06/15, please click here. ■

Law Commission consultation on financial consequence of relationship breakdown

We responded to the Law Commission's consultation paper on the financial consequences of relationship breakdown.

This is a wide-ranging and comprehensive consultation and deals with areas of broad social policy and general and specific areas of the law, which are outside SPC's area of relevance. Our response was, therefore, quite brief.

Firstly, we noted that the consultation paper does not address state benefits or benefits derived from contracting out from the State pension arrangements.

The consultation paper does suggest that on a relationship breakdown, pension sharing orders should be available. It is not for us to comment on whether such orders should or should not be available, but from a practical point of view, and in order not to add to the already considerable complexity of operating pension schemes, we suggested that, if pension sharing does apply on relationship breakdown, it does so in exactly the same way as it does on the ending of a marriage or civil partnership. ■

PPF - revised factors

The Pension Protection Fund has published revised commutation factors, compensation cap factors and early retirement factors on its website.

The factors have been revised to reflect changes in market yields. The changes are:-

- Commutation factors for pre-97 pensions – marginally improved (typically 2-3%) in favour of members.
- Commutation factors for post-97 pensions – substantially improved (typically 9-16%) in favour of members.
- Early retirement factors – substantially improved (up to 46% more pension) in favour of members.
- Compensation cap factors (i.e. reductions in £26,050 cap for early retirement) – marginal improvement (0-3%) in favour of members.

The new factors should be used for all calculations with an effective date on or after 11 September 2006.

Early retirement factors which applied for the period from 6 April 2005 to 10 September 2006 (inclusive) have also been revised in a way which is more favourable to members – substantially in some cases, although not as much as for future early retirements. This will involve some recalculation of previous early retirement quotations and of reduced pensions in payment for schemes which are in the assessment period. ■

EU portability directive

SPC is continuing to participate in meetings hosted by DWP to discuss developments on the proposed EU Portability Directive.

The outlook beyond early 2007 is unclear. The draft Directive is high in the priorities of the current EU presidency of the Finnish government. However, the two governments due to hold the presidency in 2007 are among those which least support the Directive in its current form. If they do not have progress on the Directive high in their priorities, it could become bogged down during 2007. ■

FASB confirms it requires full recognition of funded status

The US accounting standards board, FASB, has issued FAS158, Employers' Accounting for Defined Benefit Pension and other Postretirement Plans. FAS158 amends the US accounting standards which apply to defined benefit pension plans and other post retirement plans (FAS87, FAS88, FAS106 and FAS132(R)).

The amendments require employers subject to US GAAP to recognise the funded status of pension, retiree medical, and other post-retirement benefit plans in their balance sheets. For companies with publicly traded equity, the requirements apply to accounting years ending after December 15, 2006. There is a six-month delay for other employers.

Changes in the funded status of a defined benefit post-retirement plan in the year will have to be recognised in the year in which the changes occur and reported in the comprehensive income of a business entity and in changes in net assets of a not-for-profit organisation.

A further amendment, which will apply to accounting years ending after December 15 2008, requires all measurements to be made at fiscal year-end (not up to three months earlier, as now permitted).

FASB has simplified the transition to the new rules – employers need not revise any prior-year results and will be able to change measurement dates without performing two measurements within a short period. ■

Discounted publication for SPC members

SPC Members are eligible for a 10% Discount on

Tolley's Guide to the Pensions Act 2004

by Alec Ure

The guide covers both the primary legislation, in the form of The Pensions Act 2004, and the secondary legislation which has emerged from it. It explains in full the increased powers of the new Pensions Regulator and how its powers to control scheme assets and investigate breaches in conduct operate. It explores the new scheme specific statutory funding objective in detail; addresses cross-border provision; and describes the Pension Protection Fund and the Financial Assistance Scheme and various miscellaneous subjects.

For copies contact Lexis Nexis customer services (0845 370 1234) and quote ***5031*** for your discount. ■

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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