

Regulations made by the Secretary of State, laid before Parliament under section 43 of the Corporate Insolvency and Governance Act 2020, for approval by resolution of each House of Parliament within 40 days beginning with the day on which the Regulations were made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2020 No. 943

**INSOLVENCY
ENERGY**

**The Insolvency (Moratorium) (Special Administration
for Energy Licensees) Regulations 2020**

Made - - - - 2nd September 2020

Laid before Parliament 4th September 2020

Coming into force in accordance with regulation 1(2)

The Secretary of State makes the following Regulations in exercise of the powers conferred by section A50(1) of the Insolvency Act 1986⁽¹⁾.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Insolvency (Moratorium) (Special Administration for Energy Licensees) Regulations 2020.

(2) These Regulations come into force on the day after the day on which they are made.

(3) In these Regulations—

“the 1986 Act” means the Insolvency Act 1986⁽²⁾;

“energy supply company” has the meaning given in section 94(5) of the Energy Act 2011⁽³⁾;

“protected energy company” has the meaning given in section 154(5) of the Energy Act 2004⁽⁴⁾; and

“smart meter communication licensee” has the meaning given in section 2(5) of the Smart Meters Act 2018⁽⁵⁾.

(1) 1986 c. 45; section A50 was inserted by section 1 of the Corporate Insolvency and Governance Act 2020 (c. 12).

(2) 1986 c. 45.

(3) 2011 c. 16.

(4) 2004 c. 20.

(5) 2018 c. 14.

Modification of application of Part A1 of the 1986 Act (moratorium)

2. Part A1 of the 1986 Act⁽⁶⁾ applies in relation to a protected energy company, a smart meter communication licensee or an energy supply company with the modifications set out in regulations 3 to 10.

Modification of section A3 (obtaining a moratorium by filing or lodging documents at court)

3. Section A3 of the 1986 Act applies as if, after subsection (3), there were inserted—

“(4) Where the company is a protected energy company, a smart meter communication licensee or an energy supply company, the directors of the company must, within one business day of filing the relevant documents with the court under subsection (2), give a copy of the relevant documents to the Secretary of State and GEMA.”.

Modification of section A4 (obtaining a moratorium for company subject to winding-up petition)

4. Section A4 of the 1986 Act applies as if, after subsection (3), there were inserted—

“(3A) Where the company is a protected energy company, a smart meter communication licensee or an energy supply company, the directors of the company must, within one business day of filing an application with the court under subsection (2), notify the Secretary of State and GEMA that the application has been made.

(3B) A notice under subsection (3A) must be accompanied by—

- (a) a copy of the application, and
- (b) a copy of the relevant documents filed with the court.”.

Modification of section A5 (obtaining a moratorium for other overseas companies)

5. Section A5 of the 1986 Act applies as if, after subsection (3), there were inserted—

“(3A) Where the company is a protected energy company, a smart meter communication licensee or an energy supply company, the directors of the company must, within one business day of filing an application with the court under subsection (2), notify the Secretary of State and GEMA that the application has been made.

(3B) A notice under subsection (3A) must be accompanied by—

- (a) a copy of the application, and
- (b) a copy of the relevant documents filed with the court.”.

Modification of section A8 (obligations to notify where moratorium comes into force)

6. Section A8 of the 1986 Act applies as if, after subsection (2)(d), there were inserted—

“(e) in a case where the company is a protected energy company, a smart meter communication licensee or an energy supply company, the Secretary of State and GEMA.”.

Modification of section A17 (obligations to notify change in end of moratorium)

7. Section A17 of the 1986 Act applies as if—

- (a) after subsection (1), there were inserted—

(6) Part A1 was inserted by section 1 of the Corporate Insolvency and Governance Act 2020 (c. 12).

“(1A) The table imposes obligations on the directors of a protected energy company, a smart meter communication licensee or an energy supply company to give documents to the Secretary of State and GEMA where a moratorium for the company is extended or comes to an end.

	<i>Where a moratorium is extended or comes to an end under or by virtue of the following provision</i>	<i>the directors must (except for any document that the directors have already given to them) give to the Secretary of State and GEMA a copy of</i>
1	Section A10	The documents filed with the court under section A10(1).
2	Section A11	The documents filed with the court under section A11(1).
3	Section A13(4)	The application under section A13(1), the documents filed with the court under section A13(2), and the court order made under section A13(4).
4	Section A13(7)(a)	The application under section A13(1) and the documents filed with the court under section A13(2).
5	Section A13(7)(b)(ii)	The application under section A13(1), the documents filed with the court under section A13(2), any withdrawal of the application and any court order made under section A13(7)(b)(ii).
6	Section A14(2)(a)	The proposal referred to in section A14(1)(a).
7	Section A14(2)(b)	The proposal referred to in section A14(1)(a).
8	Section A15	The application referred to in section A15(1)(a), and any court order made under section A15(2).
9	Section A42	The court order made under section A42(4).
10	Section A44	The court order made under section A44(3).

(1B) The documents specified in subsection (1A) must be given to the Secretary of State and GEMA within five business days beginning with the day on which the directors give the notice under subsection (1).”;

(b) after subsection (4), there were inserted—

“(4A) A notice required to be given by the monitor under subsection (2) or (3) to the Secretary of State and GEMA must be given within five business days beginning with the day on which the duty to give the notice arises.”; and

(c) after subsection (8)(d), there were inserted—

“(e) in a case where the company is a protected energy company, a smart meter communication licensee or an energy supply company, the Secretary of State and GEMA.”.

Modification of section A20 (restrictions on insolvency proceedings etc)

8. Section A20 of the 1986 Act applies as if, after subsection (2), there were inserted—

“(2A) Subsection (1)(e) does not prevent an application being made by the Secretary of State or GEMA for an energy administration order, a smart meter communication licensee

administration order or an energy supply company administration order in respect of the company.”.

Modification of section A21 (restrictions on enforcement and legal proceedings)

9. Section A21 of the 1986 Act applies as if, after subsection (5), there were inserted—

“(5A) Subsection (1)(e) does not prevent GEMA from instituting, carrying out or continuing any legal process, without the permission of the court, in relation to a protected energy company, a smart meter communication licensee or an energy supply company.”.

Modification of section A54 (interpretation of Part A1: general)

10. Section A54(1) of the 1986 Act applies as if, in the appropriate places, there were inserted—

““energy administration order” has the meaning given in section 154(1) of the Energy Act 2004(7);”

““energy supply company” has the meaning given in section 94(5) of the Energy Act 2011(8);”

““energy supply company administration order” has the meaning given in section 94(1) of the Energy Act 2011;”

““GEMA” means the Gas and Electricity Markets Authority(9);”

““protected energy company” has the meaning given in section 154(5) of the Energy Act 2004;”

““smart meter communication licensee” has the meaning given in section 2(5) of the Smart Meters Act 2018(10);”

““smart meter communication licensee administration order” has the meaning given in section 2(1) of the Smart Meters Act 2018;”.

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Department for Business, Energy and Industrial
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2nd September 2020

(7) 2004 c. 20.

(8) 2011 c. 16.

(9) The Gas and Electricity Markets Authority was established under section 1(1) of the Utilities Act 2000 (c. 27).

(10) 2018 c. 14.

EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument modifies the application of the moratorium regime in Part A1 of the Insolvency Act 1986 (c. 45) (“the moratorium regime”) to “protected energy companies” (companies that hold an electricity distribution or transmission licence or a gas transporter licence), a “smart meter communication licensee” and “energy supply companies” (companies that hold an electricity or gas supply licence).

Regulations 3, 4 and 5 modify the procedure for these companies to obtain or apply for a moratorium, by requiring their directors to notify the Secretary of State and the energy regulator, the Gas and Electricity Markets Authority (“GEMA”), that they have obtained or have applied to court for a moratorium.

Regulations 6 and 7 modify the obligations on monitors and directors of those companies when a moratorium comes into force, has been extended, or come to an end. The monitor is required to notify, and the directors are required to give specified documents to, the Secretary of State and GEMA.

Regulations 8 and 9 modify restrictions on legal processes during a moratorium. Regulation 8 allows the Secretary of State or GEMA to apply for an energy administration order, a smart meter communication licensee administration order or an energy supply company administration order. These orders would respectively place a company under a special administration regime under: Chapter 3 of Part 3 of the Energy Act 2004 (c. 20) in respect of protected energy companies; sections 2 to 10 of the Smart Meters Act 2018 (c. 14) in respect of a smart meter communication licensee; or Chapter 5 of Part 2 of the Energy Act 2011 (c. 16) in respect of energy supply companies. Regulation 9 allows GEMA to institute, carry out or continue legal processes in relation to these companies without the court’s permission.

Regulation 10 modifies the general interpretation provision for the moratorium regime to include definitions for terms contained in the modifications.

A full impact assessment has not been produced for this instrument as no impact, or no significant impact on the private, public or voluntary sectors is foreseen.