

2021 No.

PENSIONS

**The Pensions Regulator (Notifiable Events) (Amendment)
Regulations 2021**

Made - - - - ***
Laid before Parliament ***
Coming into force - - ***

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 69(2), 69A(2), (4) and (8), 315(2) and 318(1) of the Pensions Act 2004(a), makes the following Regulations.

The Secretary of State has consulted such persons as the Secretary of State considers appropriate, in accordance with section 317 of the Pensions Act 2004.

Citation and commencement

1. These Regulations may be cited as the Pensions Regulator (Notifiable Events) (Amendment) Regulations 2021, and will come into force on [date to be confirmed].

Amendments to the Pensions Regulator (Notifiable Events) Regulations 2005

2.—(1) The Pensions Regulator (Notifiable Events) Regulations 2005(b) are amended as follows.

(2) In paragraph (2) of regulation 1 (citation, commencement and interpretation), at the appropriate places insert—

““assets”, in relation to the assets of an employer, does not include money;

“decision in principle” means a decision prior to any negotiations or agreements being entered into with another party;

“sale” includes the transfer of legal or beneficial ownership;”.

(3) In regulation 2 (notifiable events)—

(a) in paragraph (2)—

(i) omit sub-paragraph (c);

(ii) for sub-paragraph (f) substitute:

“(f) where the employer is a company—

(a) 2004 c. 35. Section 69A of the Pensions Act 2004 was inserted by section 109 of the Pension Schemes Act 2021 (c. 1).

(b) S.I. 2005/900, amended by S.I. 2005/2113 and S.I. 2009/617.

- (i) a decision in principle by a controlling company to relinquish control of the employer company, or
- (ii) an offer to acquire control of the employer company, where the employer company has not made a decision in principle to relinquish such control;”;
- (iii) in sub-paragraph (h), for “.” substitute “;”;
- (iv) after sub-paragraph (h) insert—
 - “(i) a decision in principle by the employer to sell a material proportion of its business or assets;
 - (j) a decision in principle by the employer to grant or extend a relevant security over its assets, where the grant or extension would result in the secured creditor being ranked above the scheme in the order of priority for debt recovery.
- (3) The events prescribed for the purposes of section 69A(2) of the Act (duty to give notices and statements to the Regulator of certain events) are—
 - (a) the intended sale by the employer of a material proportion of its business or assets, in respect of which the main terms have been proposed;
 - (b) the intended granting or extending of a relevant security by the employer over its assets, where the grant or extension would result in the secured creditor being ranked above the scheme in the order of priority for debt recovery, in respect of which the main terms have been proposed;
 - (c) where the employer is a company—
 - (i) the intended relinquishing of control by a controlling company of the employer company, in respect of which the main terms have been proposed, or
 - (ii) where the controlling company relinquishes such control without a decision to do so having been taken, the relinquishment of control of the employer company by the controlling company.
- (4) For the purposes of this regulation, a relevant security—
 - (a) is a security granted or extended by—
 - (i) the employer, or
 - (ii) one or more subsidiaries of the employer, comprising more than 25% of either the employer’s consolidated revenue or its gross assets;
 - (b) includes—
 - (i) a fixed charge or floating charge over assets of the employer or the wider employer group, and
 - (ii) an all assets floating charge which gives the charge-holder the right to appoint an administrator;
 - (c) does not include—
 - (i) the refinancing of an existing debt, except where this entails the granting of a security mentioned in sub-paragraph (b),
 - (ii) security for specific chattels, or
 - (iii) financing for company vehicles.
- (5) For the purposes of this regulation—
 - (a) a material proportion of the business of the employer is one that accounts for more than 25% of its annual revenue, either—
 - (i) on its own or
 - (ii) considered cumulatively with any other sales of its business decided upon or completed within the 12 months prior to the date of the relevant notifiable event,

as recorded in either—

- (iii) its most recent annual accounts within the meaning given in section 471 of the Companies Act 2006, or
 - (iv) where the employer is not required to file annual accounts, its accounting records.
- (b) 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—
- (i) on its own or
 - (ii) considered cumulatively with any other sales of its assets decided upon or completed within the 12 months prior to the date of the relevant notifiable event,

as recorded in either—

- (iii) its most recent annual accounts within the meaning given in section 471 of the Companies Act 2006, or [question for TPR]
- (iv) where the employer is not required to file annual accounts, its accounting records.

(6) An accompanying statement within the meaning of section 69A(7) of the Act must describe—

- (a) the event, including, where relevant, the main terms proposed,
- (b) any adverse effects of the event on the eligible scheme,
- (c) any adverse effects of the event on the employer's ability to meet its legal obligations to support the scheme,
- (d) any steps taken to mitigate those adverse effects, and
- (e) any communication with the trustees or managers of the eligible scheme about the event.

(7) For the purposes of s69A of the Act, a material change includes—

- (a) in relation to the events specified in sub-paragraphs (3)(a), (b) and (c)(i), a change in the proposed main terms;
- (b) a change in steps taken to mitigate any adverse effects of the event.”.

Signed by authority of the Secretary of State for Work and Pensions

Address
Date

Name
Parliamentary Under Secretary of State
Department for Work and Pensions