



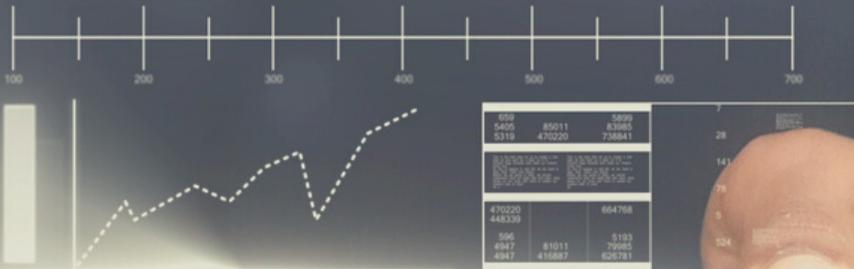
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## DEVELOPMENTS IN OCCUPATIONAL PENSIONS

**JANUARY 2022**

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# Our Pensions OVERVIEW



## JANUARY: IT'S TIME FOR RESOLUTIONS

During 2022, possibly more than ever before, trustees and employers of pension schemes are required to have a long list of resolutions.

We want to help them to make sure nothing is missing and support them so that at the end of the year their list is all ticked.

For this reason, we have created the table below which contains new requirements, when these requirements become effective and the resolutions trustees and employers should write in their list to fulfil these requirements.



Equalise  
GMP  
asap



7.1.22  
Submit  
statement



31.3.22  
Submit  
Scheme Return



31.3.22  
Certify  
contingent assets



31.3.22  
Certify asset backed  
contribution certificate



6.4.22  
Notifiable  
events regime

1.6.22  
Stronger nudge  
to pensions  
guidance

Summer 2022  
New single code

Summer 2022  
Revised funding code

1.8.22  
New CMP  
schemes



Summer 2022  
ESG

Summer 2022  
Decision  
RPI/CPIH

2022/23  
Dashboard

2022/23  
Value for  
members

Now and 2028  
NMPA

REQUIREMENTS	EFFECTIVENESS	TRUSTEES/EMPLOYERS' RESOLUTIONS
Guaranteed minimum pension Equalisation ( <b>GMPE</b> )	As soon as possible	There is no deadline to comply with GMPE but the expected guidance has now been issued and there is a general expectation for trustees to equalise GMP as soon as possible.
Competition and Markets Authority ( <b>CMA</b> )	7 January 2022	You should have now submitted to the CMA, the Trustees' statement of compliance with their <u>Order</u> .
Certify asset backed contribution certificate to the Pension Protection Fund ( <b>PPF</b> ).	31 March 2022	Trustees that certify asset backed contribution value, payments and s179 amounts can use this <u>form</u> from the PPF.

<p>Submit scheme return to the Pensions Regulator (the <b>Regulator</b>).</p>	<p>31 March 2022</p>	<p>There are some new questions for DB-only and hybrid schemes this year, and the scheme return will also be issued in two parts:</p> <ul style="list-style-type: none"> <li>• Part 1 contains new questions and will be completed in a separate online form.</li> <li>• Part 2 contains the rest of the questions and will be completed in Exchange as usual.</li> </ul> <p>See information from the Regulator <a href="#">here</a>.</p>
<p>Certify contingent assets via the Regulator's Exchange system for your next PPF levy invoice.</p>	<p>31 March 2022</p>	<p>If the Regulator has previously recognised contingent assets in your PPF levy calculation, you'll still need to recertify them on Exchange every year but you won't need to provide all the hard-copy documents. However, if the asset is a guarantee that will reduce your levy by £100,000 or more then you'll need to provide a guarantor strength report every year.</p>
<p>Draft regulation to extend notifiable events regime.</p>	<p>Expected to come into force on 6 April 2022</p>	<p>Employers are to notify the Regulator if the following new events are triggered:</p> <ol style="list-style-type: none"> <li>1- the intended sale by an employer of a material proportion of its business or assets, in respect of which a decision in principle has been reached.</li> <li>2- a decision in principle by an employer to grant or extend certain security over its assets which will be ranked above the pension scheme on an insolvency.</li> </ol>
<p>Member communications</p> <p>A stronger nudge to pensions guidance</p>	<p>1 June 2022</p>	<p>Trustees or managers of a trust-based occupational or personal pension scheme that provide money purchase benefits must, from 1 June 2022, offer to make a Pension Wise appointment for any member aged 50 or over (or a survivor) with accrued rights to flexible benefits who applies to:</p> <ul style="list-style-type: none"> <li>• transfer their accrued rights; or</li> <li>• start receiving scheme benefits.</li> </ul>

		<p>Where an appointment can't be made at a suitable date or time, trustees must provide the saver with details on how to make an appointment for themselves.</p> <p>Trustees and managers must not proceed with the application if the member has not received appropriate pensions guidance or opted out of receiving such guidance.</p>
The new single code of practice from the Regulator	Expected Summer 2022	<p>Trustees are required to familiarise with the new requirements and review their internal policies, processes and procedures to make sure they comply with the new single code of practice.</p> <p>If you want to find out more click <a href="#">here</a>.</p>
Revised funding code of practice	Late summer 2022 for the second consultation.	<p>Trustees and employers to keep an eye on developments.</p> <p>If you want to find out more click <a href="#">here</a>.</p>
Collective money purchase schemes, a new type of pension scheme in the UK.	The Collective Money Purchase Schemes Regulations 2022 are expected to come into force on 1 August 2022.	<p>Trustees and employers can find out more on these new schemes by clicking on this <a href="#">link</a> about the consultation from DWP.</p>
Environmental, Social and Governance ( <b>ESG</b> ) module in the new single code of practice	Summer 2022	<p>The new single code of practice includes a module on climate change (<a href="#">link</a>) which demonstrates that ESG, including climate change, will remain a hot topic this year.</p> <p>Trustees should make sure to add discussion and review of ESG in their agenda.</p> <p>Some trustees who are subject to the Climate Change Governance and Reporting Regulations have to comply with governance and disclosure requirements in line with the new recommendations set out by the Task Force on Climate-related Financial Disclosures (<b>TCFD</b>).</p> <p>Click <a href="#">here</a> to read more.</p>

Decision to switch from RPI to CPIH has been challenged	Summer 2022	<p>The trustees of the BT, Ford and Marks and Spencer pension schemes have challenged the decision to replace the retail price index (<b>RPI</b>) with the consumer price index including housing costs (<b>CPIH</b>) as they believe the switch will considerably decrease members' benefits.</p> <p>The hearing of their application is expected to take place in summer 2022.</p> <p>Both trustees and employers may be affected by the decision.</p>
Governance and reporting of climate-related risks and opportunities guidance (link)	1 October 2022	<p>The guidance is aimed at schemes which have to comply with the TCFD reporting and governance requirements. This will be extended to schemes with assets of 1 billion or more from 1 October 2022.</p> <p>The trustees of these schemes must meet the requirements of the climate regulations, and must have regard to the <a href="#">DWP's statutory guidance</a> in doing so.</p>
Pension dashboard	2022/2023	<p>Trustees should start thinking about:</p> <ul style="list-style-type: none"> <li>i. data quality assessment and cleansing; and</li> <li>ii. explore options for connecting to dashboards.</li> </ul>
Value for Members ( <b>VFM</b> ) defined contributions ( <b>DC</b> ) schemes only	2022/2023	<p>The new VFM requirement set by the Government (click <a href="#">here</a> for more info) may translate in an increased number of consolidation of small DC schemes.</p> <p>Trustees of relevant schemes (schemes with total assets under £100 million which have been operating for 3 or more years) have to consider this requirement, check when the assessment is due, and add this matter in their next agenda.</p>

Normal Minimum Pension Age ( <b>NMPA</b> ) increased	6 April 2028	Although the NMPA will increase from 55 to 57 in 2028, trustees may decide to write to their members to make them aware of this change. Trustees may also wish to seek legal advice where needed to confirm the position and to discuss whether any amendments are needed to the rules to reflect the forthcoming change in NMPA.
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### How HPW can help you

Please get in touch with us if you need any support.

We would be happy to discuss any requirements with you to make sure you are aware of your obligations and the timescale to comply with them and to support you with anything you may need.



## MORE CLARITY ON GMPE NEW PASA GUIDANCE ON MEMBER COMMUNICATIONS, HISTORIC TRANSFERS AND ANTI-FRANKING

It has been more than three years since the Lloyds case which required schemes to equalise for the effect of GMP. These years have been characterised by uncertainties on how to undertake this project.

The Pensions Administration Standards Association (PASA), following Lloyds case number 1 in 2018, has set up working groups to help schemes with GMPE and issued three new important pieces of guidance on member communications, historic transfers and anti-franking.

### **PASA GMPE communications Guidance**

One of the biggest challenges of GMPE is how to communicate something quite technical to scheme members in a simple and clear way.

In August 2020, PASA published the GMP Communications Guidance - Early Planning Stage guidance.

In September 2021, one year on from the Early Planning Stage guidance, PASA published the GMP Communications - Implementation Stage guidance designed to help schemes during the implementation stage of their GMPE journey.

The two main messages the Guidance seems to put forward are that schemes must:

- plan their communications to members efficiently, allowing sufficient time to plan and check everything; and
- keep communications effective and simple.



Where we are  
**TODAY**

### **PASA GMPE Transfer Payments Guidance**

The purpose of this Guidance published in August 2021 is to assist pension schemes and their advisers to equalise historic transfers and is divided into the following three sections:

- 1-role of transferring schemes in individual transfers;
- 2-role of receiving schemes in individual transfers; and
- 3-bulk transfers.

### **PASA GMPE Anti-franking Guidance**

To add some complexity to the already challenging GMPE, there is also the anti-franking test to consider.

#### **What is anti-franking?**

The purpose of anti-franking is to ensure that, except in limited circumstances, the revaluation applied to GMPs in deferment cannot be offset against a member's other benefits.

Anti-franking applies directly to members who leave before normal pension age and then retire at normal pension age, and to members who leave active service at or over normal pension age (subject to certain additional conditions set out in the Pension Schemes Act 1993). However, the preservation requirements for members taking early or late retirement to receive benefits at least equal in value to those they would have received had they retired at normal pension age, means it may have an indirect effect on other members as well.





## GOOD “VALUE FOR MEMBERS” OR WIND-UP

The Occupational Pension Scheme (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021 (the 2021 Regulations) has introduced the following two new requirements for trustees and managers of relevant occupational pension schemes:

- 1- to calculate and state the return on investments from their default and self-selected funds, net of transaction costs and charges; and
- 2- to demonstrate that their schemes deliver value for members (VFM).

Both the statutory guidance (the Statutory Guidance) and the Pensions Regulator’s value for money guidance (the TPR VFM Guidance) offer a support to trustees and managers of relevant occupational pensions schemes dealing with these new requirements.

### **Reporting net investment returns**

The 2021 Regulations require that, from 1 October 2021, trustees of all relevant pension schemes<sup>[1]</sup>, no matter what their asset size is, are required to calculate and state the return on investments from their default and self-selected funds, net of transaction costs and charges.

Trustees must record this information in their annual chair’s statement and publish it on a publicly accessible website.

The aim of this requirement is to help members understand how their investments are performing. The Statutory Guidance suggests how information could be displayed for different member age groups and different charging structures and includes useful examples.

<sup>[1]</sup> A ‘relevant scheme’ is defined by Regulation 1(2) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996. This definition includes most schemes that provide money purchase benefits while excluding defined benefit schemes.

## VFM assessment

For each scheme year ending after 31 December 2021, trustees of relevant schemes with a total asset under £100 million (known as specified schemes), which have been operating for 3 or more years, must demonstrate that their schemes deliver VFM.

If they are unable to demonstrate this, they need to consider winding up their scheme and transferring their members to a different scheme that provides good value for members.

To demonstrate that their schemes deliver VFM, trustees of relevant schemes have to carry out an assessment which must involve a comparison against three other schemes.

We have set out below a road map to help the trustees of a specified scheme navigating through this new requirement.

I am a trustee or a manager of a specified scheme. I need to carry out a VFM assessment.

The assessment must involve:

- 1- a comparison of reported costs and charges and fund performance (net investment returns) with 3 other schemes; and
- 2- a consideration of key governance and administration criteria.

I must:

- 1- include and explain the outcome of my VFM assessment in my annual chair's statement for the first scheme year ending after 31 December 2021;
- 2- report the outcome of my VFM to TPR via the annual scheme return; and
- 3- publish it on a publicly available website.

When I complete the VFM assessment I need to take into account the following factors:

- costs and charges;
- net investment returns; and
- administration and Governance.

If my scheme does not provide good VFM, I need to look to wind up my scheme and transfer the rights of my members into a larger occupational pension scheme or personal pension scheme or set out an immediate action to make improvements to my scheme.

### The three broad factors

When trustees of specified schemes complete the VFM assessment, they need to consider the:

- costs and charges assessed relatively, based on comparison with at least three other pension schemes;
- net investment returns assessed relatively, based on comparison with at least three other pension schemes; and
- administration and Governance assessed on an absolute basis within the pension scheme itself.

In accordance with the Statutory Guidance, for the purposes of assessing costs and charges and net investment returns, each specified scheme must compare itself with three “comparison schemes” which should be:

1. an occupational pension scheme which on the relevant date<sup>[2]</sup> has total assets of £100m or more;  
or
2. a personal pension scheme which is not investment regulated under the Finance Act 2004.

The 2021 Regulations also require that trustees of specified schemes have had discussions with at least one of the comparator schemes about a potential transfer of the members’ rights if the specified scheme is wound up.

TPR publishes an updated list of authorised master trust schemes that trustees of specified schemes may want to consider when choosing comparison schemes. However, trustees are free to select their own comparison schemes.

Differently from the costs and charges and the net investment returns, the administration and governance assessment does not require a comparison.



[2]A relevant date is the date on which the trustees obtained audited accounts for the scheme year that ended most recently.

However, for the VFM assessment, the Administration Regulations (as amended by the 2021 Regulations) lists the following 7 key metrics that must be considered and assessed:

1. **Promptness and accuracy of core financial transactions:** trustees should have effective methods to control the risk of delays and inaccuracies in processing financial transactions and reconcile and rectify errors.
2. **Quality of the records kept by the trustees or managers:** trustees should have reliable, accurate, secure data and processes in place to review records in order to deliver value for scheme members.
3. **Appropriateness of the default investment strategy:** including the quality of decision making and governance in relation to the strategy.
4. **Quality of investment governance:** trustees have responsibility for securing the proper management of the scheme's assets and good scheme investment governance.
5. **Level of trustee knowledge and understanding and skills to operate the scheme effectively:** to demonstrate compliance with the new requirement, trustees should include reference to (i) whether sufficient time is spent running the scheme, (ii) diversity of the trustee board, (iii) quality of leadership and effectiveness of board decision making (iv) trustee continuous learning and development and (v) quality of working relationship with employer and third parties.
6. **Quality of communication with the members:** trustees have to demonstrate their compliance with statutory obligations and explain the quality and timeliness of information in various areas.
7. **Effectiveness of the management of any conflicts of interest:** pension schemes should have a conflict of interests policy and controls in place to ensure conflicts are correctly declared.

The Statutory Guidance is clear that, trustees of schemes that do not provide good VFM, need to look to wind up their schemes and transfer the rights of their members into a larger occupational pension scheme or personal pension scheme or set out an immediate action to make improvements to their schemes.



**How HPW can help you**

The government's expectation is that members should rely on a well-run scheme that delivers optimal VFM over the long term.

If this is not achievable, members should be expected to be transferred to a different scheme which can offer this optimal VFM.

HPW can help you in different ways.

- *Understanding the new requirements in this area*

We can explain to you the background and the legislative requirements. We can make sure you understand your duties and comply with them.

- *Net investment returns & VFM assessment*

We can guide you through all the requirements to complete your net investment returns and your VFM assessment and we can make sure this is done in the most efficient way.

- *Improvement or consolidation*

If, after completing your VFM assessment, you believe that you are not able to offer VFM, we can help you set out an immediate action to make improvements to your scheme or, alternatively, winding up your scheme and transfer the rights of your members into a larger occupational pension scheme or personal pension scheme that can offer good VFM.



## NEW GUIDANCE FROM THE REGULATOR ON HOW TO HALT SUSPICIOUS TRANSFERS

The Pensions Regulator (TPR) has published Guidance for trustees, pension managers and administrators on checking, proceeding with and refusing transfer requests from scheme members.

From 30 November 2021, as part of the due diligence process for transfer requests, both trustees and scheme managers have the duty to make specific checks before dealing with transfers. The checks to be carried out will determine which conditions apply to the transfer and whether a statutory transfer can proceed.

### First condition: The receiving scheme is listed in the transfer regulations

Is the receiving scheme one of the following:

- a public service pension scheme (schemes established by a public authority for civil servants, armed forces, health service workers, teachers, judiciary, police, firefighters and local government workers)
- an authorised master trust on TPR's published list
- a collective defined contribution (CDC) scheme that has obtained authorisation and is included on the list which TPR will publish?

If, beyond reasonable doubt, the receiving scheme is one of those listed above, the transfer can proceed without any further checks.

The member must receive confirmation that the receiving scheme is one of the types described above no later than the date at which it is confirmed to the member that the transfer has been made.

### Second condition: Check for an employment link, overseas residency and red and amber flags

Where the receiving scheme is not one of those described in the first condition, it must be considered whether the second condition is met. This may require further checks to assess the level of risk to the member. It may be the case that, from previous checks on the receiving scheme, it is concluded that the transfer is low risk and therefore the second condition is met.

The table below lists the red and amber flags mentioned in the Guidance.

The Guidance contains useful paragraphs on:

1. how to collect relevant information;
2. how to carry out due diligence;
3. how to direct members to mandatory guidance from MoneyHelper; and
4. when to refuse a transfer.

The Guidance also includes the helpful "Transfer process decision" tree to aid decision-making on the various checks.

RED FLAGS	AMBER FLAGS
<ul style="list-style-type: none"> <li>• The member has failed to provide the required information</li> <li>• The member has not provided evidence of receiving MoneyHelper guidance</li> <li>• Someone carried out a regulated activity without the right regulatory status</li> <li>• The member requested a transfer after unsolicited contact</li> <li>• The member has been offered an incentive to make the transfer</li> <li>• The member has been pressured to make the transfer</li> </ul>	<ul style="list-style-type: none"> <li>• The member hasn't shown an employment link or overseas residency</li> <li>• The member can't show an employment link or overseas residency</li> <li>• High-risk or unregulated investments are included in the scheme</li> <li>• The scheme charges are unclear or high</li> <li>• The scheme's investment structure is unclear, complex or unorthodox</li> <li>• Overseas investments are included in the scheme</li> <li>• A sharp, unusual rise in transfers involving the same scheme or adviser</li> </ul>

## PENSION SCHEMES ACT 2021: NEW PROTECTIONS FOR SCHEMES

### Key elements of the new Act

The Pension Schemes Act 2021, which amends the Pensions Act 2004, provides the following new powers to the Pensions Regulator (TPR).

#### Criminal sanctions

New criminal offences include:

- Failure to comply with a contribution notice – punishable by an unlimited fine.
- Avoidance of an employer debt (i.e. under section 75 of the Pensions Act 1995) – punishable by an unlimited fine and/or up to seven years in prison.
- Conduct risking accrued scheme benefits – punishable by an unlimited fine and/or up to seven years in prison.

In September 2021, to help people understand the Regulator's new powers and duties, TPR published a new criminal offences policy which provides guidance on how the new criminal offences of 'avoidance of employer debt' or 'conduct risking accrued scheme benefits' are investigated and prosecuted.

This policy:

- describes the new offences, and the elements that make up each offence, who they can apply to, and TPR's approach to 'reasonable excuse';
- set out the relevance of clearance statements to these offences, and
- identify other TPR publications that may be of interest to readers.

The policy also includes three appendices that:

- compare the offences to contribution notices (CNs) and to the financial penalties in sections 58C and 58D;
- describe the Regulator's approach to some common behaviours and activities; and
- contain a case study where the contents of this policy are applied to a fictional set of facts.

#### Civil sanctions

As an alternative to criminal sanctions being enforced as outlined above, the Regulator will have power to impose a civil penalty of up to £1 million. This type of penalty can also be imposed where a person knowingly or recklessly provides the Regulator, or trustees in certain circumstances, "with information which is false or misleading in a material particular".

### Criminal sanctions Did you know?

**Reasonable excuse – the three factors TPR would generally consider "significant"**

When assessing whether a person has a reasonable excuse for the act or course of conduct, there are three factors that will generally be "significant":

- 1-Detriment to the scheme: how incidental the detriment was to the act or omission;
- 2-Mitigation: the adequacy of any mitigation provided to offset the detrimental impact; and
- 3-Viable alternative: if mitigation was not provided or was inadequate, whether there was a viable alternative which would have avoided or reduced the detrimental impact.

#### Additional factors

The Regulator may consider these additional factors as part of their decision on whether it begins or continues a criminal investigation, including:

- the extent of communication and consultation with the scheme trustees before the act took place
- whether the person complied with any statutory duty to notify the Regulator of certain events affecting the scheme, and
- where the Regulator was engaged, the extent of the openness and timeliness of communication.

### Information-gathering powers

These powers have also been extended to include wider powers to inspect premises and to require trustees, scheme employers, professional advisers (and any other relevant person) to attend an interview. Failure to attend an interview or to answer a question will also be a criminal offence, punishable by an unlimited fine.

In September 2021 the Regulator issued a consultation document containing a draft policy which explains the Regulatory approach to the information-gathering powers.

The draft policy:

- states that the Regulator will be able to compel individuals to attend an interview;
- states that the Regulator will be able to carry out inspections of relevant premises to collect information relevant to their anti-avoidance powers;
- explains what tools are available to the Regulator and how they will engage with those involved; and
- outlines the options for enforcement action for failure to comply, including the Regulator's approach to the new fixed and escalating penalty powers.

### Notifiable events

Section 69 of the Pensions Act 2004 requires trustees and employers to notify the Regulator of prescribed events and the government extends the type of events that trustees and employers are required to notify the Regulator about.

The Government has recently run a consultation on Notifiable Events which closed in October 2021 which seeks views from the industry on the proposed draft regulations and seek views on any impacts.

Details of the new notifiable events will be set out in regulations but are expected to include:

- the sale of a material proportion of the business or assets of a sponsoring employer which has funding responsibility for at least 20% of a DB scheme's liabilities, and
- the granting of security on a debt to give it priority over a DB scheme.

Notifications to the Regulator will generally need to be made as soon as reasonably practicable after the sponsoring employer becomes aware of the event. An accompanying statement must also cover how any detriment to the scheme resulting from the event is to be mitigated, and a description of any communication with the scheme trustees. Breach of the new events (or failure to provide an accompanying statement) without reasonable excuse will be punishable by a civil penalty of up to £1 million.



## SINGLE CODE OF PRACTICE – ALL THE INFORMATION IN ONE CLICK

The transformation should happen around summer 2022 when the existing 15 codes of practice from the Regulator will be transformed into only one new online code which provides all the information on scheme governance and management.

The hope is to create a clearer and more accessible single code of practice.

The full draft of the new code of practice is available [here](#):

The Regulator held a consultation from March to May 2021 and the responses provided challenges and ideas with an extensive range of views from different areas of the pensions industry.

The majority of the requirements introduced by the code apply to schemes with 100 or more members. However, it is essential that also schemes with fewer than 100 members have an effective system of governance in place which is proportionate to their size, nature, scale and complexity of activities.

David Fairs, TPR's Executive Director of Regulatory Policy, Analysis and Advice, said: "I'm confident the feedback received during our new code consultation will help ensure the final version provides a clear, up-to-date and consistent source of information on scheme governance."

The new code has the potential to bring together codes, guidance and the Trustee Toolkit. The table below shows which codes of practice are being replaced by the new code.

No	Code of practice	Code in force	Part of new code
1	Reporting breaches of the law	April 2005	✓
2	Notifiable events	April 2005	x
3	Funding defined benefits	July 2014 (GB) July 2015 (NI)	x
4	Early leavers	May 2006	✓
5	Reporting of late payment of contributions to occupational pension schemes	September 2013	✓
6	Reporting of late payment of contributions to personal pension schemes	September 2013	✓
7	Trustee knowledge and understanding (TKU)	November 2009	✓
8	Member-nominated trustees/member-nominated directors – putting arrangements in place	November 2006	✓
9	Internal controls	November 2006	✓
10	Modification of subsisting rights	January 2007	x
11	Dispute resolution – reasonable periods	July 2008	✓
12	Circumstances in relation to the material detriment test	June 2009	x
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	x



### **Expectations, requirements or statements of the law?**

It's important to bear in mind that the codes of practice set out TPR's expectations for the conduct and practice of those who must meet the requirements set in pensions legislation but they are not statements of the law, except in certain circumstances set out in legislation.

However, even though in most cases there is not a specific penalty for failing to follow a code of practice, TPR may rely on codes of practice in legal proceedings as evidence that a requirement has not been met and the court must take a code of practice into account when considering their verdict.

### **Governing bodies**

The new code is addressed to various pension professionals and, to provide consistency, a new term has been used: governing bodies. This new term groups trustees or managers of occupational pension schemes, managers of personal pension schemes, and scheme managers and pension boards of public service schemes.

However, as some expectations are applicable only to specific audiences (for example the trustees) and not the generic "governing bodies", the code also uses the specific term when relevant.

We have listed below the different areas introduced or receiving greater detail in the new code.

#### **1-Internal control – Own risk assessment (ORA)**

There is no secret, a well-run scheme is a scheme with robust internal controls.

Policies, processes and procedures (that together form the internal control of a scheme) that work correctly and are regularly checked and adjusted to the changing needs are a guarantee for smooth running of a scheme.

If yours is a private sector scheme with 100 or more members, you, as a governing body, have the new requirement to carry out and document an ORA.

#### **What is an ORA?**

The ORA will identify the key governance risks facing your scheme and the governing body need to use the findings:

- In the management of your scheme and the decision-making processes;
- to adjust existing processes and procedures or create new ones; and
- to identify the areas of work that you need to undertake.

## Areas covered by the ORA

The Regulator requires that the governing body carries out an ORA that is proportionate to the size, nature and complexity of its scheme. The areas that should be covered when carrying out an ORA are set out below.

### Documentation

The governing body should:

- ensure the ORA is in writing
- provide the ORA documentation to all members of the governing body
- ensure the ORA documentation is available on request
- make sure the chair of the governing body signs off the ORA.

The governing body should record:

- the date on which the ORA has been prepared
- the date on which the next ORA will be prepared
- details of any interim reviews or updates that the governing body has carried out or plans to carry out.

The ORA documentation should cover:

- how the governing body has assessed the effectiveness of each of the policies and procedures covered by the ORA
- whether the governing body considers the operation of the policies and procedures to be effective and why.

The Regulator states that, to meet their expectations, the ORA should consider the effectiveness of, and risks arising from, each element listed below.

### Policies for the governing body

How the governing body is integrating risk assessment and mitigation into the management and decision-making processes.

The operation of policies relating to the:

- role of the governing body;
- building and maintaining knowledge; and
- governance of knowledge and understanding.

### Risk management policies

- The operation of policies to identify and assess risks facing the scheme.
- Continuity planning for the scheme and, where applicable, how it has performed.
- The internal control policies and procedures for the scheme.
- Management of potential internal conflicts of interest, and those with participating employers and service providers.
- The prevention of conflicts of interest where the employer and governing body use the same service provider.

**Investment**

- The scheme's investment governance processes.
- How investment performance is reviewed and monitored.
- How the governing body assesses investment risks relating to climate change, the use of resources and the environment.
- How the governing body assesses social risks to the scheme's investments.
- How the governing body considers the potential for depreciation of assets arising from regulatory or societal change.
- How the governing body assesses the protection mechanisms available to the scheme, including how these might apply and the risks of them not functioning as intended.
- How the governing body ensures the security of assets and their liquidity when they are required.
- How the governing body assesses the protection of member benefits in the event of the insolvency of a sponsoring or participating employer, or a decision to discontinue the scheme.

**Additional investment matters for DB schemes**

- How the governing body assesses the scheme's funding needs with reference to its recovery plan.
- How the governing body assesses the specific risks relating to the indexation of benefits provided by the scheme.

**Administration**

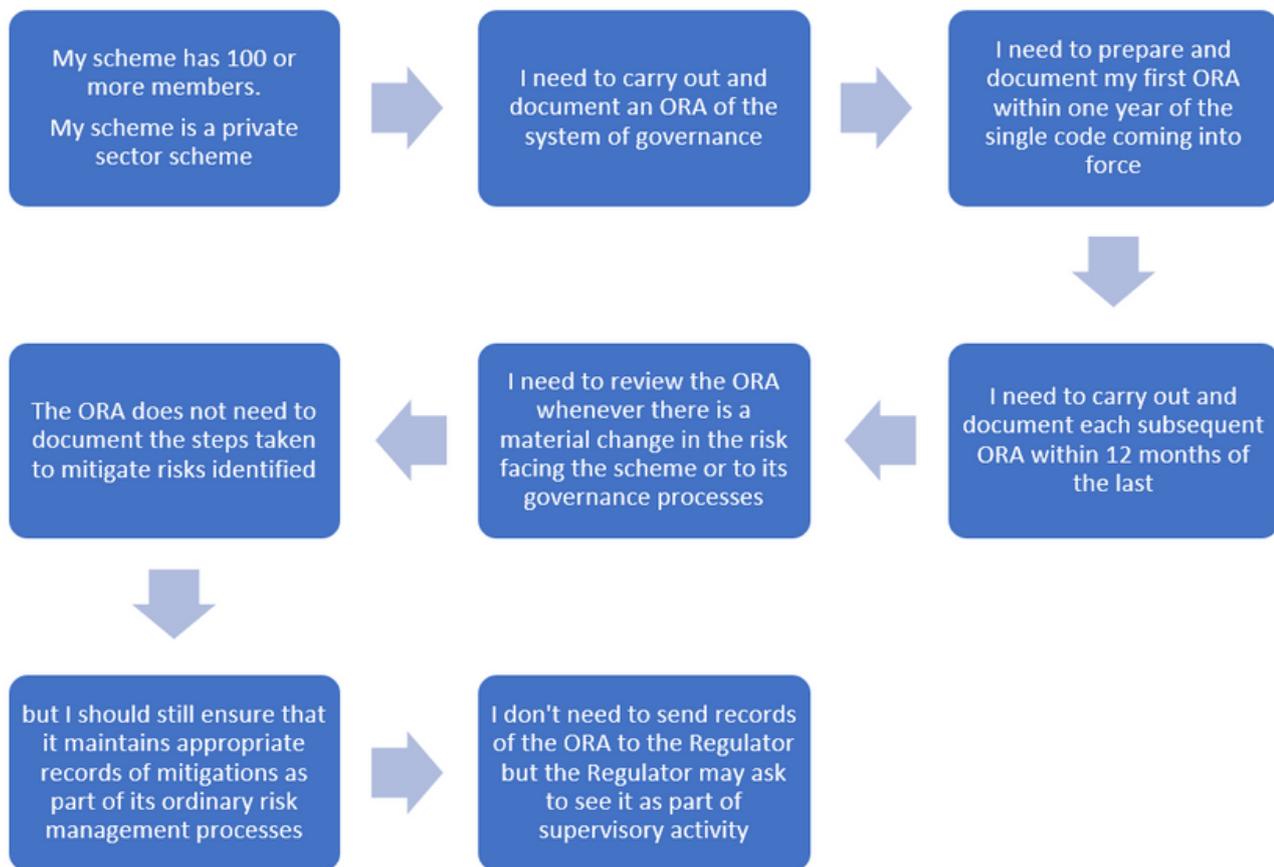
- How the governing body assesses the risks associated with the scheme's administration with particular reference to financial transactions, scheme records and receiving contributions.
- Action the governing body takes to manage overdue contributions considering the degree to which they represent material amounts or delays.

**Payment of benefits, where applicable**

- How the governing body assesses operational risks, focusing on the risk to members and beneficiaries relating to record-keeping and payment of benefits.
- The governing body's management of risks relating to circumstances where accrued pension benefits may be reduced, under which conditions and by whom.
- The governing body's management of the risk of member benefits being reduced or altered, including on the insolvency of a sponsoring or participating employer or the cessation of the scheme.



We have also set out below a chart which we hope will help you to navigate this new requirement.



## 2- Cyber security

Cyber security is a topic already addressed by the Regulator but the single code now places direct expectations on security and maintenance of scheme data.

The expectations will apply only to certain schemes (yet to be determined), but the Regulator strongly encourages all schemes to adopt as many of the expectations as possible.

## 3- Environmental, social and governance (ESG)

As concern about climate change and social responsibility grow, the new code introduces the following two modules that address matters in these areas:

- 1- Stewardship focuses on the governance responsibilities that come with financial investments; and
- 2- climate change and the risks and opportunities it presents.

## 4- Financial transactions

The new code also introduces a new module on financial transactions which contains expectations that apply to defined benefit, money purchase (defined contribution), or hybrid schemes.

The new code is not in force yet but, if you want to have a look at the early version, please [click here](#).



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