

SCHEDULE 2

MODIFICATIONS OF THE ACT AND REGULATIONS

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—

“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.

Status: *This is the original version (as it was originally made).*

(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.