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STATUTORY INSTRUMENTS

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**2009 No. 2477**

**The Water Industry (Special Administration) Rules 2009**

**PART 2**

**The petition and the special administration order**

**Form of petition**

7.—(1) A petition for an order for special administration in relation to a water company must be in Form WAT1.

(2) The petition must state the petitioner's name and address for service.

(3) If the petitioner is the Secretary of State<sup>(1)</sup>, and the water company is a qualifying licensed water supplier (within the meaning of the Water Industry Act 1991) the petition must state that the Secretary of State has consulted the Welsh Ministers before presenting it.

(4) If the petitioner is the Authority, the petition must state—

(a) that it is presented with the consent of—

(i) if the water company is a relevant undertaker (within the meaning of the Water Industry Act 1991) whose area is wholly or mainly in Wales, the Welsh Ministers; or

(ii) the Secretary of State; and

(b) if the water company is a qualifying licensed water supplier (within the meaning of the Water Industry Act 1991), that the Secretary of State has consulted the Welsh Ministers before consenting.

(5) The petition—

(a) must specify the name and address of the person, or each person, proposed to be appointed as special administrator; and

(b) must state that, to the best of the petitioner's knowledge and belief, the person, or each person, proposed is qualified to act as an insolvency practitioner in relation to the water company.

(6) The petitioner, or another person on the petitioner's behalf, must prepare and swear an affidavit complying with rule 8.

(7) There must be exhibited to the affidavit—

(a) a copy of the petition;

(b) the proposed special administrator's written consent, in Form WAT2, to being appointed.

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(1) The functions of the Secretary of State under sections 24 (except for section 24(2)(d) (winding up following investigation under section 440 of the [Companies Act 1985 \(c. 6\)](#))) and 26 of the Water Industry Act 1991 in relation to water undertakers and sewerage undertakers whose areas are wholly or mainly in Wales were conferred on the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, [SI 1999/672](#), article 2(a) and Schedule 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, [SI 2000/253](#), article 4 and Schedule 3(c)). Functions in relation to licensed water suppliers were not conferred on the National Assembly. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the [Government of Wales Act 2006 \(c. 32\)](#), functions conferred on the National Assembly for Wales are now exercisable by the Welsh Ministers.

### **Contents of affidavit**

- 8.**—(1) The affidavit must state—
- (a) whether the water company that is the subject of the petition is a relevant undertaker or a qualifying licensed water supplier (within the meaning of the Water Industry Act 1991);
  - (b) which of the grounds set out in section 24(2) of the Water Industry Act 1991 the petitioner believes are satisfied in relation to the water company; and
  - (c) the reasons for that belief.
- (2) The affidavit must contain a statement of the water company’s financial position, setting out (so far as the deponent knows) the assets and liabilities of the company, including contingent and prospective liabilities.
- (3) The affidavit must set out details (to the best of the deponent’s knowledge and belief) of—
- (a) any security held by creditors of the water company; and
  - (b) whether any such security gives its holder power to appoint an administrative receiver.
- (4) If the deponent knows or believes that an administrative receiver has been appointed, the affidavit must state that fact.
- (5) The affidavit must contain details (to the best of the deponent’s knowledge and belief) of—
- (a) any petition that has been presented for the winding up of the water company;
  - (b) any notice served in accordance with section 26(1)(c) of the Water Industry Act 1991 by any person intending to enforce a security over the water company’s property; and
  - (c) any step taken to enforce such a security.
- (6) If there are other matters that, in the opinion of the person intending to present the petition for a special administration order, will assist the court in deciding whether to make such an order, those matters must also be stated in the affidavit.

### **Filing of petition**

- 9.**—(1) The petitioner must file as many copies of the petition and affidavit as are required to be served in accordance with rule 11.
- (2) The court must—
- (a) seal each filed copy; and
  - (b) endorse it with the date and time of filing.
- (3) The court must also—
- (a) fix a venue for the hearing of the petition; and
  - (b) endorse the details of the venue on each copy of the petition.
- (4) The court must then issue each copy to the petitioner.

### **Notice to enforcement officer, etc.**

- 10.** As soon as reasonably practicable after filing the petition, the petitioner must give notice of its presentation—
- (a) to any enforcement officer or other officer who, to the petitioner’s knowledge, is charged with an execution or other legal process against the water company or its property; and
  - (b) to any person who, to the petitioner’s knowledge, has distrained against the water company or its property.

**Service of petition**

**11.**—(1) Not less than 2 days before the hearing the petitioner must serve on each person specified in paragraph (2)—

- (a) a copy of the petition issued by the court,
- (b) a copy of the affidavit and exhibits in support of it.

(2) The following must be served—

- (a) the water company;
- (b) any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the water company;
- (c) if an administrative receiver has been appointed, the administrative receiver;
- (d) any person who has applied to the court for an administration order under Part II of the Insolvency Act in relation to the water company;
- (e) if a petition is pending for the winding up of the water company, the petitioner and any provisional liquidator;
- (f) the person, or each person, proposed for appointment as special administrator;
- (g) the Environment Agency;
- (h) the Consumer Council for Water;
- (i) the Chief Inspector of Drinking Water;
- (j) if the petitioner is the Secretary of State, the Welsh Ministers and the Authority;
- (k) if the petitioner is the Welsh Ministers, the Secretary of State and the Authority;
- (l) if the petitioner is the Authority, the Secretary of State and the Welsh Ministers.

(3) Service is in any way that the court directs or by delivering documents in accordance with the following table.

<i>Person served</i>	<i>Method of delivery</i>
The water company	<ul style="list-style-type: none"> <li>(a) Delivery to its registered office or, if this is not practicable, to its last known principal place of business in England and Wales;</li> <li>(b) any other way permitted by any enactment relating to companies</li> </ul>
Any other company	Any way permitted by any enactment relating to companies
Any person— <ul style="list-style-type: none"> <li>who is an authorised deposit taker or a former authorised institution;</li> <li>who has appointed, or is or may be entitled to appoint, an administrative receiver of the water company, or</li> <li>who has not notified an address for service</li> </ul>	<ul style="list-style-type: none"> <li>(a) The address of an office of the person, if the petitioner knows that the water company maintains a bank account;</li> <li>(b) if the petitioner knows of no such office, the person's registered office; or</li> <li>(c) if the person has no registered office, the person's usual or last known address</li> </ul>
Any other person	<ul style="list-style-type: none"> <li>(a) If the person has previously notified an address as the person's address for service, that address;</li> </ul>

<i>Person served</i>	<i>Method of delivery</i>
	(b) the address at which the person lives or carries on business; or
	(c) the person's usual or last known address

(4) In the table—

“authorised deposit taker” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000(2) to accept deposits;

“former authorised institution” means an institution that—

- (a) continues to have a liability in respect of a deposit which was held in accordance with the Banking Act 1979(3) or the Banking Act 1987(4); but
- (b) is not an authorised deposit taker.

(5) References in this rule to deposits and their acceptance must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

#### **Proof of service**

**12.**—(1) The person, or each person, who served the petition and annexed documents must swear and file an affidavit in Form WAT3, specifying the date on which, and the manner in which, service was effected.

(2) The affidavit of service must be filed as soon as reasonably practicable after service, and in any event not less than one day before the hearing of the petition.

#### **Insolvency proceedings brought after petition presented**

**13.** If after the petition is presented the petitioner becomes aware of any other insolvency proceedings affecting the water company concerned, the petitioner must notify the court in writing of those proceedings.

#### **The hearing: right of appearance**

**14.** At the hearing of the petition, the following may appear or be represented—

- (a) any person on whom the petition was served;
- (b) with the leave of the court, any other person who appears to have an interest justifying the appearance..

#### **Form of special administration order**

**15.** A special administration order must be in Form WAT4.

#### **Costs of petitioner etc.**

**16.**—(1) If the court makes a special administration order, the petitioner's costs are payable as an expense of the administration.

(2) 2000 c. 8.

(3) 1979 c. 37.

(4) 1987 c. 22.

(2) The court may direct that the costs of any other person appearing are also payable as an expense of the administration.

#### **Notice and advertisement of special administration order**

**17.**—(1) If the court makes a special administration order the petitioner must, as soon as reasonably practicable, give notice, in Form WAT5, to the person or each person appointed as special administrator.

(2) The special administrator must, as soon as reasonably practicable, give notice, in Form WAT6, of the making of the order, by advertising—

- (a) in the London Gazette; and
- (b) in such newspaper as the administrator thinks most appropriate for ensuring that the order comes to the notice of the water company's creditors.

(3) The special administrator must also, as soon as reasonably practicable—

- (a) give notice, in Form WAT7, of the order to each person (other than the water company) on whom the petition was served; and
- (b) send a sealed copy of that form to the registrar of companies.

(4) The special administrator must send a sealed copy of the order to whichever of the Secretary of State, the Welsh Ministers and the Authority were not the petitioner.

(5) The special administrator, when sending to the registrar of companies a copy of the order in accordance with section 21(2) of the Insolvency Act, must also send to the registrar a completed Form WAT8.

(6) If the court makes any other order, it will give directions as to—

- (a) whom notice of the order is to be given; and
- (b) how that notice is to be given.

#### **Notice of discharge of special administration order**

**18.** If a special administration order is discharged, the special administrator must send a copy of the order effecting the discharge and a completed Form WAT9 to each of the Secretary of State, the Welsh Ministers, the Authority and the registrar of companies.