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DRAFT STATUTORY INSTRUMENTS

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**2024 No.**

**The Water Industry (Special Administration) Regulations 2024**

**PART 4**

The Insolvency Act 1986 – specific modifications

**CHAPTER 1**

Schedule B1 – specific modifications

**Introduction**

7. This Chapter sets out modifications to the provisions of Schedule B1 to the 1986 Act.

**Special administrator**

8. Paragraph 1 has effect as if—
- (a) for sub-paragraph (1) there were substituted—

“(1) For the purposes of this Act, a “special administrator” means a person appointed by the court to manage the affairs, business and property of a water industry company under—

    - (a) section 23(1) of the 1991 Act, or
    - (b) paragraph 91 or 103 of this Schedule.”; and
  - (b) after sub-paragraph (1) there were inserted—

“(1A) Where the context requires, the definition of “special administrator” in sub-paragraph (1) includes a former special administrator.”.

**Status of special administrator**

9. Paragraph 5 has effect as if “(whether or not he is appointed by the court)” were omitted.

**Powers of the court**

10. Paragraph 13 applies as if sub-paragraphs (1)(a), (b) and (e) and (4) were omitted.

**Dismissal of pending winding-up application**

11. Paragraph 40 has effect as if it were substituted with—

“40. When a court makes a special administration order in respect of a company, it must dismiss any outstanding petition for the winding up of the company.”.

**Moratorium on insolvency proceedings**

12. Paragraph 42 has effect as if sub-paragraphs (4) and (5) were omitted.

### **Moratorium on other legal process**

13. Paragraph 43 has effect as if—

(a) after sub-paragraph (5) there were inserted—

“(5A) No proceedings under or for the purposes of section 18 of the 1991 Act may be instituted or continued against the company or property of the company except—

(a) with the consent of the special administrator, or

(b) with the permission of the court.”; and

(b) in sub-paragraph (6), after “No” there were inserted “other”.

### **Interim moratorium**

14. Paragraph 44 has effect as if—

(a) sub-paragraphs (2), (3), (4) and (6) were omitted; and

(b) in sub-paragraph (7), paragraphs (a) to (c) were omitted.

### **Announcement of special administrator’s appointment**

15. Paragraph 46 has effect as if—

(a) for sub-paragraph (4) there were substituted—

“(4) Before the end of the period of seven days beginning with the date specified in sub-paragraph (6), the special administrator must send notice of their appointment to—

(a) the registrar of companies,

(b) in relation to a qualifying water supply licensee whose licence gives it a supplementary authorisation, the Welsh Ministers, and

(c) whichever of the following was not the applicant for the special administration order under which the special administrator was appointed—

(i) the relevant authority,

(ii) the Water Services Regulation Authority.”; and

(b) for sub-paragraph (6) there were substituted—

“(6) The date for the purpose of sub-paragraphs (4) and (5) is the date of the special administration order.”.

### **Statement of company’s affairs**

16. Paragraph 47 has effect as if sub-paragraph (5) were omitted.

### **Special administrator’s proposals**

17. Paragraph 49(1) has effect as if—

(a) for paragraph (2)(b) there were substituted—

“(b) where applicable (see section 23 of the 1991 Act), explain why the special administrator thinks that—

(i) it is not likely to be possible to rescue the company as a going concern, or

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(1) Paragraph 49 was amended by: [S.I. 2008/948](#), articles 3(1)(b) and 6 and Schedule 1, Part 2, paragraph 100(a); the Corporate Insolvency and Governance Act 2020 (c. 12), section 7 and Schedule 7, Part 2, paragraphs 5, 7(1) and (2); and, the Small Business, Enterprise and Employment Act 2015 (c. 26), section 126 and Schedule 9, Part 1, paragraphs 1, 10(1) and (2).

- (ii) transfer is likely to secure more effective performance of the functions or activities mentioned in section 23(2)(a), (2A)(a) or (2AA)(a) of the 1991 Act.”; and
- (b) in sub-paragraph (4), before paragraph (a), there were inserted—
  - “(za) to the relevant authority,
  - (zb) in the case of a qualifying water supply licensee whose licence gives it a supplementary authorisation, to the Welsh Ministers,
  - (zc) to the Water Services Regulation Authority.”.

### **Revision of special administrator’s proposals**

**18.** Paragraph 54(2) has effect as if it were substituted with—

“**54.**—(1) The special administrator of a company may on one or more occasions revise the proposals included in the statement made under paragraph 49 in relation to the company.

(2) If the special administrator thinks that a revision is substantial, they must send a copy of the revised proposals to—

- (a) the registrar of companies,
- (b) the relevant authority,
- (c) in the case of a qualifying water supply licensee whose licence gives it a supplementary authorisation, the Welsh Ministers,
- (d) the Water Services Regulation Authority,
- (e) every creditor of the company, other than an opted-out creditor, of whose claim and address the special administrator is aware, and
- (f) every member of the company of whose address the special administrator is aware.

(3) A copy sent in accordance with sub-paragraph (2)—

- (a) must be sent within the prescribed period, and
- (b) must also, in the case of the copy under sub-paragraph (2)(f), be sent before the end of the period of five business days beginning with the day on which a copy is first sent to a creditor under sub-paragraph (2)(e).

(4) The special administrator is to be taken to have complied with sub-paragraph (2)(f) if they publish, in the prescribed manner, a notice undertaking to provide a copy of the revised proposals free of charge to any member of the company who applies in writing to a specified address.

(5) A special administrator who fails without reasonable excuse to comply with this paragraph commits an offence.”.

### **Special administrator’s power to manage**

**19.** Paragraph 59(1) has effect as if for “The administrator” there were substituted “Subject to paragraph 60(3), the special administrator”.

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(2) Paragraph 54 was amended by the Small Business, Enterprise and Employment Act 2015 (c. 26), section 126 and Schedule 9, Part 1, paragraphs 1, 10(1), (11) to (15) and (16)(a) and (b), and 13(a) and (b).

### **Special administrator’s general powers and dealings with protected land**

**20.** Paragraph 60(3) has effect as if—

(a) after sub-paragraph (1), there were inserted—

“(1A) The special administrator of a company has the power to act on behalf of the company for the purposes of provision contained in any legislation which confers a power on the company or imposes a duty on it.

(1B) In sub-paragraph (1A) “legislation” means any provision made by or under an Act.”; and

(b) after sub-paragraph (2), there were inserted—

“(3) Subject to sub-paragraph (6), the special administrator must not dispose of any of the company’s protected land(4), or any interest or right in or over that land, except with the consent of the relevant authority.

(4) Consent for the purposes of sub-paragraph (3) may be given on such conditions as the relevant authority thinks appropriate.

(5) Consent for the purposes of sub-paragraph (3) and any conditions imposed under sub-paragraph (4) must be notified to the special administrator in writing.

(6) Paragraph (3) does not apply where the special administrator disposes of protected land under a scheme for the transfer of property under Schedule 2 to the 1991 Act.”.

### **Special administrator’s general duties**

**21.** Paragraph 68 has effect as if—

(a) for sub-paragraph (1) there were substituted—

“(1) Subject to sub-paragraph (2), the special administrator of a company must manage its affairs, business and property in accordance with—

(a) proposals in the statement made under paragraph 49, and

(b) where applicable, any revision to the proposals under paragraph 54.”; and

(b) for paragraph (3) there were substituted—

“(3) Directions given by the court under sub-paragraph (2) must be consistent with the purposes of the special administration order.”.

### **Charged property: non-floating charge**

**22.** Paragraph 71(3)(b) has effect as if for “market value” there were substituted “appropriate value”.

### **Hire-purchase property**

**23.** Paragraph 72(3)(b) has effect as if for “market value” there were substituted “appropriate value”.

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(3) Paragraph 60 was amended by the Small Business, Enterprise and Employment Act 2015 (c. 26), section 129(1), (2) and (3).

(4) The term “protected land” is defined in section 219 of the Water Industry Act 1991.

### Protection for priority creditor

24. Paragraph 73(3)(5) has effect as if for “or modified” there were substituted “under paragraph 54”.

### Challenge to special administrator’s conduct of company

25. Paragraph 74(6) has effect as if—

(a) for sub-paragraph (2), there were substituted—

“(2) Where a company is in special administration, a person mentioned in sub-paragraph (2A) may apply to the court claiming that the special administrator is conducting the special administration in a way that is preventing its purposes from being achieved as quickly and efficiently as is reasonably practicable.”;

(b) after sub-paragraph (2), there were inserted—

“(2A) The persons who may apply to the court under sub-paragraph (2) are—

- (a) the relevant authority,
- (b) the Water Services Regulation Authority, if it has the consent of the relevant authority,
- (c) a creditor of the company,
- (d) a member of the company.

(2B) Where a company is in special administration, the relevant authority or the Water Services Regulation Authority may apply to the court claiming that the special administrator has exercised or is exercising or is proposing to exercise their powers in relation to the company in a way which involves a contravention of—

- (a) the conditions of the company’s appointment under Chapter 1 of Part 2 of the 1991 Act,
- (b) the company’s licence granted under Chapter 1A of Part 2 of the 1991 Act, or
- (c) any statutory or other requirement imposed on the company in consequence of that appointment or licence.”;

(c) sub-paragraph (6)(c) were omitted; and

(d) after sub-paragraph (6), there were inserted—

“(7) In the case of a claim made by a creditor or member of the company, the court may not grant a remedy or relief under this paragraph unless it has given the relevant authority and the Water Services Regulation Authority a reasonable opportunity to make representations about the claim and the proposed remedy, relief or order.

(8) An order may not be made under this paragraph if it would be likely to prejudice, impede or prevent the achievement of the purposes of the special administration order concerned.

(9) Before making an order of the kind mentioned in sub-paragraph (4)(d)—

- (a) the court must notify the special administrator of—

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(5) Paragraph 73 was amended by: [S.I. 2007/2974](#), regulation 65(1), (2) and (3); [S.I. 2008/948](#), articles 3(1)(b), and 6 and Schedule 1, Part 2, paragraph 100(a); [S.I. 2018/1244](#), articles 4, 10(1), (2), (3), (4) and (5), 13(1) and (3)(a), (b) and (c); [S.I. 2019/348](#), regulation 8, Schedule 3, paragraph 1; and, the Corporate Insolvency and Governance Act 2020 ([c. 12](#)), section 7 and Schedule 9, Part 2, paragraphs 5, 7(1) and (3).

(6) Paragraph 74 was amended by: [S.I. 2007/2974](#), regulation 65(1), (4) and (5); [S.I. 2008/948](#), articles 3(1)(b), 6 and Schedule 1, Part 2, paragraph 100(b); the Small Business, Enterprise and Employment Act 2015 ([c. 26](#)), section 126 and Schedule 9, Part 1, paragraphs 1, 10(1) and (24); [S.I. 2019/348](#), regulation 8 and Schedule 3, paragraph 1; and, the Corporate Insolvency and Governance Act 2020 ([c. 12](#)), section 7, Schedule 9, Part 2, paragraphs 5 and 7(1) and (4).

- (i) the proposed order, and
  - (ii) a reasonable period during which the special administrator may take relevant steps (see sub-paragraphs (10) to (13)), and
- (b) the period mentioned in paragraph (a)(ii) must have expired without the special administrator having taken such of those steps as the court thinks should have been taken.
- (10) If the claim is made under sub-paragraph (1)(a), relevant steps are—
  - (a) ceasing to act in a way that unfairly harms the interests to which the claim relates,
  - (b) remedying any harm unfairly caused to those interests, and
  - (c) ensuring that there is no repetition of conduct unfairly causing harm to those interests.
- (11) If the claim is made under sub-paragraph (1)(b), relevant steps are steps for ensuring that the interests to which the claim relates are not unfairly harmed.
- (12) If the claim is made under sub-paragraph (2), relevant steps are—
  - (a) ceasing to act in a manner preventing the achievement of the purposes of the special administration as quickly and as efficiently as is reasonably practicable,
  - (b) remedying the consequences of the special administrator having acted in such a manner, and
  - (c) ensuring that there is no repetition of conduct preventing the achievement of the purposes of the special administration as quickly and as efficiently as is reasonably practicable.
- (13) If the claim is made under sub-paragraph (2B), relevant steps are—
  - (a) ceasing to act in a manner contravening—
    - (i) the conditions of the appointment or licence, or
    - (ii) any statutory or other requirement imposed on the company in consequence of that appointment or licence,
  - (b) remedying the consequences of the special administrator having acted in such a manner, and
  - (c) ensuring that there is no repetition of conduct contravening—
    - (i) the conditions of the appointment or licence, or
    - (ii) any statutory or other requirement imposed on the company in consequence of that appointment or licence.”.

### **Court order ending special administration**

**26.** Paragraph 79(7) has effect as if—

- (a) for sub-paragraph (1) there were substituted—
  - (a) “(1) The special administrator of a company may apply to the court for the appointment of a special administrator of the company to cease to have effect from a specified time.
  - (b) The special administrator may only make an application under paragraph (a) on the ground that the purposes of the special administration have been achieved.

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(7) Paragraph 79 was amended by: the Small Business, Enterprise and Employment Act 2015 (c. 26), section 164(1) and Schedule 9, paragraphs 1, 10(1) and (29); S.I. 2015/1329, regulation 3(d); S.I. 2016/1020, regulation 4(e); and, S.I. 2019/816, regulation 4(c).

- (c) The special administrator must obtain the consent of the relevant authority before making an application under paragraph (a).
  - (d) In a case where—
    - (i) the company in special administration is a qualifying water supply licensee whose licence gives it a supplementary authorisation, and
    - (ii) the relevant authority is the Secretary of State,the Secretary of State must consult the Welsh Ministers before giving consent under paragraph (c).
  - (a) (1A) The relevant authority or the Water Services Regulation Authority may apply to the court for the appointment of a special administrator to cease to have effect from a specified time.
  - (b) An application may only be made under paragraph (a) on the ground that there is no longer a need to pursue the purposes of the special administration.
  - (c) The Water Services Regulation Authority must obtain the consent of the relevant authority before making an application under paragraph (a).
  - (d) In a case where the company in special administration is a qualifying water supply licensee whose licence gives it a supplementary authorisation, the Secretary of State or the Water Services Regulation Authority (as the case may be) must consult the Welsh Ministers before making an application under paragraph (a).”; and
- (b) sub-paragraphs (2) and (3) were omitted.

### **Moving from special administration to creditors’ voluntary liquidation**

27. Paragraph 83 has effect as if—

- (a) sub-paragraph (2)(8) were omitted; and
- (b) in sub-paragraph (3), for “The administrator” there were substituted “The special administrator, with the consent of the relevant authority or the Water Services Regulation Authority,”.

### **Moving from special administration to dissolution**

28. Paragraph 84(9) has effect as if—

- (a) in sub-paragraph (1), for “If” there were substituted “Subject to sub-paragraph (1ZA), if”; and
- (b) after sub-paragraph (1), there were inserted—

“(1ZA) Before sending a notice under sub-paragraph (1), the special administrator must obtain the consent of the relevant authority or the Water Services Regulation Authority.”.

### **Resignation of special administrator**

29. Paragraph 87 has effect as if, for sub-paragraph (2), there were substituted—

- “(2) Where a special administrator may resign, they may do so only by notice in writing to the court.”.

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(8) Paragraph 83(2) was amended by the Small Business, Enterprise and Employment Act 2015 (c. 26), section 128(3).

(9) Paragraph 84 was amended by: the Small Business, Enterprise and Employment Act 2015 (c. 26), section 126 and Schedule 9, paragraphs 1, 10(1) and (33); and, S.I. 2017/702, 2019/146.

### **Special administrator ceasing to be qualified**

30. Paragraph 89(2)(10) has effect as if—
- (a) in the words before paragraph (a), after “in writing” there were inserted “to the court.”; and
  - (b) paragraphs (a) to (d) were omitted.

### **Supplying vacancy in office of special administrator**

31. Paragraph 90 has effect as if for “91 to 95” there were substituted “91 and 95”.

### **Application to replace special administrator**

32. Paragraph 91 has effect as if—
- (a) for sub-paragraph (1) there were substituted—
    - “(1) The court may replace the special administrator on an application made—
    - (a) by the relevant authority,
    - (b) by the Water Services Regulation Authority, or
    - (c) where more than one person was appointed to act jointly or concurrently as the special administrator, by any of those persons who remain in office.”; and
  - (b) sub-paragraph (2) were omitted.

### **Replacement of special administrator**

33. Paragraph 95 has effect as if—
- (a) in the opening text, for “the court—” there were substituted “the court is satisfied that it is right to do so”; and
  - (b) paragraphs (a) and (b) were omitted.

### **Vacation of office: discharge from liability**

34. Paragraph 98(11) has effect as if—
- (a) in sub-paragraph (2), paragraphs (b) and (ba) were omitted; and
  - (b) sub-paragraphs (3) and (3A) were omitted.

### **Vacation of office: charges and liabilities**

35. Paragraph 99(12) has effect as if—
- (a) in sub-paragraph (4), for the words from “A sum payable” to “before cessation” there were substituted “A sum falling within sub-paragraph (4A)”;
  - (b) after sub-paragraph (4) there were inserted—
    - “(4A) A sum falls within this paragraph if it is—

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(10) Paragraph 89 was amended by the Enterprise Act 2002 (c. 40), section 248(2) and Schedule 16 (as amended by S.I. 2003/2096, article 2(1) and (5)).

(11) Paragraph 98 was amended by: the Deregulation Act 2015 (c. 20), section 19 and Schedule 6, paragraphs 4, 7(1), (3) and (4)(a); and, the Small Business Enterprise and Employment Act 2015 (c. 26), section 126, Schedule 9, paragraphs 1, and 10(1), (36), (37) and (38).

(12) Paragraph 99 was amended by the Deregulation Act 2015 (c. 20), section 19 and Schedule 6, paragraphs 24 and 27.



- (a) a sum payable in respect of a debt or liability arising out of a contract that was entered into before cessation by the former special administrator or a predecessor,
  - (b) a sum that must be repaid by the company in respect of a grant that was made before cessation under section 153 of the 1991 Act as is mentioned in subsection (3) of that section,
  - (c) a sum—
    - (i) that must be repaid by the company in respect of a loan made before cessation under that section, or
    - (ii) that must be paid by the company in respect of interest payable on such a loan,
  - (d) a sum payable in respect of an indemnity given by the Secretary of State under section 153 of the 1991 Act, or
  - (e) a sum payable by the company under section 154(5) of the 1991 Act in respect of a guarantee given before cessation.”; and
- (c) in sub-paragraph (5), for “Sub-paragraph (4)” there were substituted “Sub-paragraph (4A) (a)”.

#### **References to joint special administrators**

**36.** Paragraph 101(3) has effect as if for “paragraphs 87 to 99” there were substituted “paragraphs 87 to 91, 95, 98 and 99”.

#### **Appointment of joint and concurrent special administrators**

**37.** Paragraph 103 has effect as if it were substituted with—

“**103.**—(1) Where a company is in special administration, a person may be appointed to act as a special administrator jointly or concurrently with the person or persons acting as the special administrator of the company.

(2) Subject to sub-paragraph (3), an appointment under sub-paragraph (1) must be made by the court on the application of—

- (a) the relevant authority; or
- (b) the Water Services Regulation Authority.

(3) An appointment made under sub-paragraph (1) may be made only with the consent of the person or persons acting as the special administrator of the company.”.

#### **Penalties**

**38.** Paragraph 106(2) has effect as if paragraphs (a), (b), (f), (g), (i) and (l) to (n) were omitted.

#### **Extension of time limits**

**39.** Paragraph 109 has effect as if “or 108” were omitted.

## Interpretation

40. Paragraph 111(13) has effect as if—

(a) in sub-paragraph (1)—

(i) for “In this Schedule” there were substituted “In this Act”;

(ii) the following definitions were omitted—

(aa) “administrator”;

(bb) “holder of a qualifying floating charge”;

(cc) “market value”;

(dd) “the purpose of administration”;

(ee) “unable to pay its debts”;

(iii) at the appropriate places, the following definitions were inserted—

““the 1991 Act” means the Water Industry Act 1991,”;

““appropriate value” means the best price that could be reasonably available on a sale which is consistent with the achievement of the purposes of the special administration,”;

““company in special administration” means a company in respect of which a special administration order has effect,”;

““purposes of special administration” is to be construed in accordance with section 23(2) to (2B) of the 1991 Act,”;

““qualifying water supply licensee” is to be construed in accordance with section 23(6) of the 1991 Act,”;

““relevant authority” means—

(a) in the case of a special administration order that relates to a company appointed under section 6(1) of the 1991 Act to be the water or sewerage undertaker for an area that is wholly or mainly in Wales, the Welsh Ministers(14), and

(b) in any other case, the Secretary of State,”;

““special administration order” means an order of the kind described in section 23(1) of the 1991 Act,”;

““special administrator” has the meaning given by paragraph 1,”;

““supplementary authorisation” has the meaning given in paragraph 8 of Schedule 2A to the 1991 Act,”;

““water industry company” means a company of a kind mentioned in section 23(1) of the Water Industry Act 1991.”.

(b) in sub-paragraph (1A), paragraphs (b) and (c) were omitted; and

(c) sub-paragraph (1B) were omitted.

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(13) Paragraph 111 was amended by: the Small Business, Enterprise and Employment Act 2015 (c. 26), section 126 and Schedule 9, paragraphs 1 and 10(1) and (44); S.I. 2005/879, regulation 2(1), (4)(a) and (b); S.I. 2009/1941, article 2(1) and Schedule 1, paragraph 72; S.I. 2010/18, articles 2 and 4(2); S.I. 2017/702, regulation 2(1) and the Schedule, paragraphs 1 and 31; and, S.I. 2019/146, regulation 2 and the Schedule, paragraphs 16, and 44(b)(i) and (ii).

(14) The original Instruments of Appointment of water undertakers and sewerage undertakers, including maps of the areas of appointment and any amendments to them, are available to view online at: <https://www.ofwat.gov.uk/regulated-companies/ofwat-industry-overview/licences/#ioa>. They may also be inspected in person at: Ofwat, 7 Hill Street, Birmingham, B5 4UA, between the hours of 9.30am and 1pm, and 2pm and 4.30pm, Monday to Friday, (except public and other holidays) at a cost of £20 per inspection except where an appointment to inspect is made at least 24 hours in advance (by calling 0121 644 7600) in which case the inspection is free of charge.

