

# Pensions and Employment: Pensions Bulletin

SLAUGHTER AND MAY

Legal and regulatory developments in Pensions

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For more information, or if you have a query in relation to any of the above items, please contact the person with whom you normally deal at Slaughter and May or [Rebecca Hardy](#). To unsubscribe [click here](#).

## New law

### New requirement to consult on change to pensionable pay

Regulations<sup>1</sup> taking effect on 6th April, 2010 extend the “listed changes”, on which employers of 50 or more employees (in Great Britain) must consult affected employees, to changes to pensionable pay.

In particular, employers are now required to consult:

- > when changes are made to which elements of pay constitute “pensionable earnings”,
- > when changes are made to the proportion of any element of pay that is to be pensionable, or
- > if limits are put on the amount of any element of pay that is pensionable.

“Pensionable earnings” are defined as “the earnings by reference to which pension benefits are calculated” and “an element of pay” includes basic salary, a pay rise, an overtime payment, and a bonus payment.

The requirement to consult will apply even where the changes are beneficial.

<sup>1</sup> The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/???)

The consultation response, published by the DWP on 5th March, 2010, confirms that the Government considers that changes to revaluation or indexation are not “listed changes”, as defined in the legislation.

**Comment:** The DWP’s original proposals, put out for consultation in September, 2009, were limited to changes to the definition of “pensionable earnings” in the trust deed and rules. Respondents noted that most changes to pensionable pay are made outside the trust deed and rules, and so the DWP widened the ambit of the new “listed change”.

**Action point:** Any changes to pensionable pay to be made on or after 6th April, 2010 (including, for example, a decision that a pay rise will not be pensionable) will come within the employer consultation provisions if the employer employs 50 or more employees in Great Britain.

The Regulator has, since 6th April, 2009, had power to impose a civil penalty (of up to £5,000 for an individual and £50,000 for a company) for failure to comply with the consultation requirements.

## Tax

### Change to “normal minimum pension age”: act now!

Schemes with members taking early retirement at age 50 prior to the rules changing on 6th April, 2010 need to ensure they have followed the correct procedures. Failure to do so will result in the deadline being missed. Make sure you manage members’ expectations in this respect.

For further details [click here](#).

### Post April, 2011 restriction of tax relief on pension contributions by high earners: Slaughter and May’s comments

Click here for our comments on the HM Treasury consultation paper published on 9th December, 2009 on implementing the restriction of pensions tax relief from 6th April, 2011.

Issues covered are:

- > the impact of redundancy payments on who is a high income individual;
- > valuing DB contributions,
- > the “scheme pays” proposal – this point is important as it has substantial non-trivial administrative implications for schemes (think annual internal transfer pension sharing on divorce orders),

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- > the impact on provision of benefits through EFRBS,
- > the impact of transfers on valuation of DB rights, and
- > the Government's impact assessment.

### Anti-forestalling (1): increase in Special Annual Allowance: Regulations

The Budget 2009 introduced a new charge to income tax (the "special annual allowance charge") on high income individuals whose "total adjusted pension input amount for a tax year" exceeds the individual's "special annual allowance" (£20,000).

An HM Treasury Order<sup>2</sup> amends the rate of the special annual allowance charge to reflect the introduction of the 50% additional tax rate from 6th April, 2010. The rate increases from 20% to 30% on that slice of the member's income that would be subject to the 50% tax rate.

### Anti-forestalling (2): amending Order: new protections

An HM Treasury Order<sup>3</sup> coming into force on 19th March, 2010 and taking effect for the tax year 2009/10 and subsequent tax years extends protection against the special annual allowance charge:

<sup>2</sup> The Special Annual Allowance Charge (Variation of Rate) Order 2010 (S.I. 2010/572).

<sup>3</sup> The Special Annual Allowance Charge (Protected Pension Input Amounts) Order 2010 (S.I. 2010/429).

- > where there is a change in pensions provider on or after 22nd April, 2009;
- > for contributions which an individual or an individual's employer was contractually committed to at 22nd April, 2009 but which had not actually commenced on that date; and
- > for certain lump sum contributions made on 22nd April, 2009.

[Click here](#) for a Focus on the new protections.

### Inheritance tax and pensions after 5th April, 2006: IHT Manual

HMRC has published (on 21st January, 2010) the final version of new pages for its IHT Manual (IHTM) dealing with pensions after 5th April, 2006.

The guidance covers:

- > registered pension schemes (including death in service provisions, pension choices, income from protected rights, annuity purchase, unsecured pensions and alternatively secured pensions);
- > unregistered schemes (including in relation to a possible charge on failure to take benefits, payment of death benefits, reservation of benefit, and discretionary trust charges, including in relation to unfunded unapproved retirement benefit schemes);
- > lump sums payable at trustees' discretion;

- > excepted group life policies; and
- > scheme pensions and lifetime annuities.

**Comment (1):** It has taken almost 4 years for HMRC to get to grips with the IHT treatment of pension schemes post A-day. The restriction of exemptions previously available to all "sponsored superannuation schemes" to, broadly, registered schemes, has caused a headache for unregistered schemes in trying to apply legislation aimed at family trusts.

**Comment (2):** For registered schemes, IHT is a potential issue in the following situations:

- > distribution of lump sum death benefits: most occupational pension schemes give the trustees discretion to pay the lump sum to any members of a "named class". An alternative method is for the pension scheme to give the member a limited power to nominate the benefit.

IHTM (para 17053) confirms that, where the trustees have a discretion, the benefits will not form part of the member's estate for IHT purposes. However, it is silent on the nomination point. As the exemption is based on (unchanged) provisions of the inheritance tax legislation, in our view it remains effective. However, a statement in IHTM to that effect would have been helpful.

- > where a member defers taking benefits, resulting in enhanced death benefits becoming payable to the members' beneficiaries: the exemptions that applied where the member is in good health, or if not, where the death benefits go to charity or to

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someone financially dependent on the member are preserved. Otherwise a charge to tax may be levied on the member's estate in respect of the pension benefit foregone.

The position is, broadly, unchanged from that applicable to "sponsored superannuation schemes" on or before 5th April, 2006.

**Comment (3):** The position for unregistered schemes, including life cover schemes, is, however much more complex than before, due to the removal of exemptions on which they previously relied. We will be looking at this in more detail in a future issue of the Pensions Bulletin.

## Cases

### Winding up schemes in deficit: meaning of "money purchase benefits": The Imperial Home Décor case

On 4th March, 2010, the Court of Appeal upheld the High Court's decision in **Bridge Trustees v. Yates**<sup>4</sup> that, as a matter of construction of the Imperial Home Décor Pension Scheme Trust Deed and Rules, certain benefits were "money purchase benefits" and so were not to be taken into account on a winding up of the scheme.

Section 73 of the Pensions Act 1995 and regulations made under it set out the order in which a pension scheme's assets are to be applied towards meeting its liabilities. "Money purchase benefits" are generally excluded from Section 73. This case is about what benefits are "money purchase benefits".

The scheme was initially set up as a conventional final salary scheme. It was restructured in 1983 in order to provide lower final salary benefits but to introduce voluntary additional member contributions (described as voluntary investment planning, or "VIP"). The additional member contributions were "**VIP contributions**".

Subsequently, a further tier of benefit was introduced, the "**money match**" benefit, which was a money purchase benefit but with a guaranteed investment

<sup>4</sup> In the Court of Appeal, the case is called *Houldsworth v. Bridge Trustees (1) & Yates and the Secretary of State for Work and Pensions (2)* following intervention by the DWP.

return. Members had the option of converting final salary benefits into "money match benefits" for past service, and of continuing in the final salary section or switching to "money match" for future accrual. They also had the option of paying higher contributions ("**money match plus**").

Both VIP contributions and money match plus contributions by members were matched by contributions from the employer.

Members had the option of internal annuitisation<sup>5</sup> of all VIP and money match benefits.

Prior to 6th April, 1997, the scheme was contracted out on a final salary basis. The money match benefits were used to pay GMPs.

The scheme wound up underfunded in October, 2003.

In the High Court, Sarah Asplin QC held that:

- > money match benefits were money purchase benefits in the statutory sense and so were excluded from Section 73, notwithstanding the guaranteed investment return,
- > pensions in payment derived from money match and VIP (subject to the GMP point – see below) following internal annuitisation remained "money purchase benefits" and so were also excluded from Section 73,

<sup>5</sup> i.e. the money purchase balance is converted into a pension payable from the scheme on factors advised by the scheme's actuary.

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- > benefits arising from matching employer contributions to VIP contributions and money match plus were not “voluntary contributions” and so were not accorded first priority under Section 73, and
- > where money purchase benefits are used to pay GMPs (or some other defined benefit underpin) they are “underpin benefits” (and so fall within the ambit of Section 73).

The DWP, concerned that the judgment could have serious policy ramifications, applied for and was granted permission to intervene in the appeal.

The Court of Appeal confirmed that:

- > the money match benefits were money purchase benefits; the use of notional returns did not mean benefits were no longer calculated “by reference to” contributions,
- > the internal annuitisation that had taken place when pensions came into payment had not caused the money match and VIP benefits from which the pension was derived to cease to be money purchase benefits, and
- > where money purchase benefits are used to pay GMPs, they are still money purchase benefits but are “underpin benefits” and so within the ambit of Section 73. However, money purchase benefits accrued after 5th April, 1997 (when GMPs ceased to accrue) are not available to meet the GMP and so are not “underpin benefits” and therefore are outside Section 73.

However, the Court allowed the trustee’s appeal on the “matching contributions” issue, holding that benefits attributable to the employers’ matching contributions in respect of VIP contributions and money match plus were benefits “derived from” payment of the members’ voluntary contributions. The benefits should be accorded the same priority on winding up as the members’ voluntary contributions (the VIP and money match plus contributions).

**Comment (1):** The decision relates to the pre-6th April, 2005 winding up priority order. However, the legal analysis, particularly in relation to the ranking of matching voluntary contributions and the definition of “money purchase benefits” remains relevant.

The Court of Appeal did, however, emphasise that its decision related only to Section 73 and it refused to be drawn into giving an all encompassing definition of money purchase benefits.

**Comment (2):** In terms of Article 15(2) of the EU Pension Funds Directive (EC/2003/41) (the “**Directive**”), the benefits have a “guarantee” and so would be required to be governed by the funding regime required by the Directive. So the UK has not properly implemented in Part 3 of the Pensions Act 2004 Article 15 of the Directive.

**Comment (3):** The decision means that pension arising from internal annuitisation of money purchase benefits will be reduced where there are insufficient assets on wind up to secure it in full. The DWP intervened in the appeal because of its concern that this aspect of the High Court decision, if upheld, might place the UK in breach

of its obligations under EC law, in not having properly implemented the EU Insolvency Directive (EC/80/987) and the Pensions Funds Directive (EC/2003/41). The DWP is expected to appeal to the Supreme Court.

**Comment (4):** Although the facts and issues are complex, the Court of Appeal’s judgment (given by Mummery LJ) is straightforward and easy to follow, in keeping with the court’s aim “*to produce, as far as possible, a judgment that scheme members can themselves understand, if not the dense detail, at least the crucial conclusions and the reasons for them*”.

Mummery LJ said: “*This is particularly important in a case where the benefits of the members are significantly scaled back. Nearly everybody in employment belongs to an occupational pension scheme and the workings of a scheme should be capable of brief explanation in simple, non-technical language. Being short or simple in this area is a real challenge: pensions law grapples with the problems of planning complicated things over a long time span; the schemes are inevitably complex legal arrangements which are further complicated by periodic revision; professional people, who have the advantages of knowledge and experience which members and others do not normally have, are responsible for drafting, for administering and for giving advice to one another, but do not always appreciate the difficulties in communication to non-specialists; and the schemes themselves and the spate of legislation in recent years use unfamiliar notions, special language and imprecise legal concepts.*”

*Attempts to translate the legislation and the Scheme precisely into ordinary English for the benefit of a wider audience of non-experts are probably doomed to failure.*

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*The complexity of the subject must be respected. Over-simplification that does not do so could make matters even worse by causing confusion and misunderstanding through error and inaccuracy.”*

### Costs order for representative beneficiary: HR Trustees v. German (IMG Pension Plan) (No. 2)

On 26th February, 2010, the High Court (Arnold J.) gave judgment in this case, ordering that IMG should pay the costs of Mr. German, the representative beneficiary, in respect of a cross appeal by him against one aspect of Arnold J’s. judgment in the main action.

IMG appealed against Arnold J’s. decision (see our [Pensions Bulletin 09/20](#)) that its attempts in 1992 to convert its pension plan from final salary to money purchase in respect of both past and future service were effective but subject to an underpin preserving the monetary value of the final salary benefits accrued to the date of amendment. G wished to cross appeal against the judge’s finding that the Trustees had failed properly to exercise their power of amendment. If he were to succeed, the result would be that the pension scheme continued to be a final salary scheme.

Arnold J. considered the authorities on the principle to be applied to applications for prospective costs orders in pension fund cases (**McDonald v. Horn**<sup>6</sup> [1994], as applied in **Laws v. National Grid**<sup>7</sup> and **Chessels v. BT Plc**<sup>8</sup>).

<sup>6</sup> [1994] PLR 155.

<sup>7</sup> [1998] OPBLR 1.

<sup>8</sup> [2002] PLR 141.

He concluded that G satisfied the various conditions for the exercise of the **McDonald** jurisdiction. He believed that the cross appeal had a real prospect of success. Further, the fact that there would be an appeal to the Court of Appeal anyway, and G was only cross appealing because IMG had appealed, the issues on the cross appeal were closely related to those on the appeal and that success would result in a substantial financial benefit for a substantial number of members, led him to concluding that he should make the order sought.

IMG’s argument that the extra costs of G’s cross appeal were likely to be substantial and that it was a company of relatively modest resources was given short shrift, Arnold J. noting that IMG had already spent **£1.9 million** on the proceedings, to which must in any event be added its and the Trustee’s costs on the appeal. In his view, the extra costs of a cross appeal should be relatively small in the context of the total costs incurred, and to be incurred, by IMG.

**Comment:** The main point of interest here is the huge costs already racked up by IMG in this case (£1.9m, as against a pension fund worth £1.5m in 1992, when the amendment the subject of the proceedings was made).

### Is there a duty to remove Revenue limits? Power v. The Trustees of the Open Text (UK) Limited Group Life Assurance Scheme

The widow of a former active member of the Open Text Group Life Scheme brought an action for breach of trust against the Trustee of that scheme (who was also the deceased’s employer) on the basis that Revenue limits in the scheme under which a death in service payment was due to be paid (the “**Life Cover Scheme**”) had not been removed when the limits were abolished on 6th April, 2006.

The Life Cover Scheme was an “exempt approved scheme”, subject to Revenue limits on the maximum lump sum that could be paid out (4 x final remuneration), with salary being subject to the earnings cap.

The Trustee/Employer had considered whether to remove the restrictions after 5th April, 2006 but had not done so. As a result, the limits continued to apply.

The member, P, died on 30th July, 2007. At the time of his death, his remuneration exceeded the earnings cap. As a result, the lump sum payable was £451,000, instead of £750,000.

The High Court (John Baldwin QC sitting as a Deputy Judge) dismissed the widow’s claim, holding that the Trustee was under no obligation to consider whether the life cover provided for the deceased was appropriate. Its duty was to administer and manage the scheme in accordance with the rules in place. The power to amend was ancillary to that primary obligation, and

enabled the Trustee to amend the scheme to facilitate better administration and management. Accordingly, the failure to propose an amendment to the scheme to remove the limits did not amount to an actionable breach of trust.

**Comment:** A welcome decision, and a timely reminder that the transitional period during which Revenue limits continue to apply to schemes in existence at 6th April, 2006 expires on 5th April, 2011. Schemes that wish to preserve the limits but have not already made the necessary amendments need to do so.

## Points in practice

### Scheme funding: Regulator's statement on post-valuation improvements

The Regulator has (January, 2010) published guidance on its website on taking into account post-valuation improvements in asset values when agreeing a recovery plan and schedule of contributions for schemes with effective valuation dates of 31st March, 2009.

Deficits in such schemes have significantly reduced to date because the actual asset return has far outstripped the return built into the technical provisions.

The legislation permits allowance for post-valuation developments in recovery plans. Although, in normal market conditions, the Regulator believes trustees should be cautious about taking account of upward fluctuation, given the "extreme" conditions in March/April, 2009, it considers that for some schemes it may be reasonable to take some of the increase in asset values into account.

However *"this view has been formed in relation to these specific market events, and is not of automatic application to future situations which may develop"*.

Further, the Regulator expects any changes to the recovery plan arising from factoring in favourable post-valuation events to affect the length of the plan rather than the level of actual payments.

The guidance sets out how any adjustments should be made, noting that any excess out performance that

has been assumed should be shown explicitly in the valuation and recovery plans submitted to the Regulator.

The Pensions Regulator has also published an additional answer to its FAQs in the "technical queries" section of the part of its website relating to funding dealing with **changing the valuation renewal date**, confirming that Trustees can choose a different effective date for their next actuarial valuation provided that (i) the new effective date is within 3 years of the effective date of the previous valuation, and (ii) before the valuation is obtained, the Trustees update the statement of funding principles to reflect the new valuation cycle.

The guidance and FAQs are at [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk).

**Action point:** If you have a valuation date on or around March, 2009, consider whether to take advantage of the opportunity to adjust recovery plans and schedules of contributions to take account of increases in asset values.

### PPF (1): guidance on disclaimer of onerous contracts

On 8th March, 2010, the Board of the PPF published guidance on exercise of its powers<sup>9</sup> to disclaim onerous contracts.

Section 161 enables the PPF Board to disclaim "onerous" contracts, or to substitute a reasonable term or condition.

<sup>9</sup> Under Section 161 of, and Schedule 6 to, the Pensions Act 2004.

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The decision to issue guidance follows a number of enquiries concerning investment contracts, particularly ISDA contracts for derivatives, entered into between pension scheme trustees and fund managers.

Because of concern as to whether or not the PPF Board might disclaim existing contracts on the transfer of a scheme to the PPF, ISDA counterparties have started to insert an additional trigger event into the termination clauses of their contracts providing that the transfer of the scheme to the PPF will be an automatic termination event.

The guidance sets out the broad principles the PPF Board would expect to apply in determining whether and how to exercise its powers. It considers it would not ordinarily seek to disapprove or substitute terms in contracts that have been negotiated at arms length by trustees in the ordinary course of their trustee business, even if it is felt that the trustees negotiated a poor deal. It has decided that the test it will apply in exercising its powers is to disapply or vary contractual terms which are “substantially unfair or manifestly prejudicial”.

It gives the following examples of what might be onerous terms:

- > contracts entered into with persons connected to or associated with the trustees,
- > contracts entered into in the run up to the commencement of an assessment period, or entered into during an assessment period,
- > terms that provide for a specified outcome if a transfer to the PPF under Section 161 occurs or

becomes likely – for example, a financial charge on transfer,

- > terms triggered by insolvency events in relation to a sponsoring employer or any term expressly triggered by an event under Part 2 of the 2004 Act (such as a scheme rescue, the issue of a notice under Section 160 of the Act or a transfer under Section 161),
- > terms restricting the liability of a third party to the trustees. The Board would consider using its powers to modify such terms, and
- > termination provisions, in particular any terms imposing a penalty on cancellation or termination or a long notice period or the absence of any termination provisions.

The guidance contains the following proposed wording to be included in derivative contracts which the PPF Board “strongly encourages” trustees and managers to adopt.

*“It shall be an Additional Termination Event (and party A shall be the Affected Party and all transactions shall be Affected Transactions) when*

- (a) *the Board of the Pension Protection Fund (“PPF”) approves under section 144 of the Pensions Act 2004 (“the Act”) a valuation under section 143 of the Act which verifies that Party A’s protected liabilities (within the meaning of section 131 of the Act) exceeds its assets;*
- (b) *the PPF determines under section 152(2) that it must accept responsibility for the Scheme; or*

- (c) *the PPF approves under section 158(3) of the Act an actuarial valuation which verifies that Party A’s protected liabilities exceed its assets;*

*Provided that in each case there shall be no Additional Termination Event if the PPF prior to termination by Party B has executed and issued a deed to Party B that it will not, following the issue of a transfer notice pursuant to section 160 of the Act, use its powers under section 161 of the Act (or any regulations made thereunder) to disapply or amend any terms or conditions of this Agreement or terminate this Agreement (unless such disapplication, amendment or termination is permitted under the express terms of the Agreement).”*

The guidance notes that the Board would not expect to use its power to enable an “out of the money” derivative to be terminated, nor would it expect to vary contractual netting terms with credit support agreements.

The form of irrevocable deed referred to in the proposed wording, to be executed by the PPF following commencement of an assessment period, notifies the parties to the contract of the PPF’s intention not to use its powers under Section 161.

The guidance, to which the Deed is appended, is available from the PPF website ([www.pensionprotectionfund.org.uk](http://www.pensionprotectionfund.org.uk)).

**Comment:** We have, in the last 12 months, concluded more than 30 ISDA Master Agreements on behalf of pension fund clients. The wording in (a), (b) and (c) is very similar to that which we negotiated in those agreements in response to original requests by counterparties for an

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insolvency event occurring in relation to an employer, which started an assessment period, being an Additional Termination Event.

The PPF's proposed wording can usefully be included from the pension fund's perspective in ISDA Master Agreements going forward to avoid such negotiations.

## PPF (2): Technical News

Issue 1 of this was published in February, 2010. Its aim is to provide practical guidance on topical and key issues that may affect schemes that are in PPF assessment periods.

Issue 1 covers:

- > the High Court decision in the **Ilford** case (see our [Pensions Bulletin 09/20](#)), noting that trustees need to be wary of proposals that seek to "game" the PPF. Such proposals are not limited to the type put forward in the **Ilford** case. Proposals, for example, by trustees to take on an investment they would not otherwise take on if the PPF did not exist would, according to the newsletter, be affected,
- > benefit equalisation for GMPs, noting that no action is currently required from trustees of schemes in an assessment period until the PPF provides further guidance. However, the PPF will be making an announcement about how the DWP's recent announcement that there is no need to identify comparators when equalising

benefits for GMPs will affect PPF cases "in the near future",

- > terminal ill-health applications in a PPF assessment period,
- > minimum pension age, noting that, for schemes in a PPF assessment period, all early retirement applications should be processed before the scheme transfers to the PPF as such applications will not transfer to the PPF as work in progress. On transfer, the relevant member will have to apply to the PPF for early payment of compensation. An application for early payment of PPF compensation cannot be made before transfer, and
- > negative RPI and its effect on PPF compensation, noting that PPF compensation will not reduce where there is a negative movement in the RPI. Where the increase in RPI is zero, or negative, compensation in payment will not be increased in the following January. Accordingly, the increase on 1st January, 2010 is zero for pensioners.

Technical News is available at [www.pensionprotectionfund.org.uk](http://www.pensionprotectionfund.org.uk)

## Consultation on revisions to Regulator's guidance on winding up: avoiding delays

The Regulator has published, in February, 2010, proposed revisions to its June, 2008 guidance on winding up ("Winding up: avoiding delays").

The proposed changes are marked on the guidance in italics and relate to:

- > delays caused by obtaining terms to securing of members' benefits with an insurer; when schemes claim that obtaining such terms is impractical, the Regulator expects there to be documented evidence of the difficulties encountered and the plan to keep the matter under close scrutiny to ensure benefits are secured as soon as possible, and
- > the transfer of the functions of the FAS scheme manager to the PPF and the transfer of FAS schemes' assets to the FAS, noting that FAS schemes which are unable to conclude winding up until after the transfer legislation is made are expected to have progressed the other aspects of the winding up pending the transfer of the scheme to the FAS.

The draft guidance is available at [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk). Comments are invited by 5th May, 2010.

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**BAS Actuarial Standard on Pensions**

The FRC's Board for Actuarial Standards "(BAS)" has published in draft its pensions technical actuarial standard (the "pensions TAS").

The standard covers:

- > the regulated role of the scheme actuary advising Trustees and the unregulated role of the actuary advising employers, and
- > practice areas – specific aspects of generic matters.

It is proposed that the pensions TAS will apply to actuarial reports completed on or after 1st April, 2011 and that the final version be issued during the summer of 2010.

Comments on the latest draft are invited by 21st May, 2010.

The relevant GNs will be withdrawn when the pensions TAS becomes effective.

Many of the requirements of **GN9** (Funding Defined Benefits – Presentation of Actuarial Advice) will be covered by the pensions TAS, although they will be expressed differently.

**GN16** (Retirement Benefit Schemes – Transfers without consent) will be withdrawn (including the certificate which actuaries can sign to confirm that benefits are in their opinion "broadly no less favourable").

**GN28** (Retirement Benefit Schemes – Adequacy of Benefits for contracting out), which gives guidance to actuaries determining whether a scheme passes the reference scheme test, will, in part, be covered by the pensions TAS. However, those provisions that also supplement the legislation by providing details of what schemes must do to meet the test do not, according to BAS, fit into the new principles-based standard and BAS is discussing with the DWP how they might be maintained in the future.

The draft pensions TAS is available at [www.frc.org.uk](http://www.frc.org.uk).

**Personal Accounts: administrator appointed**

The Personal Accounts Delivery Authority has announced the awarding of the contract for provision of main administration services to NEST to Tata Consultancy Services (TCS). No surprise, as, in the end, TCS was the only bidder.

Scheme administration services will include:

- > employer participation,
- > member enrolment,
- > collection and reconciliation,
- > cash management,
- > accessing pensions savings, and
- > administration of accounts.

The initial contract will last only until October, 2010 in view of the forthcoming General Election. TCS is then expected to be awarded a second stage contract running up to March, 2011. If both parties are happy, a further 10 year contract will be signed with possible extensions for up to a further 5 years. The contract is estimated to be worth £600 million over the 10 years.

**State pensions reform: briefing pack for advisers**

The DWP has (February, 2010) published version 2 of its briefing pack.

The briefing pack gives an overview of the ongoing reforms to state pensions, including:

- > the increase in state pension age for women from 60 to 65 for women born after 5th April, 1950,
- > from 6th April, 2024, in the gradual increase in state pension age for men and women from 65 to 68 for men and women born after 5th April, 1959, and
- > a reduction in the number of qualifying years and removal of the current minimum NI contribution conditions required to obtain the basic state pension.

The briefing pack is available at [www.dwp.gov.uk](http://www.dwp.gov.uk).

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## Slaughter and May comments on the Government's proposals for implementing the restriction of pensions tax relief from 2011

### A. "A.5 The Government welcomes views on ways in which the impact on individuals affected by the restriction due to a redundancy payment of over £30,000 could be further mitigated without opening up scope for abuse."

1. The Government has stated it is minded to exempt the first £30,000 of a redundancy payment (and other termination payments) from income for the purposes of restricting tax relief on pension contributions.<sup>10</sup>
2. However, payments in excess of £30,000 on a termination would, as currently proposed, count towards the income thresholds.
3. In our view the preferred position is that all of a redundancy/termination payment should be excluded from the income threshold. Anti-

<sup>10</sup> Consultation paper: Implementing the restriction of pensions tax relief, December 2009, ("Consultation Paper") paragraph 3.25.

avoidance provisions could be included to prevent abuse of the redundancy/termination exception.

4. Redundancies/terminations will often be outside the employee's control.
5. HMRC's concern seems to centre on the potential abuse of the redundancy/termination process to deliver what would otherwise be normal remuneration. The example given by HMRC at the consultation meeting on 22nd January, 2010 was the payment of termination payments on a series of short form contracts.

**Comment:** Presumably HMRC would wish to address this kind of arrangement in any event since it would also be taking advantage of the £30,000 tax free payment provisions (ITEPA Section 403). See, for example, EIM13825 (Termination payments and benefits: redundancy: site agreements for short-service employees).

6. It seems to us that the potential of abuse should be addressed through anti-avoidance provisions, rather than potentially bringing genuine redundancy/termination cases within the tax charge when individuals would not otherwise be caught.
7. If the approach at **3.** is not acceptable to the Government then, as part of a more targeted approach, the following proposals would help mitigate the impact of the restriction on those affected by redundancy in a way that does not open up opportunities for abuse:

- any payment in lieu of notice should be attributable to the tax year in which the payments would have fallen if the notice period had been worked out. So if a payment in lieu of six months notice is made on 6 February 2012, one third of it should be attributable to the 2011/12 tax year and two thirds of it to the 2012/13 tax year even though the whole payment is made in the 2011/12 tax year. This spreads the economic effect of the payment into the tax years to which the notice period relates.
- where a payment in excess of £30,000 is made under a redundancy scheme which applies generally to employees of the same status as the affected individual, then the excess payment should also be exempted from the calculations of income for that individual. This should be the case whether the redundancy scheme is discretionary or contractual.

### B. Valuing the Defined Benefit Contribution (Chapter 4)

#### 1. Valuation method to be used

- 1.1 In our view the valuation method used must achieve the objective of simplicity even if this may be at the cost of some fairness.
- 1.2 In our view the CETV approach is unworkable because it is a highly individual and scheme specific calculation.

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1.3 For example, where a scheme has chosen to de-risk its investment strategy under current cash equivalent rules the CETV attributable to a member is higher than it would be in a scheme that had not de-risked its investment strategy. Members of schemes would have different outcomes depending on the investment strategies that their scheme had decided to adopt. This would result in higher tax charges for members of schemes that are invested on a de-risked basis which would be an unwelcome outcome.

## 2. Starting point for drafting

2.1 When drafting the legislation for the purposes of valuing the defined benefit contribution, it would be preferable **not** to take as your starting point the drafting in the Finance Act 2004 for the annual allowance charge.

2.2 The special annual allowance charge “piggy backed” on the drafting in the Finance Act 2004 relating to the annual allowance.

2.3 Difficulties with the Finance Act 2004 drafting only became apparent when used for the special annual allowance charge. This was because the annual allowance threshold was high and rarely in point so the drafting had not been put to the test in the original context.

2.4 We have encountered a number of difficulties with the annual allowance drafting including:

- the exception that is meant to carve out deferred pensioners with defined benefit arrangements in Finance Act 2004 section 235(3). Regulations were made under this section that are meant to mirror the DWP “revaluation” requirements. The regulations were not fully thought through, and do not address a number of issues relating to the fact that any calculation under the regulations would be notional rather than actual.
- calculating benefits in the tax year in which benefits crystallise. Under Finance Act 2004, Section 236(8) there is a requirement to add back “amounts crystallised” when calculating the input for that tax year. This has been an issue in the special annual allowance context. On a literal reading, this requirement would cause problems because of the different valuation methods under the Finance Act 2004 used for crystallised benefits versus benefits as they accrue. HMRC have indicated that they interpret the legislation in a different way (they convert the actual package of benefits back to a prospective entitlement to avoid the problem). It is difficult to reconcile the HMRC position with the actual wording of the annual allowance legislation.

## 3. Complying with legislation requirements should not result in a tax charge

As a general principle, where a benefit has to be increased because of a legislative requirement<sup>11</sup>, that increase should not result in a restriction of pensions tax relief under the new legislation. For example, applying the revaluation requirements under the preservation provisions should not result in a tax charge.

## 4. Normal pension age definition

4.1 The normal pension age definition will be key to valuing the defined benefit contribution.

4.2 In our experience, as a consequence of the equalisation of pension benefits following the “Barber” decision it is common for members to have different minimum ages at which they can draw different tranches of benefit without reduction within a single scheme. This is also recognised by the Pension Protection Fund in the way it scales back pensions for schemes that enter the Pension Protection Fund.

4.3 The legislation will need to address this issue in a practical, clear and workable way.

4.4 When the earliest age at which a member can take benefits depends on the circumstances of leaving, the Government’s preferred approach

<sup>11</sup> Eg revaluation of deferred benefits under the Pension Schemes Act 1993 (and remember different revaluation periods and factors apply to GMPs and the excess over the GMP).

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appears to be to use the later normal pension age<sup>12</sup>. This is to avoid systematic over-charging.

4.5 This will result in more of the benefit being treated for tax purposes as though it accrues in the final year if, in the event, the member leaves in the more favourable circumstances (e.g. from active rather than deferred status).

4.6 This will result, effectively, in tax charges on benefits that have accrued before 6th April 2011. For example, if:

- a member with 20 years service retires from active service age 60 in 2012, and
- the “normal pension age” for the scheme is 65 (the earliest age at which a deferred pensioner can take benefits as if right without reduction)
- the current proposals will work on the basis that the whole 20 year period of accrual is treated as enhanced (as there is no reduction on the pension as a whole for paying it 5 years “early”). This extra value is effectively treated as all accruing in the year of retirement.

4.7 In general there is a principle against retrospective taxation. Adherence to the principle is particularly important in the pensions field where time horizons are long and plans made based on one tax regime should not retrospectively be disturbed.

<sup>12</sup> Consultation Paper, paragraph D.10.

## C. Scheme pays

1. **“A.15 : The Government welcomes views on its proposed approach to scheme pays, and in particular, whether the approach could be modified to minimise burdens, while delivering the same flexibility for individuals.”**

1.1 The feedback that we have received to date from those running private occupational pension schemes is that the “scheme pays” option is extremely unattractive.

1.2 The main concern is that if a member requires the scheme to operate “scheme pays”, that member’s benefit immediately becomes non-standard and cannot be administered in a cost effective way.

1.3 Our expectation is that private sector employers will wish to restrict pension benefits for members where there is a risk that the resulting tax charge would trigger the “scheme pays” right for the member.

1.4 The regulatory burden and associated cost does not, we suggest, demonstrate that this part of the legislative proposal is fit for purpose.

1.5 In effect it would result in the equivalent of annual internal transfers on pensions sharing on divorce for a significant part of the scheme’s active membership.

2. **“A.17: Is it reasonable to allow individuals to only elect for a single scheme to pay in any given year, and for that scheme to pay only the portion of the charge relating to contributions or deemed contributions made to that scheme?”**

2.1 The general principle should be that if “scheme pays” is to be included in the legislation, the scheme should only have to pay the portion of the charge relating to contributions or deemed contributions made to that particular scheme.

2.2 As noted above the administrative costs and consequences of reducing the scheme benefit are going to be significant and it would be inappropriate for a scheme to have to manage a tax charge relating to accrual in another scheme.

3. **“A.18: For defined benefit schemes, given that the method and assumptions used to actuarially reduce the value of a pension could vary across schemes and could allow a scheme to disadvantage members electing for the scheme to pay, is it appropriate to set parameters for calculating the actuarially fair offsetting reduction to a members pension across all defined benefits schemes when implementing scheme pays, or to leave it to individuals schemes’ discretion?”**

If “scheme pays” is to be imposed on schemes, they should be given discretion as to how to reduce benefits in a cost neutral way for that particular scheme. Trust based schemes would have to deal with members fairly in any event.

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4. "A.19: Do stakeholders agree that it would be necessary to include an opt-out for the small minority of schemes that would be disproportionately affected, for example, by reference to a minimum level of funding?"

4.1 Introducing "scheme pays" effectively enables members of the scheme to use scheme benefits to meet an external obligation.

4.2 This option will only be available to high earners with a tax charge of £15,000 or more.

4.3. This is inheritantly advantaging those members over non-high earners or high earners with lower tax charges.

4.4 We doubt this is intended Government policy.

#### D. Provision of Benefits through Employer Financed Retirement Benefits Schemes

1. We anticipate that on the introduction of the HIER tax charge, many private sector employers will decide to stop pension accrual in registered pension schemes for employees with incomes of £150,000 or more.

2. Employers may still wish to provide a pension benefit as part of their remuneration policy. One alternative to benefits under a registered pension scheme is to provide benefits in a non-registered employer financed retirement benefits scheme ("EFRBS"), such as those that are currently used,

we understand, for the Judicial Pensions Scheme and the Prime Minister's pension scheme.

3. We note that the Government anticipate including anti-avoidance type provisions in the 2011 legislation.

**Comment:** The anti-avoidance provisions relating to the special annual charge also encompassed the annual allowance charge and the lifetime allowance charge. These provisions were unnecessarily wide and lead to uncertainty about previously acceptable means of managing exposure to these tax charges. Any anti-avoidance provisions included should be limited to the HIER charge itself.

4. HMRC were willing to give guidance in relation to the anti-avoidance provisions relating to the special annual allowance charge, where an EFRBS was used to provide pension accrual in place of accrual under a registered pension scheme.

5. The established tax treatment for such schemes is that there is no benefit in kind charge on the accrual of the benefit but benefits, when paid, are taxable. Conversely there is no corporation tax deduction for the cost of providing the benefits until the benefits are actually paid.

6. Giving benefits under an EFRBS results in a "deferral" of the tax charge to the time of taking the benefits, when compared to the HIER charge that arises if the same benefits are provided under a registered pension scheme.

7. It would be helpful to have an early statement of HMRC's attitude to the use of EFRBS to provide pension benefits as we anticipate that these will become of increasing interest for delivering pension benefits to high earning employees. No doubt the judiciary and, perhaps, the Prime Minister will have an interest in the position.

8. Any guidance should encompass both onshore and offshore EFRBS.

#### E. Transfers

1. At D.14 of the Consultation Document it is noted that "*there is a potential for inconsistency in the value of an individual's pension rights year to year if there is a transfer of accrued pension rights between schemes associated with a compulsory transfer of employment under the TUPE legislation*".

2. It is further noted that this is typically carried out "*via a "bulk transfer" of affected employees' pension rights which broadly preserves pension expectations at retirement*" and that "*depending on the pension valuation approach adopted for tax relief purposes, the change of schemes could give rise to an apparent change in the value of pension in some circumstances*".

3. You state that you welcome views from respondents on whether they agree that it would not be appropriate for these apparent changes to be factored into the valuation of deemed contributions for the purposes of restricting tax relief.

4. We agree that it would be wholly inappropriate for these apparent changes to be so factored in.

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5. You should note that bulk transfers occur not only where there is a business transfer under the TUPE legislation but also on:
  - scheme mergers
  - company re-organisations, and
  - sales of companies out of a group.
6. The same approach should be taken for these transactions as for TUPE transfers, if the final form of legislation could result in an apparent change in the value of the pension in any of these circumstances. All of the transactions listed at 5 above are common legitimate business activities.
7. Protection of pre-existing pension benefits/accrual has had to be managed a number of times in the recent past, when the taxation of pension accrual has been changed by legislation. In each instance, it has taken considerable time and trouble to devise a legislative mechanism for protecting pre-existing pension benefits/accrual where there is a subsequent “bulk transfer” involving a person with the benefit of the protection.
8. In our view the most effective of the “bulk transfer protection” type provisions were those put in place in respect of the earnings cap.<sup>13</sup>

<sup>13</sup> The Retirement Benefit Schemes (Tax Relief on Contributions) (Disapplication of Earnings Cap) Regulations 1990 and the Retirement Benefit Schemes (Continuation of Rights of Members of Approved Schemes) Regulation 1990 (the “1990 Regulations”).

9. The issue of maintaining protections on a bulk transfer has arisen most recently in the context of enhanced protection under the Finance Act 2004 and the anti-forestalling provisions of the Finance Act 2009. In both these cases protection has been given in a piecemeal fashion (rather than adopting the comprehensive approach taken in the 1990 Regulations) and there are still outstanding issues relating to bulk transfers.
10. It would be helpful to learn from these previous instances and to provide “bulk transfer protection” type provisions under the new legislation from inception in the case of all types of bulk transfers (and not just TUPE transfers).

## F. Impact assessment

1. Throughout the impact assessment it is assumed that employers and trustees will do no more than the minimum required by law to inform members of the effect of the new tax charge and to administer it.
2. In reality many employers will incur significant additional costs, particularly in relation to:
  - review of remuneration policies, and
  - dealing with members who are close to the thresholds in determining whether or not they fall within the new tax charge.
3. We have serious doubts as to whether the impact assessment bears any relation to the actual costs

4. We recommend that the impact assessment is re-visited in a more rigorous fashion as part of the consultation process.
5. We note that the more complex the eventual legislation the more difficult it is to get the drafting right first time.
6. Both the Finance Act 2004 and the Finance Act 2009 have had to be amended a number of times. There have also been a number of instances where HMRC has changed its interpretation of the Finance Act 2004 via the Registered Pension Schemes Manual, and some parts of the guidance given in the Registered Pension Schemes Manual are difficult to reconcile with the black letter law.
7. All of this leads to uncertainty in advising on and applying the relevant tax law.
8. Our clients are generally interested in certainty first and foremost in relation to pensions and tax.
9. It is also the case that the greater the complexity of the legislation and the uncertainty surrounding it the greater the call that will be made on HMRC technical resources at a time when Government resources are under significant pressure.
10. This tends to support the objective of simplicity in the legislative approach.

## Update On Anti-Forestalling – Amending Order – New Protections

### 1. Introduction

1.1 When the “anti-forestalling” provisions of the Finance Act 2009 were debated, the Financial Secretary to the Treasury said that the Government would consider making amendments to the legislation to deal with:

- “changes of pension provider”, where somebody changes pension provider (or pension scheme) but carries forward exactly the same pension arrangements, enabling protection to be retained for the new arrangement, and
- “pipeline payments”, to protect new pension arrangements that were agreed but not actioned before 22nd April, 2009.

1.2 An amending Order<sup>14</sup> has now been laid which amends the anti-forestalling legislation to give protection in these circumstances, if detailed conditions are met. The Order has retrospective effect from the beginning of the 2009/10 tax year.

1.3 The Order may be of help for occupational schemes where, for example:

- one off salary or bonus sacrifices were agreed but not paid before 22nd April, 2009
- a scheme merger or internal re-organisation is underway where the member will change scheme but continue with the same level of pension provision
- on acquisitions and disposals where the member will change scheme but continue with the same level of pension provision.

1.4 This update explains the changes and summarises some of the points of difficulty, and areas where further HMRC guidance would be helpful.

### 2. Background – the “anti-forestalling” tax charge

2.1 In the Budget speech on 22nd April, 2009, the Chancellor announced that from 6th April, 2011 changes would be made to restrict tax relief on pension savings for “high income” individuals.

**Note:** A consultation is currently underway on the implementation of these proposals. [Click here](#) to view Slaughter and May’s submission made to the Government as part of the consultation process.

2.2 At the same time as announcing the decision to restrict pensions tax relief from 2011, the Chancellor announced a new “anti-forestalling” tax charge (the “special annual allowance charge”) which was applied with immediate effect. This is intended to deter high income individuals from making changes to their pension savings before 6th April, 2011.

2.3 Currently the charge applies to:

- “high income individuals” (with UK taxable income (not just employment income) of £130,000 or more in the current tax year or either of the two previous tax years),
- who have pension savings made by them or their employer on or after 22nd April, 2009<sup>15</sup> that are not protected from the special annual allowance charge, and
- where total annual pension savings for the tax year exceed a figure between £20,000 and £30,000 (depending on the circumstances) (this is the “special annual allowance”).

2.4 The special annual allowance charge effectively limits tax relief on such unprotected pension savings in excess of the special annual allowance to the basic rate of tax.

### 3. Problems with the “protections” as originally drafted

3.1 As originally drafted, pension accrual in excess of the special annual allowance could only be protected for:

- arrangements that had been established before 22nd April, 2009 that (broadly) continued unchanged, and

<sup>14</sup> The Special Annual Allowance Charge (Protected Pension Input Amounts) Order 2010

<sup>15</sup> 9th December, 2009 in the case of individuals with incomes of £130,000 or more but less than £150,000.

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- new arrangements that met rigorous conditions designed primarily to accommodate one off “new joiners”.
- 3.2 There was no specific protection tailored to deal with the common scenario where a group of active members have to leave a pension scheme due to an outside event, such as a scheme merger or company or business disposal, and are then provided with future pension accrual under another pension scheme.
- 3.3 On leaving their protected arrangements under the old scheme, such members could only be provided with protection in the new scheme if the detailed conditions of the “new arrangements” protection could be met in relation to that particular individual’s circumstances. Even if that protection applied, it did not extend to AVCs.
- 3.4 The new arrangements protection includes a requirement that there must at all times from inception be a cohort of 20 active members employed by the same employer accruing benefits on the same basis as the individual seeking to rely on the protection. Meeting this test can prove difficult, particularly where the new pension arrangement is under a defined contribution scheme with a wide range of benefit options.
- 3.5 Representations were made to HMRC by ourselves and others asking for a more tailored protection to deal with transfers that occur because of an outside event such as a scheme merger or company or business disposal.

- 3.6 The new Order goes some way to respond to those representations but there are a number of areas of difficulty which are referred to below.
- 3.7 A further problem with some (but not all) of the original protections is that they did not extend to arrangements or enhancements which had been agreed before 22nd April, 2009 but not provided by that date. This caused problems, for example, with agreed salary and bonus sacrifices that had not been actioned by 22nd April, 2009.
- 3.8 The new Order extends protection to both one off contributions and new arrangements so long as these are made in accordance with a written agreement made before 22nd April, 2009 between an individual and the employer. In the case of a one off contribution, it must be made no later than the date specified for payment in the agreement.
- 3.9 The Order also extends protection to payments made on a less regular than quarterly basis, made to money purchase arrangements on the date of the Budget speech itself (22nd April, 2009). Previously such payments had to have been made on or before 21st April, 2009 to be protected.

#### 4. Change of occupational pension scheme

- 4.1 HMRC have now provided a protection tailored to the situation where individuals who have protection in a pre-22nd April, 2009 arrangement have to change pension arrangements due to an

external event. However, predictably, stringent conditions have to be met for the protection to apply to the new arrangements, and questions arise in relation to some of these. The main conditions are summarised below.

- 4.2 The individual must make the new arrangement for one of the following reasons:
- the individual’s employer has entered into a re-organisation of its pension provisions and the making of the arrangement is a consequence of that re-organisation, or
  - the making of the arrangement is due to a transfer of all or part of an undertaking or business:
    - involving 20 or more employees
    - where the transferor and transferee companies are not part of the same group

**Comment 1:** Scheme mergers and larger business sales to third parties clearly fall within these “reasons”. However, there is no specific reference to company sales. We have asked HMRC to clarify whether they accept that a company sale that results in individuals joining a new scheme can fall within the re-organisation reason.

**Comment 2:** In some internal re-organisations the individual will change both employer and scheme. On the face of it, this fact pattern could fall outside the new protection.

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**Comment 3:** The new protection refers to the individual having “made” the new arrangement. It is common on both scheme mergers [and business and company sales] where the scheme is non-contributory to auto-enrol individuals into the new scheme. We have asked HMRC to confirm that they accept that the protection can apply in these circumstances.

**Comment 4:** It is to be hoped that these points will be covered in HMRC’s detailed guidance, once published.

4.3 The individual must not make more than one new arrangement under the new pension scheme, and must make the new arrangement within 3 months of active membership stopping under the old scheme.

**Comment:** Any scheme which provides both defined benefit and AVC money purchase arrangements will be treated as providing at least two arrangements to the member. HMRC in their overview note on the Order do confirm that AVCs can continue to be protected, but the drafting of the “one arrangement” provision does not sit happily with this. There also appears to be a problem in money purchase schemes if AVCs are held in a separate arrangement. We have asked HMRC to clarify these points.

4.4 For new defined benefit arrangements, there must be no material difference between “*the rules of the pension scheme under which benefits*

*to or in respect of the individual are calculated*” in the new scheme and the equivalent rules in the old scheme.

**Comment 1:** This requirement would clearly be met by mirror image benefits. It would not be sufficient to provide benefits in different form but of equivalent value in the new scheme.

**Comment 2:** It may be possible to subsequently change the form of the benefits provided to give benefits of different “shape” so long as:

- the change affects at least 50 active members of the new scheme in the same way (relying on the general exception for material changes under defined benefit arrangements) and
- the “pension input” is not increased as a result (ie the benefits are of equivalent value as measured for these purposes).

4.5 The level of protection given for the new defined benefit arrangement cannot exceed the protection that would have been given had the old arrangement continued.

4.6 For new money purchase arrangements:

- the contributions that are protected under the new arrangement are capped by reference to the amount that would have been protected if contributions under the old arrangement had continued, and

- the rate of contributions must be no higher than the rate paid under the old arrangement (likely to have the same effect as the previous point) but also the rate cannot be increased.

**Comment:** In the old arrangement, if the scheme design provided for automatic increases in the contribution rate eg on reaching a particular age, those “pre-defined” increases were protected. If these scheme provisions are duplicated in the new scheme, the subsequent increase in the rate would **not** be protected.

4.7 There is no equivalent “grandfathering” protection for individuals who joined the old pension scheme after 22nd April 2009<sup>16</sup> and who were relying on the “new arrangement” test for protection of pension provision in the old scheme in excess of the special annual allowance. If such an individual has to change pension arrangements due to an external event, the “new arrangement” test will have to be applied afresh to the new arrangement in the new scheme. It will depend on the facts as to whether protection can be retained.

4.8 Members who have to change pension arrangements due to an external event may have benefitted from a pre-22nd April 2009<sup>17</sup> salary sacrifice in the old scheme, taking them

<sup>16</sup> 9th December, 2009 in the case of individual’s with incomes of £130,000 or more but less than £150,000.

<sup>17</sup> Pre-9th December, 2009 in the case of individual’s with incomes of £130,000 or more but less than £150,000.

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out of the category of “high income individual” altogether. If a new salary sacrifice agreement is made in relation to the new pension arrangement, the moneys sacrificed will have to be added back when calculating the individual’s income and this may result in the individual becoming “high income” for the first time. It appears that the new protections can still apply.

**5. Conclusion**

- 5.1 The new protections are welcome but in the case of the “change of scheme” protections, need to be looked at carefully to check whether the particular pension transaction falls squarely within the provisions,
- 5.2 It is hoped that the HMRC guidance, when issued, will clarify the points of difficulty outlined in this Update.

This Bulletin is prepared by the Pensions and Employment Group of Slaughter and May in London.

We advise on a wide range of pension matters, acting both for corporate sponsors (UK and non-UK) and for trustees. We also advise on a wide range of both contentious and non-contentious employment matters, and generally on employee benefit matters.

Our recent work includes advising:

- > RSA Insurance Group on a derisking arrangement for RSA's 2 main defined benefit pension schemes involving a fully collateralised asset swap and longevity insurance contracts with Goldman Sachs and its insurance subsidiary, Rothesay Life, resulting in removal of a significant proportion of the schemes' longevity, inflation and interest risk
- > Royal Mail in its negotiations with its pension trustees over the Government's investment in the Royal Mail and the Post Office and on its consultation over changing the terms of its defined benefit pension scheme
- > HM Treasury on pension issues in connection with the taking into temporary public ownership of Northern Rock and Bradford & Bingley
- > Marks and Spencer on its substantial contributions to its UK defined benefits pension scheme by an interest in a property-backed partnership, and on changes to benefits under that scheme, affecting 21,000 employees
- > United Utilities on the demerger of its section of the Electricity Supply Pension Scheme, on the sale of United Utilities Electricity Limited
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If you would like to find out more about our Pensions and Employment Group or require advice on a pensions, employment or employee benefits matter, please contact one of the following or your usual Slaughter and May adviser:

**Jonathan Fenn**      [jonathan.fenn@slaughterandmay.com](mailto:jonathan.fenn@slaughterandmay.com)  
**Roland Doughty**      [roland.doughty@slaughterandmay.com](mailto:roland.doughty@slaughterandmay.com)

For more information, or if you have a query in relation to any of the above items, please contact the person with whom you normally deal at Slaughter and May or [Rebecca Hardy](#). To unsubscribe [click here](#).