ISSUE NO. 6, 2006
ISSUED IN JANUARY, 2007

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SPC committees

We have completed the annual review of SPC committee membership and the current memberships are as follows:-

Actuarial Committee		
James	Atherton (Deputy Chairman)	Deloitte Total Reward and Benefits Limited
Mike	Bartlet	Buck Consultants Limited
Ben	Brown	KPMG LLP
Mike	Carson	Jardine Lloyd Thompson Benefit Solutions
Martin	Collins (Chairman)	Watson Wyatt Limited
Deborah	Cooper	Mercer Human Resource Consulting Limited
Melanie	Cusack	Towers Perrin
Darren	Fleming	Aon Consulting
John	Forrest	Aegon Scottish Equitable plc
Darren	Greenwell	Hewitt
David	Hamilton	HSBC Actuaries and Consultants Limited
Steve	Hitchiner	Barnett Waddingham LLP
Jonathan	Isted	Capita Hartshead
Shayala	McRae	Lane Clark & Peacock LLP
Elizabeth	Rye	Punter Southall & Co
Bill	Sharp	Gissings Ltd
Chris	Sheasby	Hymans Robertson LLP

European Sub-Committee		
Christina	Bowyer	Wedlake Bell
Paul	Burt	Entegria Ltd
Christopher	Cooke	Linklaters
Edmund	Downes	Norwich Union
Gordon	Harkes	Standard Life Assurance
Isabel	Coles	Mercer Human Resource Consulting Limited
Oonagh	McDevitt	Eversheds LLP
Caoimhe	O'Neill	Charles Russell LLP
Andrew	Payne	Hewitt
Elisabetta	Russo	PricewaterhouseCoopers
Laura	Sayer	Hammonds
Charles	Magoffin	Freshfields Bruckhaus Deringer
Robert	Sperl	Watson Wyatt Limited
Ian	Walker	Buck Consultants Limited
David	West (Chairman)	Aon Consulting
Michael	Wyman	Simmons & Simmons

Administration Committee		
David	Barnes	SBJ Benefit Consultants Ltd
Bob	Burse	Fidelity Pensions Management
Cath	Cooney	HS Administrative Services Ltd
Isobel	Garside	Paymaster (1836) Limited
Anne	Salzedo	Aon Consulting
Nigel	Howarth	Hazell Carr plc
Leonie	Jones	Hewitt
Gareth	Kitchener	Norwich Union
Rosie	Kwok	Mercer Human Resource Consulting Limited
Tracey	Lennon	Jardine Lloyd Thompson Benefit Solutions
Rachel	Low	MNPA Ltd
Craig	Martin	Excellerate HRO
Stewart	Mason	Clerical Medical Investment Group
Brendan	Mooney	Hymans Robertson LLP
David	Parker	HSBC Actuaries and Consultants Limited
Karen	Rhodes	Punter Southall & Co
Andrew	Short	Capita Hartshead
Jim	Tucker	Edis Partnerships Limited
Deborah	Wilson (Chairman)	PricewaterhouseCoopers LLP

Financial Services Regulation Sub-Committee		
Tom	Calvert-Lee (Chairman)	Gissings Consultancy Services Limited
Ian	Cass	Compliant Solutions Ltd
Chris	Halewood	Griffiths and Armour Financial Services
Mike	Kelly	Fidelity Pensions Management
Peter	Lovegrove	Heath Lambert Consulting Limited
Colin	Murphy	Legal & General Life & Pensions Group
Vivien	Thomas	Mercer Human Resource Consulting Limited
Peter	Williams	Aegon/Scottish Equitable
Chris	Wood	Norwich Union
Steve	Wright	MNPA Ltd
Mike	Young	Buck Consultants Limited

Investment Committee

David	Clare	HSBC Actuaries and Consultants Limited
Jill	Clark	Buck Consultants Limited
Paul	Deane-Williams	Watson Wyatt Limited
Judith	Donnelly	Linklaters
Tony	English	Mercer Investment Consulting
Anne	Fairchild	PIMCO Europe Ltd
Andrew	Fraser	Henderson Global Investors
Brian	Henderson	Hymans Robertson LLP
David	Hepplewhite	Capita Hartshead
Peter	Martin	Aon Consulting
Neil	Morgan	SBJ Benefit Consultants Ltd
Neil	Walton	Schroder Investment Management Limited
Tim	Rees (Chairman)	Insight Investment Management Limited
Clifford	Sims	Hammonds
Alan	Wilcock	Mellon Analytical Solutions
Natalie	Winter (Deputy Chairman)	PricewaterhouseCoopers LLP

Legislation Committee

Tony	Bacon	Lane Clark & Peacock LLP
Janet	Brown	Sacker & Partners
Chris	Dallard	Hewitt
Eleanor	Dowling	Mercer Human Resource Consulting Limited
Peter	Esam (Deputy Chairman)	Travers Smith
Helen-Mary	Finney	Aon Consulting
Brian	Huggett	Pearl Group Limited
Wendy	Hunter	Hammonds
Claire	Lancaster	Barnett Waddingham LLP
Ian	Long	Norwich Union
Paul	Marshall	Prudential
David	Roberts	Watson Wyatt Limited
Peter	Sayers	Entegria Ltd
Ron	Thom	Lawrence Graham
Andy	Wells	Punter Southall & Co
John	Wilson (Chairman)	HSBC Actuaries and Consultants Limited

Money Purchase Committee

Tony	Barnard	Gissings Consultancy Services Limited
Mark	Bondi	Heath Lambert Consulting Limited
Bob	Champion	Mercer Human Resource Consulting Limited
Dot	Clark	Barnett Waddingham LLP
Liz	Hinchliffe (Chairman)	Prudential
Jim	Kelly	Edis Partnerships Limited
Mike	Kelly (Deputy Chairman)	Fidelity Pensions Management
Stewart	Lee	HSBC Actuaries and Consultants Limited
James	Leslie	Standard Life Assurance
Stewart	Mason	Clerical Medical Investment Group
Colin	Mayes	Hymans Robertson LLP
Gavin	Moffatt	SBJ Benefit Consultants Ltd
Mike	Morrison	Winterthur Financial Services UK Ltd
Ian	Neale	Aries Pension & Insurance Systems Ltd
Emma	Palfreyman	Towers Perrin
Tim	Richards	Pearl Group Limited
Robert	Smith	Lawrence Graham
Pauline	Vassiades	Norwich Union

Public Relations Committee

Neil	Bowden	Linklaters
Jason	Coates	Wragge & Co LLP
Lindsay	Davies (Deputy Chairman)	Hymans Robertson LLP
Ken	Edis	Edis Partnerships Limited
Robin	Hames	PIFC Consulting plc
Christopher	Holmes	Ashurst
Duncan	Howorth	Jardine Lloyd Thompson Benefit Solutions
Stephen	Ingamells	Capita Hartshead
Roger	Mattingly (Chairman)	HSBC Actuaries and Consultants Limited
Clive	Pothecary	Punter Southall & Co

The latest new member of SPC

- **Pencheck, Warrington**

SPC Conference 2006

SPC's annual conference took place on November 23rd 2006 and was organised in cooperation with FT Business and the Cass Business School, on whose premises the conference was held.

The centrepiece of the conference, which attracted a capacity audience of slightly over 160, was an interview of John Hutton, Secretary of State for Work and Pensions, by Lionel Barber, the editor of the Financial Times.

As usual, a distinctive feature of the day was interactive polling of delegates and you can see all the results of polling on some key topical questions by clicking here. ■

HMRC Consults on BCE3 and Dependants' Scheme Pension Rules

Following the Chancellor of the Exchequer's pre-Budget report in December, HMRC issued a consultation document, seeking to identify improvements which could be made to the new pension taxation regime in connection with one of the lifetime allowance tests (benefits crystallisation event 3) and the dependants' scheme pension rules.

The government will consider responses to the consultation document before deciding whether to make legislative changes in the Finance Bill 2008.

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

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

SPC Confers with HMRC on Scheme Audit Requirements

In November and December 2006 members of the SPC Money Purchase and Administration Committees had two meetings with HMRC officials, building on a meeting earlier in the year, to assist HMRC in refining its processes for scheme audits under the new pension taxation regime. ■

Pre-Budget Report 2006

The Government has announced its intention to revise a number of aspects of the new pension taxation regime.

• Alternatively Secured Pensions (ASPs)

There will be a requirement to draw a minimum level of income (65% of the notional annuity the fund could purchase) rather than the current amount of zero.

There will be a higher maximum annual withdrawal of 90%, rather than the current 70% of the notional annuity.

Higher tax charges on the death of the member, if the money is transferred to the fund of a different scheme member.

These changes to take effect on and after 6 April 2007.

• Transitional protection from the lifetime allowance charge

Changes to safeguard transitional rights, to take effect from 6 April 2007, when a member makes a partial transfer; where there are bulk transfers, where members transfer to a new occupational death-in-service arrangement; and when the terms of a life policy in an occupational scheme are varied to comply with the Age Directive (these will take effect from either 6 April 2006 or 6 April 2007).

• Ill-health pensions

It will be possible to reduce these pensions, rather than require either continuation at a full rate or a full suspension. This is presumably to allow a partial pension if a member partly recovers. Discretion will be granted to the Scheme Administrator to reduce the pension. The change will have affect from 6 April 2006.

• Pension commencement lump sums (PCLS)

It will be possible to pay a PCLS up to 12 months after the member becoming entitled to the relevant pension - even when this deadline is after age 75. Changes will have affect from 6 April 2006.

• Lump sum death benefits

The time limit of 2 years will be from the date the scheme was notified (or, if earlier, when it could have been aware) of the member's death. This change will apply to payments on or after 6 April 2008 in respect of deaths on or after 6 April 2006.

• Unsecured pension funds

A review of the annual maximum withdrawal may be permitted at the member's discretion more frequently than the current five year limit. The five yearly mandatory review of the maximum withdrawal remains. The change will have effect on and after 6 April 2006.

• Winding up lump sums

The winding-up lump sum rules will be changed so that only a check against the current employer will apply. The change will have effect on or after 6 April 2006.

- **Scheme establishment**

  Any person or entity, given permission by the Financial Services Authority, is eligible to establish a (non-occupational) registered scheme after 6 April 2007. This replaces the current provision where there are more specific restrictions.

- **Consultations on pension increases and dependants' scheme pension**

  The government will consult on the way the rules around the lifetime allowance operate for pension increases and dependants' scheme pension. Any changes will be effective from 6 April 2008.

- **Trivial commutation lump sums**

  HMRC will discuss concerns over the administration involved with trivial commutation lump sums.

- **Non-cash benefits**

  The government will review certain aspects of non-cash benefits given to pensioners.

- **Annuities**

  In a detailed note on the annuities market, the Government confirms that it wishes to keep age 75 as the age beyond which it discourages non-annuity pensions. There are no plans to take additional actions to support the annuity market, e.g. issue of longevity bonds or additional long gilts, beyond current activity. It does wish to see the market in "open-market-options" work better.

- **Income tax rates and allowances**

  All income tax allowances will be increased in line with inflation. The personal allowance will increase to £5,225.

  The age-related personal allowances will rise to £7,550 for people aged between 65 and 74 and to £7,690 for those aged 75 and over. According to the Chancellor, this will mean that in 2007-08 no one aged 65 or over need pay tax on an income of up to £145 a week; and about one half of all pensioners pay no tax on their income. ■

DWP Deregulatory Review

As part of its deregulatory review of existing pension provision, DWP has sought our views on the disclosure requirements.

We have suggested that a key aim of the review should be to produce a single set of disclosure regulations and to harmonise as far as is appropriate the requirements for occupational, personal and stakeholder schemes.

The current dispersal of requirements among different areas of regulation makes it difficult to know with confidence what the requirements are and also seems to be leading to the unsatisfactory prospect that the main body of the disclosure requirements will require disclosure within a reasonable period, with those elsewhere still subject to more rigid requirements.

As examples of the type of difference between the treatment of personal, stakeholder and occupational schemes, which could be looked at:-

- The requirements for personal and stakeholder schemes on information to be issued before retirement differ between protected rights and non-protected rights and do not cover every circumstance where a member changes their expected retirement date. The timescales for the provision of information also differ between personal and occupational schemes. The requirements on providing annual statements differ between stakeholder and personal schemes.
- The deadline for providing information to a new member of an occupational scheme is within two months of joining. For a personal pension scheme it is thirteen weeks.
- On the supply of basic information on subsequent request, an occupational pension scheme does not have to provide the information, if it has been supplied within the last year. For personal pensions it can be refused if it has been provided within the last three years.

Member-Nominated Trustees and Internal Controls Codes of Practice Come into Effect

Two Pensions Regulator Codes of Practice, on Member-nominated trustees and directors (the MNT Code), and Internal Controls, came into effect on 22 November 2006.

The MNT Code relates to the requirement that most schemes have a minimum of one third member trustees, and suggests reasonable periods for achieving this, via a nomination and selection process, which must be fair, transparent and proportionate. This Code is the finalised version of the "final draft Code" previously on the Regulator's website - it has now gone through the full Parliamentary process.

The Code on Internal Controls relates to the requirement for schemes to have internal controls which are adequate to secure that they are administered and managed in accordance with the scheme rules and the law. This Code is also the finalised version of the "final draft Code" previously on the Regulator's website ■

Pensions Regulator consults on guidance on internal controls

At the beginning of November the Pensions Regulator consulted us on draft guidance for trustees on internal controls. The Regulator is responding to suggestions that it should produce a less detailed code of practice on internal controls and move some of the detail into guidance.

For a copy the draft guidance please click here.

Our response was positive. For a copy, please click here. ■

- Where a member approaches normal retirement date, pre-retirement information must be supplied in respect of an occupational pension scheme at least six months in advance, but under a personal pension it is at least four months in advance, unless there are protected rights, in which case it is between six and four months.

Differences such as these make it impossible for a provider or administrator, which deals with all these types of benefit, to have a single process for supplying information. It would also be impossible to supply complete information for members with benefits under both a money purchase scheme and a rebate only personal pension.

Failing a consolidated set of requirements, it would be extremely helpful, perhaps in the form of guidance from the Regulator, to have a statement in one place of all the disclosure requirements.

We would like any review to specifically encompass the removal of obstacles to providing information in electronic form. The regulations withdrawn earlier this year contained some helpful material in this respect.

We think that it would be useful to obtain the views of scheme members as part of this review and we wonder if DWP will be doing this.

In undertaking its review, we hope that DWP will also bear in mind the work which FSA is undertaking on its financial promotions regime in the light of MiFID. For providers and administrators having to operate both DWP and FSA requirements, it would be helpful if changes arising from the reviews could be accommodated as far as possible within a single set of changes to processes. ■

DWP Paper on Speeding Up the Winding Up of Occupational Pension Schemes

In SPC News No. 5 2006, we reported that DWP had published a report, looking at how the winding up of defined benefit occupational pension schemes could be speeded up.

We generally welcome this paper, which contains some helpful comment and suggestions on how the government and practitioners can speed up wind-ups, where it is feasible to do so.

There are, however, two respects in which care needs to be taken, to ensure that the well intended content of the paper does not actually lead to slower wind-ups. Firstly, when contemplating investigations of wind-ups or the removal of trustees, the Pensions Regulator will need to keep clearly in mind the risk that taking either of these steps might lead to an even slower winding up, as a result of the time consumed in cooperating with the investigation or, where new trustees are appointed, the need for them to familiarise themselves with the scheme.

The second risk would be that practitioners come to regard the regulatory risks of being involved in wind-ups as outweighing the commercial benefits. This would lead to fewer resources being available to wind-up schemes and therefore slow down winding up. An example from the pensions field of a similar outcome is in the field of transfers. The rules on advice on transfers have, for the best of motives, been tightened, but this has meant that there are now fewer advisers willing to take the risks associated with giving this advice, and it can be difficult, perhaps particularly in respect of modest transfer amounts, for individuals to find advice, although it is certainly an area where taking advice can be invaluable.

One contributory factor to delays in winding up, which is not mentioned in the paper, is that the need to resolve cases in the hands of the Pensions Ombudsman, relating to a scheme which is winding up, can significantly delay the conclusion of a winding up.

We also suggest, that it might be helpful to suspend the statutory right to a transfer value during a wind up, although the right could be reintroduced when all the preliminary steps to a wind-up had been completed. Calculation of transfer values is expensive, given the need to adjust the value to reflect the funds actually available to the member.

Before submitting our response to the paper, when we made the points above, we were invited to a meeting with DWP to discuss some of the matters raised in its paper. ■

Pensions Regulator consults on regulating money purchase schemes

In November 2006 the Pensions Regulator issued a consultation document on its plans for regulating money purchase schemes in relation to risks to members.

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

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

The Pensions Regulator's Notifiable Events Requirements

As part of its contribution to the DWP's deregulatory review, the Pensions Regulator is giving general consideration to the requirements on notifiable events.

The SPC Administration Committee has had a meeting with officials from the Regulator to exchange preliminary views on the subject. ■

Trustee Investment Powers

The SPC Council has noted that there have recently been a number of comments, to the effect that, given the position of sponsors of defined benefit schemes now as virtual guarantors of the benefits, trustees should be required to seek the agreement of sponsoring employers to their proposed investment strategy, not simply to consult them on it.

Council invited the Investment Committee to discuss this subject.

The Committee agreed that some employers, with excellent covenants, undoubtedly are unhappy with what they viewed as excessively cautious strategies adopted by trustees.

It was agreed that when accrual of future benefits ceases, the sponsoring employer generally has a much weaker argument for seeking to control the investment strategy.

The position on investment strategy could also be characterised as out of step with the general thrust of the Pensions Act 2004, which generally now requires agreement between the sponsoring employers and the trustees.

It was commented, however, that in many cases there is not in practice a problem with the existing position. The requirement now is for trustees to consult the sponsoring employer, but before the Pensions Act 1995 many scheme rules had, in fact, vested control of the investment strategy in the trustees.

There is the argument that sponsoring employers might be willing to put more money into a scheme if their agreement to the investment strategy was required, but there are practical ways of addressing employers' reservations, for example special purpose vehicles, contingent assets and escrow accounts.

There are occasions where sponsoring employers actually take a more conservative approach than the trustees, but there is usually little actual disagreement between the two parties where this is the case.

It was noted that there was case law which suggested that trustees are justified in taking into account the interests of the sponsoring employer in operating a scheme. This might suggest that it would be reasonable to legislate that, in setting the investment strategy, trustees should take into account the legitimate interests of the sponsoring employer, i.e. go beyond consulting.

It was agreed that it is unlikely, in any case, that the government would agree to amend legislation to require trustees to obtain the agreement of the sponsoring employer to the investment strategy. If the law was changed there would be at least a few cases of detriment to scheme members, which would attract considerable attention, and probably give rise to accusations that the government had forgotten the lesson of Maxwell.

The Committee's conclusion was that change to the current legal position should not be advocated by SPC and this was agreed by Council. ■

Pensions Regulator Advisory Panel

SPC participates in the advisory panel set up by the Pensions Regulator. The panel comprises the relevant government bodies and pensions industry bodies.

The panel had a meeting on December 8th 2006, at which Peter Sayers, a member of the SPC Legislation Committee, attended in place of the SPC President, Mark Ashworth.

For a note of the main points of the meeting, please click here. ■

PPF Consults on Investment Risk

The Pension Protection Fund has issued a consultation document on the possible inclusion of investment risk as a risk factor in the risk-based levy.

The paper was issued in December 2006 and is available by clicking here.

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

White Paper on Personal Accounts

On 12 December 2006, the government published a White Paper, **Personal accounts: a new way to save**. The White Paper sets out its proposals for a quasi-compulsory system of pension saving, although there are some issues still left for consultation. The White Paper has eight chapters:

Individuals and auto-enrolment

Contributions will be made on pay between about £5,000 and £33,500 (the personal accounts earnings band, or PAEB). The PAEB will be indexed in line with average pay. Employees aged over 22, and of less than state pension age, will be auto-enrolled into the scheme. If they opt out, the proposal is that they should be re-enrolled after three years. Other employees, the self-employed and non-earners will be able to opt in voluntarily.

Employees will effectively contribute 5% of pay in the PAEB (offset by tax relief of 1%), and their employer will pay 3%. Contributions will be phased in over the first three years of the scheme.

There is some concern that, because of their eligibility for means tested benefit, some older workers at the start of the scheme will not have the opportunity to accumulate sufficient funds by the time they reach retirement to get good value from their savings. Consequently, the government is consulting on whether this group should be auto-enrolled into the scheme, or whether instead they should be required to actively opt in.

Choosing the personal accounts model

Personal accounts will be delivered via a central clearing house, which will be responsible for outsourcing to investment managers and administration providers. The government believes this model will minimise charges, by avoiding the need for providers to market themselves to individuals and employers.

Delivering personal accounts

The Pensions Bill, published in November, includes provision for a Delivery Authority with responsibility for advising the government on detailed design aspects of the personal accounts. The White Paper proposes that, once the scheme is established, the Delivery Authority could be given executive authority over the personal accounts. A Personal Accounts Board would be responsible for the management of the scheme and its objectives, which would be set in statute, would include optimising participation, setting investment strategy and minimising the burden on employers.

The government is consulting on how member interests can be best represented and will work with groups, including FSA, to establish a strategy for providing information to employees and employers.

Charges and financing

The White Paper expects that, initially, charges will be about 0.5% of the fund, although it accepts that some up-front financing will be necessary to achieve this. Whether this will come from government or the private sector service providers is left for further discussion. In the long run, it expects that charges could be as low as 0.3% of the fund. However, the Government is consulting on the appropriate charging structure. At this stage it has not defined whether costs will be met from an annual management charge, fixed fees, a joining charge, or some combination of these.

Investment and accessing savings

The choice of investment funds will be restricted to a lifestyle default fund and a limited number of 'bulk bought' funds. However, a wider range, including ethical and branded funds could also be made available at extra cost. The executive authority will be responsible for developing the scheme's investment strategy.

Personal accounts will be subject to the same pension rules as existing occupational and personal schemes - that is:

- people will be able to draw down on their fund at any time between ages 55 and 75;
- they will be able to take up to 25% of the fund as a lump sum;
- they will have to annuitise outside the scheme by age 75.

Employers and private pension reform

Employers who auto-enrol their employees into 'adequate' occupational pension arrangements will be able to use them to opt out from personal accounts. 'Adequate' will mean:

- A contracted-out defined benefit (DB) scheme, or a contracted-in DB scheme with an accrual rate of 1/120ths.
- An occupational money purchase scheme with a minimum contribution of 8% per annum, where at least 3% of the contribution is paid by the employer. Note that these would apply to gross earnings in the PAEB.

The government is still considering how personal/stakeholder pension schemes can be used to opt out - the difficulty is that it is not possible to auto-enrol employees into these schemes.

The government is undecided as to whether to allow opt out schemes to retain 3-6 month waiting periods if they wish, which might make such schemes more attractive to employers with high turnover.

Employer contributions to personal accounts will be phased in over three years (1% in the first year; then 2%; then 3%), with corresponding phasing of the employee minimum. There will be a 'light touch' regime to ensure compliance.

No special easements are offered for small employers, although the three year phase-in should help them particularly.

Personal accounts and existing pension provision

The White Paper believes that the new system will produce £4-5 bn of new household saving each year. To ensure that the personal accounts do not overwhelm existing provision, it is suggested that, at least in the first instance, transfers from occupational and personal pensions to the personal accounts will not be permitted. This means that, where employers wished in future to use personal accounts rather than private schemes, they could not wind up by transferring existing funds - they would have to maintain these or wind up in some other way.

Although the stakeholder regime will be left more or less intact, the requirement for employers to designate a stakeholder scheme for its employees will be removed once the personal accounts are introduced. It will remain for the intervening 5 years.

Individuals will be able to save more than the minimum contribution, but this will not trigger additional employer contributions. The maximum contribution each year will be at least £5,000 (the amount the government believes someone on median earnings needs to save to achieve a replacement ratio of 67% at retirement), although to encourage pension saving in the scheme's first year a £10,000 limit will be imposed.

Next steps

The Government has asked for comments on its proposals, and the consultation period ends on 20 March 2007. It will also be carrying out further research to support the development of the personal accounts, which could give rise to other consultation exercises.

SPC will be responding. ■

Pensions Bill Published

The government published a Pensions Bill on 29 November 2006, intended to implement the suggestions for changes in State pensions, proposed in its White Paper 'Security in retirement: towards a new pensions system'. The Bill would also end contracting-out via a money purchase arrangement and, in some cases, enable schemes with Guaranteed Minimum Pensions (GMPs) to alter them to be in line with other scheme benefits.

The main changes to the State pension are:

- The rate of increase in the basic State pension will be linked to rises in earnings, from a future date to be determined, but expected to be between 2012 and 2015;
- State pension age will be increased from 65 to 66 during the years 2024 to 2026, then to 67 between 2034-2036 and to 68 between 2044-2046;
- The eligibility rules for basic State pension will be amended, to make it easier for people who take breaks from employment or have caring responsibilities to accrue their full entitlement;
- From 2010-11, the state second pension will have the flat rate band targeting 40% accrual on notional earnings up to £12,500*, as at present, but the accrual target between £12,500* and £33,540* will be limited to 10% (at present the slice between £28,800 and £33,540 targets 20% rather than 10%). The £33,540 upper limit will also be frozen for pension purposes, but not National Insurance contributions.

* 2006-2007 rates

The Bill also introduces a 'Delivery Authority', which will be responsible for preparing for the implementation of Personal Accounts (the government's name for the National Pensions Savings Scheme proposed by the Pensions Commission).

The government recently consulted on how to end contracting-out via money purchase arrangements and the effect this would have on protected rights. The Pensions Bill paves the way for money purchase contracting-out to end (from an 'abolition date' yet to be determined, but previously proposed as not earlier than 2012), but it appears to leave the treatment of protected rights accrued to the abolition date to future regulations.

The ability to amend GMP rights also comes with certain restrictions, including a value and amount test and the requirement to retain associated survivor's rights and the defined benefit nature of the promise.

The Bill also legislates to permit simpler Internal Dispute Resolution procedures. ■

Code of Practice on Modification of Subsisting Rights

The Pensions Regulator has published a code of practice on modification of subsisting rights. This code was laid before Parliament in draft form on 7 November 2006 and was due to come into force if, at the end of a 40 days period, no representations were made.

The code explains that there are two types of amendments of scheme rules:-

- a protected modification (a change which would or might change the nature of the subsisting rights of a member or survivor of a member from another type of scheme to a money purchase scheme, or to replace a non-money purchase right with a money purchase right, or which would or might reduce the rate of pensions in payment); and
- a detrimental modification (a modification which would or might adversely affect any subsisting right of a member or survivor of a member) but which is not a protected modification.

A protected modification can only be made with the informed consent of each affected member ("the consent route").

The trustees must provide each affected member with adequate information in writing to enable informed consent to be given and to make representations to the trustees. The Regulator expects the members to have at least four weeks to make representations. Changes only apply to members who have consented. The Regulator expects the trustees to implement the change within seven months from the date consent is received from a member.

A detrimental modification, which is not a protected modification, can be made:-

- under the consent route (as above); or
- under the actuarial equivalence route.

The actuarial equivalence route requires the same information as under the consent route. In addition, the trustees have to provide a brief explanation of what constitutes actuarial equivalence and how it has been achieved and a clear explanation that where the actuarial equivalence requirements are met, the change will apply to affected members, even if they do not give their consent. The Regulator would normally expect trustees to give members a period of at least four weeks to make representations.

Before making the decision to approve a change, the trustees must take adequate steps to ensure that the actuarial value will be maintained. The Regulator would normally expect the trustees to obtain an actuarial equivalence statement within one month of the effective date of change.

Where a detrimental modification (made under the member consent route) or a protected modification has been made, The Regulator expects the trustees to make a decision on whether to effect the change within six months after the first member has given consent. The deadline for implementation once the decision is made is seven months from the date consent is received.

Once the trustees have decided to make the change, The Regulator expects the trustees to inform the affected members within one month of their decision (but before the change takes effect). ■

SPC

Response to FSA Discussion Paper on Treating Customers Fairly

The discussion paper was issued in September 2006 and it invited discussion and debate on FSA's view of the respective regulatory responsibilities of providers and distributors to treat customers fairly. FSA indicated that it would do this in "Treating Customers Fairly – Building on Progress (published in July 2005) and in the FSA business plan for 2006/2007. A copy of this discussion paper (06/04) is at http://www.fsa.gov.uk/pubs/discussion/dp06_04.pdf

In our response, we voice an overall concern about the potential difficulties which could arise, many of which focus on paragraph 4.20 of the paper. This paragraph states that the provider should consider the extent to which it needs to regularly review products whose performance might vary materially. On one level this is an obvious and entirely reasonable suggestion. However, how reasonable it is in practice will depend on how it is policed in FSA visits. In what detail will firms be expected to document the reviews?

Is the intention that a review would cover existing customers or only future sales of the product? How far would it be acceptable to take the view that a dip in performance was no more than a dip due to a change in the markets, which was not fundamental and might reverse?

It is also not clear what FSA envisages as the benchmark against which a review would take place. Certainly reviews ought to be in the context of fundamental changes in the market, involving investors in general, and not in the context of individual investors' circumstances.

There certainly must not be the implicit presumption that a review is triggered solely by the possibility that investors might suffer loss.

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

National Audit Office Review of FSA

The National Audit Office is, at the invitation of the Treasury, reviewing the economy, efficiency and effectiveness, with which FSA has used its resources, when discharging its statutory functions.

The topics to be covered by the review will address five broad areas of FSA's work:-

- Internal performance management;
- External joint working within the UK;
- Influencing and representation internationally;
- Financial crime;
- Financial capability.

FSA intends to complete its report as soon as possible within the first half of 2007. For further details please click here.

We have made a written submission to the National Audit Office.

One question which we suggest the review could usefully address would be whether there were, or ought to be, priorities within FSA's statutory objectives. For instance, FSA appears to give relatively little emphasis to improving financial capability, although if the population as a whole was better equipped to deal with financial issues it would be easier to avoid regulatory problems.

Another objective is to promote and support the financial services industry. In practice, however, the emphasis is virtually entirely on protecting investors. The responsibilities of regulated firms to investors are usually defined in considerable detail, whereas FSA seems to hardly recognise the possibility that there might be responsibilities in the opposite direction.

Another area, which we believe warrants attention, is the approach to implementing regulation from the EU.

The first instance in this area is implementation of the Insurance Mediation Directive.

As its name suggests, this Directive applies to contracts of insurance. A significant number of SPC Members undertake third party pension administration. FSA has interpreted the IMD in such a way that it believes that the administration of occupational pension schemes is now a regulated activity. This means that third party pension administrators have to be authorised by FSA and comply with the Conduct of Business Rules. This is particularly onerous in view of the fact that occupational pension schemes are highly regulated already by a number of other regulators such as the Pensions Regulator. The implementation of FSA rules in addition seems to be totally disproportionate to any perceived consumer protection requirement. Our contact with FSA suggests that it was not their intention to regulate third party pension administrators but they regard themselves as bound to do so by the Directive.

We would be extremely surprised if any other EU member state had interpreted the Directive in such a way that third party pension administrators are caught. When it became apparent that this activity would need to be regulated we made representations to FSA and the Treasury but we were informed that it was too late as the Directive had already been adopted. However, there was nothing to alert us to the fact that a Directive ostensibly about insurance mediation would affect pension administration activities.

The second area is in FSA's disclosure provisions.

Under the Distance Mediation Directive and the Insurance Mediation Directive, it is necessary for a firm to give consumers certain information about, for example, its name and address and status. In itself this is unobjectionable and, indeed, almost all firms would have provided this information in their Terms of Business. However, FSA requires firms to provide specific documents in a specific format. There are different documents, depending on whether it is investment business or general

insurance business, which in itself adds another layer of complexity. For general insurance it is necessary to issue an Initial Disclosure Document and a Statement of Demands and Needs. For investment business it is necessary to issue an Initial Disclosure Document and Menu Document. These documents are in addition to existing disclosure documents such as Key Features documents. All these documents are extremely confusing to practioners let alone to members of the public.

These documents only have to be provided to Private Customers, but since the definition of Private Customers can include pension trustees and firms subject to certain limits (e.g. entities with less than £10 million of net assets) many small companies and pension trustees are caught. The need to distinguish between Private and Non-private customers is extremely onerous (and has to be conducted under FSA rules at least once a year) and so many firms decide to treat all clients as Private Customers and issue this documentation to all their clients. Where clients, whether Private or not under the FSA definition are businesses or financially well-versed individuals (as would generally be the case for SPC Members) the provision of this information is of no benefit to them.

Looking to the future, FSA currently has a rule based system and is planning a more principle based system. Our fear is that in practice we will end up with the worst of both worlds – a set of principles, which will be vague and enable enforcement action on the basis of vague principles, combined with a substantial body of detailed rules which will also need to be complied with. ■

FSA Consults on Financial Promotion and Other Communications

In October 2006 FSA issued consultation paper 06/20 on financial promotion and other communications. The consultation paper seeks views on FSA's proposals to implement a more principles-based regime for financial promotions and other communications. It also proposes rules and guidance to implement the conduct of business obligations in MiFID in relation to "all information" and "marketing communications"

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

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

FSA Consultation Paper on Reforming Conduct of Business Regulation

Also in October 2006 FSA issued consultation paper 06/19 on reforming conduct of business regulation.

This 350 page consultation paper seeks views on FSA's proposals for reforming the conduct of business regime. It sets out FSA's approach to reforming the conduct of business source book, which it committed itself to do in its business plan for 2006/2007 and in its Better Regulation Action Plan. It also consults on FSA's proposed implementation of the conduct of business requirements in MiFID.

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

In responding we selected questions of greatest relevance to SPC.

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

Amendment To FRS 17 Will Not Be Effective Until April 2007

The Accounting Standards Board (ASB) published an amendment to Financial Reporting Standard (FRS) 17 'Retirement Benefits' in December, 2006. The amendment will be effective for accounting periods beginning on or after 6 April 2007. Early adoption will be encouraged.

The amendment will align the disclosures in FRS 17 with those of IAS 19. The initial draft proposed that the amendment would be effective for accounting periods ending on or after 31 December 2006. ASB has decided to allow a longer implementation period in response to concerns, regarding the time required to prepare for the amended disclosure requirements.

ASB has also decided to amend paragraph 16 of FRS 17, so that for quoted securities, the current bid price (rather than the mid-market value) is taken as fair value. This is a further alignment with IAS 19, on which ASB consulted in July 2005.

ASB is continuing its review of the matters raised in relation to the proposals in the May 2006 exposure draft for a best practice reporting statement. ■

Final Age Discrimination Guidance published

DTI and DWP have jointly published the final version of amended guidance on the pensions aspects of the Age Discrimination regulations, which came into force on 1 December 2006. The guidance in on the DTI website.

The guidance is intended to help trustees and employers to understand how the Age Discrimination regulations apply to occupational and personal pension schemes. It has no legislative force, but lay members of the Employment Tribunals may rely on it to form judgements. Reassurance given by the guidance could also be used to help form objective justifications.

The guidance is helpful in the following respects:

- When assessing whether age related contributions to money purchase occupational pension schemes meet the exemption in the regulations (the 'more nearly equal' test) it suggests that it is permissible to compare contributions paid over someone's entire prospective scheme membership.
- It gives an example, which suggests that it is not discriminatory to have two separate pension schemes, with different eligibility conditions and benefits. So it appears to be possible to maintain nursery arrangements, provided that the arrangement is comprised of two separate schemes, rather than one sectionalised scheme. (A nursery scheme gives younger employees access to money purchase benefits, but they can move to defined benefit accrual once they reach a certain age. New employees above that age would have immediate access to defined benefits.)
- It notes that it is possible for different rules (including the early retirement pivot age and actuarial reduction factors) to apply on early retirement from deferred status, compared to early retirement from active status.

However, in some respects it is not helpful:

- It attempts to define 'more nearly equal', but its definition is unclear.
- It states that the government's 'intention' was for the exemption for age related contributions to personal pension schemes to be the same as the exemption which applies to money purchase occupational pension schemes. However, the regulations appear to set different tests for occupational and personal pension schemes and no reference or explanation is given for this.
- It gives no indication of whether employers and trustees need to permit flexible, or phased, retirement.
- It gives no help to employers and trustees who were unable to amend rules in time for the regulation's implementation date (1 December 2006).

We plan to produce a comprehensive note for the government, setting out areas where we consider the guidance is unclear or could be improved. ■

Portability Directive Update

SPC participated in a further meeting hosted by DWP, which took place in November, to take stock on the current position on the draft portability Directive.

One of the key questions, awaiting resolution, is whether the Directive should cover transfers, or whether it should embrace only vesting and preservation. The potential impact on the UK would be greatly reduced if it did not cover transfers.

It is unclear how the draft will progress and at what speed. It is possible that the European Parliament could consider a revised draft text in early 2007. ■

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 Editorial Committee:
Chairman, Secretary,
Chris Bellers (Friends Provident)
and contributors from Mercers

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