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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

The Water and Sewerage Services  
(Northern Ireland) Order 2006

PART III

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER II

ENFORCEMENT AND INSOLVENCY

*Special administration orders*

**Meaning and effect of special administration order**

**41.**—(1) A special administration order is an order of the High Court made in accordance with Article 42 or 43 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, creditors and customers 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) The Department may by regulations—

- (a) make provision for applying provisions of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (with or without modifications) in relation to a special administration order or an application for such an order;
- (b) make consequential or supplementary provision (including provision modifying other statutory provisions) in relation to special administration orders.

(4) Schedule 1 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 Article “business” and “property” have the same meanings as in the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#).

### **Special administration orders made on application of Department or Authority**

**42.**—(1) If, on an application made to the High Court—

(a) by the Department; or

(b) with the consent of the Department, by the Authority,

that Court is satisfied in relation to any company which holds an appointment under Chapter I that any one or more of the grounds specified in paragraph (2) 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 paragraph (1) 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 paragraph (3) of Article 31, 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 Article 33(1); 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 DETI has certified that it would be appropriate, but for Article 43, for it to petition for the winding up of the company under Article 104A of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (winding-up on grounds of public interest), it would be just and equitable, as mentioned in that Article, for the company to be wound up if it did not hold an appointment under Chapter I; or

(e) that the company is unable or unwilling adequately to participate in arrangements certified by the Department or the Authority to be necessary by reason of, or in connection with, a proposal for the making by virtue of Article 14(4)(d) of any appointment or variation replacing a company as a relevant undertaker.

(3) Notice of any application under this Article for a special administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under Article 359 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#); and no such application shall be withdrawn except with the leave of the High Court.

(4) For the purposes of this Article a company is unable to pay its debts if—

(a) it is a limited company which is deemed to be so unable under Article 103 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (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).

(5) In this Article “principal duty”, in relation to a company, means a requirement imposed on the company by Article 65 or 149.

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

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

- (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.