

# ENTERPRISE AND REGULATORY REFORM ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 6: Miscellaneous and General**

#### **Insolvency: protection of essential supplies**

##### ***Section 92: Power to add to supplies protected under the Insolvency Act 1986***

599. This section gives the Secretary of State a power to make an order amending sections 233 and 372 of the Insolvency Act 1986 (“IA 1986”). These sections currently allow for certain providers of gas, electricity, water and communications services (“utility supplies”) to seek a personal guarantee from an insolvency practitioner before continuing to supply an insolvent business and prevent such suppliers from demanding that pre-insolvency arrears are cleared as a condition of continuing supply.
600. *Subsections (1) and (2)* provide a power to enable IT suppliers to be added to the present list of utility supplies to which sections 233 and 372 apply. This reflects the increasing importance of IT supplies to the functioning of modern businesses since these two sections were enacted.
601. Subsections (1) and (2) also enable the Secretary of State to widen the application of these provisions to providers of utility services who are not presently covered by sections 233 and 372. The Government considers this is necessary in order to be able to reflect the way the utility and telecoms markets have evolved and deregulated since these statutory provisions were enacted.

##### ***Section 93: Corporate insolvency: power to give further protection to essential supplies***

602. This section gives the Secretary of State a power to make an order that renders void certain contractual terms in contracts for the supply of essential goods or services where a company goes into administration or a voluntary arrangement takes effect if certain conditions are met. The supplies that may be protected are those to which section 233 applies, i.e. supplies of gas, electricity, water, communications and IT supplies if added through exercise of the power in section 92.
603. *Subsection (2)* requires the provision of express safeguards that must be included in an order made under this power. Those safeguards include granting the right to a supplier to terminate a contract of supply where any charges for post-insolvency supply remain unpaid after 28 days beginning with the day on which payment is due regardless of the terms of the contract. A supplier may also terminate the contract if given permission by the insolvency office-holder or by the court.
604. *Subsection (3)* requires a further safeguard to be provided for affected suppliers by giving such suppliers a right to request a personal guarantee for payment from

the insolvency office-holder as a condition of continuing the supply. *Subsection (4)* provides scope for the Secretary of State to provide exceptions to this right.

605. *Subsection (5)* gives the Secretary of State the power to add any other safeguards that might be felt necessary, in order to protect suppliers who may be affected.
606. *Subsection (7)* defines which contractual terms may be rendered void by the order for the purposes of this power. These are those contractual terms that would allow providers of essential IT or utility supplies to alter the terms of a contract or withdraw the supply from an insolvent company on account of the insolvency. It also includes those that allow a supplier to terminate the contract on account of a termination event that occurred before the insolvency but which had not been exercised by the time of insolvency.

***Section 94: Individual insolvency: power to give further protection to essential supplies***

607. This section makes comparable provision to section 93 for cases where an individual becomes subject to an individual voluntary arrangement. *Subsection (2)* provides that this power is restricted to supplies made to individuals subject to an individual voluntary arrangement for the purpose of carrying on a business.

***Section 95: Sections 93 and 94: supplemental***

608. This section gives the Secretary of State the power in an order under sections 93 and 94 to make different provision for different cases, to provide for persons to exercise discretion and to make incidental, supplementary, consequential and transitional or saving provision in relation to the exercise of the powers. It also restricts the powers so that they may not be exercised retrospectively in a way which would affect contracts of supply which pre-date the introduction of any order made and ensures that any order made is subject to the affirmative resolution procedure.