The Pensions Regulator consults on new single code of practice

What you **need to know**

- The Pensions Regulator (TPR) has issued a consultation on a new single code of practice that brings together 10 of the 15 current codes into 51 new modules. The new code aims to be clearer and more accessible, providing a single up to date source on pension scheme governance and management.

- The new code incorporates some potentially significant additional governance requirements. These are not a surprise as they were largely transposed from the second European Pensions Directive (IORP II) into The Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 (the 2018 Governance Regulations) which came into force in January 2019. The new code sets out the detail of how schemes should comply.

- In particular, the 2018 Governance Regulations set out that schemes must establish and operate an 'effective system of governance including internal controls'. The new code sets out TPR's expectations of the processes and procedures which trustees should have in place to form an effective system of governance.

- Schemes with more than 100 members will need to carry out an 'own risk assessment' (ORA) to assess how well governance systems are working and how potential risks are managed. TPR acknowledges that the first of these assessments is likely to involve a substantial amount of work and is to be carried out within a year of the code coming into force (likely this autumn).

Actions you can take

- **Carry out a review of the requirements of the new code** and the consultation and consider whether you wish to respond by the deadline of 26 May 2021. XPS will be issuing a response.
- **Review existing governance policies and processes** to identify if there are any gaps.
- **Assess your trustee board's effectiveness** to establish where additional governance processes are required.

What's new?

Whilst much of the new code comes from the existing codes, there are some new and beefed-up elements, including:	
Effective system of governance[1] and own risk assessment (ORA)[1]	The new code sets out in almost checklist form the policies and procedures that TPR expects to be in place for the effective system of governance regulatory requirement to be met. Many schemes will already be doing much of this, but there appears to be more prescription as well as some new areas. The ORA is then essentially a review of how well the system of governance is working for the scheme[2].
Remuneration policy[1]	The new code expects most schemes[2] to establish a remuneration policy, setting out the levels and means for remunerating those undertaking activities paid for by the scheme or sponsor.
Risk management function	Schemes[2] should have a specific risk management function (which could be a sub-committee focusing on this area). This function would have responsibility for identifying and evaluating risks, internal controls and general risk management.
Administration	The new code introduces new material on cyber security and maintenance of IT systems as well as pension scams and data monitoring, partly incorporated from existing guidance.
Investment governance	The new code introduces modules on stewardship and climate change reflecting recent changes to disclosure requirements. It also sets out in the investment decision making module that schemes should generally ensure that no more than 20% of their investments are held in assets not traded on regulated markets.

[1] These requirements do not apply to public service schemes or authorised master trusts.
[2] Schemes with 100 members or more.

The finer detail: key parts of the new code

Application of the code

What is the format of the new code?	The new code is to be web-based and easy to navigate. The amount of content has been almost halved from the existing codes. Most of the expectations are set out in bullet points, distinguishing between legal requirements and TPR's view as to how those requirements should be met.
Who does the new code apply to?	It applies to governing bodies (i.e. trustees and managers) of all occupational defined benefit, defined contribution, personal and public service pension schemes. Not all of the provisions apply to all types of schemes.
Which of the existing codes are not yet incorporated?	The five codes which have not been incorporated into the new single code are those relating to notifiable events, modification of subsisting rights, funding defined benefits, the material detriment test and the authorisation and supervision of master trusts. These codes will be incorporated into the new code at a later date, as will any changes arising from the Pension Schemes Act 2021. TPR is also due to review and align its code-related guidance.

New governance requirements

Where did these requirements come from?	The Pensions Act 2004 (as amended) sets out that schemes must 'establish and operate an effective system of governance and internal controls'. This applies to most private sector occupational pension schemes. It stems from the IORP II Directive, from which the governance requirements were incorporated into UK law via the 2018 Governance Regulations. The industry has been waiting for the associated code of practice from TPR to implement the provisions and set out its expectations for how they will apply.
What does TPR define as an effective system of governance?	TPR sets out that an effective system of governance should include processes and procedures to ensure compliance in the following areas (which are covered in detail in separate modules in the new code): • the role of the trustees (including meetings and decision-making and the role of the chair); • remuneration policy; • trustee knowledge and understanding (including building and maintaining knowledge as well as the governance around identifying gaps and documenting training); • dispute resolution procedures; • risk management (including identifying and assessing risks, managing risk using internal controls and continuity planning); • conflicts of interest; • managing advisers and service providers; • investment governance (including stewardship, decision-making, monitoring and climate change considerations); and • member communications.
What is an own risk assessment?	Schemes with more than 100 members must carry out an assessment of how well governance systems are working and how potential risks are managed. This assessment is distinct from a scheme's normal risk management processes. The new code sets out a list of areas that the ORA should cover and TPR notes that the first ORA could be a substantial piece of work. The first ORA must be carried out within a year of the code coming into force, with subsequent ORA's carried out every 12 months. The ORA does not have to be sent to TPR but should be recorded and could be requested as part of TPR's investigations.

For further information, please get in touch with Rob Wallace or Jill Brown or speak to your usual XPS Pensions contact.

t 0118 313 0789

e robert.wallace@xpsgroup.com

t 0117 906 4188

e jill.brown@xpsgroup.com

@xpsgroup

xpspensionsgroup

XPS Pensions Group