

Draft Order laid before Parliament under paragraph 5(3)(b) of Schedule 5 to the Flood and Water Management Act 2010, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No. 0000

**INSOLVENCY, ENGLAND AND WALES
WATER INDUSTRY, ENGLAND AND WALES**

The Water Industry Act 1991 (Amendment) Order 2024

Made - - - -

Coming into force in accordance with article 1(2)

The Secretary of State makes this Order with the consent of the Welsh Ministers and in exercise of the powers conferred by paragraph 5(2) of Schedule 5 to the Flood and Water Management Act 2010⁽¹⁾. In accordance with paragraph 5(3)(b) of Schedule 5 to that Act, a draft of this Order was laid before and approved by resolution of each House of Parliament.

Citation, commencement and extent

- 1.—(1) This Order may be cited as the Water Industry Act 1991 (Amendment) Order 2024.
- (2) This Order comes into force on the day after the day on which it is made.
- (3) This Order extends to England and Wales.

Amendment of Schedule 2 to the Water Industry Act 1991

2. Schedule 2 to the Water Industry Act 1991⁽²⁾ is amended as follows.

Amendment of paragraph 1

3. In paragraph 1(4) (interpretation), at the appropriate place, insert—
““new owner” means, where securities are transferred to a company as described in paragraph 2A(1)(b) or (2)(b), the company to which the transfer is made;”.

⁽¹⁾ 2010 c. 29.

⁽²⁾ 1991 c. 56. Schedule 2 was amended by the Water Act 2003 (c. 37), section 36(2) and paragraph 51 of Schedule 8, the Flood and Water Management Act 2010, paragraphs 1 and 2 of Schedule 5, and the Water Act 2014 (c. 21), paragraph 122 of Schedule 7.

Amendment of paragraph 2

4. In paragraph 2 (making and modification of transfer schemes), after sub-paragraph (7) insert—
- “(7ZA) In a case where—
- (a) another scheme under this Schedule provides for the transfer of the property, rights and liabilities of the existing appointee, and
 - (b) that other scheme makes provision for a transfer that is effected as described in paragraph 2A (hive down),
- the duty in sub-paragraph (7) also applies to the new owner in relation to that other scheme.”.

Insertion of new paragraph 2A

5. After paragraph 2 insert—

“Transfer schemes providing for transfer by hive down

2A.—(1) In a case specified in paragraph 1(3) (special administration order in relation to existing appointee), a scheme under this Schedule may provide for a transfer under section 23(2) that is effected by—

- (a) the transfer of property, rights and liabilities from the existing appointee to a new appointee that is a wholly-owned subsidiary of the existing appointee, and
- (b) the subsequent transfer of securities in the new appointee to another company.

(2) In a case specified in paragraph 1(3A) (special administration order in relation to a qualifying licensee) where the transferor is a qualifying water supply licensee, a scheme under this Schedule may provide for a transfer under section 23(2A) that is effected by—

- (a) the transfer of property, rights and liabilities from the transferor to a transferee that is a wholly-owned subsidiary of the transferor, and
- (b) the subsequent transfer of securities in the transferee to another company.

(3) In a case where a transfer is effected or proposed to be effected as described in sub-paragraph (1) or (2), paragraph 2 has effect as if—

- (a) in sub-paragraphs (1) and (3) of paragraph 2, the references to the consent of the new appointee were references to the consent of the new owner;
- (b) in sub-paragraph (4), the persons whose consent is required included the new owner;
- (c) in sub-paragraph (7), the persons subject to the duty imposed by that sub-paragraph included the new owner.”.

Amendment of paragraph 3

- 6.—(1) Paragraph 3 (transfers by scheme) is amended as follows.

- (2) After sub-paragraph (1) insert—

“(1A) Where a scheme under this Schedule provides for a transfer of securities as described in paragraph 2A(1)(b) or (2)(b), that transfer has effect in accordance with the provisions of the scheme and without further assurance, immediately after the transfer of property, rights and liabilities mentioned in paragraph 2A(1)(a) or (2)(a).”.

- (3) After sub-paragraph (3) insert—

“(3A) Where a scheme under this Schedule provides for a transfer of securities as described in paragraph 2A(1)(b) or (2)(b), the scheme may contain provision for the consideration to be provided by the new owner in respect of the transfer; and any such provision is enforceable in the same way as if the securities had been transferred, and (if the case so requires) had been capable of being transferred, by agreement between the parties.”.

Amendment of paragraph 5

7.—(1) Paragraph 5 (supplemental provisions of schemes) is amended as follows.

(2) In sub-paragraph (2)(f), for the words from “the existing” to “appointees” substitute—

“—

(i) the existing appointee and the new appointee or new owner,

(ii) a person referred to in sub-paragraph (i) and any other appointee or new owner of any other appointee, or

(iii) different companies which are other appointees or new owners of other appointees.”.

(3) In sub-paragraph (2)(g), for “appointees” substitute “persons”.

(4) In sub-paragraph (3)(b), for “appointees” substitute “persons”.

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 2 to the Water Industry Act 1991 (c. 56) in consequence of section 23(2H) of that Act.

Section 23(2H) was inserted by the Flood and Water Management Act 2010 (c. 29). It provides that on special administration of a water company or, in some cases, a sewerage company, transfer as a going concern of the company may be effected by way of transfer of the company's undertaking to a wholly-owned subsidiary followed by transfer of securities in the subsidiary (known as "transfer by hive-down").

This Order amends Schedule 2, which makes provision about transfer schemes upon the termination of an appointment or transfer of a licence of a water or sewerage company, to include provision about transfer schemes in cases where there is a transfer by hive-down.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.