

# Sixty second summary

## One Code to rule them all: combining Codes of Practice

The Pensions Regulator has begun consultation on draft content for a consolidated Code of Practice.<sup>1</sup> This initial instalment will replace ten of the fifteen existing Codes, and deals mainly with governance and administration matters in both defined benefit and defined contribution schemes, and encompassing the private and public sectors. The remaining Codes will be incorporated into the new, modular format later. The consultation period is from 17 March to 26 May 2021.

### Subject matter

This first phase of consolidation involves the following Codes of Practice:

- *No. 1: Reporting Breaches of the Law;*
- *No. 4: Early Leavers—Reasonable Periods;*
- *No. 5: Reporting Late Payment of Contributions to Occupational Money Purchase Schemes;*
- *No. 6: Reporting Late Payment of Contributions to Personal Pension Schemes;*
- *No. 7: Trustee Knowledge and Understanding;*
- *No. 8: Member-nominated Trustees and Directors—Putting in Place and Implementing Arrangements;*
- *No. 9: Internal Controls;*
- *No. 11: Dispute Resolution—Reasonable Periods;*
- *No. 13: Governance and Administration of Occupational Trust-based Schemes Providing Money Purchase Benefits;* and
- *No. 14: Governance and Administration of Public Service Pension Schemes.*

The Regulator has drawn out various themes from those Codes to form 51 shorter, more-topical modules. For simplicity, its expectations and schemes' legal duties are set out in separate lists, each arranged in logical sequence. The language used has been reviewed too, so that '*must*' signifies a legal obligation, '*should*' indicates a regulatory expectation, and '*need*' is used for practical requirements. With one Code to rule them all—trust-based, personal and statutory (public-sector)—schemes—the Regulator has had to find a new way of referring to the responsible parties: hence its catch-all reference to the '*governing body*'.

It being primarily a consolidation exercise, there is relatively little that is truly fresh material. Most of the expectations and requirements covered already exist, although in some cases they have been updated and, where relevant, made consistent across scheme types. The Regulator says that its expectations are set at the level appropriate for any well-run scheme, '*not... a gold standard*'.

<sup>1</sup> <https://www.thepensionsregulator.gov.uk/en/document-library/consultations/new-code-of-practice>



## Newer ground

There are some novel elements, however, such as the two modules dealing with responsible investment issues: one focusing on stewardship and the other on the risks and opportunities arising from climate change. The Regulator has also reinforced its guidance on cyber security, going into greater detail on its expectations.

The most extensive addition is of material intended to meet the IORP II Directive's requirements for occupational schemes to have '*effective systems of governance*'. The broad requirement has been part of UK law, for private-sector schemes, since January 2019; but trustees now have details of the Regulator's expectations on, for example, the need for schemes with 100 members or more to have written policies on key functions, including responsibility for risk management, on remuneration issues, and on the appointment of service providers. The draft Code of Practice also explains how schemes of such size can meet the requirement for '*own-risk assessment*', which (the Regulator explains) is a regular process, distinct from ordinary risk-management activities, whereby the trustees evaluate the effectiveness of their system of governance. It notes that the first own-risk assessment may require substantial extra work, notwithstanding that it should be proportionate to the characteristics of the scheme. Documented evidence of the first assessment should be available within twelve months of the commencement of the new Code of Practice. Thereafter, the process should be repeated annually, and following any material change in the scheme's risk profile.

## Future phases

These Codes are missing from the first phase of consolidation:

- *No. 2: Notifiable Events;*
- *No. 3: Funding Defined Benefits;*
- *No. 10: Modification of Subsisting Rights;*
- *No. 12: Circumstances in Relation to the Material Detriment Test, and*
- *No. 15: Authorization and Supervision of Master Trusts.*

The first update to the consolidated Code is likely to involve incorporation of the revised *Code of Practice No. 3: Funding Defined Benefits*, upon which consultation is expected in the second half 2021. The Regulator is drafting it in the same style as the consolidated Code so that it can be readily slotted in. Further extensions to the combined Code will be required in due course to cover the contents of the *Pensions Schemes Act 2021*, which will expand the Regulator's powers, enable the establishment of collective money purchase schemes, allow prescribed qualifications to the statutory right to transfer as a means of combatting scams, and lead to the imposition of new climate-risk governance obligations.

## Have your say

The consultation period for the draft Code ends on 26 May 2021. The Regulator is organizing a '*virtual workshop*' at which groups of participants will have opportunities to discuss the new Code.<sup>2</sup>

The consolidated Code is concise and presents its information straightforwardly. The state of suspense about the practical implications of the IORP II governance requirements is over at last. In the meantime, the subject has been the focus of much attention and effort; the own-risk assessment is an opportunity to honestly appraise the extent of progress. Considerable extra work will be required for the first such assessment; and we note that the legal requirement for the ORA to recur at least triennially has been translated into a regulatory expectation that it will be undertaken annually.

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<sup>2</sup> Readers can register interest at: <[www.eventbrite.co.uk/e/new-code-of-practice-virtual-workshop-expression-of-interest-tickets-145528759437](http://www.eventbrite.co.uk/e/new-code-of-practice-virtual-workshop-expression-of-interest-tickets-145528759437)>.