

Annex C to the Board's determination under Section 175(5) of the Pensions Act 2004 in respect of the financial year 1 April 2009 – 31 March 2010

Certification requirements in respect of contingent assets

In order for a contingent asset to be recognised for the purposes of the 2009/10 risk-based levy, the Board must be satisfied that the information set out below has been provided, and the matters set out below have been certified, in relation to that contingent asset. All such information must be provided in accordance with paragraphs 4(a)-4(c) and 29 of the schedule to the determination no later than 5pm on 31 March 2009. The requirements are different for the different types of contingent asset, as further specified below.

Without prejudice to the provisions of paragraph 27 of Appendix 4 (changes during the levy year), where, in connection with the certification requirements specified below, and prior to the notification of the amount of the levy to the scheme concerned, the Board is notified of any matter relating to any contingent asset, including without limitation:

- (a) that any attempt has been made to enforce or call upon the contingent asset; or
- (b) that the contingent asset itself or any other documentation that was supplied in connection with any application for recognition of that contingent asset has been amended or terminated since it was supplied to the Board

then the Board may disregard the contingent asset in whole or in part for the purposes of the pension protection levy if it appears to the Board that the assets of the relevant scheme/section and/or the value of the contingent asset itself would otherwise be overstated or that it would not be consistent with the approach set out in Appendix 4 and this Annex C to the determination for the contingent asset to continue to be recognised.

Type A – guarantee from a parent company or other associated undertaking

1. The certificate must contain the following information:

(a) In respect of each guarantor which is a party to the guarantee:

- Full name
- Type of organisation (legal form)
- Company registration number (if applicable)
- Charities number (if applicable)
- Country of domicile, which must be a member state of the European Union or Organisation for Economic Co-operation and Development
- Full address

(b) In respect of the guarantee:

- Date on which the guarantee came or will come into effect, which must be no later than 1 April 2009

- A statement as to the form of liability cap which applies, including (if relevant) the percentage funding level on a s179 basis guaranteed and/or the fixed sterling amount. The liability cap must be in one of the five forms specified in the definition of “Guaranteed Obligations” set out in the form of guarantee forming Annex D to the determination. In the case of a non-associated scheme, the liability cap must be a fixed sterling amount.
- Where the same guarantee has been recognised by the Board for the purposes of a previous levy year, a statement as to whether any amendments have been made to the guarantee since it was previously submitted to the Board and if so what those amendments are. Note: where the guarantee has been amended, the rules specified in paragraphs 24-29 of Appendix 4 to the determination will apply to determine whether or not the guarantee is taken into account for the purposes of the risk-based levy for 2009/10.

2. The person providing the certificate must confirm the following matters:

(a) He/she is authorised by or on behalf of the trustees or managers of the scheme/section to complete the certificate.

(b) The Guarantor(s) has/have entered into a guarantee in favour of the scheme/section as detailed above.

(c) The guarantee

- is a legally binding, valid and enforceable obligation of the Guarantor(s) and where there is more than one guarantor, each guarantor is jointly and severally liable for the obligations under the guarantee;
- is in the Pension Protection Fund’s required form for such documents (as published on its website as at the date on which the guarantee was entered into), subject only to variations which have been or will be notified to the Board of the Pension Protection Fund by 5 pm on 31 March 2009 and which do not have a materially detrimental effect on the rights of the trustees as compared with the required form;
- can be drawn against the liabilities to the scheme/section of any of the employers listed in Schedule 1 to the guarantee, which schedule lists every undertaking which is both (A) and “associate” of the/any Guarantor within the meaning set out in Section 435 of the Insolvency Act 1986, and (B) an “employer” in relation to that scheme/section within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder; and
- on its terms, will be unconditionally available to the scheme/section for so long as any actual or contingent liability of any such employers to the scheme/section subsists.

(d) The declarations made in (c) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

(e) He/she is aware of the “Guidance in relation to contingent assets” published by the Board on its website.

(f) He/she has notified the Board of the Pension Protection Fund of any claim that has been made under the guarantee.

(g) The information contained within the certificate is complete and accurate, and the trustees or managers (as the case may be) of the scheme/section undertake to notify the Board of the Pension Protection Fund promptly if the terms of the contingent asset are amended in any respect, the contingent asset is terminated or any of the information in the certificate otherwise ceases to be true and correct on or before 31 March 2010.

(h) He/she is aware that it is a criminal offence under section 195 of the Pensions Act 2004 knowingly or recklessly to provide false or misleading information to the Board in the knowledge that the information will be used to calculate the pension protection levy.

3. The following documents must be supplied to the Board in hard copy in accordance with paragraph 4(b) of the schedule to the determination no later than 5pm on 31 March 2009.

(a) If the guarantee has not been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. generally where the guarantee is new):

- A certified copy of the guarantee
- A blacklined document showing the changes from the Pension Protection Fund's required form or confirmation that there are no changes to the required form
- A copy of the legal opinion referred to in 2(d) above

(b) If the guarantee has been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. the scheme is re-certifying for 2009/10):

- If the guarantee has been amended since the version last sent to the Board, a certified copy of the amended guarantee or amending document
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in 2(c) and (d) above, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.

Type B(i) – security over cash in a bank account

1. The certificate must contain the following information:

(a) In respect of the Chargor which has executed the security agreement and whose interest in the bank account has been charged:

- Full name
- Type of organisation (legal form)
- Company registration number (if applicable)
- Charities number (if applicable)

- Full address

(b) In respect of the bank at which the charged account is held:

- Full name of account bank
- Account details
- Ratings for the account bank published by Moodys, Standard and Poors and/or Fitch. In accordance with Appendix 4 to the determination, the account bank must be rated at least Aa3 by Moodys and/or AA- by Standard and Poors and/or AA- by Fitch.
- Country of domicile, which must be a member state of the European Union or Organisation for Economic Co-operation and Development
- Regulatory body (i.e. the UK Financial Services Authority or an equivalent EU regulator)
- Full address

(c) In respect of the security agreement:

- Date on which the charge came or will come into effect, which must be no later than 1 April 2009
- Balance on the charged account as at a date not more than 7 days prior to the date of submission of the contingent asset certificate, as evidenced by a bank statement. The account must be denominated in pounds sterling.
- A statement as to the form of liability cap which applies, including (if relevant) the percentage funding level on a s179 basis guaranteed and/or the fixed sterling amount. The liability cap must be in one of the five forms specified in the definition of "Secured Liabilities" set out in the form of security agreement forming Annex E to the determination. In the case of a non-associated scheme, the liability cap must be a fixed sterling amount.
- Where the same charge has been recognised by the Board for the purposes of a previous levy year, a statement as to whether any amendments have been made to the charge since it was previously submitted to the Board and if so what those amendments are. Note: where the charge has been amended, the rules specified in paragraphs 24-29 of Appendix 4 to the determination will apply to determine whether or not the charge is taken into account for the purposes of the risk-based levy for 2009/10.

2. The person providing the certificate must confirm the following matters:

(a) He/she is authorised by or on behalf of the trustees or managers of the scheme/section to complete the certificate.

(b) The Chargor has entered into a security agreement in respect of a bank account in favour of the scheme/section as detailed above.

(c) The security agreement

- is a legally binding, valid and enforceable obligation of the Chargor;

- has been properly registered as required by the Companies Act 1985 or any other applicable legislation¹;
- is in the Pension Protection Fund's required form for such documents (as published on its website as at the date on which the security agreement was entered into), subject only to variations which have been or will be notified to the Board of the Pension Protection Fund by 5pm on 31 March 2009 and which do not have a materially detrimental effect on the rights of the trustees as compared with the required form;
- creates a first priority legal mortgage or fixed charge in favour of the trustees of the scheme/section over all amounts standing to the credit of the bank account referred to above, and such amounts are not subject to any prior or *pari passu* security interest; and
- secures the liability to the scheme/section of, and can be enforced upon the occurrence of an Insolvency Event (as defined in the security agreement) in respect of any of the employers listed in Schedule 1 to the security agreement, which schedule lists every undertaking which is both (A) an "associate" of the Chargor within the meaning set out in Section 435 of the Insolvency Act 1986, and (B) an "employer" in relation to that scheme/section within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder.

(d) The declarations made in (c) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

(e) The credit balance on the charged account as at a date not more than 7 days prior to the date of the certificate was as stated above, no withdrawals have been made since that date and a copy of the bank statement verifying such balance has been or will be sent to the Board of the Pension Protection Fund by 5pm on 31 March 2009.

(f) He/she is aware of the "Guidance in relation to contingent assets" published by the Board on its website.

(g) He/she has notified the Board of the Pension Protection Fund of any attempt that has been made to enforce the security created by the account security agreement.

(h) The information contained within the certificate is complete and accurate, and the trustees or managers (as the case may be) of the scheme/section undertake to notify the Board of the Pension Protection Fund promptly if the terms of the contingent asset are amended in any respect, the contingent asset is terminated or any of the information in the certificate otherwise ceases to be true and correct on or before 31 March 2010.

(i) He/she is aware that it is a criminal offence under section 195 of the Pensions Act 2004 knowingly or recklessly to provide false or misleading information to the Board in the knowledge that the information will be used to calculate the pension protection levy.

¹ Note that this means the security must actually have been recorded in the relevant register at the point the certificate is given to the Board

3. The following documents must be supplied to the Board in hard copy in accordance with paragraph 4(b) of the schedule to the determination no later than 5pm on 31 March 2009.

(a) If the security agreement has not been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. generally where the security agreement is new):

- A certified copy of the account security agreement
- A blacklined document showing the changes from the Pension Protection Fund's required form or confirmation that there are no changes to the required form
- A copy of the legal opinion referred to in 2(d) above
- A copy of the bank statement referred to in 2(e) above

(b) If the security agreement has been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. the scheme is re-certifying for 2009/10):

- A copy of the bank statement referred to in 2(e) above
- If the security agreement has been amended since the version last sent to the Board, a certified copy of the amended security agreement or amending document
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in 2(c) and (d) above, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.

Type B(ii)EW – security over real estate located in England or Wales

1. The certificate must contain the following information:

(a) In respect of the Chargor which has executed the security agreement and whose interest in the property has been charged:

- Full name
- Type of organisation (legal form)
- Company registration number (if applicable)
- Charities number (if applicable)
- Full address

(b) In respect of the security:

- Date on which the security agreement came or will come into effect, which must be no later than 1 April 2009

- A statement as to the form of liability cap which applies, including (if relevant) the percentage funding level on a s179 basis guaranteed and/or the fixed sterling amount. The liability cap must be in one of the five forms specified in the definition of “Secured Liabilities” set out in the form of security agreement forming Annex E to the determination. In the case of a non-associated scheme, the liability cap must be a fixed sterling amount.
- Where the same charge has been recognised by the Board for the purposes of a previous levy year, a statement as to whether any amendments have been made to the charge since it was previously submitted to the Board and if so what those amendments are. Note: where the charge has been amended, the rules specified in paragraphs 24-29 of Appendix 4 to the determination will apply to determine whether or not the guarantee is taken into account for the purposes of the risk-based levy for 2009/10.

(c) In respect of the real estate the subject of the security:

- A statement as to whether any of the property is occupied by the chargor, any of the employers listed in Schedule 1 to the security agreement or by any party which is an “associate” (within the meaning set out in section 435 of the Insolvency Act 1986) of any of them
- The value of the property as stated in a valuation, and the date of that valuation. Where the security has not previously been recognised by the Board for the purposes of the pension protection levy, the valuation date must not be more than three months prior to the date of the contingent asset certificate. Otherwise the valuation date must not be more than three years prior to the date of the certificate. If the property, or any part of it, is occupied by the Chargor or any of the employers covered by the security agreement or an associate of any of them, then the property or the relevant part must be valued on a vacant possession basis. Otherwise, the property must be valued on a market value basis. For these purposes 'vacant possession' and 'market value' shall have the meanings given to them in the RICS 'red book'. What constitutes a valuation for these purposes shall be determined in accordance with the contingent asset guidance published by the Board.
- The date of a certificate of title obtained by the trustees, which shall not be earlier than 7 days prior to the effective date of the security agreement.

2. The person providing the certificate must confirm the following matters:

(a) He/she is authorised by or on behalf of the trustees or managers of the scheme/section to complete the certificate.

(b) The Chargor has entered into a security agreement in respect of real estate situated in England and Wales in favour of the scheme/section as detailed above.

(c) The security agreement

- is a legally binding, valid and enforceable obligation of the Chargor;

- has been properly registered as required by the Land Registration Acts 1925-1986, the Land Registration Act 2002, the Companies Act 1985 (each as amended from time to time) and/or any other applicable legislation²;
- is in the Pension Protection Fund's required form for such documents (as published on its website as at the date on which the security agreement was entered into), subject only to variations which have been or will be notified to the Board of the Pension Protection Fund by 5pm on 31 March 2009 and which do not have a materially detrimental effect on the rights of the trustees as compared with the required form;
- creates a first priority legal mortgage or fixed charge in favour of the trustees of the scheme/section over the property referred to above, and such property is not subject to any prior or *pari passu* security interest; and
- secures the liability to the scheme/section of, and can be enforced upon the occurrence of an Insolvency Event (as defined in the security agreement) in respect of any of the employers listed in Schedule 1 to the security agreement, which schedule lists every undertaking which is both (A) an "associate" of the Chargor within the meaning set out in Section 435 of the Insolvency Act 1986, and (B) an "employer" in relation to that scheme/section within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder.

(d) The declarations made in (c) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

(e) The trustees have obtained a valuation of the property that is the subject of the security agreement, as at the date specified above. Where this security has not previously been recognised by the Board for the purposes of the pension protection levy, the valuation date is not more than three months prior to the date of the certificate. Otherwise the valuation date is not more than three years prior to the date of the certificate. The valuation has been prepared by a chartered surveyor who is a member of the Royal Institute of Chartered Surveyors (RICS) and has appropriate indemnity cover in place. The valuation has been prepared on a market value basis, except to the extent any of the property is occupied by the Chargor or any of the employers listed in Schedule 1 to the security agreement (or by any associate of any of them), in which event the property or part of the property so occupied has been valued on a vacant possession basis. The valuation includes allowance for any encumbrances recorded in the certificate of title referred to in (f) below.

(f) The trustees have obtained a certificate of title from an appropriately qualified person and dated not more than 7 days prior to the effective date of the security agreement which confirms that the Chargor has good and marketable title to the property that is the subject of the security agreement and records any material encumbrances to that property. Having made appropriate enquiries I am satisfied that, as at the date of the certificate, there are no matters affecting the title to the property which were not disclosed in the certificate of title referred to above, or that

² Note that this means the security must actually have been recorded in the relevant registers at the point the certificate is given to the Board

to the extent there are any such matters, they have been allowed for in the valuation of the property referred to above.

(g) Insurance in relation to the property which meets the requirements of the security agreement is in place and all premia have been paid.

(h) He/she is aware of the "Guidance in relation to contingent assets" published by the Board on its website.

(i) He/she has notified the Board of the Pension Protection Fund of any attempt that has been made to enforce the security created by the security agreement.

(j) The information contained within the certificate is complete and accurate, and the trustees or managers (as the case may be) of the scheme/section undertake to notify the Board of the Pension Protection Fund promptly if the terms of the contingent asset are amended in any respect, the contingent asset is terminated or any of the information in the certificate otherwise ceases to be true and correct on or before 31 March 2010.

(k) He/she is aware that it is a criminal offence under section 195 of the Pensions Act 2004 knowingly or recklessly to provide false or misleading information to the Board in the knowledge that the information will be used to calculate the pension protection levy.

3. The following documents must be supplied to the Board in hard copy in accordance with paragraph 4(b) of the schedule to the determination no later than 5pm on 31 March 2009.

(a) If the security agreement has not been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. generally where the security agreement is new):

- A certified copy of the security agreement
- A blacklined document showing the changes from the Pension Protection Fund's required form or confirmation that there are no changes to the required form
- A copy of the legal opinion referred to in 2(d) above
- A copy of the valuation referred to in 2(e) above
- A copy of the certificate of title referred to in 2(f) above

(b) If the security agreement has been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. the scheme is re-certifying for 2009/10):

- If the security agreement has been amended since the version last sent to the Board, a certified copy of the amended security agreement or amending document
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in 2(c) and (d) above, and

should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.

- If a new valuation has been obtained, a copy of that valuation
- If a new certificate of title has been obtained, a copy of that certificate of title

Type B(ii)NI - security over real estate located in Northern Ireland

1. The certificate must contain the following information:

(a) In respect of the Chargor which has executed the security agreement and whose interest in the property has been charged:

- Full name
- Type of organisation (legal form e.g. limited company, charity etc)
- Company registration number (if applicable)
- Charities number (if applicable)
- Full address

(b) In respect of the security:

- Date on which the security agreement came or will come into effect, which must be no later than 1 April 2009
- A statement as to the form of the liability cap which applies, including (if relevant) the percentage funding level on a section 179 of the Pensions Act 2004 basis guaranteed and/or the fixed sterling amount. The liability cap must be in one of the five forms specified in the definition of "Secured Liabilities" set out in the form of security agreement forming Annex E to the determination. In the case of a non-associated scheme, the liability cap must be a fixed sterling amount.
- Where the same charge has been recognised by the Board for the purposes of a previous levy year, a statement as to whether any amendments have been made to the charge since it was previously submitted to the Board and if so what those amendments are. Note: where the charge has been amended, the rules specified in paragraphs 24-29 of Appendix 4 to the determination will apply to determine whether or not the guarantee is taken into account for the purposes of the risk-based levy for 2009/10.

(c) In respect of the real estate the subject of the security:

- A statement as to whether any of the property is occupied by the Chargor, any of the employers listed in Schedule 1 to the security agreement or by any party which is an "associate" (within the meaning set out in Article 4 of the Insolvency (Northern Ireland) Order 1989) of any of them.
- The value of the property as stated in a valuation, and the date of that valuation. Where the security has not previously been recognised by the Board for the purposes of the pension protection levy, the valuation date must not be more than three months prior to the date of the contingent asset certificate. Otherwise the valuation date must not be more than three years

prior to the date of the certificate. If the property, or any part of it, is occupied by the Chargor or any of the employers covered by the security agreement or an associate of any of them, then the property or the relevant part must be valued on a vacant possession basis. Otherwise, the property must be valued on a market value basis. For these purposes vacant possession and 'market value' shall have the meanings given to them in the RICS 'red book'. What constitutes a valuation for these purposes shall be determined in accordance with the contingent asset guidance published by the Board.

- The date of a certificate of title obtained by the trustees, which shall not be earlier than 7 days prior to the effective date of the security agreement.

2. The person providing the certificate must confirm the following matters;

(a) He/she is authorised by or on behalf of the trustees or managers of the scheme/section to complete the certificate.

(b) The Chargor has entered into a security agreement in respect of real estate situated in Northern Ireland in favour of the scheme/section as detailed above.

(c) The security agreement:

- is a legally binding, valid and enforceable obligation of the Chargor;
- has been properly registered as required by the Land Registration Act (Northern Ireland) 1970, the Companies (Northern Ireland) Order 1986 (each as amended from time to time) and/or any other applicable legislation³;
- is in the Pension Protection Fund's required form for such documents (as published on its website as at the date on which the security agreement was entered into), subject only to variations which have been or will be notified to the Board of the Pension Protection Fund by 5pm on 31 March 2009 and which do not have a materially detrimental effect on the rights of the trustees as compared with the required form;
- creates a first priority legal mortgage or fixed charge in favour of the trustees of the scheme/section over the property, and such property is not subject to any prior or *pari passu* security interest; and
- secures the liability to the scheme/section of, and can be enforced upon the occurrence of an Insolvency Event (as defined in the security agreement) in respect of any of the employers listed in Schedule 1 to the security agreement, which schedule lists every undertaking which is both (A) an "associate" of the Chargor within the meaning set out in Article 4 of the Insolvency (Northern Ireland) Order 1989, and (B) an "employer" in relation to that scheme/section within the meaning set out in Article 2 of the Pensions (Northern Ireland) Order 2005 and regulations made thereunder.

(d) The declarations made in (c) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

³ Note that this means the security must actually have been recorded in the relevant register at the point the certificate is given to the Board

(e) The trustees have obtained a valuation of the property that is the subject of the security agreement, as at the date specified above. Where this security has not previously been recognised by the Board for the purposes of the pension protection levy, the valuation date is not more than three months prior to the date of the certificate. Otherwise the valuation date is not more than three years prior to the date of the certificate. The valuation has been prepared by a chartered surveyor who is a member of the Royal Institute of Chartered Surveyors (RICS) and has appropriate indemnity cover in place. The valuation has been prepared on a market value basis, except to the extent any of the property is occupied by the Chargor or any of the employers listed in Schedule 1 to the security agreement (or by any associate of any of them), in which event the property or part of the property so occupied has been valued on a vacant possession basis. The valuation includes allowance for any encumbrances recorded in the certificate of title referred to in (f) below.

(f) The trustees have obtained a certificate of title from an appropriately qualified person and dated not more than 7 days prior to the effective date of the security agreement which confirms that the Chargor has good and marketable title to the property that is the subject of the security agreement and records any material encumbrances to that property. Having made appropriate enquiries the person providing the certificate is satisfied that, as at the date of the certificate, there are no matters affecting the title to the property which were not disclosed in the certificate of title referred to above, or that to the extent there are any such matters, they have been allowed for in the valuation of the property referred to above.

(g) Insurance in relation to the property which meets the requirements of the security agreement is in place and all premia have been paid.

(h) He/she is aware of the "Guidance in relation to contingent assets" published by the Board on its website.

(i) He/she has notified the Board of the Pension Protection Fund of any attempt that has been made to enforce the security created by the security agreement.

(j) The information contained within the certificate is complete and accurate, and the trustees or managers (as the case may be) of the scheme/section undertake to notify the Board of the Pension Protection Fund promptly if the terms of the contingent asset are amended in any respect, the contingent asset is terminated or any of the information in the certificate otherwise ceases to be true and correct on or before 31 March 2010.

(k) He/she is aware that it is a criminal offence under section 195 of the Pensions Act 2004 knowingly or recklessly to provide false or misleading information to the Board in the knowledge that the information will be used to calculate the pension protection levy.

3. The following documents must be supplied to the Board in hard copy in accordance with paragraph 1(b) of appendix 4 to the determination no later than 5pm on 31 March 2009.

(a) If the security agreement has not been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. generally where the security agreement is new):

- A certified copy of the security agreement
- A blacklined document showing the changes from the Pension Protection Fund's required form or confirmation that there are no changes to the required form
- A copy of the legal opinion referred to in 2(d) above
- A copy of the valuation referred to in 2(e) above
- A copy of the certificate of title referred to in 2(f) above

(b) If the security agreement has been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. the scheme is re-certifying for 2009/10):

- If the security agreement has been amended since the version last sent to the Board, a certified copy of the amended security agreement or amending document
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in 2(c) and (d) above, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.
- If a new valuation has been obtained, a copy of that valuation
- If a new certificate of title has been obtained, a copy of that certificate of title

Type B(ii)S - security over real estate located in Scotland

1. The certificate must contain the following information:

(a) In respect of the Chargor which has executed the standard security and whose interest in the property has been charged:

- Full name
- Type of organisation (legal form e.g. limited company, charity etc)
- Company registration number (if applicable)
- Charities number (if applicable)
- Full address

(b) In respect of the security:

- Date on which the standard security came or will come into effect, which must be no later than 1 April 2009
- A statement as to the form of the liability cap which applies, including (if relevant) the percentage funding level on a section 179 of the Pensions Act 2004 basis guaranteed and/or the fixed sterling amount. The liability cap must be in one of the five forms specified in the definition of "Secured Liabilities" set out in the form of standard security forming Annex E to the determination. In

the case of a non-associated scheme, the liability cap must be a fixed sterling amount.

- Where the same charge has been recognised by the Board for the purposes of a previous levy year, a statement as to whether any amendments have been made to the charge since it was previously submitted to the Board and if so what those amendments are. Note: where the charge has been amended, the rules specified in paragraphs 24-29 of Appendix 4 to the determination will apply to determine whether or not the guarantee is taken into account for the purposes of the risk-based levy for 2009/10.

(c) In respect of the real estate the subject of the security:

- A statement as to whether any of the property is occupied by the Chargor, any of the employers listed in Schedule 1 to the standard security or by any party which is an "associate" (within the meaning set out in section 435 of the Insolvency Act 1986) of any of them
- The value of the property as stated in a valuation, and the date of that valuation. Where the security has not previously been recognised by the Board for the purposes of the pension protection levy, the valuation date must not be more than three months prior to the date of the contingent asset certificate. Otherwise the valuation date must not be more than three years prior to the date of the certificate. If the property, or any part of it, is occupied by the Chargor or any of the employers covered by the standard security or an associate of any of them, then the property or the relevant part must be valued on a vacant possession basis. Otherwise, the property must be valued on a market value basis. For these purposes vacant possession and 'market value' shall have the meanings given to them in the RICS 'red book'. What constitutes a valuation for these purposes shall be determined in accordance with the contingent asset guidance published by the Board.
- The date of a certificate of title obtained by the trustees, which shall not be earlier than 7 days prior to the effective date of the standard security.

2. The person providing the certificate must confirm the following matters;

(a) He/she is authorised by or on behalf of the trustees or managers of the scheme/section to complete the certificate.

(b) The Chargor has entered into a standard security in respect of real estate situated in Scotland in favour of the scheme/section as detailed above.

(c) The standard security

- is a legally binding, valid and enforceable obligation of the Chargor;
- has been properly registered as required by the Land Register of Scotland or recorded in the General Register of Sasines (as appropriate) and the charge created thereby has been registered under the Companies Act 1985 (as amended from time to time) and/or any other applicable legislation⁴;

⁴ Note that this means the security must actually have been recorded in the relevant register at the point the certificate is given to the Board

- is in the Pension Protection Fund's required form for such documents (as published on its website as at the date on which the standard security was entered into), subject only to variations which have been or will be notified to the Board of the Pension Protection Fund by 5pm on 31 March 2009 and which do not have a materially detrimental effect on the rights of the trustees as compared with the required form;
- creates a first ranking standard security in favour of the trustees of the scheme/section over the property, and such property is not subject to any prior or *pari passu* security interest; and
- secures the liability to the scheme/section of, and can be enforced upon the occurrence of an Insolvency Event (as defined in the standard security) in respect of any of the employers listed in Part 1 of the Schedule to the standard security, which Part 1 lists every undertaking which is both (A) an "associate" of the Chargor within the meaning set out in Section 435 of the Insolvency Act 1986, and (B) an "employer" in relation to that scheme/section within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder.

(d) The declarations made in (c) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

(e) The trustees have obtained a valuation of the property that is the subject of the standard security, as at the date specified above. Where this security has not previously been recognised by the Board for the purposes of the pension protection levy, the valuation date is not more than three months prior to the date of the certificate. Otherwise the valuation date is not more than three years prior to the date of the certificate. The valuation has been prepared by a chartered surveyor who is a member of the Royal Institute of Chartered Surveyors (RICS) and has appropriate indemnity cover in place. The valuation has been prepared on a market value basis, except to the extent any of the property is occupied by the Chargor or any of the employers listed in Part 1 of the Schedule to the standard security (or by any associate of any of them), in which event the property or part of the property so occupied has been valued on a vacant possession basis. The valuation includes allowance for any encumbrances recorded in the certificate of title referred to in (f) below.

(f) The trustees have obtained a certificate of title from an appropriately qualified person and dated not more than 7 days prior to the effective date of the standard security which confirms that the Chargor has good and marketable title to the property that is the subject of the standard security and records any material encumbrances to that property. Having made appropriate enquiries the person providing the certificate is satisfied that, as at the date of the certificate, there are no matters affecting the title to the property which were not disclosed in the certificate of title referred to above, or that to the extent there are any such matters, they have been allowed for in the valuation of the property referred to above.

(g) Insurance in relation to the property which meets the requirements of the standard security is in place and all premia have been paid.

(h) He/she is aware of the "Guidance in relation to contingent assets" published by the Board on its website.

(i) He/she has notified the Board of the Pension Protection Fund of any attempt that has been made to enforce the security created by the standard security.

(j) The information contained within the certificate is complete and accurate, and the trustees or managers (as the case may be) of the scheme/section undertake to notify the Board of the Pension Protection Fund promptly if the terms of the contingent asset are amended in any respect, the contingent asset is terminated or any of the information in the certificate otherwise ceases to be true and correct on or before 31 March 2010.

(k) He/she is aware that it is a criminal offence under section 195 of the Pensions Act 2004 knowingly or recklessly to provide false or misleading information to the Board in the knowledge that the information will be used to calculate the pension protection levy.

3. The following documents must be supplied to the Board in hard copy in accordance with paragraph 1(b) of appendix 4 to the determination no later than 5pm on 31 March 2009.

(a) If the standard security has not been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. generally where the standard security is new):

- A certified copy of the standard security
- A blacklined document showing the changes from the Pension Protection Fund's required form or confirmation that there are no changes to the required form
- A copy of the legal opinion referred to in 2(d) above
- A copy of the valuation referred to in 2(e) above
- A copy of the certificate of title referred to in 2(f) above

(b) If the standard security has been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. the scheme is re-certifying for 2009/10):

- If the standard security has been amended since the version last sent to the Board, a certified copy of the amended standard security or amending document
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in 2(c) and (d) above, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.
- If a new valuation has been obtained, a copy of that valuation
- If a new certificate of title has been obtained, a copy of that certificate of title

Type B(iii) – security over securities

1. The certificate must contain the following information:

(a) In respect of the Chargor which has executed the security agreement and whose interest in the securities has been charged:

- Full name
- Type of organisation (legal form)
- Company registration number (if applicable)
- Charities number (if applicable)
- Full address

(b) In respect of the custodian holding the charged securities:

- Full name of custodian
- Ratings for the custodian published by Moodys, Standard and Poors and/or Fitch. In accordance with Appendix 4 to the determination, the custodian must be rated at least Aa3 by Moodys and/or AA- by Standard and Poors and/or AA- by Fitch.
- Country of domicile, which must be a member state of the European Union or Organisation for Economic Co-operation and Development
- Regulatory body (i.e. the UK Financial Services Authority or an equivalent EU regulator)
- Full address

(c) In respect of the security agreement:

- Date on which the charge came or will come into effect, which must be no later than 1 April 2009
- Date and value of the latest valuation of the charged securities. The valuation must be provided by the Custodian save that, to the extent the securities are unquoted, the Custodian may rely on a valuation provided by an appropriately qualified third party valuer. The valuation must be as at a date not more than one month prior to the date of the contingent asset certificate, except that for unquoted securities this limit is extended to three months. If the securities are a mixture of quoted and unquoted, the date of the oldest element of the valuation must be stated. Securities issued by, or by reference to, undertakings which are the Chargor or any employer covered by the security agreement or 'associates' of any of them must be excluded for the purposes of valuing the securities.
- A statement as to the form of liability cap which applies, including (if relevant) the percentage funding level on a s179 basis guaranteed and/or the fixed sterling amount. The liability cap must be in one of the five forms specified in the definition of "Secured Liabilities" set out in the form of security agreement forming Annex E to the determination. In the case of a non-associated scheme, the liability cap must be a fixed sterling amount.
- Where the same charge has been recognised by the Board for the purposes of a previous levy year, a statement as to whether any amendments have been made to the charge since it was previously submitted to the Board and if

so what those amendments are. Note: where the charge has been amended, the rules specified in paragraphs 24-29 of Appendix 4 to the determination will apply to determine whether or not the charge is taken into account for the purposes of the risk-based levy for 2009/10.

2. The person providing the certificate must confirm the following matters:

(a) He/she is authorised by or on behalf of the trustees or managers of the scheme/section to complete the certificate.

(b) The Chargor has entered into a security agreement in respect of certain securities owned by the Chargor and held by the Custodian in favour of the scheme/section as detailed above.

(c) The security agreement

- is a legally binding, valid and enforceable obligation of the Chargor;
- has been properly registered as required by the Companies Act 1985 (as amended from time to time) or any other applicable legislation⁵;
- is in the Pension Protection Fund's required form for such documents (as published on its website as at the date on which the security agreement was entered into), subject only to variations which have been or will be notified to the Board of the Pension Protection Fund by 5pm on 31 March 2009 and which do not have a materially detrimental effect on the rights of the trustees as compared with the required form;
- creates a first priority legal mortgage or fixed charge in favour of the trustees of the scheme/section over the relevant securities and the Chargor's rights under its custody agreement with the Custodian named above, and such amounts are not subject to any prior or *pari passu* security interest; and
- secures the liability to the scheme/section of, and can be enforced upon the occurrence of an Insolvency Event (as defined in the security agreement) in respect of any of the employers listed in Schedule 1 to the security agreement, which schedule lists every undertaking which is both (A) an "associate" of the Chargor within the meaning set out in Section 435 of the Insolvency Act 1986, and (B) an "employer" in relation to that scheme/section within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder.

(d) The declarations made in (c) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

(e) The securities which are the subject of the security agreement are securities in which the trustees would be permitted to invest pension fund assets recognising any restrictions on investment contained within the scheme/section's trust deed and/or rules (but ignoring any restriction on employer-related investments).

(f) The Custodian has provided a valuation of the securities subject to the security agreement as at the date specified above. The valuation has been prepared in

⁵ Note that this means the security must actually have been recorded in the relevant register at the point the certificate is given to the Board

accordance with the Statement of Recommended Practice on Financial Reporting for Pension Schemes. Securities issued by, or by reference to, any undertaking which is the Chargor or any of the employers listed in Schedule 1 to the security agreement or an 'associate' (within the meaning set out in Section 435 of the Insolvency Act 1986) of any of them have been valued at zero for the purposes of the valuation.

(g) He/she is aware of the "Guidance in relation to contingent assets" published by the Board on its website.

(h) He/she has notified the Board of the Pension Protection Fund of any attempt that has been made to enforce the security created by the security agreement.

(i) The information contained within the certificate is complete and accurate, and the trustees or managers (as the case may be) of the scheme/section undertake to notify the Board of the Pension Protection Fund promptly if the terms of the contingent asset are amended in any respect, the contingent asset is terminated or any of the information in the certificate otherwise ceases to be true and correct on or before 31 March 2010.

(j) He/she is aware that it is a criminal offence under section 195 of the Pensions Act 2004 knowingly or recklessly to provide false or misleading information to the Board in the knowledge that the information will be used to calculate the pension protection levy.

3. The following documents must be supplied to the Board in hard copy in accordance with paragraph 4(b) of the schedule to the determination no later than 5pm on 31 March 2009.

(a) If the security agreement has not been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. generally where the security agreement is new):

- A certified copy of the security agreement
- A blacklined document showing the changes from the Pension Protection Fund's required form or confirmation that there are no changes to the required form
- A copy of the legal opinion referred to in 2(d) above
- A copy of the valuation referred to in 2(f) above

(b) If the security agreement has been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. the scheme is re-certifying for 2009/10):

- A copy of the valuation referred to in 2(f) above
- If the security agreement has been amended since the version last sent to the Board, a certified copy of the amended security agreement or amending document
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in 2(c) and (d) above, and

should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.

Type C(i) – letter of credit or bank guarantee, evergreen version

1. The certificate must contain the following information:

(a) In respect of the purchaser:

- Full name
- Type of organisation (legal form)
- Company registration number (if applicable)
- Charities number (if applicable)
- Full address

(b) In respect of the counterparty

- Full name of counterparty
- Ratings for the counterparty published by Moodys, Standard and Poors and/or Fitch. In accordance with Appendix 4 to the determination, the counterparty must be rated at least Aa3 by Moodys and/or AA- by Standard and Poors and/or AA- by Fitch.
- Country of domicile, which must be a member state of the European Union or Organisation for Economic Co-operation and Development
- Regulatory body (i.e. the UK Financial Services Authority or an equivalent EU regulator)
- Full address

(c) In respect of the letter of credit/bank guarantee:

- Date on which the letter of credit/bank guarantee came or will come into effect, which must be no later than 1 April 2009
- Date on which the letter of credit/bank guarantee will expire, which must be no earlier than 31 March 2010
- Face value of letter of credit/bank guarantee. The instrument must be denominated in sterling

2. The person providing the certificate must confirm the following matters:

(a) He/she is authorised by or on behalf of the trustees or managers of the scheme/section to complete the certificate.

(b) The Counterparty has provided a letter of credit/bank guarantee (type C(i) - "evergreen" version) in favour of the scheme/section as detailed above.

(c) The letter of credit/bank guarantee:

- is a legally binding, valid and enforceable obligation of the Counterparty;

- is in the Pension Protection Fund's required form for such documents (as published on its website as at the date on which the guarantee was entered into), subject only to variations which have been or will be notified to the Board of the Pension Protection Fund by 5 pm on 31 March 2009 and which do not have a materially detrimental effect on the rights of the trustees as compared with the required form;
- on its terms, will be unconditionally available to the scheme/section until the expiry date stated above; and
- can be drawn, *inter alia*, upon the occurrence of an Insolvency Event (as defined in the letter of credit/bank guarantee) in respect of, any of the employers listed in Schedule 1 to the letter of credit/bank guarantee, which schedule lists every undertaking which is both (A) an "associate" of the Purchaser within the meaning set out in Section 435 of the Insolvency Act 1986, and (B) an "employer" in relation to that scheme/section within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder.

(d) The declarations made in (c) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

(e) If any contractual documents other than the letter of credit/bank guarantee were previously supplied to the Board of the Pension Protection Fund in support of an application for recognition of the letter of credit/bank guarantee, those contractual documents remain in force without amendment or, if this is not the case, he/she has notified the Board of the Pension Protection Fund of any changes.

(f) He/she is aware of the "Guidance in relation to contingent assets" published by the Board on its website.

(g) He/she has notified the Board of the Pension Protection Fund of any attempt that has been made to call upon the letter of credit/bank guarantee.

(h) The information contained within the certificate is complete and accurate, and the trustees or managers (as the case may be) of the scheme/section undertake to notify the Board of the Pension Protection Fund promptly if the terms of the contingent asset are amended in any respect, the contingent asset is terminated or any of the information in the certificate otherwise ceases to be true and correct on or before 31 March 2010.

(i) He/she is aware that it is a criminal offence under section 195 of the Pensions Act 2004 knowingly or recklessly to provide false or misleading information to the Board in the knowledge that the information will be used to calculate the pension protection levy.

3. The following documents must be supplied to the Board in hard copy in accordance with paragraph 4(b) of the schedule to the determination no later than 5pm on 31 March 2009.

(a) If the letter of credit/bank guarantee has not been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. generally where the letter of credit/bank guarantee is new):

- A certified copy of the letter of credit/bank guarantee
- A blacklined document showing the changes from the Pension Protection Fund's required form or confirmation that there are no changes to the required form
- A copy of the legal opinion referred to in 2(d) above

(b) If the letter of credit/bank guarantee has been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. the scheme is re-certifying for 2009/10):

- If the letter of credit/bank guarantee has been amended since the version last sent to the Board, a certified copy of the amended letter of credit/bank guarantee or amending document
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in 2(c) and (d) above, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.

Type C(ii) – letter of credit or bank guarantee to support a defined schedule of deficit reduction contributions

1. The certificate must contain the following information:

(a) In respect of the purchaser:

- Full name
- Type of organisation (legal form)
- Company registration number (if applicable)
- Charities number (if applicable)
- Full address

(b) In respect of the counterparty

- Full name of counterparty
- Ratings for the counterparty published by Moodys, Standard and Poors and/or Fitch. In accordance with Appendix 4 to the determination, the counterparty must be rated at least Aa3 by Moodys and/or AA- by Standard and Poors and/or AA- by Fitch.
- Country of domicile, which must be a member state of the European Union or Organisation for Economic Co-operation and Development
- Regulatory body (i.e. the UK Financial Services Authority or an equivalent EU regulator)
- Full address

(c) In respect of the letter of credit/bank guarantee:

- Date on which the letter of credit/bank guarantee came or will come into effect, which must be no later than 1 April 2009
- Date on which the letter of credit/bank guarantee will expire, which must be no earlier than 5 days after the last "Planned Contribution" is due (see below)
- Face value of letter of credit/bank guarantee. The instrument must be denominated in sterling. The face value of the instrument must be stated as at 1 April 2009, i.e. after any reduction as a result of Planned Contributions having been made prior to that date.

2. The person providing the certificate must confirm the following matters:

(a) He/she is authorised by or on behalf of the trustees or managers of the scheme/section to complete the certificate.

(b) The Counterparty has provided a letter of credit/bank guarantee (type C(ii) – to support a defined schedule of deficit reduction contributions) in favour of the scheme/section as detailed above.

(c) The scheme/section benefits from an undertaking to make a defined schedule of deficit-reduction contributions to the scheme/section (the "Planned Contributions"). The aggregate amount of the outstanding Planned Contributions is at least equal to the face value of the letter of credit/bank guarantee stated above, and all of the Planned Contributions will become payable no later than 5 days prior to the expiry date of the letter of credit/bank guarantee stated above. The trustees/managers of the scheme/section have received confirmation in writing from the scheme actuary dated not more than 30 days prior to the date this contingent asset was first certified to the Board of the Pension Protection Fund stating that, based on then current circumstances including the level of committed regular contributions, all of the Planned Contributions were expected to constitute deficit-reduction contributions.

(d) The letter of credit/bank guarantee:

- is a legally binding, valid and enforceable obligation of the Counterparty
- is in the Pension Protection Fund's required form for such documents (as published on its website as at the date on which the letter of credit/bank guarantee was entered into), subject only to variations which have been or will be notified to the Board of the Pension Protection Fund by 5 pm on 31 March 2009 and which do not have a materially detrimental effect on the rights of the trustees as compared with the required form;
- on its terms, will be unconditionally available to the scheme/section until the expiry date stated above; and
- can be drawn, *inter alia*, upon a failure to pay any of the Planned Contributions or upon the occurrence of an Insolvency Event (as defined in the letter of credit/bank guarantee) in respect of, any of the employers listed in Schedule 1 to the letter of credit/bank guarantee, which schedule lists every undertaking which is both (A) an "associate" of the Purchaser within the meaning set out in Section 435 of the Insolvency Act 1986, and (B) an

"employer" in relation to that scheme/section within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder.

(e) The declarations made in (d) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

(f) If any contractual documents other than the letter of credit/bank guarantee were previously supplied to the Board of the Pension Protection Fund in support of an application for recognition of the letter of credit/bank guarantee, those contractual documents remain in force without amendment or, if this is not the case, he/she has notified the Board of the Pension Protection Fund of any changes.

(g) He/she is aware of the "Guidance in relation to contingent assets" published by the Board on its website.

(h) He/she has notified the Board of the Pension Protection Fund of any attempt that has been made to call upon the letter of credit/bank guarantee.

(i) The information contained within the certificate is complete and accurate, and the trustees or managers (as the case may be) of the scheme/section undertake to notify the Board of the Pension Protection Fund promptly if the terms of the contingent asset are amended in any respect, the contingent asset is terminated or any of the information in the certificate otherwise ceases to be true and correct on or before 31 March 2010.

(j) He/she is aware that it is a criminal offence under section 195 of the Pensions Act 2004 knowingly or recklessly to provide false or misleading information to the Board in the knowledge that the information will be used to calculate the pension protection levy.

3. The following documents must be supplied to the Board in hard copy in accordance with paragraph 4(b) of the schedule to the determination no later than 5pm on 31 March 2009.

(a) If the guarantee has not been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. generally where the guarantee is new):

- A certified copy of the letter of credit/bank guarantee
- A blacklined document showing the changes from the Pension Protection Fund's required form or confirmation that there are no changes to the required form
- A copy of the actuary's confirmation referred to in 2(c) above
- A copy of the legal opinion referred to in 2(e) above

(b) If the guarantee has been accepted by the Board as satisfying its requirements in relation to a previous levy year (i.e. the scheme is re-certifying for 2009/10):

- If the letter of credit/bank guarantee has been amended since the version last sent to the Board, a certified copy of the amended letter of credit/bank guarantee or amending document
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in 2(c) and (d) above, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.