
EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Insolvency Act 1986 (c.45) (the “1986 Act”) to give further protection to the essential supplies of insolvent businesses. The Order comes into force on 1st October 2015 and extends to the whole of Great Britain, subject to certain exceptions including Articles 3 and 5 which extend to England and Wales only, reflecting the extent of the 1986 Act.

Articles 2 and 3 amend sections 233 and 372 of the 1986 Act. Sections 233 and 372 prohibit a supplier of utilities (such as gas, electricity, water and communication services) from compelling the payment of charges incurred before the commencement of an insolvency event by threatening to terminate the supply of the utilities on the grounds of non-payment. Section 233 provides this protection to insolvent companies, whilst section 372 provides similar protection to businesses carried on by insolvent individuals. Sections 233 and 372 require suppliers to continue to provide the utilities if a request is made by the office-holder of the insolvent company or individual for the continued supply. The supplier is, however, entitled to make it a condition of the supply that the office-holder provides a personal guarantee for the payment in respect of any supply made during the insolvency. The supplier is not entitled to make it a condition of the continued supply that any outstanding charges incurred before the insolvency are paid.

The scope of section 233 and 372 is confined to a limited list of suppliers including statutory undertakers and similar bodies. The amendments made by Articles 2 and 3 extend the scope of sections 233 and 372 to include a wider list of private suppliers of gas, electricity, water or communication services including the supply of utilities from a landlord to tenant.

Articles 2 and 3 also add to the present list of utility supplies to which sections 233 and 372 apply to include the supply of goods or services that are for the purpose of enabling or facilitating anything done by electronic means (“IT supplies”). Primarily these include goods or services relating to information technology, other than those to which sections 233 and 372 already apply by virtue of being a communication service, including the supply of point of sale terminals, computer hardware and software and other items identified under new subsections (3A) or (4A) of sections 233 and 372 respectively.

Articles 4 and 5 insert new sections 233A and 372A into the 1986 Act. Section 233A applies to companies, whilst section 372A applies to businesses carried on by individuals. These new sections cause certain “insolvency-related terms” in contracts to cease to have effect, thereby preventing a supplier from terminating a supply or contract, altering the terms of the contract or compelling higher payments for the supply, when a company enters administration or when a voluntary arrangement is approved in respect of a company or individual respectively. The insolvency-related terms cease to have effect only in a contract for the supply of those utility and IT supplies listed under section 233 and 372. Furthermore, the insolvency-related terms may continue to be relied upon in respect of other insolvency procedures, thereby enabling a supplier to terminate a contract when a company goes into liquidation or a bankruptcy order is made against an individual. Sections 233A and 372A only apply to contracts entered into after this Order comes into force.

A supplier may, however, terminate the contract or the supply if a condition outlined in subsections (4) or (5) of sections 233A and 372A is met.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Insolvency Service, 4 Abbey Orchard Street, London SW1P 2HT and is published on the Insolvency Service website

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

<https://www.gov.uk/government/organisations/insolvency-service/id>. It is also published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.