SPC news

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in this issue ...

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eileen.damsell@spc.uk.com

SPC Northwest evening meetings

The SPC Northwest Committee organised an evening meeting on **October 9th**. The speaker was **Steven Dicker** from **Watson Wyatt**, talking about **developments in the buy out market and other methods of managing pension liabilities**.

A further meeting took place on **November 19th**. The speakers were **Neil Brougham (Mercer)** and **Anthea Whitton (Pinsent Masons)** and their subject was **Scheme Funding - Issues Arising from the British Vita Case** (this is the leading case on the new funding regime, which explores the relationship between the new regime and the terms of individual scheme rules).

Both meetings were hosted by **Pinsent Masons** in Manchester.

SPC London Evening Meetings

The third meeting in the 2007/2008 season of SPC London evening meetings, kindly hosted and sponsored by **Buck Consultants**, took place on **November 21st, 2007**.

The speakers were **Mark Willis** and **Anthony Maton (Cohen Milstein Hausfeld & Toll)** and **Caroline Goodman (Institutional Protection Services)** and their subject was **"Class Actions and Pension Funds: What You Need to Know"**.

For a copy of their handout, please click here.

Pension Taxation Simplification Newsletter 30: notification of a scheme wind-up where there is no longer a scheme administrator

An article in **Pension Taxation Simplification Newsletter 30** states that the persons who assume liability for obligations of the scheme administrator under s272 of the Finance Act 2004 must report a winding up. However, it is not clear how the relevant person should actually do this, given that only a scheme administrator or practitioner can register to use pension schemes online. We have asked HMRC to clarify the process for reporting winding up in these circumstances.

The Pre-Budget report

On 9th October 2007, the Chancellor, Alistair Darling, delivered his Pre-Budget Report, which contained a number of changes affecting pension schemes.

The following changes have immediate effect.

- Some employers were avoiding the spreading of tax relief on large contributions by arranging for them to be paid by a company newly participating in the scheme. This meant the contributions received full tax relief in the year of payment. Such contributions in the future will be subject to the usual spreading rules.
- There has been a relaxation of the treatment of pension increases in excess of 5% per annum. The amount of the "excess increase" counts as a BCE 3 and therefore needs to be tested against the member's lifetime allowance. However, the rules have been relaxed to take more members outside the scope of the test. In addition, further changes mean that members already over the lifetime allowance will now pay less tax.
- The change of the state second pension (S2P) to a flat rate scheme will begin in April 2009 instead of 2012.

The following changes were not signalled as having immediate effect.

- The treatment of members with grandfathered tax free cash will be simplified. Members who have a protected tax-free cash entitlement in excess of 25% of the value of their funds pre A-day, who continue as active members of the scheme after that date, will be able to receive additional cash in respect of the post A-day accrual. This change could be backdated to A-day, but until draft legislation appears we will not have a clear idea of its scope and effects.
- The investment rules for large pension schemes will be relaxed to exempt them from the restrictive rules introduced to prevent SIPPs from investing in taxable property.
- There are already tax penalties if members seek to use "alternatively secured pensions" as a way of passing money down the generations. Similar rules will be extended to scheme pensions and lifetime

SPC Administration committee meets HMRC

The SPC Administration Committee has had a useful informal meeting with Kerry Singleton, until recently Head of Compliance and Service Delivery at HMRC. The meeting covered

- Unauthorised payments processing
- Trivial commutation
- HMRC's approach to audit
- Audit reporting ■

Tax-free cash protection and assignment

We have sent a further letter to HMRC on tax-free cash protection and assignment.

For a copy of the letter, please click here.

Generally we accept HMRC's stated rationale for not extending the protection for leavers, whose benefits are assigned, as we suggested. If protection is extended for these leavers, it could be argued to be unfair to other leavers, whose benefits are bought out, and then the question becomes one of complete transferability of protection.

Our only other observation is that retention of deferred members within occupational pension schemes has the disadvantage of increasing scheme costs, by increasing levy payments and administrative costs. ■

annuities in cases where members die after the age of 75 and were seeking to use the pension scheme to pass money to their dependants after their death.

We have placed various HMRC papers associated with the Pre-Budget Report at http://www.spc.uk.com/2007/LC143att.pdf

These cover:-

- Technical improvements (PBRN 14), covering BCE3, protection of lump sums exceeding 25% of pension rights, taxable property provisions, inheritance tax on overseas pension schemes
- A regulatory impact assessment on the above
- Spreading of tax relief for pension contributions (PBRN 13)
- Changes to S2P and contracting-out (PBRN 01)
- Draft legislation on benefit crystallisation event 3
- Inheriting tax-relieved pension savings (PBRN 15), including draft legislation

We have also placed material relating to spreading of tax relief on employer contributions at http://www.spc.uk.com/2007/LC148.pdf. ■

DWP consultation on the cross-border activities regulations

DWP has sought our view on the success of the 2005 cross-border activities regulations (the Occupational Pension Schemes (Cross-Border Activities) Regulations 2005) in implementing the cross-border provisions of the 2003 Pensions Directive.

The UK implemented the cross-border provisions of the EU Occupational Pensions Directive 2003/41 EC (often known as the Pensions Directive) in December 2005.

The European Commission plans to carry out a review of the Directive in early 2008. Whilst the Commission will be looking at all relevant parts of the Directive, one of the key areas will be the success of the cross-border provisions of the Directive. The cross-border provisions seek to enable multi-nationals, operating in a number of EU Member States through subsidiary companies, to consolidate their pension arrangements in one Member State. It also allows an employer to locate its pension scheme in another Member State.

So that it can compare the Commission's findings with its own experience of how well the cross-border provisions of the Directive have performed, DWP is carrying out its own review of the 2005 Regulations.

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

Our initial consideration suggests that the regulations have probably caused some schemes, which used to be cross-border, to cease being so and has provided an unintended incentive to schemes, which are not currently cross-border, to avoid becoming so.

We will publish our full response to DWP when submitted. ■

Government responds to the de-regulatory review conducted by Chris Lewin and Ed Sweeney

The government has published its response to the de-regulatory review conducted by Chris Lewin and Ed Sweeney, although it continues to seek views in a number of areas. We will report our views on these areas in the next issue of SPC News.

The government agrees with the reviewers, that it would not be appropriate to make changes which would affect rights which have already accrued.

The government is encouraged by the reviewers' comments, regarding the scope within existing legislation for the development of innovative approaches to risk sharing and intends to explore the scope for further guidance, which might help small and medium sized scheme sponsors take advantage of this flexibility. However, it is also interested in views on whether it would be appropriate to introduce a third layer of legislation to make provision for a particular type of risk sharing scheme.

The government is also seeking views on proposals to:

- reduce the cap on revaluation of deferred benefits for all pension rights accrued on or after a future date, from 5% to 2.5%. Rights accrued before that date will be revalued in accordance with the current statutory requirements; and
- introduce a statutory override to enable schemes to amend their scheme rules to reflect the reduction in the cap on indexation from 5% to 2.5%, which came into effect from 6 April 2005, where they are otherwise not able to do so, and also introduce a similar override to enable scheme rules to be amended to reflect any change to the cap on revaluation.

The government will:

- carry out further work to seek a practical solution to the difficulties encountered in relation to the application of the employer debt provisions where there is a group reconstruction in a multi employer scheme;
- explore over the coming months, the scope to address concerns about the legislative requirements which must be met before surplus funds can be returned to the employer;
- move towards a principles based approach to legislation, with the disclosure requirements relating to the day to day running of a pension scheme being used as a test bed for that approach;
- repeal the legislative requirements on pension sharing on divorce, which apply to safeguarded rights and review the remaining legislation applying to the payment of pension credit benefits (i.e. those benefits which arise from pension sharing, not state pension credit);
- move to combat perceived misconceptions about the trustee knowledge and understanding requirements by clarifying the effect of the relevant legislation.

For a copy of the full government response, please click here.

Earlier, we made a supplementary response to the report published by Chris Lewin and Ed Sweeney, following up that reported in **SPC News No. 4, 2007**.

For a copy, please click here. ■

SPC seeks clarification from the pensions regulator on notifiable events

Our consideration of the Pensions Regulator's draft revised clearance guidance, which was issued in September 2007, prompted us to contact the Pensions Regulator to ascertain whether it had any plans to revise its code of practice and guidance on notifiable events.

This request was not just related to the fact that there can be overlap between clearance and notifiable events. It was more concerned with uncertainty in respect of some of the prescribed events themselves.

For instance, SPC has already been in contact with the Regulator in connection with regulation 2(1)(e) of the Notifiable Events Regulations (granting of benefits). Since then, other events which have given rise to queries from SPC members, are:

- Change in company credit rating (regulation 2(2)(e)). Does this relate to any change (up or down)?
- Controlling company relinquishing control of employer company (regulation 2(2)(f)). For a multi-employer scheme, does this just relate to a change of control of the principal employer or does it also extend to the scenario where a subsidiary participating employer is sold? If the latter, is it a notifiable event only if that subsidiary company continues to participate in the scheme, or does it also include situations where, as a result of the change in control, it ceases to participate in the scheme?

More generally, it would be very helpful if the guidance could be updated to include examples of when the notifiable events regulations are and are not triggered.

Given the lack of certainty to date in a number of areas, there may be cases, which were not thought to have been 'notifiable events', but, with hindsight, and as a result of clarifications from the Pensions Regulator, should have been reported. Following such clarification, provided notification is then given, we asked for confirmation that the Regulator would not seek to impose financial penalties as a result of the initial "non-compliance".

We have placed a copy of our letter at http://www.spc.uk.com/2007/LC154.pdf ■

Draft regulations and draft code of practice on internal dispute resolution procedures

Draft regulations and a draft code of practice relating to internal dispute resolution (IDR) have been published by DWP and the Pensions Regulator respectively.

The primary legislation on IDR has already been published, but has not yet been brought into force. It is intended to simplify the dispute resolution process and give trustees more flexibility. This is in response to criticism that the current law on IDR is unnecessarily detailed and prescriptive; for example, it requires that there be two stages in the decision-making process and sets strict time limits for the taking of various steps in that process.

The new legislation will permit a one stage decision-making process but trustees who wish to retain their two stage process will be able to do so. Trustees will also be able to delegate the decision-making to one or more of the trustee body. The time limits for making a decision and giving notice are replaced with "reasonable periods".

According to the draft code of practice, which it has published, the Regulator expects such reasonable period for making a decision and giving notice to be four months from the date the application was received. However, there is an additional requirement that notification has to be made within 15 working days of a decision. A shorter time period may be appropriate, but where trustees and managers are unable to meet the reasonable periods, it is their responsibility to ensure that the time taken to reach a decision and the actions they have taken are appropriate under the circumstances.

The new legislation will extend slightly the range of potential complainants (for example, a non-dependent of the member who is entitled to scheme benefits on the member's death). In addition, some minor changes to member communication may be required (for example, the new procedures are less prescriptive about details which complainants must include in an application). Further, the draft regulations require that the decision notice must state the availability of the Pensions Advisory Service and the Pensions Ombudsman in all cases (currently, the Pensions Ombudsman only has to be mentioned in the second stage notifications).

Under the draft regulations, the new law will not apply to complaints already going through the complaints process before the date the law is brought into force - only to complaints made on or after that date.

DWP anticipates at this stage that it will bring into force the new legislation and the finalised regulations on 6 April 2008, and the Pensions Regulator expects the code to be issued then.

For a copy of the draft regulations please click here.

For a copy of the draft code of practice, please click here. ■

SPC response to PPF consultation on the future development of the pension protection levy

We summarised PPF's consultation document on the future development of the Pension Protection Levy in **SPC News no. 4, 2007**. We have now responded.

We noted that some of the changes proposed are not insignificant, but there was really not enough information at the time of the response (e.g. in relation to the potential range of scaling factors, and how the individual elements of the new levy formula would be calculated) for us to be able to fully assess the impact, and therefore to state definitively whether we thought the proposals suitable or otherwise.

We also had some concerns in relation to the proposed change in measurement date and the fact that this would create such a lag between a scheme/company taking action to reduce the levy, and actually receiving any credit for it, by which time the scheme's/company's situation could change completely. The detail of the proposals would only be available when PPF had published its draft Determination. Given the 31 March 2008 measurement date, this did not give schemes much time to analyse the impact on expected levies or to organise any levy reduction steps.

However, we welcomed reports that PPF was considering bringing forward the calculation date for levies as planned, but allowing deficit reduction contributions to be submitted up the start of the levy year.

Our full response is available by clicking here. ■

SPC response to consultation on the draft employer debt regulations

We have responded to the DWP consultation on the draft Occupational Pension Schemes (Employer Debt) (Amendment) Regulations 2007.

While we identified some serious problems with the regulations as drafted, we emphasised at the outset that, overall, these draft regulations were welcome, provided that the problems were resolved.

We welcomed the intention to introduce greater flexibility, and potentially less cost, for employers seeking to withdraw from a scheme with the approval of the Pensions Regulator. Although this adds to the detail of the regulations, we therefore welcome the proposals for various ways in which an employer's share of a debt is to be calculated and apportioned. It is welcome that the draft regulations permit apportionment agreements, where a scheme can meet its technical provisions and the remaining employers are strong, as well as where a scheme is in deficit and the remaining employers are weak.

However we cautioned against the proposed removal of the option to apportion debt in accordance with the scheme rules. If the intention is to promote flexible and cost effective approaches to the treatment of debts, we suggest that this is an option which should be retained.

We also welcomed the clarification that it will not be necessary to produce new scheme accounts or to undertake a fresh valuation in order to determine an employer debt.

The first major difficulty with the proposals related to the circumstances in which an employer debt would be triggered. Subject to a period of grace, the draft regulations indicate that a debt will be triggered once an employer has no more active members. This means that a debt could be triggered when there is a corporate restructuring, even if the employer covenants are as strong as previously and the employers are as committed to the scheme as previously.

We very much welcomed the subsequent clarification that this was the unintended product of drafting. Otherwise, it would be a critical impediment to employers who remain committed to pension provision, but wish to organise it differently, and to schemes being closed for future accrual, while remaining well supported by the employer.

Our next major concern was that making a scheme paid up (i.e. ceasing all accrual where there is no scheme wind-up or employer insolvency) should not be an employer debt trigger in a multi-employer scheme, where such an event was not a trigger in a single employer scheme. There was no justification for such an anomaly. Again, we welcomed

SPC online poll indicates continuing confidence on personal accounts

An on-line poll conducted by SPC found that nearly four out of five people responding believe that Gordon Brown will proceed with the sweeping proposals originally put forward by the Turner Commission, including the introduction of personal accounts.

The survey, open to all SPC members, revealed that 78% of respondents were confident the proposals would go ahead.

Mark Ashworth, President of SPC, said:

> *"The result of this survey conveys a very strong message that the pensions industry at large believes that personal accounts are going to become a reality. We should therefore be preparing ourselves for largescale change. Our advice would be that all employers, big and small, would benefit from building personal accounts into their longer-term planning now. It is essential that the government backs up this message and we look forward to working with them on this key objective."* ■

the clarification that this is as a result of drafting and not a reflection of a policy intention.

Finally, we strongly questioned whether it would be appropriate to bring these regulations into force in December 2007. Given the need to resolve the questions raised above, among others, and that the consultation period ended only on October 1st, this was likely to leave a very short period for trustees, employers and their advisers to prepare to operate under the new regulations.

The full response is available by clicking here.

SPC administration committee meets the pensions regulator on administration standards

Representatives from SPC's Administration Committee have had a meeting with the Pensions Regulator on administration standards. The meeting took place at the request of the Pensions Regulator. The Regulator is holding a series of informal exploratory meetings, of which this was one.

One of the Pension's Regulator's priorities is to promote good scheme administration. Until now, other priorities, for example defined benefit scheme funding, have significantly limited the attention which it could give to the priority to promote good administration. However, scheme funding, at least for the time being, has reached its peak demand on the Regulator's time and now allows more attention to be given to other areas. The need to prepare for the arrival of personal accounts has in particular focused minds on the area of scheme administration.

The types of question which the Regulator was interested in exploring were these. What, if any, were the main data issues experienced? What were the causes of any problems? Could risk management techniques help? Are there any recognised standards or benchmarks? What generally should be the Regulator's involvement?

DWP consults on flexible retirement and pension provision

DWP has issued a consultation document on flexible retirement and pension provision.

This consultation document seeks views on key issues which have been raised since the implementation of Schedule 2 (the pension provisions) of the Employment Equality (Age) Regulations in December 2006.

For a copy of the document, please click here.

We will report our response when submitted.

SPC responds to the Draft Financial assistance Scheme (Miscellaneous Amendments) Regulations 2007

We have responded to the draft Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2007. For a copy of our response, please click here. For a copy of the draft regulations, please click here.

Our main concern is that the conditions governing schemes, which have entered into a compromise agreement, are too restrictive. There will be situations where trustees entered validly into compromise agreements, which will not be covered.

The key factor for trustees considering whether to enter into a compromise agreement was whether they would receive more under the agreement than if they had gone ahead with a claim under section 75 of the 1995 Act. This appears to have been acknowledged in the relevant DWP press release of September 6th 2007. This stated that "the government has already said it will extend the Financial Assistance Scheme to include schemes with "compromise agreements" between trustees and solvent employers. This will pick up schemes where trustees have agreed to accept less money than they are owed on behalf of members to avoid forcing the employer into insolvency".

This, however, is not covered in the draft regulations.

Queen's speech 2007

The Queen's Speech, presented to Parliament on 6 November 2007, announced a new Pensions Bill to complete the legislative changes needed to implement personal accounts.

The speech positions retirement saving for employees as an employer responsibility, saying that the Bill will 'place a duty on every employer to contribute to good quality workplace pensions for their employees'. The Bill will enable the Personal Accounts Delivery Authority, set up under the Pensions Act 2007, to move from being an advisory body to an executive which can develop the infrastructure required for personal accounts to operate effectively.

The Bill will also give the government the power to require employers to automatically enrol employees into 'qualifying' pension schemes (employees will be able to opt out), and to make it compulsory for employers to contribute to those schemes.

The Queen's Speech also introduces a National Insurance Contributions (NICs) Bill, which will implement the changes to the State Second Pension (S2P) announced in the Chancellor's Pre-Budget Report. The main items in the NICs Bill are:

- Raising the upper earnings limit (UEL) for NICs to align this with the tax threshold at which higher rate income tax applies (£39,825 in 2007/8) and removing the requirement that the UEL can be no greater than 7½ times the primary threshold (effectively making it easier for Government to increase the proportion of pay liable for full rate NICs);
- Introducing, from April 2009, an 'Upper Accruals Point' (UAP) for S2P, so that S2P will not accrue on earnings above this level. Previously the UEL acted as a 'UAP'. The effect of this will be to de-couple S2P accrual and national insurance contributions. Contracting out rebates will also be based on pay up to the UAP. ■

SPC responds to the Law Commission's proposals on the financial consequences of relationship breakdown

We have responded to the Law Commission's proposals "Cohabitation: the Financial Consequences of Relationship Breakdown".

For a copy of our response, please click here.

Our response focused on the practical implications of the proposals for pension schemes. We did not comment from a social policy point of view, but noted that the proposals do not extend to State benefits and we raised the question of why, if it is not appropriate to extend pension sharing on relationship breakdown to State benefits, it is appropriate to extend it to non-State pensions? ■

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.

The Society of Pension Consultants

St Bartholomew House
92 Fleet Street
London EC4Y 1DG
TELEPHONE: **020 7353 1688**
FACSIMILE: **020 7353 9296**
EMAIL: **john.mortimer@spc.uk.com**
WEB: **http://www.spc.uk.com**

SPC News is produced by the SPC Secretary, Oonagh McDevitt (Eversheds) and contributors from Mercer