

SCHEDULE 2

Regulation 19

MODIFICATIONS OF THE ACT AND REGULATIONS

Multi-employer schemes

1.—(1) Where—

- (a) a scheme in relation to which there is more than one employer is divided into two or more sections, and
- (b) the provisions of the scheme are such that they meet conditions A and B,

Part 3 of the 2004 Act and these Regulations shall apply as if each section of the scheme were a separate scheme.

(2) Condition A is that contributions payable to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer's section (or, if more than one section applies to the employer, to the section which is appropriate in respect of the employment in question).

(3) Condition B is that a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section.

(4) In their application to a scheme—

- (a) which has been such a scheme as is mentioned in sub-paragraph (1);
- (b) which is divided into two or more sections, at least one of which applies only to members who are not in pensionable service under the section;
- (c) the provisions of which have not been amended so as to prevent conditions A and B being met in relation to two or more sections, and
- (d) in relation to one or more sections of which those conditions have ceased to be met at any time by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

Part 3 of the 2004 Act and these Regulations apply as if the section in relation to which those conditions have ceased to be satisfied were a separate scheme.

(5) For the purposes of sub-paragraphs (1) to (4), any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits are disregarded.

(6) But if sub-paragraph (1) or (4) applies and, by virtue of any provisions of the scheme, contributions or transfers of assets to make provision for death benefits are made to a section ("the death benefits section") the assets of which may only be applied for the provision of death benefits, the death benefits section is also to be treated as if it were a separate scheme for the purpose of Part 3 of the 2004 Act and these Regulations.

(7) For the purpose of this paragraph, any provisions of a scheme by virtue of which assets attributable to one section may on the winding up of the scheme or a section be used for the purposes of another section are disregarded.

(8) In their application in a case of the kind described in sub-paragraph (1) or (4), the forms set out in Schedule 1 are modified as follows—

- (a) after "*Name of scheme*", there is inserted "*and name of section*", and
- (b) for "scheme" and "scheme's", wherever else they occur, there is substituted "section" and "section's".

2. In the application of section 229 of the 2004 Act to a scheme in relation to which there is more than one employer, references to the employer have effect as if they were references to a person

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nominated by the employers, or by the rules of the scheme, to act as the employers' representative for the purposes of the section or, if no such nomination is made—

- (a) for the purposes of agreement to any of the matters mentioned in subsection (1) of that section, to all of the employers other than any employer who has waived his rights under that sub-section, and
- (b) for the purposes of agreement to a modification of the scheme under subsection (2) of that section, to all of the employers.

Frozen or paid-up schemes

3. In the application of Part 3 of the 2004 Act and these Regulations to a scheme which has no active members, references to the employer have effect as if they were references to the person who was the employer immediately before the occurrence of the event after which the scheme ceased to have any such members.

Schemes covering United Kingdom and foreign employment

4.—(1) This paragraph applies in the cases described in sub-paragraphs (2) and (3).

(2) The first case referred to in sub-paragraph (1) is where a scheme—

- (a) has its main administration in the United Kingdom;
- (b) applies to members in employment in the member States and members in employment outside the member States;
- (c) is divided into two or more sections, and
- (d) makes provision whereby—
 - (i) different sections of the scheme apply to members in employment in the member States and to members in employment outside the member States;
 - (ii) contributions payable to the scheme in respect of a member are allocated to the section applying to that member's employment, and
 - (iii) a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section.

(3) The second case referred to in sub-paragraph (1) is where a scheme—

- (a) has its main administration outside the member States;
- (b) applies to members in employment in the United Kingdom and members in employment outside the United Kingdom;
- (c) is divided into two or more sections, and
- (d) makes provision whereby—
 - (i) different sections of the scheme apply to members in employment in the United Kingdom and to members in employment outside the United Kingdom;
 - (ii) contributions payable to the scheme in respect of a member are allocated to the section applying to that member's employment, and
 - (iii) a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section.

(4) Where this paragraph applies, Part 3 of the 2004 Act and these Regulations shall apply as if each section of the scheme were a separate scheme.

5.—(1) This paragraph applies in the case described in sub-paragraph (2).

(2) The case referred to in sub-paragraph (1) is where a scheme either—

- (a) satisfies the criteria in sub-paragraphs (a) and (b) of paragraph 4(2), but is not divided into sections in the manner described in sub-paragraphs (c) and (d) of that paragraph, or
- (b) satisfies the criteria in sub-paragraphs (a) and (b) of paragraph 4(3), but is not divided into sections in the manner described in sub-paragraphs (c) and (d) of that paragraph,

and part of the scheme is or was treated as a separate scheme under section 611(3) of the Income and Corporation Taxes Act 1988⁽¹⁾.

(3) Where this paragraph applies, Part 3 of the 2004 Act and these Regulations shall apply as if the separated parts of the scheme were separate schemes.

Schemes undertaking cross-border activities

6.—(1) This paragraph applies where the trustees or managers of a scheme are authorised under section 288 of the 2004 Act to accept contributions from European employers or approved under section 289 of that Act to accept contributions from a particular European employer.

(2) Where this paragraph applies, and subject to sub-paragraphs (3) and (4), Part 3 of the 2004 Act and these Regulations shall apply as if they were subject to the following modifications—

- (a) in section 224 of the Act—
 - (i) in subsection (1)(a), the words from “or,” to the end of the subsection are omitted;
 - (ii) paragraphs (c) and (d) of subsection (2) are omitted;
 - (iii) the word “and” at the end of paragraph (a) of subsection (3) and paragraph (b) of that subsection are omitted;
 - (iv) the words “or report” in subsections (4), (6) and (7) and the words “or reports” in subsection (5) are omitted;
- (b) in section 226—
 - (i) in subsection (1), for the words from “within the prescribed time” to the end of the subsection there is substituted—
 - “(a) send a summary of the valuation to the Regulator within a reasonable period, and
 - (b) take such steps as are necessary to ensure that the statutory funding objective is met within two years after that date.”, and
 - (ii) subsections (2) to (6) are omitted;
- (c) in section 227, for the words “by the end of the period specified in the recovery plan” in subsection (6)(b)(i) there is substituted “within two years after that date”;
- (d) in section 231, the words from “with respect to” in paragraph (d) of subsection (1) to the end of that paragraph are omitted;
- (e) in regulations 6(2) and (3)(a), 7(2)(a), 9(1) and (2)(a) and 13 of these Regulations, for “15 months” there is substituted “12 months”;
- (f) in regulation 7(2), the words “or an actuarial report” are omitted;
- (g) regulations 7(2)(c) and (5), 8, 9(2)(c) and 17(1)(a) and (e) to (i) are omitted;
- (h) in regulation 10—

(1) 1988 c. 1; section 611 is repealed by Part 3 of Schedule 42 to the Finance Act 2004 with effect from 6th April 2006.

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- (i) in paragraph (2), for “five years”, where those words first appear, there is substituted “two years”, and the words from “or, in a case where” to the end of that paragraph are omitted;
 - (ii) in paragraph (4), for “give effect to a recovery plan”, there is substituted “comply with section 226”, and
- (i) in Schedule 1, in the first of the alternative statements in the form of certification of the adequacy of the rates of contributions, for “by the end of the period specified in the recovery plan dated [dd/mm/yyyy]” there is substituted “within two years after the effective date of the last actuarial valuation”.
- (3) In the case of a pre-23rd September 2005 scheme—
- (a) section 226 of the 2004 Act applies as if it were subject to the following modifications in place of the modifications in sub-paragraph (2)(b)—
 - (i) for the words from “they must, within the prescribed time” in subsection (1) to the end of that subsection there is substituted—
 - “they must—
 - (a) send a summary of the valuation to the Regulator within a reasonable period, and
 - (b) take such steps as are necessary to ensure that the statutory funding objective is met—
 - (i) if the valuation is the first valuation the trustees or managers have obtained under section 224, by 22nd September 2008, and
 - (ii) in any other case, within two years after that date.”, and
 - (ii) subsections (2) to (6) are omitted;
 - (b) these Regulations apply as if, in addition to the modifications in sub-paragraph (2)(e) to (i), paragraph 2(a)(i) of Schedule 4 is modified so that, after “this Schedule” there is inserted “and, without prejudice to any of those requirements, by reference to an effective date which is no later than 22nd September 2006”.
- (4) In sub-paragraph (3), “pre-23rd September 2005 scheme” has the meaning given by article 3 of the Pensions Act 2004 (Commencement No. 8) Order 2005(2).

Schemes with a partial guarantee by a public authority

7. Where such a guarantee has been given as is mentioned in regulation 17(1)(a)(ii) in respect of only part of a scheme, Part 3 of the 2004 Act and these Regulations shall apply as if that part and the other part of the scheme were separate schemes.

Schemes relating to certain defence contractors

8.—(1) This paragraph applies in the case of a scheme under which variations to the rate of contributions payable towards the scheme by the employer are subject, either in particular cases or generally, to the consent of—

- (a) the Secretary of State for Defence;
- (b) a person duly authorised by him, or

- (c) a company of which the Secretary of State for Defence or a nominee of his is a shareholder, or a subsidiary (within the meaning of section 736 of the Companies Act 1985(3)) of such a company.

(2) Where this paragraph applies, sections 224(7) and 229 of the 2004 Act shall apply as if references to the employer were both to the employer and the Secretary of State for Defence or, in a case where the consent of a company is required, both to the employer and that company.

Schemes under which the rates of contributions are determined by the trustees or managers or by the actuary

9.—(1) In the case of a scheme under which—

- (a) the rates of contributions payable by the employer are determined by the trustees or managers without the agreement of the employer, and
- (b) no person other than the trustees or managers is permitted to reduce those rates or to suspend payment of contributions,

section 229 of the 2004 Act and regulation 13 shall apply as if they were subject to the modifications set out in sub-paragraphs (2) and (3), and the reference to section 229 in paragraph 8(2) above shall be read as a reference to that section as modified by sub-paragraph (2).

(2) The modifications of section 229 of the 2004 Act are as follows—

- (a) in the heading, for “**agreement of the employer**” there is substituted “**consultation or agreement**”;
- (b) in subsection (1), for “obtain the agreement of the employer to” there is substituted “consult the employer regarding”;
- (c) in subsection (2), for the words before “(if the employer agrees)” there is substituted “After consulting the employer regarding any such matter, the trustees or managers may”;
- (d) subsection (5) is omitted, and
- (e) in subsection (6), for “(1), (4) or (5)” there is substituted “(1) or (4)”.

(3) The modifications of regulation 13 are as follows—

- (a) in the heading, for “**obtaining employer’s agreement**” there is substituted “**consulting employer**”, and
- (b) in the text, for “obtain the agreement of the employer to” there is substituted “consult the employer regarding”.

(4) Where the power of the trustees or managers to determine the rates of contributions payable by the employer without the employer’s agreement is subject to conditions, the modifications provided for in sub-paragraphs (2) and (3) have effect only in circumstances where the conditions are satisfied.

(5) In the case of a scheme under which the rates of contributions payable by the employer are determined by the actuary without the agreement of the employer, section 227(6) of the 2004 Act shall apply as if it required that, in addition to the matters specified there, the actuary’s certificate must state that the rates shown in the schedule of contributions are not lower than the rates he would have provided for if he, rather than the trustees or managers of the scheme, had the responsibility of preparing or revising the schedule, the statement of funding principles and any recovery plan.

(6) In the case to which sub-paragraph (5) applies, regulation 10(6) and Schedule 1 apply as if the form of certification of the adequacy of the rates of contributions shown in the schedule of contributions included an additional statement that—

(3) 1985 c. 6; section 736 was substituted by section 144(1) of the Companies Act 1989 (c. 40).

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“I also certify that the rates of contributions shown in this schedule are not lower than I would have provided for had I had responsibility for preparing or revising the schedule, the statement of funding principles and any recovery plan”.

(7) Where the power of the actuary to determine the rates of contributions payable by the employer without the employer’s agreement is subject to conditions, the modifications provided for in sub-paragraphs (5) and (6) have effect only in circumstances where the conditions are satisfied.

(8) In the case of a scheme to which paragraph 8 applies, the references to the employer’s agreement in sub-paragraphs (4), (5) and (7) of this paragraph shall be read as if the extended meaning of “employer” given by paragraph 8(2) applied.

Schemes which are not required to appoint an actuary

10. Where a scheme is exempt from the application of section 47(1)(b) of the 1995 Act (requirement to appoint a scheme actuary) by virtue of regulations made under subsection (5) of that section, Part 3 of the 2004 Act and these Regulations shall apply as if references to the actuary were to an actuary authorised by the trustees or managers to provide such valuations and certifications as may be required under that Part and these Regulations.

Schemes with fewer than 100 members

11.—(1) This paragraph applies in the case of a scheme which—

- (a) had fewer than 100 members on the effective date of its last actuarial valuation;
- (b) is not exempted from the application of Part 3 of the 2004 Act by regulation 17(1), and
- (c) is not a scheme in relation to which the application of that Part of the Act is modified by paragraph 6 of this Schedule.

(2) Where this paragraph applies—

- (a) section 224(1)(a) of the 2004 Act shall apply as if it required the trustees or managers of the scheme to obtain an actuarial valuation the effective date of which is not more than three years after that of the last such valuation, and an actuarial report for any intervening year at any time in which the scheme had 100 or more members, and
- (b) section 224(3) of that Act shall apply as if—
 - (i) all but paragraph (b) were omitted, and
 - (ii) that paragraph required that the effective date of any actuarial report must be an anniversary of the effective date of the last actuarial valuation.

Schemes subject to a change of circumstances affecting the certification of the schedule of contributions

12.—(1) In circumstances where the actuary considers that, because of the possibility of significant changes in the value of the assets of the scheme or in the scheme’s technical provisions since the effective date of the last actuarial valuation, he is unable to certify the schedule of contributions in the terms set out in paragraph (b) of section 227(6) of the 2004 Act, that paragraph applies as if it provided for a statement that the rates shown in that schedule are such that—

- (a) where the statutory funding objective was not met on the effective date of the last actuarial valuation, the statutory funding objective could have been expected on that date to be met by the end of the period specified in the recovery plan, or

(b) where the statutory funding objective was met on the effective date of the last actuarial valuation, the statutory funding objective could have been expected on that date to continue to be met for the period for which the schedule is to be in force.

(2) In circumstances where the statutory funding objective was met on the effective date of the last actuarial valuation but the actuary considers that, having regard to—

(a) the rates of contributions payable towards the scheme since that date, or

(b) the rates of contributions payable since that date taken together with the possibility of significant changes in the value of the assets of the scheme or in the scheme's technical provisions,

he is unable to certify the schedule of contributions in the terms set out in paragraph (b)(ii) of section 227(6) of the 2004 Act, that paragraph applies as if it provided for a statement that the rates shown in that schedule are such that the statutory funding objective could have been expected on that date to be met by the end of the period for which the schedule is to be in force.

(3) In the case to which sub-paragraph (1) applies, regulation 10(6) and Schedule 1 apply as if the alternative statements in the form of certification of the adequacy of the rates of contributions shown in the schedule of contributions were as follows—

“the statutory funding objective could have been expected on [*effective date of valuation on which the schedule is based*] to be met by the end of the period specified in the recovery plan.

the statutory funding objective could have been expected on [*effective date of valuation on which the schedule is based*] to continue to be met for the period for which the schedule is to be in force.”.

(4) In the case to which sub-paragraph (2) applies, regulation 10(6) and Schedule 1 apply as if the alternative statements in the form of certification of the adequacy of the rates of contributions shown in the schedule of contributions were replaced by the following statement—

“the statutory funding objective could have been expected on [*effective date of valuation on which the schedule is based*] to be met by the end of the period for which the schedule is to be in force.”.

(5) Where paragraph 6 of this Schedule applies, sub-paragraphs (1) and (3) of this paragraph apply as if the references to the period specified in the recovery plan were to the period of two years from the effective date of the last actuarial valuation.