

Draft Regulations laid before Parliament under section 316(2) of the Pensions Act 2004, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2021 No. ***

PENSIONS

**The Pensions Regulator (Contribution Notices) (Amendment)
Regulations 2021**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 38E(2)(a) and 38E(2)(b) of the Pensions Act 2004(a).

In accordance with section 317(1) of the Pensions Act 2004, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

A draft of these Regulations has been laid before and approved by resolution of each House of Parliament in accordance with section 316(2) of the Pensions Act 2004(b).

PART 1
INTRODUCTION

Citation and Commencement

1. These Regulations may be cited as the Pensions Regulator (Contribution Notices) (Amendment) Regulations 2021 and shall come into force on ***.

Interpretation

2. In these Regulations—

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

“accounting reference period” has the meaning given in section 391 of the 2006 Act;

“the Act” means the Pensions Act 2004;

“annual accounts” has the meaning given in section 471 of the 2006 Act;

“the Regulator” means the Pensions Regulator;

(a) 2004 (c.35). Section 38E was inserted by section 103 of the Pension Schemes Act 2021 c.1
(b) Section 316(2) was amended by paragraph 12 of Schedule 7 to the Pension Schemes Act 2021
(c) 2006 (c.46)

“the relevant time” has the meaning in section 38E(5) of the Act.

PART 2

CONTRIBUTION NOTICES

Meaning of “employer resources”

3.—(1) For the purposes of section 38E of the Act (Section 38 contribution notice: meaning of “employer resources test”), the resources of the employer are the normalised profits of the employer before tax.

(2) Subject to paragraph (4), the value of the resources of the employer is to be determined as follow—

- (a) in relation to the value of the resources of the employer excluding the effect of the act or failure to act, the profits as stated in the annual accounts of the employer for the most recent completed accounting reference period before the relevant time, as adjusted to exclude the effects of non-recurring or exceptional items;
- (b) in relation to the value of the resources of the employer including the effect of the act or failure to act, the profits as stated in the annual accounts of the employer for the most recent completed accounting reference period before the relevant time, as 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 resources of the employer.

(3) For the purposes of paragraph (2), the following are to be determined by the Regulator—

- (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 resources of the employer.

(4) The Regulator may estimate the value of the resources of an employer where—

- (a) the employer is not required to prepare annual accounts pursuant to the 2006 Act; or
- (b) the annual accounts are not prepared in compliance with section 395 (Individual accounts: applicable accounting framework) or section 403 (Group accounts: applicable accounting framework) of the 2006 Act.

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

Address
Date

Name
Minister for Pensions and Financial Inclusion
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulation)

These Regulations make further provisions relating to the “moral hazard” provisions in section 38 of the Pensions Act 2004 (c.35) (“the Act”). This section provides for the Pensions Regulator’s power to issue contribution notices.

Regulation 3 sets out what constitutes the resources of the employer, how the value of the resources is to be determined for the purposes of section 38E(2) of the Act, 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 specified circumstances.

An impact assessment has not been produced for these Regulations as no, or no significant, impact on the private, voluntary or public sectors is foreseen.