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SCHEDULES

SCHEDULE 3

SPECIAL ADMINISTRATION ORDERS

PART I

MODIFICATIONS OF THE 1986 ACT

General application of provisions of 1986 Act

- 1 Where a special administration order has been made, sections 11 to 15, 17 to 23 and 27 of the 1986 Act (which relate to administration orders under Part II of that Act) shall apply, with the modifications specified in the following provisions of this Part of this Schedule—
- (a) as if references in those sections to an administration order were references to a special administration order and references to an administrator were references to a special administrator; and
 - (b) where the company in relation to which the order has been made is a statutory water company that is not a limited company, as if references to a company included references to such a company.

Effect of order

- 2 In section 11 of the 1986 Act (effect of order), as applied by this Part of this Schedule—
- (a) the requirement in subsection (1)(a) that any petition for the winding up of the company shall be dismissed shall be without prejudice to the special administration order in a case where the order is made by virtue of section 25 of this Act;
 - (b) the references in subsections (1)(b), (3)(b) and (4) to an administrative receiver, in relation to a statutory water company that is not a limited company, shall include references to any receiver whose functions in relation to that company correspond to those of an administrative receiver in relation to a limited company; and
 - (c) the reference in subsection (3)(d) to proceedings shall include a reference to any proceedings under or for the purposes of section 18 of this Act.

Appointment of special administrator

- 3 In section 13 of the 1986 Act (appointment of administrator), as applied by this Part of this Schedule, for subsection (3) there shall be substituted the following subsection—

“(3) An application for an order under subsection (2) may be made—

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- (a) by the Secretary of State;
- (b) with the consent of the Secretary of State, by the Director General of Water Services;
- (c) by any continuing special administrator of the company or, where there is no such special administrator, by the company, the directors or any creditor or creditors of the company.”

General powers of special administrator

- 4 In section 14 of the 1986 Act (general powers of administrator), as applied by this Part of this Schedule
- (a) in subsection (1)(b), the reference to the powers specified in Schedule 1 to that Act shall be deemed to include a reference to a power to act on behalf of the company for the purposes of this Act, any local statutory provision or the exercise or performance of any power or duty which is conferred or imposed on the company by virtue of its holding an appointment under Chapter I of Part II of this Act [^{F1}or a licence under Chapter 1A of that Part] ; and
 - (b) in subsection (4), the reference to a power conferred by the company’s [^{F2}articles of association] shall be deemed to include a reference to a power conferred by a local statutory provision or by virtue of the company’s holding such an appointment [^{F3}or licence] .

Textual Amendments

- F1** Words in Sch. 3 para. 4(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 52(2)(a); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F2** Words in Sch. 3 para. 4(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order (S.I. 2009/1941), art. 2(1), {Sch. 1 para. 126(4)} (with art. 10)
- F3** Words in Sch. 3 para. 4(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 52(2)(b); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)

Power to deal with charged property

- 5 (1) Section 15 of the 1986 Act (power to deal with charged property), as applied by this Part of this Schedule, shall have effect as follows.
- (2) In subsection (5)(b) (amount to be paid to chargeholder not to be less than open market value), for the words “in the open market by a willing vendor” there shall be substituted the words “for the best price which is reasonably available on a sale which is consistent with the purposes of the special administration order”.
- (3) Subsections (7) and (8) (notice to registrar) shall not apply where the company in relation to which the special administration order is made is a statutory water company that is not a limited company.

Duties of special administrator

- 6 (1) Section 17 of the 1986 Act (duties of administrator), as applied by this Part of this Schedule, shall have effect as follows.

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(2) For subsection (2) there shall be substituted the following subsection—

“(2) Subject to any directions of the court, it shall be the duty of the special administrator to manage the affairs, business and property of the company in accordance with proposals, as for the time being revised under section 23, which have been prepared for the purposes of that section by him or any predecessor of his.”

(3) In subsection (3), paragraph (a) (right of creditors to require the holding of a creditors’ meeting) shall be omitted.

Discharge of order

7 (1) Section 18 of the 1986 Act (discharge and variation of administration order), as applied by this Part of this Schedule, shall have effect as follows.

(2) For subsections (1) and (2) there shall be substituted the following subsection—

“(1) An application for a special administration order to be discharged may be made—

- (a) by the special administrator, on the ground that the purposes of the order have been achieved; or
- (b) by the Secretary of State or, with the consent of the Secretary of State, the Director General of Water Services, on the ground that it is no longer necessary that those purposes are achieved.”

(3) In subsection (3), the words “or vary” shall be omitted.

(4) In subsection (4), the words “or varied” and “or variation” shall be omitted and for the words “to the registrar of companies” there shall be substituted—

- (a) where the company in relation to which the special administration order is made is a statutory water company that is not a limited company, the words “to the Director General of Water Services”; and
- (b) in any other case, the words “to the registrar of companies and to the Director General of Water Services”.

Notice of making of order

8 In section 21(2) of the 1986 Act (notice of order to be given by administrator), as applied by this Part of this Schedule, for the words “to the registrar of companies” there shall be substituted—

- (a) where the company in relation to which the special administration order is made is a statutory water company that is not a limited company, the words “to the Director General of Water Services”; and
- (b) in any other case, the words “to the registrar of companies, to the Director General of Water Services”.

Statement of proposals

9 In section 23 of the 1986 Act (statement of proposals), as applied by this Part of this Schedule, for subsections (1) and (2) there shall be substituted the following subsections—

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- “(1) Where a special administration order has been made, the special administrator shall, within 3 months (or such longer period as the court may allow) after the making of the order, send a statement of his proposals for achieving the purposes of the order—
- (a) to the Secretary of State and to the Director General of Water Services;
 - (b) so far as he is aware of their addresses, to all creditors of the company; and
 - (c) except where the company in relation to which the special administration order is made is a statutory water company that is not a limited company, to the registrar of companies;
- and may from time to time revise those proposals.
- (2) If at any time—
- (a) the special administrator proposes to make revisions of the proposals for achieving the purposes of the special administration order; and
 - (b) those revisions appear to him to be substantial,
- the special administrator shall, before making those revisions, send a statement of the proposed revisions to the Secretary of State, to the Director General of Water Services, (so far as he is aware of their addresses) to all creditors of the company and, except where the company in relation to which the special administration order is made is a statutory water company that is not a limited company, to the registrar of companies.
- (2A) Where the special administrator is required by subsection (1) or (2) to send any person a statement before the end of any period or before making any revision of any proposals, he shall also, before the end of that period or, as the case may be, before making those revisions either—
- (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company; or
 - (b) publish in the prescribed manner a notice stating an address to which members should write for copies of the statement to be sent to them free of charge.”

Applications to court

- 10 (1) Section 27 of the 1986 Act (protection of interests of creditors and members), as applied by this Part of this Schedule, shall have effect as follows.
- (2) After subsection (1) there shall be inserted the following subsection—
- “(1A) At any time when a special administration order is in force the Secretary of State or, with the consent of the Secretary of State, the Director General of Water Services may apply to the High Court by petition for an order under this section on the ground that the special administrator has exercised or is exercising, or proposing to exercise, his powers in relation to the company in a manner which—
- (a) will not best ensure the achievement of the purposes of the order; or
 - (b) without prejudice to paragraph (a) above, involves either a contravention of the conditions of the company’s appointment under Chapter I of Part II of the Water Industry Act 1991 [F⁴ or

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its licence under Chapter 1A of that Part] or of any statutory or other requirement imposed on the company in consequence of that appointment [^{F5}or licence] .”

(3) In subsection (3) (order not to prejudice or prevent voluntary arrangements or administrator’s proposals), for paragraphs (a) and (b) there shall be substituted the words “ the achievement of the purposes of the order ”.

(4) Subsections (4)(d) and (6) (power of court to order discharge) shall be omitted.

Textual Amendments

- F4** Words in Sch. 3 para. 10(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 52(3)(a); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F5** Words in Sch. 3 para. 10(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 52(3)(b); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)

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