



Water Industry Act 1991

1991 CHAPTER 56

PART II

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER II

ENFORCEMENT AND INSOLVENCY

Enforcement orders

18 Orders for securing compliance with certain provisions

- (1) Subject to subsection (2) and sections 19 and 20 below, where in the case of any company holding an appointment under Chapter I of this Part the Secretary of State or the Director is satisfied—
- (a) that that company is contravening—
 - (i) any condition of the company's appointment in relation to which he is the enforcement authority; or
 - (ii) any statutory or other requirement which is enforceable under this section and in relation to which he is the enforcement authority;
 - or
 - (b) that that company has contravened any such condition or requirement and is likely to do so again,
- he shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.
- (2) Subject to section 19 below, where in the case of any company holding an appointment under Chapter I of this Part—
- (a) it appears to the Secretary of State or the Director as mentioned in paragraph (a) or (b) of subsection (1) above; and

Status: This is the original version (as it was originally enacted).

- (b) it appears to him that it is requisite that a provisional enforcement order be made,
 he may (instead of taking steps towards the making of a final order) by a provisional enforcement order make such provision as appears to him requisite for the purpose of securing compliance with the condition or requirement in question.
- (3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional enforcement order be made, the Secretary of State or, as the case may be, the Director shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of any condition or of any statutory or other requirement enforceable under this section, is likely to be done, or omitted to be done, before a final enforcement order may be made.
- (4) Subject to sections 19 and 20 below, where the Secretary of State or the Director has made a provisional enforcement order, he shall confirm it, with or without modifications, if—
- (a) he is satisfied that the company to which the order relates—
 - (i) is contravening any condition or statutory or other requirement in relation to which he is the enforcement authority; or
 - (ii) has contravened any such condition or requirement and is likely to do so again;
 and
 - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- (5) An enforcement order—
- (a) shall require the company to which it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
 - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
 - (c) may be revoked at any time by the enforcement authority who made it.
- (6) For the purposes of this section and the following provisions of this Act—
- (a) the statutory and other requirements which shall be enforceable under this section in relation to a company holding an appointment under Chapter I of this Part shall be such of the requirements of any enactment or of any subordinate legislation as—
 - (i) are imposed in consequence of that appointment; and
 - (ii) are made so enforceable by that enactment or subordinate legislation;
 - (b) the Director shall be the enforcement authority in relation to the conditions of an appointment under Chapter I of this Part; and
 - (c) the enforcement authority in relation to each of the statutory and other requirements enforceable under this section shall be the Secretary of State, the Director or either of them, according to whatever provision is made by the enactment or subordinate legislation by which the requirement is made so enforceable.
- (7) In this section and the following provisions of this Chapter—
 “enforcement order” means a final enforcement order or a provisional enforcement order;

Status: This is the original version (as it was originally enacted).

“final enforcement order” means an order under this section other than a provisional enforcement order;

“provisional enforcement order” means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.

- (8) Where any act or omission constitutes a contravention of a condition of an appointment under Chapter I of this Part or of a statutory or other requirement enforceable under this section, the only remedies for that contravention, apart from those available by virtue of this section, shall be those for which express provision is made by or under any enactment and those that are available in respect of that act or omission otherwise than by virtue of its constituting such a contravention.

19 Exceptions to duty to enforce

- (1) Neither the Secretary of State nor the Director shall be required to make an enforcement order in relation to any company, or to confirm a provisional enforcement order so made, if he is satisfied—
- (a) that the contraventions were, or the apprehended contraventions are, of a trivial nature;
 - (b) that the company has given, and is complying with, an undertaking to take all such steps as it appears to him for the time being to be appropriate for the company to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
 - (c) that the duties imposed on him by Part I of this Act preclude the making or, as the case may be, the confirmation of the order.
- (2) The requirement to comply with an undertaking given for the purposes of subsection (1)(b) above shall be treated as a statutory requirement enforceable under section 18 above—
- (a) by the Secretary of State; or
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.
- (3) Where the Secretary of State or the Director, having notified a company that he is considering the making in relation to the company of an enforcement order or the confirmation of a provisional enforcement order so made, is satisfied as mentioned in paragraph (a), (b) or (c) of subsection (1) above, he shall—
- (a) serve notice that he is so satisfied on the company;
 - (b) publish a copy of the notice in such manner as he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (c) in a case where the Secretary of State is satisfied as mentioned in the said paragraph (b), serve a copy of the notice and of the undertaking given for the purposes of that paragraph on the Director.
- (4) The requirements of subsection (3) above shall not apply, in the case of any proposed order or confirmation in respect of a direction under section 208 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

Status: This is the original version (as it was originally enacted).

20 Procedure for enforcement orders

- (1) Before making a final enforcement order or confirming a provisional enforcement order, the Secretary of State or the Director shall give notice—
 - (a) stating that he proposes to make or confirm the order and setting out the effect of the order;
 - (b) setting out—
 - (i) the condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
 - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and
 - (iii) the other facts which, in his opinion, justify the making or confirmation of the order;
 - and
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (2) A notice under subsection (1) above shall be given—
 - (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the company to which the order relates and, where the notice is given by the Secretary of State, on the Director.
- (3) Neither the Secretary of State nor the Director shall make a final enforcement order with modifications, or confirm a provisional enforcement order with modifications, except—
 - (a) with the consent to the modifications of the company to which the order relates; or
 - (b) after complying with the requirements of subsection (4) below.
- (4) The requirements mentioned in subsection (3) above are that the Secretary of State or, as the case may be, the Director shall—
 - (a) serve on the company to which the order relates such notice as appears to him to be requisite of his proposal to make or confirm the order with modifications;
 - (b) in that notice specify the period (not being less than twenty-eight days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
 - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making an enforcement order or confirming a provisional enforcement order, the Secretary of State or, as the case may be, the Director shall—
 - (a) serve a copy of the order on the company to which the order relates and, where this subsection applies in the case of an order made or confirmed by Secretary of State, on the Director; and

Status: This is the original version (as it was originally enacted).

- (b) publish such a copy in such manner as he considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.
- (6) Before revoking an enforcement order, other than an unconfirmed provisional order, the Secretary of State or the Director shall give notice—
 - (a) stating that he proposes to revoke the order and setting out its effect; and
 - (b) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under subsection (6) above, the Secretary of State or the Director decides not to revoke the order to which the notice relates, he shall give notice of that decision.
- (8) A notice under subsection (6) or (7) above shall be given—
 - (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (b) by serving a copy of the notice on the company to which the order relates and, where the notice is given by the Secretary of State, on the Director.
- (9) The requirements of the preceding provisions of this section shall not apply, in the case of any order in respect of a contravention of a direction under section 208 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

21 Validity of enforcement orders

- (1) If the company to which an enforcement order relates is aggrieved by the order and desires to question its validity on the ground—
 - (a) that its making or confirmation was not within the powers of section 18 above; or
 - (b) that any of the requirements of section 20 above have not been complied with in relation to it,the company may, within forty-two days from the date of service on it of a copy of the order, make an application to the High Court under this section.
- (2) On any such application the High Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the company have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.
- (3) Except as provided by this section, the validity of an enforcement order shall not be questioned in any legal proceedings whatsoever.

22 Effect of enforcement order

- (1) The obligation to comply with an enforcement order shall be a duty owed to any person who may be affected by a contravention of the order.

Status: This is the original version (as it was originally enacted).

- (2) Where a duty is owed by virtue of subsection (1) above to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.
- (3) In any proceedings brought against any company in pursuance of subsection (2) above, other than proceedings in respect of so much of a contravention of any order as consists in a breach of the duty imposed by virtue of section 68(1)(a) below, it shall be a defence for the company to show that it took all reasonable steps and exercised all due diligence to avoid contravening the order.
- (4) Without prejudice to any right which any person may have by virtue of subsection (1) above to bring civil proceedings in respect of any contravention or apprehended contravention of an enforcement order, compliance with any such order shall be enforceable by civil proceedings by the relevant enforcement authority for an injunction or for any other appropriate relief.
- (5) In subsection (4) above “the relevant enforcement authority”, in relation to any enforcement order, means the Secretary of State or the Director or either of them according to who is the enforcement authority in relation to the condition or requirement compliance with which was to be secured by the order.

Special administration orders

23 Meaning and effect of special administration order

- (1) A special administration order is an order of the High Court made in accordance with section 24 or 25 below in relation to a company holding an appointment under Chapter I of this Part and directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the High Court—
 - (a) for the achievement of the purposes of such an order; and
 - (b) in a manner which protects the respective interests of the members and creditors of the company.
- (2) The purposes of a special administration order made in relation to any company shall be—
 - (a) the transfer to another company, or (as respects different parts of the area to which the company’s appointment relates, or different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company’s undertaking as it is necessary to transfer in order to ensure that the functions which have been vested in the company by virtue of its appointment may be properly carried out; and
 - (b) the carrying out of those functions pending the making of the transfer and the vesting of those functions in the other company or companies (whether by virtue of the transfer or of an appointment or variation which replaces the former company as a relevant undertaker).
- (3) Schedule 3 to this Act shall have effect for applying provisions of the Insolvency Act 1986 where a special administration order is made.
- (4) Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker, without

an appointment or variation under Chapter I of this Part, in pursuance of a special administration order.

- (5) In this section “business” and “property” have the same meanings as in the Insolvency Act 1986.

24 Special administration orders made on special petitions

- (1) If, on an application made to the High Court by petition presented—
- (a) by the Secretary of State; or
 - (b) with the consent of the Secretary of State, by the Director,
- that Court is satisfied in relation to any company which holds an appointment under Chapter I of this Part that any one or more of the grounds specified in subsection (2) below is satisfied in relation to that company, that Court may make a special administration order in relation to that company.
- (2) The grounds mentioned in subsection (1) above are, in relation to any company—
- (a) that there has been, is or is likely to be such a contravention by the company of any principal duty, not being a contravention in respect of which a notice has been served under subsection (3) of section 19 above, as is serious enough to make it inappropriate for the company to continue to hold its appointment;
 - (b) that there has been, is or is likely to be such a contravention by the company of the provisions of any enforcement order which—
 - (i) is not for the time being the subject-matter of proceedings brought by virtue of section 21(1) above; and
 - (ii) if it is a provisional enforcement order, has been confirmed,as is serious enough to make it inappropriate for the company to continue to hold its appointment;
 - (c) that the company is or is likely to be unable to pay its debts;
 - (d) that, in a case in which the Secretary of State has certified that it would be appropriate, but for section 25 below, for him to petition for the winding up of the company under section 440 of the Companies Act 1985 (petition by the Secretary of State following inspectors' report etc.), it would be just and equitable, as mentioned in that section, for the company to be wound up if it did not hold an appointment under Chapter I of this Part; or
 - (e) that the company is unable or unwilling adequately to participate in arrangements certified by the Secretary of State or the Director to be necessary by reason of, or in connection with, a proposal for the making by virtue of section 7(4)(c) above of any appointment or variation replacing a company as a relevant undertaker.
- (3) Notice of any petition under this section for a special administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under section 411 of the Insolvency Act 1986 (“the 1986 Act”); and no such petition shall be withdrawn except with the leave of the High Court.
- (4) Subsections (4) and (5) of section 9 of the 1986 Act (powers on application for administration order) shall apply on the hearing of the petition for a special administration order in relation to any company as they apply on the hearing of a petition for an administration order.

Status: This is the original version (as it was originally enacted).

- (5) Subsections (1), (2) and (4) of section 10 of the 1986 Act (effect of petition) shall apply in the case of a petition for a special administration order in relation to any company as if—
- (a) the reference in subsection (1) to an administration order were a reference to a special administration order;
 - (b) paragraph (b) of that subsection did require the leave of the court for the taking of any of the steps mentioned in paragraphs (b) and (c) of subsection (2) (appointment of, and exercise of functions by, administrative receiver); and
 - (c) the reference in paragraph (c) of subsection (1) to proceedings included a reference to any proceedings under or for the purposes of section 18 above.
- (6) For the purposes of this section a company is unable to pay its debts if—
- (a) it is a limited company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or
 - (b) it is an unregistered company which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding up of unregistered companies).
- (7) In this section “principal duty”, in relation to a company, means a requirement imposed on the company by section 37 or 94 below.

25 Power to make special administration order on winding-up petition

On an application made to any court for the winding up of a company which holds an appointment under Chapter I of this Part—

- (a) the court shall not make a winding-up order in relation to the company; but
- (b) if the court is satisfied that it would be appropriate to make such an order if the company were not a company holding such an appointment, it shall, instead, make a special administration order in relation to the company.

Restrictions on voluntary winding up and insolvency proceedings

26 Restrictions on voluntary winding up and insolvency proceedings

- (1) Where a company holds an appointment under Chapter I of this Part—
- (a) the company shall not be wound up voluntarily;
 - (b) no administration order shall be made in relation to the company under Part II of the Insolvency Act 1986; and
 - (c) no step shall be taken by any person to enforce any security over the company’s property except where that person has served fourteen days’ notice of his intention to take that step on the Secretary of State and on the Director.
- (2) In this section “security” and “property” have the same meanings as in Parts I to VII of the Insolvency Act 1986.