

## SCHEDULES

### SCHEDULE 4

#### OCCUPATIONAL AND PERSONAL PENSION SCHEMES

### PART I

#### PROTECTING PENSIONS

##### *Employer to make good deficiencies on winding up*

2. After the Article 68A of the Pensions Order inserted by Article 13 insert the following Article—

##### **“Deficiencies in the assets of a scheme on winding up**

**68B.**—(1) If, in the case of an occupational pension scheme which is not a money purchase scheme, the value at the applicable time of the scheme’s liabilities, as determined in accordance with regulations, exceeds the value of its assets, as so determined, then—

- (a) an amount equal to the excess shall be treated as a debt due from the employer to the trustees of the scheme; and
- (b) if that debt has not been discharged before the default time then, for the purposes of the law relating to winding up or bankruptcy as it applies in relation to the employer, it shall be taken to arise at the default time.

(2) In this Article—

“the applicable time” means the earlier of—

- (a) any time when the scheme is being wound up which falls before the default time; or
- (b) the default time;

“the default time” means—

- (a) where the employer is a company, immediately before the company goes into liquidation, within the meaning of Article 6(2) of the Insolvency (Northern Ireland) Order 1989;
- (b) where the employer is an individual, immediately before the commencement of his bankruptcy, within the meaning of Article 252 of that Order;

“the employer” means the employer of persons in the description or category of employment to which the scheme relates;

“money purchase scheme” has the same meaning as it has in Article 68A.

(3) The power to make regulations conferred by paragraph (1) includes power to provide—

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- (a) that, in calculating the value of the scheme's liabilities, any provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded;
- (b) that the value of the scheme's liabilities or assets is to be calculated and verified in such manner as may, in the particular case, be approved—
  - (i) by a prescribed person,
  - (ii) by a person with prescribed professional qualifications or experience, or
  - (iii) by a person approved by the Department,or that their value is to be calculated and verified in accordance with guidance prepared by a prescribed body.
- (4) This Article is without prejudice to any other right or remedy which the trustees may have in respect of the deficiency.
- (5) A debt due by virtue only of this Article shall not be regarded as a preferential debt for the purposes of the Insolvency (Northern Ireland) Order 1989.
- (6) The Department may make regulations modifying this Article in its application—
  - (a) to any occupational pension scheme which applies to earners in employments under different employers;
  - (b) to any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme;
  - (c) to any occupational pension scheme of which there are no members who are in pensionable service under the scheme, as defined in paragraph 3 of Schedule 3; or
  - (d) to any case where the assets and liabilities of the scheme are transferred to another occupational pension scheme.
- (7) The provisions of this Article and of any regulations made under it override any provision of a scheme to the extent that it conflicts with this Article or those regulations.”.