**NOTIFICATION OF NEW FINES AND PENALTIES INTRODUCED BY THE PENSION SCHEMES ACT 2021**

**To Participating Employers of the YMCA Pension and Assurance Plan (the Plan)**

**Notifiable events and providing information to the Plan Trustee**

## Introduction

### This note outlines new obligations on Participating Employers (PEs) to notify the Pensions Regulator (**tPR**) if they are considering certain events. It is a briefing note to raise awareness, as the full guidance note has not yet been published, and PEs should take professional advice when considering a transaction covered by the requirements before deciding on the appropriate action to take.

(An updated list of all notifiable events is attached as Appendix C)

## Current notifiable events regime

### Under the current notifiable events regime, PEs are under a legal obligation to notify tPR as soon as reasonably practicable if:

#### they decide to take action which will, or is intended to, result in a debt due to the Plan not being repaid in full;

#### they cease, or decide to cease, business in the UK;

#### they trade wrongfully, or a director (or former director) knows that insolvent liquidation is likely;

#### they breach a banking covenant, except where the bank agrees not to enforce the covenant;

#### a decision is made which will lead to a change in control of the PE; or

#### a director is convicted for an offence involving dishonesty.

tPR’s guidance for “as soon as reasonably practicable” is that notification should be done without delay.

## Additional requirements from 6 April 2022

### From 6 April 2022, it is expected that PEs will be under a legal duty to give advance notice to tPR and the Plan Trustee if they are considering:

#### a change in control of the PE

#### a sale of a material proportion (meaning 25% or more) of the business or assets of the PE; or

#### the grant of security on a debt which gives the debt priority over the Plan.

The requirement for advance notice is expected to mean that the PE will be required to notify tPR and the Plan Trustee without delay after a decision in principle is made to proceed with one of the events above.

The PE will also be required to provide tPR and the Plan Trustee with an accompanying statement which describes:

1. the relevant event, including the main terms being proposed;
2. any adverse effects of the event on the Plan;
3. any adverse effects of the event on the ability of the PE to support the Plan;
4. any steps taken to mitigate the adverse effects on the Plan; and
5. any communications with the Plan Trustee about the event.

It is expected that the PE will be required to provide the accompanying statement as soon as reasonably practicable after the main terms of the notifiable event have been proposed.

In addition, the PE will be expected to keep tPR and the Plan Trustee updated of any changes in the anticipated effect of the notifiable event and to inform them if the notifiable event is no longer expected to (or does not) take place.

*The legislation and tPR's guidance setting out the details of these new legal obligations and how much advance notice will be required have not yet been published – further details will be provided when the requirements are finalised.*

## Notifying tPR

PEs need to email, without delay, a completed “notifiable events form” to customersupport@thepensionsregulator.gov.uk – see Appendix A. Alternatively, PEs may be able to submit a report via tPR’s Exchange portal. Please contact the Plan’s Secretary, Gwynnejarvis@pensionsymca.org.uk to help you complete this.

## Failure to comply with the notifiable events regime is very serious

tPR has the power to impose a civil penalty of up to £1 million if a PE fails to comply with the notifiable events regime, irrespective of whether they are a company or an individual.

Also, tPR can also now impose a criminal penalty of an unlimited fine and /or a prison sentence of up to two years if a PE knowingly or recklessly provides false information to tPR through the notifiable events regime. This would be expected to only be imposed in the most severe of cases, particularly as tPR has the option of imposing a civil penalty instead.

## Information sharing with the Plan Trustee

Given the changes to the notifiable events regime outlined in this note, it is now more important than ever to ensure that PEs make the Plan Trustee aware at an early stage of any transaction which could have a material impact on the ability of the Plan to meet its liabilities.

As soon as the Plan Trustee is notified of a proposed transaction, it will issue a request for information to the PE – see Appendix B.

**Action for PEs**

PEs should:

1. make sure that they understand the key points of the notifiable events regime outlined above and understand their obligations to notify tPR and the Plan Trustee when they are considering a potential notifiable event;
2. familiarise themselves with the Plan Trustee’s' request for information, so that they are aware of the information they will need to provide to the Plan Trustee as soon as possible after notifying it of a proposed transaction;
3. review their governance processes to ensure that tPR and the Plan Trustee are notified of a proposed transaction as soon as possible and the impact on the Plan is considered at an early stage; and
4. seek professional advice (legal, covenant and actuarial, as appropriate) in advance of any proposed transaction.

### If you have any queries in relation to this note, please contact Gwynne Jarvis at gwynnejarvis@pensionsymca.or.uk.

**Appendix A**

**Notifiable events form**

**(See separate document)**

**Appendix B**

**Request for information**

**(See separate document)**

**Appendix C**

**Updated list of all notifiable events either to the tPR (where applicable) and the Trustee**

**(See separate document)**