

# PENSIONS ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – the Pensions Regulator

#### Contribution notices where avoidance of employer debt

##### *Section 39: The sum specified in a section 38 contribution notice*

142. This section defines how the amount that a person is required to pay by way of a contribution notice under *section 38* is to be determined.
143. *Subsection (1)* provides that the amount specified by the Regulator in a contribution notice under *section 38* must not exceed the whole of the shortfall sum in relation to the scheme. The amount specified may be less than the whole of the shortfall sum. *Subsection (2)* sets out how the amount of the shortfall sum is to be calculated. Where at “the relevant time” a debt was due from the employer under section 75 of the Pensions Act 1995, then the shortfall sum is the amount that the Regulator estimates the section 75 debt to be at that time. If at “the relevant time” no such debt was due, the shortfall sum is the amount that the Regulator estimates would be the section 75 debt if *subsection (2)* of that section applies and “the relevant time” were the time designated for the purposes of that section.
144. *Subsection (3)* allows the Regulator in specified circumstances to increase the amount calculated under *subsection (2)(a) or (2)(b)* by way of a debt by any amount it considers appropriate. *Subsection (4)* sets out that “the relevant time” is the time of the act or, in the case of a failure to act, either the time when the failure occurred or if the failure continued for a period of time, the time which the Regulator determines during that period. *Subsection (5)* provides that any reference to a debt due under section 75 of the Pensions Act 1995 includes a contingent debt under that section.