

## TPR issues consultation on draft single code of practice

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### Introduction

First announced in 2019 (see [7 Days](#)), TPR published the [consultation](#) on its [draft code of practice](#) on 17 March 2021. Calling for industry views on its efforts to create “a clearer, more accessible single code of practice”, the consultation runs until 26 May 2021.

The consultation forms the first phase of TPR’s work, bringing together 10 of its 15 current codes in 51 new “modules” (and in doing so, reducing its page count for these by nearly half).

“User-friendly”, the code aims to “make it easier for governing bodies, and those providing them with professional services, to distinguish between legal duties they must meet and what [TPR] expect[s] should be done to comply with those duties.”

### Key points

- Current governance expectations have been updated to reflect the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 (which were designed to implement certain requirements of the second European Pensions Directive, better known as IORP II; see our [Alert](#)), as well as the “seismic changes” in the pension saving landscape over the past decade.
- TPR has broken down the themes from its existing codes to form shorter, topic-focused modules, which will link to related topics within the new code and, in time, to guidance and external sources. Some additional new topics have also been included.
- A useful [Annex](#) gives a destination / derivation table, setting out where information from the existing codes has been used. Once the new code comes into force, the codes being replaced will be revoked in their entirety.
- Further modules of TPR’s current codes will be consulted on, and its guidance generally reviewed, in due course.
- The new code is designed to be web-based, with an [early version](#) of this available during the consultation period. The appearance of modules online may differ from the way they appear in the consultation documents.
- TPR notes that none of its codes cover all aspects of pensions legislation, and therefore that governing bodies should continue to look beyond its codes, and seek the help of advisers, to help them understand all their legal obligations.

## Approach

The new code “takes a fresh approach” to setting out TPR’s expectations, adopting a simpler method with most expectations now appearing in lists. These lists separate legal duties and TPR’s expectations of how “governing bodies” (TPR’s new single term encompassing all those with responsibilities for schemes) should meet them. This is not intended to encourage “tick-box governance”, but is for clarity and to allow an ordered approach.

TPR has “adopted government communication principles” in its use of language to help users distinguish between legal duties (which are flagged by the word “must”), and TPR’s expectations (indicated by “should”). “Need” is used where there is no expectation or legal requirement in place, but a process is necessary to allow a scheme to operate. While TPR’s codes are not statements of the law, it reminds us that it may rely on its codes in legal proceedings as evidence that a requirement has not been met, or where it finds grounds to issue an improvement or a compliance notice. However, there remains flexibility for schemes to take their own approach where this appropriate in the circumstances.

In some modules, TPR highlights expectations as a matter of best practice for certain schemes. These expectations are set at a level it considers appropriate “for any well-run scheme”: “they do not represent a gold standard [and] are not intentionally difficult to meet”. For the most part, the expectations it sets out already exist in the current codes. Unless an expectation is new, such as the own risk assessment (see below), TPR notes that “schemes should already be meeting the provisions”.

## What’s new

The proposed single code contains greater detail on several topics, such as cyber security, new modules on matters including stewardship and climate change, plus the long-awaited detail of how schemes should establish and carry out the processes required by the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 (“the Regulations”).

By way of reminder, the Regulations require occupational pension schemes to establish and operate an effective system of governance, including internal controls. The system of governance must be:

- proportionate to the complexity, scale and organisational structure of the scheme, and to the nature of the risks to which it is exposed
- and, if the scheme has more than 100 members, assessed by the trustees in a documented “own-risk assessment” (“ORA”).

For both the [effective system of governance](#) and the [ORA](#), TPR has created modules that are intended to act as an index for the elements that should be considered.

### Own risk assessments

TPR notes that the ORA is distinct from the normal risk management processes for a scheme, and will be a way for governing bodies to demonstrate that they have fully considered the various risk management processes – external, financial and operational – that their scheme faces, and how well their policies and procedures address these.

Schemes are not required to publish their ORA, or to send it to TPR, but TPR expects schemes to record it,

and warns that the first such exercise “may be a significant piece of work”.

The initial ORA must be prepared and documented within one year of the new code coming into force, with subsequent assessments to be carried out annually, or whenever there is a material change in the risks facing the scheme or to its governance processes.

## What’s not (yet) covered

A draft DB funding code (see [7 Days](#)) will be consulted on in the second half of 2021. TPR notes that this new code will be in the same style as, and form part of, the new single code.

Associated codes, such as those on notifiable events, modification of subsisting rights, circumstances in relation to the material detriment test are also yet to be included. Future consultations will also cover areas such as master trust authorisation and supervision, and collective defined contribution (“CDC”) schemes.

Currently, the code does not reflect any of the changes that will gradually be ushered in by the Pension Schemes Act 2021 (see our [Alert](#)), nor does it adopt any findings from its consultation on the Future of Trusteeship (see our [Alert](#)). However, the code is intended to be a living product that will go through an ongoing process of review and amendment to reflect legislative and policy change. TPR notes that, as with its current codes, all future changes will require consultation and Parliamentary approval, giving schemes time to comment on and adapt to new expectations.

## Next steps

TPR plans to carry out “a series of engagement activities” with more details about the new code and to provide industry with the opportunity to share its views. Trustees, advisers and pension professionals will also be able to sign up to virtual workshops to discuss the code's modules and content in more detail with TPR experts.

A project to review TPR’s guidance in line with the new code will start later in 2021.

For further information and advice on how to ensure your scheme complies with the Regulations, **please speak to your usual Sackers contact.**