

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

THE INSOLVENCY (MORATORIUM) (SPECIAL
ADMINISTRATION FOR ENERGY LICENCEES)
(REGULATIONS) 2020

Wednesday 30 September 2020

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The Committee consisted of the following Members:

Chair: †PHILIP DAVIES

Abrahams, Debbie (*Oldham East and Saddleworth*)
(Lab)

Ali, Rushanara (*Bethnal Green and Bow*) (Lab)

† Bailey, Shaun (*West Bromwich West*) (Con)

† Bristow, Paul (*Peterborough*) (Con)

† Browne, Anthony (*South Cambridgeshire*) (Con)

† Fletcher, Mark (*Bolsover*) (Con)

† Fletcher, Nick (*Don Valley*) (Con)

† Furniss, Gill (*Sheffield, Brightside and
Hillsborough*) (Lab)

† Garnier, Mark (*Wyre Forest*) (Con)

† Hollinrake, Kevin (*Thirsk and Malton*) (Con)

† Kwarteng, Kwasi (*Minister for Business, Energy and
Clean Growth*)

McDonagh, Siobhain (*Mitcham and Morden*) (Lab)

† Onwurah, Chi (*Newcastle upon Tyne Central*) (Lab)

† Tarry, Sam (*Ilford South*) (Lab)

Thompson, Owen (*Midlothian*) (SNP)

† Tomlinson, Michael (*Lord Commissioner of Her
Majesty's Treasury*)

† Williams, Craig (*Montgomeryshire*) (Con)

Seb Newman, *Committee Clerk*

† **attended the Committee**

Fourth Delegated Legislation Committee

Wednesday 30 September 2020

[PHILIP DAVIES *in the Chair*]

The Insolvency (Moratorium) (Special Administration for Energy Licencees) (Regulations) 2020

9.25 am

The Minister for Business, Energy and Clean Growth (Kwasi Kwarteng): I beg to move,

That the Committee has considered the Insolvency (Moratorium) (Special Administration for Energy Licencees) (Regulations) 2020 (S.I. 2020, No. 943).

It is always a pleasure to conduct these affairs under your chairmanship, Mr Davies. The regulations were made on 2 September and laid before the House on 4 September. The Committee will be aware that the Corporate Insolvency and Governance Act 2020 introduced a free-standing moratorium regime for companies in financial distress. Those companies were allowed a breathing space from their creditors to pursue a rescue or restructure.

The regulations modify the way in which that moratorium regime, inserted into the Insolvency Act 1986 last year, applies with respect to companies that hold an electricity distribution or transmission licence or a gas transporter licence, to a smart meter communication licensee, and to companies that hold an electricity or gas supply licence.

The purpose of the regulations is to require a relevant energy company such as those I have described to notify the Secretary of State and Ofgem when it applies for, enters, extends or ends a moratorium under part A1 of the Insolvency Act. The regulations will avoid any delay to the ability of the Secretary of State or Ofgem to make a decision about whether to apply for a special administration order.

The regulations also modify the part A1 restrictions on enforcement and legal proceedings during a moratorium, so that Ofgem can continue to engage in legal processes, including enforcing licence obligations and revoking licences, without first having to seek the court's permission. That feature of the regulations will enable Ofgem to act promptly to protect consumers. It should be noted that special administration has never been used in the energy sector, and the Government's view is that it remains an unlikely resort.

The regulations are a short, simple and proportionate step to align the changes that the Government have made to provide businesses with flexibility and breathing space, which they need to continue trading during difficult times. They are also necessary to protect the interests of energy consumers and other market participants.

9.28 am

Chi Onwurah (Newcastle upon Tyne Central) (Lab): It is a great pleasure to serve under your chairship to consider this important statutory instrument, Mr Davies.

As winter approaches, and more and more of our constituents are required to stay at home to protect themselves and their families from coronavirus, the Office for National Statistics has said that nearly half of all workers were working from home in June, and a further 2.2 million vulnerable people have been required to shield themselves. I say that to emphasise that the provision of energy to our homes is of particular importance now. There are now, according to Ofgem, more than 60 energy suppliers in the UK providing jobs and services to tens of millions of us. Although discussion about the sector is often dominated by the topic of the big six, there are many smaller energy companies currently at threat.

Insolvencies of energy companies have occurred in increasing numbers in recent years because of undercapitalisation of new entrants in the supply market, over-optimistic plans for growth and new customers, and inadequate provision for levies and other requirements on energy companies that are part of the funding landscape. Five relatively small energy providers—with fewer than 200,000 customers—went bankrupt last year, and since 2016 a total of 13 such companies, some of which were considerably larger, have gone under.

As the Minister said, the SI modifies the working of the moratorium regime in part A1 of the Insolvency Act 1986 in respect of particular energy companies involved in provision or distribution of gas, electricity and smart meter services. Currently, companies in distress can enter a moratorium period to enable possible restructuring and rescue activities to take place while in administration. The modifications that the SI introduces will require struggling companies to notify the Department for Business, Energy and Industrial Strategy that they are in a moratorium, so that the Secretary of State can consider whether to apply for a special administration order that will enable Ofgem to protect continuity of supply and, if appropriate, commence proceedings for the transfer of supply to another company through the supplier of last resort proceedings.

There is some fear about the solvency of a number of energy supply companies as a result of the financial losses that have occurred as a result of measures relating to bill payments and increasing bad debts. That could lead to companies defaulting on levy payments due in October. If that occurs, Ofgem will manage the insolvency by a series of stages to prevent a company from taking on new customers if it is seen to be failing in its licence obligations and then will enter supplier of last resort arrangements when the company is no longer able to trade.

With companies inevitably falling into those arrangements following insolvency, can the Minister tell us to what extent socialisation of compensation for companies taking over customers of failed concerns will have a detrimental effect on bill payers generally and the finances of other more stable companies? Is he considering any changes to the supplier of last resort compensation regime to make that less of a customer and company burden in the future?

In effect, the process is equivalent to a competitive bid from other energy companies for the customers of the failed company, with provisions about continuity of tariffs, prices and so on being part of the bid process. The company taking over the customers may be compensated for the work involved in doing so through

payments socialised across the sector. Because of the risk of a high number of sizeable companies going bust, those payments have become a real source of concern for stable energy companies that find themselves having to underwrite payments for failed companies that may have previously tried to undercut them with cheap but unsustainable customer tariffs.

A substantial cause of collapse appears to be the borrowing of levy payment liabilities by troubled energy companies, using the sums required to pay those levies to keep themselves afloat. The levy payment is due each October and, historically, troubled companies have defaulted on payments of levies at that point, leading to notices issued against them from Ofgem, and either arrangements to pay the levy in instalments or effective foreclosure on the company. In 2019 we lost eight domestic energy suppliers, meaning half a million customers were moved to suppliers they did not pick, with 87% ending up back at one of the big six companies. Is the Minister considering either short or long-term changes to the conditions for the payment of the levies by energy companies in the light of the this year's circumstances?

A combination of the energy price cap, the effects of covid-19 and the imminent emergence of this year's levy payment point may cause a further number of energy companies to go under this year, something that the Government are effectively acknowledging through the SI. Can the Minister tell me how many companies he anticipates may become insolvent this October because of covid-19 price cap problems? How many does he fear may go under because of continued problems associated with the management of finances and payment obligations? Will his Department seek to distinguish between those companies that are in difficulty because of immediate problems and those that are in difficulty because of their own business models and poor management of liabilities? I recognise that that may be difficult to achieve. It is important to have a view on those questions, because it is important for Ofgem to manage these eventualities and ensure continuity of supply, particularly at this time.

Labour has always supported a competitive energy market that provides cheap and reliable services to consumers, and the rights of consumers always to have access to the essential energy provisions that they need. With winter approaching and the virus again spreading, we must do all we can to ensure our constituents do not have to worry about their energy provision. For that reason we will not oppose the regulations, but I would be grateful if the Minister answered some of my questions.

9.35 am

Kwasi Kwarteng: I appreciate that the hon. Member for Southampton, Test (Dr Whitehead) is not in his place, and I welcome the hon. Lady as his temporary replacement, but I detect his hand in many of her remarks; it was extremely characteristic of him to widen the scope of the debate. This is just an SI, but I was asked how many companies I thought would be insolvent. If I had a number, I would certainly never divulge it in this public forum. A lot of the questions posed by the hon. Lady are relevant, but they are not specifically tied to the nature of this debate or our specific requirement to consider the SI. I am happy to engage with her and her colleague in subsequent debates—that is an open

invitation. I thank the hon. Lady for her contribution. I also thank you, Mr Davies, for the patient way in which you have chaired this debate.

Kevin Hollinrake (Thirsk and Malton) (Con): Is my right hon. Friend looking at making it easier for communities to produce and distribute their own energy, and if so, would this SI affect their capability to do so?

Kwasi Kwarteng: I appreciate the enthusiasm of hon. Members to engage with this debate, but we have to be specific about the nature of the SI. I am absolutely happy to debate and talk to my hon. Friend individually about the scope for local communities to engage with energy provision, but the scope of the SI is, unfortunately, very narrowly concerned with the financial distress in which energy companies—as defined in the measure—may find themselves. Those companies will essentially have to pre-warn or give warning to the Secretary of State, so that the Secretary of State and Ofgem can act swiftly to address the situation. That is what the SI relates to, but I am of course happy to debate wider considerations in another forum.

Chi Onwurah: I thank the Minister for his comments and his recognition of the contribution of my hon. Friend the Member for Southampton, Test, the shadow Minister. However, I am slightly confused. As the Minister says, the SI is about insolvency provisions for energy suppliers, yet he seems to believe that any consideration of the likely level of distress and insolvency of energy suppliers, and indeed the impact of covid-19 on the energy market, which has given rise to the need for this SI, to be out of the scope of this debate. I have to say that I find that hard to understand, given that this SI is addressing that issue.

Kwasi Kwarteng: We can get into a debate about what the SI does.

Chi Onwurah: That is the purpose of the meeting.

Kwasi Kwarteng: I have tried to be as clear as possible, but I have been dragged in all sorts of different directions. When financial distress occurs the SI has two provisions. First, it enjoins, instructs or demands that companies give information to the Secretary of State, so that the Secretary of State and Ofgem can intervene. Secondly, it modifies the moratorium regime that the hon. Lady described in respect of those companies and puts restrictions on legal proceedings by creditors of those firms, so it essentially protects those firms in financial distress from their creditors. The causes of the financial distress, the impacts of covid-19, are not actually addressed in the SI.

I am sure the hon. Lady will want to come back on that, but I have resisted by saying that I am prepared to debate those issues in another forum. I do not think this is the right forum in which to engage with that, because we could be here all morning if that is what she wants to do. I am struck by the fact that, if she is very engaged with the debate, so few of her colleagues have attended this critical SI, which rather tugs against her contention that we can debate those wider issues in this format.

Chi Onwurah *rose*—

Kwasi Kwarteng: I am not going to give way. In conclusion, I would like to say that the regulations align the corporate moratorium regime that the Government

[Kwasi Kwarteng]

introduced last summer with existing powers to protect energy consumers and other market participants, and on that basis I commend the regulations to the Committee.

Question put and agreed to.

9.40 am

Committee rose.

