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STATUTORY INSTRUMENTS

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**2009 No. 2477**

**The Water Industry (Special Administration) Rules 2009**

**PART 4**

**Conduct of the special administration**

**CHAPTER 1**

**Statement of affairs and proposals to creditors**

**Meaning of “responsible person”**

**26.** In this Chapter, a reference to a responsible person is a reference to a person to whom the special administrator of a water company has sent a notice of the kind referred to in rule [27](#).

**Notice requiring statement of affairs**

**27.—**(1) If the special administrator determines that a person should be required to prepare and submit a statement of affairs in accordance with section 22 of the 1986 Act, the special administrator must send notice in WAT 12 to each of the persons whom the special administrator considers should be made responsible under that section, requiring them to prepare and submit the statement.

(2) The notice must set out—

- (a) the names and addresses of every other responsible person (if any);
- (b) the period within which the statement must be delivered;
- (c) the effect of section 22(6) (penalty for non-compliance) of the Insolvency Act; and
- (d) the effect of section 235 (duty to co-operate with office-holder) of that Act.

**Verification of statement of affairs**

**28.—**(1) The statement of affairs shall be in Form WAT13, must contain all the particulars required by that form and must be verified by affidavit by the deponents (using the same form).

(2) The special administrator may require any of the persons mentioned in section 22(3) of the 1986 Act to submit to the special administrator an affidavit of concurrence in Form WAT14, stating that that person concurs in the statement of affairs.

(3) A special administrator who does so must inform the person making the statement of affairs of that fact.

(4) An affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the affidavit is not in agreement with the deponents, or he considers the statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.

(5) The statement of affairs must be delivered to the special administrator by the deponent making the affidavit (or by one of them, if more than one), together with a copy.

(6) Every affidavit of concurrence must be delivered to the special administrator by the person who makes it, together with a copy.

### **Filing the statement of affairs**

**29.** The special administrator must file the verified copy of the statement of affairs and the affidavits of concurrence (if any) in court as soon as is reasonably practicable.

### **Limiting disclosure of statement of affairs**

**30.—**(1) If the special administrator thinks that it would prejudice the conduct of the special administration if the whole or a part of the statement of affairs were disclosed, the special administrator may apply to the court for an order limiting disclosure of the statement or any specified part of it.

(2) The court may in its discretion order that the statement or specified part—

(a) is not to be filed; or

(b) is to be filed separately and is not to be open to inspection otherwise than with the permission of the court.

(3) The court may also give directions as to the delivery of documents to the registrar of companies and the disclosure of relevant information to other persons.

### **Release from obligation or extension of time**

**31.—**(1) This rule applies if—

(a) the special administrator refuses to exercise the power given it under section 22(5) of the Insolvency Act to—

(i) release a responsible person from the obligation to submit a statement of affairs, or

(ii) extend the period within which the statement must be submitted; and

(b) the responsible person applies to the court.

(2) The court may dismiss the application if it considers that the applicant has not shown sufficient cause for the release or extension.

(3) However, the court must not do so unless it first—

(a) gives the applicant 7 days' notice that it proposes to do so; and

(b) invites the applicant to make oral representations to the court at a "preliminary hearing".

(4) No notice need be given to any other person of the preliminary hearing.

(5) If the court does not dismiss the application at the preliminary hearing, the court must fix a venue for it to be heard, and give notice to the applicant accordingly.

(6) The applicant must, at least 14 days before the hearing of the application, send the special administrator—

(a) a notice of the hearing stating the venue;

(b) a copy of the application; and

(c) copies of any evidence that the applicant intends to rely on.

(7) The special administrator may appear and be heard on the application.

(8) The special administrator may file a written report of any matter that the special administrator considers should be drawn to the court's attention (whether or not the special administrator appears at the hearing of the application).

(9) If the special administrator files such a report, the special administrator must also send a copy of it to the applicant no later than 5 days before the hearing.

(10) The court must send sealed copies of the order made on the application to the applicant and to the special administrator.

(11) On any application under this Rule, the applicant's costs shall be paid in any event by the applicant and, unless the court otherwise orders, no allowance towards them shall be made out of the assets of the water company.

### **Expenses of statement of affairs**

**32.—**(1) A responsible person who makes a statement of affairs or an affidavit of concurrence must be allowed, and must be paid by the special administrator out of the receipts of the administration, any expenses that the responsible person reasonably incurs in doing so.

(2) Any decision by the special administrator under this rule relating to expenses is subject to appeal to the court.

(3) Nothing in this rule relieves a responsible person of any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the special administrator.

### **Statement to be annexed to proposals**

**33.—**(1) The statement of the special administrator's proposals required by section 23(1) of the Insolvency Act must be in form WAT15.

(2) The special administrator must annex to that statement a further statement setting out—

- (a) details of the appointment of the special administrator;
- (b) the names of the directors and any secretary of the water company;
- (c) an account of the circumstances that gave rise to the application for a special administration order;
- (d) if a statement of affairs has been submitted, a copy or summary of it, with the special administrator's comments, if any;
- (e) if no statement of affairs has been submitted, details of the financial position of the water company at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that of the special administration order);
- (f) the manner in which the special administrator—
  - (i) has managed and financed the affairs and business of the water company since the date of the special administrator's appointment; and
  - (ii) will continue to manage and finance those affairs and that business; and
- (g) any other information that the special administrator thinks necessary.

### **Form of statement of revised proposals**

**34.—**(1) A statement of the special administrator's revised proposals required by section 25(2) of the Insolvency Act to be sent to creditors must be in form WAT16.

(2) The special administrator must, when sending form WAT16 to the creditors, send a copy of form WAT16 to the registrar of companies.

**Statement if special administration order to be discharged before statement of proposals**

**35.** If the special administrator, the Secretary of State, the Welsh Ministers or the Authority intends to apply to the court under section 18 of the Insolvency Act for the special administration order to be discharged but the special administrator has not yet sent to the authorities and persons mentioned in section 23(1) of that Act (“the relevant persons”)—

- (a) the statement of proposals mentioned in rule 33(1), and
- (b) the further statement mentioned in rule 33(2),

the special administrator, must, at least 10 days before the application to the court is made, send to the relevant persons the further statement mentioned in rule 33(2).

**Notice to members of proposals to creditors**

**36.—**(1) For the purposes of section 23(2A)(b) of the Insolvency Act, the prescribed manner is that the notice must be published—

- (a) once in the London Gazette; and
- (b) in such other manner as the special administrator thinks most appropriate to ensure that the appointment comes to the notice of the relevant water company’s creditors.

**CHAPTER 2****Disposal of property****Disposal of charged property, etc.**

**37.—**(1) This rule applies if the special administrator of a water company applies to the court under section 15(2) of the Insolvency Act for an order authorising the disposal of—

- (a) property of the water company that is subject to a security to which section 15(2) applies; or
- (b) goods in the possession of the water company under a hire-purchase agreement (within the meaning given by section 15(9) of that Act).

(2) The court will fix a venue for the hearing of the application, and the special administrator must, as soon as reasonably practicable, give notice of the venue to the person who is the holder of the security or the owner under the agreement, as the case may be.

(3) If the court makes an order under section 15(2) of that Act the special administrator must, as soon as reasonably practicable, give notice of the order by sending a copy of the order and a completed Form WAT17, to the holder or owner.

**CHAPTER 3****Accounts****Abstract of receipts and payments**

**38.—**(1) The special administrator of a water company must send accounts of the receipts and payments of the water company to the court and to the registrar of companies—

- (a) within 2 months after the end of—
  - (i) 6 months from the date of appointment; and
  - (ii) each subsequent 6-month period; and
- (b) within 2 months after ceasing to act as special administrator.

(2) The court may, on the application of the special administrator, extend either 2-month period mentioned in paragraph (1).

- (3) The accounts must be in the form of an abstract, in Form WAT18, showing—
  - (a) receipts and payments during the relevant 6-month period; or
  - (b) if the special administrator has ceased to act—
    - (i) receipts and payments during the period from the end of the last 6-month period to the time of ceasing to act; or
    - (ii) if there has been no previous abstract, receipts and payments in the period since the special administrator's appointment.
- (4) It is an offence for the special administrator to fail to comply with this rule, punishable—
  - (a) on summary conviction, to a fine not exceeding level 3 on the standard scale; and
  - (b) for continued contravention, to a daily fine not exceeding one-tenth of that amount.

## CHAPTER 4

### Access to documents

#### Confidentiality of documents

**39.**—(1) If in the course of a special administration the special administrator considers that a document forming part of the records of the special administration—

- (a) should be treated as confidential, or
- (b) is of such a nature that its disclosure would be injurious to the interests of the creditors or members of the water company in special administration,

the special administrator may refuse to allow the document to be inspected by a person who would otherwise be entitled to do so.

(2) If the special administrator decides to refuse to allow a person to inspect a document, the person may apply to the court to overrule that refusal.

(3) The court may overrule or confirm the refusal it, and may confirm it subject to conditions.

(4) Nothing in this rule entitles the special administrator to refuse to allow the inspection of a claim or proxy.

#### Right to copy documents

**40.**—(1) If under the Insolvency Act or these Rules a person has a right to inspect a document, the person may also take a copy of it, on payment of the appropriate fee.

(2) If a creditor or member of a water company asks a special administrator of the company to supply a copy of a document, the special administrator is entitled to require the payment of the appropriate fee for the supply of the copy.

(3) For this rule, the appropriate fee is 15 pence for each A4 or A5 page or 30 pence for each A3 page.

#### Right to have list of creditors

**41.**—(1) A creditor who, under these Rules, has the right to inspect documents on the court file also has the right to require the special administrator to give the creditor, on payment of the appropriate fee, a list of the creditors of the water company and the amounts that each of them is owed.

(2) This does not apply if a statement of the water company's affairs has been filed.

(3) For this rule, the appropriate fee is 15 pence for each A4 or A5 page or 30 pence for each A3 page.

**False claim of status as creditor or member etc.**

**42.**—(1) It is an offence for a person falsely to claim, with the intention of obtaining a sight of documents that the person has, under these Rules, no right to inspect, a status that would entitle the person to inspect them.

(2) A person guilty of an offence under this rule is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.