
STATUTORY INSTRUMENTS

2005 No. 2483

The Energy Administration Rules 2005

PART 14

MISCELLANEOUS AND GENERAL

Power of Secretary of State to regulate certain matters

153.—(1) Pursuant to paragraph 27 of Schedule 8 to the 1986 Act the Secretary of State may, subject to the 1986 Act, the 2004 Act, Schedule B1 to the 1986 Act and the Rules, make regulations with respect to any matter provided for in the Rules as relates to the carrying out of the functions of an energy administrator of a protected energy company, including, without prejudice to the generality of the foregoing provision, with respect to the following matters arising in an energy administration—

- (a) the preparation and keeping of books, accounts and other records, and their production to such persons as may be authorised or required to inspect them;
 - (b) the auditing of an energy administrator's accounts;
 - (c) the manner in which an energy administrator is to act in relation to the protected energy company's books, papers and other records, and the manner of their disposal by the energy administrator or others;
 - (d) the supply by the energy administrator to creditors and members of the protected energy company of copies of documents relating to the energy administration and the affairs of the protected energy company (on payment, in such cases as may be specified by the regulations, of the specified fee).
- (2) Regulations made pursuant to paragraph (1) may—
- (a) confer discretion on the court;
 - (b) make non-compliance with any of the regulations a criminal offence;
 - (c) make different provision for different cases, including different provision for different areas; and
 - (d) contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient.

Costs, expenses, etc

154.—(1) All fees, costs, charges and other expenses incurred in the course of the energy administration proceedings are to be regarded as expenses of the energy administration.

- (2) The costs associated with the prescribed part shall be paid out of the prescribed part.

Provable debts

155.—(1) Subject as follows, in energy administration all claims by creditors are provable as debts against the protected energy company, whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) Any obligation arising under a confiscation order made under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002⁽¹⁾ is not provable.

(3) The following are not provable except at a time when all other claims of creditors in the energy administration proceedings (other than any of a kind mentioned in this paragraph) have been paid in full with interest under Rule 56—

(a) any claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000⁽²⁾, not being a claim also arising by virtue of section 382(1)(b) of that Act;

(b) any claim which by virtue of the 1986 Act or any other enactment is a claim the payment of which is to be postponed.

(4) Nothing in this Rule prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

Notices

156.—(1) All notices required or authorised by or under the 1986 Act, the 2004 Act, Schedule B1 to the 1986 Act or the Rules to be given must be in writing, unless it is otherwise provided, or the court allows the notice to be given in some other way.

(2) Where in energy administration proceedings a notice is required to be sent or given by the energy administrator, the sending or giving of it may be proved by means of a certificate by him, or his solicitor, or a partner or an employee of either of them, that the notice was duly posted.

(3) In the case of a notice to be sent or given by a person other than the energy administrator, the sending or giving of it may be proved by means of a certificate by that person that he posted the notice, or instructed another person (naming him) to do so.

(4) A certificate under this Rule may be endorsed on a copy or specimen of the notice to which it relates.

Quorum at meeting of creditors

157.—(1) Any meeting of creditors in energy administration proceedings is competent to act if a quorum is present.

(2) Subject to the next paragraph, a quorum is at least one creditor entitled to vote.

(3) For the purposes of this Rule, the reference to the creditor necessary to constitute a quorum is to those persons present or represented by proxy by any person (including the chairman) and includes persons duly represented under section 375 of the Companies Act.

(4) Where at any meeting of creditors—

(a) the provisions of this Rule as to a quorum being present are satisfied by the attendance of—

(i) the chairman alone, or

(ii) one other person in addition to the chairman, and

(b) the chairman is aware, by virtue of proofs and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote,

the meeting shall not commence until at least the expiry of 15 minutes after the time appointed for its commencement.

(1) 2002 c. 29.

(2) 2000 c. 8.

Evidence of proceedings at meetings

158.—(1) A minute of proceedings at a meeting (held under the 1986 Act, Schedule B1 to the 1986 Act or the Rules) of the creditors or of the members of a protected energy company, signed by a person describing himself as, or appearing to be, the chairman of that meeting is admissible in energy administration proceedings without further proof.

- (2) The minute is prime facie evidence that—
- (a) the meeting was duly convened and held,
 - (b) all resolutions passed at the meeting were duly passed, and
 - (c) all proceedings at the meeting took place.

Documents issuing from Secretary of State

159.—(1) Any document purporting to be, or to contain, any order, directions or certificate issued by the Secretary of State shall be received in evidence and deemed to be or (as the case may be) contain that order or certificate, or those directions, without further proof, unless the contrary is shown.

(2) Paragraph (1) applies whether the document is signed by the Secretary of State himself or an officer on his behalf.

(3) Without prejudice to the foregoing, a certificate signed by the Secretary of State or an officer on his behalf and confirming—

- (a) the making of an order,
- (b) the issuing of any document, or
- (c) the exercise of any discretion, power or obligation arising or imposed under the 1986 Act, the 2004 Act, Schedule B1 to the 1986 Act or the Rules,

is conclusive evidence of the matters dealt with in the certificate.

Forms for use in energy administration proceedings

160.—(1) The forms contained in Schedule 1 to the Rules shall be used in, and in connection with, energy administration proceedings.

(2) The forms shall be used with such variations, if any, as the circumstances may require.

Energy administrator's security

161.—(1) Wherever under the Rules any person has to appoint a person to the office of energy administrator, he is under a duty to satisfy himself that the person appointed or to be appointed has security for the proper performance of his functions.

(2) In any energy administration proceedings the cost of the energy administrator's security shall be defrayed as an expense of the energy administration.

Time-limits

162.—(1) The provisions of CPR(3) Rule 2.8 (time) apply, as regards computation of time, to anything required or authorised to be done by the Rules.

(2) The provisions of CPR rule 3.1(2)(a) (the court's general powers of management) apply so as to enable the court to extend or shorten the time for compliance with anything required or authorised to be done by the Rules.

(3) [S.I. 1998/3132](#).

Service by post

163.—(1) For a document to be properly served by post, it must be contained in an envelope addressed to the person on whom service is to be effected, and pre-paid for either first or second class post.

(2) A document to be served by post may be sent to the last known address of the person to be served.

(3) Where first class post is used, the document is treated as served on the second business day after the date of posting, unless the contrary is shown.

(4) Where second class post is used, the document is treated as served on the fourth business day after the date of posting, unless the contrary is shown.

(5) The date of posting is presumed, unless the contrary is shown, to be the date shown in the post-mark on the envelope in which the document is contained.

General provisions as to service and notice

164. Subject to Rule 163 and 165, CPR Part 6 (service of documents) applies as regards any matter relating to the service of documents and the giving of notice in energy administration proceedings.

Service outside the jurisdiction

165.—(1) CPR Part 6, paragraphs 6.17 to 6.35 (service of process, etc, out of the jurisdiction) do not apply in energy administration proceedings.

(2) Where for the purposes of energy administration proceedings any process or order of the court, or other document, is required to be served on a person who is not in England and Wales, the court may order service to be effected within such time, on such person, at such place and in such manner as it thinks fit, and may also require such proof of service as it thinks fit.

(3) An application under this Rule shall be supported by an affidavit stating—

- (a) the grounds on which the application is made, and
- (b) in what place or country the person to be served is, or probably may be found.

Confidentiality of documents

166.—(1) Where in energy administration proceedings the energy administrator considers, in the case of a document forming part of the records of the proceedings, that—

- (a) it should be treated as confidential, or
- (b) it is of such a nature that its disclosure would be calculated to be injurious to the interests of the creditors or members of a protected energy company,

he may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) Where under this Rule the energy administrator determines to refuse inspection of a document, the person wishing to inspect it may apply to the court for that determination to be overruled; and the court may either overrule it altogether, or sustain it subject to such conditions (if any) as it thinks fit to impose.

(3) Nothing in this Rule entitles the energy administrator to decline to allow the inspection of any proof or proxy.

Notices sent simultaneously to the same person

167. Where under the 1986 Act, the 2004 Act, Schedule B1 to the 1986 Act or the Rules, a document of any description is to be sent to a person (whether or not as a member of a class of persons to whom that same document is to be sent), it may be sent as an accompaniment to any other document or information which the person is to receive, with or without modification or adaptation of the form applicable to that document.

Right to copy documents

168. Where the 1986 Act or the Rules confer a right for any person to inspect documents, the right includes that of taking copies of those documents, on payment—

- (a) in the case of documents on the court's file of proceedings, of the fee chargeable under any order made under section 92 of the Courts Act 2003⁽⁴⁾ and
- (b) otherwise, of the appropriate fee.

Charge for copy documents

169. Where the energy administrator is requested by a creditor or member to supply copies of any documents he is entitled to require the payment of the appropriate fee in respect of the supply of the documents.

Non-receipt of notice of meeting

170. Where in accordance with the 1986 Act, Schedule B1 to the 1986 Act or the Rules a meeting of creditors or other persons is called or summoned by notice, the meeting is presumed to have been duly summoned and held, notwithstanding that not all those to whom the notice is to be given have received it.

Right to have list of creditors

171.—(1) In energy administration proceedings a creditor who under the Rules has the right to inspect documents on the court file also has the right to require the energy administrator to furnish him with a list of the creditors of the protected energy company and the amounts of their respective debts.

This does not apply if a statement of the protected energy company's affairs has been filed in court.

(2) The energy administrator, on being required by any person to furnish that list, shall send it to him, but is entitled to charge the appropriate fee for doing so.

False claim of status as creditor

172.—(1) Where the Rules provide for creditors or members of a protected energy company a right to inspect any documents, whether on the court's file or in the hands of the energy administrator or other person, it is an offence for a person, with the intention of obtaining a sight of documents which he has not under the Rules any right to inspect, falsely to claim a status which would entitle him to inspect them.

(2) A person guilty of an offence under this Rule is liable to imprisonment or a fine, or both.

(4) 2003 c. 39.

The Gazette

173.—(1) A copy of the Gazette containing any notice required by the 1986 Act, Schedule B1 to the 1986 Act or the Rules to be gazetted is evidence of any fact stated in the notice.

(2) In the case of an order of the court notice of which is required by the 1986 Act, Schedule B1 to the 1986 Act or the Rules to be gazetted, a copy of the Gazette containing the notice may in any proceedings be produced as conclusive evidence that the order was made on the date specified in the notice.

(3) Where an order of the court which is gazetted has been varied, and where any matter has been erroneously or inaccurately gazetted, the person whose responsibility it was to procure the requisite entry in the Gazette shall forthwith cause the variation of the order to be gazetted or, as the case may be, a further entry to be made in the Gazette for the purpose of correcting the error or inaccuracy.

Punishment of offences

174.—(1) Schedule 2 to the Rules has effect with respect to the way in which contraventions of the Rules are punishable on conviction.

(2) In relation to an offence under a provision of the Rules specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.

(3) The fourth column shows, in relation to an offence, the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily), a reference to a period of years or months being to a term of imprisonment of that duration.

(4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).

(5) Section 431 of the 1986 Act (summary proceedings), as it applies to England and Wales, has effect in relation to offences under the Rules as to offences under the 1986 Act.

Notice of order under section 176A(5) of the 1986 Act

175.—(1) Where the court makes an order under section 176A(5) of the 1986 Act, it shall as soon as reasonably practicable send two sealed copies of the order to the energy administrator.

(2) Where the court has made an order under section 176A(5) of the 1986 Act, the energy administrator shall, as soon as reasonably practicable, send a sealed copy of the order to the protected energy company.

(3) Where the court has made an order under section 176A(5) of the 1986 Act, the energy administrator shall, as soon as reasonably practicable, give notice to each creditor of whose claim and address he is aware.

(4) Paragraph (3) shall not apply where the court directs otherwise.

(5) The court may direct that the requirement in paragraph (3) is complied with by the energy administrator publishing a notice in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the protected energy company's unsecured creditors stating that the court has made an order disapplying the requirement to set aside the prescribed part.

(6) The energy administrator shall send a copy of the order to the registrar of companies as soon as reasonably practicable after the making of the order.

