



In Touch technical update

DWP consults on revised notifiable events framework including 'accompanying statement'

The DWP has [published](#) a consultation on "Strengthening The Pensions Regulator's Powers: Notifiable Events (Amendments) Regulations 2021". The consultation runs until 27 October 2021 and the new provisions are likely to come into force in 2022.

At a glance...

- New Notifiable Events are proposed, with some amendments to the existing list
- Details of the 'accompanying statement' that will be required for certain Notifiable Events are set out
- Under Pension Schemes Act 2021, fines of up to £1 million can apply

Background

The notifiable events framework requires trustees and employers to notify the Regulator if certain events occur, giving an early warning of potential problems. Following consultation in 2018, it was announced that the range of events requiring notification would be expanded, and that corporate planners would need to prepare a 'declaration of intent' to be shared with the trustee board and the Regulator for certain notifiable events. The stated aim was to ensure that the impact of the event could be estimated, and mitigations put in place.

The Pension Schemes Act 2021 lays the foundations for these changes, including setting out the requirement for an 'accompanying statement' (the new name for the 'declaration of intent') that describes:

- Any adverse effects on the scheme
- Any steps taken to mitigate those effects, and
- Any related communication with the trustees.

The notice and accompanying statement would need to be given to the Regulator and copied to the trustees 'as soon as reasonably practicable'. Further details, including the implementation date, are to be prescribed in regulations.

Why bring you this note?

The DWP is consulting on changes to the Notifiable Events framework.

Next steps

DWP aims to publish a response to the consultation within 12 weeks of the 27 October deadline.

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The Act also includes new provisions allowing for a maximum fine of £1 million for failure to comply with the notifiable events framework.

New and amended Notifiable Events

The draft regulations propose adding the following Notifiable Events:

- A decision in principle by the employer to sell a material proportion of its business or assets;
- A decision in principle by the employer to grant or extend a relevant security over its assets, giving this priority over debt to the scheme.

The draft regulations define:

- a “decision in principle” is “a decision prior to any negotiations or agreements being entered into with another party”. DWP explain that this is intended to be the point at which the employer has made a decision to go ahead (for example, to sell the asset) and will then that start to negotiate the specific terms.
- A “material proportion of the business of the employer” is one that accounts for more than 25% of the employer’s annual revenue – either on its own or considered together with any other business sales decided on or completed within the 12 months prior to the notifiable event.
- A “material proportion of the assets of the employer” is one that accounts for more than 25% of the gross value of its assets – either on its own or considered together with any other asset sales decided on or completed within the 12 months prior to the notifiable event.
- A “relevant security” is a security granted or extended by the employer (or one or more subsidiaries comprising more than 25% of the employer’s revenue or gross assets). This includes fixed or floating charges over assets of the employer or the wider employer group and an all assets floating charge giving the charge-holder the right to appoint an administrator, but does not include refinancing of an existing debt (unless this includes granting a security as above), security for specific chattels or financing for company vehicles.

The existing notifiable event of where a controlling company decides to relinquish control of the employer company is also amended so that it occurs at the point of the “decision in principle” (or where the controlling company relinquishes control without a decision).

The existing notifiable event concerning wrongful trading of the sponsoring employer will be removed.

Accompanying statement

An accompanying statement will be required for the two new notifiable events and in relation to the existing notifiable event of where a controlling company relinquishes (or decides to relinquish) control of the employer company.

The draft regulations explain that these statements will be required following such a notifiable event, when the main terms of the relevant event have been proposed.

The draft regulations set out what the statement must describe:

- The event, including, where relevant, the main terms proposed;
- Any adverse effects of the event on the eligible scheme;
- Any adverse effects of the event on the employer’s ability to meet its legal obligations to support the scheme;
- Any steps taken to mitigate those adverse effects; and
- Any communication with the trustees or managers of the eligible scheme about the event.

Material changes

The Act also requires the Regulator to be notified of material changes to a notifiable event or related mitigation. The draft regulations define this as a change in the terms of the intended sale, intended granting or extension of security or the relinquishing of control, or a change in the steps taken to mitigate any adverse effects of the event.

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