

- (d) information, advice and technical assistance in connection with the use of information technology;
- (e) data storage and processing;
- (f) website hosting.”

3.—(1) Section 372 of the Insolvency Act 1986(a) is amended as follows.

(2) After subsection 4(d) insert—

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

(3) After subsection (4) insert—

“(3A) The goods and services referred to in subsection 4(f) are—

- (a) point of sale terminals;
- (b) computer hardware and software;
- (c) any service enabling the making of payments;
- (d) information, advice and technical assistance in connection with the use of information technology;
- (e) data storage and processing;
- (f) website hosting.”

Corporate Insolvency: Insolvency-related terms of a contract

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

“233A Further protection of essential supplies

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

- (a) the company enters administration, or
- (b) a voluntary arrangement approved under Part 1 takes effect in relation to the company.

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

- (a) terminate the contract, if one of the conditions in subsection (3) is met;
- (b) terminate the supply, if the conditions in subsection (4) are met.

(3) The conditions in this subsection are that—

- (a) the insolvency office-holder consents to the termination of the contract,
- (b) the court grants permission for the termination of the contract, or
- (c) any charges in respect of the supply that are incurred after the company entered administration or the voluntary arrangement took effect are not paid within the period of 28 days beginning with the day on which payment is due.

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

(4) The conditions in this subsection are that—

(a) Section 372(4) was amended by section 190 and paragraph 78 of Schedule 25 to the Water Act 1989 (c. 15), paragraph 14 of Schedule 4 to the Gas Act 1995 (c. 45), paragraph 47 of Schedule 6 to the Utilities Act 2000 (c. 27), paragraph 82 of Schedule 17 to the Communications Act 2003 (c. 21).

- (a) within the period of 14 days beginning with the day the company entered administration or the voluntary arrangement took effect the supplier gives written notice to the insolvency office-holder that the supply will be terminated unless the office-holder personally guarantees the payment of any charges in respect of the continuation of the supply after that day, and
 - (b) the insolvency office-holder does not give that guarantee within the period of 14 days beginning with the day the notice is received.
- (5) A contract for the supply of essential goods or services is a contract for a supply mentioned in section 233(3).
- (6) An insolvency-related term of a contract for the supply of essential goods or services to a company is a provision of the contract under which—
- (a) the contract or the supply would terminate, or any other thing would take place, because the company enters administration or the voluntary arrangement takes effect,
 - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company enters administration or the voluntary arrangement takes effect, or
 - (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the company enters administration or the voluntary arrangement takes effect.
- (7) In this section “insolvency office-holder” means—
- (a) in a case where a company enters administration, the administrator;
 - (b) in a case where a voluntary arrangement under Part 1 takes effect in relation to a company, the supervisor of the voluntary arrangement.
- (8) Subsection (1) does not have effect in relation to a contract entered into before this section comes into force.”

Individual Insolvency: Insolvency-related terms of a contract

5. After section 372 of the Insolvency Act 1986 insert—

“372A Further protection of essential supplies

- (1) An insolvency-related term of a contract for the supply of essential goods or services to an individual ceases to have effect if—
- (a) a voluntary arrangement proposed by the individual is approved under Part 8, and
 - (b) the supply is for the purpose of a business which is or has been carried on by the individual, by a firm or partnership of which the individual is or was a member, or by an agent or manager for the individual or for such a firm or partnership.
- (2) Where an insolvency-related term of a contract ceases to have effect under this section the supplier may—
- (a) terminate the contract, if one of the conditions in subsection (3) is met;
 - (b) terminate the supply, if the conditions in subsection (4) are met.
- (3) The conditions in this subsection are that—
- (a) the supervisor of the voluntary arrangement consents to the termination of the contract,
 - (b) the court grants permission for the termination of the contract, or
 - (c) any charges in respect of the supply that are incurred after the voluntary arrangement is approved are not paid within the period of 28 days beginning with the day on which payment is due.

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

(4) The conditions in this subsection are that—

- (a) within the period of 14 days beginning with the day the voluntary arrangement is approved the supplier gives written notice to the supervisor of the voluntary arrangement that the supply will be terminated unless the supervisor personally guarantees the payment of any charges in respect of the continuation of the supply after that day, and
- (b) the supervisor does not give that guarantee within the period of 14 days beginning with the day the notice is received.

(5) A contract for the supply of essential goods or services is a contract for a supply mentioned in section 372(4).

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

- (a) the contract or the supply would terminate, or any other thing would take place, because the voluntary arrangement proposed by the individual is approved,
- (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the voluntary arrangement proposed by the individual is approved, or
- (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the voluntary arrangement proposed by the individual is approved.

(7) Subsection (1) does not have effect in relation to a contract entered into before this section comes into force.”

Consequential amendments

6. The Schedule to this Order (which contains consequential amendments) shall have effect.

[Name]
Parliamentary Under-Secretary of State for Employment Relations and Consumer Affairs
Department for Business, Innovation and Skills

Date

SCHEDULE

CONSEQUENTIAL AMENDMENTS

1. In Article 4(3)(a) of the Insolvent Partnerships Order 1994^(a) after the words “section 233” insert “and section 233A”.

2. In Schedule 2 to the Limited Liability Partnerships (Scotland) Regulations 2001^(b) after the reference to section 233 insert the words “Section 233A to the extent that the section applies in case of a voluntary arrangement taking effect”.

3. In section 145 of the Banking Act 2009^(c) in Table 2 after the entry for “Section 233” insert—

“Section 233A	Further protection of utilities”
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4. In Table 2 to regulation 15 of the Investment Bank Special Administration Regulations 2013^(d) after the entry for “Section 233” insert—

“Section 233A	Further protection of utilities”
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(a) S.I. 1994/2421, to which there are amendments not relevant to this Order.
(b) S.S.I. 2001/128.
(c) 2009 c.1.
(d) S.I. 2011/245.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Insolvency Act 1986 (c.45) (the “1986 Act”) to give further protection to the essential supplies of insolvent businesses. The Order comes into force on the day after the day on which it is made and extends to the whole of Great Britain, with the exception of Articles 3 and 5 which extend only to England and Wales, reflecting the extent of the 1986 Act.

Articles 2 and 3 amend sections 233 and 372 of the 1986 Act. Sections 233 and 372 prohibits a supplier of utilities (such as gas, electricity, water and communication services) from compelling the payment of charges incurred before the commencement of an insolvency event by threatening to terminate the supply of the utilities on the grounds of non-payment. Section 233 provides this protection to insolvent companies, whilst section 372 provides similar protection to businesses carried on by insolvent individuals. Sections 233 and 372 require suppliers to continue to provide the utilities if a request is made by the office-holder of the insolvent company or individual for the continued supply. The supplier is, however, entitled to make it a condition of the supply that the office-holder provides a personal guarantee for the payment in respect of any supply made during the insolvency. The supplier is not entitled to make it a condition of the continued supply that any outstanding charges incurred before the insolvency are paid.

The scope of section 233 and 372 is confined to statutory undertakers and similar bodies which are under a legal obligation to provide a service to the public. A private supplier of utilities is not affected. The amendments made by Articles 2 and 3 extend the scope of sections 233 and 372 to include private suppliers who supply gas, electricity, water or communication services to companies or individuals in the course of a business.

Articles 2 and 3 also add to the present list of utility supplies to which sections 233 and 372 apply to include the supply of goods or services that are for the purpose of enabling or facilitating anything done by electronic means (“IT supplies”). Primarily this include goods or services relating to information technology, including the supply of point of sale terminals, computer hardware and software and other items identified under new subsections (3A) or (4A) of sections 233 and 372 respectively.

Articles 4 and 5 insert new sections 233A and 372A into the 1986 Act. Section 233A applies to companies, whilst section 372A applies to businesses carried on by individuals. These new sections render void certain “insolvency-related terms” in contracts, thereby preventing a supplier from terminating a supply or contract, altering the terms of the contract or compelling higher payments for the supply, when a company enters administration or when a voluntary arrangement is proposed in respect of a company or individual respectively. The insolvency-related terms are rendered void only in a contract for the supply of those utility and IT supplies listed under section 233 and 372. Sections 233A and 372A only apply to contracts entered into after this Order comes into force.

A supplier may, however, terminate the contract or the supply if one of the conditions outlined in subsections (3) and (4) of sections 233A and 372A is met.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Insolvency Service, 4 Abbey Orchard Street, London SW1P 2HT and is published on the Insolvency Service website www.insolvency.gov.uk. It is also published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.