EXPLANATORY MEMORANDUM TO

THE PENSIONS REGULATOR (EMPLOYER RESOURCES TEST) REGULATIONS (NORTHERN IRELAND) 2021

S.R. 2021 No. 261

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under Articles 34E(2) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005 and is subject to the confirmatory procedure.

2. Purpose

2.1 These Regulations set out what constitutes the resources of the employer for the purposes of the "employer resources test" and sets out the basis for how the value of the resources of the employer is to be calculated, determined and verified. The "employer resources test" is one of two new grounds introduced by the Pension Schemes Act 2021 through which the Pensions Regulator can assess if an act or failure to act satisfies the requirements for issuing a contribution notice.

3. Background

3.1 The Pensions Act 2004 established, on a UK-wide basis, the Pensions Regulator to protect the benefits of members of work-based pensions, reduce the risk of situations arising which may result in calls on the Pension Protection Fund and promote and improve understanding and good administration of work-based pensions. The Regulator's approach is risk-based focusing on education and enablement, with enforcement where appropriate.

3.2 The Pensions (Northern Ireland) Order 2005 ("the 2005 Order") gave the Pensions Regulator a number of 'anti-avoidance' tools to protect pension scheme members' benefits, and to protect the Pension Protection Fund against abuse, such as where employers sponsoring defined benefit pension schemes seek to avoid their obligations. One of the Regulator's anti-avoidance powers is the ability to issue contribution notices – to companies or to individuals – requiring money to be put into pension schemes under certain conditions.

3.3 The Pension Schemes Act 2021 inserts two new tests into Article 34(5) of the 2005 Order, which if met, would allow the Pensions Regulator to issue a contribution notice where all the other requirements under Article 34 have also been met. The contribution notice regime enables the Regulator to impose a demand to pay a specified amount of money to a defined

benefit pension scheme. The contribution notice regime forms part of the anti-avoidance powers to enable the Regulator to intervene and seek redress where an act or failure to act results in detriment to a defined benefit pension scheme.

3.4 In summary, these Regulations provide the technical details for one of the additional tests to the contribution notice regime, "the employer resources test". For example, they set out how the value of the resources of the employer is to be determined and calculated by the Pensions Regulator in order for the Regulator to assess any impact of the act or failure to act on the employer's ability to support their defined benefit pension scheme.

4. Consultation

4.1 There is no requirement to consult on these Regulations. They 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.

5. Equality Impact

5.1 The Pension Schemes Act 2021 was subject to an Impact Assessment. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals for these Regulations. The Department has concluded that they would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 The Impact Assessment for the Pension Schemes Act 2021 assessed additional costs to business. These Regulations do not require a Regulatory Impact Assessment as they do not add any additional costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 None for the Department.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department is content that these Regulations comply with section 24 of the Northern Ireland Act 1998 (Convention rights, etc.).

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain Regulations are the Pensions Regulator (Employer Resources Test) Regulations 2021 (S.I. 2021/1047) which come into force on 1st October 2021. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions in line with section 87 of the Northern Ireland Act 1998.