Summary

- The Pensions Regulator's consolidated and updated code, first announced in 2019, is expected to launch in autumn 2022.
- Although most of the code is not new, there are three new requirements that schemes will have to abide by.
- While many have been vocal on the potential challenges of the ORA, the new ESOG requirements may need to be addressed first.
- Schemes have been encouraged to prepare as well as they can ahead of the final code's publication.

Get your priorities straight

TPR's updated single code of practice is due to come into force in the autumn. Jack Gray looks at the new requirements, how they will impact the day-to-day governance operations of schemes and what trustees need to prioritise

Pension schemes and their trustees have had a multitude of new requirements thrust upon them over the past few years, and this year is no different. In the autumn, The Pensions Regulator (TPR) is expected to publish the final version of its single code of practice, which will update and consolidate the regulator's existing codes of practice. While there are new governance requirements for schemes to contend with, the aim is for the code to simplify and improve governance practices in the longer term.

TPR first announced its intention to consolidate its codes of practice in July 2019, with a consultation on the code published in March 2021.

"It's taken far longer than we had hoped," says TPR policy lead, Nick Gannon. "Admittedly, we didn't have global pandemic on the risk register when we started the project, so that's one of the major stumbling blocks.

"We've combined 10 codes of practice. Most of the expectations are existing expectations. In terms of the 'new new', there are probably three main areas."

The 'new new'

Although much of the code of practice will be made up of existing expectations, there are three key new requirements: The own risk assessment (ORA), effective systems of governance (ESOG) and remuneration policy. Gannon explains that the remuneration policy will be new for a lot of governing bodies and will focus on how they spend their money and the policies around that.

"We got a lot of feedback on that because that was new ground for us as well when we consulted," he continues. "That's one of the areas where it's fairly similar to what we consulted on, but we've rowed back on some of the more contentious issues."

Gannon notes that many were concerned that the ORA was a "big new thing" that was going to be a huge Solvency II exercise or internal risk assessment, but he assures that's not what the regulator has done.

Squire Patton Boggs partner, Kate Bailey, states that for most well-run schemes, day-to-day governance is likely to be refined and improved, with more scrutiny on processes and procedures.

"For schemes with less governance practices in place, the code is likely to drastically improve the standards of governance," she continues. "The aim is to ultimately improve member outcomes, by helping trustees identify any issues or areas of concern sooner, so they can take remedial action and prevent more serious issues from arising."

Meanwhile, Russell Investments director, UK institutional, Owen Davies, warns that the three main new requirements are expected to be a "significant amount" of additional work for trustee boards.

"Trustees and their advisers will need to ensure that the new single code of practice – and the obligations which come out of it – are given sufficient time and resources in the coming months so they can demonstrate compliance with it once it becomes effective," he states.

Preparing for the challenges

Despite much of the focus in the build up to the updated code being on the ORA, schemes should focus on getting their ESOG in place first, with Gannon noting that if schemes do their ORA before their ESOG they are "putting the cart before the horse".

"You'll probably have a year/18 months to worry about completing the first ORA," he says. "That's not the immediate thing to worry about, make sure your governance is effective and you're following the principles set out in the code."

LCP partner, Rachika Cooray, echoes this sentiment, stating that while trustees may feel overwhelmed by the code's new requirements alongside their other duties, the ORA should not pose "too much of a challenge" for schemes with an engaged governing body and strong governance processes.

"Schemes should first complete a gap analysis of their governance policies and frameworks against ESOG in the code and then formulate a plan to address any gaps," she comments. "Once this is done, it will be easier for schemes to then complete the ORA."

> **"*[The ORA]* is not the immediate thing to worry about, make sure your governance is effective and you're following the principles set out in the code"**

"Schemes may wish to prioritise putting in place policies and procedures where they currently have none," adds Bailey. "However, in practice we're finding that a mixture of tackling some 'easy wins' and some more complex policies, whilst distributing the order of priority between the allocated advisers so there are no 'blockages', keeps compliance projects moving."

Ross Trustees trustee director, Clare Kember, agrees that trustees should prioritise gap analysis, but warns that whilst many schemes will already have robust governance frameworks in place, some may struggle to identify any gaps in their existing policies, processes and procedures, or close those gaps, without some form of additional support.

"Strong schemes are underpinned by strong governance, which should be proportionate to the size and complexity of the scheme," she continues. "However, some may find challenge in establishing what is 'proportionate' in the code, and instead adopt a belt-and-braces approach, setting them up well for the future as regulatory requirements are likely to evolve."

Bailey says that while the biggest challenge facing schemes is fitting compliance into an already packed agenda, leaving it late will pile on the pressure.

"The code contains 51 modules and reviewing existing policies and drafting new policies and procedures, will be time consuming," she says. "Another key challenge will be establishing the scheme's internal control framework, and in particular what the risk management and internal audit function will look like."

Assuaging concerns

"If you're in an existing well-run scheme, then there's very little to fear from the new code," Gannon assures. "Admittedly there is a few new policies that you need to have documents, but once they have got that initial bump, there nothing really new for a well-run scheme."

Those with good existing governance structures should be less burdened by the new requirements, with Davies noting that there has been an industry-wide focus on good governance in recent years and that trustees need to ensure they can rise to the challenge.

"For many smaller schemes, the additional costs associated with complying with the new single code of practice could be another reason to review what their end game options look like over the medium to long term," he adds.

With the code expected in the autumn, Gannon notes that TPR is still on the finishing touches as "we want to make sure it's right".

"Concentrate on getting your ESOG in place and plan for the improvements you need to do," he urges. "We are a pragmatic regulator, so if it's going to take you a little while to get things in place then plan for it so you understand what the process is you're working towards. Then it's easier for those improvements to come in."

Written by Jack Gray