

# alert

## TKU – COMING TO A SCHEME NEAR YOU

### 1 INTRODUCTION

The Trustee Knowledge and Understanding (TKU) requirements under the Pensions Act 2004 are set to come into force on 6 April 2006. All occupational pension scheme trustees must have sufficient TKU of pensions and trusts law to run their schemes properly. Trustees must also be conversant with scheme documents.<sup>1</sup> The Occupational Pension Schemes (Trustees' Knowledge and Understanding) Regulations 2006 were finally laid on 16 March 2006. The Regulator laid the code of practice on 23 March 2006.

A copy of the Regulations can be found at:

<http://www.opsi.gov.uk/si/si2006/20060686.htm>

A copy of the code can be found at:

<http://www.thepensionsregulator.gov.uk/mediaCentre/pressReleases/pn06/pn06-12.aspx>

### 2 KEY POINTS

- Small schemes will be exempt from the requirements (see section 3)
- All trustees have a 6 month period of grace to get up to speed from the date of appointment (see section 4)
- The code now spells out the level of TKU required (see section 6) and also the scope of the requirement to be “conversant” with scheme documents (section 7)
- Finally, we look at how trustees can demonstrate that they have met the TKU requirements (section 8)

<sup>1</sup> For further details, see our Alerts “Trustees – the scope of knowledge and understanding” dated 8 February 2005 and “Trustee Knowledge and Understanding – draft code of practice published” dated 18 March 2005 available from our website

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### 3 NEW EXCEPTION FOR SMALL SCHEMES

A new exception built into the Regulations ensures that the TKU requirements will not apply to a scheme which has less than 12 members where all the members are trustees, provided that decisions are made unanimously or the scheme has an independent trustee.

### 4 PERIOD OF GRACE

Although the original Regulations were ambiguous, it is now clear that all newly appointed trustees (both appointed as individuals and as directors of a corporate trustee) will have a six month “period of grace” from the date they are appointed to meet the new TKU requirements.

There are two exceptions to this period of grace:

- where someone meets the requirements of being an independent trustee; or
- where he or she holds themselves out as having expertise in relation to any aspect of TKU.

### 5 CODE OF PRACTICE

The code of practice has changed significantly in response to concerns raised during the consultation process. The code now sets out a more detailed framework about the level of TKU required and includes a number of examples. In addition, the code now also includes a helpful nine-point statement of the Regulator’s aims for the TKU regime<sup>2</sup>.

We have covered the changes under the following headings:

- Level of TKU required (see section 6)
- Scope of requirement to be “conversant” with scheme documents (section 7)

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<sup>2</sup> See page 3 of the code of practice

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- Demonstrating TKU (section 8)

Please note that the two “scope” guidance notes (which list the requirements of TKU), appended to the code, were not consulted on as part of this exercise as they were “drawn up by industry and consulted on extensively in 2004”. So, no changes have been made to those documents.

## **6 LEVEL OF TKU REQUIRED**

The code makes it clear that whilst trustees do not need to be experts they do need to be able to “understand fully any advice they are given, to challenge that advice if it seems sensible to do so and to enter fully into all the decision making processes”.

However, the Regulator recognises that schemes are different and that trustees’ learning requirements “are likely to vary considerably according to the circumstances of their own scheme and their roles on the trustee body”. For instance, the Regulator notes that “learning at a deeper level” is likely to be required by the chairman of trustees and chairs of investment sub-committees.

## **7 REQUIREMENT TO BE CONVERSANT WITH SCHEME DOCUMENTS**

The code says that being conversant with documents “is taken to mean having a working knowledge of those documents such that trustees are able to use them effectively when required to do so in the course of carrying out their duties as trustees”. The Regulator illustrates this by suggesting that trustees’ “working knowledge” of the scheme’s eligibility rules and wind-up rule is likely to be different – with the trustees only needing to know the detail of the latter if the scheme is in wind-up or if it is a possibility in the foreseeable future.

## **8 DEMONSTRATING TKU**

This is one area which the Regulator accepts may need some fine-tuning. The draft code had suggested that the scheme return could be used a vehicle for reporting but this requirement has been removed from the final version.



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However, the Regulator notes in the response to consultation that “there is further work being undertaken to review the information that it is beneficial to disclose about the running of schemes in the report and accounts, and this may generate clearer requirements in the future.”<sup>3</sup>

In the meantime, the Regulator notes that TKU records can be kept in different ways:

- Individual records – the Regulator says it is “good practice” for trustees to keep records of what they do individually.
- As a trustee body – this is essential and should include the individual records as well as a log for group activities.
- By way of minutes of a meeting - “records by themselves cannot of course wholly demonstrate that trustees have the knowledge and understanding appropriate to their roles. This is more likely to be effectively demonstrated in the trustee board meetings, especially where advice has to be considered and decisions have to be taken...The minutes of such a meeting will record the elements of the discussion which will show that trustees have fully entered into the decision making process.”
- Taking a qualification – the Regulator makes it clear that this route is voluntary - “there is no requirement in law to take a qualification and there will certainly be no pressure from the regulator to do so.” The same may not be true for a professional trustee where it is likely that a formal qualification will be expected.

Finally, the Regulator makes the point that trustees need to keep their TKU skills up to date, particularly in relation to legislative changes or if the trustee takes on a new function.

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<sup>3</sup> We assume that this will be in the revised Disclosure Regulations which have been delayed – see 7 Days dated 27 March 2006 item 1.1, available on our website