

SCHEDULE 4

Methods of securing shortfall in cases of serious underprovision

Charges over unencumbered assets

4.—(1) The employer may secure the whole or part of the Article 60 shortfall by arranging, with the agreement of the trustees or managers of the scheme, for the trustees or managers to be given a charge over assets, which are otherwise free from encumbrances, being a charge in respect of which the requirements of this paragraph are satisfied.

(2) The charge shall be made on the following terms—

- (a) that, subject to head (b), during the shortfall period the assets stand charged with the payment of a debt from the employer to the trustees or managers of the sum specified in the charge as the maximum amount that is secured by it;
- (b) that, if during that period a relevant insolvency event occurs in relation to the employer or the scheme begins to be wound up, the assets stand charged with a debt from the employer to the trustees or managers of a sum equal to—
 - (i) the amount mentioned in head (a), or
 - (ii) the Article 75(1) shortfall,whichever is less;
- (c) that at no time during the shortfall period the employer will take or omit to take any steps the taking or omission of which results or may result in a reduction in the value of the assets to an amount less than the Article 60 shortfall at that time.

(3) The charge shall be registrable—

- (a) in a case where the employer is a company, under Part XIII of the Companies (Northern Ireland) Order 1986(1), and
- (b) in any other case, in a register maintained under an enactment,

and the Article 60 shortfall shall not be treated for the purposes of Article 60 as having been secured by the charge unless a legal adviser appointed by the trustees or managers has certified in writing to them that all such steps have been taken as are necessary for the purpose of protecting their interests in the charge.

(4) Before agreeing to an amount required to be secured by Article 60(2) being secured by a charge over assets, the trustees or managers shall be satisfied that the assets proposed to be charged are suitable as security for payment of that amount and, in particular, that, if a relevant insolvency event occurs in relation to the employer—

- (a) the value of the assets will not be substantially reduced, and
- (b) the assets may be converted into cash without undue difficulty and within a reasonable period.

(5) Where an Article 60 shortfall has been secured by a charge under this paragraph, the trustees or managers may accept a fresh charge over different assets in substitution for the original charge, notwithstanding that the period within which that shortfall may be secured in that manner has expired, if they are satisfied that the requirements of this paragraph are satisfied.

(6) Where an amount required to be secured by virtue of a serious shortfall valuation has been secured by a charge under this paragraph, if—

- (a) a fresh obligation arises under Article 60(2) as a result of a further such valuation, and

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- (b) the trustees or managers are satisfied that, if the charge were being taken by them as a result of that further valuation, the requirements of this paragraph would be satisfied, then—
 - (i) they may agree to accept the charge as security under this paragraph in respect of the amount required by Article 60(2) to be secured by virtue of the further valuation (so far as that amount does not exceed the sum specified in the charge as the maximum amount that is secured by it), and
 - (ii) if they do so, then for the purposes of Articles 56 to 61 and these Regulations (but not for any other purposes) the charge shall be deemed to have been given on the date of that agreement.
- (7) A charge given for the purposes of this paragraph may allow the release of assets from the charge where—
 - (a) there has been a reduction in the Article 60 shortfall, and
 - (b) the trustees or managers are satisfied that the assets which will be subject to the charge after the release would be accepted by them to secure an amount equal to the Article 60 shortfall at the time of the release if the charge were given at that time.
- (8) Except as provided by this paragraph, a charge given under this paragraph shall be given on terms under which it may not be amended or revoked during the shortfall period.