



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;

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“relevant licence” means—

- (a) a licence granted under Article 10(1)(b) [^{F1}or Article 10(1)(bb)] 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).

Annotations:

Amendments (Textual)

- F1** S. 17(5): words in definition of "relevant licence" inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 89**

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—

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- (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—

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- (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

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(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—

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- (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.

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