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STATUTORY INSTRUMENTS

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**2024 No. 205**

**The Water Industry (Special Administration) Regulations 2024**

**PART 4**

**The Insolvency Act 1986 – specific modifications**

**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(1) 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(2) 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

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- (1) 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).
- (2) 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(3) 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)(4) 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

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(3) 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).

(4) 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).

- (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.”.

#### **Avoidance of certain floating charges**

47. Section 245(1)(5) 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)(6) 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)”<sup>(7)</sup> 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”.

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(5) 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.

(6) Section 426 was amended by the Insolvency Act 2000 (c. 39), section 8, Schedule 4, paragraph 16(1), (3)(a)(ii), (iii), (iv).

(7) The entry in 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).

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**Status:** This is the original version (as it was originally made).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

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