

# **Review of the Trustee Knowledge and Understanding (TKU) code of practice (code of practice 7) and scope guidance**

**October 2008**

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## Introduction

This consultation is on a review of the first issue of the<sup>1</sup> Trustee Knowledge and Understanding (TKU) code of practice and scope guidance issued by the Pensions Regulator in accordance with the Pensions Act 2004<sup>2</sup>.

The code of practice came into force in May 2006 and we undertook to review it after two years. The scope guidance has been available since 2005. It was appropriate to review it after three years although, in practice, we have found that it has stood the test of time. It is, however, fundamental to the Trustee Knowledge and Understanding (TKU) requirements and it is appropriate that it should be refreshed to reflect changes in regulation, legislation, the market place and the focus of the regulator.

Those with the greatest interest in this consultation document will be lay trustees, individual and corporate, of all types of occupational pension schemes. Schemes' advisers and independent trustees will also be interested, particularly those who currently offer learning provision to trustees. In addition, we anticipate that it will be of interest to all training providers and examination institutes who are involved in this area of Trustee Knowledge and Understanding.

We are grateful for the input we have received from trustees, professional advisers, administrators (internal and third party), pension providers and independent trustees during the preparation of the refreshed documents which we believe has enhanced the quality and the usefulness of the work.

**It is important to emphasise that the original scope guidance covered what it was that trustees needed to know and understand and that those requirements have not changed and are very unlikely to change except to the extent mentioned above.**

Since the launch of the TKU requirements it has been well understood that there is no expectation that trustees should take on the mantle of an expert. This remains the case. The intention is unchanged and it is to enable trustees to understand the advice they are given by their professional advisers, enter into a discussion on that advice and genuinely reach their own decisions.

However, this review has given us the opportunity to consider carefully the DWP-led deregulatory review<sup>3</sup>, undertaken during 2007, which recommended the TKU requirements ought to apply not to individual trustees but to the whole board.

Neither the DWP nor the regulator was minded to seek to amend the legislation at that time and ministers rejected the notion in December 2007<sup>4</sup>.

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1 Pensions Act 2004 s91(12)

2 See s90(2)(f) of the Pensions Act 2004 with its cross referral to ss 247-248

3 Deregulatory Review of Private Pensions, An independent report to the Department for Work and Pensions, July 2007

4 Deregulatory Review – Response to Consultation, 5 December 2007

The Government did, however, consider whether there may be misconceptions about the existing requirement for Trustee Knowledge and Understanding and undertook to work with the regulator to examine how best to put right these misconceptions.

However, the regulator's experience of TKU during 2008 is that trustees themselves do understand the TKU requirements and find them reasonable. In the light of this particular recommendation in the deregulation review, the question was raised in the independent research which the regulator commissioned to evaluate its e-learning programme ([www.trusteetoolkit.com](http://www.trusteetoolkit.com)). Trustees confirmed that the TKU regime should apply to every trustee rather than to the board as a whole<sup>5</sup>.

*'No trustee reported simply relying on 'experts' on their boards, but they recognised that having depth of expertise across the board was very important.'*

Nonetheless, in the process of conducting this review and with deregulation in mind, the regulator concluded that there was a need to reconsider the scope guidance with regard to trustees of very small schemes. While schemes with fewer than 12 members are exempt<sup>6</sup>, occupational DC schemes with 12-99 members are included. This is the group for which the regulator has developed much reduced scope guidance, which we are publishing as part of this consultation.

Note that there are now three documents entitled '*Guidance on the scope of the TKU requirements (scope guidance)*', which sit alongside the code and on which the regulator wishes to consult:

- a full version for defined benefit (DB) schemes, all of which we believe will have a defined contribution (DC) arrangement associated with them;
- a separate and shorter document for trustees of defined contribution schemes, where there is no defined benefit element;
- the new and much reduced scope document for the benefit of trustees of small (12-99 members) fully insured DC schemes.

It is in this guidance that the regulator sets out what it is that trustees need to know and understand. Each document is designed to be appropriate to a different group of trustees defined by scheme size and type. Meanwhile the code sets out how it should be used in a way which is appropriate for the scheme in question.

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5 IQ Research Ltd: Trustee toolkit research: A report of the findings ([www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk))

6 Occupational Pensions Schemes (Trustee knowledge and understanding) Regulations 2006

## Background

### The legal requirement on the Pensions Regulator

The Pensions Act 2004 places a requirement on the Pensions Regulator to issue a code of practice relating to the obligations for trustees to acquire the necessary knowledge and understanding of pension schemes and conversance with their own scheme documents.

### Experience of TKU to date

Both the code and scope guidance have been well received and have significantly influenced the delivery of effective learning to trustees across the industry. In addition to the comment above, the NAPF has also noted the change that has been effected throughout the industry:<sup>7</sup>

*'Trustee knowledge and understanding: On the core issue of effective decision making, there appears to have been significant progress. There has been a step change in trustees' knowledge and the effectiveness of their investment decision making' (NAPF).*

Meanwhile, AON Consulting sought the views of trustees on the matter:<sup>8</sup>

*'...92% (of pension scheme trustees) think that the greater trustee knowledge and understanding (TKU) requirements are reasonable,'*

The regulator's own governance surveys<sup>9</sup> have confirmed the link in trustees' minds between governance and training and its perceptions tracker surveys<sup>10</sup> have consistently demonstrated the high regard in which the TKU regime is held in the industry.

We know that professional advisers and industry trainers are using elements in our scope guidance as the core of their training sessions for trustees. In addition, they are relying heavily upon the foundation indicative syllabus which the regulator prepared, based on the scope guidance, for the Pension Management Institute's Awards in Trusteeship. It appears that the step change we intended has indeed taken place and regular learning is now a vital part of the fabric of life for pension scheme trustees.

The regulator has also set the standard at which learning should be delivered by means of its own free e-learning programme, [www.trusteetoolkit.com](http://www.trusteetoolkit.com). While the contents of the relevant scope guidance is mandatory for trustees, the toolkit is not the only way of acquiring the knowledge and understanding required. Nonetheless, it is free, available and accessible and has become the recognised basis upon which a programme of advanced and scheme specific learning can be built for those trustees who need it.

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7 NAPF: Institutional Investment in the UK: six years on, November 2007

8 Aon Consulting: Hard Miles Rewarded: Defined Benefit Pensions: The Trustee View 2008

9 <http://www.thepensionsregulator.gov.uk/pdf/finalGovernanceSurveyJuly2007.pdf>

10 <http://www.thepensionsregulator.gov.uk/pdf/perceptionsTracker2007.pdf>

## The changes we propose

Because this is emphatically not an exercise in raising the bar for trustees, we have kept changes to both the code and to the scope to a minimum. Nonetheless, we and our industry consultees felt that there were useful changes that could be made to each and most of those changes are in response to industry suggestion.

The changes we propose to the code will:

- remove the transition arrangements;
- remove scope unit headings, to avoid confusion for small DC schemes and to enable the regulator to make minor amendments much more simply and quickly;
- include reference to the trustee toolkit in the recommendations for achieving the knowledge and understanding required now that it is fully built, available and has been evaluated;
- strengthen the importance of delivering effective learning of the right standard for trustees, including putting an onus on those who deliver training to be able to certify that delegates have participated and demonstrated understanding in that process;
- include the use that the regulator will make of the TKU regime to check that trustees with whom they are in contact do, in fact, know and understand enough to deal effectively with any difficulty arising;
- tidy up the wording and remove repetition.

The ordering of the DC scope guidance has been amended to make it more user-friendly, and the new scope guidance for small fully insured DC schemes is consistent with the larger DC scope guidance.

We have taken the opportunity to ensure that the scope guidance reflects all matters which have been the subject of codes of practice or guidance from the regulator since the scope documents were first written. Most topics found a place in the original version since they were already matters of concern to the professionals and trustees who drew it up, as well as to us at the regulator. This means that, as well as tidying up and re-ordering the documents, we have made other changes to reflect (or reflect more specifically):

- the importance of good administration;
- a reference to the forthcoming Personal Accounts regime
- developments in investments over recent years;
- the importance of the employer covenant and trustees' understanding of their powers;
- buyout issues (including abandonment and inducements);
- a new emphasis on the importance of recognising the possibility of wind-up where appropriate and being aware of sensible preparatory steps.

We do not consider that these amendments will involve the industry in any extra commitments of time or cost.

This document should be read in conjunction with the following draft documents which are being published at the same time and on which the regulator is also inviting comments.

- The draft code of practice
- The draft revised guidance on the scope of the TKU requirements (scope guidance) for trustees of DB schemes with DC arrangements
- The draft revised guidance on the scope of the TKU requirements (scope guidance) for trustees of DC schemes
- The draft revised guidance on the scope of the TKU requirements (scope guidance) for trustees of small fully insured DC schemes

## Responding to the regulator

The regulator is particularly interested to hear views on the following issues.

### The draft revised code of practice

1. The legislation requires that knowledge, understanding and conversance should be 'appropriate for the purposes of enabling the individual properly to exercise his functions as trustee of any relevant scheme'<sup>11</sup>. In response to our consultation on the first issue of the code of practice in 2005, we gave examples of what knowledge, understanding and conversance might be 'appropriate' in particular circumstances. Are there any other examples which have arisen in your work which would be useful for further illustration of appropriateness?
2. Since the publication of the first issue of the code of practice the delivery of learning in the industry has become generally more participative and the regulator, in particular, has published its e-learning programme ([www.trusteetoolkit.com](http://www.trusteetoolkit.com)). We have amended the references to learning delivery in this draft revised code. Do you think that this matter has been adequately addressed?
3. Again, on the matter of learning delivery, there are implicit demands on those who carry this out which are not new to the draft revised code. They include:
  - the importance of finding a way to check out the level of knowledge and understanding of delegates before the session starts;
  - the active participation of delegates;
  - the importance of allowing delegates to demonstrate their understanding of the matters in hand (formally or informally);
  - the facility to offer certification to delegates regarding their attendance, their participation and their increased knowledge and understanding (whether formally or informally demonstrated).

To what extent are these requirements being met and is there more the regulator could do to help those who deliver learning to achieve them?

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11 Pensions Act 2004 (s247 (5))

## Scope guidance

4. The draft revised scope guidance includes reference to wind-up because of the increased interest of the regulator in schemes in wind up and because it is clear that schemes in wind up are covered by the TKU requirements. We have, additionally, published three modules on wind-up on our toolkit site. On the other hand, most trustees do not come across wind-up and it is therefore not appropriate for most trustees to concern themselves unduly with it. Has wind-up been covered adequately?
5. Similarly, we have included reference both to buy-in and buyout in the scope guidance because of increased regulator interest in those areas. Have we handled these topics adequately?
6. Do you think that it will help trustees of very small schemes to have a much reduced scope and have we got the requirements for them about right?
  - Might there be a cost benefit in producing a reduced toolkit for those trustees which will be fully aligned with the new, reduced TKU requirements?
  - If you have experience of these very small schemes (12-99 members) could you contribute ideas about how to reach the trustees of those schemes?
7. While we included administration in the first issue scope guidance, we have laid increased stress on it in the draft revised scope guidance in response to requests from those in administration in the industry and to reflect the regulator's increased interest in administration. However, administration sits slightly uneasily within the regime because it is a matter of 'doing' rather than 'knowing and understanding'. Are we right to strengthen the reference to administration on the face of the scope guidance document and have we approached it correctly?
8. We have lost the direct read across from the DB/DC scope to the DC only scope to make the latter more user friendly for trustees of exclusively DC schemes. Do you agree that this is more helpful for DC only trustees and is therefore worth doing?
9. We have given more prominence to the employer covenant in the draft revised scope guidance than was the case in the first issue. This also reflects the increasing interest of the regulator in the employer covenant for DB schemes. Is there too much on this issue, too little or about the right amount?
10. At the request of the industry we have included mention of Personal Accounts and the issue of qualification for existing schemes under that regime. In current circumstances, where details remain to be settled, would you agree that we have got this about right and would you like to see amendments as matters are decided?

**Note:** It would be very helpful if, when responding to this to this consultation document in general or to our questions in particular, you could indicate:

- what experience you have had with the TKU regime;
- whether you are a trustee, and, if not, what contact you have with lay trustees;
- your experience of delivering learning especially since the implementation of the TKU regime in June 2006 (whether using the toolkit or not).

### **How to respond to the regulator**

By email to:

kate.gerrard@thepensionsregulator.gov.uk

*(We would prefer documents to be in Word format)*

By post to:

The Regulated Community Learning Team

The Pensions Regulator

Napier House

Trafalgar Place

Brighton

BN1 4DW

We may need to share the feedback you send us within our own organisation or with other government bodies. We may also publish this feedback as part of our response to the discussion paper. If you wish your comments to remain anonymous, please state this explicitly in your response.

If you wish your response to be kept confidential, please make this known and we will take the necessary steps to meet your request. However, please be aware that, should we receive a formal request under Freedom of Information legislation, we may be required 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).

We would be grateful to receive any comments that you may have by 31 December 2008.

**Draft revised code  
of practice No. 7  
Trustee Knowledge and Understanding (TKU)**

**October 2008**  
Consultation edition

**The Pensions Regulator’s code of practice**

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## At a glance

The regulator's regime for trustee knowledge and understanding (TKU) consists of this code of practice and the documents '*Guidance on the scope of the TKU requirements (scope guidance)*', which are published separately. The regime is designed to enable trustees to:

- increase their own confidence in their ability to carry out their roles;
- know about their powers as well as their duties and responsibilities;
- understand their own schemes, how they work and, in the case of defined benefit (DB) schemes, the importance of the employer covenant;
- understand the advice they are given, enter into discussion with their advisers and participate fully in decision making;
- be able to question or even challenge advice when the need arises;
- recognise when they need to consult their own or other advisers for particular specialist advice or when they need to consider reselection;
- develop a regime for the proper governance of their schemes;
- have a working knowledge of their own schemes' governing trust documentation and other important scheme documents;
- select a face to face or distance learning regime which is delivered with both the requirements of the TKU regime and the precise needs of the individual trustee in mind.

This code is designed to help trustees by setting out:

- to whom the code applies and those schemes for whom the regulator does not think that this code is appropriate;
- what is meant by knowledge and understanding in the legislation;
- what is the scope of the knowledge and understanding requirements and how much time new trustees are allowed in order to complete the learning;
- how trustees might approach the task of determining the elements of knowledge and understanding which are appropriate for them;
- how trustees might acquire the knowledge and understanding they need and how they might satisfy themselves that they have done so;
- how they might update their knowledge and understanding;
- which are the scheme documents with which trustees are required to be conversant and what is meant by conversance in this context;
- how trustees might become conversant with those documents and how they might satisfy themselves that they have done so;
- how trustees might be sure that they remain conversant with scheme documents which may be amended from time to time.

The regulator recognises that much learning is delivered by scheme professionals and by training professionals to boards of trustees and in open access programmes. Provision should reflect in full the requirements of the code. The regulator's own e-learning programme is free and has been developed to do this and to meet the needs of all trustees, whether or not they have access to other learning. This code sets out the circumstances in which further learning may be required over and above that set out in the scope guidance.

## **Introduction**

1. Codes of practice are issued by the Pensions Regulator, the body that regulates work-based pension arrangements (occupational pension schemes and certain aspects of stakeholder and other personal pensions). The Pensions Regulator is required by section 90(2)(f) of the Pensions Act 2004 to issue this code.
2. The Pensions Regulator's statutory objectives include protecting the benefits of pension scheme members, reducing the risk of calls on the Pension Protection Fund, and promoting the good administration of work-based pension schemes.
3. The Pensions Regulator has a number of regulatory tools, including issuing codes of practice, to enable it to meet its objectives. The Pensions Regulator will target its resources on those areas where members' benefits are at greatest risk.
4. Codes of practice provide practical guidelines on the requirements of pensions legislation and set out the standards of conduct and practice expected of those who must meet these requirements. The intention is that the standards set out in the code are consistent with how a well-run pension scheme would choose to meet its legal obligations.

## **The status of codes of practice**

5. Codes of practice are not statements of the law and there is no penalty for failing to comply with them. Nevertheless, codes have legal effect; they must be taken into account by the regulator, a court or tribunal, if they are relevant to what is being decided.
6. Consequently, while any alternative approach to that which appears in the code will need to meet the underlying legal requirements, it is not necessary for all the provisions of a code of practice to be followed in every circumstance.
7. This is one of a number of codes of practice issued by the Pensions Regulator. The purpose of this code is to provide practical guidelines on what knowledge and understanding is required by trustees under the legislation, and to set out the scheme documents with which trustees are required to be conversant.

## **Other relevant codes**

8. This code sets out the requirement for trustees to have knowledge and understanding of those matters included in the 'Guidance on the scope of the trustee knowledge and understanding requirements (scope guidance)', That scope guidance should be read in conjunction with this code and includes reference to all the codes of practice and guidance issued by the regulator. All codes of practice are therefore relevant. Several codes also specifically make clear that trustees are expected to have knowledge and understanding in the particular area in question.

## **Northern Ireland**

In this code of practice, references to the law that applies in Great Britain should be taken to include corresponding legislation in Northern Ireland. The appendix in this code lists the corresponding references.

## **The code of practice on trustee knowledge and understanding (TKU)**

### **Application and readership**

9. This code, together with the scope guidance, applies to all trustees, individual and corporate, of all occupational schemes (including those stakeholder pension schemes set up under trust) with the exception of trustees of small schemes of fewer than 12 members, either where all members are trustees and are equal decision makers or where all trustees are directors of a company which is the sole trustee, and all directors are equal decision makers<sup>1</sup>.
10. Where there are overseas trustees of schemes in the UK, the provisions of this code apply in the same way as they apply to trustees based in the UK.
11. The code also applies to trustees of group schemes (eg centralised schemes, industry-wide schemes and multi-employer schemes). Their learning needs will include those set out in this code and the scope guidance but are likely to exceed them.
12. This code is commended to a wider readership comprising employers who sponsor schemes, scheme advisers, fund managers and administrators, scheme members, and training and examination providers who are interested in this area of trustee knowledge and understanding.

### **The legislative requirements for individual trustees**

13. Legislation dealing with the trustee knowledge and understanding requirements<sup>2</sup> states that individual trustees of an occupational pension scheme must have appropriate knowledge and understanding of the law relating to pensions and trusts, the principles relating to the funding of occupational pension schemes (DB only) and the investment of the assets of such schemes. There is also, within the legislation, an opportunity to prescribe other matters for trustee knowledge and understanding although none is envisaged at present.
14. The degree of knowledge and understanding required is that appropriate for the purposes of enabling the individual properly to exercise the function in question.
15. Individual trustees must also be conversant with their own scheme related documents. These are described as the trust deed and rules of the scheme, any statement of investment principles and the most recently prepared statement of funding principles (DB only).
16. Individual trustees must also be conversant with any other document recording current policy relating to the administration of the scheme generally. The requirement to be conversant with scheme documents is dealt with in paragraphs 61–76 of this code.

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1 See The Occupational Pension Schemes (Trustees' Knowledge and Understanding) Regulations 2006

2 See section 247 of the Pensions Act 2004

17. For the purposes of this code, being conversant with documents is taken to mean having a working knowledge of those documents such that the trustees are able to use them effectively when they are required to do so in the course of carrying out their duties as a trustee of a scheme.

### **The legislative requirements for corporate trustees**

18. Any individual who exercises a function in relation to the scheme as a director of the trustee company is required to have knowledge and understanding of the same matters, as if they were individual members of a trustee board, ie pensions and trust law, and the principles relating to funding and investment<sup>3</sup>.
19. This will apply whether the corporate trustee is:
- a corporation formed to act as a professional trustee for any number of pension schemes;
  - a corporation formed only for the purpose of acting as a trustee of a particular pension scheme; or
  - a company (eg the sponsoring employer) acting as the scheme trustee.
20. Exactly the same arrangements will cover the requirement to be conversant with scheme documents.
21. In this document the word 'trustee' is taken to include directors of a corporate trustee board.

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3 See section 248 of the Pensions Act 2004

## **The scope of the body of knowledge and understanding**

22. The scope of knowledge and understanding that is required under the legislation is set out as a list of items in the scope guidance which is published by the regulator and may be found on the regulator's website ([www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk))
23. There are three versions of the scope guidance, which are published separately. One is for defined benefit (DB) schemes with defined contribution (DC) arrangements, on the basis that all DB schemes have such arrangements (eg DC sections, additional voluntary contributions (AVCs)). The second is for schemes which are exclusively DC and the third is for fully insured DC schemes with 12-99 members. The last of these represents a much reduced scope.

## **Applying the scope to individual circumstances**

24. Schemes vary enormously. Areas of diversity include the benefits schemes provide (eg DB or DC), the powers which are given to trustees by the trust deed, the size of the fund and the nature of the investments and the type of sponsor (eg corporate or not for profit, single or multi-employer, UK or overseas).
25. As a result of this even the three versions of the scope guidance do not quite capture the exact body of knowledge which is appropriate for all trustees in all circumstances. Instead, these documents represent three frameworks of requirements. Trustees will need to determine what is appropriate in their particular circumstances using the relevant framework, and some trustees (eg of large and complex schemes) will need to add matters which apply to them.
26. The breadth of the knowledge and understanding achieved should be sufficient to allow trustees to understand fully any advice they are given, to challenge that advice if it seems sensible to do so and to enter fully into all decision making processes.
27. The scope guidance will be kept under review to ensure that it remains relevant and up to date.
28. Trustees may eliminate items from the scope guidance on account of their own expertise or experience.
29. Examples to illustrate the concept of deciding what is appropriate in relation to the type of scheme are set out in Box 1. These examples cannot cover every case and are only designed to illustrate how trustees or trustee boards might approach the task of determining what is relevant for them.

## **Box 1**

Examples of the different situations in which trustees may find themselves regarding investment matters and how those situations may affect the learning requirements of individual trustees.

### **A. DB and DC**

It is because the differences in what is appropriate in these areas is so great that we have prepared separate documents for them, although there is much in common (eg trust duties). A third and much reduced scope document is available for trustees of fully insured DC schemes with 12-99 members.

Where DB scheme trustees run a DC section or a DC AVC arrangement they will also need to cover learning material for DC arrangements and this is included in the DB Scope.

### **B. Investment**

- In a fully insured DC scheme (including with profits), there may be little discretion regarding investment decisions on the part of trustees. These trustees will need to understand basic investment matters like the characteristics of fixed interest v equity investments and may need to know how a with profits fund works, but little beyond this.
- Trustees of other schemes will only need to understand with profits funds if they invest in them. However, trustees of schemes which invest in with profits policies in relation to their AVCs should include the requirement to understand them.
- Trustees of DC schemes with earmarked funds will need to know the characteristics of those funds and to appreciate the importance of any choices offered to members.
- Where a DB scheme is very mature (eg where all members have retired), and trustees have selected assets with a predictable income stream (eg government stocks/bonds), they will need to understand those assets and why they are more appropriate than other assets with less predictable income streams (eg equities). Beyond this, however, they will not need to concern themselves with asset classes other than those in which their scheme is invested.
- Trustees of larger schemes who take investment decisions should cover all of the ground at the level indicated in the scope guidance, even if they have an investment sub-committee, with more specialised expertise, which makes recommendations to the board.
- Where there is an investment sub-committee which takes investment decisions, then those sub-committee members may need to build on the requirements set out in the scope guidance. This is because such a scheme is likely to be large and may need opportunities for a wider range of investment opportunities than is dealt with in detail in that guidance.

### **C. The interface between occupational schemes and state pensions**

Matters of importance under this heading will differ, depending on whether the scheme is contracted out or contracted in.

Trustees of schemes with a guaranteed minimum pension (GMP), for example, will need to understand how GMPs work but that will not concern trustees of contracted in schemes at all.

#### **D. Deficits and surpluses**

Trustees of DB schemes with a large funding deficit will need to consider the implications of funding deficits in their learning, and they may decide to postpone serious consideration of surpluses until they have one. The reverse would be true where a scheme is in surplus although the position can change and change quite quickly. All such trustees should be prepared.

#### **E. Annuities**

Trustees of schemes which fund benefits by buying annuities will need to understand the annuity market. Trustees of schemes which fund benefits out of their own assets will not have the same interest in the annuity market except in relation to AVCs. Any trustee may need to have some understanding of what it is that affects annuity rates in relation to transfer values and in relation to the purchase of annuities for members with AVCs etc. The situation is different again for those schemes which use annuities as an asset class.

### **The level of knowledge and understanding**

30. Just as there will be differences in relation to the scope of the requirements, according to the role and current expertise of any individual trustee and the type of scheme in question, so the level of knowledge and understanding will also vary.
31. For example, trustees may well find that the units of the scope guidance which cover asset allocation and investment matters are the ones where they need to take particular care in assessing the level of their own learning requirements. Among other scheme specific considerations, they might take into account:
  - the level of the decision making undertaken by individual trustees (eg where there is an investment sub-committee);
  - the size of the fund and the extent to which there are opportunities to consider alternative investments; and
  - the maturity of the scheme (DB only) and the extent to which this might dictate the asset classes which are available to trustees.
32. On the other hand, all trustees will need a good understanding of such matters as:
  - their duties, responsibilities and powers;
  - when they might be in a position of conflict of interest; and
  - the risk/reward concerns governing the choice of asset classes.

33. Conversely, it is likely that they will only need to know, rather than understand, such matters as:
- the requirements for the appointment of member-nominated trustees;
  - eligibility for membership of the scheme; and
  - the implications of contracting out.
34. Particular responsibilities fall on the chair of the board of trustees and the chair of the investment sub-committee, if there is one. Members of those bodies will look to the chair for guidance and the chair must be equipped to be able to accept the particular responsibilities of the role from the date of appointment. This may mean learning at a deeper level than that required at the basic level for the vast majority of trustees, particularly for chairs of large and complex schemes and chairs of investment sub-committees.

### **Acquiring knowledge and understanding**

35. Research carried out by the regulator confirms that there are still many existing trustees who have not had the opportunity for learning at all and many others who have had induction training but nothing beyond that. Yet other trustees will recognise that they have fallen behind with their learning in some areas or that they have new needs in light of changes to legislation and further changes in the world of pensions.
36. Those trustees may not be equipped to make the decisions which they need to make on behalf of their members and may not be in a position to satisfy themselves as to the various aspects of the governance of their schemes. They need to rectify the matter at once and their first task is to carry out a training needs analysis, using the relevant version of the scope guidance.
37. This exercise of checking against the scope guidance to decide what is relevant should not be onerous and should be part of any good learning programme, (be it traditional, distance or e-learning). Trustees should look for the facility to tailor their learning to their own needs in any learning programme they might follow.
38. Trustees who appoint a provider of classroom learning, whether it is scheme specific or open access, should expect that this analysis is carried out at the start in relation to each trustee to establish the level at which the learning should be pitched.
39. In order to ensure that every trustee has the opportunity to acquire the knowledge and understanding which is required, the regulator has developed a free e-learning programme, the Trustee toolkit ([www.trusteetoolkit.com](http://www.trusteetoolkit.com)). This takes each item in the scope guidance as a separate and distinct learning objective. There are diagnostics in the programme to allow for trustees' own experience and expertise to be built into their individual learning paths.

40. The regulator is of the view that this is required study for new trustees unless they can find an alternative learning programme which covers all the items in the scope at a level relevant for them. In either case this can be done in conjunction with a scheme specific induction programme and should be completed before they avail themselves of any more advanced scheme specific learning from other providers.
41. Existing trustees who have not completed the toolkit should also do so unless they can find an alternative learning programme which delivers the exact equivalent. They, too, may benefit from the diagnostic facility.
42. On completion of each module learners may complete 'Question time'. If they successfully complete all the 'Question times', they can obtain a 'Certificate of Successful Completion'. This certificate will indicate to the learners, to their scheme members, to their sponsor or to the regulator that they have learned and understood all that is required to run a straightforward scheme.
43. Trustees may well require similar verification of any other learning programme to satisfy the same groups of people. They should consider insisting that any learning provider so organises a learning session that he or she is able to certify that delegates have participated actively and have demonstrated that they have understood the material in the process.
44. Other than chairs, newly-appointed individual trustees, who have not completed the required learning before they take up their appointments, will have a period of six months from the date of appointment as trustee to do so<sup>4</sup>. This period is designed to give new trustees the time to acquire the necessary knowledge and understanding.
45. Notwithstanding the above, the precise time which is appropriate in individual cases may well be determined by the timing of trustee meetings. Even a new trustee is accountable in law and must be equipped to make the decisions with which he or she might be faced. New trustees may find they need to prioritise their learning according to the agenda of the early trustee meetings which they attend.

### **Updating knowledge and understanding**

46. The legislative requirement is that trustees must have the appropriate knowledge and understanding. 'Appropriateness' includes the notion that trustees should keep their knowledge and understanding up to date.
47. The regulator strongly recommends that trustees should review their own knowledge and understanding at least annually against the scope guidance and undertake learning to fill any gaps that they expose. Learning programmes designed to update knowledge should help trustees with this activity. The regulator will review its scope guidance from time to time and will publish any updates on its website. It is recommended that a trustee's own updating regime should take place at least annually.

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<sup>4</sup> See The Occupational Pension Schemes (Trustee's Knowledge and Understanding) Regulations 2006

48. Further, any well thought out learning programme will have the facility to 'dip in and out' to enable trustees who have passed through the programme to remind themselves of what they learned some time previously and avail themselves of the most up-to-date version in the process of reviewing the learning.
49. Also, and in addition to annual review, trustees may find at any time that they need to acquire new areas of knowledge in the event of any change, whether internal or external, which may affect the scheme or the sponsoring employer. Similarly, trustees who take on new functions will need to have the knowledge and understanding which is appropriate to their new roles.
50. Internal changes, which may prompt a revisiting of knowledge or an acquisition of new knowledge, could include a change in the ownership of the employer, in its financial viability or in its relationship with a parent company. Other possibilities include accumulating an unexpected surplus or deficit or a proposed closure of the scheme to new members. (DB only).
51. External changes, which may prompt trustees to look again at their knowledge base, could include changes in relevant investment markets or in the law. Further topics may be suggested by the Pensions Regulator on its website, and should be reflected in amendments to the toolkit.

### **Demonstrating knowledge and understanding**

52. It is good practice for trustees to keep their own records of their learning activities. In addition, among the records which trustee boards should keep should be records both of the learning activities which trustees have carried out individually and of learning activities carried out by the board as a whole. However, the task should not be onerous because any good learning programme will maintain records of the learning activities of individuals on the programme or of group activities if these have taken place.
53. As noted, any learning programme should allow for certification of attendance, of participation and of understanding. Any such certificates would also serve to demonstrate compliance with the TKU regime.
54. Trustees should note that, should the regulator make enquiries about their level of knowledge and understanding when discussing any regulatory issue, it will be the level of knowledge and understanding set out in the scope guidance and in this code which will be expected, subject to the notion of 'appropriateness' as it applies to the trustees in question.
55. Trustee boards may like to consider whether they should additionally keep records themselves of any alternative or further learning activity (eg reading, attending conferences, sessions with the scheme advisers etc) although such record-keeping is not mandatory. Neither is it intended to be onerous or difficult. A simple log would suffice.

56. Some large schemes have already installed a system of annual discussions between the chair of the board and individual trustees about the progress of those trustees and whether there are any learning activities which might be useful for them in the coming months.
57. Trustees may then like to consider whether and how they might communicate with employers and members about what they have done.
58. Some trustees will want to take a qualification to demonstrate their knowledge and understanding to themselves or their sponsors and members, as they have done in the past. A qualification is offered by the Pensions Management Institute (PMI) for this purpose and it is accredited as a vocational qualification so that those trustees who want to make it part of their lifelong learning credits are able to do so. Further qualifications providers may emerge. There is no requirement in law to take a qualification and there will certainly be no pressure from the regulator to do so. It is simply offered for the benefit of those who wish to avail themselves of the opportunity.
59. The PMI syllabus is based on the scope guidance, was developed by the regulator and is published on the regulator's website
60. Readers of this code may find that this syllabus is an extremely useful further guide as to the depth of the knowledge or understanding expected for different elements of the scope guidance, whether or not they are contemplating taking the qualification.
61. Professional trustees and those who offer their services to schemes on the basis of specific expertise should be able to demonstrate to the sponsor and to their fellow trustees that they are appropriately qualified to do so from the date of appointment. Experience will clearly be required and it is likely that a formal qualification will be expected. Many such expert trustees will already hold one but the expectation will be the same, whether or not they are remunerated by the scheme.

## Conversance

### The scope of the requirement to be conversant with scheme documents

62. As already noted, for the purposes of this code being conversant with documents is taken to mean having a 'working knowledge' of those documents such that trustees are able to use them effectively when required to do so in the course of carrying out their duties as trustees.
63. Trustees need to be able to cope both with the routine and with the unexpected although working knowledge may differ between those two circumstances. For example, while trustees may frequently refer to eligibility for membership, they will not need detailed knowledge about trustee powers in the event of wind-up unless they suspect that a wind-up may be a possibility in the foreseeable future.
64. The statutory requirement is that trustees must be conversant with some particular scheme documents, including the trust deed and rules, Statement of Investment Principles (the SIP) and the Statement of Funding Principles (SFP), for those schemes which are required to have them. A further requirement mentions those unspecified documents 'recording policy for the time being adopted by the trustees relating to the administration of the scheme generally'. This means that trustees must also be familiar with other documents relating to scheme governance and general administration. This is despite the fact that they are not specified in the Act. Trustees will need to be able to make use of those documents as well as the specified documents in carrying out their functions as trustees.
65. It is difficult to set out what exactly this means for each board of trustees and impossible to prescribe, because of the variety of schemes and circumstances. However, to help in this respect, in the scope guidance the regulator has specified those documents which are unspecified in the legislation but which, in the regulator's view, are of significance for the majority of schemes and fall into the category mentioned there. In any one scheme, there may be other documents which also fall into this category.
66. Knowing the essential elements of the scheme's trust documentation will require that every trustee should read them through thoroughly.
67. On the other hand, it is important that trustees understand the essential elements of their own SIP (as specified in the scope guidance) and, in the case of DB schemes, their own SFP (again, as specified in the scope guidance).
68. Experienced trustees will find that they already know many of these essential elements through frequent use.

69. With regard to other documents, we can take one example, that of insurance policies. Trustees should know broadly which risks are covered but will only need to look at the detail if and when they might need to make a claim. That is to say, they can behave in this respect as a responsible private individual would in respect of household or motor cover. However, like that individual, they will need to revisit this exercise from time to time, to ensure that the cover is still required, is consistent with the trust deed and rules (especially if those have changed) and is also consistent with current legislation. They should also reconsider the cost and conduct a comparison regularly.
70. A similar approach can be taken to other documents setting out agreements and contracts, and could be adapted for the other documents listed in the relevant scope guidance.
71. Trustees need also to consider how they will assure themselves that they have adequately met this requirement covering scheme documents. They may also wish to be able to demonstrate this to fellow trustees, to sponsors or to members, as previously suggested for knowledge and understanding.
72. Despite the fact that the documents in question are, of course, scheme specific, the regulator's own e-learning programme, the Trustee toolkit, covers them and refers trustees repeatedly to their own documents as part of the programme. For the vast majority of trustees, this part of the regulator's programme will be sufficient to cover the necessary ground. If trustees choose other learning programmes they should assure themselves that the same will apply. Any certificate of successful completion should include this area of work also as will the accredited qualification referred to above.
73. Again, as with knowledge and understanding, trustees will need to consider what steps they need to take to update themselves on the requirement to be conversant with scheme documents. They could well adopt a regime for this, modelled on the regime for updating and record-keeping in relation to the requirements for knowledge and understanding.
74. For newly-appointed trustees, other than chairs, the legislative requirement to be conversant with scheme documents will not apply for a period of six months from the date of appointment as a trustee to a scheme.
75. This is designed to give new individual lay trustees the time to acquire the necessary knowledge and understanding. Notwithstanding the above, the precise time allowed may well be determined by the timing of trustee meetings. Even a new trustee must be equipped to make the decisions with which he or she might be faced. New trustees may find they need to prioritise their learning according to the agenda of the early trustee meetings which they attend.

76. Newly-appointed lay trustees are advised to start immediately to acquire the appropriate knowledge and understanding (including familiarising themselves with the scheme's trust deed, rules and relevant documents). Some schemes may offer pre-appointment training and this good practice should be encouraged. Others may arrange for mentoring of new trustees by experienced ones and this is a very useful practice of which the regulator could only approve.
77. Professional trustees and those appointed for special expertise will be expected to be fully conversant with scheme documents from the date when the appointment becomes effective, as is the case with knowledge and understanding (see paragraph 60 above).

## Annex A - Corresponding Northern Ireland legislation

GB legislation	Corresponding Northern Ireland legislation
Section 90(2)(f) of the Pensions Act 2004 (c. 35)	Article 85(2)(f) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I.1))
Section 247 of the Pensions Act 2004	Article 244 of the Pensions (Northern Ireland) Order 2005
Section 248 of the Pensions Act 2004	Article 245 of the Pensions (Northern Ireland) Order 2005
The Occupational Pensions Schemes (Trustees' Knowledge and Understanding) Regulations 2006	The Occupational Pensions Schemes (Trustees' Knowledge and Understanding) Regulations (Northern Ireland) 2006