

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Miscellaneous and General

Insolvency: protection of essential supplies

Section 93: Corporate insolvency: power to give further protection to essential supplies

602. This section gives the Secretary of State a power to make an order that renders void certain contractual terms in contracts for the supply of essential goods or services where a company goes into administration or a voluntary arrangement takes effect if certain conditions are met. The supplies that may be protected are those to which section 233 applies, i.e. supplies of gas, electricity, water, communications and IT supplies if added through exercise of the power in section 92.
603. *Subsection (2)* requires the provision of express safeguards that must be included in an order made under this power. Those safeguards include granting the right to a supplier to terminate a contract of supply where any charges for post-insolvency supply remain unpaid after 28 days beginning with the day on which payment is due regardless of the terms of the contract. A supplier may also terminate the contract if given permission by the insolvency office-holder or by the court.
604. *Subsection (3)* requires a further safeguard to be provided for affected suppliers by giving such suppliers a right to request a personal guarantee for payment from the insolvency office-holder as a condition of continuing the supply. *Subsection (4)* provides scope for the Secretary of State to provide exceptions to this right.
605. *Subsection (5)* gives the Secretary of State the power to add any other safeguards that might be felt necessary, in order to protect suppliers who may be affected.
606. *Subsection (7)* defines which contractual terms may be rendered void by the order for the purposes of this power. These are those contractual terms that would allow providers of essential IT or utility supplies to alter the terms of a contract or withdraw the supply from an insolvent company on account of the insolvency. It also includes those that allow a supplier to terminate the contract on account of a termination event that occurred before the insolvency but which had not been exercised by the time of insolvency.