

Pension Schemes Act 2021 – DWP consults on changes to notifiable events regime



What you **need to know**

- Trustees and sponsoring employers of pension schemes are required to notify The Pensions Regulator (TPR) of certain events relating to the pension scheme and/or the sponsoring employer (known as 'notifiable events').
- The Department for Work and Pensions (DWP) has published a consultation on changes to the notifiable events regime. The draft regulations introduce two new notifiable events. These are the sale of a material part of a business and the granting or extending of security over assets. It also removes an existing requirement to notify of any wrongful trading.
- The draft regulations also introduce the requirement to provide an accompanying statement as well as notice to TPR in respect of certain notifiable events. This statement will set out the implications for the pension scheme, and how any risks to the pension scheme will be mitigated. This new duty applies to the two proposed new notifiable events, plus one existing notifiable event.
- The regulations are expected to come into force in 2022.



Actions you can take

- **Understand the proposed changes to the notifiable events regime**, and consider whether you wish to respond to the consultation by the deadline of 27 October 2021.
- **Review governance processes**, to ensure that the notifiable events covered by the new regime are identified, managed and notified.
- **Review or put in place information sharing agreements** between trustees and employers to ensure any relevant event is identified and managed in a timely and proportionate manner.

Rationale for the new notifiable events

Event	Rationale
	The sale of a material part of a sponsoring employer's business may significantly reduce the ability of the sponsoring employer to support the pension scheme (with potentially lower turnover, lower profits and lower amounts of cash generated).
Material sale	<p>Sales of assets/business activities within corporate groups can often be structured by way of inter-company debt which the sponsoring employer may not be able to realise for future funding of the scheme.</p> <p>Sales structured as business and asset sales can be used to transfer the profit-generating activity from one legal entity to another whilst 'leaving behind' certain liabilities, including the pension scheme (separating them from available financial support).</p>
Granting or extending of security	The granting of security on a debt to give it priority over debt to the pension scheme means that, in the event of debt recovery should the sponsoring employer become insolvent, the pension scheme is more likely to receive a smaller amount of debt than if the security was not in place.

The finer detail: key parts of draft regulations

New notifiable events

Material sale

A notifiable event will be triggered where there is a decision in principle by the sponsoring employer to sell a 'material proportion' of its business or assets.

A 'material proportion' is defined as one that accounts for more than 25% of the annual revenue of the business, either on its own or together with other disposals, or gross value of assets.

Granting or extending of security

A notifiable event will be triggered where there is a decision in principle by the sponsoring employer to grant or extend 'relevant security' over its assets, where it would result in the secured creditor ranking above the pension scheme in the order of priority for debt recovery.

For these purposes, a 'relevant security' is defined as compromising more than 25% of either the sponsoring employer's consolidated revenue or its gross assets.

Notice and accompanying statement

The events a notice and accompanying statement must be given for

A notice and accompanying statement will be required for the two new notifiable events (material sale and granting or extending of security) as well as the intended relinquishing of control by a controlling company.

These must be given as soon as reasonably practicable after the sponsoring employer becomes aware of a specified event. An 'appropriate person' (broadly the sponsor or associated person) will need to give notices and statements to TPR and the pension scheme's trustees at the same time.

Stages of notification

It is intended that there will be at least two stages of notifications:

- An initial notification when a 'decision in principle' is taken, which is defined as the point at which a decision has been made to go ahead and start negotiations; and
- An additional notification with an accompanying statement when the 'main terms have been proposed'. This must be updated where there is a 'material change', including a change to the main terms of the transaction or to any mitigation for the pension scheme.

Content of the accompanying statement

It must include a description of

- The event including the main terms proposed;
- Any adverse effects on the scheme or on the sponsoring employer's ability to meet its legal obligations to support the pension scheme;
- Any steps taken to mitigate the adverse effects; and
- Any communication with the trustees of the eligible scheme about the event.

Penalties

Breach of the notifiable events regime or the requirement to provide an accompanying statement without reasonable excuse will be punishable by a potential civil penalty of up to £1 million.

For further information, please get in touch with **Rob Wallace** or **Helen Billing** or speak to your usual XPS Pensions contact.



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