One direction

Summary

- Phase one of TPR's plan to create a single 'supercode' sees 10 of its 15 codes consolidated into one, comprising 51 modules.
- Some previous guidance has been 'upgraded' into the new proposed code and it has a number of new requirements for trustees.
- Having just one code of practice removes the current duplication and conflicts of information between codes, and provides brevity. However, one code may also make accessing relevant information easily more difficult for trustees.
- The code is not expected to be finalised until later in the year, but preparation now is recommended.

Laura Blows looks at the regulator's efforts to create one single code of practice and what changes the proposed code will bring

The Pensions Regulator (TPR)'s plans to amalgamate its many codes of practices into one single 'supercode' has begun in earnest, with its consultation on its phase one draft set to close later this month.

Consolidation

Its plan to consolidate 15 current codes of practice into a single, shorter code first emerged in July 2019 in response to new requirements for scheme governance in the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018.

Phase one sees 10 of its 15 codes consolidated into one code of practice, comprising 51 modules, which, by removing "duplicated and unnecessary text", is considerably shorter than the original content, the regulator says. The single code currently runs at 149 pages, around half the length of all the current codes altogether.

The reason for undertaking this consolidation, TPR's consultation document states, is that when assessing its current codes of practice, "it became clear that they did not meet the current needs of schemes".

Several codes are now out of date and not always easy to navigate, it explains, and there is duplication of content between the codes and guidance the regulator provides.

"To meet the needs of schemes and their advisers, our codes of practice must be easier to access, understand, and act upon," the document adds.

TPR's executive director of regulatory policy, analysis and advice, David Fairs, expands on this, saying: "We want to provide governing bodies with a clear, simple-to-navigate source of information. The new code will see themes from our existing codes broken down to create shorter, topic-focused modules with our expectations set out."

Changes

This enterprise should not be dismissed as a pure consolidation exercise, however; there is plenty of new content for trustees to sink their teeth into. Forty per cent new content in fact, Baker McKenzie pensions partner, Chantal Thompson, states.

This mostly relates to governance changes flowing from the IORP II European Directive and the UK regulations that came into force from January 2019, she explains.

"These include requirements for 'key functions' to be identified, for trustees to conduct an own-risk assessment and for them to have a remuneration policy. There are also new expectations in the funding and investment modules of the code, and the regulator is expecting more to come in the areas of climate change and stewardship following the recent Pension Schemes Act 2021 developments, and it will be adding the DB funding code in once it's finalised."

According to Eversheds Sutherland pensions partner, Emma King: "Trustees shouldn't be under any illusion that the supercode is just a consolidation of existing guidance. It contains new requirements for trustees, some of which are quite onerous."

The one that is attracting a lot of attention is the requirement for trustees to undertake an annual own risk assessment, King highlights. "This is likely to be a major exercise. It also includes new elements such as the need to have a written remuneration policy – not just for the trustee board – but which covers everyone who 'runs' the scheme, so could capture in-house pension teams and even external advisers. The policy will also need to be published."

The introduction of an own risk assessment, a risk management function for boards and the introduction of a remuneration policy for trustees are some of the key changes in the code, Aon partner, Susan Hoare, agrees.

However, there are 51 modules and 27 of these include new requirements for DB pension schemes, 21 for DC pension schemes and 12 for public-sector pension schemes, she adds.

This could be attributed to some of the regulator's previous guidance being 'elevated' into the single code itself, "for example, in relation to cyber security measures to be taken by schemes", Thompson says.

But it's not only these requirements that is new about the code; there's a new regulator tone to contend with as well. While the consultation document does stress that its codes are not statements of the law, except in certain circumstances set out in legislation, the draft single code does sometimes read as such, Thompson notes.

"There are few statements that tend towards statements of the law even though not based on existing requirements, for example that 'no more than a fifth of a scheme's assets should be invested on unregulated markets'," she says.

This tone may be evidence of the regulator being 'clearer, quicker, tougher'. After all, it is TPR's ambition for the code to reflect this, Fairs says.

The consultation document states that its approach to the new code "reflects the changes we have made as an organisation" and recognises feedback from the pensions industry about the need to be clearer in setting out expectations.

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Pros and cons

The proposed new code providing information in a clearer format is only one of its benefits. "By consolidating 10 existing codes into one single code we lose a lot of the duplication that exists at the moment, where for example, an area like conflicts of interest is covered in more than one code of practice," Hoare says.

However, "in a drive towards brevity, some of the useful context and background of the current codes may need to be sacrificed, which could make the supercode more of a technical read," Dalriada Trustees, head of technical, research and policy, John Wilson, warns.

"It is undoubtedly helpful to have the 10 codes in one document, with the proposed format being such that the single code will be comparatively easier to navigate and digest," Eversheds Sutherland pensions partner, Stuart Earle, says.

"That said, having separate codes of practice did mean trustees could readily determine which were relevant to their particular scheme and refer to them accordingly based on the particular issue they were faced with. The move to one code means there will now need to be an element of 'unpicking' required to determine which aspects of the code apply to the particular type of scheme involved – particularly noting that public and private-sector schemes have now been brought together for the supercode."

This catering to both private and public schemes within the code has resulted in it using the term 'governing bodies' instead of 'trustees' – "which I think will take some getting used to", Hoare says.

"Also having the requirements for both *[public and private schemes]* in a single code does interrupt the flow of the document and make it more difficult for the reader to follow the requirements for their particular pension scheme," she adds.

The code may also be daunting for lay trustees, Wilson says, for them to be expected to be conversant with it under trustee knowledge and understanding (TKU) requirements. He asks: "For some schemes, will this be another driver towards the sole professional trustee structure?"

To drive down such concerns, Hoare would like to see more clarity on some of the key changes, such as own risk assessment and how this connects with existing requirements like integrated risk management. "Ideally the regulator would provide a template on what a good risk management plan looks like to make this clearer for schemes," she suggests.

Wilson would like to see clear navigation of the code. "At around 150 pages and with more codes to be incorporated, it seems likely that the pensions super code will match the *[300-page single]* mental capacity code in terms of length. We hope therefore that steps will be taken to facilitate navigation around the final code."

Another issue, mentioned in the consultation document, is that there will be a period when the new code and existing guidance will not as closely match, as will eventually be the case. Users will also need to be made aware that there will be separate guidance, Wilson adds.

"The code is ambitious but is clearly a bit of a work in progress and we do wonder whether the industry will require much more guidance, possibly including templates, in certain areas, particularly where there is new content," Thompson says.

Preparation

As there are kinks such as these still to sort, and the single code is only currently in draft phase, the temptation may be to hold off preparing for its requirements.

This approach is not recommended.

According to Earle, the new code will require a significant amount of work even for those schemes that can already be considered well-governed.

He predicts that the code will cause all governing bodies to review their existing internal controls and processes and assess where there are potentially gaps that require specific focus for the scheme. "In turn, this should support overall trustee knowledge and understanding as well as help to refresh risk registers and also provide a basis from which trustees can perhaps challenge the status quo of how a scheme has been managed to date," he adds.

Given the magnitude of some of the new governance requirements, King recommends that trustees should start to identify now how they will ensure they are able to comply.

In contrast, Thompson feels it is "a little early" for trustees to be engaging with code expectations, "given that we are expecting that the regulator will be receiving a lot of feedback".

However, she recommends that trustees should be "dusting off existing policies to see how fit for purpose they will be under the new regime". She highlights findings from a recent Baker McKenzie survey, which found that 12-18 months is the amount of time expected for trustees to comply with the code once it is finalised.

Getting any groundwork done now should only be beneficial, as there are more changes to come on the horizon.

The consultation document states that the new code has the potential to bring its codes, guidance and the Trustee Toolkit altogether, combining around 200 pieces of existing guidance.

Annual updates have also been mooted by the regulator, but, it stresses, will not be delivered without warning. However, changes every year could make the burden for schemes in keeping themselves updated could feel more onerous with a single code, Hoare warns.

But that's all in the future. For now the focus is on phase one of the code, with the consultation into its draft format closing on 26 May.

According to Fairs, "feedback so far has been positive, but we continue to welcome all responses. Providing feedback on the new code will help us make it as clear and usable as possible".

The regulator plans to start the process of laying the new code in parliament by late summer or early autumn, with the aim for the code to come into force at the end of the year.

Written by Laura Blows

TPR's corporate strategy

The Pensions Regulator (TPR) has also recently published a revised 15-year corporate strategy that sets out its blueprint of future pensions regulation.

The strategy sets out five 'priorities' that the regulator will "immediately start to deliver".

These include the primary goal of protecting pension savers' investments, which includes working to ensure DB schemes are funded and can continue to rely on the Pension Protection Fund (PPF), driving consolidation where it is in savers' best interests, quick intervention when contributions are not paid by employers, and protecting savers from scammers and cyber-related risks through collaboration with partner agencies.

The regulator will also work to ensure that savers get good value for their money through suitable investments and reasonable costs, efficient administration and working with regulatory partners to ensure good practice.

Alongside this, it will be publishing a discussion paper to assess value for money for savers.

Ensuring decisions made on behalf of savers is in their best interests was also outlined as a priority, with the regulator expecting increased transparency and increasing its focus on managing savers' exposure to economic risks.

Commenting on its strategy, TPR chief executive, Charles Counsell, says: "The pensions landscape is changing fast. Driven by automatic enrolment, pensions freedoms and the introduction of pensions dashboards, among a variety of other factors, change is likely to be our only constant.

"Our corporate strategy puts the saver at the heart of all that we do and sets out our ambition to enhance and protect savers' pensions now and in the future.

"It is grounded in analysis of pension savers and is designed to respond to their differing needs as well as changes in the pensions landscape that may shape their financial futures. The shift in the pensions landscape has affected savers differently and will continue to do so.

"The strategy therefore includes analysis of savers by generation; followed by an analysis of the key trends in the pensions landscape, before setting out TPR's five strategic priorities; security, value for money, scrutiny of decision making, embracing innovation and bold and effective regulation."

The final strategy was published in March and from this, TPR's corporate plan is set to be published later in 2021, providing the 'roadmap' for its actions over the next three years.