

## **Continuation of essential supplies on insolvency**

**Q1. Do you agree that the proposed amendments to sections 233 and 372 will be effective in bringing on-sellers of utility and IT services within the scope of the existing provisions?**

Yes, we do consider the proposed amendments to sections 233 and 372 will be effective in bringing on-sellers of utility and IT services within the scope of the existing provision.

Paragraph 25 of the Consultation document refers to deregulation of certain utilities. Under the Water Act 2014, from April 2017, all business customers of water companies wholly or mainly in England will be subject to retail competition. The market for the supply of water will therefore become subject to the “on-selling” in a similar way to some other utilities and IT provision and the same issues are likely to apply. Please note that this answer is subject to the point made in answer to question 6.

**Q2. Do you agree that the amendments will be effective in preventing supplies made for wholesale purposes from becoming subject to the provisions?**

Yes

**Q3. Do you agree that the proposed changes will be effective in bringing suppliers of IT goods within the scope of 233 and 372?**

Yes

**Q4. Do you agree with the proposed approach to specify types of IT goods or services that should be brought within the scope of sections 233 and 372? If not, would a more generic definition of IT services be preferable?**

No view

**Q5. Are there other types of IT goods and services that you believe should be brought within the scope of sections 233 and 372?**

No view

**Q6. Do you consider that new sections 233A and 372A will be effective in preventing suppliers of utility and IT goods and services from relying on insolvency termination clauses?**

While we have no comment on the substantive effect of these sections, we would point out that as water and sewerage undertakers, our members provide services to customers under the Water Industry Act 1991 ((as amended) (the “Act”)and not under any contractual provisions. Charging terms and policy are set out in charges schemes made by water and

sewerage undertakers under Section 143 of the Act. Accordingly, they are unable to rely on any contractual termination clauses. If the proposed legislation is intended to enable those provisions to apply in the water sector, the draft sections would need to be amended accordingly.

Further, companies are unable to disconnect water supplies to domestic customers under the provisions of the Act. We would therefore seek confirmation that the new legislation will not override the provisions of the Act in this respect.

**Q7. Do you consider that new sections 233A and 372A will be effective in preventing suppliers of utility and IT goods and services from demanding ransom payments as a condition of continuing supply?**

Yes

**Q8. Do you believe that the safeguards provided for suppliers are adequate?**

We have concerns about the safeguards provided to suppliers.

One proposal outlined in the consultation is to ensure continuity of utility supplies by preventing reliance on insolvency termination clauses. This will be balanced by a number of safeguards to protect the supplier. These include obtaining a personal guarantee from the insolvency office holder as a condition of continuing the supply, allowing the supplier to withdraw the supply if charges are not paid within 28 days and applying to the Court to terminate the contract.

The ability to request a personal guarantee from the insolvency office holder as a condition of continuing the supply is already set out in the Insolvency Act 1986. In practice a standard letter from the insolvency practitioner rejecting personal responsibility is usually received and not pursued any further.

Under current legislation, ransom payments cannot be levied in order to maintain supply, but water and sewerage charges are treated as an expense of the insolvency proceedings and rank ahead of other creditors and the insolvency practitioners' fees on an insolvency.

Nevertheless, on some occasions, there will be insufficient funds in the insolvency for the water and sewerage charges to be paid. Previously, practitioners have been very reluctant to agree any personal liability. The culture and practice of insolvency practitioners will need to change quite fundamentally if the intended continuity of service to insolvent companies is to be maintained.

Given the current proposal of a 14 day window during which the requirement of a guarantee must be communicated, in writing, to the insolvency practitioner it is (we believe) crucial

that there is a legislative provision that utility companies are given active formal notification, in writing, of the onset of the insolvency proceedings.

**Q9. What, if any, exceptions should be provided from the ability to seek a personal guarantee from the insolvency office holder as a condition of continuing supply?**

We can see no reason therefore for there to be any exceptions from the ability to seek a personal guarantee. Paragraph 39 of the Consultation proposes that a guarantee from a third party would be a reason not to seek such a letter. However, this requires water and sewerage companies to form a view as to the credit-worthiness of the third party. In practice, only where a surety is provided would there be an ability to limit ongoing additional insolvency risk.

**Q10. What impact, if any, do you believe the changes would have on the pricing of contract in relation to:**

**a) Utility supplies**

**b) IT goods and services**

For water, provided the supply could be terminated if no guarantee is forthcoming we find the proposed guarantees acceptable. If the supply could not be terminated in the absence of a guarantee we do not consider the proposed guarantees as offering adequate protection for the reasons given in response to question 8. If such guarantees are not forthcoming, this could result in increased debt levels which will subsequently result in increased charges.

We would like the position to be clarified.

**Q11. Can you see any practical difficulties arising from the proposed changes?**

In order to avoid disconnecting water supplies, water companies will need to move the accounts out of their current collection routes into routes designed specifically for these situations where they cannot disconnect. To ensure this happens it is of paramount importance that there is legislative provision that water companies are given an active, formal notification of the onset of the insolvency proceedings.

Failure to inform the water companies could lead to confusion and supplies being disconnected.