

EXPLANATORY MEMORANDUM TO
THE WATER INDUSTRY (SPECIAL ADMINISTRATION) RULES 2009

2009 No. 2477

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 These purpose of the Rules is to provide the court procedure to underpin the special insolvency procedure applicable to “water companies” subject to a special administration order.

2.2 Special administration exists to help ensure that water and sewerage services continue to be provided to customers should a water company becomes insolvent or otherwise be failing to meet its statutory obligations, pending the transfer of the water company’s business to another company (or more than one company).

3. **Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**

3.1 None.

4. **Legislative Context**

4.1 These Rules are made under section 411 of the 1986 Act, as applied by section 24(3) of the 1991 Act. This is the first occasion on which this power has been used for the water industry, although section 411 of the 1986 Act has been used several times to make Rules in relation to other insolvency procedures. Examples of other Rules made under section 411 of the 1986 Act include:

- the Insolvency Rules 1986 (SI 1986/1925);
- the Railway Administration Order Rules 2001 (SI 2001/3352); and
- the PPP Administration Order Rules 2007 (SI 2007/3141).

4.2 These Rules are made to provide the detail of the court procedure which should apply in relation to a special administration procedure governed by section 23 and Schedule 24 of the 1991 Act, applying “old” Part 2 of the 1986 Act with modifications. “Old” Part 2 of the 1986 Act continues to be relevant notwithstanding its repeal and replacement by section 248 of the Enterprise Act 2002, by virtue of section 249(1)(a) (as amended) which provides that section 248 has no effect in respect of a water company. Section 249(1) effectively preserves “old” Part 2 for the purposes of its application to special administration regimes. The Rules therefore apply the Insolvency Rules 1986 (SI 1986/1925, as amended). Where necessary, the Rules for the water industry have been modified to take account of the regulatory and devolutionary framework for water. In some cases certain rules from the Civil Procedure Rules have been adopted where these have superseded or simplified the Insolvency Rules 1986.

4.3 The 1991 Act provides the legislative framework for the appointment of water and sewerage undertakers and licensed water suppliers. Sections 23 and 24 and Schedules 2 and 3 of the 1991 Act contain the special administration provisions.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

• *What is being done and why*

7.1 In common with other regulated sectors, there is a special administration regime for the water industry in England and Wales which is used in the event of one of the following water companies get into financial difficulties:

- water undertakers;
- sewerage undertakers; and
- licensed water suppliers that hold a combined licence and owns a strategic water supply (i.e. a supply provided by a licensee that would impact on an undertaker's ability to supply its customers if it was withdrawn).

7.2 The interests of customers are central to the special administration regime. The procedures in the 1991 Act allow the Secretary of State, Welsh Ministers or the Water Services Regulation Authority ("Ofwat") to override ordinary insolvency proceedings by preventing a winding up order from being issued by the court. In normal insolvency this could mean that the assets and infrastructure could be closed down or sold off to save costs or pay off debts. This would not be an appropriate outcome for water and sewerage customers who will need to be assured that they will continue to receive water and sewerage services. The water regime is unique in that the special administration regime can be used for enforcement purposes where a water company is failing to such an extent that transferring it to one or more new owners is seen as the only way to protect the interests of customers. The special administrator appointed by the court is required to transfer a water company in special administration to one or more new owners.

7.3 In *Future Water – the Government's Water Strategy for England*¹, Defra announced that it was considering introducing Rules for the water industry in England and Wales. This followed the outcome of an exercise run by Ofwat that exposed the issues surrounding a water company with severe financial problems. One issue that was identified for consideration was the absence of Rules for the water industry. While the Government was confident that the 1991 Act addressed the interests of customers, it was recognised that producing Rules would help clarify the 1991 Act if a water company was put into special administration.

¹ <http://www.defra.gov.uk/environment/water/strategy/index.htm>

- ***Consolidation***

7.4 This is the first time that the power to introduce Rules has been used in the water industry.

8. Consultation outcome

8.1 The UK and Welsh Assembly Governments launched a public consultation on the draft Rules between 17 December 2008 and 20 March 2009. Overall there were five respondents, which included Companies House, CLLS, Environment Agency and the Insolvency Service. The respondents mainly questioned inconsistencies with other Rules and Companies House asked for a number of amendments that reflected recent changes to its procedures. The Government accepted a number of suggestions to improve and clarify the Rules. The full Government response can be found at <http://www.defra.gov.uk/corporate/consult/water-admin/index.htm>.

9. Guidance

9.1 There has been no guidance prepared for the Rules. The Rules in themselves clarify how the special administration procedure is to be applied to a water company.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal and would only become an issue in the unlikely event of a water company getting into difficulties.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Rules will be kept under regular review to keep pace with changes in the 1991 Act and the general insolvency rules.

13. Contact

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