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STATUTORY INSTRUMENTS

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**2009 No. 2477**

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

**PART 7** E+W+S

Court procedure and practice

CHAPTER 1 E+W+S

Applications

**Preliminary** E+W+S

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

**Interpretation** E+W+S

**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** E+W+S

**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;

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- (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** E+W+S

**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** E+W+S

**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** E+W+S

**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** E+W+S

**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 **E+W+S**

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 **E+W+S**

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 **E+W+S**

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 **E+W+S**

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.

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## CHAPTER 2 **E+W+S**

### Enforcement

#### **Enforcement of court orders** **E+W+S**

**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** **E+W+S**

**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 **E+W+S**

### Access to court records

#### **CPR rules not to apply** **E+W+S**

**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** **E+W+S**

**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 **E+W+S**

**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 <sup>M1</sup>.

#### Marginal Citations

M1 2003 c. 39.

#### Official copies of documents on court file **E+W+S**

**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 **E+W+S**

**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 **E+W+S**

**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 **E+W+S**

#### Costs and detailed assessment

#### Application of the Civil Procedure Rules **E+W+S**

**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.

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### Costs to be assessed by detailed assessment **E+W+S**

**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>M2</sup> on the date payment was made and for the period from the date of payment to that of repayment.

#### Marginal Citations

**M2** 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.

### Procedures for detailed assessment: employees of the special administrator **E+W+S**

**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 **E+W+S**

**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.

(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** **E+W+S**

**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** **E+W+S**

**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** **E+W+S**

**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** **E+W+S**

**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** **E+W+S**

**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** **E+W+S**

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

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## CHAPTER 5 **E+W+S**

### Persons who lack capacity

#### Children and patients **E+W+S**

**97.** If a party to proceedings to which these Rules apply lacks capacity (within the meaning given by the Mental Capacity Act 2005 <sup>M3</sup>) 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.

#### Marginal Citations

**M3** 2005 c. 9.

## CHAPTER 6 **E+W+S**

### Appeals

#### Appeal and review of orders **E+W+S**

**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 **E+W+S**

**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 **E+W+S**

### General

#### Principal court rules and practice to apply **E+W+S**

**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** E+W+S

**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** E+W+S

**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** E+W+S

**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** E+W+S

**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** E+W+S

**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** E+W+S

**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.

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(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** **E+W+S**

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

**Further information and disclosure** **E+W+S**

**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.

**Status:**

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**Changes to legislation:**

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