

Draft Regulations laid before Parliament under section 23(2G)(b) and (3D)(b) of the Water Industry Act 1991, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2024 No.

INSOLVENCY, ENGLAND AND WALES
WATER INDUSTRY, ENGLAND AND WALES
COMPANIES, ENGLAND AND WALES

The Water Industry (Special Administration) Regulations 2024

Made - - - -

Coming into force in accordance with regulation 2

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 23(2E) and (3A) and 213(2)(e) and (f) of the Water Industry Act 1991(a) (“the 1991 Act”).

In accordance with section 23(2G)(a) and (3D)(a) of the 1991 Act, the Welsh Ministers have consented to the making of these Regulations.

In accordance with section 23(2G)(b) and (3D)(b) of the 1991 Act, a draft of this instrument has been laid before and approved by resolution of each House of Parliament.

PART 1

General

Citation

1. These Regulations may be cited as the Water Industry (Special Administration) Regulations 2024.

Commencement

2.—(1) For the purposes of regulation 49, these Regulations come into force on the day after the day on which they are made.

(a) 1991 c. 56. Section 23 of the Water Industry Act 1991 was amended by: the Water Act 2003 (c. 37), section 101(1) and Schedule 8, paragraphs 2 and 8(1) to (6); the Flood and Water Management Act 2010 (c. 29), section 34 and Schedule 5, paragraphs 3, 5 and 6; and, the Water Act 2014, section 56 and Schedule 7, paragraphs 2 and 35.

(2) For all other purposes, these Regulations come into force at the end of a period of 21 days beginning with the day after the day on which these Regulations are made.

Extent

3. These Regulations extend to England and Wales.

Interpretation

4. In these Regulations—

“the 1986 Act” means the Insolvency Act 1986(a);

“special administrator” means a person appointed by the court to manage the affairs, business and property of a water industry company under—

(a) section 23(1) of the Water Industry Act 1991; or

(b) paragraph 91 or 103 of Schedule B1(b) to the Insolvency Act 1986 as modified by Parts 3 and 4 of these Regulations; and

“water industry company” means a company of a kind mentioned in section 23(1) of the Water Industry Act 1991.

PART 2

Application of the Insolvency Act 1986 to special administration

Application, disapplication and modification

5.—(1) The provisions of the 1986 Act mentioned in tables 1 and 2 apply in relation to special administration(c) as they apply in relation to administration but with the modifications set out in Parts 3 and 4 of these Regulations.

Table 1

Schedule B1 to the 1986 Act

<i>Paragraphs</i>	<i>Description</i>
1	Interpretation
4 to 6	Administrator’s duties, status and qualifications
13	Powers of court
40 to 49	Effect of administration
54	Revision of administrator’s proposals
59 to 75	Administrators: powers, duties, agency, property, challenge, misfeasance
79	Ending administration
83 to 91	Moving to other insolvency procedures, discharge and replacement
95	Appointment of replacement administrator by the court
98 to 104	Discharge of administrator’s liability, general provisions
106	Penalties
107	Extension of time limits
109 to 111	Provisions about time and interpretation

(a) 1986 c. 45.

(b) Schedule B1 to the Insolvency Act 1986 was inserted by the Enterprise Act 2002 (c. 40), section 248(2) and Schedule 16.

(c) See section 23(3A) and (3B) of the Water Industry Act 1991 (c. 56).

Table 2**Other provisions of the 1986 Act**

<i>Provisions</i>	<i>Description</i>
section A16	Company enters into insolvency procedure etc
section A43	Challenges to monitor remuneration in insolvency proceedings
sections 1 to 7B	Company voluntary arrangements
section 72A	Floating charge holder not to appoint administrative receiver
section 133	Public examination of officers
section 140	Court appointment after administration or voluntary arrangement
section 214	Wrongful trading
sections 233 to 237	Management by administrators, liquidators etc
sections 238 to 241	Transactions at an undervalue and preferences
section 244	Extortionate credit transactions
section 245	Avoidance of certain floating charges
section 246	Unenforceability of liens on books etc
sections 246ZA to 246ZC	Fraudulent and wrongful trading
section 246ZD	Power to assign certain causes of action
sections 246A to 246C	Remote meetings, use of websites, creditors' opt-out of notices
section 411	Power to make insolvency rules
section 413	Insolvency Rules Committee
section 424	Those who may apply for an order under section 423
section 426	Cooperation between courts exercising insolvency law jurisdiction
Schedule ZA1, paragraph 2	Moratorium: eligible companies
Schedule 1	Powers of administrator or administrative receiver
Schedule 8	Provisions capable of inclusion in company insolvency rules
Schedule 10	Punishment of offences under the 1986 Act

(2) The provisions of Schedule B1 to the 1986 Act that are not mentioned in table 1 do not apply to special administration(a).

PART 3**General modifications****General modifications to provisions about administration**

6.—(1) Subject to the following provisions of these Regulations, and except where the context demands otherwise(b), references in any enactment to any term specified in column 1 of the table include references to the term specified in column 2(c).

Table

<i>Column 1</i>	<i>Column 2</i>
administration	special administration

- (a) Section 23(3) of the Water Industry Act 1991 (as substituted by paragraph 6 of Schedule 5 to the Flood and Water Management Act 2010) applies to special administration the provisions of Schedule B1 to the Insolvency Act 1986. Section 23(3A) of that Act confers on the Secretary of State a power to make regulations that disapply those provisions.
- (b) See for example section A50 of the Insolvency Act 1986 and provision made in other special administration regimes that makes a distinction between ordinary administration and special administration.
- (c) Regulation 6 is derived from and replaces a similar insolvency provision that applied in respect of the special administration of water industry companies under paragraph 11 (general modifications and saving) of Schedule 3 (special administration orders) to the Water Industry Act 1991 (c. 56). Schedule 3 (which modified saved Part 2 of the Insolvency Act 1986 as it applied to special administration) was replaced by Schedule B1 to the Insolvency Act 1986 (c. 45) under the Flood and Water Management Act 2010 (c. 29), section 34, Schedule 5, paragraph 6.

administration application	special administration application
administration order	special administration order
administrator	special administrator
enters administration	enters special administration
purpose(s) of administration	purposes of special administration

(2) In any enactment modified under paragraph (1), the terms in column 2 of the table are to be construed in accordance with Schedule B1 to the 1986 Act as modified under Part 4 of these Regulations.

PART 4

The Insolvency Act 1986 – specific modifications

CHAPTER 1

Schedule B1 – specific modifications

Introduction

7. This Chapter sets out modifications to the provisions of Schedule B1 to the 1986 Act.

Special administrator

8. Paragraph 1 has effect as if—

(a) for sub-paragraph (1) there were substituted—

“(1) For the purposes of this Act, a “special administrator” means a person appointed by the court to manage the affairs, business and property of a water industry company under—

(a) section 23(1) of the 1991 Act, or

(b) paragraph 91 or 103 of this Schedule.”; and

(b) after sub-paragraph (1) there were inserted—

“(1A) Where the context requires, the definition of “special administrator” in sub-paragraph (1) includes a former special administrator.”.

Status of special administrator

9. Paragraph 5 has effect as if “(whether or not he is appointed by the court)” were omitted.

Powers of the court

10. Paragraph 13 applies as if sub-paragraphs (1)(a), (b) and (e) and (4) were omitted.

Dismissal of pending winding-up application

11. Paragraph 40 has effect as if it were substituted with—

“40. When a court makes a special administration order in respect of a company, it must dismiss any outstanding petition for the winding up of the company.”.

Moratorium on insolvency proceedings

12. Paragraph 42 has effect as if sub-paragraphs (4) and (5) were omitted.

Moratorium on other legal process

13. Paragraph 43 has effect as if—

- (a) after sub-paragraph (5) there were inserted—
 - “(5A) No proceedings under or for the purposes of section 18 of the 1991 Act may be instituted or continued against the company or property of the company except—
 - (a) with the consent of the special administrator, or
 - (b) with the permission of the court.”; and
- (b) in sub-paragraph (6), after “No” there were inserted “other”.

Interim moratorium

14. Paragraph 44 has effect as if—

- (a) sub-paragraphs (2), (3), (4) and (6) were omitted; and
- (b) in sub-paragraph (7), paragraphs (a) to (c) were omitted.

Announcement of special administrator’s appointment

15. Paragraph 46 has effect as if—

- (a) for sub-paragraph (4) there were substituted—
 - “(4) Before the end of the period of seven days beginning with the date specified in sub-paragraph (6), the special administrator must send notice of their appointment to—
 - (a) the registrar of companies,
 - (b) in relation to a qualifying water supply licensee whose licence gives it a supplementary authorisation, the Welsh Ministers, and
 - (c) whichever of the following was not the applicant for the special administration order under which the special administrator was appointed—
 - (i) the relevant authority,
 - (ii) the Water Services Regulation Authority.”; and
- (b) for sub-paragraph (6) there were substituted—
 - “(6) The date for the purpose of sub-paragraphs (4) and (5) is the date of the special administration order.”.

Statement of company’s affairs

16. Paragraph 47 has effect as if sub-paragraph (5) were omitted.

Special administrator’s proposals

17. Paragraph 49(a) has effect as if—

- (a) for paragraph (2)(b) there were substituted—
 - “(b) where applicable (see section 23 of the 1991 Act), explain why the special administrator thinks that—
 - (i) it is not likely to be possible to rescue the company as a going concern, or
 - (ii) transfer is likely to secure more effective performance of the functions or activities mentioned in section 23(2)(a), (2A)(a) or (2AA)(a) of the 1991 Act.”
- ; and

(a) Paragraph 49 was amended by: S.I. 2008/948, articles 3(1)(b) and 6 and Schedule 1, Part 2, paragraph 100(a); the Corporate Insolvency and Governance Act 2020 (c. 12), section 7 and Schedule 7, Part 2, paragraphs 5, 7(1) and (2); and, the Small Business, Enterprise and Employment Act 2015 (c. 26), section 126 and Schedule 9, Part 1, paragraphs 1, 10(1) and (2).

- (b) in sub-paragraph (4), before paragraph (a), there were inserted—
- “(za) to the relevant authority,
 - (zb) in the case of a qualifying water supply licensee whose licence gives it a supplementary authorisation, to the Welsh Ministers,
 - (zc) to the Water Services Regulation Authority.”.

Revision of special administrator’s proposals

18. Paragraph 54(a) has effect as if it were substituted with—

“**54.**—(1) The special administrator of a company may on one or more occasions revise the proposals included in the statement made under paragraph 49 in relation to the company.

(2) If the special administrator thinks that a revision is substantial, they must send a copy of the revised proposals to—

- (a) the registrar of companies,
- (b) the relevant authority,
- (c) in the case of a qualifying water supply licensee whose licence gives it a supplementary authorisation, the Welsh Ministers,
- (d) the Water Services Regulation Authority,
- (e) every creditor of the company, other than an opted-out creditor, of whose claim and address the special administrator is aware, and
- (f) every member of the company of whose address the special administrator is aware.

(3) A copy sent in accordance with sub-paragraph (2)—

- (a) must be sent within the prescribed period, and
- (b) must also, in the case of the copy under sub-paragraph (2)(f), be sent before the end of the period of five business days beginning with the day on which a copy is first sent to a creditor under sub-paragraph (2)(e).

(4) The special administrator is to be taken to have complied with sub-paragraph (2)(f) if they publish, in the prescribed manner, a notice undertaking to provide a copy of the revised proposals free of charge to any member of the company who applies in writing to a specified address.

(5) A special administrator who fails without reasonable excuse to comply with this paragraph commits an offence.”.

Special administrator’s power to manage

19. Paragraph 59(1) has effect as if for “The administrator” there were substituted “Subject to paragraph 60(3), the special administrator”.

Special administrator’s general powers and dealings with protected land

20. Paragraph 60(b) has effect as if—

- (a) after sub-paragraph (1), there were inserted—

“(1A) The special administrator of a company has the power to act on behalf of the company for the purposes of provision contained in any legislation which confers a power on the company or imposes a duty on it.

(a) Paragraph 54 was amended by the Small Business, Enterprise and Employment Act 2015 (c. 26), section 126 and Schedule 9, Part 1, paragraphs 1, 10(1), (11) to (15) and (16)(a) and (b), and 13(a) and (b).

(b) Paragraph 60 was amended by the Small Business, Enterprise and Employment Act 2015 (c. 26), section 129(1), (2) and (3).

(1B) In sub-paragraph (1A) “legislation” means any provision made by or under an Act.”; and

(b) after sub-paragraph (2), there were inserted—

“(3) Subject to sub-paragraph (6), the special administrator must not dispose of any of the company’s protected land(a), or any interest or right in or over that land, except with the consent of the relevant authority.

(4) Consent for the purposes of sub-paragraph (3) may be given on such conditions as the relevant authority thinks appropriate.

(5) Consent for the purposes of sub-paragraph (3) and any conditions imposed under sub-paragraph (4) must be notified to the special administrator in writing.

(6) Paragraph (3) does not apply where the special administrator disposes of protected land under a scheme for the transfer of property under Schedule 2 to the 1991 Act.”.

Special administrator’s general duties

21. Paragraph 68 has effect as if—

(a) for sub-paragraph (1) there were substituted—

“(1) Subject to sub-paragraph (2), the special administrator of a company must manage its affairs, business and property in accordance with—

(a) proposals in the statement made under paragraph 49, and

(b) where applicable, any revision to the proposals under paragraph 54.”; and

(b) for paragraph (3) there were substituted—

“(3) Directions given by the court under sub-paragraph (2) must be consistent with the purposes of the special administration order.”.

Charged property: non-floating charge

22. Paragraph 71(3)(b) has effect as if for “market value” there were substituted “appropriate value”.

Hire-purchase property

23. Paragraph 72(3)(b) has effect as if for “market value” there were substituted “appropriate value”.

Protection for priority creditor

24. Paragraph 73(3)(b) has effect as if for “or modified” there were substituted “under paragraph 54”.

Challenge to special administrator’s conduct of company

25. Paragraph 74(c) has effect as if—

(a) for sub-paragraph (2), there were substituted—

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- (a) The term “protected land” is defined in section 219 of the Water Industry Act 1991.
- (b) Paragraph 73 was amended by: S.I. 2007/2974, regulation 65(1), (2) and (3); S.I. 2008/948, articles 3(1)(b), and 6 and Schedule 1, Part 2, paragraph 100(a); S.I. 2018/1244, articles 4, 10(1), (2), (3), (4) and (5), 13(1) and (3)(a), (b) and (c); S.I. 2019/348, regulation 8, Schedule 3, paragraph 1; and, the Corporate Insolvency and Governance Act 2020 (c. 12), section 7 and Schedule 9, Part 2, paragraphs 5, 7(1) and (3).
- (c) Paragraph 74 was amended by: S.I. 2007/2974, regulation 65(1), (4) and (5); S.I. 2008/948, articles 3(1)(b), 6 and Schedule 1, Part 2, paragraph 100(b); the Small Business, Enterprise and Employment Act 2015 (c. 26), section 126 and Schedule 9, Part 1, paragraphs 1, 10(1) and (24); S.I. 2019/348, regulation 8 and Schedule 3, paragraph 1; and, the Corporate Insolvency and Governance Act 2020 (c. 12), section 7, Schedule 9, Part 2, paragraphs 5 and 7(1) and (4).

“(2) Where a company is in special administration, a person mentioned in sub-paragraph (2A) may apply to the court claiming that the special administrator is conducting the special administration in a way that is preventing its purposes from being achieved as quickly and efficiently as is reasonably practicable.”;

(b) after sub-paragraph (2), there were inserted—

“(2A) The persons who may apply to the court under sub-paragraph (2) are—

- (a) the relevant authority,
- (b) the Water Services Regulation Authority, if it has the consent of the relevant authority,
- (c) a creditor of the company,
- (d) a member of the company.

(2B) Where a company is in special administration, the relevant authority or the Water Services Regulation Authority may apply to the court claiming that the special administrator has exercised or is exercising or is proposing to exercise their powers in relation to the company in a way which involves a contravention of—

- (a) the conditions of the company’s appointment under Chapter 1 of Part 2 of the 1991 Act,
- (b) the company’s licence granted under Chapter 1A of Part 2 of the 1991 Act, or
- (c) any statutory or other requirement imposed on the company in consequence of that appointment or licence.”;

(c) sub-paragraph (6)(c) were omitted; and

(d) after sub-paragraph (6), there were inserted—

“(7) In the case of a claim made by a creditor or member of the company, the court may not grant a remedy or relief under this paragraph unless it has given the relevant authority and the Water Services Regulation Authority a reasonable opportunity to make representations about the claim and the proposed remedy, relief or order.

(8) An order may not be made under this paragraph if it would be likely to prejudice, impede or prevent the achievement of the purposes of the special administration order concerned.

(9) Before making an order of the kind mentioned in sub-paragraph (4)(d)—

- (a) the court must notify the special administrator of—
 - (i) the proposed order, and
 - (ii) a reasonable period during which the special administrator may take relevant steps (see sub-paragraphs (10) to (13)), and
- (b) the period mentioned in paragraph (a)(ii) must have expired without the special administrator having taken such of those steps as the court thinks should have been taken.

(10) If the claim is made under sub-paragraph (1)(a), relevant steps are—

- (a) ceasing to act in a way that unfairly harms the interests to which the claim relates,
- (b) remedying any harm unfairly caused to those interests, and
- (c) ensuring that there is no repetition of conduct unfairly causing harm to those interests.

(11) If the claim is made under sub-paragraph (1)(b), relevant steps are steps for ensuring that the interests to which the claim relates are not unfairly harmed.

(12) If the claim is made under sub-paragraph (2), relevant steps are—

- (a) ceasing to act in a manner preventing the achievement of the purposes of the special administration as quickly and as efficiently as is reasonably practicable,

- (b) remedying the consequences of the special administrator having acted in such a manner, and
 - (c) ensuring that there is no repetition of conduct preventing the achievement of the purposes of the special administration as quickly and as efficiently as is reasonably practicable.
- (13) If the claim is made under sub-paragraph (2B), relevant steps are—
- (a) ceasing to act in a manner contravening—
 - (i) the conditions of the appointment or licence, or
 - (ii) any statutory or other requirement imposed on the company in consequence of that appointment or licence,
 - (b) remedying the consequences of the special administrator having acted in such a manner, and
 - (c) ensuring that there is no repetition of conduct contravening—
 - (i) the conditions of the appointment or licence, or
 - (ii) any statutory or other requirement imposed on the company in consequence of that appointment or licence.”.

Court order ending special administration

26. Paragraph 79(a) has effect as if—

- (a) for sub-paragraph (1) there were substituted—

“(1) (a) The special administrator of a company may apply to the court for the appointment of a special administrator of the company to cease to have effect from a specified time.

- (b) The special administrator may only make an application under paragraph (a) on the ground that the purposes of the special administration have been achieved.
- (c) The special administrator must obtain the consent of the relevant authority before making an application under paragraph (a).
- (d) In a case where—
 - (i) the company in special administration is a qualifying water supply licensee whose licence gives it a supplementary authorisation, and
 - (ii) the relevant authority is the Secretary of State,
 the Secretary of State must consult the Welsh Ministers before giving consent under paragraph (c).

(1A) (a) The relevant authority or the Water Services Regulation Authority may apply to the court for the appointment of a special administrator to cease to have effect from a specified time.

- (b) An application may only be made under paragraph (a) on the ground that there is no longer a need to pursue the purposes of the special administration.
- (c) The Water Services Regulation Authority must obtain the consent of the relevant authority before making an application under paragraph (a).
- (d) In a case where the company in special administration is a qualifying water supply licensee whose licence gives it a supplementary authorisation, the Secretary of State or the Water Services Regulation Authority (as the case may be) must consult the Welsh Ministers before making an application under paragraph (a).”; and

- (b) sub-paragraphs (2) and (3) were omitted.

(a) Paragraph 79 was amended by: the Small Business, Enterprise and Employment Act 2015 (c. 26), section 164(1) and Schedule 9, paragraphs 1, 10(1) and (29); S.I. 2015/1329, regulation 3(d); S.I. 2016/1020, regulation 4(e); and, S.I. 2019/816, regulation 4(c).

Moving from special administration to creditors' voluntary liquidation

27. Paragraph 83 has effect as if—

- (a) sub-paragraph (2)(a) were omitted; and
- (b) in sub-paragraph (3), for “The administrator” there were substituted “The special administrator, with the consent of the relevant authority or the Water Services Regulation Authority,”.

Moving from special administration to dissolution

28. Paragraph 84(b) has effect as if—

- (a) in sub-paragraph (1), for “If” there were substituted “Subject to sub-paragraph (1ZA), if”; and
- (b) after sub-paragraph (1), there were inserted—

“(1ZA) Before sending a notice under sub-paragraph (1), the special administrator must obtain the consent of the relevant authority or the Water Services Regulation Authority.”.

Resignation of special administrator

29. Paragraph 87 has effect as if, for sub-paragraph (2), there were substituted—

“(2) Where a special administrator may resign, they may do so only by notice in writing to the court.”.

Special administrator ceasing to be qualified

30. Paragraph 89(2)(c) has effect as if—

- (a) in the words before paragraph (a), after “in writing” there were inserted “to the court.”; and
- (b) paragraphs (a) to (d) were omitted.

Supplying vacancy in office of special administrator

31. Paragraph 90 has effect as if for “91 to 95” there were substituted “91 and 95”.

Application to replace special administrator

32. Paragraph 91 has effect as if—

- (a) for sub-paragraph (1) there were substituted—

“(1) The court may replace the special administrator on an application made—

 - (a) by the relevant authority,
 - (b) by the Water Services Regulation Authority, or
 - (c) where more than one person was appointed to act jointly or concurrently as the special administrator, by any of those persons who remain in office.”; and
- (b) sub-paragraph (2) were omitted.

(a) Paragraph 83(2) was amended by the Small Business, Enterprise and Employment Act 2015 (c. 26), section 128(3).
(b) Paragraph 84 was amended by: the Small Business, Enterprise and Employment Act 2015 (c. 26), section 126 and Schedule 9, paragraphs 1, 10(1) and (33); and, S.I. 2017/702, 2019/146.
(c) Paragraph 89 was amended by the Enterprise Act 2002 (c. 40), section 248(2) and Schedule 16 (as amended by S.I. 2003/2096, article 2(1) and (5)).

Replacement of special administrator

33. Paragraph 95 has effect as if—

- (a) in the opening text, for “the court—” there were substituted “the court is satisfied that it is right to do so”; and
- (b) paragraphs (a) and (b) were omitted.

Vacation of office: discharge from liability

34. Paragraph 98(a) has effect as if—

- (a) in sub-paragraph (2), paragraphs (b) and (ba) were omitted; and
- (b) sub-paragraphs (3) and (3A) were omitted.

Vacation of office: charges and liabilities

35. Paragraph 99(b) has effect as if—

- (a) in sub-paragraph (4), for the words from “A sum payable” to “before cessation” there were substituted “A sum falling within sub-paragraph (4A)”;
- (b) after sub-paragraph (4) there were inserted—
 - “(4A) A sum falls within this paragraph if it is—
 - (a) a sum payable in respect of a debt or liability arising out of a contract that was entered into before cessation by the former special administrator or a predecessor,
 - (b) a sum that must be repaid by the company in respect of a grant that was made before cessation under section 153 of the 1991 Act as is mentioned in subsection (3) of that section,
 - (c) a sum—
 - (i) that must be repaid by the company in respect of a loan made before cessation under that section, or
 - (ii) that must be paid by the company in respect of interest payable on such a loan,
 - (d) a sum payable in respect of an indemnity given by the Secretary of State under section 153 of the 1991 Act, or
 - (e) a sum payable by the company under section 154(5) of the 1991 Act in respect of a guarantee given before cessation.”; and
- (c) in sub-paragraph (5), for “Sub-paragraph (4)” there were substituted “Sub-paragraph (4A)(a)”.

References to joint special administrators

36. Paragraph 101(3) has effect as if for “paragraphs 87 to 99” there were substituted “paragraphs 87 to 91, 95, 98 and 99”.

Appointment of joint and concurrent special administrators

37. Paragraph 103 has effect as if it were substituted with—

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- (a) Paragraph 98 was amended by: the Deregulation Act 2015 (c. 20), section 19 and Schedule 6, paragraphs 4, 7(1), (3) and (4)(a); and, the Small Business Enterprise and Employment Act 2015 (c. 26), section 126, Schedule 9, paragraphs 1, and 10(1), (36), (37) and (38).
 - (b) Paragraph 99 was amended by the Deregulation Act 2015 (c. 20), section 19 and Schedule 6, paragraphs 24 and 27.

“**103.**—(1) Where a company is in special administration, a person may be appointed to act as a special administrator jointly or concurrently with the person or persons acting as the special administrator of the company.

(2) Subject to sub-paragraph (3), an appointment under sub-paragraph (1) must be made by the court on the application of—

- (a) the relevant authority; or
- (b) the Water Services Regulation Authority.

(3) An appointment made under sub-paragraph (1) may be made only with the consent of the person or persons acting as the special administrator of the company.”.

Penalties

38. Paragraph 106(2) has effect as if paragraphs (a), (b), (f), (g), (i) and (l) to (n) were omitted.

Extension of time limits

39. Paragraph 109 has effect as if “or 108” were omitted.

Interpretation

40. Paragraph 111(a) has effect as if—

(a) in sub-paragraph (1)—

(i) for “In this Schedule” there were substituted “In this Act”;

(ii) the following definitions were omitted—

- (aa) “administrator”;
- (bb) “holder of a qualifying floating charge”;
- (cc) “market value”;
- (dd) “the purpose of administration”; and
- (ee) “unable to pay its debts”; and

(iii) at the appropriate places, the following definitions were inserted—

““the 1991 Act” means the Water Industry Act 1991,”;

““appropriate value” means the best price that could be reasonably available on a sale which is consistent with the achievement of the purposes of the special administration,”
;

““company in special administration” means a company in respect of which a special administration order has effect,”;

““purposes of special administration” is to be construed in accordance with section 23(2) to (2B) of the 1991 Act,”;

““qualifying water supply licensee” is to be construed in accordance with section 23(6) of the 1991 Act,”;

““relevant authority” means—

- (a) in the case of a special administration order that relates to a company appointed under section 6(1) of the 1991 Act to be the water or sewerage undertaker for an area that is wholly or mainly in Wales, the Welsh Ministers**(b)**, and

(a) Paragraph 111 was amended by: the Small Business, Enterprise and Employment Act 2015 (c. 26), section 126 and Schedule 9, paragraphs 1 and 10(1) and (44); S.I. 2005/879, regulation 2(1), (4)(a) and (b); S.I. 2009/1941, article 2(1) and Schedule 1, paragraph 72; S.I. 2010/18, articles 2 and 4(2); S.I. 2017/702, regulation 2(1) and the Schedule, paragraphs 1 and 31; and, S.I. 2019/146, regulation 2 and the Schedule, paragraphs 16, and 44(b)(i) and (ii).

(b) The original Instruments of Appointment of water undertakers and sewerage undertakers, including maps of the areas of appointment and any amendments to them, are available to view online at: <https://www.ofwat.gov.uk/regulated->

(b) in any other case, the Secretary of State,”;

““special administration order” means an order of the kind described in section 23(1) of the 1991 Act,”;

““special administrator” has the meaning given by paragraph 1,”;

““supplementary authorisation” has the meaning given in paragraph 8 of Schedule 2A to the 1991 Act,”; and

““water industry company” means a company of a kind mentioned in section 23(1) of the Water Industry Act 1991.”.

(b) in sub-paragraph (1A), paragraphs (b) and (c) were omitted; and

(c) sub-paragraph (1B) were omitted.

CHAPTER 2

Insolvency Act 1986 (except Schedule B1) – specific modifications

Introduction

41. This Chapter sets out modifications to provisions of the Insolvency Act 1986 other than those in Schedule B1 to that Act.

Moratorium coming to an end

42. Section A16(3) has effect as if, after paragraph (b), there were inserted—

“(ba) the court makes a special administration order.”.

Approval of voluntary arrangements

43. Section 4A(a) has effect as if, after subsection (5A), there were inserted—

“(5B) If an application under subsection (3) relates to a company in special administration, the relevant authority and the Water Services Regulation Authority are entitled to be heard on the application.”.

Effect of approval of voluntary arrangements

44. Section 5(b) has effect as if, after subsection (4), there were inserted—

“(4A) Where the company is in special administration, the court must not make an order or give a direction under subsection (3) unless—

(a) the court has given the relevant authority and the Water Services Regulation Authority a reasonable opportunity to make representations to it about the proposed order or direction, and

companies/ofwat-industry-overview/licences/#ioa. They may also be inspected in person at: Ofwat, 7 Hill Street, Birmingham, B5 4UA, between the hours of 9.30am and 1pm, and 2pm and 4.30pm, Monday to Friday, (except public and other holidays) at a cost of £20 per inspection except where an appointment to inspect is made at least 24 hours in advance (by calling 0121 644 7600) in which case the inspection is free of charge.

(a) Section 4A was inserted by the Insolvency Act 2000 (c. 45), section 2(a) and Schedule 2, paragraphs 1 and 5. It was amended by: the Financial Services Act 2012 (c. 21), section 114(1) and Schedule 18, paragraphs 51 and 52(1) to (3); the Small Business, Enterprise and Employment Act 2015 (c. 26), section 126 and Schedule 9, paragraphs 1 and 5(1), (2)(a) and (b), and (3); and, the Corporate Insolvency and Governance Act 2020 (c. 12), section 2(1) and Schedule 3, paragraphs 1 and 5(1), (2), (3) and (4).

(b) Section 5 was amended by: the Insolvency Act 2000 (c. 45), section 2(a) and 15(1), Schedule 2, paragraphs 1 and 6(a) to (c), and Schedule 5; the Enterprise Act 2002 (c. 40), section 248(3) and Schedule 17, paragraphs 9 and 11(b); the Energy Act 2004 (c. 20), section 159(1) and Schedule 20, paragraph 43; the Small Business, Enterprise and Employment Act 2015 (c. 26), section 126 and Schedule 9, paragraphs 1 and 6(1), (2)(a) and (b), and (3); and, the Corporate Insolvency and Governance Act 2020 (c. 12), section 2(1) and Schedule 3, paragraphs 1 and 6(1), (2) and (3).

- (b) the order or direction is consistent with the purposes of the special administration order.”.

Challenge of decisions

45. Section 6(a) has effect as if—

- (a) after subsection (2A), there were inserted—

“(2B) Subject to this section, where a voluntary arrangement in relation to a company in special administration is approved at a meeting summoned under section 3, an application to the court may be made—

- (a) by the relevant authority, or
- (b) by the Water Services Regulation Authority, if it has the consent of the relevant authority,

on the ground that the voluntary arrangement is not consistent with the achievement of the purposes of the special administration.”; and

- (b) in subsection (4), after “subsection (2A),” there were inserted “or (2B),”.

Floating charge holder not to appoint administrative receiver

46. Section 72A(3)(b) has effect as if—

- (a) before the definition of “holder of a qualifying floating charge in respect of a company’s property”, there were inserted—

““qualifying floating charge” means a charge created by an instrument that—

- (a) states that paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge,
- (b) purports to empower the holder of the floating charge to appoint an administrator of the company,
- (c) purports to empower the holder of the floating charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by section 29(2), or
- (d) purports to empower the holder of the floating charge in Scotland to appoint a receiver who on appointment would be an administrative receiver.”; and

- (b) for the definition of “holder of a qualifying floating charge in respect of a company’s property” there were substituted—

““holder of a qualifying floating charge in respect of a company’s property” means a person who holds one or more debentures of the company secured—

- (a) by a qualifying floating charge which relates to the whole or substantially the whole of the company’s property,
- (b) by a number of qualifying floating charges which together relate to the whole or substantially the whole of the company’s property, or
- (c) by charges and other forms of security which together relate to the whole or substantially the whole of the company’s property and at least one of which is a qualifying floating charge.”.

-
- (a) Section 6 was amended by: the Insolvency Act 2000 (c. 39), section 2(a) and Schedule 2, paragraphs 1 and 7(1), (2), (3), (4)(a) and (b), (5)(a) and (b), (6), (7) and (8); the Enterprise Act 2002 (c. 40), section 248(3), Schedule 17, paragraphs 9 and 12; the Energy Act 2004 (c. 20), section 159(1) and Schedule 20, paragraph 44(1) to (5); and, the Small Business, Enterprise and Employment Act 2015 (c. 26), section 126 and Schedule 9, paragraphs 1 and 7(1) to (3), (4)(a) and (b), (5), (6)(a) and (b), (7), (8), (9)(a) and (b), (10), (11), (12)(a) and (b), and (13)(a) to (c).
 - (b) Section 72A was inserted by the Enterprise Act 2002 (c. 40), section 250(1). It was amended by S.I. 2003/1832, article 2(a).

Avoidance of certain floating charges

47. Section 245(1)(a) has effect as if “, but applies to Scotland as well as to England and Wales” were omitted.

Expressions used generally

48. Section 251 has effect as if the definition of “prescribed” included rules made as a result of regulation 49.

Power to make rules

49. The power to make rules under section 411 applies for the purpose of giving effect to provision made by or under sections 23 to 26 of the Water Industry Act 1991 as it applies for the purpose of giving effect to Parts A1 to 7 of the 1986 Act (and accordingly, as if references in that section to those Parts included references to those provisions).

Insolvency rules committee

50. Section 413(2) has effect as if—

- (a) after “the purposes of provision made by”, there were inserted “or under”; and
- (b) “or Schedule 3 to that Act” were omitted.

Co-operation between courts exercising jurisdiction in relation to insolvency

51. Section 426(10)(a)(b) has effect as if, after “by or under this Act”, there were inserted “, sections 23 to 26 of the Water Industry Act 1991”.

Powers of special administrator

52. Schedule 1 has effect as if, in paragraph 21, for “Power” there were substituted “With the consent of the relevant authority or the Water Services Regulation Authority, power”.

Punishment of offences

53. Schedule 10 has effect as if—

- (a) in the first column, the reference to “Sch B1, para 54(7)”(c) were to “Sch B1, para 54(6)”; and
- (b) in the corresponding row of the second column, for “Administrator failing to report creditors’ decision on revised proposal” there were substituted “Special administrator failing to report on revised proposal”.

PART 5

The Water Industry Act 1991 – amendment

Restrictions on voluntary winding up and insolvency proceedings

54.—(1) The Water Industry Act 1991 is amended as follows.

-
- (a) Section 245 was amended by the Enterprise Act 2002 (c. 40), sections 248(3), 278(2), Schedule 17, paragraph 31(1) to (4), Schedule 26.
 - (b) Section 426 was amended by the Insolvency Act 2000 (c. 39), section 8, Schedule 4, paragraph 16(1), (3)(a)(ii), (iii), (iv).
 - (c) The entry in the table relating to “Sch B1, para 54(7)” was amended by the Small Business, Enterprise and Employment Act 2015 (c. 26), section 126 and Schedule 9, paragraphs 1 and 11(1) and (4).

(2) In section 26(1), for paragraph (b) substitute—

- “(b) an administrator may not be appointed in relation to the company, whether by court order or otherwise, under Schedule B1 to the Insolvency Act 1986;
- (ba) any step taken by any person for the purported purpose of appointing an administrator of the company under Schedule B1 to the Insolvency Act 1986 has no legal effect;”.

PART 6

Companies Act 2006 – specific modifications

Application of this Part

55. This Part applies in relation to water industry companies in respect of which the appointment of a special administrator has effect.

Modifications to Parts 26 and 26A of the Companies Act 2006

56. The provisions of Parts 26 and 26A the Companies Act 2006(a) apply with the modifications set out in this Part.

Interpretation of Parts 26 and 26A

57. Section 895 has effect as if, after subsection (2), there were inserted—

“(2A) In this Part and in Part 26A—

““purposes of special administration” is to be construed in accordance with section 23(2) to (2B) of the Water Industry Act 1991,”

““relevant authority” means—

(a) in the case of a special administration order that relates to a company appointed under section 6(1) of the Water Industry Act 1991 to be the water or sewerage undertaker for an area that is wholly or mainly in Wales, the Welsh Ministers,

(b) in any other case, the Secretary of State,”

““special administration order” means an order of the kind described in section 23(1) of the Water Industry Act 1991, and”

““special administrator” means a person appointed by the court under—

(a) section 23(1) of the Water Industry Act 1991, or

(b) Schedule B1 to the Insolvency Act 1986 as modified by regulations made under section 23(3A) of the Water Industry Act 1991,

to manage the affairs, business and property of a water industry company.””.

Court order for holding meeting of creditors or members

58. Section 896(b) has effect as if, for subsection (2), there were substituted—

“(2) An application under this section may only be made by the special administrator.”.

(a) 2006 c. 46. Part 26A was inserted by the Corporate Insolvency and Governance Act 2020 (c. 12), section 49(1) and Schedule 9, paragraph 1.

(b) Section 896 was amended by: the Corporate Insolvency and Governance Act 2020 (c. 12), section 7 and Schedule 9, paragraphs 30 and 35(1) and (3); and, S.I. 2008/948, articles 3(1)(b) and 6 and Schedule 1, paragraph 249(1) to (3).

Court sanction for compromise or arrangement

59. Section 899(a) has effect as if, for subsection (2), there were substituted—

“(2) An application under this section may only be made by the special administrator.

(2A) The special administrator must give notice of an application made under this section to—

- (a) the relevant authority; and
- (b) the Water Services Regulation Authority.”.

Powers of court to facilitate reconstruction or amalgamation

60. Section 900 has effect as if—

(a) after subsection (6), there were inserted—

“(6A) Within a period of seven days beginning with the day on which an order is made under this section, the special administrator must send a copy of the order to—

- (a) the relevant authority, and
 - (b) the Water Services Regulation Authority.”; and
- (b) in subsection (7), after “with subsection (6)” there were inserted “or (6A)”.

Court order for holding of meeting

61. Section 901C(b) has effect as if, for subsection (2), there were substituted—

“(2) An application under this section may only be made by the special administrator.”.

Court sanction for compromise or arrangement

62. Section 901F(c) has effect as if, for subsection (3), there were substituted—

“(3) An application under this section may only be made by the special administrator.

(3A) The special administrator must give notice of an application made under this section to—

- (a) the relevant authority, and
- (b) the Water Services Regulation Authority.”.

Powers of court to facilitate reconstruction or amalgamation

63. Section 901J(d) has effect as if—

(a) after subsection (6), there were inserted—

“(6A) Within a period of seven days beginning with the day on which an order is made under this section, the special administrator must deliver a copy of the order to—

- (a) the relevant authority, and
 - (b) the Water Services Regulation Authority.”; and
- (b) in subsection (7), after “with subsection (6)” there were inserted “or (6A)”.

-
- (a) Section 899 was amended by: the Corporate Insolvency and Governance Act 2020 (c. 12), section 7 and Schedule 9, paragraphs 30 and 35(1) and (4)(a); S.I. 2011/1265, article 28(1) and (3); and, S.I. 2008/948, articles 3(1)(b) and 6 and Schedule 1, paragraph 250(1) to (3).
 - (b) Section 901C was inserted by the Corporate Insolvency and Governance Act 2020 (c. 12), section 7 and Schedule 9, paragraph 1.
 - (c) Section 901F was inserted by the Corporate Insolvency and Governance Act 2020 (c. 12), section 7 and Schedule 9, paragraph 1.
 - (d) Section 901J was inserted by the Corporate Insolvency and Governance Act 2020 (c. 12), section 7 and Schedule 9, paragraph 1.

PART 7

Miscellaneous

Transitional provision

64.—(1) These Regulations apply in relation to—

- (a) special administration orders that have effect; and
- (b) water industry companies that are in special administration

at any time after these Regulations come into force, including where such an order took effect, or such a company entered special administration, before then.

(2) For the purposes of paragraph (1)—

- (a) a company enters special administration when the appointment of a special administrator of the company takes effect; and
- (b) a “special administration order” means an order of the kind described in section 23(1) of the Water Industry Act 1991.

Consequential provision

65.—(1) The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013(a) are amended as follows.

(2) In Schedule 1, paragraph 7 (special administration), omit sub-paragraphs (1) and (4).

[Date] *Name*
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations extend to England and Wales.

These Regulations make provision that contributes to the modernisation of the special administration procedure that applies to water industry companies (“special administration”).

Special administration regimes may be initiated by an order of the court under sections 24 and 25 of the Water Industry Act 1991 (c. 56) (“the 1991 Act”).

Before the commencement of paragraph 6 of Schedule 5 to the Flood and Water Management Act 2010 (c. 29) (“the 2010 Act”), the detailed conduct of special administration regimes was governed by an old, saved version of Part 2 of the Insolvency Act 1986 (c. 45) (“the 1986 Act”) as that Part was applied and modified by Schedule 3 to the 1991 Act.

The Enterprise Act 2002 (c. 40) modernised ordinary administration procedure by replacing old Part 2 of the 1986 Act with Schedule B1 to the 1986 Act.

Paragraph 6 of Schedule 5 to the 2010 Act amends section 23 of the 1991 Act so that Schedule B1 to the 1986 Act applies in relation to the conduct of special administration (instead of old Part 2 of that Act) subject to provision made in regulations such as these (see section 23(3) and (3A) of the 1991 Act).

(a) S.I. 2013/1582.

These Regulations perfect the transition from the provisions of old Part 2 of the 1986 Act to those in Schedule B1.

In relation to special administration, these Regulations apply, disapply and modify provisions of Schedule B1, the rest of the 1986 Act, the Companies Act 2006 (c. 46) and other provisions that usually apply in relation to or by reference to ordinary administration.

These Regulations amend section 26 of the 1991 Act, which makes provision about the nature of the relationship between special administration and other insolvency procedures.

These Regulations also amend Schedule 1 to the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (2013/1582) in order to address a legislative conflict that would otherwise have arisen as a consequence of the transition to the modernised special administration regime.

Part 1 deals with definitions and other introductory matters.

Part 2 applies and disapplies provisions of the 1986 Act in relation to special administration.

Part 3 makes general modifications to the 1986 Act and other enactments as they apply in relation to special administration.

Chapter 1 of Part 4 makes specific modifications to Schedule B1 to the 1986 Act as it applies in relation to special administration.

Chapter 2 of Part 4 makes specific modifications to other provisions of the 1986 Act as they apply in relation to special administration.

Part 5 amends section 26 of the 1991 Act so that it prevents Schedule B1 to the 1986 Act from being used to appoint an ordinary administrator in relation to a water industry company.

Part 6 makes specific modifications to Parts 26 and 26A of the Companies Act 2006 as those Parts apply to companies in special administration.

Part 7 makes transitional and consequential provision.

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

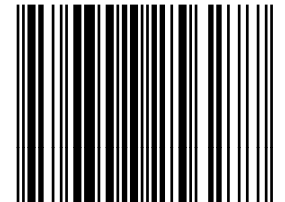
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