
STATUTORY INSTRUMENTS

2009 No. 2477

The Water Industry (Special Administration) Rules 2009

PART 7

Court procedure and practice

CHAPTER 4

Costs and detailed assessment

Application of the Civil Procedure Rules

87. Subject to any inconsistent provision in this Chapter, CPR Parts 43 (scope of costs rules and definitions), 44 (general rules about costs), 45 (fixed costs), 47 (procedure for detailed assessment of costs and default provisions) and 48 (costs - special cases) apply to special administration proceedings.

Costs to be assessed by detailed assessment

88.—(1) The amount of any costs, charges or expenses of a person that are payable out of the assets of a water company must be decided by detailed assessment unless the special administrator and the person entitled to payment agree to the contrary.

(2) In the absence of such an agreement, the special administrator may serve notice in writing on the person to commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(3) In any proceedings before the court, including proceedings on a petition, the court may order costs to be decided by detailed assessment.

(4) Nothing in this rule prevents the special administrator from making payments on account to a person on the basis of an undertaking by the person to repay immediately any money that may, when detailed assessment is made, prove to have been overpaid, with interest at the rate specified in section 17 of the Judgments Act 1838⁽¹⁾ on the date payment was made and for the period from the date of payment to that of repayment.

Procedures for detailed assessment: employees of the special administrator

89.—(1) Before making a detailed assessment of the costs of a person employed, in special administration proceedings, by a special administrator, the costs officer will require from the special administrator a certificate of the person's employment in accordance with paragraphs (2) and (3).

(2) The special administrator must endorse the certificate on the person's bill and must sign it.

(3) The certificate must set out—

(a) the person's name and address;

(1) 1838 c. 110 (1 & 2 Vict). Section 17 was amended by S I 1998/2940, article 3 and S I 1993/564 and by other enactments not relevant to these Rules.

- (b) details of the functions that the person carried out under the employment; and
- (c) a note of any special terms of remuneration that have been agreed.

Procedures for detailed assessment: time limit to bring proceedings

90.—(1) A person whose costs in special administration proceedings are required to be decided by detailed assessment must, on being required in writing to do so by the special administrator, commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(2) If the person does not commence detailed assessment proceedings within 3 months of the requirement under paragraph (1), or within such further time as the court, on application, may permit, the special administrator may deal with the assets of the water company without regard to the person's claim for costs.

(3) The person's claim for costs is forfeited by that failure to commence detailed assessment proceedings.

(4) If in such a case the person also has such a claim against a special administrator personally, that claim is also forfeited by the person's failure to commence detailed assessment proceedings.

Costs paid otherwise than out of the assets of the water company

91. If the amount of costs is decided by detailed assessment under an order of the court directing that the costs are to be paid otherwise than out of the assets of the water company, the costs officer will note, on the final costs certificate, whom the costs are to be paid by or how they are to be paid.

Award of costs against special administrator

92.—(1) If a special administrator is made a party to proceedings on the application of another party, the special administrator is not personally liable for costs unless the court so directs.

(2) Paragraph (1) is subject to any provision of the Insolvency Act, the Water Industry Act 1991 or the Insolvency Rules 1986, or any other provision of these Rules, under which the special administrator is not in any event to be liable for costs and expenses.

Applications for costs

93.—(1) This rule applies if a party to, or a person affected by, special administration proceedings—

- (a) applies to the court for an order allowing the person's costs, or part of them, incidental to the proceedings; and
- (b) that application was not made at the time of the proceedings.

(2) The party or person must serve a sealed copy of the application on the special administrator.

(3) The special administrator may oppose, or make submissions to the court orally or in writing about, the application.

(4) The court will not allow the applicant any costs in relation to the application unless the court is satisfied that the application could not have been made at the time of the proceedings.

Costs and expenses of witnesses

94.—(1) An officer of the water company concerned in special administration proceedings is not entitled to any allowance as a witness in any examination or other proceedings before the court unless the court so orders.

(2) A person presenting a petition in special administration proceedings is not taken to be a witness on the hearing of the petition, but the costs officer may allow the person's expenses of travelling and subsistence.

Final costs certificate

95. A final costs certificate of the costs officer is final and conclusive as to all matters that have not been objected to in the manner provided for under the CPR.

Replacement of lost or destroyed costs certificate

96. If a costs officer is satisfied that a costs certificate has been lost or destroyed, the costs officer may issue a duplicate certificate.