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STATUTORY INSTRUMENTS

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**2009 No. 2477**

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

**PART 1**

**Introduction**

**Citation**

1. These Rules may be cited as the Water Industry (Special Administration) Rules 2009.

**Commencement**

2. These Rules come into force on 1st November 2009.

**Definitions and interpretation**

- 3.—(1) In these Rules—

“the Authority” means the Water Services Regulation Authority;

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day that is a bank holiday in any part of England and Wales;

“the CPR” means the Civil Procedure Rules 1998(1) and “CPR” followed by a Part or rule number means the Part or rule with that number in those Rules;

“court” means the High Court;

“file” means file in court;

“Form WAT” followed by a number means the form with that number in the Schedule;

“the Insolvency Act” means, subject to paragraph (2), the Insolvency Act 1986;

“proxy” has the meaning given in rule 61;

“the registrar” means—

(a) in the case of proceedings in a district registry of the Chancery Division of the High Court, the district judge; and

(b) in any other case, a Registrar in Bankruptcy of the High Court;

“solicitor” (except in relation to witnessing an affidavit) includes any person who has, under or pursuant to an enactment, the right to conduct litigation in relation to special administration proceedings;

“special administration order” has the meaning given by section 23 of the Water Industry Act 1991(2);

“special administration proceedings” means proceedings under sections 23 to 25 of, and Schedule 3 to, the Water Industry Act 1991;

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(1) S.I. 1998/3132 as last amended by S. I. 2008/2178.

(2) 1991 c. 56; sections 23 and 24 and Schedule 3 were amended by section 101 of, and Schedule 8 to, the Water Act 2003 (c. 37).

“special administrator” has the meaning given in paragraph 12 of Schedule 3 to the Water Industry Act 1991;

“statement of affairs” has the meaning given in section 22 of the Insolvency Act;

“water company” means a relevant undertaker or a qualifying licensed water supplier within the meaning of the Water Industry Act 1991.

(2) A reference to the Insolvency Act or a provision of that Act is a reference to that Act or provision as applied, substituted or modified by sections 23 to 26 of, and Schedule 3 to, the Water Industry Act 1991, construed in accordance with section 249 of the Enterprise Act 2002(3).

(3) A reference to the Insolvency Rules 1986(4) is a reference to those Rules as in force immediately before 15th September 2003.

(4) A reference to the venue for proceedings, for an attendance before the court, or for a meeting, is to the time, date and place for the proceedings, attendance or meeting.

#### **Application: general**

4.—(1) These Rules apply to special administration proceedings that commence, in relation to a water company, on or after the date on which these Rules come into force.

(2) For special administration proceedings that commenced before that date, these Rules apply to steps taken in those proceedings on or after that date.

#### **Application of Insolvency Rules 1986**

5.—(1) These Rules apply the Insolvency Rules 1986, with modifications.

(2) Except as provided for in these Rules, nothing in the Insolvency Rules 1986 applies to—

(a) special administration proceedings commenced, in relation to a water company, on or after the date on which these Rules come into force; or

(b) any step taken on or after that date in special administration proceedings that commenced before that date.

#### **Forms for use in special administration proceedings**

6.—(1) The forms in the Schedule must be used in, and in connection with, special administration proceedings.

(2) A form may be used with any variations that the circumstances require.

## **PART 2**

### **The petition and the special administration order**

#### **Form of petition**

7.—(1) A petition for an order for special administration in relation to a water company must be in Form WAT1.

(2) The petition must state the petitioner’s name and address for service.

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(3) 2002 c. 40. Section 249(2) of the Act provides that a reference in the Water Industry Act to a provision in Part 2 of the Insolvency Act 1986 (or to a provision that has effect in relation to a provision in that Part of the Act) shall, in so far as it relates to a relevant undertaker or a qualified licensed water supplier, continue to have effect as if it referred to Part 2 as it had effect immediately before the coming into force of section 248 (which replaced Part 2).

(4) S.I. 1986/1925 as amended at that date.

(3) If the petitioner is the Secretary of State<sup>(5)</sup>, and the water company is a qualifying licensed water supplier (within the meaning of the Water Industry Act 1991) the petition must state that the Secretary of State has consulted the Welsh Ministers before presenting it.

(4) If the petitioner is the Authority, the petition must state—

(a) that it is presented with the consent of—

(i) if the water company is a relevant undertaker (within the meaning of the Water Industry Act 1991) whose area is wholly or mainly in Wales, the Welsh Ministers; or

(ii) the Secretary of State; and

(b) if the water company is a qualifying licensed water supplier (within the meaning of the Water Industry Act 1991), that the Secretary of State has consulted the Welsh Ministers before consenting.

(5) The petition—

(a) must specify the name and address of the person, or each person, proposed to be appointed as special administrator; and

(b) must state that, to the best of the petitioner's knowledge and belief, the person, or each person, proposed is qualified to act as an insolvency practitioner in relation to the water company.

(6) The petitioner, or another person on the petitioner's behalf, must prepare and swear an affidavit complying with rule 8.

(7) There must be exhibited to the affidavit—

(a) a copy of the petition;

(b) the proposed special administrator's written consent, in Form WAT2, to being appointed.

### **Contents of affidavit**

8.—(1) The affidavit must state—

(a) whether the water company that is the subject of the petition is a relevant undertaker or a qualifying licensed water supplier (within the meaning of the Water Industry Act 1991);

(b) which of the grounds set out in section 24(2) of the Water Industry Act 1991 the petitioner believes are satisfied in relation to the water company; and

(c) the reasons for that belief.

(2) The affidavit must contain a statement of the water company's financial position, setting out (so far as the deponent knows) the assets and liabilities of the company, including contingent and prospective liabilities.

(3) The affidavit must set out details (to the best of the deponent's knowledge and belief) of—

(a) any security held by creditors of the water company; and

(b) whether any such security gives its holder power to appoint an administrative receiver.

(4) If the deponent knows or believes that an administrative receiver has been appointed, the affidavit must state that fact.

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(5) The functions of the Secretary of State under sections 24 (except for section 24(2)(d) (winding up following investigation under section 440 of the [Companies Act 1985 \(c. 6\)](#))) and 26 of the Water Industry Act 1991 in relation to water undertakers and sewerage undertakers whose areas are wholly or mainly in Wales were conferred on the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, [SI 1999/672](#), article 2(a) and Schedule 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, [SI 2000/253](#), article 4 and Schedule 3(c)). Functions in relation to licensed water suppliers were not conferred on the National Assembly. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the [Government of Wales Act 2006 \(c. 32\)](#), functions conferred on the National Assembly for Wales are now exercisable by the Welsh Ministers.

- (5) The affidavit must contain details (to the best of the deponent's knowledge and belief) of—
- (a) any petition that has been presented for the winding up of the water company;
  - (b) any notice served in accordance with section 26(1)(c) of the Water Industry Act 1991 by any person intending to enforce a security over the water company's property; and
  - (c) any step taken to enforce such a security.
- (6) If there are other matters that, in the opinion of the person intending to present the petition for a special administration order, will assist the court in deciding whether to make such an order, those matters must also be stated in the affidavit.

### **Filing of petition**

- 9.**—(1) The petitioner must file as many copies of the petition and affidavit as are required to be served in accordance with rule 11.
- (2) The court must—
- (a) seal each filed copy; and
  - (b) endorse it with the date and time of filing.
- (3) The court must also—
- (a) fix a venue for the hearing of the petition; and
  - (b) endorse the details of the venue on each copy of the petition.
- (4) The court must then issue each copy to the petitioner.

### **Notice to enforcement officer, etc.**

- 10.** As soon as reasonably practicable after filing the petition, the petitioner must give notice of its presentation—
- (a) to any enforcement officer or other officer who, to the petitioner's knowledge, is charged with an execution or other legal process against the water company or its property; and
  - (b) to any person who, to the petitioner's knowledge, has distrained against the water company or its property.

### **Service of petition**

- 11.**—(1) Not less than 2 days before the hearing the petitioner must serve on each person specified in paragraph (2)—
- (a) a copy of the petition issued by the court,
  - (b) a copy of the affidavit and exhibits in support of it.
- (2) The following must be served—
- (a) the water company;
  - (b) any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the water company;
  - (c) if an administrative receiver has been appointed, the administrative receiver;
  - (d) any person who has applied to the court for an administration order under Part II of the Insolvency Act in relation to the water company;
  - (e) if a petition is pending for the winding up of the water company, the petitioner and any provisional liquidator;
  - (f) the person, or each person, proposed for appointment as special administrator;

- (g) the Environment Agency;
- (h) the Consumer Council for Water;
- (i) the Chief Inspector of Drinking Water;
- (j) if the petitioner is the Secretary of State, the Welsh Ministers and the Authority;
- (k) if the petitioner is the Welsh Ministers, the Secretary of State and the Authority;
- (l) if the petitioner is the Authority, the Secretary of State and the Welsh Ministers.

(3) Service is in any way that the court directs or by delivering documents in accordance with the following table.

<i>Person served</i>	<i>Method of delivery</i>
The water company	<ul style="list-style-type: none"> <li>(a) Delivery to its registered office or, if this is not practicable, to its last known principal place of business in England and Wales;</li> <li>(b) any other way permitted by any enactment relating to companies</li> </ul>
Any other company	Any way permitted by any enactment relating to companies
Any person— <ul style="list-style-type: none"> <li>who is an authorised deposit taker or a former authorised institution;</li> <li>who has appointed, or is or may be entitled to appoint, an administrative receiver of the water company, or</li> <li>who has not notified an address for service</li> </ul>	<ul style="list-style-type: none"> <li>(a) The address of an office of the person, if the petitioner knows that the water company maintains a bank account;</li> <li>(b) if the petitioner knows of no such office, the person’s registered office; or</li> <li>(c) if the person has no registered office, the person’s usual or last known address</li> </ul>
Any other person	<ul style="list-style-type: none"> <li>(a) If the person has previously notified an address as the person’s address for service, that address;</li> <li>(b) the address at which the person lives or carries on business; or</li> <li>(c) the person’s usual or last known address</li> </ul>

(4) In the table—

“authorised deposit taker” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000<sup>(6)</sup> to accept deposits;

“former authorised institution” means an institution that—

- (a) continues to have a liability in respect of a deposit which was held in accordance with the Banking Act 1979<sup>(7)</sup> or the Banking Act 1987<sup>(8)</sup>; but
- (b) is not an authorised deposit taker.

(5) References in this rule to deposits and their acceptance must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;

<sup>(6)</sup> 2000 c. 8.

<sup>(7)</sup> 1979 c. 37.

<sup>(8)</sup> 1987 c. 22.

- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

#### **Proof of service**

**12.**—(1) The person, or each person, who served the petition and annexed documents must swear and file an affidavit in Form WAT3, specifying the date on which, and the manner in which, service was effected.

(2) The affidavit of service must be filed as soon as reasonably practicable after service, and in any event not less than one day before the hearing of the petition.

#### **Insolvency proceedings brought after petition presented**

**13.** If after the petition is presented the petitioner becomes aware of any other insolvency proceedings affecting the water company concerned, the petitioner must notify the court in writing of those proceedings.

#### **The hearing: right of appearance**

**14.** At the hearing of the petition, the following may appear or be represented—

- (a) any person on whom the petition was served;
- (b) with the leave of the court, any other person who appears to have an interest justifying the appearance..

#### **Form of special administration order**

**15.** A special administration order must be in Form WAT4.

#### **Costs of petitioner etc.**

**16.**—(1) If the court makes a special administration order, the petitioner's costs are payable as an expense of the administration.

(2) The court may direct that the costs of any other person appearing are also payable as an expense of the administration.

#### **Notice and advertisement of special administration order**

**17.**—(1) If the court makes a special administration order the petitioner must, as soon as reasonably practicable, give notice, in Form WAT5, to the person or each person appointed as special administrator.

(2) The special administrator must, as soon as reasonably practicable, give notice, in Form WAT6, of the making of the order, by advertising—

- (a) in the London Gazette; and
- (b) in such newspaper as the administrator thinks most appropriate for ensuring that the order comes to the notice of the water company's creditors.

(3) The special administrator must also, as soon as reasonably practicable—

- (a) give notice, in Form WAT7, of the order to each person (other than the water company) on whom the petition was served; and
- (b) send a sealed copy of that form to the registrar of companies.

(4) The special administrator must send a sealed copy of the order to whichever of the Secretary of State, the Welsh Ministers and the Authority were not the petitioner.

(5) The special administrator, when sending to the registrar of companies a copy of the order in accordance with section 21(2) of the Insolvency Act, must also send to the registrar a completed Form WAT8.

(6) If the court makes any other order, it will give directions as to—

- (a) whom notice of the order is to be given; and
- (b) how that notice is to be given.

#### **Notice of discharge of special administration order**

**18.** If a special administration order is discharged, the special administrator must send a copy of the order effecting the discharge and a completed Form WAT9 to each of the Secretary of State, the Welsh Ministers, the Authority and the registrar of companies.

## **PART 3**

### **The special administrator**

#### **Special administrator's remuneration**

**19.**—(1) The special administrator is entitled to receive remuneration for work done in acting as special administrator.

(2) The remuneration is determined either—

- (a) as a percentage of the value of the property with which the special administrator has to deal; or
- (b) by reference to the time properly given by the special administrator and the special administrator's staff in attending to matters arising in the administration.

#### **Fixing of remuneration by court**

**20.**—(1) The special administrator must apply to the court to rule—

- (a) whether the remuneration will be under rule 19(2)(a) or rule 19(2)(b), and
- (b) if it is under rule 19(2)(a), the percentage to be applied.

(2) The special administrator must give at least 14 days' notice of the application to the following, who may appear or be represented—

- (a) the Authority (whether or not it is the petitioner);
  - (b) any creditors that the special administrator knows about.
- (3) In determining the remuneration, the court must have regard to—
- (a) any oral or written representations made by the Authority;
  - (b) the complexity (or otherwise) of the case;
  - (c) any respects in which, in connection with the water company's affairs, an exceptional kind or degree of responsibility falls or may fall on the special administrator;
  - (d) how effectively the special administrator appears to be carrying out, or to have carried out, the duties of special administrator; and
  - (e) the value and nature of the property with which the special administrator has to deal.

(4) The court may in its discretion order the costs of the special administrator's application to be paid as an expense of the special administration.

#### **Remuneration: joint special administrators**

**21.**—(1) If there are joint special administrators, they may agree as to how their remuneration should be apportioned.

(2) The court may settle, by order, any dispute between joint special administrators about the apportionment of their remuneration.

#### **Remuneration: special administrator a solicitor**

**22.** If the special administrator is a solicitor and employs, to act on behalf of the water company, a firm or a partner of a firm of which the special administrator is a member, profit costs must not be paid unless authorised by the court.

#### **Resignation of special administrator**

**23.**—(1) The special administrator may resign, by giving a notice of intention to resign to the court—

- (a) on grounds of ill health;
- (b) because the special administrator intends to cease practice as an insolvency practitioner; or
- (c) because a conflict of interest or change of personal circumstances precludes or makes impracticable the continued discharge of the duties of special administrator.

(2) In any other circumstance, the special administrator may resign with the permission of the court.

(3) The special administrator must give at least 7 days' written notice of intention to resign to—

- (a) the Secretary of State or the Welsh Ministers, as appropriate;
- (b) the Authority;
- (c) any continuing special administrator of the water company; and
- (d) if there is no continuing special administrator, the water company and each creditor.

(4) The special administrator must, as soon as reasonably practicable—

- (a) give notice to the court—
  - (i) in Form WAT10 of resignation under paragraph (1), or
  - (ii) in Form WAT11 of resignation under paragraph (2); and
- (b) send a completed copy of Form WAT10 or Form WAT11 to the registrar of companies.

#### **Special administrator's death in office**

**24.**—(1) If a special administrator dies while in office, the special administrator's personal representative must give notice of the fact, specifying the date of death, to the court.

(2) The personal representative must send a copy of the notice to—

- (a) the Secretary of State or the Welsh Ministers, as appropriate;
- (b) the Authority; and
- (c) the registrar of companies.

(3) Paragraph (1) is taken to have been complied with—



- (a) if the deceased special administrator was a partner in a firm, if the notice is given by another partner in the firm who—
  - (i) is qualified to act as an insolvency practitioner, or
  - (ii) is a member of a body recognised by order under section 391 of the Insolvency Act for the authorisation of insolvency practitioners; or
- (b) in any other case, if a person gives the court a copy of the relevant death certificate.

### **Order filling vacancy**

**25.** If the court makes an order filling a vacancy in the office of special administrator, the person so appointed must give notice of the appointment—

- (a) once in the London Gazette;
- (b) in such other way as the person thinks most appropriate to ensure that the appointment comes to the notice of the water company’s creditors;
- (c) to the Secretary of State or the Welsh Ministers, as appropriate;
- (d) to any person (other than the water company) on whom the petition was served; and
- (e) to the registrar of companies.

## **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.

## **PART 5**

### **Meetings**

#### **CHAPTER 1**

##### **Creditors' meetings**

#### **Application of Chapter**

**43.** This Chapter applies to a meeting of the creditors of a water company summoned by the special administrator of the company, whether under section 14(2)(b) of the Insolvency Act or by direction of the court under section 17(3)(b) of that Act.

#### **Venue and notice of creditors' meetings**

**44.**—(1) In fixing the venue for a meeting, the special administrator must have regard to the convenience of creditors.

(2) The time fixed for the start of a meeting must be between 10.00 a.m. and 4.00 p.m. on a business day, unless the court directs otherwise.

(3) The special administrator must give at least 21 days' written notice of a meeting to each creditor known to the special administrator who had a claim against the water company at the date of the special administration order.

- (4) The notice of a meeting—
  - (a) must be in Form WAT19;
  - (b) must specify the purpose of the meeting; and
  - (c) must contain a statement of the effect of rule 48 (entitlement to vote).
- (5) A form of proxy must be sent with each notice.

#### **Non-receipt of notice of meeting**

**45.** If in accordance with the Insolvency Act or these Rules a meeting of creditors is called or summoned by notice, the meeting is taken to have been properly summoned and held, even if not all those to whom the notice is to be given have received it.

#### **Who presides at meetings**

- 46.**—(1) At a meeting, the chair is either the special administrator, or a person nominated by the special administrator in writing to act as the chair.
- (2) Any person nominated must be—
    - (a) a person who is qualified to act as an insolvency practitioner in relation to the water company; or
    - (b) an employee of the special administrator or a member of the special administrator’s firm who is experienced in insolvency matters.

#### **Adjournment**

**47.**—(1) If within 30 minutes from the time fixed for the commencement of a meeting neither the special administrator nor a person nominated under rule 46 to preside is present, the meeting stands adjourned to the same time and place in the following week or, if that day is not a business day, to the business day immediately after it.

(2) A meeting may be adjourned from time to time, if the person presiding thinks fit, but not for more than 14 days from the date on which it was fixed to commence, unless the court directs otherwise.

(3) If a meeting is adjourned, the special administrator must, as soon as reasonably practicable, notify the creditors of the venue of the adjourned meeting.

#### **Entitlement to vote: meetings of creditors**

- 48.**—(1) Subject to paragraphs (3) and (6), a person may only vote at a meeting if—
  - (a) the person has given the special administrator, not later than noon on the business day before the day fixed for the meeting, details in writing of the debt that the person claims is due to the person from the water company;
  - (b) the claim has been admitted under this Part; and
  - (c) any proxy to be used on the person’s behalf has been lodged with the special administrator.
- (2) The details of the debt must set out any calculation for the purposes of rules 49 to 53.
- (3) The person presiding at the meeting may allow a creditor to vote even if the creditor has failed to comply with paragraph (1)(a), if the person presiding is satisfied that the failure was due to circumstances beyond the creditor’s control.
- (4) The person presiding may require the production of any document or other evidence necessary for the purpose of substantiating the whole or any part of the claim.

(5) Votes are to be calculated according to the amount of each creditor's debt as at the date of the special administration order, deducting any amounts paid in respect of the debt after that date.

(6) A creditor must not vote in respect of a debt for an unliquidated amount, or a debt whose value is not ascertained, unless the person presiding agrees to put an estimated minimum value on the debt for the purpose of entitlement to vote and admits the claim for that purpose.

(7) A creditor is not entitled to vote more than once on any resolution put to the meeting.

(8) A creditor may appeal to the court against a decision, under this rule, of the person presiding.

### **Admission and rejection of claims**

**49.**—(1) At a creditors' meeting the person presiding may admit or reject a creditor's claim for the purpose of the creditor's entitlement to vote, and may do so with respect to the whole or any part of the claim.

(2) If the person presiding is in doubt whether a creditor's claim should be admitted or rejected, the person presiding must mark it as objected to and allow the creditor to vote.

(3) However, the creditor's vote is invalid if the objection to the claim is sustained.

(4) A creditor may appeal to the court against a decision, under this rule, of the person presiding.

(5) If on appeal the decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just.

(6) Neither the special administrator nor a person nominated by the special administrator to preside at a meeting is personally liable for costs incurred by a person in respect of an appeal to the court under this rule, unless the court so orders.

### **Voting by secured creditors**

**50.** At a meeting of creditors, a secured creditor is entitled to vote only in respect of the balance (if any) of the creditor's debt after deducting the value of the creditor's security as estimated by the creditor.

### **Voting by holders of negotiable instruments**

**51.** A creditor must not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless the creditor agrees—

(a) to treat the liability to the creditor on the bill or note of every person who is liable on it antecedent to the water company, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in the creditor's hands; and

(b) to estimate the value of that security and, for the purpose of calculating the creditor's entitlement to vote, to deduct it from the creditor's claim.

### **Voting by retention of title creditors**

**52.** For the purpose of calculating entitlement to vote at a creditors' meeting, a creditor of the water company who is a seller of goods to the water company under a retention of title agreement must deduct from the claim the value, as estimated by the creditor, of any rights arising under that agreement in respect of goods in the possession of the water company.



### **Voting by creditors under hire-purchase, conditional sale and chattel leasing agreements**

**53.**—(1) Subject to paragraph (2), a creditor of the water company who is an owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to the creditor by the water company as at the date of the special administration order.

(2) In calculating the amount of a debt for this purpose, no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement in so far as the right has become exercisable solely because of the presentation of the petition for a special administration order or any matter arising in consequence of that presentation, or the making of the order.

### **Quorum at meetings**

**54.**—(1) A meeting of creditors called or summoned by a special administrator is competent to act if a quorum is present.

(2) One creditor entitled to vote is a quorum.

(3) For the purposes of this rule, the reference to the creditor necessary to constitute a quorum is to those persons present or represented by proxy by any person (including the chair) and includes persons duly represented under section 323 (representation of corporations at meetings) of the Companies Act 2006(9) as applied by rule 67.

(4) If at a meeting of creditors—

- (a) a quorum is present because only the person presiding at the meeting, or that person and one other person, are present, and
- (b) the person presiding is aware, because of proofs and proxies received or otherwise, that an additional person or persons would, if attending, be entitled to vote,

the meeting must not commence until at least 15 minutes after the time appointed for its commencement.

(5) In this rule “proof” means a document in which a creditor seeks to establish a claim.

### **Resolutions**

**55.**—(1) Subject to paragraph (2), at a creditors’ meeting a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of it.

(2) A resolution is invalid if those voting against it include more than half in value of the creditors—

- (a) to whom notice of the meeting was sent; and
- (b) who are not, so far as the person presiding knows, connected with the water company (within the meaning given by section 249 of the Insolvency Act).

### **Minutes**

**56.**—(1) The person presiding at a meeting must ensure that minutes of its proceedings are entered in the water company’s minute book.

(2) The minutes must include a list of the creditors who attended (personally or by proxy).

### **Report to creditors**

**57.**—(1) Within 14 days of the end of every period of 6 months beginning with the date of a special administrator's appointment, the special administrator must send each creditor of the water company concerned a report on the progress of the administration.

(2) On vacating office, the special administrator must send each creditor a report on the administration up to that time.

(3) Paragraph (2) does not apply if—

- (a) the water company goes into liquidation immediately after the special administration ends; or
- (b) the special administrator is removed from office by the court or ceases to be qualified as an insolvency practitioner.

## **CHAPTER 2**

### **Members' meetings**

#### **Venue and conduct of members' meeting**

**58.**—(1) If the special administrator of a water company summons a meeting of members of the company, the special administrator must have regard to their convenience in fixing a venue for it.

(2) Subject to paragraphs (2) to (5) and Part 6, the meeting must be summoned and conducted—

- (a) as if it were a general meeting of the water company summoned under the company's articles of association; and
- (b) in accordance with the Companies Act 2006.

(3) The special administrator, or a person nominated by the special administrator in writing, is to preside at the meeting.

(4) To be eligible for nomination, a person must be—

- (a) qualified to act as an insolvency practitioner in relation to the water company; or
- (b) an employee of the special administrator or the special administrator's firm and experienced in insolvency matters.

(5) If within 30 minutes from the time fixed for the start of the meeting there is no person present to preside, the meeting stands adjourned to the same time and place in the following week or, if that day is not a business day, to the next business day after it.

(6) The person presiding at the meeting must ensure that minutes of its proceedings are entered in the water company's minute book.

## **CHAPTER 3**

### **Meetings generally**

#### **Evidence of proceedings at meeting**

**59.**—(1) A minute of proceedings at a meeting of the creditors or members of a water company called or summoned by the special administrator, and signed by a person described as having, or appearing to have, presided at the meeting (for example, by being described as chair or chairman of the meeting), is admissible in special administration proceedings without further proof.

(2) The minute is prima facie evidence that—

- (a) the meeting was duly convened and held;
- (b) resolutions passed at the meeting were properly passed; and

- (c) the proceedings recorded in the minutes took place.

## PART 6

### Proxies and company representation

#### Application of this Part

**60.** This Part applies to any meeting of the creditors or members of a water company that is called or summoned under the Insolvency Act or under these Rules.

#### Definition and grant of proxy

**61.**—(1) For the purposes of these Rules, a proxy is a written authority in form WAT20 given by a person (“the principal”) to another person (“the proxy-holder”)—

- (a) to attend a meeting; and
- (b) to speak and vote at the meeting as the principal’s representative.

(2) A proxy-holder must be an individual aged 18 years or over.

(3) A proxy requires the proxy-holder to give the principal’s vote on matters arising for determination at the meeting, or to abstain, or to propose, in the principal’s name, a resolution to be voted on by the meeting, either as directed or, if not directed, in accordance with the proxy-holder’s own discretion.

(4) A principal may give only one proxy for any one meeting, and must give it to only one proxy-holder.

(5) However, the principal may specify one or more other individuals to be the proxy-holder in the alternative (if more than one, in the order in which they are named in the proxy).

(6) Without affecting the generality of paragraphs (4) and (5), a proxy for a particular meeting may be given to the person who presides at the meeting, and that person cannot decline to be the proxy-holder for that proxy.

#### Issue and use of forms of proxy

**62.**—(1) A form of proxy sent out with the notice of a meeting must not have a person’s name or description inserted in it.

(2) The only form of proxy that may be used at a meeting is one sent with the notice summoning the meeting.

(3) A form of proxy must be signed by the principal, or by a person authorised by the principal to do so (either generally or with reference to a particular meeting).

(4) If a form of proxy is signed by a person other than the principal, the nature of that person’s authority must be stated.

(5) A form of proxy is invalid if it does not comply with any part of this rule.

#### Use of proxies at meetings

**63.**—(1) A form of proxy given for a particular meeting may be used at an adjournment of that meeting.

(2) If the special administrator holds forms of proxy for use as chair of a meeting, and another person acts as chair, that other person may use the forms of proxy of the special administrator as if the other person were the proxy-holder.

(3) A proxy-holder may propose any resolution that, if it were proposed by another person, would be a resolution in favour of which, by virtue of the proxy, the proxy-holder would be entitled to vote.

(4) If a form of proxy gives specific directions as to voting, the proxy-holder is not, unless the form of proxy states otherwise, prevented from voting at the proxy-holder's discretion on any resolution put to the meeting but not dealt with in the proxy.

### **Retention of proxies**

**64.**—(1) Subject to paragraph (2), the person presiding at a meeting must retain all forms of proxy used for voting at the meeting.

(2) If the chair is not the special administrator of the water company concerned, that person must deliver the forms of proxy to the special administrator as soon as reasonably practicable after the meeting.

### **Right of inspection of proxies**

**65.**—(1) The special administrator of a water company who holds forms of proxy must allow them to be inspected, at any reasonable time on any business day, by any of the following—

- (a) a creditor who has submitted a written claim to be a creditor of the water company, if that claim has been admitted, in whole or in part, for the purpose of voting, dividend or otherwise;
- (b) in the case of forms of proxy used at a meeting of that company, that company's members;
- (c) the directors of that company;
- (d) the Secretary of State;
- (e) the Welsh Ministers;
- (f) the Authority.

(2) In paragraph (1)(a), "creditor" does not include a person whose claim has been wholly rejected for the purposes of voting, dividend or otherwise.

(3) Any person who attends a meeting is entitled, immediately before or during the meeting, to inspect forms of proxy and associated documents (including proofs as defined in rule 54(5)) sent or given, in accordance with directions contained in any notice summoning the meeting, by a creditor or member of the water company for the purpose of that meeting to—

- (a) the person presiding at the meeting; or
- (b) any other person.

### **Proxy-holder with financial interest**

**66.**—(1) In this rule, subject to paragraph (4), "associate" has the same meaning as in section 435 of the Insolvency Act.

(2) A proxy-holder must not vote in favour of a resolution that would directly or indirectly place the proxy-holder, or an associate of the proxy-holder, in a position to receive remuneration out of the assets of the water company concerned, unless the form of proxy specifically directs the proxy-holder to vote in that way.

(3) If a proxy-holder holds a form of proxy that has been signed by that proxy-holder on behalf of the principal under an authority given by the principal under rule 63(4), and the form of proxy

specifically directs the proxy-holder to vote in the way referred to in paragraph (2), the proxy-holder must nevertheless not vote in that way unless the proxy-holder shows the person presiding at the meeting the principal's written authorisation for the proxy-holder to have signed the form of proxy.

(4) For the purposes of paragraph (2), if a person other than the special administrator presides at a meeting, and uses forms of proxy of the special administrator in the circumstances set out in rule 63(2), the special administrator is taken to be an associate of the person presiding at the meeting.

### **Company representation**

**67.**—(1) Section 323 of the Companies Act 2006 (representation of corporations at meetings) applies to a meeting of creditors under these Rules as to a meeting of the company (references to a member of the company being read as references to a creditor).

(2) A person is authorised under section 323 of the 2006 Act to represent a corporation at a meeting of creditors, must produce to the chair of the meeting a copy of the resolution from which he derives the authority to do so is derived.

(3) The copy resolution must be under the seal of the corporation, or certified by the secretary or a director of the corporation to be a true copy.

(4) Nothing in this rule requires the authority of a person to sign a proxy on behalf of a principal which is a corporation to be in the form of a resolution of that corporation.

## **PART 7**

### **Court procedure and practice**

#### **CHAPTER 1**

#### **Applications**

### **Preliminary**

**68.** This Chapter applies to all applications made to the court in special administration proceedings, except a petition for a special administration order.

### **Interpretation**

**69.** In this Chapter—

“originating application” means an application to the court that is not made in pending proceedings before the court; and

“ordinary application” means any other application to the court.

### **Form and contents of applications**

**70.**—(1) An application must be in writing and must state—

- (a) the names of the parties;
- (b) the nature of the relief or order applied for or the directions sought from the court;
- (c) if the application is to be served on any other person, the name and address of each person on whom the applicant will serve the application;
- (d) if the Insolvency Act or these Rules require that notice of the application is to be given to a particular person, the name and address of that person (so far as the applicant knows); and
- (e) the applicant's address for service.

(2) If the application is not to be served on any other person, it must contain a statement to that effect.

(3) An originating application must set out the grounds on which the applicant claims the relief or order sought.

(4) An originating application must be in Form WAT21.

(5) An ordinary application must be in Form WAT22.

(6) The application must be signed—

(a) by the applicant;

(b) if the applicant is a child or a protected party (within the meaning of CPR rule 21), by a litigation friend of the applicant; or

(c) by the applicant's solicitor.

### **Filing and service of applications**

**71.**—(1) An application must be filed, with as many extra copies as there are persons to be served with the application, plus one more copy.

(2) Subject to paragraphs (3) to (6) and rule 72(3), or unless the rule under which the application is made provides otherwise, or the court otherwise orders, the court will fix a venue for the hearing of the application.

(3) Unless the court otherwise directs, the applicant must serve a sealed copy of the application, endorsed with the venue of the hearing, on the respondent or each respondent.

(4) Subject to any direction of the court under paragraph (5)(c), service on a person of a sealed copy of the application is sufficient notice of the venue for the application.

(5) The court may give any of the following directions—

(a) that the application be served upon a person other than one specified by the relevant provision of the Insolvency Act or these Rules;

(b) that the giving of notice to a particular person or persons be dispensed with; or

(c) that notice be given in some way other than that specified in paragraph (3).

(6) Subject to any provision of the Insolvency Act or these Rules, and subject to any direction under paragraph (5)(b), the application must be served at least 14 days before the date fixed for the hearing.

### **Hearings without notice**

**72.**—(1) In an urgent case, the court may—

(a) hear the application immediately, either with or without notice to, or with or without the attendance of, other parties; or

(b) authorise a shorter period of service than required by rule 71(6).

(2) The court may hear an application referred to in paragraph (1) on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks fit.

(3) If hearing an application without service on any other party is permitted, the court may hear it as soon as reasonably practicable, without fixing a venue.

(4) However, if the court fixes a venue for the application to be heard, rule 71 applies (so far as relevant).

### **Hearing of applications in private**

73. Unless the court orders otherwise—

- (a) an application before a registrar must be heard in private; and
- (b) an application before a judge may be heard in private.

### **Exercise of court's jurisdiction by registrar**

74.—(1) The registrar may exercise the jurisdiction of the court to hear and determine an application made to the registrar in the first instance, unless—

- (a) a judge has given a general or special direction to the contrary; or
- (b) it is not within the registrar's power to make an order sought by the application.

(2) If the application is made to the registrar, the registrar may refer to a judge any matter that the registrar thinks should properly be decided by a judge, and the judge may either dispose of the matter or refer it back to the registrar with such direction as the judge thinks fit.

(3) Nothing in this rule prevents an application being made directly to the judge.

### **Use of witness statements**

75.—(1) Evidence may be given by witness statement supported by a statement of truth unless the court otherwise directs.

(2) CPR Part 32 applies to the use of witness statements in special administration proceedings.

### **Filing and service of witness statements**

76.—(1) Unless the provision of the Insolvency Act or these Rules under which an application is made provides otherwise, or the court allows otherwise—

- (a) if the applicant intends to rely on a witness statement, the applicant must file the statement and serve a copy on the respondent not less than 14 days before the date fixed for the hearing; and
- (b) if a respondent to an application intends to oppose it and to rely for that purpose on a witness statement, the respondent must file the statement and serve a copy on the applicant not less than 7 days before the date fixed for the hearing.

### **Use of reports**

77.—(1) The special administrator may file a report instead of an affidavit or witness statement, unless the application involves other parties or the court otherwise orders.

(2) If the special administrator files a report instead of an affidavit or witness statement, the report must be treated as if it were a witness statement.

(3) In particular, the court may order the special administrator to attend for cross-examination on the report.

### **Adjournment of hearing: directions**

78.—(1) The court may adjourn the hearing of an application on such terms (if any) as it thinks fit.

(2) The court may give directions generally as to the procedure on the application and in particular as to—

- (a) service on, or notice of the application to, a person, whether in connection with the venue of a resumed hearing or for any other purpose;

- (b) whether particulars of claim and defence are to be delivered;
- (c) the manner in which evidence is to be adduced, and in particular as to—
  - (i) the taking of evidence wholly or in part by affidavit or witness statement or orally;
  - (ii) the cross-examination of deponents to affidavits or persons who have made witness statements; and
  - (iii) any report to be given by the special administrator; and
- (d) the matters to be dealt with in evidence.

## CHAPTER 2

### Enforcement

#### **Enforcement of court orders**

**79.** In special administration proceedings, an order of the court may be enforced in the same manner as a judgment.

#### **Orders enforcing compliance with these Rules**

**80.**—(1) The court may, on application by the special administrator, make such orders as it thinks necessary for the enforcement of obligations falling on a person in accordance with section 22 (statement of affairs to be submitted to administrator) or section 235 of the Insolvency Act (duty to co-operate with office-holder).

(2) An order of the court under this rule may provide that all costs of and incidental to the application for it must be borne by the person against whom the order is made.

## CHAPTER 3

### Access to court records

#### **CPR rules not to apply**

**81.** CPR Part 5 (other than rules 5.4B and 5.4C) does not apply to documents filed in special administration proceedings.

#### **Certain persons' right to inspect the court file**

**82.**—(1) The following may, at a reasonable time, inspect the court's file in relation to any special administration proceedings—

- (a) the special administrator;
- (b) the Authority;
- (c) the Secretary of State;
- (d) the Welsh Ministers;
- (e) the Chief Inspector of Drinking Water;
- (f) the Environment Agency;
- (g) the Consumer Council for Water;
- (h) subject to paragraph (2), a creditor of the water company to which the special administration proceedings relate;
- (i) a person who is, or at any time has been, a director or officer of that company;
- (j) a member of that company.



(2) A person who claims to be a creditor of the water company must make a written statement as to being such a creditor.

(3) A person's right of inspection may be exercised on the person's behalf by another person authorised by the first person.

(4) Any other person may inspect the file with the court's permission.

(5) However, the court may declare that the right of inspection under this rule is not exercisable in relation to a particular document, or a part of a document, without the court's permission.

(6) An application for a declaration under paragraph (5) may be made by the special administrator or by any other person who has an interest.

### **Right to copy documents**

**83.** If a person has a right to inspect a document on the court's file, the person may also take a copy of the document, on payment of the fee prescribed under section 92 of the Courts Act 2003(10).

### **Official copies of documents on court file**

**84.**—(1) A person who has the right to inspect the court file of special administration proceedings may request the court for an official copy of any document from the file.

(2) A person's solicitor may exercise the person's right under this rule.

(3) An official copy provided under this rule will be in the form that the registrar thinks appropriate, and will bear the court's seal.

### **False claim of status as creditor or member**

**85.**—(1) It is an offence for a person falsely to claim, with the intention of obtaining a sight of documents on the court file that the person has no right to inspect, a status that would entitle the person to inspect such a document.

(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.

### **Filing of copies of London Gazette notices and advertisements**

**86.**—(1) If a person causes a notice to be published in the London Gazette in relation to special administration proceedings, the person must file a copy of the notice.

(2) If a person causes an advertisement to be published in a newspaper in relation to special administration proceedings, the person must file a copy of the advertisement.

(3) The copy of the notice or advertisement must be accompanied by, or have endorsed on it, sufficient particulars to identify the proceedings and the date of the notice's or advertisement's appearance.

## CHAPTER 4

### Costs and detailed assessment

#### Application of the Civil Procedure Rules

**87.** Subject to any inconsistent provision in this Chapter, CPR Parts 43 (scope of costs rules and definitions), 44 (general rules about costs), 45 (fixed costs), 47 (procedure for detailed assessment of costs and default provisions) and 48 (costs - special cases) apply to special administration proceedings.

#### Costs to be assessed by detailed assessment

**88.**—(1) The amount of any costs, charges or expenses of a person that are payable out of the assets of a water company must be decided by detailed assessment unless the special administrator and the person entitled to payment agree to the contrary.

(2) In the absence of such an agreement, the special administrator may serve notice in writing on the person to commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(3) In any proceedings before the court, including proceedings on a petition, the court may order costs to be decided by detailed assessment.

(4) Nothing in this rule prevents the special administrator from making payments on account to a person on the basis of an undertaking by the person to repay immediately any money that may, when detailed assessment is made, prove to have been overpaid, with interest at the rate specified in section 17 of the Judgments Act 1838<sup>(11)</sup> on the date payment was made and for the period from the date of payment to that of repayment.

#### Procedures for detailed assessment: employees of the special administrator

**89.**—(1) Before making a detailed assessment of the costs of a person employed, in special administration proceedings, by a special administrator, the costs officer will require from the special administrator a certificate of the person's employment in accordance with paragraphs (2) and (3).

(2) The special administrator must endorse the certificate on the person's bill and must sign it.

(3) The certificate must set out—

- (a) the person's name and address;
- (b) details of the functions that the person carried out under the employment; and
- (c) a note of any special terms of remuneration that have been agreed.

#### Procedures for detailed assessment: time limit to bring proceedings

**90.**—(1) A person whose costs in special administration proceedings are required to be decided by detailed assessment must, on being required in writing to do so by the special administrator, commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(2) If the person does not commence detailed assessment proceedings within 3 months of the requirement under paragraph (1), or within such further time as the court, on application, may permit, the special administrator may deal with the assets of the water company without regard to the person's claim for costs.

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<sup>(11)</sup> 1838 c. 110 (1 & 2 Vict). Section 17 was amended by S I 1998/2940, article 3 and S I 1993/564 and by other enactments not relevant to these Rules.

(3) The person's claim for costs is forfeited by that failure to commence detailed assessment proceedings.

(4) If in such a case the person also has such a claim against a special administrator personally, that claim is also forfeited by the person's failure to commence detailed assessment proceedings.

### **Costs paid otherwise than out of the assets of the water company**

**91.** If the amount of costs is decided by detailed assessment under an order of the court directing that the costs are to be paid otherwise than out of the assets of the water company, the costs officer will note, on the final costs certificate, whom the costs are to be paid by or how they are to be paid.

### **Award of costs against special administrator**

**92.**—(1) If a special administrator is made a party to proceedings on the application of another party, the special administrator is not personally liable for costs unless the court so directs.

(2) Paragraph (1) is subject to any provision of the Insolvency Act, the Water Industry Act 1991 or the Insolvency Rules 1986, or any other provision of these Rules, under which the special administrator is not in any event to be liable for costs and expenses.

### **Applications for costs**

**93.**—(1) This rule applies if a party to, or a person affected by, special administration proceedings—

- (a) applies to the court for an order allowing the person's costs, or part of them, incidental to the proceedings; and
- (b) that application was not made at the time of the proceedings.

(2) The party or person must serve a sealed copy of the application on the special administrator.

(3) The special administrator may oppose, or make submissions to the court orally or in writing about, the application.

(4) The court will not allow the applicant any costs in relation to the application unless the court is satisfied that the application could not have been made at the time of the proceedings.

### **Costs and expenses of witnesses**

**94.**—(1) An officer of the water company concerned in special administration proceedings is not entitled to any allowance as a witness in any examination or other proceedings before the court unless the court so orders.

(2) A person presenting a petition in special administration proceedings is not taken to be a witness on the hearing of the petition, but the costs officer may allow the person's expenses of travelling and subsistence.

### **Final costs certificate**

**95.** A final costs certificate of the costs officer is final and conclusive as to all matters that have not been objected to in the manner provided for under the CPR.

### **Replacement of lost or destroyed costs certificate**

**96.** If a costs officer is satisfied that a costs certificate has been lost or destroyed, the costs officer may issue a duplicate certificate.

## CHAPTER 5

### Persons who lack capacity

#### Children and patients

**97.** If a party to proceedings to which these Rules apply lacks capacity (within the meaning given by the Mental Capacity Act 2005(12)) in relation to the proceedings, CPR Part 21 applies to—

- (a) the conduct of those proceedings by or on behalf of the party;
- (b) the appointment of a litigation friend for the party; and
- (c) any compromise or settlement of the proceedings.

## CHAPTER 6

### Appeals

#### Appeal and review of orders

**98.**—(1) The court may review, rescind or vary any order that it makes in proceedings to which these Rules apply.

(2) An appeal from a decision of a registrar in such proceedings lies to a single judge of the High Court.

(3) An appeal from a decision of that judge on such an appeal lies, with the permission of that judge or the Court of Appeal, to the Court of Appeal.

#### Procedure on appeal

**99.**—(1) Subject to paragraph (2), CPR Part 52 (appeals) applies to appeals in special administration proceedings.

(2) In relation to an appeal to a single judge of the High Court under rule 98(2)—

- (a) a reference in the CPR to the Court of Appeal is taken to be a reference to that judge; and
- (b) a reference in the CPR to the registrar of civil appeals is taken to be a reference to the registrar of the High Court who deals with special administration proceedings.

## CHAPTER 7

### General

#### Principal court rules and practice to apply

**100.**—(1) The CPR and the practice and procedure of the High Court (including any practice direction) apply to special administration proceedings, with necessary modifications, except so far as inconsistent with these Rules.

(2) All special administration proceedings shall be allocated to the multi-track for which CPR Part 29 (the multi-track) makes provision, accordingly those provisions of the CPR that provide for allocation questionnaires and track allocation do not apply.

#### Title of proceedings

**101.** A document that is filed in special administration proceedings—

- (a) must name the water company to which the proceedings relate; and
- (b) must be entitled “In the matter of the Insolvency Act 1986 and the Water Industry Act 1991”.

### **Right of audience**

**102.** Rights of audience in special administration proceedings are the same as in insolvency proceedings under the Insolvency Act or the Insolvency Rules 1986.

### **Special administrator’s solicitor**

**103.** If the attendance of the special administrator’s solicitor is required in special administration proceedings, the special administrator need not attend in person unless the court so directs.

### **Formal defects**

**104.** Special administration proceedings are not invalidated by any formal defect or by any irregularity, unless the court considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

### **Affidavits**

**105.—**(1) Subject to paragraphs (2) to (5), the practice and procedure of the High Court with regard to affidavits, their form and contents, and the procedure governing their use, apply to special administration proceedings.

(2) If the special administrator makes an affidavit in special administration proceedings, the deponent must state—

- (a) the capacity in which the deponent makes the affidavit;
- (b) the position that the deponent holds; and
- (c) the address at which the deponent works.

(3) Subject to paragraph (4), where these Rules provide for the use of an affidavit, a witness statement verified by a statement of truth may be used instead.

(4) If the court has ordered a person to submit an affidavit the person must not substitute a witness statement.

(5) If a witness statement is used instead of an affidavit, in any form filed in the proceedings references to a witness statement must be substituted for references to an affidavit, and references to the maker of the statement must be substituted for references to the deponent.

### **Giving of security to the court**

**106.—**(1) If security has to be given to the court (otherwise than in relation to costs), it may be given by guarantee, bond or the payment of money into court.

(2) A person proposing to give a bond as security must give notice to the party in whose favour the security is required, and to the court, naming the persons who are to be sureties to the bond.

(3) The court will give notice to the parties concerned of a venue for the execution of the bond and the making of any objection to the sureties.

(4) The sureties must make an affidavit of their sufficiency (unless dispensed with by the party in whose favour the security is required) and must, if required by the court, attend the court to be cross-examined.

### **Payment into court**

107. CPR Part 37 applies to money paid into court in proceedings to which these Rules apply.

### **Further information and disclosure**

108.—(1) A party to special administration proceedings may apply to the court for an order—

- (a) that any other party—
  - (i) clarify a matter in dispute in the proceedings, or
  - (ii) give additional information in relation to such a matter, in accordance with CPR Part 18 (further information); or
- (b) to obtain disclosure from any other party in accordance with CPR Part 31 (disclosure and inspection of documents).

(2) An application under this rule may be made without notice being served on any other party.

## **PART 8**

### **Examination of persons in special administration proceedings**

#### **Application**

109. The rules in this Part relate to applications to the court by a special administrator for an order under section 236 (inquiry into company's dealings, etc.) of the Insolvency Act.

#### **Interpretation**

110. In this Part “respondent” means the person in respect of whom an order is applied for.

#### **Form and contents of application**

111.—(1) An application must be in writing, and must be accompanied by a brief statement of the grounds on which it is made.

- (2) The application must sufficiently identify the respondent and what the application is for.
- (3) The applicant may apply for the respondent to be ordered—
  - (a) to appear before the court;
  - (b) to clarify a matter in dispute in the proceedings or to give additional information in relation to such a matter;
  - (c) to submit an affidavit; or
  - (d) to produce books, papers or other records.

(4) If the application is for an order for the respondent to submit a witness statement or an affidavit, the application must specify the matters about which the respondent is to be required to make the statement, or to which the respondent is to be required to swear.

(5) If the application is for an order for the respondent to produce books, papers or other records, the application must specify the items that the respondent is to be required to produce.

(6) The application may be made without notice being served on any other party.

### **Order for examination, etc.**

**112.**—(1) In an application under this Part, the court may make any order that it has power to make under section 236 of the Insolvency Act.

(2) If the court orders the respondent to appear before it, it will specify a venue for that appearance.

(3) The date and time specified will be at least 14 days after the date of the order.

(4) If the respondent is ordered to submit an affidavit or witness statement, the order will specify—

(a) the matters that the affidavit or witness statement must deal with; and

(b) the time within which the affidavit or witness statement is to be submitted to the court.

(5) If the order is to produce books, papers or other records, the order will specify the time, place and manner of compliance.

(6) The special administrator must serve the order on the respondent as soon as reasonably practicable.

(7) It must be served on the respondent personally, unless the court otherwise orders.

### **Procedure for examination**

**113.**—(1) At the examination of the respondent, the special administrator may attend in person, or be represented by a solicitor, and may put any question to the respondent that the court allows.

(2) If the respondent is ordered to clarify a matter or to give additional information, the court will direct the respondent as to the questions that the respondent is required to answer, and as to whether the answers (if any) are to be made on affidavit.

(3) If the relevant application under section 236 was made on information provided by a creditor of the water company, that creditor may, with the permission of the court and if the special administrator does not object, attend the examination and put questions to the respondent (but only through the special administrator).

(4) The respondent may at the respondent's own expense employ a solicitor.

(5) The respondent's solicitor—

(a) may put to the respondent any question that the court allows for the purpose of enabling the respondent to explain or qualify an answer; and

(b) may make representations on the respondent's behalf.

### **Recording of proceedings**

**114.**—(1) A written record must be made of the examination.

(2) The record must be read over by or to the respondent and signed by the respondent at a venue fixed by the court.

(3) The written record may be used in any proceedings (whether under the Insolvency Act or otherwise) against the respondent as evidence of any statement made by the respondent in the course of the examination.

(4) The court may appoint, in Form WAT23, a shorthand writer to take down the evidence of a person examined in the course of special administration proceedings.

(5) A shorthand writer so appointed must make a declaration in Form WAT24.

(6) The remuneration of a shorthand writer in special administration proceedings is payable by the party who requested the appointment, or out of the assets of the water company concerned, or otherwise, as the court may direct.

(7) Any question arising as to the rates of remuneration payable must be determined by the court in its discretion.

### **Warrants under section 236 of the Insolvency Act**

**115.**—(1) The tipstaff and any assistant of the tipstaff are prescribed officers of the court for the purposes of section 236(5) of the Insolvency Act.

(2) If a person is arrested under a warrant issued under that section, the officer or constable who arrests the person must, as soon as reasonably practicable, bring the person before the court so that the person can be examined.

(3) If the person cannot immediately be brought up for examination, the officer or constable must deliver the person into the custody of the governor of the prison specified in the warrant, who must keep the person in custody and produce the person before the court as the court directs.

(4) After arresting the person, the officer or constable must immediately—

- (a) report to the court the arrest or delivery into custody; and
- (b) apply to the court to fix a venue for the person's examination.

(5) The court must appoint the earliest practicable time for the examination, and must—

- (a) direct the governor of the prison to produce the person for examination at the time and place appointed; and
- (b) give notice of the venue to the person who applied for the warrant.

(6) Any property in the arrested person's possession that has been seized must, in accordance with any direction of the court—

- (a) be lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it; or
- (b) be kept by the officer or constable seizing it pending the receipt of written orders from the court as to its disposal.

### **Filing of record of examination**

**116.**—(1) The written record of the respondent's examination, and any response the respondent gives to, and any affidavit or witness statement submitted in compliance with, an order of the court under section 236 of the Insolvency Act, must not be filed unless the court directs.

(2) The written record, responses and affidavits or witness statements are not open to inspection, without an order of the court, by any person other than the special administrator.

(3) Paragraph (2) applies also to so much of the court file as shows the grounds of the application for an order under that section and to any copy of any order.

(4) The court may from time to time give directions as to the custody and inspection of documents to which this rule applies, and as to the furnishing of copies of, or extracts from, such documents.

### **Costs of proceedings under section 236 of the Insolvency Act**

**117.**—(1) Subject to paragraphs (2) and (3), the special administrator's costs must be paid out of the assets of the water company unless the court otherwise orders.

(2) If the court orders an examination of a person under section 236 of the Insolvency Act because the respondent unjustifiably refused to provide information, it may order the respondent to pay the costs of the examination.



(3) If the court makes an order against a person under section 237(1) or section 237(2) (court's enforcement powers under section 236) of the Insolvency Act, the court may order the respondent to pay the costs of the application for the order.

(4) A person summoned to attend for examination under this Part must be tendered a reasonable sum in respect of travelling expenses incurred in connection with that attendance.

(5) Other costs incurred by that person are at the court's discretion.

## PART 9

### Miscellaneous and general

#### **Special administrator's security**

**118.**—(1) Wherever under these Rules any person has to appoint, or proposes the appointment of, a person to the office of special administrator, that person must be satisfied that the person appointed or to be appointed has security for the proper performance of his functions.

(2) In any administration proceedings the cost of the special administrator's security must be defrayed as an expense of the proceedings.

#### **Power of Secretary of State to regulate certain matters**

**119.**—(1) Pursuant to paragraph 27 of Schedule 8 to the Insolvency Act the Secretary of State may make regulations, not inconsistent with the Insolvency Act, the Water Industry Act 1991 or these Rules, with respect to any matter provided for in these Rules that relates to the carrying out of the functions of a special administrator of a water company.

(2) Those Regulations may—

- (a) confer discretion on the court;
- (b) make non-compliance with any of the regulations a criminal offence;
- (c) make different provision for different cases, including different provision for different areas; and
- (d) contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient.

#### **Evidence of orders, directions or certificates issued by Secretary of State or Welsh Ministers**

**120.**—(1) A document purporting to be, or to contain, an order, direction or certificate issued by the Secretary of State or the Welsh Ministers must be received in evidence and taken to be or to contain (as the case may be) that order, direction or certificate without further proof, unless the contrary is shown.

(2) Paragraph (1) applies whether the document is signed by—

- (a) the Secretary of State personally or on behalf of the Secretary of State; or
- (b) a Welsh Minister personally or on behalf of a Welsh Minister.

(3) Without prejudice to paragraph (1), a certificate signed by or on behalf of the Secretary of State or the Welsh Ministers confirming—

- (a) the making of an order,
- (b) the issuing of a document, or

(c) the exercise of a discretion, power or obligation arising or imposed under the Insolvency Act, the Water Industry Act 1991 or these Rules,  
is conclusive evidence of the matters dealt with in the certificate.

#### **Time limits**

**121.**—(1) CPR rule 2.8 (time) applies as regards computation of the period of time within which anything is required or authorised to be done by these Rules.

(2) CPR rule 3.1(2)(a) applies so as to enable the court to extend or shorten the period within which compliance with anything is required or authorised to be done by these Rules (even if the period has ended).

#### **General provisions as to service and notice**

**122.** CPR Part 6 (service of documents) applies in relation to the service of documents and the giving of notice in special administration proceedings except for service outside the jurisdiction.

#### **Service outside the jurisdiction**

**123.**—(1) If for the purposes of special administration proceedings a document is required to be served on a person who is not in England and Wales, the court—

- (a) may order service to be effected within the time, on the person, at the place and in the manner it thinks fit; and
- (b) may require proof of service as it thinks fit.

(2) However, paragraph (1) does not apply if Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)(**13**) applies to the document.

(3) An application for an order under paragraph (1) must be supported by an affidavit stating—

- (a) the grounds on which the application is made; and
- (b) in what place or country the person to be served is, or probably may be found.

#### **Notice, etc. to solicitors**

**124.** If in special administration proceedings a notice or other document is required or authorised to be given to a person who has indicated that the person's solicitor is authorised to accept service on the person's behalf, the notice or document is sufficiently served if given to the solicitor.

#### **Notice to joint special administrators**

**125.** If two or more persons are acting jointly as the special administrator in any proceedings, delivery of a document to one of them is to be treated as delivery to them all.

#### **Notices sent simultaneously to the same person**

**126.** If under the Insolvency Act, the Water Industry Act 1991 or these Rules a document is to be sent to a person (whether or not as a member of a class of persons to whom the document is to be sent), it may be sent with any other document or information that the person is to receive, with or without modification or adaptation of the form applicable to it.

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(13) OJ No L 324, 10.12.2007, p. 79.

### **The London Gazette as evidence**

**127.**—(1) A copy of the London Gazette containing a notice required by the Insolvency Act or these Rules to be published in the London Gazette is evidence of any fact stated in the notice.

(2) In the case of an order of the court notice of which is required, by the Insolvency Act or these Rules, to be gazetted, a copy of the London Gazette containing the notice is conclusive evidence that the order was made on the date specified in the notice.

(3) If—

(a) an order of the court that has been gazetted has been varied, or

(b) a matter has been erroneously or inaccurately gazetted,

the person whose responsibility it was to procure the requisite entry in the London Gazette must, as soon as reasonably practicable, cause the variation of the order to be gazetted or, as the case may be, a further entry to be made in the London Gazette for the purpose of correcting the error or inaccuracy.

### **Punishment of offences**

**128.** Section 431 (summary proceedings) of the Insolvency Act, as it applies to England and Wales, has effect in relation to offences under these Rules as to offences under that Act.

### **Powers of the court and the registrar**

**129.**—(1) Anything to be done in special administration proceedings by, to or before the court may be done by, to or before a judge or the registrar.

(2) The registrar may authorise any formal or administrative act that is not by statute the registrar's responsibility to be carried out by an officer of the court on the registrar's behalf, in accordance with directions given by the Lord Chancellor.

Signed, by authority of the Lord Chancellor

8th September 2009

*Bach*  
Parliamentary Under Secretary  
Ministry of Justice

I concur, by the authority of the Secretary of State

8th September 2009

*Huw Irranca-Davies*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs