
STATUTORY INSTRUMENTS

2006 No. 772

The Energy Administration (Scotland) Rules 2006

PART 11

Miscellaneous and General

Giving of notices, etc.

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

(2) Any reference in the 1986 Act, Schedule B1 to the 1986 Act, the 2004 Act or the Rules to giving, sending or delivering a notice or any such document means, without prejudice to any other way and unless it is otherwise provided, that the notice or document may be sent by post, and that, subject to Rule 69, any form of post may be used. Personal service of the notice or document is permissible in all cases.

(3) Where under the 1986 Act, Schedule B1 to the 1986 Act, the 2004 Act or the Rules a notice or other document is required or authorised to be given, sent or delivered by a person (“the sender”) to another (“the recipient”), it may be given, sent or delivered by any person duly authorised by the sender to do so to any person duly authorised by the recipient to receive or accept it.

(4) Where two or more persons are acting jointly as the energy administrator in energy administration proceedings, the giving, sending or delivering of a notice or document to one of them is to be treated as the giving, sending or delivering of a notice or document to each or all.

Sending by post

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

(2) Any document to be sent by post may be sent to the last known address of the person to whom the document is to be sent.

(3) Where first class post is used, the document is to be deemed to be received 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 to be deemed to be received on the fourth business day after the date of posting, unless the contrary is shown.

Certificate of giving notice, etc.

70.—(1) Where in any proceedings a notice or document is required to be given, sent or delivered by the energy administrator, the date of giving, sending or delivery of it may be proved by means of a certificate signed by him or on his behalf by his solicitor, or a partner or an employee of either of them, that the notice or document was duly given, posted or otherwise sent, or delivered on the date stated in the certificate.

(2) In the case of a notice or document to be given, sent or delivered by a person other than the energy administrator, the date of giving, sending or delivery of it may be proved by means of a certificate by that person that he gave, posted or otherwise sent or delivered the notice or document on the date stated in the certificate, or that he instructed another person (naming him) to do so.

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

(4) A certificate purporting to be signed by or on behalf of the energy administrator, or by the person mentioned in paragraph (2), shall be deemed, unless the contrary is shown, to be sufficient evidence of the matters stated therein.

Validity of proceedings

71. Where in accordance with the 1986 Act, Schedule B1 to the 1986 Act or the Rules a meeting of creditors or other persons is 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.

Evidence of proceedings at meetings

72. A report of proceedings at a meeting of the protected energy company or of the creditors in an energy administration, which is signed by a person describing himself as the chairman of that meeting, shall be deemed, unless the contrary is shown, to be sufficient evidence of the matters contained that report.

Right to list of creditors and copy documents

73.—(1) Subject to Rule 74, in any energy administration proceedings, a creditor who has the right to inspect documents also has the right to require the energy administrator to furnish him with a list of the protected energy company's creditors and the amounts of their respective debts.

(2) Where the energy administrator is requested by the Secretary of State, GEMA, a creditor or member to supply a copy of any document, he is entitled to require payment of the appropriate fee in respect of the supply of that copy.

(3) Subject to Rule 74, where a person has the right to inspect documents, the right includes that of taking copies of those documents, on payment of the appropriate fee.

(4) In this Rule, the appropriate fee means 15 pence per A4 or A5 page and 30 pence per A3 page.

Confidentiality of documents

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

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

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 refuses inspection of a document, the person who made that request may apply to the court for an order to overrule the refusal and the court may either overrule it altogether, or sustain it, either unconditionally or 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 inspection of any claim or proxy.

Energy administrator's caution

75.—(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 caution for the proper performance of his functions.

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

Punishment of offences

76. Section 431 (summary proceedings), as it applies to Scotland, has effect in relation to offences under the Rules as to offences under the 1986 Act.

Forms for use in energy administration proceedings

77.—(1) The forms contained in the Schedule 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.

Fees, expenses, etc.

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

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

Power of court to cure defects in procedure

79.—(1) The court may, on the application of any person having an interest—

- (a) if there has been a failure to comply with any requirement of the 1986 Act, Schedule B1 to the 1986 Act, the 2004 Act or the Rules, make an order waiving any such failure and, so far as practicable, restoring any person prejudiced by the failure to the position he would have been in but for the failure;
- (b) if for any reason anything required or authorised to be done in, or in connection with, the energy administration proceedings cannot be done, make such order as may be necessary to enable that thing to be done.

(2) The court, in an order under paragraph (1), may impose such conditions, including conditions as to expenses, as it thinks fit and may—

- (a) authorise or dispense with the performance of any act in the energy administration proceedings;
- (b) extend or waive any time limit specified in the 1986 Act, Schedule B1 to the 1986 Act, the 2004 Act or the Rules.

(3) An application under paragraph (1)—

- (a) may at any time be remitted by the sheriff to the Court of Session, of his own accord or on an application by any person having an interest;
- (b) shall be so remitted, if the Court of Session so directs on an application by any such person,

if the sheriff or the Court of Session, as the case may be, considers that the remit is desirable because of the importance or complexity of the matters raised by the application.

(4) The energy administrator shall record in the sederunt book the decision of the court.

Sederunt book

80.—(1) The energy administrator shall maintain a sederunt book during his term of office for the purpose of providing an accurate record of the administration of the energy administration.

(2) Without prejudice to the generality of the above paragraph, there shall be inserted in the sederunt book a copy of anything required to be recorded in it by any provision of the 1986 Act or of the Rules.

(3) The energy administrator shall make the sederunt book available for inspection at all reasonable hours by any interested person.

(4) Any entry in the sederunt book shall be sufficient evidence of the facts stated therein, except where it is founded on by the energy administrator in his own interest.

(5) Without prejudice to paragraph (3), the energy administrator shall retain, or shall make arrangements for retention of, the sederunt book for a period of ten years from the date on which the energy administration ends.

(6) Where the sederunt book is maintained in non-documentary form it shall be capable of reproduction in legible form.

Disposal of protected energy company's books, papers and other records

81.—(1) Where a protected energy company has been the subject of energy administration proceedings (“the original proceedings”) which have terminated and other insolvency proceedings (“the subsequent proceedings”) have commenced in relation to that protected energy company, the energy administrator appointed in relation to the original proceedings, shall, before the expiry of the later of—

(a) the period of 30 days following a request to him to do so by the responsible insolvency practitioner appointed in relation to the subsequent proceedings; or

(b) the period of 6 months after the protected energy company entered energy administration, deliver to the responsible insolvency practitioner appointed in relation to the subsequent proceedings the books, papers and other records of the protected energy company.

(2) The energy administrator shall dispose of the books, papers and records of the protected energy company in accordance with the directions of the court or, if by the date which is 12 months after dissolution of the protected energy company no such directions have been given, he may do so after that date in such a way as he deems appropriate.

(3) The energy administrator or former energy administrator shall within 14 days of a request by the Secretary of State give the Secretary of State particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the protected energy company or dividends or other sums due to any person as a member or former member of the protected energy company.

Information about time spent on a case

82.—(1) Subject as set out in this Rule, in respect of any energy administration in which he acts, the energy administrator shall on request in writing made by any person mentioned in paragraph (2), supply free of charge to that person a statement of the kind described in paragraph (3).

(2) The persons referred to in paragraph (1) are—

(a) any creditor in the case; and

(b) any director of the protected energy company.

(3) The statement referred to in paragraph (1) shall comprise in relation to the period beginning with the date of the energy administrator's appointment and ending with the relevant date the following details—

- (a) the total number of hours spent on the case by the energy administrator and any staff assigned to the case during that period;
 - (b) for each grade of individual so engaged, the average hourly rate at which any work carried out by individuals in that grade is charged; and
 - (c) the number of hours spent by each grade of staff during that period.
- (4) In relation to paragraph (3) the “relevant date” means the date next before the date of the making of the request on which the energy administrator has completed any period in office which is a multiple of six months or, where the energy administrator has vacated office, the date that he vacated office.
- (5) Where the energy administrator has vacated office, an obligation to provide information under this Rule shall only arise in relation to a request that is made within 2 years of the date he vacates office.
- (6) Any statement required to be provided to any person under this Rule shall be supplied within 28 days of the date of the receipt of the request by the energy administrator.