The Pensions Regulator

Consultation document

The new code of practice

March 2021

Contents

1. Scope of the consultation

We are consulting on the draft content for the first phase of our new code of practice. This begins the process of replacing our existing codes of practice (COPs). The new code incorporates changes introduced by the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 (the governance regulations).

The COPs that have been replaced by the new code in this phase are shown on page 8.

We welcome comments on any aspect of the draft content of the new code and have provided specific questions on certain areas of interest.

The new code is designed to be a web-based product. Therefore, the appearance of modules online may vary from the way they appear in the consultation documents. An online demonstration version of the new code is available for users during this consultation.

You can submit feedback on issues such as the web design, navigation and functionality of the new code via the online demonstration version. We know from stakeholder feedback that users value ease of use, simple navigation and an efficient search. We are developing the online functionality alongside this consultation and further user testing will be taking place to ensure it will meet users' needs. If you would like to be involved in user testing, contact: **webfeedback@tpr.gov.uk**

Following the consultation, we will consider any representations made on the draft content and make any appropriate changes before laying the new code in Parliament. We will also be undertaking work to adjust guidance in relation to the new code.

Who is this consultation for?

We are interested to hear from pensions professionals who provide support and advice in relation to understanding and meeting the expectations we set in our COPs.

We value responses from trustees and managers of occupational and personal pension schemes and scheme managers, advisory boards and pension boards of public service pension schemes. We are also particularly interested to hear from non-professionals, such as member-nominated and lay trustees, and whether they find the new code easier to use and understand.

Responding to the consultation

We have provided forms for responses which you can complete electronically and submit to us. It is our strong preference that respondents use the forms which can be found at: www.tpr.gov.uk/en/document-library/consultations/new-code-of-practice. We can accept responses in other formats, but you should retain the same structure as the forms. You can send your response:

- by email to: newcodeofpractice@tpr.gov.uk
- by post to: **Nick Gannon**, Regulatory Policy, The Pensions Regulator, Napier House, Trafalgar Place, Brighton, BN1 4DW

Due to the current national lockdown, there may be a delay in postal communications and any responses arriving after the closing date may not be considered.

We may need to share any comments you send us within our own organisation or with other government bodies, including the Department for Work and Pensions (DWP). We may publish comments as part of our response to the consultation.

> If you want your comments to remain anonymous, please state this explicitly in your response. If you want your response to be confidential, please let us know and we will take the necessary steps to meet your request.

However, please be aware that, if we receive a formal request under the Freedom of Information Act, we may have to make your response available. When responding, please advise whether you are responding as an individual or on behalf of an organisation (and, if the latter, which organisation).

Closing date

This consultation document was published on **17 March 2021**. The closing date for responses is **26 May 2021**.

Government consultation principles

For the purposes of this consultation paper, we are following the government's consultation principles at: **www.gov.uk/government/publications/consultation-principles-guidance**

The key principles state that consultations should:

- be clear and concise
- have a purpose
- be informative
- be only part of a process of engagement
- last for a proportionate amount of time
- be targeted
- take account of the groups being consulted
- be agreed before publication
- facilitate scrutiny

2. Background

The governing bodies (see **section 5: Explanatory notes for other content**) for more information about our use of this term) of workplace pension schemes play a pivotal role in achieving good outcomes for savers. Running a pension scheme is an increasingly demanding task in an environment that is constantly changing and growing in complexity.

The DWP chose to transpose the changes from the second European Pensions Directive (IORP II) to UK legislation in the governance regulations. The governance regulations came into effect from 13 January 2019 and required us to change some of our existing COPs. They also required us to introduce new expectations in some areas, such as the introduction of an "effective system of governance". The new code addresses those requirements.

It is important to note that the governance regulations only transpose certain aspects of IORP II into UK law. Elements of IORP II that were not transposed are considered to already be present in UK law.

The governance regulations set out measures to improve the standards of governance across pension schemes. Good governance is key to a well-run scheme. With increased member engagement and the need to publish additional information about schemes, the public scrutiny of pension schemes and those running them will increase. Growing concerns about climate change and developments such as the pensions dashboards will also highlight the need for good scheme governance.

The landscape of pension saving has seen seismic changes over the past decade. The continuing shift from DB to DC accrual, the rise of master trusts, and success of automatic enrolment have each created new pressures on those governing pension schemes. The number of pension savers has increased massively, as have the standards expected of those running the schemes. Trustees and scheme managers need to have the right people, skills, structures and processes in place to facilitate scheme operations, enable effective and timely decisions, and to manage risks appropriately. Our COPs and guidance provide the support needed to be able to achieve this.

The purpose of codes of practice

Our COPs are not statements of the law, except in certain circumstances set out in legislation. Instead, our COPs set out our expectations for the conduct and practice of those who must meet the requirements set in pensions legislation.

In most cases there is no specific penalty for failing to follow a COP, or to meet the expectations set out in it. However, we may rely on COPs in legal proceedings as evidence that a requirement has not been met. In those situations, a court must take a COP into account when considering their verdict. Similarly, if we find grounds to issue an improvement or a compliance notice, they may be worded in relation to a COP issued by us.

3. The new code of practice

When assessing our COPs for changes needed to implement the governance regulations it became clear that they did not meet the current needs of schemes.

Several COPs are now out of date and there is duplication of content between COPs and guidance. Furthermore, the 15 COPs are not always easy to navigate, and the interactions between them and related guidance are not always apparent.

There is a clear need for our COPs to support modern scheme governance. To meet the needs of schemes and their advisers, our COPs must be easier to access, understand, and act upon. To address these issues, we have taken the decision to combine our existing COPs into the new code.

We have broken down the themes from our existing COPs to form shorter, topic-focused modules. Each module sets out our expectations in relation to a topic. Modules also link to related topics within the new code and, in time, to guidance and external sources.

Moving our existing COPs to the new code is a significant undertaking in terms of time and resource. We have therefore chosen to phase the transition. This phasing will allow a full reconsideration of our COPs and associated guidance. A project to review our guidance in line with the new code will start later in 2021. Phasing also allows additional time for the substantial work needed to redesign our website. We do not currently have an end-date for this work, instead we see the code as being a living product that will go through an ongoing process of review and amendment to reflect legislative and policy change.

This first phase of the new code comprises 51 modules. These represent the content of 10 of our existing COPs. By removing duplicated and unnecessary text, the new code is considerably shorter than the original content.

Our approach to the new code reflects the changes we have made as an organisation. It also recognises feedback from the pensions industry about the need for us to be clearer in setting our expectations.

Codes transposed

The table below sets out our existing COPs and shows which of them are being replaced by the new code.

Code of practice	Code in force	Part of new code
01: Reporting breaches of the law	April 2005	✓
02: Notifiable events	April 2005	×
03: Funding defined benefits	July 2014 (GB) July 2015 (NI)	×
04: Early leavers	May 2006	✓
05: Reporting of late payment of contributions to occupational pension schemes	September 2013	✓
06: Reporting of late payment of contributions to personal pension schemes	September 2013	✓
07: Trustee knowledge and understanding (TKU)	November 2009	✓
08: Member-nominated trustees/member-nominated directors – putting arrangements in place	November 2006	✓
09: Internal controls	November 2006	✓
10: Modification of subsisting rights	January 2007	×
11: Dispute resolution – reasonable periods	July 2008	✓
12: Circumstances in relation to the material detriment test	June 2009	×
13: Governance and administration of the occupational trust-based schemes providing money purchase benefits	July 2016	✓
14: Governance and administration of public service pension schemes	April 2015	✓
15: Authorisation and supervision of master trusts	October 2018	×

Once the new code comes into force, the COPs that are being replaced will be revoked in their entirety. Our expectation is that the remaining COPs will be brought into the new code in due course. We also intend to include planned revisions to existing COPs (such as the DB funding code) within the framework of the new code.

We have provided a reference table showing the transposition of existing COPs to the new code at: **www.tpr.gov.uk/en/document-library/consultations/new-code-of-practice/annex-2-where-the-new-code-of-practice-modules-come-from**

Regular updates

The regulations that will arise from the Pensions Schemes Act 2021 are a clear indication that the legislative landscape for pensions changes frequently. Natural changes to schemes as some reach maturity, and as provision shifts to new types of scheme, will also mean that our expectations will need to change and adapt. This means that the new code will also need to change and adapt to reflect the changing landscape. We believe the new code will be easier for us to maintain and update as required and we intend for the new code to have a predictable update cycle. This will provide governing bodies and advisers with a degree of predictability about future code revisions.

Although the new code may be simpler to update than older COPs, we will not deliver updates without warning. All changes to our COPs require consultation and Parliamentary approval before they come into force. These requirements will not change with the new code. Schemes and advisers will still have time to comment on, and adapt to, new expectations.

The Pensions Schemes Act 2021 has introduced new powers for us, a new scheme type, and will deliver regulations affecting transfers, and the way in which governing bodies consider climate change. Each of these is likely to introduce measures that will lead to new or updated code elements. We also have five existing COPs to transpose to the new code. We expect the first updates to the new code to include modules relating to DB scheme funding, arising from the recently closed consultation. There are no modules in the material in this consultation that draw from provisions in the Pension Schemes Act 2021. Necessary changes arising from the Act will arrive in later phases of the new code.

Questions about updates

1. We welcome any observations about a possible regular process for issuing updates to the new code. For example, should updates be annual, or at longer intervals? Please advise any concerns about regular updates.
2. We would also be interested to hear about any topics, besides those described above, that we should prioritise for inclusion in the new code.

Presentation of expectations

Our COPs set out the way we expect schemes to comply with the law in certain areas. This will continue to be the case in the new code.

We know from discussions with stakeholders that finding specific expectations in any of our current COPs is often difficult. Similarity, repetition and separation of COPs can potentially introduce conflicting expectations. All these factors can make it difficult for governing bodies to meet our expectations.

The new code takes a fresh approach to setting out our expectations and adopts a simpler method where most expectations now appear in lists. These lists separate legal duties and our expectations of how governing bodies should meet them. It is important to note that none of our codes cover all aspects of pensions legislation. Therefore, governing bodies should look beyond our codes, and seek the help of advisers, to help them understand all their legal obligations.

We have adopted government communication principles in our use of language to help users distinguish between legal duties and our expectations. In the new code, legal duties are shown by using the word 'must', whilst our expectations use 'should'. We use 'need' where there is no expectation or legal requirement in place, but that process is necessary to allow a scheme to operate. In some modules, we highlight expectations as a matter of best practice for certain schemes. We have also extensively rewritten the new code to make our expectations clearer.

Setting expectations in lists may tempt some to consider them to be tick-box governance requirements. This is not our intention, and we do not believe that governance should ever be tick-box. We believe that by clearly presenting our expectations we make it simpler for governing bodies to consider whether and how they are meeting them. The lists should prompt discussion and consideration of the processes and policies, and the assessment of whether they exist and are functioning as intended. The expectations in each list are typically set out sequentially. This allows users to progress through stages of a process in an ordered way. Governing bodies still have the freedom to choose to prioritise specific measures above others. This may be because some are more urgent or important. For example, prompt and accurate processing of contributions will probably have a higher priority in a large DC scheme than a small closed DB scheme. Whatever the focus of improvement work, governing bodies should always ensure that they comply with legislative requirements.

The format of the new code will also help us in any future regulatory interactions. We will remain a pragmatic regulator and the new code will help us to work with schemes where we identify matters that fall short of our expectations.

The new code will still provide flexibility for those running a scheme to operate in a way that is appropriate for the circumstances of their scheme. Certain scheme-specific circumstances may lead schemes to meet our expectations in a way not specified in the code.

Guidance

In time, the new code has the potential to bring our codes, guidance and the Trustee Toolkit together. However, full integration will require an audit and review of around 200 pieces of existing guidance, across various phases of new code development. This means there will be a period when the new code and guidance are not as closely related as will eventually be the case.

We have identified certain pieces of guidance that are immediately affected by the new code. This is particularly the case in respect of guidance that relates to specific paragraphs in a related COP. The redesign of these pieces of guidance is being prioritised to ensure they fit alongside the new code.

Our review of guidance will mean we will no longer have categories such as scope guidance or code-related guidance. All guidance will be readily distinguishable from the content of the new code. However, some guidance, such as that developed to assist employers with their automatic enrolment duties, will remain outside of the scope of this project.

Question about guidance

Which pieces of guidance, or topic areas, should be prioritised for updates following the introduction of the new code?

4. New governance expectations

The new code is largely a consolidation and re-presentation of the existing codes it replaces. One of the principal aims of the new code is for all schemes to be held to comparable standards when allowing for differences in the underlying legislation. The governance regulations have given us a much greater scope to set expectations around behaviours of running pension schemes. The scope of the governance regulations is not universal however, and our expectations of our regulated community are not uniform.

Governing bodies

Throughout the new code, we have used a new term to provide consistency when referring to the trustees or managers of occupational pension schemes, managers of personal pension schemes, and scheme managers and pension boards of public service schemes that we regulate.

The term we are using is ’the governing body’. The need for a single term was apparent from discussions with stakeholders. These revealed that using a single description, for example ‘trustee’, could disengage those who were not trustees. Similarly, using the full list of possible audiences, as above, is unwieldy when writing a concise code.

The roles and responsibilities of the various types of governing body should be understood by those performing them. Where there is any doubt in a scheme as to where a responsibility or accountability lies, the governing body should take steps to establish the position.

Within each module, we have attempted to ensure that any responsibility is clear to those on whom it falls. Governing bodies should then decide if they are within that audience. We particularly welcome comments to this consultation where applicability is not clear to the reader.

During the development of the new code we have received requests for a Local Government Pension Scheme (LGPS) specific version of the code. We have examined this request but, due to the various management structures that exist across the funds and their associated authorities it would be impractical to do so. Governing bodies of LGPS funds should consider their own governance arrangements and where responsibilities ultimately sit within them.

Governing bodies continued...

In schemes in the private sector, the same principles of delegation apply. Trustees or managers may delegate certain activities or functions to others, either employed by or providing services to the scheme. In each case, the accountability remains with the trustees or scheme manager.

Differences in legislation may lead to different expectations on certain schemes according to type or size. Some expectations, such as those associated with the DC chair's statement, are only applicable to specific audiences. Where there is only a single intended audience, we have used a specific term in the relevant module, for example 'the trustee', instead of 'the governing body'.

A table showing each module and those to whom it applies is in Appendix 1.

Question about governing bodies

Do you understand the term "governing body"? Would another term work better?

Effective systems of governance

One of our primary aims as a regulator has been to improve the governance of pension schemes. The governance regulations have introduced a new requirement for most occupational schemes to have and operate an effective system of governance. Without the code being in place, it is difficult for schemes to understand what our expectations might be.

In our efforts to establish what an effective system of governance might be, we reviewed a great deal of existing material that covered relevant topics. The scope of governance and the related regulations is broad. To provide governing bodies with a clear indication of our expectations in this area, we have created a module that provides links to sections of the new code that describe a minimum effective system of governance.

Schemes that do not need to operate an effective system of governance may still find they are subject to comparable legislation that requires them to follow expectations set out in certain various modules. Governing bodies of other schemes may wish to follow the principles of an effective system of governance as an example of best practice. The Systems of governance module provides a useful starting point for a thorough review of the processes and procedures of any scheme.

Question about effective systems of governance:

Is it clear where all the features of an effective system of governance are covered in code from the content of this module? If not, what needs to be clearer?

Internal controls

Perhaps the single most important aspect of establishing effective systems of governance is the fact that they hinge on internal controls. Most governing bodies are not directly involved in every aspect of the day-to-day operation of their scheme. They instead delegate operational tasks to an internal administration team or outsource to professional service providers. However, regardless of delegation, the governing body retains accountability for those functions. All governing bodies should have procedures for the operation of their scheme. Similarly, all governing bodies need policies and processes that give them assurance that all the functions of the scheme are operating correctly.

Internal controls are the policies, processes and procedures carried out in running the scheme. They are also the checks and balances that ensure those processes are operating correctly. Governing bodies can assure themselves that their scheme is operating correctly by having robust and measurable internal controls. Internal controls apply equally to services provided in-house and externally. Internal controls are also an important part of assessing and managing the risks that face a scheme.

It would be highly inadvisable, and almost impossible, to operate any scheme without internal controls. We believe almost all schemes will have some controls in place, even if they do not recognise them as such. However, it is likely that many schemes will not have the full suite of internal controls that we consider they should have.

To help governing bodies establish relevant internal controls, we have created several modules within the new code focusing on risk management and specific controls that should be in place. We do not go into the details of how any control should operate. It is for the governing body, and their advisers, to determine the most appropriate controls for their scheme and the adequacy and effectiveness of any control they implement.

Question about internal controls:

The expectations set out apply differently to different schemes. Is this clear from the module, and are governing bodies provided with enough leeway to address the expectations in the most appropriate way for their scheme?

Own risk assessment

The governance regulations introduce another new requirement for private sector schemes with 100 or more members. This is the introduction of the Own Risk Assessment (ORA). When transposing this requirement from IORP II, the UK chose to stop short of requiring the Solvency II type assessment of the scheme's finances originally proposed. Our interpretation of an ORA recognises that pension schemes face a wide range of risks, not just those related to investments.

The ORA we propose builds on the principles set out for the effective system of governance. The ORA is then a regular process that requires the governing body to assess the effectiveness and risks of the effective system of governance. This is distinct from the normal risk management processes for the scheme. The ORA is therefore a process for assessing the management of risks.

The ORA should not be perceived as an item of tick-box compliance, or an unnecessary burden. We propose the ORA as 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. The ORA is a tool to focus governing bodies on their policies, processes and procedures in a way they may not have done before.

The governance regulations do not require publication of the ORA, or for it to be sent to us. We do expect schemes to record their ORA, and the first such exercise may be a significant piece of work. Many schemes will already have broadly comparable review processes in place already, while others will have to expand their processes considerably. However, we accept that the circumstances of each scheme will affect the risks it faces. It is therefore possible for governing bodies to tailor their ORA according to the size, scale and complexity of their scheme.

Those schemes required to produce an ORA will have 12 months from the date the new code comes into force to document their first assessment. The ORA then becomes an annual process, or whenever there is a material change in the risks facing the scheme or its governance processes.

As with effective systems of governance, we have created a module that acts as an index for the elements we expect the ORA to consider.

Questions about own risk assessments:

1. Are there any improvements we could make to our suggested ORA that would make it more valuable for governing bodies?
2. Is the cycle suggested for the review and update of the ORA appropriate given the subjects that it covers?

5. Explanatory notes for other content

In this section we provide a rationale for new or amended expectations. As noted above, a key aim for the new code was to create a consistency in expectations between different schemes types. This is subject to the different legislative requirements placed on different schemes according to their type, nature or size.

We are responsible for the regulation of a wide range of different scheme types within the private and public sectors. Many schemes resist simple classification as they incorporate different benefit types. Several of our existing COPs focus on a specific scheme type. This meant it was easy to overlook expectations set in other COPs. For example, we are aware that some schemes with a 'dedicated' code were unaware that they should be following the provisions in the codes dealing with maintaining contributions. For all the differences between schemes, many expectations set across our COPs are very similar. This duplication of content created longer codes, reduced readability and risked creating inconsistency of expectation.

Although many of the expectations in the new code have come directly from the existing codes, we have taken the opportunity to ensure they are up-to-date and consistent. In some areas, this has meant we have needed to create new content and expectations, or we have broadened the scope of existing content to cover a larger number of schemes. Some wording may be recognisable as originating from a particular COP. This does not imply that it only applies to one type of scheme. It is simply us choosing the best existing form of words for that expectation.

Throughout the new code, we have sought to improve consistency and clarity where the same or comparable legal requirements exist. Acting in this way simplifies knowledge required for those working with more than one scheme. It also enables us, where necessary, to use our powers in an appropriate and timely fashion. The work to create the new code has not moved expectations away from their legal underpins. Nor are we expanding the scope of our regulatory remit. Some scheme types will still face different expectations because the law applies differently to those schemes. In time, it may be possible to filter modules so that only content directly applicable to the user's scheme is displayed.

There are some expectations that apply to only a subset of schemes. Where these might be useful for other schemes, we have suggested that they are adopted as best practice.

The table shown in Appendix 1 illustrates each module and its current audience. It also shows whether content is new to that audience or taken from an existing code.

Our expectations are set at a level we consider to be appropriate for any well-run scheme. They do not represent a gold standard or are not intentionally difficult to meet. It is important to repeat that most expectations set out in the new code already exist in our COPs. Unless an expectation is new, such as the ORA, schemes should already be meeting the provisions set out in the new code.

Public service schemes

COP 14 (Public service pensions) was published in April 2015 when we took on the responsibility of regulating public service schemes. Since then, these schemes have developed their practices significantly. They have made huge strides towards consistently delivering the governance we expect of them. Our understanding of public service schemes has also grown, and the creation of the new code provides us with an opportunity to update some of our expectations.

The new code seeks, wherever possible, to set comparable standards for schemes of all types. This is equally true of public service schemes. However, public service schemes do not have identical legislation to schemes in the private sector. Consequently, there is some divergence in the exact expectation we have placed on public service schemes. This is particularly true in the case of the modules dealing with internal controls, where the legislative standard is different. In practice, while this means that our expectations of the presence of controls is the same as for private sector schemes, their operation may be different.

As with other codes that dealt with a specific audience, the expectations we had for public service schemes in COP 14 are comparable to other types of schemes. Therefore, while the new code sets out expectations in a different way, we believe those expectations will be familiar to public service users.

Master trusts

Master trusts are directly authorised by us and need to keep us satisfied that they meet the criteria to be authorised. The framework for that authorisation is the relevant legislation, COP15 and associated guidance. The review of the authorisation process identified areas within COP15 that could have been clearer and therefore require some modification. We intend to transpose and update COP15 to the new code, but this is not happening in the current phase. Elements of the new code are relevant for master trusts and they should also continue to refer to COP15 until we transpose it to the new code.

Cyber security

One subset of internal controls receiving greater detail in the new code is that of cyber security. With most scheme records held digitally, the security and maintenance of scheme data has become a significant issue. Cyber security is a topic that we have already addressed in guidance. However, survey data indicates that cyber security processes are still rare. To ensure that more schemes address this pressing issue we have taken the opportunity to reinforce our guidance and place direct expectations on schemes. The expectations apply only to certain schemes, but we strongly encourage all schemes to adopt as many of the expectations as possible.

Environmental, social and governance (ESG)

Another area introduced to the new code is the stewardship of the scheme's investments. Attention has, in recent years, increasingly turned to the way schemes manage their money. It is no longer possible for schemes to seek returns from their investments without considering the social or environmental costs that they may facilitate. Pension schemes should seek to exercise the significant rights they have as shareholders and bondholders of their investee companies. Governance of investments, and an awareness of the activities of investee companies, will influence the financial returns of the scheme. Pension schemes have longer-term investment horizons than many other investors. As concerns about matters such as climate change and social responsibility grow, the long-term interests of scheme members will be served by governing bodies who are active stewards of their investments.

The new code introduces two modules that address matters in these areas. Stewardship focuses on the governance responsibilities that come with financial investments. The second module relates to climate change and the risks and opportunities it presents.

Financial transactions

As noted elsewhere, legislation sets different requirements for different scheme types. However, most of our expectations in a given area, such as financial transactions, are common to all. Regardless of whether they are DB, DC, or hybrid, all schemes need processes for handling financial transactions.

DC schemes are required by law to maintain processes around core financial transactions. We believe the principles that apply to DC schemes are equally valuable to all schemes and we have examined our ability to set comparable expectations on other schemes. Having satisfied ourselves that this is possible, the module on financial transactions contains expectations that apply to many more schemes.

Timescales

One of the functions of any of our COPs is to provide our interpretation of certain timescales set in legislation.

For example, various pieces of legislation require governing bodies to do things 'regularly'. Some regular events follow payrolls or investment cycles, others by valuations, annual accounts or external events. Where there is an obvious link of this sort, our intention has been to align our expectation of regularity with those cycles. Where there is no obvious operational link, we have typically set our expectation of a regular event to be annually.

Wherever possible, we have maintained the timescales set in existing COPs. This is so schemes that may be considering more pressing matters do not need to adjust established procedures. However, when developing the modules we have noted that certain timescales set out in in COPs 5 and 6 (maintaining contributions) were potentially harder to meet than had been intended when viewed as part of a procedure. We have therefore taken steps to amend them for consistency and to match current our operational expectations.

Northern Ireland

Pensions legislation in Northern Ireland (NI) is separate, but comparable, to that in Great Britain. The new code contains various references and links to legislation in Great Britain and legal references to NI legislation in the same footnotes as for the rest of the UK.

6. Equalities

As part of our regulatory work and business functions, TPR is subject to the Public Sector Equality Duty (PSED). The PSED ensures that public bodies have due regard to the needs of all individuals in their day-to-day work – in shaping policy, in delivering services, and in relation to their own employees.

The legislation relates to specific “protected characteristics” set out in the Equality Act 2010: disability, gender re-assignment, pregnancy and maternity, age, race, religion or belief, sex, and sexual orientation matters.

Question about equalities

We would be interested to understand if there are any aspects of our expectations that users think would discriminate against, disadvantage or present an additional or exceptional challenge to anyone with a protected characteristic.

7. Status of other consultations

The new code will continue to grow and adapt over time. Modules representing the content of the remaining five existing COPs will be added in future phases. The current DB funding code is already being revised and the modules that relate to that topic are expected to be ready for consultation at the end of 2021.

It is important to note that at this stage we are not adopting into the new code any of the findings from our recent consultation on the future of trusteeship. Events over the past year have delayed this work and it will be recommenced in due course.

We will also be adding content relating to the Pensions Schemes Act 2021, and other forthcoming legislation as it becomes ready. Future revisions may take the form of additional or updated modules, or a mixture of both. We will be consulting on future updates to the new code at the appropriate times.

8. Consultation questions

We are consulting on a significant revision to our existing COPs. We therefore want to give respondents every opportunity to comment on as much or as little of the code content as they wish to.

As well as the questions presented in this paper, we are also asking questions, listed below, which apply to every module. We do not expect respondents to answer each question for every module. We do not require any respondent to specify "no comment" to a question where they have no comment to make. Respondents can make comments about as many or as few modules as they wish.

The consultation covers only the content of the new code as presented online at: **www.tpr.gov.uk/en/document-library/consultations/new-code-of-practice**. We welcome general comments about the principles on which the new code is based. Space for general comments is provided at the end of **Response form 1: General questions about the new code of practice**.

The following questions are raised in relation to each module and are replicated in the relevant response forms.

Universal questions for each module

1. Is the title a fair reflection of the content provided within the module and, if not, what would be a clearer description of this content?
2. Is it clear from the module what our expectations are, and does this content provide governing bodies with a clear sense of how expectations may be applied to their scheme's own circumstances?
3. Has the subject matter of the module been covered in sufficient detail and is there any further information or guidance that would assist governing bodies in meeting our expectations?
4. Are there any expectations that may be considered a disproportionate and/or unreasonable burden for a well-run scheme, or for certain types of scheme or governing body?
5. Do you have any further comments on the module that have not been covered by the questions above?

There are specific questions in relation to the matters discussed in this consultation paper, which are restated below.

General questions

Updates

We welcome any observations about a possible regular process for issuing updates to the new code. For example, should updates be annual, or at longer intervals? Please advise us of any concerns about regular updates.

We would also be interested to hear about any topics, besides those described above, that we should prioritise for inclusion in the new code.

Guidance

Which pieces of guidance, or topic areas, should be prioritised for updates following the introduction of the new code?

Governing bodies

Do users understand the term “governing body”? Would another term work better?

Public Sector Equality Duty (PSED)

We would be interested to understand if there are any aspects of our expectations users think would discriminate against, disadvantage or present an additional or exceptional challenge to anyone with a protected characteristic.

If you need extra space when responding to these questions, or have any general comments to make, please use the space provided at the end of **Response form 1: General questions about the new code of practice**.

Module-specific questions

The following questions are in relation to specific modules in the code. Space to respond to these questions is provided at the appropriate point in the relevant response form.

Maintaining contributions (ADM008)

Are the timescales set out in this module appropriate with regards monitoring the payment of contributions?

Refunds (CAD016)

This module refers to the underlying legislation extensively. Does it provide enough information on the legislative requirements and our expectations?

Knowledge and understanding (TGB017 and TGB005)

The expectations in these modules are based on long-standing existing guidance. Do the expectations provide a new member of a governing body with sufficient knowledge and understanding to enable them to fulfil their role?

Effective systems of governance (TGB046)

Is it clear where all the features of an effective system of governance are covered in the code from the content of this module? If not, what needs to be clearer?

Internal controls (TGB032)

The expectations set out apply differently to different schemes. Is this clear from the module, and are governing bodies provided with enough leeway to address the expectations in the most appropriate way for their scheme?

Own risk assessment (TGB045)

Are there any improvements that we could make to our suggested ORA that would make it more valuable for governing bodies?

Is the cycle suggested for the review and update of the ORA appropriate given the subjects that it covers?

9. Impact assessment

The DWP[1] has estimated costs of complying with the changes to our codes of practice to align this with the requirements of IORP II. They considered the range of potentially acceptable methods of compliance that would apply to schemes of different size and complexity, as well as the extent to which relevant legislation or COPs already apply to different types of schemes.

They concluded that the UK was already largely compliant with IORP II and that transposition would not cause much additional burden on industry. They estimated costs were:

- £5.1 million in year 1
- £2.7 million every subsequent third year (years 4, 7, 10)

The estimated annual net direct cost to business over a policy period of 10 years is £1.3 million and so will qualify for self-certification.

In harmonising expectations between schemes, the new code goes further than the DWP had envisaged in its impact assessment. This may lead to higher than anticipated costs in year one as governing bodies become used to the expectations in the new code. However, we expect that these costs will be substantially mitigated in subsequent years by the new format of the code and its ease of use.

We will be liaising with the DWP following this consultation and may seek further external evidence to support our assessment of regulatory burden and Business Impact Target obligations under the Small Business, Enterprise and Employment Act 2015 in relation to the new code.

1 The DWP's impact assessment of the Occupational Pension Scheme (Governance) (Amendment) Regulations 2018 can be found at: http://www.legislation.gov.uk/uksi/2018/1103/pdfs/uksiod_20181103_en_001.pdf

Appendix 1

The table below provides an indication of the modules where users may find new content that relates to them. We have categorised this in terms of the main scheme types; defined benefit, defined contribution and public service. The legislative basis for each module may mean that it does not apply to certain schemes within that group.

Where a module is shown to contain "Existing" content, updates may still mean that new expectations are presented within the module, or that they are presented in a different way. Such changes are unlikely to be significant and will have been introduced for consistency. Similarly, some content marked as "New" will be existing content that is new to that audience. This is most obvious where it is shown to be existing content for other scheme types.

Modules marked with "DNA" do not apply to that audience. Modules showing "Best Practice" also do not apply to that audience, but consideration should be given to following them for best practice purposes.

The governing body					
		In relation to:			
Module number	Module title	DB	DC	PS	Comment
TGB001	Role of the governing body	New	Existing	Existing	
TGB014	Recruiting to the governing body	New	Existing	Existing	
TGB044	Member-nominated trustee appointments	Existing	Existing	DNA	
TGB015	Role of the chair	Existing	Existing	Existing	
TGB006	Meetings and decision-making	New	New	New	
TGB016	Remuneration policy	New	New	Best Practice	
TGB017	Working knowledge of pensions	Existing	Existing	Existing	
TGB005	Governance of knowledge and understanding	New	New	DNA	
TGB003	Building and maintaining knowledge	New	New	Existing	
TGB009	Value for members	DNA	Existing	DNA	
TGB010	Managing advisers and service providers	New	Existing	New	
TGB031	Identifying and assessing risks	Existing	Existing	Existing	

The governing body continued...					
		In relation to:			
Module number	**Module title**	**DB**	**DC**	**PS**	**Comment**
TGB032	Managing risk using internal controls	Existing	Existing	Existing	
TGB033	Assurance of governance and internal controls	Existing	Existing	Existing	New material on assurance
TGB022	Continuity planning	New	New	Best Practice	
TGB039	Conflicts of interest	Existing	Existing	Existing	
TGB045	Own risk assessment	New	New	DNA	
TGB046	Scheme governance	New	New	Existing	
Funding and investment					
FAI001	Investment governance	Existing	Existing	Best Practice	
FAI003	Investment decision-making	New	New	DNA	Based on current guidance
FAI004	Implementation report	New	New	DNA	

Funding and investment continued...					
		In relation to:			
Module number	Module title	DB	DC	PS	Comment
FAI005	Investment monitoring	New	New	Best Practice	
FAI006	Stewardship	New	New	DNA	
FAI011	Climate change	New	New	DNA	
FAI008	Statement of investment principles	New	New	DNA	
FAI010	Default arrangements and charge restrictions	DNA	Existing	DNA	
Administration					
ADM001	Administration	New	New	New	
ADM002	Financial transactions	New	New	New	
ADM014	Transfers	New	New	New	Based on current guidance
ADM003	Scheme records	New	New	New	
ADM006	Data monitoring	New	New	New	
ADM015	Maintenance of IT systems	New	New	New	

Administration continued...					
		In relation to:			
Module number	Module title	DB	DC	PS	Comment
ADM016	Cyber controls	New	New	New	Based on current guidance
ADM007	Receiving contributions	Existing	Existing	Existing	
ADM008	Monitoring contributions	Existing	Existing	Existing	
ADM011	Resolving overdue contributions	Existing	Existing	Existing	
Communications and disclosure					
CAD001	General principles for member communications	New	Existing	New	
CAD003	Statutory financial statements (DC)	DNA	Existing	DNA	
CAD011	Statutory financial statements (DB)	Existing	DNA	DNA	
CAD012	Statutory financial statements (PSPS)	DNA	DNA	Existing	
CAD004	Retirement risk warnings and guidance	DNA	Existing	DNA	
CAD016	Short service refunds/refunds of contributions	Existing	Existing	Existing	
CAD008	Chair's statement	DNA	Existing	DNA	

Communications and disclosure continued...					
		In relation to:			
Module number	Module title	DB	DC	PS	Comment
CAD005	Scams	New	Existing	New	
CAD010	Publishing information about public service pension schemes	DNA	DNA	Existing	
CAD014	Audit requirements	New	New	DNA	
CAD015	Dispute resolution procedures	Existing	Existing	Existing	
Reporting to TPR					
RTT001	Registrable information and scheme returns	New	Existing	New	
RTT003	Who must report	Existing	Existing	Existing	
RTT004	Decision to report	Existing	Existing	Existing	
RTT005	How to report	Existing	Existing	Existing	

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Consultation document: **The new code of practice**