



## 2011 CHAPTER 6

### PART 2

#### SPECIAL ADMINISTRATION REGIME FOR PROTECTED ENERGY COMPANIES

##### *Energy administration orders*

##### **Energy administration orders**

17.—(1) In this Part “energy administration order” means an order which—

- (a) is made by the High Court in relation to a protected energy company; and
- (b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the Court.

(2) The person appointed in relation to a company for the purposes of an energy administration order is referred to in this Part as the energy administrator of the company.

(3) The energy administrator of a company must manage its affairs, business and property, and exercise and perform all the powers and duties of an energy administrator so as to achieve the objective set out in section 18.

(4) In relation to an energy administration order applying to a non-NI company, references in this section to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Northern Ireland and to its property in Northern Ireland.

(5) In this Part—

“protected energy company” means a company which is the holder of a relevant licence;

“relevant licence” means—

- (a) a licence granted under Article 10(1)(b) of the [Electricity \(Northern Ireland\) Order 1992 \(NI 1\)](#) (transmission of electricity);
- (b) a licence granted under Article 8(1)(a) of the Gas Order (conveyance of gas).

### **Objective of an energy administration**

**18.**—(1) The objective of an energy administration is to secure—

- (a) that the company’s system is and continues to be maintained and developed as an efficient, economical and co-ordinated system; and
- (b) that it becomes unnecessary, by one or both of the following means, for the energy administration order to remain in force for that purpose.

(2) Those means are—

- (a) the rescue as a going concern of the company subject to the energy administration order; and
- (b) transfers falling within subsection (3).

(3) A transfer falls within this subsection if it is a transfer as a going concern—

- (a) to another company, or
- (b) as respects different parts of the undertaking of the company subject to the energy administration order, to two or more different companies,

of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the energy administration.

(4) The means by which transfers falling within subsection (3) may be effected include, in particular—

- (a) a transfer of the undertaking of the company subject to the energy administration order, or of a part of its undertaking, to a wholly-owned subsidiary of that company; and
- (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).

(5) The objective of an energy administration may be achieved by transfers falling within subsection (3) to the extent only that—

- (a) the rescue as a going concern of the company subject to the energy administration order is not reasonably practicable or is not reasonably practicable without such transfers;
- (b) the rescue of that company as a going concern will not achieve that objective or will not do so without such transfers;
- (c) such transfers would produce a result for the company’s creditors as a whole that is better than the result that would be produced without them; or

(d) such transfers would, without prejudicing the interests of those creditors as a whole, produce a result for the company's members as a whole that is better than the result that would be produced without them.

(6) In this section “the company's system”, in relation to an energy administration, means—

- (a) the system of electricity transmission or of electricity distribution, or
- (b) the pipe-line system for the conveyance of gas,

which the company subject to the energy administration order has been maintaining as the holder of a relevant licence.

### **Applications for energy administration orders**

**19.—**(1) An application for an energy administration order in relation to a company may be made only—

- (a) by the Department; or
- (b) with the consent of the Department, by the Authority.

(2) The applicant for an energy administration order in relation to a company must give notice of the application to—

- (a) every person who has appointed an administrative receiver of the company;
- (b) every person who is or may be entitled to appoint an administrative receiver of the company;
- (c) every person who is or may be entitled to make an appointment in relation to the company under paragraph 15 of Schedule B1 to the Insolvency Order (appointment of administrators by holders of floating charges); and
- (d) such other persons as may be prescribed by energy administration rules.

(3) The notice must be given as soon as reasonably practicable after the making of the application.

(4) In this section “administrative receiver” means—

- (a) an administrative receiver within the meaning given by Article 5 of the Insolvency Order for the purposes of Parts 2 to 7 of that Order; or
- (b) a person whose functions in relation to a non-NI company—
  - (i) are equivalent to those of an administrative receiver; and
  - (ii) relate only to the affairs and business of the company so far as carried on in Northern Ireland and to its property in Northern Ireland.

### **Powers of court**

**20.—**(1) On hearing an application for an energy administration order, the High Court has the following powers—

- (a) it may make the order;
  - (b) it may dismiss the application;
  - (c) it may adjourn the hearing conditionally or unconditionally;
  - (d) it may make an interim order;
  - (e) it may treat the application as a winding-up petition and make any order the Court could make under Article 105 of the Insolvency Order (power of Court on hearing winding-up petition);
  - (f) it may make any other order which the Court thinks appropriate.
- (2) The High Court may make an energy administration order in relation to a company only if it is satisfied—
- (a) that the company is unable to pay its debts;
  - (b) that it is likely to be unable to pay its debts; or
  - (c) that, on a petition by the Department under Article 104A of the Insolvency Order (petition for winding up on grounds of public interest), it would be just and equitable (disregarding the objective of the energy administration) to wind up the company in the public interest.
- (3) The High Court must not make an energy administration order in relation to a company on the ground set out in subsection (2)(c) unless the Department has certified to the Court that the case is one in which it considers (disregarding the objective of the energy administration) that it would be appropriate for the Department to petition under Article 104A of the Insolvency Order.
- (4) The High Court has no power to make an energy administration order in relation to a company which—
- (a) is in administration under Schedule B1 to the Insolvency Order; or
  - (b) has gone into liquidation (within the meaning of Article 6(2) of that Order).
- (5) An energy administration order comes into force—
- (a) at the time appointed by the High Court; or
  - (b) if no time is so appointed, when the order is made.
- (6) An interim order under subsection (1)(d) may, in particular—
- (a) restrict the exercise of a power of the company or of its directors; or
  - (b) make provision conferring a discretion on a person qualified to act as an insolvency practitioner in relation to the company.
- (7) Where the company in relation to which an application is made is a non-NI company, the reference in subsection (6)(a) to restricting the exercise of a power of the company or of its directors is a reference only to restricting the exercise of such a power—
- (a) within Northern Ireland; or

- (b) in relation to the company's affairs or business so far as carried on in Northern Ireland, or to its property in Northern Ireland.
- (8) For the purposes of this section a company is unable to pay its debts if—
  - (a) it is a company which is deemed to be so unable under Article 103 of the Insolvency Order (definition of inability to pay debts); or
  - (b) it is an unregistered company which is deemed, by virtue of any of Articles 186 to 188 of that Order, to be so unable for the purposes of Article 185 of that Order (winding up of unregistered companies), or which would be so deemed if it were an unregistered company for the purposes of those Articles.

### **Energy administrators**

- 21.—**(1) The energy administrator of a company—
- (a) is an officer of the High Court; and
  - (b) in exercising and performing the powers and duties of an energy administrator in relation to the company, is the company's agent.
- (2) The management by the energy administrator of a company of any affairs, business or property of the company must be carried out for the purpose of achieving the objective of the energy administration as quickly and as efficiently as is reasonably practicable.
- (3) The energy administrator of a company must exercise and perform the powers and duties of an energy administrator in the manner which, so far as it is consistent with the objective of the energy administration to do so, best protects—
- (a) the interests of the creditors of the company as a whole; and
  - (b) subject to those interests, the interests of the members of the company as a whole.
- (4) A person is not to be the energy administrator of a company unless that person is qualified to act as an insolvency practitioner in relation to the company.
- (5) Where the High Court makes an appointment in a case in which two or more persons will be the energy administrator of a company after the appointment, the appointment must set out—
- (a) which (if any) of the powers and duties of an energy administrator are to be exercisable or performed only by those persons acting jointly;
  - (b) the circumstances (if any) in which powers and duties of an energy administrator are to be exercisable, or may be performed, by one of the persons appointed to be the energy administrator, or by particular appointees, acting alone; and

- (c) the circumstances (if any) in which things done in relation to one of the persons appointed to be the energy administrator, or in relation to particular appointees, are to be treated as done in relation to all of them.

### **Conduct of administration, transfer schemes etc.**

**22.**—(1) The Department may by regulations—

- (a) make provision for applying provisions of the Insolvency Order (with or without modifications) in relation to an energy administration order or an application for such an order;
- (b) make consequential or supplementary provision (including provision modifying other statutory provisions) in relation to energy administration orders.

(2) The Schedule (which makes provision for transfer schemes to achieve the objective of an energy administration) has effect.

(3) The power to make rules conferred by Article 359 of the Insolvency Order (insolvency rules) shall apply for the purpose of giving effect to this Part as it applies for the purpose of giving effect to that Order and, accordingly, as if references in that Article to that Order included references to this Part.

### *Restrictions on other insolvency procedures*

### **Restrictions on winding-up orders**

**23.**—(1) This section applies where a petition for the winding up of a protected energy company is presented by a person other than the Department.

(2) The High Court is not to exercise its powers on a winding-up petition unless—

- (a) notice of the petition has been served both on the Department and on the Authority; and
- (b) a period of at least 14 days has elapsed since the service of the last of those notices to be served.

(3) If an application for an energy administration order in relation to the company is made to the High Court in accordance with section 19(1) before a winding-up order is made on the petition, the Court may exercise its powers under section 20, instead of exercising its powers on a winding-up petition.

(4) References in this section to the High Court's powers on a winding-up petition are references to—

- (a) its powers under Article 105 of the Insolvency Order (other than its power of adjournment); and
- (b) its powers under Article 115 of that Order.

**Restrictions on voluntary winding up**

**24.—**(1) A protected energy company has no power to pass a resolution for voluntary winding up without the permission of the High Court.

(2) Such permission may be granted only on an application made by the company.

(3) The High Court is not to grant permission on such an application unless—

- (a) notice of the application has been served both on the Department and on the Authority; and
- (b) a period of at least 14 days has elapsed since the service of the last of those notices to be served.

(4) If an application for an energy administration order in relation to the company is made to the High Court in accordance with section 19(1) after an application for permission under this section has been made and before it is granted, the Court may exercise its powers under section 20 instead of granting permission.

(5) In this section “a resolution for voluntary winding up” has the same meaning as in the Insolvency Order.

**Restrictions on making ordinary administration orders**

**25.—**(1) This section applies where an ordinary administration application is made in relation to a protected energy company by a person other than the Department.

(2) The High Court must dismiss the application if—

- (a) an energy administration order is in force in relation to the company; or
- (b) an energy administration order has been made in relation to the company but is not yet in force.

(3) Where subsection (2) does not apply, the High Court, on hearing the application, must not exercise its powers under paragraph 14 of Schedule B1 to the Insolvency Order (other than its power of adjournment) unless—

- (a) notice of the application has been served both on the Department and on the Authority;
- (b) a period of at least 14 days has elapsed since the service of the last of those notices to be served; and
- (c) there is no application for an energy administration order that is outstanding.

(4) Paragraph 45 of Schedule B1 to the Insolvency Order (interim moratorium) does not prevent, or require the permission of the High Court for, the making of an application for an energy administration order.

(5) Upon the making of an energy administration order in relation to a protected energy company, the High Court must dismiss any ordinary administration application made in relation to that company which is outstanding.

(6) In this section “ordinary administration application” means an application in accordance with paragraph 13 of Schedule B1 to the Insolvency Order.

**Restrictions on administrator appointments by creditors etc.**

**26.—**(1) No step is to be taken by any person to make an appointment in relation to a company under paragraph 15 or 23 of Schedule B1 to the Insolvency Order (powers of holder of floating charge and of the company itself and of its directors to appoint administrators) if—

- (a) an energy administration order is in force in relation to the company;
- (b) an energy administration order has been made in relation to the company but is not yet in force; or
- (c) an application for such an order is outstanding.

(2) In the case of a protected energy company to which subsection (1) does not apply, an appointment in relation to that company under paragraph 15 or 23 of Schedule B1 to the Insolvency Order takes effect only if each of the conditions mentioned in subsection (3) is met.

(3) Those conditions are—

- (a) that a copy of every document in relation to the appointment that is filed or lodged with the High Court in accordance with paragraph 19 or 30 of Schedule B1 to the Insolvency Order (documents to be filed or lodged for appointment of administrator) has been served both on the Department and on the Authority;
- (b) that a period of 14 days has elapsed since the service of the last of those copies to be served;
- (c) that there is no outstanding application to the High Court for an energy administration order in relation to the company in question; and
- (d) that the making of an application for such an order has not resulted in the making of an energy administration order which is in force or is still to come into force.

(4) Paragraph 45 of Schedule B1 to the Insolvency Order (interim moratorium) does not prevent, or require the permission of the High Court for, the making of an application for an energy administration order at any time before the appointment takes effect.

**Restrictions on enforcement of security**

**27.—**(1) No step to enforce a security over property of a protected energy company is to be taken by any person, unless—

- (a) notice of intention to do so has been served both on the Department and on the Authority; and
- (b) a period of at least 14 days has elapsed since the service of the last of those notices to be served.

(2) In the case of a protected energy company which is a non-NI company, the reference in subsection (1) to the property of the company is a reference only to its property in Northern Ireland.

*Financial support for company in administration*

**Grant and loans**

**28.—**(1) This section applies where an energy administration order has been made in relation to a company.

(2) The Department may make grants or loans to the company of such amounts as appear to the Department appropriate to pay or lend for achieving the objective of the energy administration.

(3) A grant or loan under this section may be made in whatever manner, and on whatever terms, the Department considers appropriate.

(4) The terms on which a grant may be made under this section include, in particular, terms requiring the whole or a part of the grant to be repaid to the Department if there is a contravention of the other terms on which the grant is made.

(5) The terms on which a loan may be made under this section include, in particular, terms requiring—

- (a) the loan to be repaid at such times and by such methods, and
- (b) interest to be paid on the loan at such rates and at such times,

as the Department may from time to time direct.

(6) The consent of the Department of Finance and Personnel is required—

- (a) for the making of a grant or loan under this section; and
- (b) for the giving by the Department of a direction under subsection (5).

**Indemnities**

**29.—**(1) This section applies where an energy administration order has been made in relation to a company.

- (2) The Department may agree to indemnify persons in respect of one or both of the following—
- (a) liabilities incurred in connection with the exercise and performance by the energy administrator of the powers and duties of an energy administrator; and
  - (b) loss or damage sustained in that connection.
- (3) The agreement may be made in whatever manner, and on whatever terms, the Department considers appropriate.
- (4) If sums are paid by the Department in consequence of an indemnity agreed to under this section, the company must pay to the Department—
- (a) such amounts in or towards the repayment to the Department of those sums as the Department may direct; and
  - (b) interest, at such rates as the Department may direct, on amounts outstanding under this subsection.
- (5) Payments to the Department under subsection (4) must be made at such times and in such manner as the Department may determine.
- (6) Subsection (4) does not apply in the case of a sum paid by the Department for indemnifying a person in respect of a liability to the company in relation to which the energy administration order was made.
- (7) The consent of the Department of Finance and Personnel is required—
- (a) for the doing of anything by the Department under subsection (2);
  - (b) for the giving by the Department of any direction under subsection (4); and
  - (c) for the making of a determination under subsection (5).
- (8) The power of the Department to agree to indemnify persons—
- (a) is confined to a power to agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as relevant persons; but
  - (b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.
- (9) A person is a relevant person for the purposes of this section if that person is—
- (a) the energy administrator;
  - (b) an employee of the energy administrator;
  - (c) a member or employee of a firm of which the energy administrator is a member;
  - (d) a member or employee of a firm of which the energy administrator is an employee;

- (e) a member of a firm of which the energy administrator was an employee or member at a time when the order was in force;
  - (f) a body corporate which is the employer of the energy administrator;
  - (g) an officer, employee or member of such a body corporate.
- (10) For the purposes of subsection (9)—
- (a) the references to the energy administrator are to be construed, where two or more persons are appointed to act as the energy administrator, as references to any one or more of them; and
  - (b) the references to a firm of which a person was a member or employee at a particular time include references to a firm which holds itself out to be the successor of a firm of which that person was a member or employee at that time.

### **Guarantees**

**30.—(1)** This section applies where an energy administration order has been made in relation to a company.

(2) The Department may guarantee—

- (a) the repayment of any sum borrowed by the company while the energy administration order is in force;
- (b) the payment of interest on such a sum; and
- (c) the discharge of any other financial obligation of the company in connection with the borrowing of such a sum.

(3) The Department may give a guarantee under this section in such manner, and on such terms, as the Department thinks fit.

(4) As soon as practicable after giving a guarantee under this section, the Department must lay a statement of the guarantee before the Assembly.

(5) If sums are paid out by the Department under a guarantee given under this section, the company must pay the Department—

- (a) such amounts in or towards the repayment to the Department of those sums as the Department may direct; and
- (b) interest, at such rates as the Department may direct, on amounts outstanding under this subsection.

(6) Payments to the Department under subsection (5) must be made at such times, and in such manner, as the Department may from time to time direct.

(7) Where a sum has been paid out by the Department under a guarantee given under this section, the Department must lay a statement relating to that sum before the Assembly—

- (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
  - (b) as soon as practicable after the end of each subsequent relevant financial year.
- (8) In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for the purposes of subsection (7) unless—
- (a) before the beginning of that year, the whole of that sum has been repaid to the Department under subsection (5); and
  - (b) the company in question is not at any time during that year subject to liability to pay interest on amounts that became due under that subsection in respect of that sum.
- (9) The consent of the Department of Finance and Personnel is required—
- (a) for the giving of a guarantee under this section; and
  - (b) for the giving by the Department of a direction under subsection (5) or (6).

*Licence modifications relating to energy administration*

**Modification of particular or standard conditions**

- 31.—**(1) Where the Department considers it appropriate to do so in connection with the provision made by this Part, it may make—
- (a) modifications of the conditions of a gas or electricity licence held by a particular person;
  - (b) modifications of the standard conditions of such licences of any type.
- (2) The power to make modifications under this section includes power to make incidental, consequential or transitional modifications.
- (3) Before making a modification under this section, the Department must consult—
- (a) the holder of any licence being modified; and
  - (b) such other persons as the Department considers appropriate.
- (4) Subsection (3) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (5) The Department must publish every modification made by it under this section.
- (6) The publication must be in such manner as the Department considers appropriate.
- (7) A modification under subsection (1)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing

to be regarded as a standard condition for the purposes of the Gas Order or the [Electricity \(Northern Ireland\) Order 1992 \(NI 1\)](#).

(8) Where the Department makes modifications under subsection (1)(b) of the standard conditions of licences of any type, the Authority must—

(a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and

(b) publish the modifications in such manner as it considers appropriate.

(9) The Department's powers under this section are exercisable only during the 18 months beginning with the commencement of this section.

(10) In this section—

“electricity licence” means a licence under Article 10 of the [Electricity \(Northern Ireland\) Order 1992](#);

“gas licence” means a licence under Article 8 of the Gas Order.

### **Licence condition to secure funding of energy administration**

**32.—**(1) The modifications that may be made under section 31 include, in particular, modifications imposing conditions requiring the licence holder (L)—

(a) so to modify the charges imposed by L for anything done by L in the carrying on of the licensed activities as to raise such amounts as may be determined by or under the conditions; and

(b) to pay the amounts so raised to such persons as may be so determined for the purpose of—

(i) their applying those amounts in making good any shortfall in the property available for meeting the expenses of an energy administration; or

(ii) enabling those persons to secure that those amounts are so applied.

(2) Those modifications may include modifications imposing on L an obligation to apply amounts paid to L in pursuance of conditions falling within subsection (1)(a) or (b) in making good any such shortfall.

(3) For the purposes of this section—

(a) there is a shortfall in the property available for meeting the costs of an energy administration if, in a case where a company is or has been subject to an energy administration order, the property available (apart from conditions falling within subsection (1) or (2)) for meeting relevant debts is insufficient for meeting them; and

(b) amounts are applied in making good that shortfall if they are paid in or towards discharging so much of a relevant debt as cannot be met out of the property otherwise available for meeting relevant debts.

- (4) In this section “relevant debt”, in relation to a case in which a company is or has been subject to an energy administration order, means an obligation—
- (a) to make payments in respect of the expenses or remuneration of any person as the energy administrator of that company;
  - (b) to make a payment in discharge of a debt or liability of that company arising out of a contract entered into at a time when the order was in force by the person who at that time was the energy administrator of that company;
  - (c) to repay the whole or a part of a grant made to that company under section 28;
  - (d) to repay a loan made to the company under that section, or to pay interest on such a loan;
  - (e) to make a payment under section 29(4); or
  - (f) to make a payment under section 30(5).

### *Interpretation of Part 2*

#### **Interpretation of Part 2**

**33.—(1)** In this Part—

“the Insolvency Order” means the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#);

“business”, “member”, “property” and “security” have the same meanings as in Parts 2 to 7 of the Insolvency Order;

“company” means—

- (a) a company registered under the Companies Act [2006 \(c. 46\)](#); or
- (b) an unregistered company;

“energy administration order” has the meaning given by section 17(1);

“energy administration rules” means rules made under Article 359 of the Insolvency Order by virtue of section 22(3);

“energy administrator” has the meaning given by section 17(2) and is to be construed in accordance with subsection (2) of this section;

“non-NI company” means a company incorporated outside Northern Ireland;

“objective of the energy administration” is to be construed in accordance with section 18;

“protected energy company” has the meaning given by section 17(5);

“relevant licence” has the meaning given by section 17(5);

“unregistered company” means a company that is not registered under the Companies Act 2006;

“wholly-owned subsidiary” has the same meaning as in the Companies Act 2006.

- (2) In this Part references to the energy administrator of a company—
- (a) includes (if paragraph 92 or 104 of Schedule B1 to the Insolvency Order are applied by regulations under section 22(1)) references to a person appointed under either of those paragraphs to be the energy administrator of that company; and
  - (b) where two or more persons are appointed to be the energy administrator of that company, are to be construed in accordance with the provision made under section 21(5).
- (3) References in this Part to a person qualified to act as an insolvency practitioner in relation to a company are to be construed in accordance with Part 12 of the Insolvency Order (insolvency practitioners and their qualifications); but as if references in that Part to a company included references to a company registered under the Companies Act 2006 in Great Britain.
- (4) For the purposes of this Part an application made to the High Court is outstanding if it—
- (a) has not yet been granted or dismissed; and
  - (b) has not been withdrawn.
- (5) For the purposes of subsection (4) an application is not to be taken as having been dismissed if an appeal against the dismissal of the application, or a subsequent appeal, is pending.
- (6) An appeal shall be treated as pending for the purposes of subsection (5) if—
- (a) such an appeal has been brought and has been neither determined nor withdrawn;
  - (b) an application for permission to appeal has been made but has not been determined or withdrawn; or
  - (c) no such appeal has been brought and the period for bringing an appeal is still running.
- (7) References in this Part to Schedule B1 to the Insolvency Order, or to a provision of that Schedule (except the references in subsection (2)), are references to that Schedule or that provision without any modifications made by regulations under section 22(1).