

SCHEDULES

SCHEDULE 5

Section 34

SPECIAL ADMINISTRATION

Transfer schemes

- 1 (1) This paragraph amends paragraph 2 of Schedule 2 to the Water Industry Act 1991 (transfer schemes).
- (2) In sub-paragraph (1) omit “and, in relation to the matters affecting them, of any other appointees”.
- (3) In sub-paragraph (3) for “, of the existing appointee and, in relation to the matters affecting them, of any other appointees,” substitute “and the existing appointee”.
- (4) In sub-paragraph (4) for “, the new appointee and, in relation to the provisions of the order which affect them, any other appointees” substitute “and the new appointee”.
- 2 At the end of paragraph 3(2)(b) of Schedule 2 add “(but may not impose new liabilities on any other appointee);”.

Objectives

- 3 After section 23(2A) of the Water Industry Act 1991 (special administration order: effect) insert—
 - “(2B) Where a company is in special administration as a result of an order made on the grounds that the company is or is likely to be unable to pay its debts—
 - (a) a purpose of the special administration order is to rescue the company as a going concern, and
 - (b) the transfer purpose under subsection (2)(a) or (2A)(a) applies only if the special administrator thinks that—
 - (i) it is not likely to be possible to rescue the company as a going concern, or
 - (ii) transfer is likely to secure more effective performance of the functions or activities mentioned in subsection (2)(a) or (2A)(a).
 - (2C) Where subsection (2B) applies, subsections (2)(b) and (2A)(b) have effect as if they referred to carrying out functions, or carrying on activities, pending rescue or transfer.
 - (2D) For the purpose of rescuing the company as a going concern a special administrator may propose—
 - (a) a company voluntary arrangement under Part 1 of the Insolvency Act 1986, or

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- (b) a compromise or arrangement in accordance with Part 26 of the Companies Act 2006.
- (2E) The Secretary of State may by regulations made by statutory instrument—
- (a) modify a provision of the Insolvency Act 1986 or the Companies Act 2006 in respect of the arrangements and compromises mentioned in subsection (2D) in so far as they apply to a company which is or has been in special administration;
 - (b) make other supplemental provision about those arrangements and compromises (which may, in particular, apply or modify the effect of an enactment about insolvency or companies).
- (2F) Provision under subsection (2E)(a) or (b) may, in particular, confer a function on—
- (a) the Secretary of State,
 - (b) the Welsh Ministers, or
 - (c) the Authority.
- (2G) Regulations under subsection (2E) may not be made unless—
- (a) the Welsh Ministers have consented to the making of the regulations, and
 - (b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply)."

Financial assistance

- 4 (1) This paragraph amends sections 153 and 154 of the Water Industry Act 1991 (government financial assistance where special administration order made).
- (2) For section 153(1)(b) substitute—
- “(b) offer indemnities in respect of liabilities or loss incurred or sustained in the course of functions under the order.”
- (3) After section 153(1) insert—
- “(1A) An indemnity under subsection (1)(b) may be offered to—
- (a) the special administrator,
 - (b) an employee of the special administrator,
 - (c) a member or employee of a firm of which the special administrator is or was a member or employee (or a successor of that firm),
 - (d) a body corporate of which the special administrator is or was an employee, or
 - (e) an officer, employee or member of a body corporate within paragraph (d).”
- (4) In section 153(3) for “by Schedule 3 to this Act” substitute “by or under section 23”.
- (5) After section 153(3) insert—
- “(3A) Arrangements for a grant, loan or indemnity which are made while a special administration order is in force may continue to have effect after the order ceases to have effect.”

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- (6) In section 154(2) for “Immediately” substitute “As soon as is reasonably practicable”.
- (7) In section 154(3) for “possible” substitute “is reasonably practicable”.
- (8) In section 154(5) for “by Schedule 3 to this Act” substitute “by or under section 23”.
- (9) This paragraph has effect in respect of special administration orders made whether before or after this section comes into force.

Hive down

- 5 (1) In section 23 of the Water Industry Act 1991 (special administration order) after subsection (2G) (inserted by paragraph 2 above) insert—
 - “(2H) A transfer under subsection (2) or (2A) may be effected by—
 - (a) transferring all or part of the company’s undertaking to a wholly-owned subsidiary of the company, and
 - (b) then transferring securities in the subsidiary to another company.”
- (2) The Secretary of State may by order amend Schedule 2 to the Water Industry Act 1991 in consequence of sub-paragraph (1).
- (3) An order under sub-paragraph (2) may not be made unless—
 - (a) the Welsh Ministers have consented to the making of the order, and
 - (b) a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Amendments made by or under this paragraph apply to special administration orders made before or after the commencement of this section.

Application of general administration law

- 6 (1) For section 23(3) of (and Schedule 3 to) the Water Industry Act 1991 (special administration order: application of Insolvency Act 1986) substitute—
 - “(3) Schedule B1 to the Insolvency Act 1986 (administration) applies to special administration (subject to regulations under subsection (3A)).
- (3A) The Secretary of State may make regulations about special administration which—
 - (a) apply (with or without modification) an insolvency provision;
 - (b) disapply an insolvency provision;
 - (c) modify the effect of an insolvency provision;
 - (d) make provision similar to, and in place of, an insolvency provision.
- (3B) In subsection (3A) “insolvency provision” means a provision of the Insolvency Act 1986 or another enactment about insolvency (including (i) a provision about administration, (ii) a provision about consequences of insolvency, and (iii) a provision conferring power to make rules).
- (3C) A reference in an enactment to Part II of the Insolvency Act 1986 includes a reference to that Part as applied by or under this section (subject to regulations under subsection (3A)).

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- (3D) Regulations under subsection (3A) shall be made by statutory instrument and may not be made unless—
- (a) the Welsh Ministers have consented to the making of the regulations, and
 - (b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply)."
- (2) Section 24(4) and (5) of the Water Industry Act 1991 (which apply to special administration orders specified provisions of the Insolvency Act 1986) shall cease to have effect.
- (3) Section 249(1)(a) and (aa) of the Enterprise Act 2002 (which preserve an old version of Insolvency Act 1986 in its application to water and sewerage undertakers and suppliers) shall cease to have effect.
- (4) In section 24(2)(d) of the Water Industry Act 1991 (special administration orders made on special petition) for “section 440 of the Companies Act 1985” substitute “section 124A of the Insolvency Act 1986”.

Strategic supplies

- 7 (1) In section 66G(10) of the Water Industry Act 1991 (designation of strategic supply) after “its own customers” insert “, and supplies which it is obliged to make under section 66A or 66C,”.
- (2) In section 66H(10) of the Water Industry Act 1991 (designation of collective strategic supply) after “its own customers” insert “, and supplies which it is obliged to make under section 66A or 66C,”.