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# Deaths of DOUGLAS SMEE and TOM COLLINGE

We are very sorry to record the death in February of **Douglas Smeed**. He made a long and distinguished contribution to the work of SPC, including as **President from 1974 – 1976**, and the wider pension world. We have written to his widow, to express the condolences of SPC.

We are also very sorry to record the death in March of **Tom Collinge**. Tom was, until January of this year, **Chairman of the SPC European Sub-Committee**.

Tom had been unwell for some time but his death was nevertheless a shock to his colleagues at Hammonds.

We have let Hammonds know, on behalf of all who knew him at SPC, how sad we are to lose such a pleasant, co-operative and effective colleague. ■



We have the following SPC London evening meeting coming up.

DATE	SUBJECT	SPEAKER(S)	VENUE
May 18 <sup>th</sup>	Current Accounting Issues	Ian Sykes (KPMG)	KPMG, London

The meeting is hosted by KPMG, 1 Puddle Dock, Blackfriars, London EC4V 3PD.

The meeting begins at 5.30 pm and is preceded by drinks from 5.00 pm. They are planned to end at 6.45 pm.

We are very grateful to KPMG for hosting this meeting. 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
March 8 <sup>th</sup>	<a href="#">Information and Consultation following the Pensions Act 2004</a>	Tim Roberts (Talking People – a Mellon Financial Company)	Hammonds, London
April 28 <sup>th</sup>	<a href="#">Moral Hazard and the Pensions Act 2004</a>	Jason Coates (Wragge & Co.)	Wragge & Co.

To obtain copies, please click on the subject title above. ■

# SPC launches helpful aid to administering the new lifetime allowance

SPC has created a simplified document, designed to help the UK's pension schemes administer the lifetime allowance under the new pension tax regime.

The document – in the form of a standardised explanation which administrators can adapt and distribute to scheme members – has been produced by the SPC's Administration Committee and is easily accessible via the web.

In the run-up to A Day we expect scheme administrators will have to deal with significant numbers of requests for benefit information from members,

seeking to assess what action they should take regarding primary and enhanced protection of existing benefits, in relation to the lifetime allowance under the new regime.

The Administration Committee hopes those in charge of schemes will find this 'information statement' helpful as a basis for channelling members' requests for information in broadly the right direction, given that the knowledge base of the member him or herself might be basic. It has tried to keep the statement as simple as possible. The idea was not to set out an authoritative and comprehensive

explanation of the working of enhanced and primary protection.

The statement is not designed to replace independent financial advice to individuals on their own position in relation to the rules of their specific scheme.

The statement is based on the Committee's current understanding of the Finance legislation, which might change before A Day, meaning that the figures included are provisional.

A copy of the statement can be accessed free of charge from the SPC's website ([www.spc.uk.com](http://www.spc.uk.com)). ■

# New Pension Taxation Regime: Commutation

The Finance Act 2004 introduced a change to the arrangements for trivial commutation lump sums under the new pension taxation regime. The changes mean that a much greater number of small pensions will be left uncommuted than under Inland Revenue's earlier proposals for the new regime. This is because it is now a requirement to consider the value of funds across all arrangements and schemes, rather than just the schemes with small pensions. It is generally accepted that administering small pension amounts is

one of the greatest cost inefficiencies in the current system.

SPC, and other members of the Occupational Pension Schemes Joint Working Group, have been having extended discussions with Inland Revenue, to try to agree arrangements closer to those originally planned, which were changed because Inland Revenue was concerned that they would be abused.

Unfortunately, Inland Revenue has agreed to only a limited change to

the arrangements in the Finance Act 2004. This is intended to ensure that Equivalent Pension Benefits will be treated as authorised payments, taxed in the same way as trivially commuted funds, when paid in accordance with DWP requirements. ■

## New Pension Taxation Regulations

Inland Revenue has published on its website a summary of responses to comments on its earlier draft regulations on the new pension taxation regime and a revised set of draft regulations.

A summary of responses to the draft regulations is at [www.inlandrevenue.gov.uk/pensionschemes/draftregsum.htm](http://www.inlandrevenue.gov.uk/pensionschemes/draftregsum.htm).

The revised draft regulations themselves are at [www.inlandrevenue.gov.uk/pensionschemes/draftregs.htm](http://www.inlandrevenue.gov.uk/pensionschemes/draftregs.htm).

At the time of preparing this issue of SPC News, we had these documents under consideration. ■

### SPC in Yorkshire

The SPC Yorkshire Committee organised a very successful evening meeting on March 7<sup>th</sup> in the Leeds office of Hammonds.

The subject of the talk was "The Moral Hazard Powers of the Pensions Regulator under the Pensions Act 2004" and was given by Philip Tooke, who is part of the PricewaterhouseCoopers team who worked on this for the new Regulator. ■

# Inland Revenue exemption for pensions information and advice

Towards the end of 2004 the Income Tax (Exemption of Minor Benefits) (Amendment) Regulations 2004 were published.

The regulations were billed by Inland Revenue as offering employers for the first time an opportunity to give their employees access to valuable pensions advice without incurring a tax charge.

We therefore wrote to Inland Revenue to explain that we would expect the practical value of the regulations to be decidedly limited. We think this for the following reasons:-

1. If the employer provides pensions information and advice greater than £150 per annum, the whole of the amount if taxable, not just the amount greater than £150.
2. The exemption is on £150, including VAT. The actual amount of advice to the employee, which the exemption will cover is, therefore, not even £150.
3. £150 would currently cover little if anything by way of advice. It would probably not even cover the fact

find required under the Financial Services legislation as a preliminary to the giving of advice. It certainly would not cover any significant amount of individual face to face advice, which is generally regarded as the most effective means of giving advice.

It is possible that the context, in which the exemption is to be allowed, is intended to be influenced by the Treasury's recent proposals to reinforce

the position of employers in giving basic work place pension advice. If so, we do not yet have any experience on which to comment on the economics of advice under this regime, but as things stand we fear that the impact of the regulations will be limited.

Inland Revenue has yet to seriously address these comments and we will be keeping this subject under review in preparing future Budget submissions. ■

## Pension Act 2004 Regulations

**In the past few weeks, there has been a flood of new regulations and draft regulations, mainly from the DWP, as well as consultations from the new Pensions Regulator on Codes of Practice. This article summarises the state of new legislation (as at April 6, 2005) and is in four parts. Part 1 covers the regulations which have been issued, other than those to do with the Pension Protection Fund (PPF) and the Pensions Regulator. Part 2 covers the regulations involving the PPF and Part 3 the regulations involving the Regulator. Part 4 covers draft regulations (and Codes of Practice) currently being consulted upon.**

## ➔ PART 1 – DWP REGULATIONS

### The Contracting-out (Protected Rights and Safeguarded Rights) (Transfer Payment) Amendment Regulations 2005 (SI 2005/555)

These regulations came into force on 6 April 2005. Before these regulations, different rules applied to overseas transfers, according to whether they included contracted-out rights. The regulations provide that Inland Revenue rules will apply not only just to contracted-in rights, but also to contracted-out rights. However, where contracted-out benefits are being transferred overseas, it will still be necessary to notify NICO (through CA 1881, for protected rights from a personal pension scheme).

Inland Revenue Pensions Update 152 summarises the new position, and this is also mirrored in revised Appendix 22 to IR76 and Appendix VI of IR12.

### The Register of Occupational and Personal Pension Schemes Regulations 2005 (SI 2005/597)

These regulations came into force on 1 April 2005 and replace those issued under the 1995 Act, to reflect the role of the Pensions Regulator. The provisions are similar to the previous regulations and here is no change to the type of schemes required to register (e.g. one man schemes and death benefit-only schemes are still exempt and are not 'registrable' schemes).

### The Occupational and Personal Pension Schemes (General Levy) Regulations (SI 2005/626)

These regulations set out the general levy for the three years from 1 April 2005. These are listed below, and represent a simple doubling for all sizes of scheme over their current level. The general levy will pay for the setting up and running costs of the new Pensions Regulator, as well as the running costs of the Pensions Ombudsman and the Pensions Advisory Service (formally OPAS).

The levy will be charged from the date of scheme registration and billed on the following 1 April. Before these regulations, schemes did not have to pay a levy in the year they became registrable and the year after. Part years have now been introduced to keep in line with the Pension Protection Fund levies. However, no levy is payable for the financial year starting 1 April 2005, for schemes becoming registerable schemes in the financial year starting 1 April 2004. Death in service only members do not count in calculating the amount of the levy.

### The Personal and Occupational Pension Schemes (Indexation and Disclosure of Information) (Miscellaneous Amendments) Regulations 2005 (SI 2005/704)

These regulations confirm the policy intention that any money purchase benefits, regardless of the type of scheme, need not have any indexation applied where they come into payment after 5 April 2005. This applies to both contracted-in rights and to pre and post-1997 protected rights. Indexation still applies to any defined benefit, including any defined benefit pensions paid on death: this is RPI up to 5% for service between April 1997 and April 2005, and RPI up to 2.5% for service after April 2005 (unless the scheme chooses to apply LPI to all the benefit).

#### Transfers

If there is a transfer of contracted-in rights (whether defined benefit or money purchase) to a money purchase scheme (including a Section 32 contract), all indexation is lost (even if there is a subsequent transfer to a defined benefit scheme).

If there is a transfer of contracted-out rights to a money purchase scheme, the scheme will need to keep records of both pre and post-97 protected rights, and also any post-2005 protected

rights. This is because, on a subsequent transfer to a defined benefit scheme, the pre-97 protected rights become GMPs, and the post-97 protected rights become S.9(2B) rights to which LPI applies (or the lower increase rate if there is post 2005 service and the scheme rules so provide). The same rule applies to a transfer into a Section 32 – it will need to keep records of pre-97, 97 – 05, and post-2005 protected rights, so that the proper indexation can be applied on a subsequent transfer to a defined benefit scheme.

Post 5 April 1997 rights transferred from a contracted-out defined benefit scheme into a personal pension become protected rights. They will no longer have to have indexation applied while they remain in the personal pension, but will have to if they transfer out to a defined benefit scheme.

#### Disclosure of information

Money purchase occupational pension schemes will have to provide information to any member, or any beneficiary on the death of a member, who "has an opportunity to select an annuity" which includes:

1. A statement that the member may select the annuity (including, where the member has an opportunity to select the provider, a statement to that effect).
2. A statement that different annuities have different features and different rates of payment.
3. A statement that these include, by way of example –
  - annuities which provide payments which do not vary from year to year and annuities which provide payments which increase from year to year;
  - annuities which cover a single life and annuities which make provision for a spouse or partner,
  - annuities which may be with or without guarantee on early death of the member.
4. General information explaining characteristic features of the types of annuities outlined in the examples in 3.
5. A statement that the member should consider taking advice as to which annuity is most suitable for him or her.

To help schemes give this information, the Pensions Regulator has produced a leaflet (although, at 20 pages, it is more a booklet than a leaflet). This leaflet (or the provider's own leaflet

General levy (financial year 1/4/2005 - 31/3/2006 and next 2 years)		
Number of active members	Occupational pension scheme	Personal pension scheme
2 - 11	£24.00 per scheme	£10.40 per scheme
12 - 99	£2.50 per member	£1.00 per member
100 - 999	Greater of £1.80 per member and £250	Greater of £0.70 per member and £100
1,000 - 4,999	Greater of £1.40 per member and £1,800	Greater of £0.60 per member and £700
5,000 - 9,999	Greater of £1.06 per member and £7,000	Greater of £0.40 per member and £3,000
10,000 or more	Greater of £0.74 per member and £10,600	Greater of £0.30 per member and £4,000

➔ which covers the necessary information) must be included in any retirement packs issued after 5 April 2005. As the disclosure regulations require schemes to give retirement information at least six months before retirement date, the government acknowledges that members with retirement dates before October 2005 may not actually receive the information. However, the Regulator's leaflet will only be taken to satisfy 4 above.

Under the personal pension disclosure regulations, members must be given details of their retirement options not less than four months (but, for protected rights, no more than six months) before their retirement. Under FSA rules, the details sent must include information about the open market option and annuities, and FSA has provided a leaflet for the industry to send out when a member approaches annuity purchase. FSA will consult on amending its conduct of business rules to also require providers to provide information on the implications of taking a flat-rate or indexed annuity, as now required for occupational pension schemes, and will update the FSA leaflet to include the necessary information.

### **The Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations 2005 (SI 2005/469)**

These regulations came into force on 6 April 2005 and make transitional arrangements arising from the change in the increase rate from 1/7% to 1/5% for deferring state pensions beyond state pension age. They also introduce an option to choose a lump sum when a person defers entitlement to their pension for at least 12 months.

### **The Transfer of Employment (Pension Protection) Regulations 2005 (SI 2005/649)**

These regulations came into force on 6 April 2005. Where employees transfer to a new employer (for example, as the result of a management buy-out) and the previous employer operated an occupational pension scheme, the new employer must comply with one of the following for the transferring employees:

- Make sure they can join a defined benefit scheme providing benefits at least at the level of the reference scheme test or benefits equal to or greater than 6% of pensionable pay, for each member (excluding member contributions).

- Make sure they can join a money purchase scheme to which the employer makes 'relevant contributions'.
- Make 'relevant contributions' to a stakeholder pension scheme.

'Relevant contributions' are contributions matching the employee's contributions up to a maximum of 6% of gross basic pay.

### **The Occupational Pension Schemes (Independent Trustee) Regulations 2005 (SI 2005/703)**

These regulations came into force on 11 April 2005. They require the Pensions Regulator to compile and maintain a register of independent trustees who meet the conditions for being on the register. One of these conditions is for the trustee to agree to have their fees scrutinised by an independent adjudicator and to be bound by that adjudicator's final adjudication as to those fees.

In addition, the appointed trustee is required to tell (in writing) every member (or relevant trade union) its name and address within "a reasonable period" of its appointment. On request (even to prospective members), the trustee must disclose its fee scale and the fees actually charged to the scheme in the last 12 months, again within a reasonable period. The prescribed maximum penalties for non-compliance are £5,000 for an individual and £50,000 in any other case.

### **The Occupational Pension Schemes (Contracting-out) (Amount Required for Restoring State Scheme Rights) Amendment Regulations 2005 (SI 2005/891)**

These regulations came into force on 21 April 2005. They set out the factors used to calculate 'deemed buy-back' including how to put a value on contracted-out service after 5 April 2002 (when S2P replaced SERPS). Deemed buy-back enables some or all state scheme rights to be restored to members of underfunded schemes where there is no prospect of any further employer contribution. However, it involves members giving up all benefits under the scheme (including, it seems, AVCs).

### **The Guaranteed Minimum Pensions Increase Order 2005 (SI 2005/521)**

The order sets the rate, at which GMPs should be increased from 6 April 2005, at 3%.

## **PART 2 - PPF REGULATIONS**

In general, these regulations have not been the subject of prior consultation, and they mostly came into force on 6 April 2005.

### **The Pension Protection Fund (Limit on Borrowing) Order 2005 (SI 2005/339)**

This order came into force on 9 March 2005 and prescribes £25 million as the PPF borrowing limit.

### **The Pension Protection Fund (Entry Rules) Regulations 2005 (SI 2005/590)**

These regulations specify which schemes are not eligible for the PPF. They include public sector schemes which are unfunded or have a guarantee, death benefit only schemes and unapproved schemes.

### **The Pension Protection Fund (Eligible Schemes) Appointed Day Order 2005 (SI 2005/599)**

This order prevents an occupational pension scheme from being eligible for the PPF if it started to wind-up before 6 April 2005.

### **The Pension Protection Fund (Reviewable Matters) Regulations 2005 (SI 2005/600)**

These regulations add to or modify the list of decisions by the PPF Board in Schedule 9 to the Pensions Act which can be disputed. They also set out the time periods which need to elapse before a dispute can be made regarding the Board's failure to reach a decision.

### **The Pension Protection Fund (Appointment of Ordinary Members) Regulations 2005 (SI 2005/616)**

These regulations set out the procedure which the PPF Board must follow in making any appointment of 'ordinary members' (i.e. members other than the chairman and the Chief Executive) to the Board, under paragraph 2 of Schedule 5 to the Pensions Act 2004.

### **The Pension Protection Fund (Maladministration) Regulations 2005 (SI 2005/650)**

These regulations provide for a two stage internal review process for dealing with complaints of maladministration against the PPF. Unresolved complaints can then be referred to the PPF Ombudsman.

### **The Pension Protection Fund (Reviewable Ill Health Pensions) Regulations 2005 (SI 2005/652)**

These regulations concern ill health pensions awarded in the three ➔

➔ years before commencement of the assessment period for a scheme seeking entry to the PPF. The PPF Board is entitled under Section 140 of the Pensions Act to "review" such pensions. These regulations set out the procedure to be followed in relation to a review and the determination of compensation payable in respect of an ill health pension where the conditions set out in section 141(3) are satisfied.

### **The Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005 (SI 2005/669)**

These regulations follow on from SI 2005/650 and provide detail of the PPF's two stage internal review process.

### **The Pension Protection Fund (Compensation) Regulations 2005 (SI 2005/670)**

These regulations provide detail for paying compensation under the PPF. Members may apply for early payment of compensation from age 50, provided they apply four months in advance. Early payment will be subject to actuarial reduction and cannot be made during the assessment period.

Where a scheme has no provision to pay surviving spouses, no PPF compensation will be payable to spouses. PPF compensation will be paid to surviving unmarried partners, where there is such a provision in the scheme rules. Members may commute up to 25% of the value of their compensation (or 100% on the grounds of triviality).

### **The Pension Protection Fund (Valuation) Regulations 2005 (SI 2005/672)**

These regulations detail the way in which scheme valuations are to be carried out. Valuations are carried out as at the assessment date to determine whether or not the PPF Board will take over a scheme, and also every three years to establish a scheme's assets and liabilities in order to calculate the risk-based levies.

### **The Pension Protection Fund (Provision of Information) Regulations 2005 (SI 2005/674)**

These regulations detail the information to be provided to and by the PPF Board.

### **The Pension Protection Fund (Statement of Investment Principles) Regulations 2005 (SI 2005/675)**

These regulations detail the procedures the PPF Board must follow in preparing,

maintaining, reviewing and revising the Board's statement of investment principles. These are similar to the rules which apply to the trustees of occupational pension schemes.

### **The Occupational Pension Schemes (Modification of Pension Protection Provisions) Regulations 2005 (SI 2005/705)**

These Regulations provide that, if the PPF Board allows any liability to provide PPF benefits to be discharged via a transfer payment during an assessment period, the effect is taken into account in the actuarial valuation. The compensation payable is to be determined on the basis that the discharge occurred immediately before the assessment period began.

### **The Pension Protection Fund (PPF Ombudsman) Order 2005 (SI 2005/824)**

These regulations set out the terms and conditions of appointment of the PPF Ombudsman. The PPF Ombudsman is separate from the Pensions Ombudsman, but initially both offices will be held by the same person (the current Pensions Ombudsman, David Laverick).

### **The Pension Protection Fund (Pension Compensation Cap) Order 2005 (SI 2005/825)**

This Order confirms that the PPF compensation cap is £27,777.78 at age 65. Where members are only entitled to compensation at 90%, this means their maximum compensation is capped at £25,000.

### **The Occupational Pension Schemes (Levies) Regulations 2005 (SI 2005/842)**

These regulations 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 PAS) have already been published – see above.

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 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.

## **PART 3 - PENSIONS REGULATOR REGULATIONS**

These regulations came into force on 6 April 2005.

### **The Pensions Regulator (Freezing Orders and Consequential Amendments) Regulations 2005 (SI 2005/686)**

Freezing orders may be made by the Regulator as an alternative to winding up a scheme at risk. They may last for up to 6 months. These regulations extend the time limits for issuing guaranteed statements of entitlement under the transfer value regulations where a freezing order makes it impossible to comply within the normal period.

### **The Pensions Regulator Tribunal Rules 2005 (SI 2005/690)**

These regulations put in place the practice and procedures to be followed when appealing (within 28 days) to the Pensions Regulator Tribunal against a determination made by the Regulator.

### **The Pensions Act (Commencement No.3, Transitional Provisions and Amendment) Order 2005 (SI 2005/695)**

This order deals with the dissolution of OPRA and the transfer of its functions to the Pensions Regulator on 6 April 2005.

### **The Pensions Regulator Tribunal (Legal Assistance Scheme) Regulations 2005 (SI 2005/781)**

These regulations put in place legal assistance which can be applied for by anyone appealing against a determination made by the Regulator to the Pensions Regulator Tribunal.

### **The Pensions Regulator Tribunal (Legal Assistance Scheme - Costs) Regulations 2005 (SI 2005/782)**

These regulations set out how costs are determined under a legal assistance order when appealing against a determination made by the Regulator to the Pensions Regulator Tribunal.

### **The Pensions Regulator (Contribution Notices and Restoration Orders) Regulations 2005 (SI 2005/931)**

These regulations deal with two of the Regulator's 'moral hazard' powers ➔

→ – contribution notices and restoration orders (it proved too complex to put in place the third power, financial support directions, before 6 April 2005). The regulations prescribe which schemes will not be subject to the new powers and extend the persons on whom the Regulator can serve a restoration order where there has been a transaction at an undervalue.

## PART 4 - DRAFT REGULATIONS

### The Occupational Pension Schemes (Trustees' Knowledge and Understanding) Regulations 2005

Under the Pensions Act the trustees of occupational pension schemes will have to be conversant with the scheme documentation and to have knowledge and understanding of trust and pensions law. These draft regulations state that these requirements will not apply to individual trustees during the first six months of their appointment, unless the trustee is an independent trustee, professional trustee or a trustee who holds him or herself out as experts. This is intended to give new member-nominated trustees a period of grace.

The Regulator has issued a draft Code of Practice for consultation.

### The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2005 and the Personal Pension Schemes (Appropriate Schemes) (Amendment) Regulations 2005

These draft regulations are due to come into force on 6 April 2006 and will change how pension benefits can be taken from protected rights funds. The new regulations will:

- Allow up to 25% tax-free cash to be taken from protected rights funds. The commutation should be on a pro rata basis to ensure that, where there are both protected rights and non-protected rights held in the scheme, a greater proportion of the protected rights are not commuted in order to avoid the other conditions (i.e. the requirement to provide a survivors' pension) placed on the protected rights.
- Allow protected rights benefits to be taken from age 50 onwards (or, from 2010, age 55 onwards).
- Bring the protected rights triviality rules into line with the Inland Revenue's limit of 1% of the lifetime allowance (i.e. up from its current level of £260 per annum to an aggregate fund value of £15,000).

- Allow serious ill-health commutation of all contracted-out rights, excluding any entitlement to a survivor's pension (currently, serious ill-health commutation of personal pension protected rights is not permitted).
- Allow commutation of Equivalent Pension Benefits (EPBs) without consent, where schemes write to the member at his or her last known address and no reply is received within 2 months of sending the notice.
- Specify that a contributions equivalent premium (CEP) need not be paid where an early leaver from an occupational pension scheme has elected to take a transfer value rather than a contribution refund (from April 2006, early leavers with at least three months' pensionable service, but less than two years qualifying service, must be offered a transfer value as an alternative to a refund).

The draft regulations confirm that self invested personal pensions (SIPPs) cannot be contracted-out and cannot hold contracted-out rights. They also include a definition of a SIPP as a personal pension "under which the member is able to direct the manner in which some or all of the contributions paid to the scheme are to be invested by the scheme administrators" and which do not comprise either of the following:

- Arrangements under which all the scheme investments consist of contracts of insurance, units in unit trusts or shares in OEICs and, in managing those investments, the scheme administrators do not consult with any scheme member except to the extent necessary by virtue of the investment offering choices that are available to any person (whether or not a member of the scheme).
- Arrangements under which all contributions paid are, after the deduction of expenses, invested in deposits with deposit-takers, and the payment of interest on those deposits comprises the only income of the scheme from its investments.

### The Protected Rights (Transfer Payment) (Amendment) Regulations 2005

These draft regulations will allow the transfer of protected rights without consent from one COMP scheme to another.

### The Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 2005

These regulations come into force on 23 September 2005. They revoke the 1996 regulations made under the Pensions Act 1995.

The government's intention is for the trustees to have the choice of keeping their existing two-stage process or adopting a simpler procedure which they think best suits their scheme. However, whereas current procedures call for complaints to be determined by a person nominated by the trustees, the new procedure appears to require the trustees to take the decision.

Whatever procedure is adopted, the trustees will still have to make complainants aware that the Pensions Advisory Service (formerly OPAS) is available to help them and that the Pensions Ombudsman can investigate unresolved complaints. Instead of prescribed time limits, trustees will be required to issue decisions within a reasonable time. What is reasonable will be set out in a Code of Practice, a draft of which has been issued for consultation (<http://www.spc.uk.com/docs/LC66.pdf>). The dispute resolution process will not need to be exhausted before a complaint can be made to the Pensions Ombudsman.

### The Occupational Pension Schemes (Scheme Funding) Regulations 2005

These draft regulations are due to come into force on 23 September 2005 and provide detail on the new 'scheme specific' funding standards to replace the Minimum Funding Requirement. They:

- Require the calculation of a scheme's "technical provisions" to use an accrued benefits funding method.
- Specify what the statement of funding principles must include.
- Set a time limit of 15 months from the date of valuation, for preparation of the schedule of contributions.
- Specify the content and certification of schedules of contributions.
- Exempt most SSASs and schemes which are neither tax approved nor tax registered and have fewer than 100 members.

The government expects the transition to the new funding standards to take over four years (i.e. to the end of 2009). Trustees will be required to obtain their first actuarial valuation under the new system within three years of the

➔ effective date of the last MFR valuation before 23 September 2005 and they will then have 15 months to set up a schedule of contributions.

The Regulator has issued a draft Code of Practice for consultation (<http://www.dwp.gov.uk/consultations/consult/2005/funding-pension-schemes/index.asp>).

### The Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2005

These regulations are due to come into effect in September 2005 and will require defined benefit schemes to send an annual funding statement to all members by 22 September 2006 and within 12 months of the scheme year end thereafter. Members must also be told that further information is available on request, and that certain funding information is included in the scheme's annual report.

### The Occupational Pension Schemes (Investment) Regulations 2005

These regulations are due to come into force on 22 September 2005.

- Regulation 2 largely reproduces the current requirements for statements of investment principles in Section 35 of the Pensions Act 1995, other than requiring statements of investment principles to be reviewed at least every three years (rather than, as now, "from time to time"). 'Small schemes' and public authority schemes with a guarantee are exempt from having to have a statement of investment principles.
- Regulation 4 requires the trustees to exercise their powers of investment in the ways prescribed (e.g. to ensure the security and quality of the portfolio, to invest predominantly on regulated markets, to properly diversify the scheme assets). This requirement is part of the 'prudent person rule' required by the EU IORP Directive. The regulations incorporate this rule into Section 36 of the Pensions Act 1995 which requires trustees, before making investment decisions, to have regard to the appropriate diversification of investments and the proposed investment's suitability. They must also obtain and consider "proper advice" on those matters, having regard to the "prudent person rule" requirements. 'Small schemes' and schemes with less than 100 active and deferred members are exempt from this requirement, but must "have regard to the need for diversification of investments,

in so far as appropriate to the circumstances of the scheme".

- Regulation 5 prohibits trustees from borrowing and acting as guarantors, except that trustees may borrow on a temporary basis to provide liquidity. 'Small schemes' and schemes with less than 100 active and deferred members are exempt from this requirement.
- Regulations 9 to 16 largely reproduce 1996 regulations prohibiting the investment of more than 5% of the scheme's assets in employer-related investments. The limit is 10% where there is investment in undertakings belonging to the same group. Small schemes are exempt from these restrictions.

A 'small scheme' is a trust scheme with fewer than 12 members where:

- All the members are trustees and either the rules require that decisions are made unanimously by the member trustees, or the scheme has a registered independent trustee.
- All the members are directors of a company which is the sole trustee of the scheme and either the rules require that decisions are made unanimously by the members, or one of the directors of the company is independent.

Sections 35 and 36 of the 1995 Act and regulations 2 and 4 do not apply to wholly insured schemes. A scheme is wholly insured if the scheme has no investments other than insurance policies (there can therefore be more than one insurance policy involved) and the terms of the insurance policies and the scheme rules, taken together, are such that all the following apply:

- The trustees are precluded from investing in assets other than policies of insurance.
- The trustees have no power to change the terms of the policies or the scheme rules to enable them to invest in assets other than insurance policies.

## DWP analysis of its TUPE consultation

DWP has published an analysis of responses to its consultation on the draft Transfer of Employment (Pension Protection) Draft Regulations 2005.

There is a copy on the SPC website at <http://www.spc.uk.com/docs/LC48.pdf> ■

- The trustees have no discretion as to how monies held by the insurance company for the trustees or members (other than AVC contributions) are invested nor as to whether any assets purchased with such monies (other than benefits from AVCs) are retained or disposed of by the insurance company.

These requirements are satisfied even where the trustees may choose from a number of investment funds offered by the insurance company as long as all the following apply:

- The trustees have no other discretion as to how the monies are invested.
- The trustees cannot influence the insurance company's investment management of the fund.
- No individual asset is attributed to the monies invested by a particular scheme.

### The Civil Partnership (Amendment of Provisions Relating to Contracted-Out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005

These regulations are due to come into force on 5 December 2005. They require contracted-out rights to make provision for a surviving civil partner, in the same way as they must provide for a surviving spouse, for rights accrued from April 1988. ■

# Changes in contact details for pension tracing

From April 6<sup>th</sup> 2005 the Pensions Regulator replaced OPRA. The Regulator will not carry out pension tracing and from April 6<sup>th</sup> this responsibility will pass to the Pension Service, which is part of DWP.

The contact details for the Pension Tracing Service, with effect from April 6<sup>th</sup>, are The Pension Service, Pension Tracing Service, Whitley Road, Newcastle-Upon-Tyne, NE98 1BA. Telephone: 0845 60 02 537. Opening hours: Monday – Friday: 9.00 am – 5.00 pm. Text Phone: 0845 30 00 169. Website: <http://www.thepensionservice.gov.uk> ■

## DWP response to draft indexation and information regulations

DWP has issued a document setting out its response to its consultation on the draft Indexation and Information Regulations on which it sought views earlier this year.

A copy is on the DWP website at <http://www.dwp.gov.uk/consultations/2004/index.asp> ■

## DWP addresses issues on member nominated trustees / Directors

DWP has written to address questions raised on the requirement that 50% of trustees be MNTs/MNDs.

On the matter of moving to 50%, DWP states that no decisions have yet been made about how or when the move will happen. The government, it says, is conscious of the amount of impending change and wants to let other changes, including those to the existing MNT requirements, bed in first.

The key issues raised so far are about:-

- The position of independent trustees; and
- The impact on trustee decision making.

On the first point, in schemes with one or more independent trustees, employers are concerned that the member-nominated trustees might outnumber the employer appointed trustees. To address this concern, DWP is considering modifying the requirement in regulations, so that independent trustees are disregarded for the purpose of calculating the 50% threshold. The effect of this would be that the number of member and employer trustees would be equal. This intention was announced by Baroness Hollis in the House of Lords when the move to 50% was introduced.

As a logical extension of the same principle, DWP will also look at the impact of the MNT requirements on schemes where the sole trustee is independent of both employer and employees.

On the matter of trustee decision making, the concern is that with an equal number of member and employer appointed trustees, there is a risk of stalemate, and the question of whether a chairman can have a casting vote.

The government's view is that this is a matter for schemes. DWP's feeling is that most trustee boards work hard to achieve consensus decision making and stalemates rarely arise. However, if such a situation did arise, DWP would propose leaving it to individual schemes to resolve for themselves through their own scheme rules.

Turning to implementation of the provisions already in the Pensions Act 2004 – the 1/3<sup>rd</sup> requirement, the government intends to bring them into force in April 2006.

Although the provisions will come into force in April 2006, DWP recognises there is a large number of schemes operating with employer's alternative arrangements approved by the members under the current legislation. The government intends to let these run until the approval expires in accordance with the existing regulations, subject to an overall cut off date. DWP has in mind to set the cut off date at 31<sup>st</sup> October 2007, by which time the bulk of existing approvals will have ended. By then, schemes will have to have arrangements which comply with the Pensions Act 2004.

The full text of DWP's letter is at <http://www.spc.uk.com/docs/LC33.pdf> ■

## Appointments to Pensions Regulator's Determinations Panel

The Pensions Regulator's Determinations Panel will consist of 7 panel members, in addition to the Chairman, and will be responsible for making formal decisions relating to individual cases where the Pensions Regulator seeks to use its powers.

The panel will have power to make decisions (determinations) where:

- The Regulator seeks to sanction or prosecute a breach of pensions law.
- A problem has arisen in a scheme, which the Regulator considers can be rectified with the use of one of its powers.
- An application has been made by trustees, managers, members or the sponsoring employer of a scheme for the regulator to use one of its powers.

The Chairman of the Pensions Regulator has appointed the first Chairman of the Determinations Panel. He is John Scampion and is appointed with effect from April 6<sup>th</sup> 2005. He has been a member of the Criminal Injuries Compensation Appeals Panel since 1996 and of the Healthcare Commission since 2003. He is a lawyer and was formerly Chief Executive of a metropolitan local authority.

Seven members of the Determinations Panel have been appointed with effect from the same date:-

- Duncan Campbell, an OPRA Board member since 2001.
- Geoffrey Fitchew, former Chairman of the Building Societies Commission
- Michael Maunsell, former Managing Partner of Lovell White & Durrant, Solicitors
- Dianne Hayter, Vice Chairman of the Financial Services Consumer Panel and Board member of the National Consumer Council
- Suzanne McCarthy, former Chief Executive of the Financial Services Compensation Scheme
- Olivia Dickson, former Senior Adviser to the Financial Services Authority
- Daniel Taylor, until recently Company Solicitor for News International Newspapers ■

# FSA updates on integrated regulatory reporting

FSA has supplied us with an update on its programme for integrated regulatory reporting.

If you would like a copy, it can be obtained at <http://www.spc.uk.com/docs/FSR17.pdf>. ■

## SPC response to FSA quarterly consultation (FSA CP 05/1)

**Our comments related to chapter 2 of the above consultation paper.**

### Amendments to the Glossary

The definition of 'Third Party Processor' (TPP) only refers to firms which carry on insurance mediation activities in relation to non-investment insurance contracts. This definition appears to be too narrowly drawn, as it fails to recognise that TPPs undertake regulated insurance mediation activities in relation to non-investment insurance contracts (e.g. money purchase schemes such as personal pensions, SSAS, SIPP and EPP arrangements) under outsource or administration agreements. As currently drawn, the definition means that firms undertaking insurance mediation activities in relation to life policies cannot take advantage of some of the exemptions being provided for firms undertaking these activities in relation to life policies.

### Amendments to ICOB

We agree with the amendments proposed to ICOB. However, we are concerned that no amendments are proposed in relation to COB (for investment business). In particular, COB applies to all regulated activities and hence this includes, from 14.01.05 insurance mediation activities carried out in relation to life policies (see COB 1.3.1(1)R). As TPPs, some SPC Members carry out insurance mediation activities (including 'arranging') for clients, as part of administration agreements. If

COB is not amended in the same way as proposed for ICOB, they will be required (as a result of changes made in Handbook Instrument 2004/89 and others to implement the IMD) to issue an Initial Disclosure Document. The reason for this is that the new requirements for an IDD apply to firms which 'arrange' in relation to 'packaged products'. A 'packaged product' includes a life policy, which in turn includes group personal pension plans, group life policies, SSAS, SIPPs and annuities. Third party administration can involve the administrator in 'arranging' for a member of a scheme to effect an annuity contract on retirement - and under a group scheme the scheme

member is the policyholder rather than the employer (even though the SPC Member acts for the employer).

The IDD, if provided, would be irrelevant to services of this nature as the TPP acting as such would not have permission to advise, would charge fees for its services and those fees would be paid by the employer. The TPP only acts as an administrator of the scheme. Similarly, if the TPP were to treat the trustees as its client (and often the trusts fall within the definition of private customer as defined in COB), the TPP would have to provide an IDD - but, again, the content would be irrelevant to the service provided. ■

## Implementation of depolarisation

SPC has considered FSA Policy Statement 04/27 on the implementation of the new depolarised regime for financial advice.

We have identified a possibly misleading message on disclosure of remuneration in respect of firms which have exercised the option for the time being not to depolarise. In the investment initial disclosure document (which is also labelled as a key facts document), there is a statement that remuneration

will be disclosed in the key facts document. However, a firm which is not depolarised is not yet required to disclose remuneration in the initial disclosure document.

FSA has clarified that in the situation which we describe firms should tick the second box in Section 4 which says "We will tell you how we get paid, and the amount, before we carry out any business for you." ■

## SPC seeks clarification from FSA on Pension transfers

We have put to FSA two questions arising from material in its Handbook Notice 36, released towards the end of 2004. These concern amendments in relation to the definition of "Pension Transfer".

Our questions are as follows:

- If a personal investment firm, at the point of winding up an occupational pension scheme, recommends to the trustees that a "bulk transfer" is effected, would that fall within the definition of a pension transfer?
- If a pension provider offers a pension transfer product through an adviser (i.e. the provider itself is not giving advice) does, under COB5.3.26R, that constitute conducting pension transfer business by the provider and, if so, is it reportable?

FSA has yet to let us have an answer. ■

## SPC response to review of the Myners Principles

SPC has responded to the document issued by the Treasury at the end of 2004, setting out its views arising from the review which it has carried out of the impact of the Myners Principles on Investment Decision Making, as they apply to defined benefit schemes.

In our response to the review we argued that the "comply or explain" approach, which currently applies, should continue to apply.

The Myners Principles play a useful role in drawing together in one place some sensible guidelines which trustees will often find useful. Equally, some trustees will entirely validly take the view that parts of the principles do not offer a model which they need to follow. It is therefore right that the principles should remain high level, and that adherence to them should be genuinely voluntary.

It is disappointing that the review appears to be written in a vacuum, with no recognition being given to the difficult legislative and financial environment within which defined benefit schemes have been operating since the Myners Principles were published. Bearing this in mind, we suggest that the review could have taken a more positive approach, which would have pointed less strongly in the

direction of some of the changes in the principles which are now proposed.

The analysis in the review seems to us to indicate that the principles are having a significant impact, but, given the range of other challenges which they currently face, schemes are, perfectly reasonably, concluding that it is more important to give early attention to some parts of the Principles than to others.

Given our support for the "comply or explain" approach, we would have expected more emphasis to have been placed on the fact that, where schemes have not complied, there appears to have been relatively weak disclosure of why not. On the other hand, we are surprised, and indeed to some degree concerned, at the disappointment that the review document expresses for example that 'only' 15% of schemes have overruled an investment consultant's recommendation.

SPC feels it is right that trustees should fully address with their investment consultants all the relevant issues leading up to the giving of advice, but, having appointed expert advisers, it is a very considerable step - not least in terms of compliance with the Pensions Act - to then overrule their advice.

Another area of particular concern is the possibility that the proposed changes to the Principles will cost far more than expected, and will fail to deliver the much heralded benefits.

The changes are presented on the basis that, while they will impose extra costs, there will be a gain in investment performance which ought to more than off-set those costs. We believe that the assumed benefits of the amended principles are misconceived and that the additional costs are understated.

Finally SPC is concerned that the numbers of people available to fill Trustee posts may diminish as a result of the Principles' implementation. The stated wish of the government, to work with the pensions industry to strengthen the Trustee pool, is welcome, but we are concerned that there are elements of the review which in practice would add to the existing pressures on the trust model and make strengthening the pool more difficult than it already is, and actually reduce the pool.

The full text of SPC's response is available at <http://www.spc.uk.com/docs/IC7.pdf>

The Myners Review document is at [http://www.hm-treasury.gov.uk/media/DCB/53/myners\\_principles\\_web.pdf](http://www.hm-treasury.gov.uk/media/DCB/53/myners_principles_web.pdf) ■

# Pensions Ombudsman user group

The Pensions Ombudsman some time ago set up a user group for informal exchange of views and information with bodies in the pension industry. SPC is represented at meetings of the user group.

The most recent meeting of the group took place at the end of February and the following were some of the points which arose:-

- For the year ending March 2005 the Pensions Ombudsman is likely to have completed around 1300 cases. There are currently 1,650 cases outstanding, of which 30% are over 2 years old and 27% are over 1 year old.
- The main reasons for delays in issuing Determinations are IT problems and staff shortage. Constraints on premises mean that the number of staff cannot currently be increased.
- The Pensions Act 2004 provides for the appointment of Deputy Ombudsmen. At the time of writing the first deputy was due to join in April 2005 for a three-year term.
- A new Pensions Ombudsman Administration Guide is due for issue in April 2005. It is aimed at trustees, managers, consultants and administrators. A new explanatory leaflet about the Pensions Ombudsman is also due for release in April 2005. It will replace the existing 2001 version.
- The Pensions Ombudsman will soon be issuing feedback surveys to both applicants and respondents. Surveys are currently only issued to respondents. ■

## Family tree of Inland Revenue

The National Insurance Contributions Office has helpfully supplied us with a "family tree" of Inland Revenue. If you would like a copy, it is available at:

- [http://www.spc.uk.com/docs/NISPI\\_FAMILY\\_TREE.xls](http://www.spc.uk.com/docs/NISPI_FAMILY_TREE.xls); and
- [http://www.spc.uk.com/docs/Family\\_tree\\_Links.doc](http://www.spc.uk.com/docs/Family_tree_Links.doc) ■

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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.