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SPC Launches its New Money Purchase Committee

SPC's orientation towards money purchase provision is increasing as money purchase gains ground. However, a large part of the limited time available to SPC Committees is devoted to reacting to legislative and regulatory initiatives. It is likely that for some considerable time a great deal of legislative and regulatory attention will be given to defined benefit provision, although, or perhaps because, it is in

decline. This will impede the ability of existing Committees to focus on current or future money purchase issues.

The role of the SPC Money Purchase Committee is therefore to consider only money purchase provision, and any new developments in design, without commitment to devote time to the defined benefit legacy.

The role of the Committee is to

consider legislation, regulation and any other relevant factor related to money purchase (not necessarily occupational or employer sponsored) pension provision and any new developments in design. It may also consider saving, other than pensions.

The initial membership of the Committee will be that of the SPC Personal Pensions Sub-Committee, which it replaces. ■

SPC in Yorkshire

The SPC Yorkshire Committee held an evening meeting on January 10th, when Andrew Young, from the Government Actuary's Department, gave an entertaining and informative talk on "The Pension Protection Fund and the Pensions Commission". ■

SPC Northwest Evening Meetings

The most recent SPC evening meeting in the Northwest took place in Manchester on December 7th.

Poor weather could not prevent a large and appreciative attendance for a talk by Tom Ross on "Creating a Sustainable Partnership between State and Private Pension Provision". ■

SPC Round-table 2005

This year's SPC Round-Table takes place on June 9th in the SPC office. The guest facilitator will be Robin Ellison (Pinsent Masons), who will by that time also be Chairman of NAPF.

This year's subject is "Conflicts of

Interest", focusing on the changing role of pension scheme trustees, their relationship with the scheme sponsor, the potential for conflict and the impact on trustees of new legislation, tighter regulation and stricter com-

pliance requirements. The event starts at 9.30 a.m. and finishes at around 12.30 p.m. and is followed by a buffet lunch. We will be sending out a booking form later, but please put the date in your diary now. ■

SPC Scottish Evening Meetings

The evening meeting programme for 2004 ended on December 8th, when David Reid, of Dunnett Shaw, spoke on "Improving Administration Standards".

The 2005 season began on January 25th, when Richard Hardy (Capita Hartshead) spoke on pension sharing on divorce.

Further evening meetings, organised in cooperation with PMI, are as follows:

DATE	SUBJECT	SPEAKER	VENUE
February 24 th	Flexible Benefits	Marcus Underhill (Mercer)	Standard Life, Edinburgh
March 23 th	Pension Protection Fund	Alistair Lochhead (PWC)	Britannic, Edinburgh ■



SPC London Evening Meetings

Meetings held so far in the 2005 segment of the current season of SPC London evening meetings have been

DATE	SUBJECT	SPEAKER(S)	VENUE
January 25 th	What's new on Myners?	Clifford Sims (Hammonds)	City Conference Centre
February 7 th	Pension Benefits: Trust or Contract - Where Does the Future Lie?	Jo Ratcliffe (Addleshaw Goddard) and Nick Burns (PIFC)	City Conference Centre

We have the following meetings coming up:

DATE	SUBJECT	SPEAKER(S)	VENUE
March 8 th	Information and Consultation following the Pensions Act 2004	Tim Roberts (Talking People - a Mellon Financial Company)	Hammonds
April 28 th	Moral Hazard and the Pensions Act 2004	Jason Coates and Paul Feathers (Wragge & Co.)	Wragge & Co.

The March meeting takes place at Hammonds, 7 Devonshire Square, Cutlers Gardens, London EC2M 4YH. The April meeting is hosted by Wragges, 3 Waterhouse Square, 142 Holborn, London EC1B 2SW.

The meetings begin at 5.30 p.m. and are preceded by drinks from 5.00 p.m. They are planned to end at 6.45.

We are very grateful to Hammonds and to Wragges for hosting these meetings. More hosts would be welcome and, if your organisation would be interested in hosting a meeting, please contact John Mortimer in St Bartholomew House.

Handouts are available for the following SPC London evening meetings:

DATE	SUBJECT	SPEAKER(S)	VENUE
November 16 th 2004	Assessing the Employer's Covenant	Bruce Mackay (Baker Tilly)	City Conference Centre
December 9 th 2004	Liability Led Investment: Myths and Realities	Bobby Riddaway (HSBC)	Lovells

To obtain copies, please contact Eileen Damsell in St. Bartholomew House, or click on the subject title above. ■

SPC Assists in Implementation of New Pension Taxation Regime

Inland Revenue has now started to consult on some of the detail of the new pension taxation regime, to apply from April 6th 2006.

SPC Committees have been considering first drafts of some of the reporting forms to be used under the new regime and there are a number of SPC participants in the readers'

panel which Inland Revenue has set up to consider its draft guidance on the new regime.

Towards the end of 2004 Inland Revenue held workshops to discuss comments received on its draft regulations to govern the new regime. SPC contributed to all the workshops. ■

SPC Compliance Forum

The SPC Compliance Forum met on March 3rd 2005.

The meeting took place in the SPC's office. Our guests were Richard Sutcliffe (Manager, Wholesale Prudential Policy) and Andrew Smithson (Associate, Wholesale Prudential Policy) from FSA. Both are specialists in the client money area. ■

Protecting pre A-Day Rights under the New Tax Regime

This article summarises the final rules on protecting pre A-Day rights under the Finance Act 2004.

Pre A-Day rights at a glance

The following boxes summarise the key facts:

	Primary protection	Enhanced protection	Pre A-Day tax-free cash more than 25% of fund
Conditions for registration	<ul style="list-style-type: none"> Pre A-Day rights must be more than £1.5m May remain in pensionable service and continue paying contributions Occupational pension scheme benefits must be within pre A-Day Inland Revenue maximum limits 	<ul style="list-style-type: none"> Pre A-Day rights can be of any value Must leave pensionable service/stop contributing Occupational pension scheme benefits must be within pre A-Day Inland Revenue maximum limits 	<ul style="list-style-type: none"> Applies to OPS, S32 buy-out, old code, statutory and Parliamentary schemes only Does not apply to personal pensions and s226 retirement annuity contracts Rights do not need to be registered
Rights protected from the lifetime allowance charge.	<ul style="list-style-type: none"> Pre A-Day rights increased in line with growth in Standard Lifetime Allowance 	<ul style="list-style-type: none"> All rights are protected from the lifetime allowance charge providing there is no relevant benefit accrual and any transfer is a 'permitted transfer' 	<ul style="list-style-type: none"> No special treatment Entitlement to higher tax-free cash lost on transfer, unless it is a block transfer
Pension commencement lump sum	<ul style="list-style-type: none"> Pre A-Day tax-free cash increased in line with growth in SLA 	<ul style="list-style-type: none"> Same % of fund that tax-free cash bore to the fund on 5 April 2006. 	<ul style="list-style-type: none"> Pre A-Day tax-free cash increased in line with growth in SLA, plus 25% of the post A-Day fund

Primary and enhanced protection

The two ways of protecting pre A-Day rights greater than the SLA, or are likely to grow to more than the SLA, are by registering for primary and enhanced protection.

- 'Primary protection' is available to individuals who are still in pensionable service or still contributing to any registered scheme, when the value of their pension rights exceeds the lifetime allowance. The benefits protected from the lifetime allowance tax charge are the registered benefits, increased in line with growth in the SLA. The pension rights which are protected from the lifetime allowance charge are expressed as a percentage of the lifetime allowance, given to the individual as an 'enhanced lifetime allowance factor'. This means the registered fund is automatically indexed in line with the lifetime allowance.
- 'Enhanced protection' is available to anyone who leaves pensionable service and stops contributing to any registered scheme, whether or not the value of their pension rights exceeds the lifetime allowance at registration. There is then no test against the annual allowance or lifetime allowance. All

benefit growth and salary growth is protected from the lifetime allowance tax charge, providing there is no 'relevant benefit accrual' and any transfer is a permitted transfer. This is further explained later.

There is nothing to stop an individual registering for both primary and enhanced protection, so that if they decide to start contributing to their pension again, they can fall back on the primary protection. This can only apply to individuals with pre A-Day rights worth £1.5m or more, as anyone with funds less than this cannot apply for primary protection.

The amount which can be registered is the value of rights on 5 April 2006. These must be within Inland Revenue limits. Amounts above Inland Revenue limits must be surrendered before the rights can be registered. The maximum which can be registered is explained later.

Valuing benefits when registering for primary or enhanced protection

The amount which can be registered is the value of the individual's uncrystallised pension rights on 5 April 2006 under all schemes PLUS the value of all crystallised rights on that date.

This ensures that the value of benefits already paid out is taken into account.

These are calculated as follows:

1. Uncrystallised benefits from money purchase schemes

The value of the member's funds if their benefits came into payment on 5 April 2006.

2. Uncrystallised benefits from defined benefit schemes

The gross annual pension is multiplied by 20 to work out its value. Any tax-free cash provided in addition to the pension (rather than by commutation) is added.

A higher factor than 20 can be agreed with the Inland Revenue if the scheme provides increases to pensions in payment of more than RPI or 5%.

The pension and lump sum are the amount the member would receive if benefits came into payment on 5 April 2006 using the 'valuation assumptions'. These are that the individual has reached the age needed not to suffer any early retirement discount and the individual is not taking benefits on grounds of incapacity. This age is assumed to be 60 unless the terms of the arrangement on 10 December 2003 specified a particular age below which an early retirement reduction would apply. This means any early retirement reduction which would normally apply under a defined benefit scheme if the member actually took benefits is ignored.

3. Crystallised benefits

Pensions in payment on 5 April 2006 are multiplied by 25 to work out their value. The pension in payment is the gross annual pension. (Note that uncrystallised scheme pensions are multiplied by 20 to work out their value and any tax-free cash is then added on. The higher factor of 25 assumes tax-free cash was taken when the pension started).

This is used to value pensions in payment under

- An occupational pension scheme.
- An old code scheme.
- A statutory scheme.
- Annuities bought from any of the above or pensions / income withdrawal from any of the above.
- Parliamentary schemes.
- S226 retirement annuity contracts.
- Personal pensions (this would include stakeholder).

- ➔ Income withdrawal from personal pensions.

Dependant's and spouse's pensions in payment are not included.

Pensions paid as income withdrawal (other than from personal pensions) are valued using the maximum annual amount at that date.

Personal pension income withdrawal is valued using the maximum allowed in the 12-month period in which 5 April 2006 falls. If an individual has made an election to start income withdrawal under a personal pension but it has not yet come into payment, it is treated as if it started on 5 April 2006.

Maximum value of rights which can be registered for primary or enhanced protection

Members of occupational pension schemes, old code schemes, statutory schemes and s32 buy-out plans must be within existing Inland Revenue maximum benefit limits before they can register for primary or enhanced protection. This is 20 times the Inland Revenue maximum-permitted pension under pre A-Day Inland Revenue limits, assuming the member leaves service on 5 April 2006 (if still in service) and is in good health. Because the test is based on the IR maximum and not the scheme rules, the IR could simplify the maximum benefits test before A-Day to make it easier for administrators to do the necessary checks. At the time of writing it is not clear how the Inland Revenue maximum permitted pension will actually be calculated. It would appear that the N/NS formula will apply to individuals in the pre '87 and '87 - '89 regimes. For those entitled to a full 2/3rds pension after 20 years service, it would appear to be the pension which does not exceed 2/3rds of final remuneration.

For example, a 40 year old with 20 years service, a normal retirement age of 60 and a final remuneration of £200,000 could have a maximum pension of £133,333. This would mean their maximum fund value is £2.66 million (20 x £133,333).

When enhanced protection will be lost

Enhanced protection will be lost when the benefits are transferred out unless the transfer is a '**permitted transfer**'. This is a transfer where:

- All the benefits are transferred at once
- The accrued rights are either (1) transferred to one or more money purchase arrangements under a registered scheme or recognised overseas pension scheme or (2) if a defined benefit scheme is being wound

up, transferred to another defined benefit scheme of the same employer, which is a registered scheme or a recognised overseas pension scheme.

- The amount transferred out and received is actuarially equivalent.

Enhanced protection will also be lost if the individual has any '**relevant benefit accrual**'.

What is relevant benefit accrual under a money purchase scheme?

Under a money purchase scheme, this means no contributions may be paid by the employer and no tax relievable contributions may be paid by or on behalf of the individual. Contracted-out rebates and contributions to fund death benefits may still be paid.

What is relevant benefit accrual under a defined benefit scheme?

Under a defined benefit scheme, enhanced protection will be lost if benefits grow beyond the '**appropriate limit**'. This is the value of their rights on 5 April 2006 increased by the greater of RPI, 5% p.a. compound or an annual percentage rate specified in Inland Revenue regulations. (This will be the statutory rate of increase required to contracted-out rights). This includes the value of any benefits bought by a permitted transfer.

The '**post commencement earnings limit**' is the maximum earnings which can be used to calculate scheme benefits on a defined benefits basis.

For a member subject to the earnings cap at A-Day (i.e. a post 89 regime member), this is the lesser of:

- 7.5% of the standard lifetime allowance (SLA) when he or she takes benefits (i.e. initially £112,500), and
- The member's best 12 months earnings in the three years up to first taking benefits

For all other members, it is the member's best 12 months earnings in the three years up to the first relevant event, but only if this is not greater than 7.5% of the SLA at that time. Otherwise, it is the greater of:

- 7.5% of the SLA when they take benefits, and
- A third of earnings over the three years before first taking benefits.

Where the period of employment includes time absent from work in connection with pregnancy, paternity or adoption, earnings must be taken as the amount which would have been paid if the individual had not been absent.

Penalty relating to enhanced protection

If an individual has registered for enhanced protection, he or she must notify

Inland Revenue within 90 days if he or she starts to accrue benefits again. The penalty for not doing so is £3000.

Tax-free cash under primary protection

If the tax-free cash entitlement on 5 April 2006 is less than £375,000 (25% of the SLA), the pension commencement lump sum is 25% of the fund (capped to 25% of the SLA).

If the tax-free cash entitlement on 5 April 2006 is more than £375,000, the pension commencement lump sum is the tax-free cash entitlement at 5 April 2006 increased in line with any growth in the SLA between A-Day and the date benefits are taken i.e.:

(Tax free cash at 5 April 2006) X (SLA at crystallisation/£1.5m)

There is no 25% cap.

Where tax-free cash is taken after A-Day, this amount is taken off if further benefits are taken. The amount of cash taken previously is increased in line with growth in the SLA.

This is expressed as:

VULSR x (CSLA / FSLA) – APCLS x (CSLA / PSLA)

VULSR = VALUE of UNCRYSTALLISED LUMP SUM RIGHTS on 5 April 2006

APCLS = AGGREGATE PENSION COMMENCEMENT LUMP SUM. This is the tax-free cash sum taken since A-Day

CSLA = CURRENT STANDARD LIFETIME ALLOWANCE

FSLA = FIRST STANDARD LIFETIME ALLOWANCE i.e. £1,500,000

PSLA = PREVIOUS STANDARD LIFETIME ALLOWANCE. This is the SLA at the time the individual took tax-free cash on / after A-Day

In other words:

{(tax-free cash at 5/4/06) X (current SLA/£1.5m)} – {(tax-free cash taken since A-Day) X (current SLA/ SLA at time cash taken)}

The individual must register for primary protection to protect the cash.

Tax-free cash under enhanced protection

If the tax-free cash entitlement on 5 April 2006 is less than £375,000 (25% of the SLA), the pension commencement lump sum is 25% of the fund (capped to 25% of the SLA).

If the tax-free cash entitlement on 5 April 2006 is more than £375,000, the pension commencement lump sum is the same percentage of the fund that the tax-free cash bore to the fund on 5 April 2006. There is no 25% cap. The formulae are:

➔ 1. Income Withdrawal

(VULSR / VUR) X (LS + AD)

VULSR = VALUE of UNCRYSTALLISED LUMP SUM RIGHTS on 5 April 2006

VUR = VALUE of UNCRYSTALLISED PENSION RIGHTS on 5 April 2006

LS = LUMP SUM paid

AD = AMOUNT DESIGNATED for payment of unsecured pension

2. Lifetime Annuity

(VULSR / VUR) X (LS + APP)

VULSR = VALUE of UNCRYSTALLISED LUMP SUM RIGHTS on 5 April 2006

VUR = VALUE of UNCRYSTALLISED PENSION RIGHTS on 5 April 2006

LS = LUMP SUM paid

APP = ANNUITY PURCHASE PRICE

3. Scheme Pension

(VULSR / VUR) X (LS + AC)

VULSR = VALUE of UNCRYSTALLISED LUMP SUM RIGHTS on 5 April 2006

VUR = VALUE of UNCRYSTALLISED PENSION RIGHTS on 5 April 2006

LS = LUMP SUM paid

AC = AMOUNT CRYSTALLISED to provide scheme pension

The individual must register for enhanced protection to protect the cash.

Tax-free cash rights exceeding 25% of pre A-Day rights

The individual may keep his or her entitlement to a tax-free cash sum which exceeds 25% of his rights on 5 April 2006 if the following conditions are met:

- The individual has not registered for primary or enhanced protection
- All the benefits under the scheme are taken at once
- The scheme is an occupational pension scheme, old code scheme, statutory scheme, S32 buy-out or Parliamentary scheme.
- The lump sum rights exceed 25% of the uncrystallised funds on 5 April 2006
- The benefits are not transferred out to another scheme (unless the transfer is a block transfer)

A block transfer is one where all the benefits relating to the individual and at least one other individual in the same scheme are transferred out in one go to a scheme of which the individual was not a member before the transfer. When a block transfer has been made, the right to the higher cash sum is protected. This means the receiving scheme will need to record the higher cash entitlement.

Under a s226 retirement annuity contract, the tax free cash entitlement on 5 April 2006 is always assumed to be 25% of the fund and so this rule cannot apply to those contracts.

The amount of tax-free cash paid at retirement depends on whether or not 'relevant benefit accrual' occurs after 5 April 2006.

'Relevant benefit accrual' has the same meaning as where the right to enhanced protection is lost if there is relevant benefit accrual, including where an individual's earnings exceed the 'post commencement earnings limit' under a defined benefit scheme

If there has been no further benefit accrual after A-Day, the pension commencement lump sum is the tax-free cash entitlement on 5 April 2006, increased in line with the SLA. In other words:

(Tax free cash at 5 April 2006) X (SLA at crystallisation/£1.5m)

Note that if the tax-free cash on 5 April 2006 was, say, 35% of the fund, the tax free cash at crystallisation is not 35% of the fund, as one might expect.

If there has been benefit accrual since A-Day, the pension commencement lump sum is

- Tax free cash at 5 April 2006 X (SLA at crystallisation / £1.5m), **plus**
- 25% of the post A-Day fund

There is no overall 25% cap.

If more than one scheme provides a pension commencement lump sum, the amount is apportioned to each scheme according to the size of the fund, so that the same percentage must be taken from each scheme.

Pension commencement lump sum more than £375,000 and 25% of pre A-Day rights

There are no separate provisions for individuals who fall into both camps. So treatment will depend on whether they have registered for primary or enhanced protection.

How VULSR is calculated

This section explains how the value of uncrystallised lump sum rights (i.e. tax-free cash) on 5 April 2006 is calculated.

For a s226 retirement annuity contract, the value is calculated as a straight 25% of the funds on 5 April 2006.

For personal pensions, any lump sum certificate from an occupational pension scheme transfer or any 'nil cash' certificate from a transfer from a scheme not providing tax-free cash will still apply on 5 April 2006. Protected rights funds are still excluded from the tax-free cash calculation.

For an occupational pension scheme, old code scheme or s32 buy-out, the tax-free cash is calculated on the assumption that the individual became entitled to

the lump sum under the arrangement on 5 April 2006, using the 'valuation assumptions'. These are that the individual has reached the age needed not to suffer any early retirement discount and the individual is not taking benefits on grounds of incapacity. This is age 60 unless the terms of the arrangement on 10 December 2003 specified a particular age below which an early retirement discount would apply. This means any early retirement reduction which would normally apply under a defined benefit scheme, if the member actually took benefits, is ignored.

The tax-free cash cannot be more than the Inland Revenue maximum permitted lump sum.

This is based on the maximum allowable Inland Revenue lump sum from an approved occupational pension scheme assuming the member left service on 5 April 2006 (if still in service). It is also assumed the individual is in good health and has reached the minimum age needed for a tax-free cash sum to be paid under an approved occupational pension scheme.

If the benefits from a particular employment are in more than one scheme or arrangement, then the amount which is more than the Inland Revenue maximum is taken off the tax-free cash entitlement from each scheme proportionately. It cannot be taken off the tax-free entitlement from just one scheme.

How VUR is calculated

This section explains how the value of uncrystallised rights on 5 April 2006 is calculated.

For a s226 retirement annuity contract or personal pension it is the fund value on 5 April 2006.

For individuals in an occupational pension scheme, an old code scheme, statutory scheme or s32 buy-out this is the amount the member would receive if benefits came into payment on 5 April 2006 using the 'valuation assumptions', as described in the previous section.

For members of occupational pension schemes, old code schemes, statutory schemes and s32 buy-out plans it must be within existing Inland Revenue maximum benefit limits. This is 20 times the Inland Revenue maximum-permitted pension under pre A-Day Inland Revenue limits, assuming the member leaves service on 5 April 2006 if still in service and the member is in good health.

If the benefits from a particular employment are spread across more than one scheme or arrangement, the fund which is more than the Inland Revenue maximum is proportioned across each scheme or arrangement.

➔ Other rights which can be registered

The following benefits can also be registered so that an individual can be given an increased Personal Lifetime Allowance which is more than the Standard Lifetime Allowance:

- Pension credits arising from a pension in payment acquired on or after A-Day. This is because the benefits which suffered the pension debit will already have been tested against the lifetime allowance.
- Rights built up for the period during which an individual was not UK resident (see the section below on relevant overseas individuals).
- Transfer values received from a recognised overseas pension scheme (see section below on recognised overseas pension schemes).
- Pension credits received before A-Day. This is because under the pre A-Day legislation, pension credits do not count towards the recipient's maximum Inland Revenue benefits and are therefore benefits given in addition to Inland Revenue maximum benefits. Pension credit rights granted from A-Day (other than from pensions already in payment) will count towards the recipient's lifetime allowance.

Relevant overseas individuals

An individual may apply for an increased lifetime allowance if, at any time on or after A-Day he or she is a 'relevant overseas individual' whilst an active member of a registered pension scheme.

At the time of writing, the draft regulations states that a relevant overseas individual is someone who:

- Is not a 'relevant UK individual' (see below).
- Is only a relevant UK individual because they were UK resident at some time in the previous 5 tax years.
- Is not employed by a person resident in the UK.

A relevant UK individual is someone who:

- Has earnings chargeable to UK income tax for the tax year in question.
- Is resident in the UK at some time during that tax year.
- Was UK resident when they took out the pension and was UK resident at some point in the previous five tax years.
- Has general earnings as a Crown Servant working overseas or is the husband or wife of a Crown Servant in the relevant tax year. Examples of Crown Servants are diplomats and members of the armed forces.

Recognised overseas pension schemes

An individual may apply for an increased lifetime allowance if they have received a transfer value from a recognised overseas pension scheme. The draft regulations define a recognised overseas scheme as a scheme that is in one of the following:

- Norway, Iceland or Liechtenstein or any member state of the European Communities.
- A country or territory with a reciprocal agreement with the UK (thought to include Jersey, the Isle of Man, Guernsey and the Republic of Ireland).
- Another country or territory where the pension scheme is a private (i.e. non-State) scheme and is recognised for tax purposes by the country or territory to whose legislation it is subject. This means tax relief is given on contributions or benefits and either it is approved, recognised or registered with the relevant tax authorities or the scheme is resident in the country. An authorised transfer can be made to such a scheme if it provides an income for life at a minimum pension age, the scheme is still open to members, it gives an undertaking to the Inland Revenue that it will notify the Inland Revenue when benefits first come into payment and the benefits do not come into payment before age

50 (before 6 April 2010) or 55 (on or after 6 April 2010).

How the additional personal lifetime allowance is granted.

In each case, the individual will be given an extra percentage on top of the standard lifetime allowance. The percentage will be given as a factor ('a lifetime allowance enhancement factor'). Where the extra rights represent say, £150,000 on 5 April 2006, the 'lifetime allowance enhancement factor' will be 0.1 (i.e. an extra 10% on top of the £1.5m lifetime allowance at A-Day). When the benefits crystallise, the individual will get an extra 10% of the SLA applying at that time. So if the SLA at crystallisation is £1.8m, the individual will get a personal lifetime allowance of £1,980,000 (i.e. £1.8m + 10%).

How to register for an increased lifetime allowance

In all cases where an individual is entitled to a Personal Lifetime Allowance greater than the Standard Lifetime Allowance, the individual must register the extra rights with the Inland Revenue. An increased lifetime allowance will not be given to anyone who fails to notify these additional rights to the Inland Revenue.

At the time of writing, the closing dates for registering the extra rights proposed by the draft regulations will be as follows:

Extra rights	Closing date
Primary or enhanced protection	5 April 2009
Post A-Day pension credit from pension in payment	31 January five years after the 31 January following the tax year in which the sharing order was effective.
Rights built up whilst non-UK resident	31 January five years after 31 January following the tax year in which the individual was no longer a relevant overseas individual whilst an active member of a registered scheme.
Transfer value received from a recognised overseas pension scheme	31 January five years after 31 January following the tax year in which the transfer was made.
Pension credit received before A-Day	5 April 2009

Inland Revenue may accept a late notification if it is satisfied that the individual had a reasonable excuse for missing the closing date. Once it has been notified of the rights, Inland Revenue will issue the individual with a certificate showing the registered rights.

Inland Revenue will prescribe the method of notifying additional rights and the certificate it issues will be in a prescribed format. The individual will be required to sign and date the notification and must then keep all documents relating to the information given on that notification for six tax years.

At the time of writing, the draft regulations state that Inland Revenue

must issue a certificate to the individual if the information given in the notification is complete. If it is not complete, the Revenue will return it. The individual must return the correctly completed notification by the later of the closing date and 30 days from the day on which the Inland Revenue returns the notification.

The individual must keep the certificate until all the benefits have vested. If Inland Revenue issues an amended certificate, because the individual gave incorrect information, the individual may be required to surrender the original certificate (unless it has been lost, destroyed or defaced). If Inland Revenue is satisfied an original certificate is lost,

→ destroyed or defaced, it will issue a replacement certificate.

Inland Revenue may audit the information it has been given at any time within 12 months of the information being given to it. If it believes any of the information it has been given was incorrect or has become incorrect, it can conduct an audit

at any time. It must give the individual notice of the information, documents or particulars it wants and must tell them the timescale for providing it. The individual must be given at least 30 days from the date on which the notice is given. The individual does not have to produce anything which relates to a

pending tax appeal made by him or her. Inland Revenue must give an individual notice that it is going to revoke or amend a certificate.

At each stage of the entire procedure, there is an appeal procedure should a dispute arise between the individual concerned and the Inland Revenue. ■

Presumption of Death Following the Tsunami: Inland Revenue Guidance

Inland Revenue has offered some guidance on payment of benefits in respect of scheme members presumed dead as a result of the Tsunami.

It explains that the 7 year period for presumption of death applies only in circumstances where UK law is not otherwise satisfied that a person is dead, i.e. where a person disappears without explanation. But a firmly identified body is not a condition precedent for legal recognition of death – it is merely the most decisive possible evidence. It is possible to have perfectly sufficient evidence of death without a body.

Inland Revenue looked at the rules of a sample number of approved occupational schemes and, not surprisingly, none contain any specific reference to the evidence required where death is presumed but cannot be proved.

However, most pension scheme rules provide that it is for the trustees or the administrator of the scheme to decide what evidence is necessary to enable the scheme to pay benefits. The Revenue is not in a position to advise on the legality of the trustees' decision.

The Foreign and Commonwealth Office set up special procedures, which allow its local representatives to issue death certificates locally in place of the overseas jurisdiction where the presumed death occurred. Relatives and claimants in the affected area will need to satisfy the FCO representative that the person concerned was in the disaster area at the relevant time. In which case a death certificate can be issued. Alternatively, relatives and claimants in this country can contact the FCO in London on 020 7008 0186 between 10am to 12pm.

So in most cases, a death certificate may be available. In other cases, where the member has no controlling interest in the sponsoring employer, Inland Revenue will be content for the trustees to adopt whatever tests

they think appropriate to determine, in the absence of a death certificate or similar, both that death has occurred and the date on which it occurred.

Inland Revenue envisages that trustees/administrators will wish to take into account such factors as:

- (a) whether the member was one of those individuals described by the Foreign Office as likely to be victims of the Tsunami,
- (b) whether there is any person who would have expected to have heard from him/her if they were alive and who has not heard anything after a reasonable time has elapsed. It is for the trustees to decide what is a reasonable time, and
- (c) they (the trustees) were not aware that the member had any known motive for taking the opportunity to disappear e.g. financial difficulties, threat of court proceedings or reason to conceal whereabouts from spouse. It will be a matter entirely for the trustees' own judgement as

to whether they make any enquiries regarding these matters.

Alternatively, Inland Revenue understands that grants of probate may be made and/or declarators of death issued by the Court in Scotland (under the Presumption of Death (Scotland) Act 1972) even in the case of those whose death can only be presumed. Trustees might decide to wait until the proposed beneficiaries can produce these in evidence. Again, this is a matter entirely for the trustees.

For the purposes of establishing the date of entitlement to benefits, Inland Revenue is content for the trustees to treat the day of the event (26 December 2004) as the date of death, unless the trustees have evidence that death may have occurred later, in which case that later date should be taken as the date of death. This is on a without prejudice basis so far as other taxes such as inheritance tax are concerned. ■

Pension Scheme Mergers: Stamp Duty Reserve Tax

In the run-up to next year's Budget we raised with the Treasury the liability for stamp duty reserve tax on pension scheme mergers.

Pension schemes frequently merge as a result of a reorganisation of an employer's pension arrangements or following a merger of two businesses. This frequently gives rise to a large scale transfer of members, and the benefits and liabilities in respect of them, from one scheme to another. The transfer of liability would normally be

accompanied by a transfer of assets.

The Finance Act 1999 changed the legislation on stamp duty and stamp duty reserve tax on unit trusts. Since then the transfer of units in a UK unit trust held by a pension scheme will, on a scheme merger, attract a charge to stamp duty reserve tax of 0.5% of the value of the units transferred. This can give rise to a significant stamp duty reserve tax charge, which we do not believe was intended when the legislation was changed. It is sometimes

→ possible to effect the transfer in such a way as to avoid or mitigate the charge, but this is not always possible, and it does complicate transactions and therefore adds to their cost.

If we are correct, that the amendment to the legislation was not intended to catch transfers relating to pension scheme mergers, we suggested that there should be an exception to the 1999 legislation, applying to transfers of assets between pension schemes, where the transfer is made only in respect of the assumption of liabilities for pension benefits of individuals who join the receiving scheme.

In response Inland Revenue has clarified the position. It accepts that no

charge to stamp duty reserve tax arises where pension schemes merge and the only consideration for the transfer of assets from the discontinuing scheme to continuing scheme is the assumption by the latter of the obligation to pay pension benefits to the members of the discontinuing scheme. This is because consideration in this form is not regarded as "consideration in money or monies' worth" for stamp duty reserve tax charging purposes, under either Section 87, Finance Act 1986 or Schedule 19, Finance Act 1999. Although transfers will not attract a Schedule 19 charge, fund managers will still need to report the transaction on their Schedule 19 monthly notice as a third party exemption. ■

SPC Addresses Challenges Set by the Pensions Commission

The Pensions Commission published a report on its analysis of the system for providing retirement incomes in the UK on 12 October 2004.

The Commission will publish a second report, including policy recommendations, in Autumn 2005, which is likely to fall after a general election.

The report (316 pages plus 212 pages of appendices) can be downloaded from <http://www.pensionscommission.org.uk/publications/2004/annrep/index.asp>

A 6 page executive summary is available at <http://www.pensionscommission.org.uk/publications/2004/annrep/exec-summary.pdf>

The SPC Council set up a working party to examine the issue raised for consultation. Working with the SPC Council and SPC Committees, the working party prepared SPC's response.

One of the key areas covered in the response was the possibility of making occupational pension contributions compulsory. SPC came down against the idea, on the grounds that such a system would be unreliable and might actually damage the existing at-work pensions structure.

In our view the case for compulsory private savings, over and above any first or second tier provision compelled by the State, is extremely weak. Because of the variability of outcome in money purchase provision, which will relatively

soon become the dominant component of private sector pension provision, compulsory private saving cannot be relied upon to provide the predictable basic level of pension needed as the foundation of any durable and robust pension system. Only the State has the capacity to meet this need.

Furthermore, SPC is concerned that many firms would be encouraged under a 'compulsion' system to reduce their own contributions, or would in some cases down-size their workforces as a direct result of extra costs imposed by compulsion.

Some employers might consider that the introduction of compulsory minimum contributions provided an acceptable reason to reduce existing contributions, over and above those to national insurance, to the minimum compulsory level. Others would be faced with a substantial increase in employment costs which they would have to address by reducing costs elsewhere in the business or by employing fewer people than they would otherwise employ and/or paying them less. Experience in Australia provides evidence that companies reduce pension contributions to the compulsory minimum.

SPC also foresees significant practical and employee relations problems in any move to compulsion beyond that which already exists.

SPC's full response to the Pensions Commission is available at www.spc.uk.com/htm/C18.pdf. ■

Pensions Act 2004

The Pensions Bill received Royal Assent on November 18, 2004.

The Pensions Act 2004 consists of nine sections:-

- "Pensions Regulator";
- "Board of the PPF";
- "Scheme funding";
- "Financial planning for retirement" will need further regulations before it is brought into effect;
- "Occupational and personal pension schemes", which includes (amongst other things) the new vesting regime, the removal of statutory price indexation from money purchase schemes, revised Member Nominated Trustee requirements and pension protection on transfer of employment (the TUPE regulations);
- "Financial assistance scheme" – eligibility for this is left to regulations, but it is expected to cover schemes which began winding up before April 2005;
- "Cross border activities within the EU";
- "State pensions";
- "Miscellaneous", which is largely to do with dissolving the existing regulatory bodies, which are being replaced by the new regulator and the Board of the Pension Protection Fund (PPF).

Main changes

The main changes in the Act compared to the Bill are:

- The risk based part of the levy to the PPF must make up 80% of the total amount collected each year and will begin be payable from April 2006.
- The Financial Assistance Scheme (FAS) was added to the Bill.
- Between them, the PPF and FAS are expected to be able to cover all schemes which wind up with an insolvent employer, regardless of the date, although there is no new money to cover the extra liabilities.
- 'Moral hazard' clauses were added to the Bill, but the events to which they could be applied were limited by subsequent amendments.
- The Bill was amended so that money purchase schemes will not be required to provide LPI to pensions in payment.

Timetable for publication of regulations

The latest information is set out in General Circular 1009. *If you would like a copy please contact Eileen Damsell in Saint Bartholomew House.* ■

Proposed Changes to Stakeholder Pensions

Introduction

As part of the process of introducing Sandler stakeholder products, the Government announced on 2 November 2004 proposals to change stakeholder pension legislation to enable stakeholder pension schemes to sit within the Sandler stakeholder product suite. The proposals have been made in a consultation document (http://www.dwp.gov.uk/publications/dwp/2005/stakeholder_pens/sps_amd_regs.pdf) which includes draft regulations amending the Stakeholder regulations.

The main changes proposed for consultation concern lifestyling and charges.

Lifestyling

Stakeholder pension schemes will be required to operate a default investment option to 'lifestyle' members' assets as they approach retirement. 'Lifestyling' means that from at least five years before retirement the member's pension savings are gradually moved into less volatile investments. This requirement would apply where a member has made no investment choices under the scheme. This provision is expected to apply to new and existing schemes from April 2005. However, transitional arrangements will allow existing schemes the option to elect before April 2005 to delay putting such provisions in place until April 2006.

Those currently defaulted into a fund which is not lifestyled will need to be given the option of changing to a lifestyle arrangement.

The lifestyling requirement is being introduced to make stakeholder pension schemes suitable for sale under the new form of 'simpler, quicker and lower cost' financial advice proposed by the Financial Services Authority (FSA). This is known as 'basic advice' – see FSA Consultation Paper 04/11 (http://www.fsa.gov.uk/pages/library/policy/cp/2004/04_11.shtml) for more information.

Charges

The new 1.5% charge cap announced on 17 June 2004 will not apply to members of stakeholder pension schemes who joined before 6 April

2005. These scheme members will continue to have their charges capped at 1%.

The 1.5% charge cap will apply only for the period of 10 years from the date the first contribution is paid, after which the charge will be 1% per annum.

In addition, the draft amending regulations are intended to harmonise the treatment of dealing costs for the purposes of what counts towards the charging cap and what does not.

Other

Advanced notice

The draft regulations specify that the provider must write to individuals between 6 months and 2 years before a lifestyle switching is due to commence. This is to give individuals notice that a default switch to lifestyling may occur.

Cooling off period

It is proposed that individuals taking out a stakeholder pension must be given at least a 30 day cooling off period in which to cancel their policy. This represents an increase from the current minimum requirement of 14 days. It is worth noting that the new FSA policy statement and consultation paper (see http://www.fsa.gov.uk/pages/library/policy/cp/2004/04_11.shtml), do not appear to include this provision.

Investment restriction

The proposals do not indicate that an equity investment restriction will apply for stakeholder pensions. It had been thought that some equity restriction might apply for stakeholder pensions, particularly as an equity restriction is to apply to Sandler 'medium-term' investment products.

What happens next?

It is expected that revised regulations will be published early in 2005, to come into force on 6 April 2005. Behind the scenes, in the past few months, FSA has been market testing the Sandler stakeholder product in anticipation of the 6 April 2005 launch date.

SPC's Response

For a copy of SPC's response to the draft regulations referred to above, please contact Eileen Damsell in Saint Bartholomew House. ■

Pension Protection Fund Levies Set

The Government has issued a number of draft regulations concerning the Pension Protection Fund (PPF), the compensation scheme which comes into effect for defined benefit schemes on 6 April 2005, for approval by Parliament.

The drafts set out the PPF levy for the first year, the PPF administration levy and the PPF Ombudsman levy. The general levy rates (to pay for the new Regulator, the Pensions Ombudsman and OPAS) have already been published.

The PPF levy for the period 6 April 2005 to 31 March 2006 will be £15 for each active and pensioner member and £5 for each deferred member. After the first year, the PPF levy becomes 80% risk-based (i.e. based on the scheme's and employer's solvency etc) and 20% scheme based.

The PPF will protect 100% of liabilities for those who have reached normal pension age and 90% of liabilities for others (once they have reached normal pension age) after limiting liabilities to the 'compensation cap'. The draft regulations set the cap as £27,777.78 so that, after applying the 90%, the limit is actually a benefit of £25,000.

The PPF administration levy (to pay for the costs of running the PPF board, not to pay for compensation) will be the same as the general levy.

The draft regulations make provision for a PPF Ombudsman and Deputy PPF Ombudsman, although to start with the Pensions Ombudsman (David Laverick) will fulfil these functions. No PPF Ombudsman levy will be raised for the year ending 31 March 2006.

The effect of the new levies can be demonstrated by the following example: a defined benefit occupational pension scheme with 10,000 members (all active or pensioners) currently pays a total of £6,000 a year (general levy of £3,700 and compensation levy of £2,300). For the year 2005/06, it will have to pay £167,100 (general levy of £7,400, fraud compensation levy of £2,300, PPF administration levy of £7,400 and PPF levy of £150,000). ■

SPC Urges Caution on FSA Policy on Bundled Brokerage and Soft Commission

FSA issued its policy statement (PS 04/23) on bundled brokerage and soft commission arrangements in November 2004.

We welcome the opportunity, which FSA is giving to IMA, NAPF and LIBA, to develop disclosure on the costs of execution and research. Our view is that a disclosure led approach to the issues dealt with in the policy statement is generally likely to provide the best all round results.

In our earlier comments to FSA we emphasised the importance which we attached to regulation in the UK not moving out of step with regulation in the rest of world. We observed that the global approach is generally disclosure led and expressed concern that if, of the major markets, only the UK moved towards prescription, the UK's competitive position could be put at risk. We therefore welcome FSA's continuation of discussions with the Securities & Exchange Commission in the USA, but are concerned that, while FSA is taking

the UK down the route of prescription, ways in which it might be able to co-ordinate its efforts with the SEC are only the subject of continuing discussions.

We note that, even at the policy level difficulties are emerging as to how a prescriptive approach will be defined. We fear that these difficulties can only increase as FSA moves to detailed rules. The results could be the complexity and uncertainty, which, we fear, could undermine the UK's international position.

In our earlier comments we agreed that it was reasonable to treat bundled brokerage and soft commission arrangements in the same way for regulatory purposes. We are, however, surprised to see that in the policy statement no account at all seems to have been taken of bundled brokerage. All substantive comment is on soft commission. There clearly are differences between the two practices and we assume that FSA policy will recognise this. ■

Morris Review of the Actuarial Profession: Interim Assessment

At the end of 2004 the Treasury published the interim assessment by Sir Derek Morris of the Actuarial Profession.

SPC submitted a response to the interim assessment, making the following points:

- We agree with the suggestion that there is a clear responsibility upon the actuarial profession to communicate actuarial advice in a clear non-technical way. In our view firms of consulting actuaries devote considerable attention to client satisfaction follow-up, designed to check that advice is understandable and useful. Clients therefore generally have plentiful opportunities to say if what they are being provided with is not useful.
- We agree that more external scrutiny of the actuarial profession would be appropriate and we support the manner in which the actuarial profession itself is addressing this. We are aware that there is a perceived shortcoming in the external supervision of the accountancy profession. Some commentators suggest that the way in which external supervision of the accountancy profession has been implemented has sometimes turned accountants into compliance officers.
- The question of splitting advice to the sponsoring employer and the pension scheme trustees is a subject on which views will often differ. A large well established firm, with long-standing relationships with both the sponsoring

Deemed Buy-Back

Some defined benefit occupational pension schemes which were previously contracted-out are unable to wind-up because there is not enough money in the scheme to secure members' guaranteed minimum pensions (GMPs). Before 1997, it was in some circumstances possible to buy-back members' GMPs into the state by means of a state scheme premium which, when paid, would have the effect of treating the member as if they had never been contracted-out.

This facility was removed under the Pensions Act 1995. Instead, a new procedure, known as 'deemed buy-back', was laid down for schemes starting to wind-up after 5 April 1997, where the employer was insolvent and unable to provide extra funding. In addition, the funds available to the scheme for the member had to be both less than the amount required to restore their State scheme rights for the period of contracted-out employment and less than the amount which would have been available had the scheme wound up 100% funded. If members accept the 'deemed buy-back' offer, they are reinstated into the state scheme, but give up all their scheme benefits.

Regulations needed to calculate the amounts needed to assess whether deemed buy-back could apply were issued in 1998, but very few schemes, if any, fulfilled the requirements. The government has now issued revised draft regulations to amend the 1998 ones. These are the draft Occupational Pension Schemes (Contracting-out) (Amount Required for Restoring State Scheme Rights) Amendment Regulations 2005. They are on the DWP website (www.dwp.gov.uk) in the Resource Centre under consultation Papers. Once finalised (presumably on 6 April 2005), the intention is that deemed buy-back will actually be made to work to assist schemes to finally wind-up. ■

employer and the trustees will tend to have a different view to that of a small firm seeking to make inroads into the market. Whatever these differences of view, however, we consider that it should not be mandatory to have separate advisers for the two parties. There will be many cases where the cost of doing this will be unjustified and where separation will be unnecessary. ■

Civil Partnership Act 2004

The Civil Partnership Act will enable same-sex couples, subject to certain criteria, to formally register their relationship as a 'civil partnership', and so qualify for certain rights which currently only apply to married couples. The Act received Royal Assent on 18 November 2004, but at the time of writing no date has yet been set for it to come into effect (the Government estimates that it will take at least 12 months to introduce all the necessary procedures to allow registrations, and winding-up of partnerships, to take place).

The Act includes wide-ranging amendments to social security legislation to extend the same rights for married couples to civil partners. This means that civil partners will have the same state pension rights as married couples (once entitlement for both husbands and wives has been equalised in 2010). For example, if a couple are over state pension age and one of them dies, the surviving partner will be able to use their partner's state pension entitlement to increase their own pension entitlement; if a couple are under state pension age and one of them dies, the surviving partner will be entitled to claim bereavement benefit.

Section 255 of the Act contains wide powers allowing the Government to amend existing legislation as it thinks appropriate for the purpose of ensuring pension provision for surviving civil partners or their dependants. This provision may be the same as, or different to, the provision for widows or widowers, and may take account of service occurring before the date the Act comes into force.

The Government has announced that it will use these powers to amend the contracting-out requirements so that contracted-out survivors' benefits will have to be provided to the surviving partner of a civil partnership. For pension schemes, this will mean that their obligations will be identical to those for surviving widows and widowers and they will apply from 6 April 1988 (the date when widowers' GMPs became obligatory). This retrospective aspect applies to all types of contracted-out benefit, not just GMPs. For example, money purchase schemes will have to purchase any annuity with protected rights accrued from 1988 with provision for a surviving civil partner.

The Government also announced that same-sex couples will benefit from the same public-sector pension rights as

married couples, and will allow the surviving civil partner to benefit from their deceased partner's pension.

Other than changes to contracting-out rights back to 1988, there are no specific provisions for private sector schemes. These schemes will therefore be free to determine whether they wish to amend their rules so as to enable survivor benefits to be paid to registered partners in the same way as they currently are to spouses. However, many schemes already have discretion to extend survivor benefits to 'interdependants'.

In addition, regulations prohibiting discrimination on the grounds of an individual's sexual orientation came into force on 1 December 2003, and these already require any rule which allows survivor benefits to be paid to unmarried opposite sex partners, to allow survivor benefits to be payable to same-sex partners. Once the Civil Partnership Act comes into force, the same benefits will have to be paid to surviving civil partners as for surviving spouses, but only for benefits accruing after the date it comes into force.

On the dissolution of a civil partnership, much the same provisions will apply as for divorcing couples, including earmarking and pension sharing. ■

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About SPC

SPC is the representative body for the providers of advice and services needed to establish and operate occupational and personal pension schemes and related benefit provision. Our Members include accounting firms, solicitors, life offices, investment houses, investment performance measurers, consultants and actuaries, independent trustees and external pension administrators. Slightly more than half the Members are consultants and actuaries. SPC is the only body to focus on the whole range of pension related functions across the whole range of non-State provision, through such a wide spread of providers of advice and services. We have no remit to represent any particular type of provision.

The overwhelming majority of the 500 largest UK pension funds use the services of one or more of SPC's Members. Many thousands of individuals and smaller funds also do so. SPC's growing membership collectively employ some 14,000 people providing pension-related advice and services.

SPC's fundamental aims are:

- (a) to draw upon the knowledge and experience of Members, so as to contribute to legislation and other general developments affecting pensions and related benefits, and
- (b) to provide Members with services useful to their business.