

# HERBERT SMITH FREEHILLS CALLS FOR GREATER CLARITY ON NEW NOTIFIABLE EVENT TRIGGERS

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Responding to the UK Department for Work & Pensions' (DWP) consultation on the proposed new notifiable events for corporate sponsors and groups with defined benefit (DB) schemes, Michael Aherne, pensions partner at Herbert Smith Freehills, argues that the increased frequency of notifications, coupled with greater financial penalties for non-compliance, means clarification is needed over the new notification triggers.

He says: *"Substantial fines without a clear regulatory framework runs the risk of impeding corporate activity as the economy looks to recover in 2022. It is essential the Government clarifies the triggers for the new pensions notifiable events for corporate sponsors and groups with defined benefit schemes, particularly as corporates and directors face fines of up to £1 million if they fail to comply."*

The proposed changes to the pensions notifiable events regime are contained in [draft regulations](#) published by the DWP. Due to be introduced in April 2022, they will require corporate sponsors and groups with DB schemes to give the Pensions Regulator and their scheme's trustees much earlier notice of material corporate transactions and finance arrangements. Multiple notifications will also likely need to be given in relation to the same transaction.

Commenting on the proposals, Aherne says: *"Several of the trigger events in the draft regulations are vague and imprecise such as the requirements for a notification to be given when a "decision in principle" has been made to sell part of a sponsor's business or its assets. It is important that these terms are clarified in the final regulations or accompanying guidance so that corporates and directors can be clear about their compliance obligations."*

The new notification requirements are designed to ensure the Regulator and trustees are made aware of material corporate transactions so they can assess whether the transaction causes detriment to the scheme and may require mitigation. The Pensions Regulator and trustees will also need to be given notice where a company plans to grant security which will rank ahead of the scheme.

Aherne continues: *"Although they have been expected for some time, these new notification obligations come hot on the heels of the new pensions criminal offences and regulatory sanctions introduced on 1 October 2021. They are likely to have a much bigger practical impact on day to day corporate transactions as they will require corporates to regularly involve the Pensions Regulator and their scheme's trustees and to provide more information about a transaction at an earlier stage than has typically been the case to date."*

Concerns have been expressed about forcing companies to disclose confidential and, even, inside information at such an early stage of a transaction and before the relevant market announcements have been made. Aherne concludes: *"There is some nervousness about the potential for confidential and inside information to leak into the public domain, particularly as the draft legislation does not currently provide for any safeguards. Sponsors should consider and review their existing information sharing and confidentiality arrangements with their pension scheme trustees to ensure they will continue to be fit for purpose."*

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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