

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT PENSIONS REGULATOR (EMPLOYER  
RESOURCES TEST) REGULATIONS 2021

*Wednesday 21 July 2021*

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**Sunday 25 July 2021**

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**The Committee consisted of the following Members:**

*Chair:* ESTHER McVEY

- |   |   |
|---|---|
| † Drummond, Mrs Flick ( <i>Meon Valley</i> ) (Con)                                      | Pursglove, Tom ( <i>Corby</i> ) (Con)                                       |
| Duguid, David ( <i>Parliamentary Under-Secretary of State for Scotland</i> )            | † Rodda, Matt ( <i>Reading East</i> ) (Lab)                                 |
| Eagle, Maria ( <i>Garston and Halewood</i> ) (Lab)                                      | Rutley, David ( <i>Lord Commissioner of Her Majesty's Treasury</i> )        |
| Huq, Dr Rupa ( <i>Ealing Central and Acton</i> ) (Lab)                                  | Tami, Mark ( <i>Alyn and Deeside</i> ) (Lab)                                |
| Jones, Mr Kevan ( <i>North Durham</i> ) (Lab)   | Thomson, Richard ( <i>Gordon</i> ) (SNP)                                    |
| Jones, Mr Marcus ( <i>Vice-Chamberlain of Her Majesty's Household</i> )                 | Throup, Maggie ( <i>Lord Commissioner of Her Majesty's Treasury</i> )       |
| † Mak, Alan ( <i>Lord Commissioner of Her Majesty's Treasury</i> )                      | † Tomlinson, Michael ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) |
| Morris, James ( <i>Lord Commissioner of Her Majesty's Treasury</i> )                    | Winter, Beth ( <i>Cynon Valley</i> ) (Lab)                                  |
| † Opperman, Guy ( <i>Parliamentary Under-Secretary of State for Work and Pensions</i> ) | Chloe Freeman, <i>Committee Clerk</i>                                       |
|   | † <b>attended the Committee</b>   |

## Sixth Delegated Legislation Committee

Wednesday 21 July 2021

[ESTHER McVEY *in the Chair*]

### Draft Pensions Regulator (Employer Resources Test) Regulations 2021

9.25 am

**The Chair:** Before we begin, I remind Members that Mr Speaker has stated that the wearing of masks is encouraged. *Hansard* colleagues will be most grateful if Members could send their speaking notes to [hansardnotes@parliament.uk](mailto:hansardnotes@parliament.uk).

**The Parliamentary Under-Secretary of State for Work and Pensions (Guy Opperman):** I beg to move,

That the Committee has considered the draft Pensions Regulator (Employer Resources Test) Regulations 2021.

It is a great pleasure to serve under your chairmanship, Ms McVey. The draft regulations were laid before this House on 28 June. It is the mission of this Government to make pensions safer, better and greener, and the Pension Schemes Act 2021 has definitely taken things forward. It strengthens the powers of the Pensions Regulator, and fulfils our manifesto commitment to take action against those who think that they can plunder the pension savings of hard-working employees.

The draft regulations provide essential details on the new employer resources test, which forms part of the Pension Regulator's contribution notice regime. The regime enables the regulator to demand that money is paid into a pension scheme from those who have caused detriment to the scheme. A recent example is Dominic Chappell, who was ordered to pay £9.5 million by the regulator into the British Home Stores pension schemes. The new employer resources test that the draft regulations relate to will enable the regulator to overcome existing challenges of assessing the act, or failure to act, that has affected the financial strength of the sponsoring employer and therefore its ability to support the scheme, rather than damaging the scheme directly.

With the new provisions, we will also avoid the associated challenge of having to assess the future likelihood of members receiving their accrued benefits. In addition to looking at the health of the employer, the regulator also has a focus on the scheme, where it is required to assess the reduction of material compared with the scheme's estimated section 75 liability. We remain committed to ensuring that there should be no place for those who put workers' retirement savings at risk. The draft regulations will play a vital role in enhancing the regulator's ability to protect pension scheme members, and I commend the regulations to the Committee.

9.27 am

**Matt Rodda (Reading East) (Lab):** It is a pleasure to serve under your chairship, Ms McVey. It is important that the Government encourage people to save for their retirement. Indeed, Ministers have a duty to stand up for people who have worked hard and saved all their lives. It is vital that Government and regulators have the power to take action against the small number of employers

who fail to pay their share into workers' pensions. At times, those powers have been too weak or underused. In some cases, Ministers have failed to use them. We have all seen some appalling cases where thousands of pensioners and workers were left without adequate pensions. Such scandals must simply not be allowed to happen again.

Given that context, I welcome the new, stronger powers. However, I have several questions about how they will work and whether they will be used quickly and effectively. The draft regulations are designed to clearly define an employer's resources in the context of the employer resources test so that the regulator can more effectively use its contribution notice powers. I note that between the introduction of contribution notice powers and the passage of the Pension Schemes Act through Parliament, those powers were used only once. That seems to be an error worth correcting, especially in the light of the difficulties faced by various high-profile pension schemes over the past few years, after the employers collapsed.

The Opposition support giving the Pensions Regulator the powers that it needs to safeguard pension schemes, which is why it is so important that we get today's regulations right. Some experts have raised concerns about profit being used as a measure of resources, as the Department intends via the draft regulations, rather than the alternative measure of a firm's net assets. The experts worry that the corporate sector will be further disincentivised by the new regulations to offer defined benefit pensions, which are already vanishingly rare for today's younger workers.

The Department for Work and Pensions argued that profitability was less subjective than using net assets, covenant value or covenant strength. I seek assurances from the Minister that that decision was taken with the wider consequences on the future for defined benefit schemes in mind, and that he will address any potential decline in defined benefit schemes that comes as a consequence, either by revisiting the regulations or by taking other steps.

I will move on to some broader issues. First, these further powers could be seen as part of wider increased reliance on regulator to help run pensions policy. Over recent years we have seen the regulator take on a host of new responsibilities. How many more staff will be needed to take on the new role? We must ensure that the regulator has the necessary resources and be aware of its recent increased influence when taking future decisions.

Secondly, the Government have justified the Secretary of State determining the details of employer resources tests in regulations, rather than in primary legislation, as they may need to be changed over time. As we all know, the pensions industry works to very long timeframes, so does the Minister foresee the need to make alterations? How will he ensure that all parties have the notice they need to plan for them?

Finally, some stakeholders fear that the threat of an increasingly complicated and wide-ranging set of regulatory powers could lead to legitimate business activity being caught up and punished or to firms being overly cautious. The Government must commit to communicating clearly with the business community and stakeholders about the regulator's role and powers.

In summary, Britain should be the best place to grow old, but to make that a reality we need to develop the Pension Regulator's anti-avoidance powers. We must do so with care and with an awareness of the broader context. I hope the Minister will take my points on board, and I look forward to hearing his response.

9.31 am

**Guy Opperman:** I am grateful for the hon. Gentleman's support for the principle of the regulations. I can assure him that the Pension Regulator and I have engaged extensively with stakeholders over the past three years during the build-up, passage and implementation of the Pensions Schemes Act 2021.

As for the regulator's staffing and resources, the hon. Gentleman will be aware that its budget has effectively increased by 100% in the past five years. Although it is quite clearly adjusting to the new burdens in the 2021 Act, at the same time some issues have lessened. For example, auto-enrolment occupied a massive part of the regulator's time when it was launched in 2012, but it is now not such a large issue.

Regulations are always kept under review, and the hon. Gentleman and I can happily discuss them on an ongoing basis. As for the profit before tax measure, he is correct that we have provided the regulator with a tool to make a simple snapshot assessment of the impact of an act, or the failure to act, by an employer. It was selected for measuring the resources of an employer because the term is widely understood by the industry and the regulator and, on that basis, it was shown to be an appropriate test.

As for ensuring that defined benefit schemes continue, the whole purpose of the DB White Paper and the 2021 Act is to ensure that this Government continue to support DB and members with a DB pension. Aside from DB, we are also developing the third way—not to be too Clintonian in the matter—with collective defined contribution pensions, which represent a genuine alternative for employers, employees and unions. I commend the regulation to the Committee.

*Question put and agreed to.*

9.33 am

*Committee rose.*





