STATUTORY INSTRUMENTS

2015 No. 989

INSOLVENCY

The Insolvency (Protection of Essential Supplies) Order 2015

Made - - - -	*26th March 2015*
Coming into force - -	*1st October 2015*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 92, 93, 94 and 95 of the Enterprise and Regulatory Reform Act 2013(**1**).

In accordance with sections 92(5) and 95(4) of that Act, a draft of this Order has been laid before, and approved by a resolution of, each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Insolvency (Protection of Essential Supplies) Order 2015 and comes into force on 1st October 2015.

(2) This Order extends to England and Wales and Scotland, subject to paragraphs (3) and (4).

(3) The following provisions of this Order extend to England and Wales only—

(a) Article 3;

(b) Article 5;

(c) paragraph 1 of the Schedule.

(4) Paragraph 3 of the Schedule extends to Scotland only.

Protection of essential supplies

2.—(1) Section 233 of the Insolvency Act 1986(**2**) is amended in accordance with paragraphs (2) and (3).

(2) In subsection (3)—

(a) after paragraph (a) insert—

"(aa) a supply of gas by a person within paragraph 1 of Schedule 2A to the Gas Act 1986(**3**) (supply by landlords etc.);";

(**1**) 2013 c.24.

(**2**) 1986 c.45; section 233(3) was amended by paragraph 78 of Schedule 25 to the Water Act 1989 (c. 15), paragraph 14 of Schedule 4 to the Gas Act 1995 (c. 45), paragraph 47 of Schedule 6 to the Utilities Act 2000 (c. 27), paragraph 82 of Schedule 17 to the Communications Act 2003 (c. 21), and paragraph 14 of the Schedule to S.I. 2004/1822.

(**3**) 1986 c.44; paragraph 1 of Schedule 2A was inserted by Schedule 1 to the Gas Act 1995 (c.45).

(b) after paragraph (b) insert—

"(ba) a supply of electricity by a class of person within Class A (small suppliers) or Class B (resale) of Schedule 4 to the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001(**4**) (S.I. 2001/3270);";

(c) after paragraph (c) insert—

"(ca) a supply of water by a water supply licensee within the meaning of the Water Industry Act 1991(**5**);

(cb) a supply of water by a water services provider within the meaning of the Water Services etc. (Scotland) Act 2005(**6**);

(cc) a supply of water by a person who has an interest in the premises to which the supply is given;";

(d) after paragraph (d) insert—

"(e) a supply of communications services by a person who carries on a business which includes giving such supplies;

(f) a supply of goods or services mentioned in subsection (3A) by a person who carries on a business which includes giving such supplies, where the supply is for the purpose of enabling or facilitating anything to be done by electronic means.".

(3) After subsection (3) insert—

"(3A) The goods and services referred to in subsection (3)(f) are—

(a) point of sale terminals;

(b) computer hardware and software;

(c) information, advice and technical assistance in connection with the use of information technology;

(d) data storage and processing;

(e) website hosting.".

(4) Until the commencement of section 1 of the Water Act 2014(**7**), paragraph (ca) of section 233(3) of the Insolvency Act 1986 (as inserted by paragraph (2)(c)) is to be read as if for the words "water supply licensee" there were substituted the words "licensed water supplier".

3.—(1) Section 372 of the Insolvency Act 1986(**8**) is amended in accordance with paragraphs (2) and (3).

(2) In subsection (4)—

(a) after paragraph (a) insert—

"(aa) a supply of gas by a person within paragraph 1 of Schedule 2A to the Gas Act 1986 (supply by landlords etc.);";

(b) after paragraph (b) insert—

(**4**) S.I. 2001/3270.

(**5**) 1991 c.56; the meaning of water supply licensee is given by section 17A of the Water Industry Act 1991, which is to be inserted by section 1 of the Water Act 2014 (c.21) on a day yet to be appointed.

(**6**) 2005 asp 3.

(**7**) 2014 c.21; section 1 will commence on a day yet to be appointed. The meaning of licensed water supplier is given by section 17B of the Water Industry Act 1991 (c.56), which was inserted by paragraph 2 of Schedule 4 to the Water Act 2003 (c.37).

(**8**) Section 372(4) was amended by paragraph 78 of Schedule 25 to the Water Act 1989 (c. 15), paragraph 14 of Schedule 4 to the Gas Act 1995 (c. 45), paragraph 47 of Schedule 6 to the Utilities Act 2000 (c. 27), paragraph 82 of Schedule 17 to the Communications Act 2003 (c. 21).

"(ba) a supply of electricity by a class of person within Class A (small suppliers) or Class B (resale) of Schedule 4 to the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (S.I. 2001/3270);";

(c) after paragraph (c) insert—

"(ca) a supply of water by a water supply licensee within the meaning of the Water Industry Act 1991;

(cb) a supply of water by a person who has an interest in the premises to which the supply is given;";

(d) after paragraph (d) insert—

"(e) a supply of communications services by a person who carries on a business which includes giving such supplies;

(f) a supply of goods or services mentioned in subsection (4A) by a person who carries on a business which includes giving such supplies, where the supply is for the purpose of enabling or facilitating anything to be done by electronic means.".

(3) After subsection (4) insert—

"(4A) The goods and services referred to in subsection (4)(f) are—

(a) point of sale terminals;

(b) computer hardware and software;

(c) information, advice and technical assistance in connection with the use of information technology;

(d) data storage and processing;

(e) website hosting.".

(4) Until the commencement of section 1 of the Water Act 2014, paragraph (ca) of section 372(4) of the Insolvency Act 1986 (as inserted by paragraph (2)(c)) is to be read as if for the words "water supply licensee" there were substituted the words "licensed water supplier".

Corporate Insolvency: Insolvency-related terms of a contract

4. After section 233 of the Insolvency Act 1986 insert—

"**Further protection of essential supplies**

233A.—(1) An insolvency-related term of a contract for the supply of essential goods or services to a company ceases to have effect if—

(a) the company enters administration, or

(b) a voluntary arrangement approved under Part 1 takes effect in relation to the company.

(2) An insolvency-related term of a contract does not cease to have effect by virtue of subsection (1) to the extent that—

(a) it provides for the contract or the supply to terminate, or any other thing to take place, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement;

(b) it entitles a supplier to terminate the contract or the supply, or do any other thing, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement; or

(c) it entitles a supplier to terminate the contract or the supply because of an event that occurs, or may occur, after the company enters administration or the voluntary arrangement takes effect.

(3) Where an insolvency-related term of a contract ceases to have effect under this section the supplier may—

(a) terminate the contract, if the condition in subsection (4) is met;

(b) terminate the supply, if the condition in subsection (5) is met.

(4) The condition in this subsection is that—

(a) the insolvency office-holder consents to the termination of the contract,

(b) the court grants permission for the termination of the contract, or

(c) any charges in respect of the supply that are incurred after the company entered administration or the voluntary arrangement took effect are not paid within the period of 28 days beginning with the day on which payment is due.

The court may grant permission under paragraph (b) only if satisfied that the continuation of the contract would cause the supplier hardship.

(5) The condition in this subsection is that—

(a) the supplier gives written notice to the insolvency office-holder that the supply will be terminated unless the office-holder personally guarantees the payment of any charges in respect of the continuation of the supply after the company entered administration or the voluntary arrangement took effect, and

(b) the insolvency office-holder does not give that guarantee within the period of 14 days beginning with the day the notice is received.

(6) For the purposes of securing that the interests of suppliers are protected, where—

(a) an insolvency-related term of a contract (the "original term") ceases to have effect by virtue of subsection (1), and

(b) the company subsequently enters administration, or a voluntary arrangement subsequently has effect in relation to it,

the contract is treated for the purposes of subsections (1) to (5) as if, immediately before the subsequent administration is entered into or the subsequent voluntary arrangement takes effect, it included an insolvency-related term identical to the original term.

(7) A contract for the supply of essential goods or services is a contract for a supply mentioned in section 233(3).

(8) An insolvency-related term of a contract for the supply of essential goods or services to a company is a provision of the contract under which—

(a) the contract or the supply would terminate, or any other thing would take place, because the company enters administration or the voluntary arrangement takes effect,

(b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company enters administration or the voluntary arrangement takes effect, or

(c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the company enters administration or the voluntary arrangement takes effect.

(9) In this section "insolvency office-holder" means—

(a) in a case where a company enters administration, the administrator;