

2021 No. 261

PENSIONS

**The Pensions Regulator (Employer Resources Test) Regulations
(Northern Ireland) 2021**

Made - - - - *21st September 2021*

Coming into operation - *1st October 2021*

Approved by resolution of the Assembly on 14th March 2022

The Department for Communities^(a) makes the following Regulations in exercise of the powers conferred by Articles 34E(2) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005^(b).

Citation and commencement

1. These Regulations may be cited as the Pensions Regulator (Employer Resources Test) Regulations (Northern Ireland) 2021 and shall come into operation on 1st October 2021.

Interpretation

2.—(1) In these Regulations—

“the 2005 Order” means the Pensions (Northern Ireland) Order 2005;

“accounting reference date” is determined in accordance with paragraph (2);

“annual accounts” has the meaning given in section 471(c) of the Companies Act;

“assessment period” means—

(a) subject to paragraph (b), the period of 12 months ending on the relevant accounting reference date;

(b) where the employer’s annual accounts cover a period ending not more than 7 days either before or after the relevant accounting reference date, a period of no less than 51 weeks and no more than 53 weeks beginning on the day immediately after the previous accounting reference date;

“charity” has the meaning given in section 1(1) of the Charities Act (Northern Ireland) 2008^(d);

(a) See section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))

(b) S.I. 2005/255 (N.I. 1); Article 34E was inserted by paragraph 2(3) of Schedule 8 to the Pension Schemes Act 2021 (c. 1); see also Article 288(3)(aaa) and (aab) as inserted by paragraph 26(2) of that Schedule

(c) Section 471 was amended by regulation 18 of S.I. 2012/2301, paragraph 18 of the Schedule to S.I. 2013/1970, regulation 7(3) of S.I. 2013/3008, regulation 3(5) of S.I. 2016/1245 and regulation 23 of S.I. 2019/970

(d) 2008 c. 12 (N.I.)

“the Companies Act” means the Companies Act 2006(a);

“relevant accounting reference date” means the employer’s most recent accounting reference date immediately prior to the relevant time(b).

(2) Subject to regulation 4(7), the accounting reference date is to be determined in accordance with sections 391 (accounting reference periods and accounting reference date) and 392(c) (alteration of accounting reference date) of the Companies Act.

3.—(1) For the purposes of these Regulations—

(a) in the case of an employer which is—

- (i) not trading for profit, or
- (ii) a charity,

any reference to “profits” in these Regulations shall be read as if it referred to “net income”;

(b) the value of the resources of the employer may be a negative number.

(2) In this regulation “net income” means income after the deduction of expenditure.

Constitution and value of employer resources

4.—(1) For the purposes of Article 34E(2)(a) of the 2005 Order (Article 34 contribution notice: meaning of “employer resources test”), what constitutes the resources of the employer are the profits of the employer before tax.

(2) For the purposes of Article 34E(2)(b) of the 2005 Order, and subject to paragraph (5), the value of the resources of the employer is to be determined, calculated and verified as follows—

(a) the value of the resources of the employer excluding the effect of the act or failure to act is the profits before tax as stated in the annual accounts of the employer for the assessment period, adjusted to exclude the effects of non-recurring or exceptional items;

(b) the value of the resources of the employer including the effect of the act or failure to act is the profits before tax as stated in the annual accounts of the employer for the assessment period, adjusted to—

- (i) exclude the effects of non-recurring or exceptional items, and
- (ii) account for any effect of the act or failure to act on the value of the resources of the employer as if the act had occurred or the failure first occurred immediately before the beginning of the assessment period.

(3) For the purposes of paragraph (2), the Regulator may determine—

- (a) whether an item is to be treated as non-recurring or exceptional;
- (b) the value of any non-recurring or exceptional items;
- (c) the effect of the act or failure to act on the value of the resources of the employer.

(4) When determining the matters set out in paragraph (3)(a) or (b), the Regulator must have regard to the relevant financial reporting standards relating to accounting practices published by the Financial Reporting Council Limited(d).

(5) Where paragraph (6) applies, the Regulator may determine, calculate and verify the value of the resources of an employer for the purposes of paragraph (2)(a) and (b) by reference to a period which the Regulator deems appropriate.

(6) This paragraph applies where—

- (a) the employer’s annual accounts do not cover the assessment period;

(a) 2006 c. 46

(b) “Relevant time” has the meaning given in Article 34E(5) of the Pensions (Northern Ireland) Order 2005

(c) Section 392 was amended by paragraph 4 of Schedule 2 to S.I. 2019/145

(d) The Financial Reporting Council can be contacted at 8th Floor, 125 London Wall, London EC2Y 5AS and at www.frc.org.uk

- (b) the employer is not required to prepare annual accounts pursuant to the Companies Act, or
- (c) the employer's accounts are not prepared in compliance with section 395(a) (individual accounts: applicable accounting framework) or 403(b) (group accounts: applicable accounting framework) of the Companies Act.

(7) The Regulator may disregard any alteration of the accounting reference date where an employer does so—

- (a) in a case where the act or failure to act forms part of a series of acts or failures to act, after the first act or failure to act;
- (b) in any other case, after the act or failure to act occurred.

(8) In making a determination under regulation 4(3) or (5), the Regulator must take into account all relevant information in its possession and, having done so, no further verification is required.

Sealed with the Official Seal of the Department for Communities on 21st September 2021

(L.S.)

Anne McCleary
A senior officer of the Department for Communities

(a) Section 395 was amended by regulation 9 of S.I. 2008/393, regulations 12, 13 and 14 of S.I. 2012/2301, paragraph 7 of Schedule 2 to S.I. 2019/145 and paragraph 6 of Schedule 1 to S.I. 2019/685

(b) Section 403 was amended by regulations 15, 16 and 17 of S.I. 2012/2301, paragraph 11 of Schedule 2 to S.I. 2019/145 and paragraph 10 of Schedule 10 to S.I. 2019/685

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further provision relating to the “moral hazard” provisions in Article 34 of the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”), and in particular, what constitutes the resources of an employer, and how they are valued, for the purposes of the “employer resources test”. Article 34 provides for the Pensions Regulator’s power to issue contribution notices.

Regulation 4 sets out what constitutes the resources of the employer and how the value of the resources is to be determined for the purposes of Article 34E(2) of the 2005 Order. It also sets out the matters to be determined by the Pensions Regulator and enables the Pensions Regulator to estimate the value of the resources of an employer in certain circumstances. In addition, regulation 4 sets out the circumstances in which verification of the determination made by the Pensions Regulator is not required.

The Pension Schemes Act 2021 (Commencement No. 1) Order (Northern Ireland) 2021 (S.R. 2021 No. 240 (C. 8)) provides for the coming into operation of paragraph 2(3) of Schedule 8 to the Pension Schemes Act 2021, which inserts Article 34E into the 2005 Order, one of the enabling provisions under which these Regulations are made, for the purpose only of authorising the making of regulations on 1st September 2021.

As these Regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement to consult under Article 289(1) of the 2005 Order does not apply by virtue of paragraph (2)(e) of that Article.

An Impact Assessment has been carried out as part of the enactment of the measures in the Pension Schemes Act 2021 and has been published alongside the Pension Schemes Act 2021 at www.legislation.gov.uk. Paper copies can be obtained from the Department for Work and Pensions, First Floor, Caxton House, Tothill Street, London SW1H 9NA.

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