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STATUTORY INSTRUMENTS

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**2013 No. 1046**

**The Energy Supply Company Administration Rules 2013**

**PART 1**

Introductory provisions

**Citation and commencement**

1. These Rules may be cited as the Energy Supply Company Administration Rules 2013 and shall come into force on 7th June 2013.

**Construction and interpretation**

2.—(1) In these Rules—

“the 1986 Act” means the Insolvency Act 1986;

“the 2004 Act” means the Energy Act 2004;

“the 2011 Act” means the Energy Act 2011;

“administrative receiver” has the same meaning as in section 156(4) of the 2004 Act;

“the Companies Act” means the Companies Act 2006 <sup>M1</sup>;

“CPR” means the Civil Procedure Rules 1998 <sup>M2</sup>;

“enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003 <sup>M3</sup>;

“GEMA” means the Gas and Electricity Markets Authority;

“insolvency proceedings” has the same meaning as in Rule 13.7 of the Insolvency Rules;

“the Insolvency Rules” means the Insolvency Rules 1986 <sup>M4</sup>;

“pre-energy supply company administration costs” are—

(a) fees charged, and

(b) expenses incurred,

by the energy administrator, or another person qualified to act as an insolvency practitioner, before the energy supply company entered energy supply company administration but with a view to its doing so;

“proxy”, “the proxy-holder” and “the principal” have the meaning given to them in Rule 133(1);

“qualifying floating charge” has the same meaning as in paragraph 14(2) of Schedule B1 to the 1986 Act;

“registrar of companies” means the registrar of companies for England and Wales;

“unpaid pre-energy supply company administration costs” are pre-energy supply company administration costs which had not been paid when the company entered energy supply company administration.

(2) References to provisions of the 1986 Act are, where those provisions have been modified by Schedule 20 to the 2004 Act, references to those provisions as so modified.

(3) References to provisions of the 2004 Act are, where those provisions have been modified by the 2011 Act, references to those provisions as so modified.

(4) Where the energy supply company is a non-GB company within the meaning of section 102 of the 2011 Act, references in these Rules to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain.

(5) Where the energy supply company is an unregistered company, any requirement to deliver information to the registrar of companies applies only if the company is subject to a requirement imposed by virtue of section 1043 and 1046(1) of the Companies Act.

(6) Part 16 of these Rules has effect for their interpretation and application.

#### Marginal Citations

**M1** 2006 c. 46.

**M2** S.I. 1998/3132.

**M3** 2003 c. 39.

**M4** S.I. 1986/1925, as amended by S.I. 1987/1919, 1989/397, 1991/495, 1993/602, 1995/586, 1999/359, 1999/359, 1999/1022, 2001/763, 2002/1307, 2002/2712, 2003/1730, 2004/584, 2004/1070, 2005/527, 2009/642, 2010/686 and 2011/785.

#### Application

3. These Rules apply in relation to energy supply companies which the courts in England and Wales have jurisdiction to wind up.

## PART 2

### Appointment of energy administrator by court

#### Witness statement

4. Where it is proposed to apply to the court for an esc administration order to be made in relation to an energy supply company, the energy supply company administration application must be in Form ESCA1 and a witness statement complying with Rule 6 must be prepared with a view to it being filed with the court in support of the application.

#### Form of application

5.—(1) The application must state by whom it is made and the applicant's address for service.

(2) Where it is made by GEMA, the application must contain a statement that it is made with the consent of the Secretary of State.

(3) There must be attached to the application a written statement which must be in Form ESCA2 by each of the persons proposed to be energy administrator stating—

(a) that the person consents to accept appointment; and

- (b) details of any prior professional relationship(s) that the person has had with the energy supply company to which that person is to be appointed as energy administrator.

### **Contents of application and witness statement**

**6.—(1)** The energy supply company administration application must state that the company is an energy supply company.

- (2) The application must state one or both of the following—
  - (a) the applicant's belief that the energy supply company is, or is likely to be, unable to pay its debts;
  - (b) the Secretary of State has certified that it would be appropriate to petition for the winding up of the energy supply company under section 124A of the 1986 Act <sup>M5</sup> (petition for winding up on grounds of public interest).
- (3) There must be attached to the application a witness statement in support which must contain—
  - (a) a statement of the energy supply company's financial position, specifying (to the best of the applicant's knowledge and belief) the company's assets and liabilities, including contingent and prospective liabilities;
  - (b) details of any security known or believed to be held by the creditors of the energy supply company and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver or to appoint an administrator under paragraph 14 of Schedule B1 to the 1986 Act; if an administrative receiver has been appointed, that fact must be stated;
  - (c) details of any insolvency proceedings in relation to the energy supply company including any petition that has been presented for the winding up of the energy supply company so far as within the immediate knowledge of the applicant;
  - (d) details of any notice served in accordance with section 164 of the 2004 Act by any person intending to enforce any security over the energy supply company's assets, so far as within the immediate knowledge of the applicant;
  - (e) details of any step taken to enforce any such security, so far as within the immediate knowledge of the applicant;
  - (f) details of any application for permission of the court to pass a resolution for the voluntary winding up of the energy supply company, so far as within the immediate knowledge of the applicant;
  - (g) where it is intended to appoint a number of persons as energy administrators, details of the matters set out in section 158(5) of the 2004 Act regarding the exercise of the powers and duties of the energy administrator;
  - (h) any other matters which, in the opinion of those intending to make the application for an esc administration order, will assist the court in deciding whether to make such an order, so far as within the knowledge or belief of the applicant.

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#### **Marginal Citations**

**M5** 1986 c. 45; section 124A was inserted by the Companies Act 1989 (c. 40), section 60(3) and was amended by S.I. 2001/3694; the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) and S.I. 2004/3322.

### **Filing of application**

7.—(1) The application (and all supporting documents) must be filed with the court, with a sufficient number of copies for service and use as provided by Rule 8.

(2) Each of the copies must have applied to it the seal of the court and be issued to the applicant; and on each copy there must be endorsed the date and time of filing.

(3) The court must fix a venue for the hearing of the application and this also must be endorsed on each copy of the application issued under paragraph (2).

(4) After the application is filed, it is the duty of the applicant to notify the court in writing of the existence of any insolvency proceedings, in relation to the energy supply company, as soon as the applicant becomes aware of them.

### **Service of application**

8.—(1) In the following paragraphs of this Rule, references to the application are to a copy of the application issued by the court under Rule 7(2) together with the witness statement required by Rule 4 and the documents attached to the application.

(2) Notification for the purposes of section 156(2) of the 2004 Act must be by way of service in accordance with Rule 10, verified in accordance with Rule 11.

(3) The application must be served in addition to those persons referred to in section 156(2) of the 2004 Act—

- (a) if an administrative receiver has been appointed, on the administrative receiver;
- (b) if there is pending an administration application under Schedule B1 to the 1986 Act, without the modifications made by Schedule 20 to the 2004 Act, on the applicant;
- (c) if there is pending a petition for the winding up of the energy supply company, on the petitioner (and also on the provisional liquidator, if any);
- (d) on any creditor who has served notice in accordance with section 164 of the 2004 Act of the creditor's intention to enforce the creditor's security over property of the energy supply company;
- (e) on the person proposed as energy administrator;
- (f) on the energy supply company;
- (g) if the applicant is the Secretary of State, on GEMA;
- (h) if the applicant is GEMA, on the Secretary of State;
- (i) if a supervisor of a voluntary arrangement under Part I of the 1986 Act has been appointed, on that person.

### **Notice to officers charged with execution of writs or other process**

9. The applicant must as soon as reasonably practicable after filing the application give notice of its being made to—

- (a) any enforcement officer or other officer who to the applicant's knowledge is charged with an execution or other legal process against the energy supply company or its property; and
- (b) any person who to the applicant's knowledge has distrained against the energy supply company or its property.

### **Manner in which service to be effected**

**10.**—(1) Service of the application in accordance with Rule 8 must be effected by the applicant, or the applicant's solicitor, or by a person instructed by the applicant or the applicant's solicitor, not less than 2 business days before the date fixed for the hearing.

(2) Service must be effected as follows—

- (a) on the energy supply company (subject to paragraph (3)), by delivering the documents to its registered office;
- (b) on any other person (subject to paragraph (4)), by delivering the documents to that person's proper address;
- (c) in either case, in such other manner as the court may direct.

(3) If delivery to an energy supply company's registered office is not practicable or if the energy supply company is an unregistered company, service may be effected by delivery to its last known principal place of business in England and Wales.

(4) Subject to paragraph (5), for the purposes of paragraph (2)(b), a person's proper address is any which that person has previously notified as the person's address for service, but if the person has not notified any such address, service may be effected by delivery to the person's usual or last known address.

(5) In the case of a person who—

- (a) is an authorised deposit-taker or a former authorised deposit-taker;
- (b) either—
  - (i) has appointed, or is or may be entitled to appoint, an administrative receiver of the energy supply company; or
  - (ii) is or may be entitled to appoint an administrator of the energy supply company under paragraph 14 of Schedule B1 to the 1986 Act; and
- (c) has not notified an address for service,

the proper address is the address of an office of that person where, to the knowledge of the applicant, the energy supply company maintains a bank account or, where no such office is known to the applicant, the registered office of that person or, if there is no such office, that person's usual or last known address.

(6) In this Rule—

- (a) “authorised deposit-taker” means a person with permission under [F1Part 4A of the Financial Services and Markets Act 2000]<sup>M6</sup> to accept deposits;
- (b) “former authorised deposit-taker” means a person who—
  - (i) is not an authorised deposit-taker,
  - (ii) was formerly—
    - (aa) an authorised institution under the Banking Act 1987 <sup>M7</sup>, or a recognised bank or a licensed institution under the Banking Act 1979 <sup>M8</sup>; or
    - (bb) a person with permission under Part 4 [F2or Part 4A] of the Financial Services and Markets Act 2000; and
  - (iii) continues to have liability in respect of any deposit for which it had a liability at a time when it was an institution, bank or person mentioned in paragraph (ii).

(7) Paragraph (6)(a) and (b) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and

(c) Schedule 22 to that Act.

- F1** Words in rule 10(6)(a) substituted (19.12.2013) by [The Energy Supply Company Administration \(Amendment\) Rules 2013 \(S.I. 2013/2950\)](#), art. 1, **rule 2(a)**
- F2** Words in rule 10(6)(b)(ii)(bb) inserted (19.12.2013) by [The Energy Supply Company Administration \(Amendment\) Rules 2013 \(S.I. 2013/2950\)](#), art. 1, **rule 2(b)**

#### Marginal Citations

- M6** 2000 c. 8.
- M7** 1987 c. 22; repealed by [S.I. 2001/3649](#), **article 3(1)(d)**.
- M8** 1979 c. 37; repealed by the [Banking Act 1987 \(c. 22\)](#), section 108, **Schedule 7, Part 1**.

#### Proof of service

**11.**—(1) Service of the application must be verified by a certificate of service.

(2) The certificate of service must be sufficient to identify the application served and must specify—

- (a) the name and registered number of the energy supply company;
- (b) the address of the registered office of the energy supply company;
- (c) the name of the applicant;
- (d) the court to which the application was made and the court reference number;
- (e) the date of the application;
- (f) whether the copy served was a sealed copy;
- (g) the date on which service was effected; and
- (h) the manner in which service was effected.

(3) The certificate of service must be filed with the court as soon as reasonably practicable after service, and in any event not less than 1 business day before the hearing of the application.

#### The hearing

**12.**—(1) At the hearing of the energy supply company administration application, any of the following may appear or be represented—

- (a) the Secretary of State;
- (b) GEMA;
- (c) the energy supply company;
- (d) one or more of the directors;
- (e) if an administrative receiver has been appointed, that person;
- (f) any person who has presented a petition for the winding-up of the energy supply company;
- (g) the person proposed for appointment as energy administrator;
- (h) any person that is the holder of a qualifying floating charge;
- (i) any person who has applied to the court for an administration order under Schedule B1 to the 1986 Act, without the modifications made by Schedule 20 to the 2004 Act;
- (j) any creditor who has served notice in accordance with section 164 of the 2004 Act of the creditor's intention to enforce the creditor's security over the energy supply company's property;

- (k) any supervisor of a voluntary arrangement under Part I of the 1986 Act;
  - (l) with the permission of the court, any other person who appears to have an interest justifying the person's appearance.
- (2) If the court makes an esc administration order, it must be in Form ESCA3.
- (3) If the court makes an esc administration order, the costs of the applicant, and of any person whose costs are allowed by the court, are payable as an expense of the energy supply company administration.

#### **Notice of esc administration order**

- 13.**—(1) If the court makes an esc administration order, it must as soon as reasonably practicable send two copies of the order to the person who made the application.
- (2) The applicant must send a sealed copy of the order as soon as reasonably practicable to the person appointed as energy administrator.
- (3) If the court makes an order under section 157(1)(d) of the 2004 Act or any other order under section 157(1)(f) of the 2004 Act, it must give directions as to the persons to whom, and how, notice of that order is to be given.

## **PART 3**

### **Process of energy supply company administration**

#### **Notification and advertisement of energy administrator's appointment**

- 14.**—(1) The notice of appointment to be given by the energy administrator as soon as reasonably practicable after appointment must be gazetted and may be advertised in such other manner as the energy administrator thinks fit.
- (2) In addition to the standard contents, the notice under paragraph (1) must state—
- (a) that an energy administrator has been appointed;
  - (b) the date of the appointment; and
  - (c) the nature of the business of the energy supply company.
- (3) The energy administrator must, as soon as reasonably practicable after the date of the esc administration order, give notice of the appointment—
- (a) if the application for the esc administration order was made by the Secretary of State, to GEMA;
  - (b) if the application for the esc administration order was made by GEMA, to the Secretary of State;
  - (c) if a receiver or an administrative receiver has been appointed, to that person;
  - (d) if there is pending a petition for the winding up of the energy supply company, to the petitioner (and to the provisional liquidator, if any);
  - (e) to any person who has applied to the court for an administration order under Schedule B1 to the 1986 Act, without the modifications made by Schedule 20 to the 2004 Act, in relation to the energy supply company;
  - (f) to any enforcement officer who, to the energy administrator's knowledge, is charged with execution or other legal process against the energy supply company;

- (g) to any person who, to the energy administrator's knowledge, has distrained against the energy supply company or its property;
- (h) to any supervisor of a voluntary arrangement under Part I of the 1986 Act;
- (i) to any holder of a qualifying floating charge who, to the energy administrator's knowledge, has served notice in accordance with section 163 of the 2004 Act that the person is seeking to appoint an administrator; and
- (j) to any creditor who, to the energy administrator's knowledge, has served notice in accordance with section 164 of the 2004 Act of that person's intention to enforce that person's security over property of the energy supply company.

(4) Where, under a provision of Schedule B1 to the 1986 Act or these Rules, the energy administrator is required to send a notice of the appointment to any person other than the registrar of companies, the energy administrator must do so in Form ESCA4.

#### **Notice requiring statement of affairs**

**15.**—(1) In this Part “relevant person” shall have the meaning given to it in paragraph 47(3) of Schedule B1 to the 1986 Act.

(2) The energy administrator must send notice in Form ESCA5 to each relevant person whom the energy administrator determines appropriate requiring that person to prepare and submit a statement of the energy supply company's affairs.

(3) The notice must inform each of the relevant persons—

- (a) of the names and addresses of all others (if any) to whom the same notice has been sent;
- (b) of the time within which the statement must be delivered;
- (c) of the effect of paragraph 48(4) of Schedule B1 to the 1986 Act (penalty for non-compliance); and
- (d) of the application to that person, and to each other relevant person, of section 235 of the 1986 Act (duty to provide information, and to attend on the energy administrator, if required).

(4) The energy administrator must furnish each relevant person to whom the energy administrator has sent notice in Form ESCA5 with the forms required for the preparation of the statement of affairs.

#### **Verification and filing**

**16.**—(1) The statement of the energy supply company's affairs must be in Form ESCA6, contain all the particulars required by that form and be verified by a statement of truth by the relevant person.

(2) The energy administrator may require any relevant person to submit a statement of concurrence in Form ESCA7 stating that the person concurs in the statement of affairs. Where the energy administrator does so, the energy administrator must inform the person making the statement of affairs of that fact.

(3) The statement of affairs must be delivered by the relevant person making the statement of truth, together with a copy, to the energy administrator. The relevant person must also deliver a copy of the statement of affairs to all those persons whom the energy administrator has required to make a statement of concurrence.

(4) A person required to submit a statement of concurrence must do so before the end of the period of 5 business days (or such other period as the energy administrator may agree) beginning with the day on which the statement of affairs being concurred with is received by that person.

(5) A statement of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the statement of concurrence is not in agreement with the relevant



person, or that person considers the statement of affairs to be erroneous or misleading, or that person is without the direct knowledge necessary for concurring with it.

(6) Every statement of concurrence must be verified by a statement of truth and be delivered to the energy administrator by the person who makes it, together with a copy of it.

(7) Subject to Rule 17, the energy administrator must as soon as reasonably practicable deliver to the registrar of companies a copy of the statement of affairs and any statement of concurrence.

### **Limited disclosure**

**17.—**(1) Where the energy administrator thinks that it would prejudice the conduct of the energy supply company administration or might reasonably be expected to lead to violence against any person for the whole or part of the statement of the energy supply company's affairs to be disclosed, the energy administrator may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may, on such application, order that the statement or, as the case may be, the specified part of it, must not be delivered to the registrar of companies.

(3) The energy administrator must as soon as reasonably practicable deliver to the registrar of companies a copy of the order and the statement of affairs (to the extent provided by the order) and any statement of concurrence.

(4) If a creditor seeks disclosure of a statement of affairs or a specified part of it in relation to which an order has been made under this Rule, the creditor may apply to the court for an order that the energy administrator disclose it or a specified part of it. The application must be supported by written evidence in the form of a witness statement.

(5) The applicant must give the energy administrator notice of the application at least 3 business days before the hearing.

(6) The court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees just.

(7) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the energy administrator must, as soon as reasonably practicable after the change, apply to the court for the order or any part of it to be rescinded.

(8) The energy administrator must, as soon as reasonably practicable after the making of an order under paragraph (7), deliver to the registrar of companies a copy of the statement of affairs to the extent provided by the order.

(9) When the statement of affairs is filed in accordance with paragraph (8), the energy administrator must, where the energy administrator has sent a statement of proposals under paragraph 49 of Schedule B1 to the 1986 Act, provide the creditors with a copy of the statement of affairs as filed, or a summary thereof.

(10) The provisions of Part 31 of the CPR shall not apply to an application under this Rule.

### **Release from duty to submit statement of affairs; extension of time**

**18.—**(1) The power of the energy administrator under paragraph 48(2) of Schedule B1 to the 1986 Act to give a release from the obligation imposed by paragraph 47(1) of Schedule B1 to the 1986 Act, or to grant an extension of time, may be exercised at the energy administrator's own discretion, or at the request of any relevant person.

(2) A relevant person may, if that person requests a release or extension of time and it is refused by the energy administrator, apply to the court for it.

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it without a hearing but it must not do so without giving the relevant person at least 5 business days' notice, upon receipt of which the relevant person may request the court to list the application for a without notice hearing. If the application is not dismissed, the court must fix a venue for it to be heard, and give notice to the relevant person accordingly.

(4) The relevant person must, at least 14 days before the hearing, send to the energy administrator a notice stating the venue and accompanied by a copy of the application and of any evidence which the relevant person intends to adduce in support of it.

(5) The energy administrator may appear and be heard on the application and, whether or not the energy administrator appears, the energy administrator may file a written report of any matters which the energy administrator considers ought to be drawn to the court's attention. If such a report is filed, a copy of it must be sent by the energy administrator to the relevant person, not later than 5 business days before the hearing.

(6) Sealed copies of any order made on the application must be sent by the court to the relevant person and the energy administrator.

(7) On any application under this Rule the relevant person's costs must be paid in any event by the relevant person and, unless the court otherwise orders, no allowance towards them shall be made as an expense of the energy supply company administration.

#### **Expenses of statement of affairs**

**19.**—(1) A relevant person making the statement of affairs of the energy supply company or a statement of concurrence must be allowed, and paid by the energy administrator as an expense of the energy supply company administration, any expenses incurred by the relevant person in so doing which the energy administrator considers reasonable.

(2) Any decision by the energy administrator under this Rule is subject to appeal to the court.

(3) Nothing in this Rule relieves a relevant person of any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the energy administrator.

#### **Energy administrator's proposals**

**20.**—(1) The energy administrator must, under paragraph 49 of Schedule B1 to the 1986 Act, make a statement and deliver it to the registrar of companies.

(2) The statement must include, in addition to those matters set out in paragraph 49 of Schedule B1 to the 1986 Act—

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) the full name, registered address, registered number and any other trading names of the energy supply company;
- (c) details relating to the energy administrator's appointment, including the date of appointment and whether the application was made by the Secretary of State or GEMA and, where there are joint energy administrators, details of the matters set out in section 158(5) of the 2004 Act;
- (d) the names of the directors and secretary of the energy supply company and details of any shareholdings in the energy supply company they may have;
- (e) an account of the circumstances giving rise to the appointment of the energy administrator;
- (f) if a statement of the energy supply company's affairs has been submitted, a copy or summary of it, with the energy administrator's comments, if any;

- (g) if an order limiting the disclosure of the statement of affairs (under Rule 17) has been made, a statement of that fact, as well as—
    - (i) details of who provided the statement of affairs;
    - (ii) the date of the order of limited disclosure; and
    - (iii) the details or summary of the details that are not subject to that order;
  - (h) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held;
  - (i) if no statement of affairs has been submitted, details of the financial position of the energy supply company at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the energy supply company entered energy supply company administration), a list of the energy supply company's creditors including their names, addresses and details of their debts, including any security held, and an explanation as to why there is no statement of affairs;
  - (j) (except where the energy administrator proposes a voluntary arrangement in relation to the energy supply company and subject to paragraph (5))—
    - (i) to the best of the energy administrator's knowledge and belief—
      - (aa) an estimate of the value of the prescribed part (whether or not the energy administrator proposes to make an application to court under section 176A(5) of the 1986 Act <sup>M9</sup> or section 176A(3) of the 1986 Act applies); and
      - (bb) an estimate of the value of the energy supply company's net property; and
    - (ii) whether, and if so, why, the energy administrator proposes to make an application to court under section 176A(5) of the 1986 Act;
  - (k) a statement complying with paragraph (3) of any pre-energy supply company administration costs charged or incurred by the energy administrator or, to the energy administrator's knowledge, by any other person qualified to act as an insolvency practitioner;
  - (l) a statement (which must comply with paragraph (4) where that paragraph applies) of how it is envisaged the objective of the energy supply company administration will be achieved and how it is proposed that the energy supply company administration shall end;
  - (m) the manner in which the affairs and business of the energy supply company—
    - (i) have, since the date of the energy administrator's appointment, been managed and financed, including, where any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made; and
    - (ii) will continue to be managed and financed; and
  - (n) such other information (if any) as the energy administrator thinks necessary.
- (3) A statement of pre-energy supply company administration costs complies with this paragraph if it includes—
- (a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;
  - (b) details of the work done for which the fees were charged and expenses incurred;
  - (c) an explanation of why the work was done before the energy supply company entered energy supply company administration and how it would further the achievement of the objective of the energy supply company administration;
  - (d) a statement of the amount of the pre-energy supply company administration costs, setting out separately—

- (i) the fees charged by the energy administrator;
  - (ii) the expenses incurred by the energy administrator;
  - (iii) the fees charged (to the energy administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately); and
  - (iv) the expenses incurred (to the energy administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately);
- (e) a statement of the amounts of pre-energy supply company administration costs which have already been paid (set out separately as under sub-paragraph (d));
  - (f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person (set out separately as under sub-paragraph (d));
  - (g) a statement of the amounts of unpaid pre-energy supply company administration costs (set out separately as under paragraph (d)); and
  - (h) a statement that the payment of unpaid pre-energy supply company administration costs as an expense of the energy supply company administration is subject to approval under Rule 37.
- (4) This paragraph applies where it is proposed that the energy supply company administration will end by the energy supply company moving to a creditors' voluntary liquidation; and in that case, the statement required by paragraph (2)(l) must include—
- (a) details of the proposed liquidator;
  - (b) where applicable, the declaration required by section 231 of the 1986 Act; and
  - (c) a statement that the creditors may nominate a different person as liquidator in accordance with paragraph 83(7) of Schedule B1 to the Insolvency Act 1986 and Rule 81(2).
- (5) Nothing in paragraph (2)(j) is to be taken as requiring any such estimate to include any information, the disclosure of which could seriously prejudice the commercial interests of the energy supply company. If such information is excluded from the calculation the estimate must be accompanied by a statement to that effect.
- (6) Where the court orders, upon an application by the energy administrator under paragraph 107 of Schedule B1 to the 1986 Act, an extension of the period of time in paragraph 49(5) of Schedule B1 to the 1986 Act, the energy administrator must as soon as reasonably practicable after the making of the order—
- (a) notify in Form ESCA8 every creditor of the energy supply company and every member of the energy supply company of whose address (in either case) the energy administrator is aware; and
  - (b) deliver a copy of the information to the registrar of companies.
- (7) Where the energy administrator wishes to publish a notice under paragraph 49(6) of Schedule B1 to the 1986 Act, the notice must be advertised in such manner as the energy administrator thinks fit.
- (8) In addition to the standard contents, the notice under paragraph (7) must state—
- (a) that members can write for a copy of the statement of proposals for achieving the purpose of energy supply company administration; and
  - (b) the address to which to write.
- (9) This notice must be published as soon as reasonably practicable after the energy administrator sends the statement of proposals to the energy supply company's creditors but no later than 8 weeks

(or such other period as may be agreed by the creditors or as the court may order) from the date that the energy supply company entered energy supply company administration.

**Marginal Citations**

**M9** 1986 c. 45; section 176A inserted by the Enterprise Act 2002 (c. 40), section 252.

**Limited disclosure of paragraph 49 of Schedule B1 to the 1986 Act statement**

**21.—(1)** Where the energy administrator thinks that it would prejudice the conduct of the energy supply company administration or might reasonably be expected to lead to violence against any person for any of the matters specified in Rule 20(2)(h) and (i) to be disclosed, the energy administrator may apply to the court for an order of limited disclosure in respect of any specified part of the statement under paragraph 49 of Schedule B1 to the 1986 Act.

(2) The court may, on such application, order that some or all of the specified part of the statement must not be delivered to the registrar of companies or to creditors or members of the energy supply company as otherwise required by paragraph 49(4) of Schedule B1 to the 1986 Act.

(3) The energy administrator must as soon as reasonably practicable send to the persons specified in paragraph 49(4) to Schedule B1 to the 1986 Act the statement under paragraph 49 of Schedule B1 to the 1986 Act (to the extent provided by the order) and an indication of the nature of the matter in relation to which the order was made.

(4) The energy administrator must also deliver a copy of the order to the registrar of companies.

(5) A creditor who seeks disclosure of a part of a statement under paragraph 49 of Schedule B1 to the 1986 Act in relation to which an order has been made under this Rule may apply to the court for an order that the energy administrator disclose it. The application must be supported by written evidence in the form of a witness statement.

(6) The applicant must give the energy administrator notice of the application at least 3 business days before the hearing.

(7) The court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees just.

(8) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the energy administrator must, as soon as reasonable practicable after the change, apply to the court for the order or any part of it to be rescinded.

(9) The energy administrator must, as soon as reasonably practicable after the making of an order under paragraph (8), send to the persons specified in paragraph 49(4) of Schedule B1 to the 1986 Act a copy of the statement under paragraph 49 of Schedule B1 to the 1986 Act to the extent provided by the order.

(10) The provisions of CPR Part 31 do not apply to an application under this Rule.

## PART 4

### Meetings and reports

#### CHAPTER 1

##### Creditors' meetings

###### **Creditors' meetings generally**

**22.**—(1) This Rule applies to creditors' meetings summoned by the energy administrator under paragraph 62 of Schedule B1 to the 1986 Act.

(2) Notice of a creditors' meeting must be in Form ESCA9.

(3) In fixing the venue for the meeting, the energy administrator must have regard to the convenience of creditors and the meeting must be summoned for commencement between 10.00 and 16.00 on a business day, unless the court otherwise directs.

(4) Subject to paragraphs (6) and (7), at least 14 days' notice of the meeting must be given to all creditors who are known to the energy administrator and had claims against the energy supply company at the date when the energy supply company entered energy supply company administration unless that creditor has subsequently been paid in full, and the notice must—

- (a) specify the purpose of the meeting;
- (b) contain a statement of the effect of Rule 25 (entitlement to vote); and
- (c) contain the forms of proxy.

(5) As soon as reasonably practicable after notice of the meeting has been given, the energy administrator must have gazetted a notice which, in addition to the standard contents, must state—

- (a) that a creditors' meeting is to take place;
- (b) the venue fixed for the meeting;
- (c) the purpose of the meeting; and
- (d) a statement of the effect of Rule 25 (entitlement to vote).

(6) If within 30 minutes from the time fixed for the commencement of the meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, the business day immediately following.

(7) If within 30 minutes from the time fixed for the commencement of the meeting those persons attending the meeting do not constitute a quorum, the chair may adjourn the meeting to such time and place as the chair may appoint.

(8) Once only in the course of the meeting the chair may, without an adjournment, declare the meeting suspended for a period up to 1 hour.

(9) The chair may, and must if the meeting so resolves, adjourn the meeting to such time and place as seems to the chair to be appropriate in the circumstances.

(10) An adjournment under paragraph (9) must not be for a period of more than 14 days, subject to a direction of the court.

(11) If there are subsequently further adjournments, the final adjournment must not be to a day later than 14 days after the date on which the meeting was originally held, subject to a direction of the court.

(12) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to 12.00 hours on the business day immediately before the adjourned meeting.

(13) Paragraph (3) applies with regard to the venue fixed for a meeting adjourned under this Rule.

### **The chair at meetings**

**23.**—(1) At any meeting of creditors summoned by the energy administrator, either the energy administrator shall be chair, or a person nominated by the energy administrator in writing to act in the energy administrator's place.

(2) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the energy supply company; or
- (b) an employee of the energy administrator or the energy administrator's firm who is experienced in insolvency matters.

(3) Where the chair holds a proxy which includes a requirement to vote for a particular resolution and no other person proposes that resolution—

- (a) the chair must propose it unless the chair considers that there is good reason for not doing so; and
- (b) if the chair does not propose it, the chair must as soon as reasonably practicable after the meeting notify the principal of the reason why not.

### **Creditors' meeting for nomination of alternative liquidator**

**24.**—(1) Where under Rules 20(4) or 32(2)(g) the energy administrator has proposed that the energy supply company enter creditors' voluntary liquidation once the energy supply company administration has ended, the energy administrator must, in the circumstances detailed in paragraph (2), call a meeting of creditors for the purpose of nominating a person other than the person named as proposed liquidator in the energy administrator's proposals or revised proposals.

(2) The energy administrator must call a meeting of creditors where such a meeting is requested by creditors of the energy supply company whose debts amount to at least 10 per cent of the total debts of the energy supply company.

(3) The request for a creditors' meeting for the purpose set out in paragraph (1) must be in Form ESCA10. A request for such a meeting must be made within 8 business days of the date on which the energy administrator's statement of proposals is sent out.

(4) A request under this Rule must include—

- (a) a list of creditors concurring with the request, showing the amounts of the respective debts in the energy supply company administration; and
- (b) from each creditor concurring, written confirmation of the creditor's concurrence,

but this paragraph does not apply if the requesting creditor's debt is alone sufficient without the concurrence of other creditors.

(5) A meeting requested under this Rule must be held within 28 days of the energy administrator's receipt of the notice requesting the meeting.

### **Entitlement to vote**

**25.**—(1) Subject as follows, at a meeting of creditors in energy supply company administration proceedings a person is entitled to vote only if—

- (a) the person has given to the energy administrator, not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the debt which the person claims to be due to that person from the energy supply company;
- (b) the claim has been duly admitted under Rule 26 or this Rule; and

- (c) there has been lodged with the energy administrator any proxy which the person intends to be used on the person's behalf,

and details of the debt must include any calculation for the purposes of Rules 27 to 29.

(2) The chair of the meeting may allow a creditor to vote, notwithstanding that the creditor has failed to comply with paragraph (1)(a), if satisfied that the failure was due to circumstances beyond the creditor's control.

(3) The chair of the meeting may call for any document or other evidence to be produced to the chair, where the chair thinks it necessary for the purpose of substantiating the whole or any part of the claim.

(4) Votes are calculated according to the amount of a creditor's claim as at the date on which the energy supply company entered energy supply company administration, less any payments that have been made to the creditor after that date in respect of the claim and any adjustment by way of set-off in accordance with Rule 54 as if that Rule were applied on the date that the votes are counted.

(5) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chair agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(6) No vote shall be cast by virtue of a claim more than once on any resolution put to the meeting.

#### **Admission and rejection of claims**

**26.**—(1) At any creditors' meeting the chair has power to admit or reject a creditor's claim for the purpose of the creditor's entitlement to vote; and the power is exercisable with respect to the whole or any part of the claim.

(2) The chair's decision under this Rule, or in respect of any matter arising under Rule 25, is subject to appeal to the court by any creditor.

(3) If the chair is in doubt whether a claim should be admitted or rejected, the chair must mark it as objected to and allow the creditor to vote, subject to the creditor's vote being subsequently declared invalid if the objection to the claim is sustained.

(4) If on appeal the chair's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just.

(5) An application to the court by way of appeal under this Rule against a decision of the chair must be made not later than 21 days after the date of the meeting.

(6) Neither the energy administrator nor any person nominated by the energy administrator to be chair is personally liable for costs incurred by any person in respect of an appeal to the court under this Rule, unless the court makes an order to that effect.

#### **Secured creditors**

**27.** At a meeting of creditors a secured creditor is entitled to vote only in respect of the balance (if any) of the creditor's debt after deducting the value of the creditor's security as estimated by the creditor.

#### **Holders of negotiable instruments**

**28.** A creditor must not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing—

- (a) to treat the liability to the creditor on the bill or note of every person who is liable on it antecedently to the energy supply company, and against whom a bankruptcy order has



not been made (or, in the case of an energy supply company, which has not gone into liquidation), as a security in the creditor's hands; and

- (b) to estimate the value of the security and, for the purpose of the creditor's entitlement to vote (but not for dividend), to deduct it from the creditor's claim.

### **Hire-purchase, conditional sale and chattel leasing agreements**

**29.**—(1) Subject as follows, an owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to the owner by the energy supply company on the date that the energy supply company entered energy supply company administration.

(2) In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the making of an energy supply company administration application or any matter arising as a consequence, or of the energy supply company entering energy supply company administration.

### **Resolutions**

**30.**—(1) Subject as follows, at a creditors' meeting in energy supply company administration proceedings, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of it.

(2) Any resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chair's belief, persons connected with the energy supply company.

(3) In the case of a resolution for the nomination of a person to act as liquidator once the energy supply company administration has ended—

- (a) subject to paragraph (4), if on any vote there are two persons put forward by creditors for nomination as liquidator, the person who obtains the most support is nominated as liquidator;
- (b) if there are three or more persons put forward by creditors for nomination as liquidator, and one of them has a clear majority over both or all the others together, that one is nominated as liquidator;
- (c) in any other case, the chair of the meeting must continue to take votes (disregarding at each vote any person who has withdrawn and, if no person has withdrawn, the person who obtained the least support last time), until a clear majority is obtained for any one person.

(4) The support referred to in paragraph (3)(a) must represent a majority in value of all those present (in person or by proxy) at the meeting and entitled to vote.

(5) Where on such a resolution no person is nominated as liquidator, the person named as proposed liquidator in the energy administrator's proposals or revised proposals shall be the liquidator once the energy supply company administration has ended.

(6) The chair may at any time put to the meeting a resolution for the joint appointment of any two or more persons put forward by creditors for nomination as liquidator.

(7) In this Rule “connected with the energy supply company” has the same meaning as “connected with a company” in section 249 of the 1986 Act.

### **Minutes**

**31.**—(1) The chair of the meeting must cause minutes of its proceedings to be kept.

(2) The minutes must be authenticated by the chair, and be retained by the chair as part of the records of the energy supply company administration.

(3) The chair must also cause to be made up and kept a list of all the creditors who attended the meeting.

(4) The minutes must include—

- (a) a list of the names of creditors who attended (personally or by proxy) and their claims; and
- (b) a record of every resolution passed.

### **Revision of the energy administrator's proposals**

**32.**—(1) The energy administrator must, as soon as reasonably practicable, under paragraph 54 of Schedule B1 to the 1986 Act, make a statement setting out the proposed revisions to the energy administrator's proposals and send it to all those to whom the energy administrator is required to send a copy of the revised proposals, attached to Form ESCA11. The energy administrator must also deliver a copy of the statement of proposed revisions to the registrar of companies.

(2) The statement of revised proposals must include—

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) the full name, registered address, registered number and any other trading names of the energy supply company;
- (c) details relating to the energy administrator's appointment, including the date of appointment and whether the energy supply company administration application was made by the Secretary of State or GEMA;
- (d) the names of the directors and secretary of the energy supply company and details of any shareholdings in the energy supply company they may have;
- (e) a summary of the initial proposals and the reason(s) for proposing a revision;
- (f) details of the proposed revision including details of the energy administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors (as the case may be);
- (g) where a proposed revision relates to the ending of the energy supply company administration by a creditors' voluntary liquidation and the nomination of a person to be the proposed liquidator of the energy supply company—
  - (i) details of the proposed liquidator;
  - (ii) where applicable, the declaration required by section 231 of the 1986 Act;
  - (iii) a statement that the creditors may nominate a different person as liquidator in accordance with paragraph 83(7)(a) of Schedule B1 to the 1986 Act and Rule 81(2); and
- (h) any other information that the energy administrator thinks necessary.

(3) Subject to paragraph 54(4) of Schedule B1 to the 1986 Act, within 5 business days of sending out the statement in paragraph (1) above, the energy administrator must send a copy of the statement to every member of the energy supply company.

(4) Any notice to be published by the energy administrator acting under paragraph 54(3) of Schedule B1 to the 1986 Act must be advertised in such manner as the energy administrator thinks fit.

(5) The notice must be published as soon as reasonably practicable after the energy administrator sends the statement to the creditors and in addition to the standard contents must state—

- (a) that members can write for a copy of the statement of revised proposals for the energy supply company administration; and

- (b) the address to which to write.

## Reports

**33.**—(1) The energy administrator must prepare a report (the “progress report”) which includes—

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) full details of the energy supply company's name, address of registered office and registered number;
- (c) full details of the energy administrator's name and address, date of appointment and name and address of the applicant for the energy supply company administration application including any changes in office-holder, and, in the case of joint energy administrators, their functions as set out in the statement made for the purposes of section 158(5) of the 2004 Act;
- (d) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (2) below);
- (e) details of any assets that remain to be realised; and
- (f) any other relevant information for the creditors.

(2) A receipts and payments account must state what assets of the energy supply company have been realised, for what value, and what payments have been made to creditors or others. The account is to be in the form of an abstract showing receipts and payments during the period of the report and where the energy administrator has ceased to act, the receipts and payments account must include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the 1986 Act (prescribed part).

(3) The progress report must cover—

- (a) the period of 6 months commencing on the date that the energy supply company entered energy supply company administration, and every subsequent period of 6 months; and
- (b) when the energy administrator ceases to act, any period from the date of the previous report, if any, and from the date that the energy supply company entered energy supply company administration if there is no previous report, until the time that the energy administrator ceases to act.

(4) The energy administrator must send a copy of the progress report, attached to Form ESCA12, within 1 month of the end of the period covered by the report, to—

- (a) the Secretary of State;
- (b) GEMA;
- (c) the creditors; and
- (d) the court,

and must deliver a copy to the registrar of companies, but this rule does not apply when the period covered by the report is that of a final progress report under Rule 78.

(5) The court may, on the energy administrator's application, extend the period of 1 month mentioned in paragraph (4) above, or make such other order in respect of the content of the report as it thinks fit.

(6) It is an offence for the energy administrator to fail to comply with this Rule.

## CHAPTER 2

### Company meetings

#### Venue and conduct of company meeting

**34.**—(1) Where the energy administrator summons a meeting of members of the energy supply company, the energy administrator must fix a venue for it having regard to their convenience.

(2) The chair of the meeting shall be the energy administrator or a person nominated by the energy administrator in writing to act in the energy administrator's place.

(3) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the energy supply company, or
- (b) an employee of the energy administrator or the energy administrator's firm who is experienced in insolvency matters.

(4) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that day is not a business day, to the business day immediately following.

(5) Subject to anything to the contrary in the 1986 Act and these Rules, the meeting must be summoned and conducted—

(a) in the case of an energy supply company incorporated—

- (i) in England and Wales, or
- (ii) outside the United Kingdom other than in an EEA state,

in accordance with the law of England and Wales, including any applicable provision in or made under the Companies Act;

(b) in the case of an energy supply company incorporated in an EEA state<sup>F3</sup>..., in accordance with the law of the state applicable to meetings of the company.

(6) The chair of the meeting must cause minutes of its proceedings to be entered in the energy supply company's minute book.

<p><b>F3</b> Words in <a href="#">rule 34(5)(b)</a> omitted (31.12.2020) by virtue of <a href="#">The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/530)</a>, regs. 1(1), <b>82</b>; 2020 c. 1, Sch. 5 para. 1(1)</p>
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## PART 5

### Disposal of charged property

#### Authority to dispose of property

**35.**—(1) The following applies where the energy administrator applies to the court under paragraphs 71 or 72 of Schedule B1 to the 1986 Act for authority to dispose of property of the energy supply company which is subject to a security (other than a floating charge), or goods in the possession of the energy supply company under a hire purchase agreement.

(2) The court must fix a venue for the hearing of the application, and the energy administrator must as soon as reasonably practicable give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.

(3) If an order is made under paragraphs 71 or 72 of Schedule B1 to the 1986 Act the court must send two sealed copies to the energy administrator.

(4) The energy administrator must send one of them to that person who is the holder of the security or owner under the agreement.

(5) The energy administrator must deliver a copy of the order to the registrar of companies.

## PART 6

### Expenses of the energy supply company administration

#### Priority of expenses of energy supply company administration

**36.**—(1) The expenses of the energy supply company administration are payable in the following order of priority—

- (a) expenses properly incurred by the energy administrator in performing the energy administrator's functions in the energy supply company administration of the energy supply company, except for those expenses referred to in sub-paragraph (g);
- (b) the cost of any security provided by the energy administrator in accordance with the 1986 Act or these Rules;
- (c) the costs of the applicant and any person appearing on the hearing of the application;
- (d) any amount payable to a person employed or authorised, under Part 3 of these Rules, to assist in the preparation of a statement of affairs or statement of concurrence;
- (e) any allowance made, by the order of the court, towards costs on an application for release from the obligation to submit a statement of affairs or statement of concurrence;
- (f) any necessary disbursements by the energy administrator in the course of the energy supply company administration (but not including any payment of corporation tax in circumstances referred to in sub-paragraph (i) below);
- (g) the remuneration of any person who has been employed by the energy administrator to perform any services for the energy supply company, as required or authorised under the 1986 Act, the 2004 Act or these Rules;
- (h) the remuneration of the energy administrator fixed by the court under Part 8 of these Rules and unpaid pre-energy supply company administration costs approved under Rule 37;
- (i) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the energy supply company (without regard to whether the realisation is effected by the energy administrator, a secured creditor, or a receiver or manager appointed to deal with a security).

(2) The priorities laid down by paragraph (1) of this Rule are subject to the power of the court to make orders under paragraph (3) of this Rule where the assets are insufficient to satisfy the liabilities.

(3) The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the energy supply company administration in such order of priority as the court thinks just.

(4) For the purposes of paragraph 99(3) of Schedule B1 to the 1986 Act, the former energy administrator's remuneration and expenses shall comprise all those items set out in paragraph (1) of this Rule.

### **Pre-energy supply company administration costs**

37. Where the energy administrator has made a statement of pre-energy supply company administration costs under Rule 20(2)(k), the energy administrator (where the costs consist of fees charged or expenses incurred by the energy administrator) or other insolvency practitioner (where the costs consist of fees charged or expenses incurred by that practitioner) must, before paying such costs, apply to the court for a determination of whether and to what extent the unpaid pre-energy supply company administration costs are approved for payment.

## **PART 7**

### **Distribution to creditors**

#### **CHAPTER 1**

#### **Application of Part and general**

### **Distribution to creditors generally**

38.—(1) This Part applies where the energy administrator makes, or proposes to make, a distribution to any class of creditors other than secured creditors. Where the distribution is to a particular class of creditors, references in this Part to creditors shall, in so far as the context requires, be a reference to that class of creditors only.

(2) The energy administrator must give notice to the creditors of the energy administrator's intention to declare and distribute a dividend in accordance with Rule 64.

(3) Where it is intended that the distribution is to be a sole or final dividend, the energy administrator must, after the date specified in the notice referred to in paragraph (2)—

- (a) defray any items payable in accordance with the provisions of paragraph 99 of Schedule B1 to the 1986 Act;
- (b) defray any amounts (including any debts or liabilities and the energy administrator's own remuneration and expenses) which would, if the energy administrator were to cease to be the energy administrator of the energy supply company, be payable out of the property of which the energy administrator had custody or control in accordance with the provisions of paragraph 99 of Schedule B1 to the 1986 Act; and
- (c) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(4) The court may, on the application of any person, postpone the date specified in the notice.

### **Debts of insolvent energy supply company to rank equally**

39. Debts other than preferential debts rank equally between themselves in the energy supply company administration and, after the preferential debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

### **Supplementary provisions as to dividend**

40.—(1) In the calculation and distribution of a dividend the energy administrator must make provision for—

- (a) any debts which appear to the energy administrator to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs;

- (b) any debts which are the subject of claims which have not yet been determined; and
- (c) disputed proofs and claims.

(2) A creditor who has not proved the creditor's debt before the declaration of any dividend is not entitled to disturb, by reason that the creditor has not participated in it, the distribution of that dividend or any other dividend declared before the creditor's debt was proved, but—

- (a) when the creditor has proved that debt the creditor is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which the creditor has failed to receive; and
- (b) any dividends payable under sub-paragraph (a) must be paid before the money is applied to the payment of any such further dividend.

(3) No action lies against the energy administrator for a dividend, but if the energy administrator refuses to pay a dividend the court may, if it thinks just, order the energy administrator to pay it and also to pay, out of the energy administrator's own money—

- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838 <sup>M10</sup>, from the time when it was withheld; and
- (b) the costs of the proceedings in which the order to pay is made.

#### Marginal Citations

**M10** 1838 c. 110, as amended by the Civil Procedure Acts Repeal Act 1879, section 2, Schedule 1, Part 1, the Statute Law Revision (No. 2) Act 1888, S.I. 1993/564, **article 2**, 1998/2940, article 3(a), (b) and (c).

#### Division of unsold assets

**41.**—(1) The energy administrator may, with the permission of the creditors, divide in its existing form amongst the energy supply company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

- (2) The energy administrator must—
  - (a) in the receipts and payments account included in the final progress report under Chapter 1 of Part 4, state the estimated value of the property divided amongst the creditors of the energy supply company during the period to which the report relates, and
  - (b) as a note to the account, provide details of the basis of the valuation.

### CHAPTER 2

#### Machinery of proving a debt

#### Proving a debt

**42.**—(1) A person claiming to be a creditor of the energy supply company and wishing to recover the person's debt in whole or part must (subject to any order of the court to the contrary) submit the person's claim in writing to the energy administrator.

(2) A creditor who claims is referred to as “proving” for their debt and a document by which the creditor seeks to establish their claim is the creditor's “proof”.

- (3) Subject to the next paragraph, a proof must—
  - (a) be made out by, or under the direction of, the creditor and authenticated by the creditor or a person authorised in that behalf; and

- (b) state the following matters—
- (i) the creditor's name and address;
  - (ii) if the creditor is a company, its registered number;
  - (iii) the total amount of the creditor's claim (including value added tax) as at the date on which the energy supply company entered energy supply company administration, less any payments made after that date in respect of the claim, any deduction under Rule 53 and any adjustment by way of set off in accordance with Rule 54;
  - (iv) whether or not the claim includes outstanding uncapitalised interest;
  - (v) particulars of how and when the debt was incurred by the energy supply company;
  - (vi) particulars of any security held, the date on which it was given and the value which the creditor puts on it;
  - (vii) details of any reservation of title in respect of goods to which the debt refers; and
  - (viii) the name, address and authority of the person signing the proof (if a person other than the creditor).

(4) There must be specified in the proof details of any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such document be attached to the proof or submitted with it.

(5) The energy administrator may call for any document or other evidence to be produced to the energy administrator, where the energy administrator thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

### **Costs of proving**

**43.** Unless the court otherwise orders—

- (a) every creditor bears the cost of proving the creditor's own debt, including costs incurred in providing documents or evidence under Rule 42(5); and
- (b) costs incurred by the energy administrator in estimating the quantum of a debt under Rule 50 are payable out of the assets as an expense of the energy supply company administration.

### **Energy administrator to allow inspection of proofs**

**44.** The energy administrator must, so long as proofs lodged with the energy administrator are in the energy administrator's hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

- (a) any creditor who has submitted a proof of debt (unless the creditor's proof has been wholly rejected for purposes of dividend or otherwise);
- (b) any contributory of the energy supply company; and
- (c) any person acting on behalf of either of the above.

### **New energy administrator appointed**

**45.—(1)** If a new energy administrator is appointed in place of another, the former energy administrator must as soon as reasonably practicable transmit to the new energy administrator all proofs which the former energy administrator has received, together with an itemised list of them.

(2) The new energy administrator must authenticate the list by way of receipt for the proofs, and return it to the former energy administrator.

(3) From then on, all proofs of debt must be sent to and retained by the new energy administrator.



### **Admission and rejection of proofs for dividend**

**46.**—(1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) If the energy administrator rejects a proof in whole or in part, the energy administrator must prepare a written statement of the energy administrator's reasons for doing so, and send it as soon as reasonably practicable to the creditor.

### **Appeal against decision on proof**

**47.**—(1) If a creditor is dissatisfied with the energy administrator's decision with respect to the creditor's proof (including any decision on the question of preference), the creditor may apply to the court for the decision to be reversed or varied. The application must be made within 21 days of the creditor receiving the statement sent under Rule 46(2).

(2) A member or any other creditor may, if dissatisfied with the energy administrator's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the energy administrator's decision.

(3) Where application is made to the court under this Rule, the court must fix a venue for the application to be heard, notice of which must be sent by the applicant to the creditor who lodged the proof in question (if the applicant is not the creditor who lodged the proof) and the energy administrator.

(4) The energy administrator must, on receipt of the notice, file in court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 46(2).

(5) Where the application is made by a member, the court must not disallow the proof (in whole or in part) unless the member shows that there is (or would be but for the amount claimed in the proof), or that it is likely that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the energy supply company would be entitled.

(6) After the application has been heard and determined, the proof must, unless it has been wholly disallowed, be returned by the court to the energy administrator.

(7) The energy administrator is not personally liable for costs incurred by any person in respect of an application under this Rule unless the court otherwise orders.

### **Withdrawal or variation of proof**

**48.** A creditor's proof may at any time, by agreement between the creditor and the energy administrator, be withdrawn or varied as to the amount claimed.

### **Expunging of proof by the court**

**49.**—(1) The court may expunge a proof or reduce the amount claimed—

- (a) on the energy administrator's application, where the energy administrator thinks that the proof has been improperly admitted, or ought to be reduced; or
- (b) on the application of a creditor, if the energy administrator declines to interfere in the matter.

(2) Where application is made to the court under this Rule, the court must fix a venue for the application to be heard, notice of which must be sent by the applicant—

- (a) in the case of an application by the energy administrator, to the creditor who made the proof; and
- (b) in the case of an application by a creditor, to the energy administrator and to the creditor who made the proof (if that creditor is not the applicant).

## CHAPTER 3

### Quantification of claims

#### **Estimate of quantum**

**50.**—(1) The energy administrator must estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and the energy administrator may revise any estimate previously made, if the energy administrator thinks fit by reference to any change of circumstances or to information becoming available.

(2) The energy administrator must inform the creditor as to the estimate under paragraph (1) and any revision of it.

(3) Where the value of a debt is estimated under this Rule, the amount provable in the energy supply company administration in the case of that debt is that of the estimate for the time being.

#### **Negotiable instruments, etc**

**51.** Unless the energy administrator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or the creditor's authorised representative to be a true copy.

#### **Secured creditors**

**52.**—(1) If a secured creditor realises the secured creditor's security, the secured creditor may prove for the balance of the secured creditor's debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders a security for the general benefit of creditors, the secured creditor may prove for the secured creditor's whole debt, as if it were unsecured.

#### **Discounts**

**53.** There shall in every case be deducted from the claim all trade and other discounts which would have been available to the energy supply company but for its energy supply company administration except any discount for immediate, early or cash settlement.

#### **Mutual credits and set off**

**54.**—(1) This Rule applies where the energy administrator, being authorised to make the distribution in question, has pursuant to Rule 65, given notice that the energy administrator proposes to make it.

(2) In this Rule “mutual dealings” means mutual credits, mutual debts or other mutual dealings between the energy supply company and any creditor of the energy supply company proving or claiming to prove for a debt in the energy supply company administration but does not include—

- (a) any debt arising out of an obligation incurred after the energy supply company entered energy supply company administration;
- (b) any debt arising out of an obligation incurred at a time when the creditor had notice that—
  - (i) a meeting of creditors had been summoned under section 98 of the 1986 Act,
  - (ii) a petition for the winding up of the energy supply company was pending,
  - (iii) an application for an administration order under the 1986 Act was pending;
  - (iv) an application for an esc administration order was pending; or

- (v) any person had given notice of intention to appoint an administrator under the 1986 Rules;
- (c) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—
  - (i) at a time when the creditor had notice that an application for an esc administration order was pending;
  - (ii) after the commencement of energy supply company administration,
  - (iii) at a time when the creditor had notice that a meeting of creditors had been summoned under section 98 of the 1986 Act, or
  - (iv) at a time when the creditor had notice that a winding up petition was pending, or
  - (v) at a time when the creditor had notice that an application for an administration order under the 1986 Act was pending.
- (3) An account shall be taken as at the date of the notice referred to in paragraph (1) of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.
- (4) A sum shall be regarded as being due to or from the energy supply company for the purposes of paragraph (3) whether—
  - (a) it is payable at present or in the future;
  - (b) the obligation by virtue of which it is payable is certain or contingent; or
  - (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
- (5) Rule 50 shall apply for the purposes of this Rule to any obligation to or from the energy supply company which, by virtue of its being subject to any contingency or for any other reason, does not bear a certain value.
- (6) Rules 55 to 57 shall apply for the purposes of this Rule in relation to any sums due to the energy supply company which—
  - (a) are payable in a currency other than sterling;
  - (b) are of a periodical nature; or
  - (c) bear interest.
- (7) Rule 75 shall apply for the purposes of this Rule to any sum due or from the energy supply company which is payable in the future.
- (8) Only the balance (if any) of the account owed to the creditor is provable in the energy supply company administration.
- (9) Alternatively the balance (if any) owed to the energy supply company shall be paid to the energy administrator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) must be paid if and when the debt becomes due and payable.
- (10) In this Rule “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

### **Debt in foreign currency**

**55.** For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at such rate as is agreed between the relevant creditor and the energy administrator or, where no agreement can be reached, as the court determines.

### **Payments of a periodical nature**

**56.**—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the energy supply company entered energy supply company administration.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

### **Interest**

**57.**—(1) Where a debt proved in the energy supply company administration bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the energy supply company entered energy supply company administration.

(2) In the following circumstances the creditor's claim may include interest on the debt for periods before the energy supply company entered energy supply company administration, although not previously reserved or agreed.

(3) If the debt is due by virtue of a written instrument, and payable at a certain time, interest may be claimed for the period from that time to the date when the energy supply company entered energy supply company administration.

(4) If the debt is due otherwise, interest may only be claimed if, before that date, a demand for full payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.

(5) Interest under paragraph (4) may only be claimed for the period from the date of the demand to that of the energy supply company's entering energy supply company administration and for all the purposes of the 1986 Act and these Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (6).

(6) The rate of interest to be claimed under paragraphs (3) and (4) is the rate specified in section 17 of the Judgments Act 1838 on the date when the energy supply company entered energy supply company administration.

(7) Any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the energy supply company entered energy supply company administration.

(8) All interest payable under paragraph (7) ranks equally whether or not the debts on which it is payable rank equally.

(9) The rate of interest payable under paragraph (7) is whichever is the greater of the rate specified under paragraph (6) or the rate applicable to the debt apart from the energy supply company administration.

### **Debt payable at future time**

**58.** A creditor may prove for a debt of which payment was not yet due on the date when the energy supply company entered energy supply company administration, subject to Rule 75 (adjustment of dividend where payment made before time).

### **Value of security**

**59.**—(1) A secured creditor may, with the agreement of the energy administrator or the permission of the court, at any time alter the value which the secured creditor's proof of debt puts upon the secured creditor's security.

(2) However, if a secured creditor has voted in respect of the unsecured balance of the secured creditor's debt the secured creditor may re-value the secured creditor's security only with permission of the court.

### **Surrender for non-disclosure**

**60.**—(1) If a secured creditor omits to disclose a security in the secured creditor's proof of debt, the secured creditor must surrender that security for the general benefit of creditors, unless the court, on application by the secured creditor, relieves the secured creditor from the effect of this Rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just.

(3) Nothing in this Rule or the following two Rules may affect rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets (including both specific assets and collections of indefinite assets as a whole which change from time to time) belonging to the debtor that are situated outside the United Kingdom.

### **Redemption by energy administrator**

**61.**—(1) The energy administrator may at any time give notice to a creditor whose debt is secured that the energy administrator proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the energy administrator may allow) in which, if the creditor so wishes, to exercise the right to revalue the creditor's security (with the permission of the court, where Rule 60(2) applies). If the creditor re-values the creditor's security, the energy administrator may only redeem at the new value.

(3) If the energy administrator redeems the security, the cost of transferring it is payable out of the assets.

(4) A secured creditor may at any time, by notice in writing, call on the energy administrator to elect whether the energy administrator will or will not exercise the power to redeem the security at the value then placed on it; and the energy administrator then has 3 months in which to exercise the power or determine not to exercise it.

### **Test of security's value**

**62.**—(1) Subject as follows, the energy administrator, if dissatisfied with the value which a secured creditor puts on the creditor's security (whether in the creditor's proof or by way of revaluation under Rule 59), may require any property comprised in the security to be offered for sale.

(2) The terms of the sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the energy administrator on behalf of the energy supply company, and the creditor on the creditor's own behalf, may appear and bid.

(3) This Rule does not apply if the security has been re-valued and the revaluation has been approved by the court.

### Realisation of security by creditor

**63.** If a creditor who has valued the creditor's security subsequently realises it (whether or not at the instance of the energy administrator)—

- (a) the net amount realised shall be substituted for the value previously put by the creditor on the security; and
- (b) that amount shall be treated in all respects as an amended valuation made by the creditor.

### Notice of proposed distribution

**64.**—(1) Where an energy administrator is proposing to make a distribution to creditors the energy administrator must give notice of the fact.

(2) The notice given pursuant to paragraph (1) must—

- (a) be sent to all creditors whose addresses are known to the energy administrator;
- (b) state whether the distribution is—
  - (i) to preferential creditors; or
  - (ii) preferential creditors and unsecured creditors; and
- (c) where the energy administrator proposes to make a distribution to unsecured creditors, state the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act<sup>M11</sup>.

(3) Subject to paragraph (5)(b), before declaring a dividend the energy administrator must by notice invite the creditors to prove their debts. Such notice—

- (a) must be gazetted; and
- (b) may be advertised in such other manner as the energy administrator thinks fit.

(4) A notice pursuant to paragraph (1) or (3) must, in addition to the standard contents—

- (a) state that it is the intention of the energy administrator to make a distribution to creditors within the period of 2 months from the last date for proving;
- (b) specify whether the proposed dividend is interim or final;
- (c) specify a date up to which proofs may be lodged being a date which—
  - (i) is the same date for all creditors; and
  - (ii) is not less than 21 days from that of the notice.

(5) Where a dividend is to be declared for preferential creditors—

- (a) the notice pursuant to paragraph (1) need only be given to those creditors in whose cases the energy administrator has reason to believe that their debts are preferential; and
- (b) the notice pursuant to paragraph (3) need only be given if the energy administrator thinks fit.

#### Marginal Citations

**M11** 1986 c. 45; section 176A inserted by the Enterprise Act 2002 (c. 40), section 252.

### Admission or rejection of proofs

**65.**—(1) Unless the energy administrator has already dealt with them, within 5 business days of the last date for proving, the energy administrator must—

- (a) admit or reject (in whole or in part) proofs submitted to the energy administrator; or

(b) make such provision in respect of them as the energy administrator thinks fit.

(2) The energy administrator is not obliged to deal with proofs lodged after the last day for proving, but may do so, if the energy administrator thinks fit.

(3) In the declaration of a dividend no payment shall be made more than once by virtue of the same debt.

#### **Postponement or cancellation of dividend**

**66.** If in the period of 2 months referred to in Rule 64(4)(a)—

(a) the energy administrator has rejected a proof in whole or in part and application is made to the court for that decision to be reversed or varied, or

(b) application is made to the court for the energy administrator's decision on a proof to be reversed or varied, or for a proof to be expunged, or for a reduction of the amount claimed,

the energy administrator may postpone or cancel the dividend.

#### **Declaration of dividend**

**67.**—(1) Subject to paragraph (2), within the 2 month period referred to in Rule 64(4)(a), the energy administrator must proceed to declare the dividend to one or more classes of creditor of which the energy administrator gave notice.

(2) Except with the permission of the court, the energy administrator must not declare a dividend so long as there is pending any application to the court to reverse or vary a decision of the energy administrator's on a proof, or to expunge a proof or to reduce the amount claimed.

(3) If the court gives permission under paragraph (2), the energy administrator must make such provision in respect of the proof in question as the court directs.

#### **Notice of declaration of a dividend**

**68.**—(1) Where the energy administrator declares a dividend the energy administrator must give notice of that fact to all creditors who have proved their debts.

(2) The notice must include the following particulars relating to the energy supply company administration—

(a) amounts raised from the sale of assets, indicating (so far as is practicable) amounts raised by the sale of particular assets;

(b) payments made by the energy administrator when acting as such;

(c) where the energy administrator proposed to make a distribution to unsecured creditors, the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act;

(d) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;

(e) the total amount of dividend and the rate of dividend;

(f) whether, and if so when, any further dividend is expected to be declared.

#### **Payments of dividends and related matters**

**69.**—(1) The dividend may be distributed simultaneously with the notice declaring it.

(2) Payment of the dividend may be made by post, or arrangements may be made with any creditor for it to be paid to the creditor in another way, or held for the creditor's collection.

(3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

#### **Notice of no dividend, or no further dividend**

**70.** If the energy administrator gives notice to creditors that the energy administrator is unable to declare any dividend or (as the case may be) any further dividend, the notice must contain a statement to the effect either—

- (a) that no funds have been realised; or
- (b) that the funds realised have already been distributed or used or allocated for defraying the expenses of energy supply company administration.

#### **Proof altered after payment of dividend**

**71.**—(1) If after payment of dividend the amount claimed by a creditor in the creditor's proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but the creditor is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which the creditor has failed to receive.

(2) Any dividend or dividends payable under paragraph (1) must be paid before the money there referred to is applied to the payment of any such further dividend.

(3) If, after a creditor's proof has been admitted, the proof is withdrawn or expunged, or the amount is reduced, the creditor is liable to repay to the energy administrator any amount overpaid by way of dividend.

#### **Secured creditors**

**72.**—(1) The following applies where a creditor re-values the creditor's security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of the creditor's unsecured claim ranking for dividend, the creditor must as soon as reasonably practicable repay to the energy administrator, for the credit of the energy supply company administration, any amount received by the creditor as dividend in excess of that to which the creditor would be entitled having regard to the revaluation of the security.

(3) If the revaluation results in an increase of the creditor's unsecured claim, the creditor is entitled to receive from the energy administrator, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the revaluation of the security. However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the revaluation.

#### **Disqualification from dividend**

**73.** If a creditor contravenes any provision of the 1986 Act or these Rules relating to the valuation of securities, the court may, on the application of the energy administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

#### **Assignment of right to dividend**

**74.**—(1) If a person entitled to a dividend gives notice to the energy administrator that the person wishes the dividend to be paid to another person, or that the person has assigned the person's entitlement to another person, the energy administrator must pay the dividend to that other accordingly.



(2) A notice under this Rule must specify the name and address of the person to whom payment is to be made.

### **Adjustment where dividend paid before time**

**75.**—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, the creditor is entitled to dividend equally with other creditors, but subject as follows.

(2) For the purpose of dividend (and no other purpose), the amount of the creditor's admitted proof (or, if a distribution has previously been made to the creditor, the amount remaining outstanding in respect of the creditor's admitted proof) shall be reduced by applying the following formula—

$$\frac{X}{1.05^n}$$

where—

- a “X” is the value of the admitted proof; and
- b “n” is the period beginning with the date that the energy supply company entered energy supply company administration and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months in a decimalised form.

## **PART 8**

### **The energy administrator**

#### **Fixing of remuneration**

**76.**—(1) The energy administrator is entitled to receive remuneration for the energy administrator's services.

(2) The remuneration shall be fixed by reference to the time properly given by the energy administrator and the energy administrator's staff in attending to matters arising in the energy supply company administration.

(3) The remuneration of the energy administrator shall be fixed by the court and the energy administrator must make an application to court accordingly.

(4) The energy administrator must give at least 14 days' notice of the energy administrator's application to the following, who may appear or be represented—

- (a) the Secretary of State;
  - (b) GEMA; and
  - (c) the creditors of the energy supply company.
- (5) In fixing the remuneration, the court must have regard to the following matters—
- (a) the complexity (or otherwise) of the case;
  - (b) any respects in which, in connection with the energy supply company's affairs, there falls on the energy administrator any responsibility of an exceptional kind or degree;
  - (c) the effectiveness with which the energy administrator appears to be carrying out, or to have carried out, the energy administrator's duties as such; and
  - (d) the value and nature of the property with which the energy administrator has to deal.

(6) Where there are joint energy administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred to the court for settlement by order.

(7) If the energy administrator is a solicitor and employs the energy administrator's own firm, or any partner in it, to act on behalf of the energy supply company, profit costs must not be paid unless this is authorised by the court.

### **Remuneration of new energy administrator**

77. If a new energy administrator is appointed in place of another, any court order in effect under Rule 76 immediately before the former energy administrator ceased to hold office continues to apply in respect of the remuneration of the new energy administrator until a further court order is made in accordance with those provisions.

## **PART 9**

### **Ending energy supply company administration**

#### **Final progress reports**

78.—(1) In this Part reference to a progress report is to a report in the form specified in Rule 33.

(2) The final progress report means a progress report which includes a summary of—

- (a) the energy administrator's proposals;
- (b) any major amendments to, or deviations from, those proposals;
- (c) the steps taken during the energy supply company administration; and
- (d) the outcome.

#### **Application to court**

79.—(1) An application to court under paragraph 79 of Schedule B1 to the 1986 Act for an order ending an energy supply company administration must have attached to it a progress report for the period since the last progress report (if any) or the date the energy supply company entered energy supply company administration and a statement indicating what the applicant thinks should be the next steps for the energy supply company (if applicable).

(2) Where such an application is made, the applicant must—

- (a) give notice in writing to the applicant for the esc administration order (unless the applicant in both cases is the same) and the creditors of the energy supply company of the applicant's intention to apply to court at least 5 business days before the date that the applicant intends to make an application; and
- (b) attach to the application to court a statement that the applicant has notified the creditors, and copies of any response from creditors to that notification.

(3) Where such an application is to be made other than by the energy administrator—

- (a) the applicant must also give notice in writing to the energy administrator of the applicant's intention to apply to court at least 5 business days before the date that the applicant intends to make an application; and
- (b) upon receipt of such written notice the energy administrator must, before the end of the 5 business day notice period, provide the applicant with a progress report for the period

since the last progress report (if any) or the date the energy supply company entered energy supply company administration.

(4) Where the application is made other than by the Secretary of State, the application must also state that it is made with the consent of the Secretary of State.

(5) Where the energy administrator applies to court under paragraph 79 of Schedule B1 to the 1986 Act in conjunction with a petition under section 124 of the 1986 Act <sup>M12</sup> for an order to wind up the energy supply company, the energy administrator must, in addition to the requirements of paragraphs (2) and (4), notify the creditors whether the energy administrator intends to seek appointment as liquidator.

#### Marginal Citations

**M12** 1986 c. 45; section 124 was amended by the Criminal Justice Act 1988 (c. 33), section 62(2); the Companies Act 1989 (c. 40), section 60(2); the Access to Justice Act 1999 (c. 22), Schedule 13, paragraph 133; the Insolvency Act 2000 (c. 39), section 1, Schedule 1, paragraphs 1 and 7; S.I. 2002/1240, regulation 8; the Courts Act 2003 (c. 39), Schedule 8, paragraph 294; S.I. 2004/2326, regulation 73(4)(a); the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), section 50(3); S.I. 2006/2078 and S.I. 2009/1941.

#### Notification by energy administrator of court order

**80.**—(1) Where the court makes an order to end the energy supply company administration, the energy administrator must deliver to the registrar of companies a copy of the court order and a copy of the final progress report.

(2) Where the court makes such an order, it must, where the applicant is not the energy administrator, give a copy of the order to the energy administrator.

(3) As soon as reasonably practicable, the energy administrator must send a copy of the notice and the final progress report to all other persons who received notice of the energy administrator's appointment.

#### Moving from energy supply company administration to creditors' voluntary liquidation

**81.**—(1) As soon as reasonably practicable after the day on which the registrar of companies registers the notice of moving from energy supply company administration to creditors' voluntary liquidation sent by the energy administrator for the purposes of paragraph 83(3) of Schedule B1 to the 1986 Act, the person who at that point ceases to be the energy administrator must (whether the energy administrator becomes the liquidator or not) send a final progress report (which must include details of the assets to be dealt with in the liquidation) to—

- (a) all those who received notice of the energy administrator's appointment;
- (b) where the Secretary of State did not receive notice of the energy administrator's appointment, to the Secretary of State; and
- (c) where GEMA did not receive notice of the energy administrator's appointment, to GEMA,

and must deliver a copy to the registrar of companies.

(2) For the purposes of paragraph 83(7) of Schedule B1 to the 1986 Act, a person shall be nominated as liquidator in accordance with the provisions of Rule 32(2)(g) and that person's appointment takes effect, following registration under paragraph (1)—

- (a) by virtue of the energy administrator's proposals or revised proposals; or

(b) where a creditors' meeting is held in accordance with Rule 24, as a consequence of such a meeting.

(3) GEMA must notify the Secretary of State before consenting to the energy administrator delivering a notice of moving from energy supply company administration to creditors' voluntary liquidation to the registrar of companies.

### **Moving from energy supply company administration to dissolution**

**82.**—(1) Where, for the purposes of paragraph 84(1) of Schedule B1 to the 1986 Act, the energy administrator delivers a notice of moving from energy supply company administration to dissolution to the registrar of companies, the energy administrator must attach to that notice a final progress report.

(2) As soon as reasonably practicable the energy administrator must send a copy of the notice and the attached document to—

- (a) all those who received notice of the energy administrator's appointment;
- (b) where the Secretary of State did not receive notice of the energy administrator's appointment, the Secretary of State; and
- (c) where GEMA did not receive notice of the energy administrator's appointment, to GEMA.

(3) Where a court makes an order under paragraph 84(7) of Schedule B1 to the 1986 Act, it must, where the applicant is not the energy administrator, give a copy of the order to the energy administrator.

(4) The energy administrator must notify the registrar of companies in accordance with paragraph 84(8) of Schedule B1 to the 1986 Act of any order made by the court under paragraph 84(7) of Schedule B1 to the 1986 Act.

(5) GEMA must notify the Secretary of State before directing the energy administrator to deliver a notice of moving from energy supply company administration to dissolution to the registrar of companies.

### **Provision of information to the Secretary of State**

**83.** Where the energy supply company administration ends pursuant to paragraph 79, 83 or 84 of Schedule B1 to the 1986 Act, the energy administrator must, at the same time as sending the final progress report under Rule 83(1), provide the Secretary of State with the following information—

- (a) a breakdown of the relevant debts (within the meaning of section 98(4) of the 2011 Act) of the energy supply company, which remain outstanding; and
- (b) details of any shortfall (within the meaning of section 98(3)(a) of the 2011 Act) in the property of the energy supply company available for meeting those relevant debts.

## **PART 10**

### **Replacing energy administrator**

#### **Grounds for resignation**

**84.**—(1) The energy administrator may give notice of resignation—

- (a) on the grounds of ill health; or
- (b) because the energy administrator intends ceasing to be in practice as an insolvency practitioner; or

- (c) because there is some conflict of interest, or a change in personal circumstances, which precludes or makes impracticable the further discharge by the energy administrator of the duties of energy administrator.
- (2) The energy administrator may, with the permission of the court, give notice of the energy administrator's resignation on grounds other than those specified in paragraph (1).

#### **Notice of intention to resign**

**85.** The energy administrator must in all cases give at least 5 business days' notice in Form ESCA13 of the energy administrator's intention to resign, or to apply for the court's permission to do so, to the following persons—

- (a) the Secretary of State;
- (b) GEMA;
- (c) if there is a continuing energy administrator of the energy supply company, to that continuing energy administrator; and
- (d) if there is no such energy administrator, to the energy supply company and its creditors.

#### **Notice of resignation**

- 86.**—(1) The notice of resignation must be in Form ESCA14.
- (2) The notice must be filed with the court, and a copy delivered to the registrar of companies.
  - (3) A copy of the notice of resignation must be sent by the energy administrator not more than 5 business days after it has been filed with the court to all those to whom notice of intention to resign was sent.

#### **Application to court to remove energy administrator from office**

- 87.**—(1) Any application under paragraph 88 of Schedule B1 to the 1986 Act must state the grounds on which it is requested that the energy administrator should be removed from office.
- (2) Service of the notice of the application must be effected on the energy administrator, the Secretary of State, GEMA, the joint energy administrator (if any), and where there is not a joint energy administrator, to the energy supply company and all the creditors, including any floating charge holders, not less than 5 business days before the date fixed for the application to be heard.
  - (3) Where a court makes an order removing the energy administrator it must give a copy of the order to the applicant who as soon as reasonably practicable must send a copy to the energy administrator.
  - (4) The applicant must also within 5 business days of the order being made send a copy of the order to all those to whom notice of the application was sent.
  - (5) A copy of the order must also be delivered to the registrar of companies within the same time period.

#### **Notice of vacation of office when energy administrator ceases to be qualified to act**

**88.** Where the energy administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the energy supply company gives notice in accordance with paragraph 89 of Schedule B1 to the 1986 Act, the energy administrator must also give notice to the registrar of companies.

### **Energy administrator deceased**

**89.**—(1) Subject as follows, where the energy administrator has died, it is the duty of the energy administrator's personal representatives to give notice of the fact to the court, specifying the date of the death. This does not apply if notice has been given under either paragraph (2) or (3) of this Rule.

(2) If the deceased energy administrator was a partner in or an employee of a firm, notice may be given by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.

(3) Notice of the death may be given by any person producing to the court the relevant death certificate or a copy of it.

(4) Where a person gives notice under this Rule, that person shall also give notice to the registrar of companies.

### **Application to replace**

**90.**—(1) Where an application is made to court under paragraph 91(1) of Schedule B1 to the 1986 Act to appoint a replacement energy administrator, the application must be accompanied by a written statement in Form ESCA2 by the person proposed to be the replacement energy administrator.

(2) A copy of the application must be served, in addition to those persons listed in section 156(2) of the 2004 Act and Rule 8(3), on the person who made the application for the esc administration order.

(3) Rule 10 shall apply to the service of an application under paragraph 91(1) of Schedule B1 to the 1986 Act as it applies to service in accordance with Rule 8.

(4) Rules 11, 12 and 13(1) and 13(2) apply to an application under paragraph 91(1) of Schedule B1 to the 1986 Act.

### **Notification and advertisement of appointment of replacement energy administrator**

**91.** Where a replacement energy administrator is appointed, the same provisions apply in respect of giving notice of, and advertising, the replacement appointment as in the case of the appointment (subject to Rule 93), and all statements, consents etc as are required shall also be required in the case of the appointment of a replacement. All forms and notices must clearly identify that the appointment is of a replacement energy administrator.

### **Notification and advertisement of appointment of joint energy administrator**

**92.** Where, after an initial appointment has been made, an additional person or persons are to be appointed as joint energy administrator the same Rules shall apply in respect of giving notice of and advertising the appointment as in the case of the initial appointment, subject to Rule 93.

### **Notification to registrar of companies**

**93.** The replacement or additional energy administrator must deliver notice of the appointment to the registrar of companies.

### **Energy administrator's duties on vacating office**

**94.**—(1) Where the energy administrator ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner, the energy administrator is under obligation as soon as reasonably practicable to deliver up to his or her successor the assets (after deduction of any expenses properly incurred and distributions made by the energy administrator) and further to deliver up to that person—

- (a) the records of the energy supply company administration, including correspondence, proofs and other related papers appertaining to the energy supply company administration while it was within the energy administrator's responsibility; and
  - (b) the energy supply company's books, papers and other records.
- (2) It is an offence for the energy administrator to fail to comply with this Rule.

## **PART 11**

### Court procedure and practice

#### CHAPTER 1

##### Applications

#### **Preliminary**

**95.** This Chapter applies to any application made to the court in energy supply company administration proceedings, except an application for an esc administration order.

#### **Form and contents of application**

- 96.**—(1) Each application must be in writing and must state—
- (a) that the application is made under the 1986 Act;
  - (b) the names of the parties;
  - (c) the name of the energy supply company which is the subject of the energy supply company administration proceedings;
  - (d) the court (and where applicable, the division or district registry of that court) in which the application is made;
  - (e) where the court has previously allocated a number to the energy supply company administration proceedings within which the application is made, that number;
  - (f) the nature of the remedy or order applied for or the directions sought from the court;
  - (g) the names and addresses of the persons (if any) on whom it is intended to serve the application or that no person is intended to be served;
  - (h) where the 1986 Act or these Rules require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
  - (i) the applicant's address for service.

(2) The application must be authenticated by the applicant if the applicant is acting in person or, when the applicant is not so acting, by or on behalf of the applicant's solicitor.

#### **Application under section 176A(5) of the 1986 Act to disapply section 176A of the 1986 Act**

**97.**—(1) An application under section 176A(5) of the 1986 Act<sup>M13</sup> must be accompanied by a witness statement by the energy administrator.

- (2) The witness statement must state—
- (a) that the application arises in the course of an energy supply company administration;
  - (b) a summary of the financial position of the energy supply company;

- (c) the information substantiating the energy administrator's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits; and
- (d) whether any other office holder is acting in relation to the energy supply company and if so that office holder's address.

#### Marginal Citations

**M13** 1986 c. 45; section 176A inserted by the Enterprise Act 2002 (c. 40), section 252.

### Filing and service of application

**98.**—(1) An application must be filed in court, accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application.

(2) Where an application is filed with the court in accordance with paragraph (1), the court must fix a venue for the application to be heard unless—

- (a) it considers it is not appropriate to do so;
- (b) the Rule under which the application is brought provides otherwise; or
- (c) the case is one to which Rule 100 applies.

(3) Unless the court otherwise directs, the applicant must serve a sealed copy of the application, endorsed with the venue for the hearing, on the respondent named in the application (or on each respondent if more than one).

(4) The court may give any of the following directions—

- (a) that the application be served upon persons other than those specified by the relevant provision of the 1986 Act or these Rules;
- (b) that the giving of notice to any person may be dispensed with;
- (c) that notice be given in some way other than that specified in paragraph (3).

(5) An application must be served at least 14 days before the date fixed for its hearing unless—

- (a) the provision of the 1986 Act or these Rules under which the application is made make different provision; or
- (b) the case is one of urgency, to which paragraph (6) applies.

(6) Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

- (a) hear the application immediately, either with or without notice to, or the attendance of, other parties, or
- (b) authorise a shorter period of service than that provided for by paragraph (5);

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks just.

### Application under section 176A(5) of the 1986 Act

**99.** An application under section 176A(5) of the 1986 Act may be made without the application being served upon or notice being given to any other party.

### Hearings without notice

**100.** Where the relevant provisions of the 1986 Act or these Rules do not require service of the application on, or notice of it to be given to, any person—



- (a) the court may hear the application as soon as reasonably practicable without fixing a venue as required by Rule 98; or
- (b) it may fix a venue for the application to be heard in which case Rule 98 applies to the extent that it is relevant;

but nothing in those provisions is to be taken as prohibiting the applicant from giving such notice if the applicant wishes to do so.

### **Hearing of application**

**101.**—(1) Unless the court otherwise directs, the hearing of an application must be in open court.

(2) In a county court, the jurisdiction of the court to hear and determine an application may be exercised by the district judge (to whom any application must be made in the first instance) unless—

- (a) a direction to the contrary has been given, or
- (b) it is not within the district judge's power to make the order required.

(3) In the High Court, the jurisdiction of the court to hear and determine an application may be exercised by the registrar (to whom any application must be made in the first instance) unless—

- (a) a direction to the contrary has been given, or
- (b) it is not within the registrar's power to make the order required.

(4) Where the application is made to the district judge in the county court or to the registrar in the High Court, the district judge or the registrar may refer to the judge any matter which the district judge or registrar thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the district judge or the registrar with such directions as that judge thinks just.

(5) Nothing in this Rule precludes an application being made directly to the judge in a proper case.

### **Witness statements - general**

**102.**—(1) Subject to Rule 104, where evidence is required by the 1986 Act or these Rules as to any matter, such evidence may be provided in the form of a witness statement unless—

- (a) in any specific case a Rule or the 1986 Act makes different provision; or
- (b) the court otherwise directs.

(2) The court may, on the application of any party to the matter in question order the attendance for cross-examination of the person making the witness statement.

(3) Where, after such an order has been made, the person in question does not attend, that person's witness statement shall not be used in evidence without the permission of the court.

### **Filing and service of witness statements**

**103.** Unless the provisions of the 1986 Act or these Rules under which the application is made provide otherwise, or the court otherwise allows—

- (a) if the applicant intends to rely at the first hearing on evidence in a witness statement, the applicant must file the witness statement with the court and serve a copy on the respondent, not less than 14 days before the date fixed for the hearing;
- (b) where a respondent to an application intends to oppose it and rely for that purpose on evidence in a witness statement, the respondent must file the witness statement with the court and serve a copy on the applicant, not less than 5 business days before the date fixed for the hearing.

### **Use of reports**

**104.**—(1) A report may be filed in court by the energy administrator instead of a witness statement, unless the application involves other parties or the court otherwise orders.

(2) In any case where a report is filed instead of a witness statement, the report shall be treated for the purposes of Rule 102 and any hearing before the court as if it were a witness statement.

(3) Where the witness statement is made by the energy administrator, the witness statement must state the address at which the energy administrator works.

### **Adjournment of hearings; directions**

**105.**—(1) The court may adjourn the hearing of an application on such terms as it thinks just.

(2) The court may at any time give such directions as it thinks just as to—

- (a) service or notice of the application on or to any other person;
- (b) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application including whether a hearing is necessary;
- (c) the matters to be dealt with in evidence.

(3) The court may give directions as to the manner in which any evidence is to be adduced at a resumed hearing and in particular as to—

- (a) the taking of evidence wholly or partly by witness statement or orally;
- (b) the cross-examination of the maker of a witness statement; or
- (c) any report to be made by the energy administrator.

## **CHAPTER 2**

### **Shorthand writers**

### **Nomination and appointment of shorthand writers**

**106.**—(1) In the High Court the judge or registrar and, in a county court, a district judge may in writing nominate one or more persons to be official shorthand writers to the court.

(2) The court may, at any time in the course of energy supply company administration proceedings, appoint a shorthand writer to take down the evidence of a person examined under section 236 of the 1986 Act.

### **Remuneration**

**107.**—(1) The remuneration of a shorthand writer appointed in energy supply company administration proceedings must be paid by the party at whose instance the appointment was made, or out of the assets of the energy supply company, or otherwise, as the court may direct.

(2) Any question arising as to the rates of remuneration payable under this Rule shall be determined by the court in its discretion.

## **CHAPTER 3**

### **Enforcement procedures**

### **Enforcement of court orders**

**108.**—(1) In energy supply company administration proceedings, orders of the court may be enforced in the same manner as a judgment to the same effect.

- (2) Where a warrant for the arrest of a person is issued by the High Court, the warrant may be discharged by the county court where the person who is the subject of the warrant—
- (a) has been brought before a county court exercising energy supply company administration jurisdiction; and
  - (b) has given to the county court an undertaking which is satisfactory to the county court to comply with the obligations that apply to that person under the provisions of the 1986 Act or these Rules.

### Orders enforcing compliance with these Rules

- 109.**—(1) The court may, on application by the energy administrator, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—
- (a) paragraph 47 of Schedule B1 to the 1986 Act (duty to submit statement of affairs in energy supply company administration), or
  - (b) section 235 of the 1986 Act <sup>M14</sup> (duty of various persons to co-operate with energy administrator).
- (2) An order of the court under this Rule may provide that all costs of and incidental to the application for it shall be borne by the person against whom the order is made.

#### Marginal Citations

**M14** 1986 c. 45; section 235 was amended by the Enterprise Act 2002 (c. 40), Schedule 17, paragraph 24.

### Warrant under section 236 of the 1986 Act

- 110.**—(1) A warrant issued by the court under section 236 of the 1986 Act (inquiry into insolvent company's dealings) must be addressed to such officer of the High Court as the warrant specifies, or to any constable.
- (2) The persons referred to in section 236(5) of the 1986 Act (court's power of enforcement) as the prescribed officer of the court are the tipstaff and the tipstaff's assistants of the court.
- (3) In this Chapter references to property include books, papers and records.
- (4) When a person is arrested under a warrant issued under section 236 of the 1986 Act ("the arrested person"), the officer arresting the arrested person must as soon as reasonably practicable bring the arrested person before the court issuing the warrant in order that the arrested person may be examined.
- (5) If the arrested person cannot immediately be brought up for examination, the officer must deliver the arrested person into the custody of the governor of the prison named in the warrant (or where that prison is not able to accommodate the arrested person, the governor of such other prison with appropriate facilities that is able to accommodate the arrested person), who must keep the arrested person in custody and produce the arrested person before the court as it may from time to time direct.
- (6) After arresting the person named in the warrant, the officer must as soon as reasonably practicable report to the court the arrest or delivery into custody (as the case may be) and apply to the court to fix a venue for the arrested person's examination.
- (7) The court must appoint the earliest practicable time for the examination, and must—
- (a) direct the governor of the prison to produce the person for examination at the time and place appointed, and

- (b) as soon as reasonably practicable give notice of the venue to the person who applied for the warrant.
- (8) Any property in the arrested person's possession which may be seized must be—
  - (a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or
  - (b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,
 as may be directed by the court.

## CHAPTER 4

### Court records and returns

#### **Court file**

**111.**—(1) The court must open and maintain a file in any case (the “court file”) where documents are filed with it under the 1986 Act or these Rules.

(2) Any documents which are filed with the court under the 1986 Act or these Rules must be placed on the court file.

(3) The following persons may inspect or obtain from the court a copy of, or a copy of any document or documents contained in, the court file—

- (a) the energy administrator;
- (b) the Secretary of State;
- (c) any person who is a creditor of the energy supply company to which the proceedings relate if that person provides the court with a statement in writing by confirming that that person is a creditor; and
- (d) every person who is, or at any time has been, a director or officer of the energy supply company to which the energy supply company administration proceedings relate, or who is a member of the energy supply company.

(4) The right to inspect or obtain a copy of, or a copy of any document or documents contained in, the court file may be exercised on that person's behalf by a person authorised to do so by that person.

(5) Any person who is not otherwise entitled to inspect or obtain a copy of, or a copy of any document or documents contained in, the court file may do so if that person has the permission of the court.

(6) The court may direct that the court file, a document (or part of it) or a copy of a document (or part of it) must not be made available under paragraph (3), (4) or (5) without the permission of the court.

(7) An application for a direction under paragraph (6) may be made by—

- (a) the energy administrator; or
- (b) any person appearing to the court to have an interest.

(8) Where any person wishes to exercise the right to inspect the court file under paragraph (3), (4) or (5), that person—

- (a) if the permission of the court is required, must file in court an application notice in accordance with these Rules; or
- (b) if the permission of the court is not required, may inspect the court file at any reasonable time.

(9) Where any person wishes to exercise the right to obtain a copy of a document under paragraph (3), (4) or (5), that person must pay any prescribed fee and—

- (a) if the permission of the court is required, file in court an application notice in accordance with these Rules; or
- (b) if the permission of the court is not required, file in court a written request for the document.

(10) An application for—

- (a) permission to inspect the court file or obtain a copy of a document under paragraph (5); or
- (b) a direction under paragraph (6),

may be made without notice to any other party, but the court may direct that notice must be given to any person who would be affected by its decision.

(11) If for the purposes of powers conferred by the 1986 Act or these Rules, the Secretary of State or the energy administrator requests the transmission of the file of any insolvency proceedings, the court must comply with the request (unless the file is for the time being in use for the court's own purposes).

## CHAPTER 5

### Costs and detailed assessment

#### Application of Chapter 8

**112.**—(1) This Chapter applies in relation to costs in connection with energy supply company administration proceedings.

(2) In this Chapter a reference to costs includes charges and expenses.

#### Requirement to assess costs by the detailed procedure

**113.**—(1) Where the costs of any person are payable as an expense out of the assets of the energy supply company, the amount payable must be decided by detailed assessment unless agreed between the energy administrator and the person entitled to payment.

(2) In the absence of such agreement as is mentioned in paragraph (1), the energy administrator may serve notice requiring that person to commence detailed assessment proceedings in accordance with CPR Part 47.

(3) Detailed assessment proceedings must be commenced in the court to which the energy supply company administration proceedings are allocated.

(4) Where the costs of any person employed by the energy administrator in energy supply company administration proceedings are required to be decided by detailed assessment or fixed by order of the court, the energy administrator may make payments on account to such person in respect of those costs provided that person undertakes in writing—

- (a) to repay as soon as reasonably practicable any money which may, when detailed assessment is made, prove to have been overpaid; and
- (b) to pay interest on any such sum as is mentioned in sub-paragraph (a) at the rate specified in section 17 of the Judgments Act 1838<sup>M15</sup> on the date payment was made and for the period beginning with the date of payment and ending with the date of repayment.

(5) In any proceedings before the court, the court may order costs to be decided by detailed assessment.

### **Marginal Citations**

**M15** 1838 c. 110, as amended by the Civil Procedure Acts Repeal Act 1879, section 2, Schedule 1, Part 1, the Statute Law Revision (No. 2) Act 1888, S.I. 1993/564, **article 2**, 1998/2940, article 3(a), (b) and (c).

### **Procedure where detailed assessment required**

**114.**—(1) Before making a detailed assessment of the costs of any person employed in energy supply company administration proceedings by the energy administrator, the costs officer must require a certificate of employment, which must be endorsed on the bill and authenticated by the energy administrator.

(2) The certificate must include—

- (a) the name and address of the person employed;
- (b) details of the functions to be carried out under the employment; and
- (c) a note of any special terms of remuneration which have been agreed.

(3) Every person whose costs in energy supply company administration proceedings are required to be decided by detailed assessment must, on being required in writing to do so by the energy administrator, commence detailed proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(4) If that person does not commence detailed assessment proceedings within 3 months of the requirement under paragraph (3), or within such further time as the court, on application, may permit, the energy administrator may deal with the assets of the energy supply company without regard to any claim by that person, whose claim is forfeited by such failure to commence proceedings.

(5) Where in any such case such a claim lies additionally against an energy administrator in the energy administrator's personal capacity, that claim is also forfeited by such failure to commence proceedings.

(6) Where costs have been incurred in energy supply company administration proceedings in the High Court and those proceedings are subsequently transferred to a county court, all costs of those proceedings directed by the court or otherwise required to be assessed may nevertheless, on the application of the person who incurred the costs, be ordered to be decided by detailed assessment in the High Court.

### **Costs paid otherwise than out of the assets of the energy supply company**

**115.** Where the amount of costs is decided by detailed assessment under an order of the court directing that the costs are to be paid otherwise than out of the assets of the energy supply company, the costs officer must note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

### **Award of costs against energy administrator**

**116.** Without prejudice to any provision of the 1986 Act or these Rules by virtue of which the energy administrator is not in any event to be liable for costs and expenses, where an energy administrator is made a party to any proceedings on the application of another party to the proceedings, the energy administrator shall not be personally liable for costs unless the court otherwise directs.

### Application for costs

**117.**—(1) This Rule applies where a party, or person affected by, any energy supply company administration proceedings—

- (a) applies to the court for an order allowing that party's costs, or part of them, of or incidental to the proceedings; and
- (b) that application is not made at the time of the proceedings.

(2) The person concerned must serve a sealed copy of the person's application on the energy administrator.

(3) The energy administrator may appear on the application.

(4) No costs of or incidental to the application shall be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceedings.

### Costs and expenses of witnesses

**118.**—(1) Except as directed by the court, no allowance as a witness in any examination or other proceedings before the court shall be made to an officer of the energy supply company to which the energy supply company administration proceedings relate.

(2) A person making any application in energy supply company administration proceedings shall not be regarded as a witness on the hearing of the application, but the costs officer may allow the person's expenses of travelling and subsistence.

### Final costs certificate

**119.**—(1) A final costs certificate of the costs officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the CPR.

(2) Where it is proved to the satisfaction of a costs officer that a final costs certificate has been lost or destroyed, the costs officer may issue a duplicate.

## CHAPTER 6

### Persons who lack capacity to manage their affairs

#### Introductory

**120.**—(1) The Rules in this Chapter apply where in energy supply company administration proceedings it appears to the court that a person affected by the proceedings is one who lacks capacity within the meaning of the Mental Capacity Act 2005 <sup>M16</sup> to manage and administer the person's property and affairs either—

- (a) by reason of lacking capacity within the meaning of the Mental Capacity Act 2005; or
- (b) due to physical affliction or disability.

(2) The person concerned is referred to as “the incapacitated person”.

#### Marginal Citations

M16 2005 c. 9.

#### Appointment of another person to act

**121.**—(1) The court may appoint such person as it thinks just to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for the incapacitated person's incapacity.

(3) The court may make the appointment either of its own motion or on application by—

- (a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person; or
- (b) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application; or
- (c) the energy administrator.

(4) Application under paragraph (3) may be made without notice to any other party; but the court may require such notice of the application as it thinks necessary to be given to the person alleged to be incapacitated, or any other person, and may adjourn the hearing of the application to enable the notice to be given.

#### **Witness statement in support of application**

**122.** An application under Rule 121(3) must be supported by a witness statement made by a registered medical practitioner as to the mental or physical condition of the incapacitated person.

#### **Service of notices following appointment**

**123.** Any notice served on, or sent to, a person appointed under Rule 121 has the same effect as if it had been served on, or sent to, the incapacitated person.

### CHAPTER 7

#### Appeals in energy supply company administration proceedings

#### **Appeals and reviews of esc administration orders**

**124.**—(1) Every court having jurisdiction under the 1986 Act or these Rules may review, rescind or vary any order made by it in the exercise of that jurisdiction.

(2) Appeals in civil matters in proceedings under these Rules lie as follows—

- (a) to a single judge of the High Court where the decision appealed against is made by the county court or the registrar;
- (b) to the Civil Division of the Court of Appeal from a decision of a single judge of the High Court.

(3) A county court is not, in the exercise of its jurisdiction for the purposes of these Rules, subject to be restrained by the order of any other court, and no appeal lies from its decision in the exercise of that jurisdiction except as provided by this Rule.

#### **Procedure on appeal**

**125.**—(1) An appeal against a decision at first instance may only be brought with either the permission of the court which made the decision or the permission of the court which has jurisdiction to hear the appeal.

(2) An appellant must file an appellant's notice (within the meaning of CPR Part 52) within 21 days after the date of the decision of the court that the appellant wishes to appeal.

(3) The procedure set out in CPR Part 52 applies to any appeal to which this Chapter applies.



## CHAPTER 8

### General

#### **Principal court rules and practice to apply**

**126.**—(1) The CPR and the practice and procedure of the High Court (including any practice directions) apply to energy supply company administration proceedings with any necessary modifications, except so far as inconsistent with these Rules.

(2) All energy supply company administration proceedings shall be allocated to the multi-track for which CPR Part 29 (the multi-track) makes provision; accordingly those provisions of the CPR which provide for allocation questionnaires and track allocation will not apply.

#### **Rights of audience**

**127.** Rights of audience in energy supply company administration proceedings are the same as in insolvency proceedings.

#### **Formal defects**

**128.** No energy supply company administration proceedings shall be invalidated by any formal defect or by any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

#### **Service of orders staying proceedings**

**129.** Where in energy supply company administration proceedings the court makes an order staying any action, execution or other legal process against the property of the energy supply company, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the claimant or other party having the carriage of the proceedings to be stayed.

#### **Payment into court**

**130.** CPR Part 37 (miscellaneous provisions about payment into court) applies to money lodged in court under these Rules.

#### **Further information and disclosure**

**131.**—(1) Any party to energy supply company administration proceedings may apply to the court for an order—

- (a) that any other party—
  - (i) clarify any matter which is in dispute in the proceedings, or
  - (ii) give additional information in relation to any such matter, in accordance with CPR Part 18 (further information); or
- (b) to obtain disclosure from any other party in accordance with CPR Part 31 (disclosure and inspection of documents).

(2) An application under this Rule may be made without notice being served on any other party.

### **Office copies of documents**

**132.**—(1) Any person who has under these Rules the right to inspect the court file of energy supply company administration proceedings may require the court to provide the person with an office copy of any document on the file.

(2) A person's rights under this Rule may be exercised on the person's behalf by the person's solicitor.

(3) An office copy provided by the court under this Rule must be in such form as the registrar thinks appropriate, and must bear the court's seal.

## **PART 12**

### **Proxies and energy supply company representation**

#### **Definition of proxy**

**133.**—(1) For the purposes of these Rules, a proxy is an authority given by a person (“the principal”) to another person (“the proxy-holder”) to attend a meeting and speak and vote as the person's representative.

(2) Proxies are for use at creditors' meetings or energy supply company meetings summoned or called under Schedule B1 to the 1986 Act or these Rules.

(3) Only one proxy may be given by a person for any one meeting at which the person desires to be represented; and it may only be given to one person, being an individual aged 18 years or over. But the principal may specify one or more other such individuals to be proxy-holder in the alternative, in the order in which they are named in the proxy.

(4) Without prejudice to the generality of paragraph (3), a proxy for a particular meeting may be given to whoever is to be the chair of the meeting; and the chair cannot decline to be the proxy-holder in relation to that proxy.

(5) A proxy requires the holder to give the principal's vote on matters arising for determination at the meeting, or to abstain, or to propose, in the principal's name, a resolution to be voted on by the meeting, either as directed or in accordance with the holder's own discretion.

#### **Issue and use of forms**

**134.**—(1) When notice is given of a meeting to be held in energy supply company administration proceedings, and forms of proxy are sent out with the notice, no form so sent out shall have inserted in it the name or description of any person.

(2) No form of proxy shall be used at any meeting except that which is sent with the notice summoning the meeting, or a substantially similar form.

(3) A form of proxy must be authenticated by the principal, or by some person authorised by the principal (generally or with reference to a particular meeting). If the form is authenticated by a person other than the principal, the nature of the person's authority must be stated.

#### **Use of proxies at meetings**

**135.**—(1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

(2) Where the energy administrator holds proxies to be used by the energy administrator as chair of the meeting, and some other person acts as chair, that other person may use the energy administrator's proxies as if that person were the proxy-holder.

(3) Where a proxy directs a proxy-holder to vote for or against a resolution for the appointment of a person other than the energy administrator as proposed liquidator of the energy supply company, the proxy-holder may, unless the proxy states otherwise, vote for or against (as the proxy-holder thinks fit) any resolution for the appointment of that person jointly with another or others.

(4) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which by virtue of the proxy the proxy-holder would be entitled to vote.

(5) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at the proxy-holder's discretion on resolutions put to the meeting which are not dealt with in the proxy.

### **Retention of proxies**

**136.**—(1) Subject as follows, proxies used for voting at any meeting must be retained by the chair of the meeting.

(2) The chair must deliver the proxies, as soon as reasonably practicable after the meeting, to the energy administrator (where the chair is not the energy administrator).

### **Right of inspection**

**137.**—(1) The energy administrator must, so long as proxies lodged with the energy administrator are in the energy administrator's hands, allow them to be inspected, at all reasonable times on any business day by—

- (a) the creditors, in the case of proxies used at a meeting of creditors, and
- (b) an energy supply company's members, in the case of proxies used at a meeting of the energy supply company.

(2) The reference in paragraph (1) to creditors is a reference to those persons who have submitted in writing a claim to be creditors of the energy supply company but does not include a person whose proof or claim has been wholly rejected for the purposes of voting, dividend or otherwise.

(3) The right of inspection given by this Rule is also exercisable by the directors of the energy supply company.

(4) Any person attending a meeting in energy supply company administration proceedings is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents (including proofs) sent or given, in accordance with directions contained in any notice convening the meeting, to the chair of that meeting or to any other person by a creditor or member for the purpose of that meeting.

(5) This Rule is subject to Rule 194.

### **Proxy holder with financial interest**

**138.**—(1) A proxy-holder must not vote in favour of any resolution which would directly or indirectly place the proxy-holder or any associate of the proxy-holder, in a position to receive any remuneration out of the assets of the energy supply company, unless the proxy specifically directs the proxy-holder to vote in that way.

(2) Where a proxy-holder has authenticated the proxy as being authorised to do so by the principal and the proxy specifically directs the proxy-holder to vote in the way mentioned in paragraph (1), the proxy-holder must nevertheless not vote in that way unless the proxy-holder produces to the chair of the meeting written authorisation from the principal sufficient to show that the proxy-holder was entitled so to authenticate the proxy.

(3) This Rule applies also to any person acting as chair of a meeting and using proxies in that capacity under Rule 135; and in its application to the chair, the proxy-holder is deemed to be an associate of the chair.

(4) In this Rule “associate” shall have the same meaning as in section 435 of the 1986 Act.

### **Energy supply company representation**

**139.**—(1) Where a person is authorised to represent a corporation at a meeting of creditors or of the energy supply company the person must produce to the chair of the meeting a copy of the resolution from which the person derives the person's authority.

(2) The copy resolution must be under the seal of the corporation, or certified by the secretary or a director of the corporation to be a true copy.

(3) Nothing in this Rule requires the authority of a person to authenticate a proxy on behalf of a principal which is a corporation to be in the form of a resolution of that corporation.

## **PART 13**

### **Examination of persons in energy supply company administration proceedings**

#### **Preliminary**

**140.**—(1) The Rules in this Part apply to applications to the court, made by the energy administrator, for an order under section 236 of the 1986 Act (inquiry into energy supply company's dealings when it is, or alleged to be, insolvent).

(2) The following definitions apply—

- (a) the person in respect of whom an order is applied for is “the respondent”;
- (b) “section 236” means section 236 of the 1986 Act.

#### **Form and contents of application**

**141.**—(1) The application must be in writing and specify the grounds on which it is made.

(2) The application must specify the name of the respondent.

(3) It must be stated whether the application is for the respondent—

- (a) to be ordered to appear before the court, or
- (b) to be ordered to clarify any matter which is in dispute in the proceedings or to give additional information in relation to any such matter and if so CPR Part 18 (further information) shall apply to any such order, or
- (c) to submit witness statements (if so, particulars are to be given of the matters to be included), or
- (d) to produce books, papers or other records (if so, the items in question is to be specified),

or for any two or more of those purposes.

(4) The application may be made without notice to the respondent or any other party.

#### **Order for examination, etc**

**142.**—(1) The court may, whatever the purpose of the application, make any order which it has power to make under section 236.

(2) The court, if it orders the respondent to appear before it, must specify a venue for the respondent's appearance, which must be not less than 14 days from the date of the order.

(3) If the respondent is ordered to file witness statements, the order must specify—

- (a) the matters which are to be dealt with in the respondent's witness statements, and
- (b) the time within which they are to be filed in court.

(4) If the order is to produce books, papers or other records, the time and manner of compliance must be specified.

(5) The order must be served by the energy administrator as soon as reasonably practicable on the respondent, and it must be served personally, unless the court otherwise orders.

### **Procedure for examination**

**143.**—(1) At any examination of the respondent, the energy administrator may attend in person, or be represented by a solicitor with or without counsel, and may put such questions to the respondent as the court may allow.

(2) Any creditor who has provided information on which the application was made under section 236 may attend the examination with the permission of the court and may put questions to the respondent (but only through the energy administrator).

(3) If the respondent is ordered to clarify any matter or to give additional information, the court must direct the respondent as to the questions which the respondent is required to answer, and to whether the respondent's answers (if any) are to be made in a witness statement.

(4) The respondent may at the respondent's own expense employ a legal representative who may put to the respondent such questions as the court may allow for the purpose of enabling the respondent to explain or qualify any answers given by the respondent, and may make representations on the respondent's behalf.

(5) There shall be made in writing such record of the examination as the court thinks proper. The record shall be read over either to or by the respondent and authenticated by the respondent at a venue fixed by the court.

(6) The written record may, in any proceedings (whether under the 1986 Act or otherwise) be used as evidence against the respondent of any statement made by the respondent in the course of the respondent's examination.

### **Record of examination**

**144.**—(1) Unless the court otherwise directs, the written record of questions put to the respondent and the respondent's answers, and any witness statements submitted by the respondent in compliance with an order of the court under section 236, are not to be filed in court.

(2) The documents set out in paragraph (3) are not open to inspection without an order of the court, by any person other than the energy administrator.

(3) The documents to which paragraph (2) applies are—

- (a) the written record of the respondent's examination;
- (b) copies of questions put to the respondent or proposed to be put to the respondent and answers to questions given by the respondent;
- (c) any witness statement by the respondent; and
- (d) any document on the court file as shows the grounds for the application for an order.

(4) The court may from time to time give directions as to the custody and inspection of any documents to which this Rule applies, and as to the furnishing of copies of, or extracts from, such documents.

#### **Cost of proceedings under section 236**

**145.**—(1) Where the court has ordered an examination of a person under section 236, and it appears to it that the examination was made necessary because information has been unjustifiably refused by the respondent, it may order that the costs of the examination be paid by the respondent.

(2) Where the court makes an order against a person under section 237(1) or (2) of the 1986 Act (court's enforcement powers under section 236), the costs of the application for the order may be ordered by the court to be paid by the respondent.

(3) Subject to paragraphs (1) and (2) above, the energy administrator's costs shall, unless the court otherwise orders, be paid out of the assets of the energy supply company.

(4) A person summoned to attend for examination under this Part shall be tendered a reasonable sum out of the assets of the energy supply company in respect of travelling expenses incurred in connection with the person's attendance. Other costs falling on the person are at the court's discretion.

## **PART 14**

### Miscellaneous and general

#### **Power of Secretary of State to regulate certain matters**

**146.**—(1) The Secretary of State may, subject to the 1986 Act and the 2004 Act, make regulations with respect to any matter provided for in these Rules as relates to the carrying out of the functions of an energy administrator of an energy supply company including, without prejudice to the generality of the foregoing provision, with respect to the following matters arising in an energy supply company 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 energy supply company's books, papers and other records, and the manner of their disposal by the energy administrator and others;
  - (d) the supply by the energy administrator to creditors and members of the energy supply company of copies of documents relating to the energy supply company administration and the affairs of the energy supply 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

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

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

### Provable debts

**148.**—(1) Subject as follows, in energy supply company administration proceedings all claims by creditors are provable as debts against the energy supply 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 Part 2, 3 or 4 of the Proceeds of Crime Act 2002 <sup>M17</sup> is not provable.

(3) The following are not provable except at a time when all other claims of creditors in the energy supply company administration proceedings (other than any of a kind mentioned in this paragraph) have been paid in full with interest under Rule 57—

(a) any claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000 <sup>M18</sup>, 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.

#### Marginal Citations

**M17** 2002 c. 29.

**M18** 2000 c. 8.

### False claim of status as creditor, etc

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

### Punishment of offences

**150.**—(1) Schedule 2 to these Rules has effect with respect to the way in which contraventions of these 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, the person 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 these Rules as to offences under the 1986 Act.

## **PART 15**

### **Provisions of general effect**

#### **CHAPTER 1**

##### **The giving of notice and the supply of documents – general**

#### **Application**

**151.**—(1) Subject to paragraphs (2) and (3), this Chapter applies where a notice or other document is required to be given, delivered or sent under the 1986 Act or these Rules by any person, including an energy administrator.

(2) This Chapter does not apply to the service of—

- (a) any petition or application to the court;
- (b) any evidence in support of that petition or application; or
- (c) any order of the court.

(3) This Chapter does not apply to the delivery of documents to the registrar of companies.

#### **Personal delivery of documents**

**152.** Personal delivery of a notice or other document is permissible in any case.

#### **Postal delivery of documents**

**153.** Unless in any particular case some other form of delivery is required by the 1986 Act, these Rules or an order of the court, a notice or other document may be sent by post in accordance with the rules for postal service in CPR Part 6 and sending by such means has effect as specified in those rules.

#### **Non-receipt of notice of meeting**

**154.** Where in accordance with the 1986 Act or these 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.

#### **Notice etc to solicitors**

**155.** Where under the 1986 Act or these Rules a notice or other document is required or authorised to be given, delivered or sent to a person, it may be given, delivered or sent instead to a solicitor authorised to accept delivery on that person's behalf.



### **Notice of meetings by advertisement only**

**156.**—(1) The court may order that notice of any meeting be given by advertisement and not by individual notice to the persons concerned.

(2) In considering whether to act under this Rule, the court must have regard to the cost of advertisement, the amount of assets available and the extent of the interest of creditors, members or any particular class of either.

## **CHAPTER 2**

The giving of notice and the supply of documents by or to energy administrators etc

### **Application**

**157.**—(1) Subject to paragraph (2) and (3), this Chapter applies where a notice or other document is to be given, delivered or sent under the 1986 Act or these Rules.

(2) This Chapter does not apply to the delivery of documents to the registrar of companies.

(3) Rules 164 to 167 do not apply to the filing of any notice or other document with the court.

### **Notice to joint energy administrators**

**158.** Where two or more persons are acting jointly as the energy administrator in energy supply company administration proceedings, delivery of a document to one of them is to be treated as delivery to them all.

### **The form of notices and other documents**

**159.** Subject to any order of the court, any notice or other document required to be given, delivered or sent must be in writing and where electronic delivery is permitted a notice or other document in electronic form is treated as being in writing if a copy of it is capable of being produced in legible form.

### **Proof of sending etc**

**160.**—(1) Where in energy supply company administration proceedings a notice or other document is required to be given, delivered or sent by the energy administrator, the giving, delivering or sending of it may be proved by means of a certificate that the notice or other document was duly given, delivered or sent.

(2) The certificate may be given by—

- (a) the energy administrator;
- (b) the energy administrator's solicitor;
- (c) a partner or an employee of either of them.

(3) In the case of a notice or other document to be given, delivered or sent by a person other than the energy administrator, the giving delivering or sending of it may be proved by means of a certificate by that person—

- (a) that the notice or document was given, delivered or sent by that person, or
- (b) that another person (named in the certificate) was instructed to give, deliver or send it.

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

### **Authentication**

**161.**—(1) A document or information given, delivered or sent in hard copy form is sufficiently authenticated if it is signed by the person sending or supplying it.

(2) A document or information given, delivered or sent in electronic form is sufficiently authenticated—

- (a) if the identity of the sender is confirmed in a manner specified by the recipient, or
- (b) where no such manner has been specified by the recipient, if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.

### **Electronic delivery in energy supply company administration proceedings – general**

**162.**—(1) Unless in any particular case some other form of delivery is required by the 1986 Act, these Rules or an order of the court and subject to paragraph (3), a notice or other document may be given, delivered or sent by electronic means provided that the intended recipient of the notice or other document has—

- (a) consented (whether in the specific case or generally) to electronic delivery (and has not revoked that consent); and
- (b) provided an electronic address for delivery.

(2) In the absence of evidence to the contrary, a notice or other document is presumed to have been delivered where—

- (a) the sender can produce a copy of the electronic message which—
  - (i) contained the notice or other document, or to which the notice or other document was attached, and
  - (ii) shows the time and date the message was sent; and
- (b) that electronic message contains the address supplied under paragraph (1)(b).

(3) A message sent electronically is deemed to have been delivered to the recipient no later than 9.00 am on the next business day after it was sent.

### **Electronic delivery by energy administrators**

**163.**—(1) Where an energy administrator gives, sends or delivers a notice or other document to any person by electronic means, the notice or document must contain or be accompanied by a statement that the recipient may request a hard copy of the notice or document and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy.

(2) Where a hard copy of the notice or other document is requested, it must be sent within 5 business days of receipt of the request by the energy administrator.

(3) An energy administrator must not require a person making a request under paragraph (2) to pay a fee for the supply of the document.

### **Use of websites by energy administrator**

**164.**—(1) This Rule applies for the purposes of section 246B of the 1986 Act.

(2) An energy administrator required to give, deliver or send a document to any person may (other than in a case where personal service is required) satisfy that requirement by sending that person a notice—

- (a) stating that the document is available for viewing and downloading on a website;

- (b) specifying the address of that website together with any password necessary to view and download the document from that site; and
  - (c) containing a statement that the person to whom the notice is given, delivered or sent may request a hard copy of the document and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy.
- (3) Where a notice to which this Rule applies is sent, the document to which it relates must—
- (a) be available on the website for a period of not less than 3 months after the date on which the notice is sent; and
  - (b) must be in such a format as to enable it to be downloaded from the website within a reasonable time of an electronic request being made for it to be downloaded.
- (4) Where a hard copy of the document is requested it must be sent within 5 business days of the receipt of the request by the energy administrator.
- (5) An energy administrator must not require a person making a request under paragraph (4) to pay a fee for the supply of the document.
- (6) Where a document is given, delivered or sent to a person by means of a website in accordance with this Rule, it is deemed to have been delivered—
- (a) when the document was first made available on the website, or
  - (b) if later, when the notice under paragraph (2) was delivered to that person.

#### **Special provision on account of expense as to website use**

**165.**—(1) Where the court is satisfied that the expense of sending notices in accordance with Rule 164 would, on account of the number of persons entitled to receive them, be disproportionate to the benefit of sending notice in accordance with that Rule, it may order that the requirement to give, deliver or send a relevant document to any person may (other than in a case where personal service is required) be satisfied by the energy administrator sending each of those persons a notice—

- (a) stating that all relevant documents will be made available for viewing and downloading on a website;
  - (b) specifying the address of that website together with any password necessary to view and download a relevant document from that site; and
  - (c) containing a statement that the person to whom the notice is given, delivered or sent may at any time request that hard copies of all, or specific, relevant documents are sent to that person, and specifying a telephone number, e-mail address and postal address which may be used to make that request.
- (2) A document to which this Rule relates must—
- (a) be available on the website for a period of not less than 12 months from the date when it was first made available on the website or, if later, from the date upon which the notice was sent, and
  - (b) must be in such a format as to enable it to be downloaded from the website within a reasonable time of an electronic request being made for it to be downloaded.
- (3) Where hard copies of relevant documents have been requested, they must be sent by the energy administrator—
- (a) within 5 business days of the receipt of the energy administrator of the request to be sent hard copies, in the case of relevant documents first appearing on the website before the request was received, or
  - (b) within 5 business days from the date a relevant document first appears on the website, in all other cases.

(4) An energy administrator must not require a person making a request under paragraph (3) to pay a fee for the supply of the document.

(5) Where a relevant document is given, delivered or sent to a person by means of a website in accordance with this Rule, it is deemed to have been delivered—

- (a) when the relevant document was first made available on the website, or
- (b) if later, when the notice under paragraph (1) was delivered to that person.

(6) In this Rule a relevant document means any document which the energy administrator is first required to give, deliver or send to any person after the court has made an order under paragraph (1).

### **Electronic delivery of energy supply company administration proceedings to courts**

**166.**—(1) Except where paragraph (2) applies or the requirements of paragraph (3) are met, no petition, application, notice or other document may be delivered or made to a court by electronic means.

(2) This paragraph applies where electronic delivery of documents to a court is permitted by another Rule.

(3) The requirements of this paragraph are—

- (a) the court provides an electronic working scheme for the proceedings to which the document relates; and
- (b) the electronic communication is—
  - (i) delivered and authenticated in a form which complies with the requirements of the scheme;
  - (ii) sent to the electronic address provided by the court for electronic delivery of those proceedings; and
  - (iii) accompanied by any payment due to the court in respect of those proceedings made in a manner which complies with the requirements of the scheme.

(4) In this Rule “an electronic working scheme” means a scheme permitting energy supply company administration proceedings to be delivered electronically to the court set out in a practice direction.

(5) Under paragraph (3) an electronic communication is to be treated as delivered to the court at the time it is recorded by the court as having been received.

## **CHAPTER 3**

### **Service of court documents**

#### **Application**

**167.**—(1) Subject to paragraph (2), this Chapter applies in relation to the service of—

- (a) petitions,
- (b) applications,
- (c) documents relating to petitions or applications, and
- (d) court orders,

which are required to be served by any provision of the 1986 Act or these Rules (“court documents”).

(2) For the purposes of the application by this Chapter of CPR Part 6 to the service of documents in energy supply company administration proceedings—

- (a) an application commencing energy supply company administration proceedings, or

(b) an application within energy supply company administration proceedings against a respondent,  
is to be treated as a claim form.

#### **Application of CPR Part 6 to service of court documents within the jurisdiction**

**168.** Except where different provision is made in these Rules, CPR Part 6 applies in relation to the service of court documents within the jurisdiction with such modifications as the court may direct.

#### **Service of orders staying proceedings**

**169.**—(1) This Rule applies where the court makes an order staying any action, execution or other legal process against the property of the energy supply company.

(2) Service within the jurisdiction of such an order as is mentioned in paragraph (1) may be effected by sending a sealed copy of the order to the address for service of the claimant or other party having the carriage of the proceedings to be stayed.

#### **Service on joint energy administrators**

**170.** Where there are joint energy administrators in energy supply company administration proceedings, service on one of them is to be treated as service on all of them.

#### **Application of CPR Part 6 to service of court documents outside the jurisdiction**

**171.** CPR Part 6 applies to the service of court documents outside the jurisdiction with such modifications as the court may direct.

### **CHAPTER 4**

#### **Meetings**

#### **Quorum at meeting of creditors**

**172.**—(1) Any meeting of creditors in energy supply company 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 chair) and in the case of any proceedings under Parts 1 to 7 of the 1986 Act includes corporations duly represented.

(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 chair alone, or

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

(b) the chair 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 must not commence until at least the expiry of 15 minutes after the time appointed for its commencement.

### **Remote attendance at meetings of creditors**

**173.**—(1) This Rule applies to a request to the convener of a meeting under section 246A(9) of the 1986 Act to specify a place for the meeting.

(2) The request must be accompanied by—

- (a) in the case of a request by creditors, a list of the creditors making or concurring with the request and the amounts of their respective debts in the energy supply company administration proceedings in question,
- (b) in the case of a request by members, a list of the members making or concurring with the request and their voting rights, and
- (c) from each person concurring, written confirmation of that person's concurrence.

(3) The request must be made within 7 business days of the date on which the convener sent the notice of the meeting in question.

(4) Where the convener considers that the request has been properly made in accordance with the 1986 Act and this Rule, the convener must—

- (a) give notice to all those previously given notice of the meeting—
  - (i) that it is to be held at a specified place, and
  - (ii) as to whether the date and time are to remain the same or not;
- (b) set a venue (including specification of a place) for the meeting, the date of which must be not later than 28 days after the original date for the meeting; and
- (c) give at least 14 days' notice of that venue to all those previously given notice of the meeting;

and the notices required by sub-paragraphs (a) and (c) may be given at the same or different times.

(5) Where the convener has specified a place for the meeting in response to a request to which this Rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

### **Action where person excluded**

**174.**—(1) In this Rule and Rules 175 and 176 an “excluded person” means a person who—

- (a) has taken all steps necessary to attend a meeting under the arrangements put in place to do so by the convener of the meeting under section 246A(6) of the 1986 Act; and
- (b) those arrangements do not permit that person to attend the whole or part of that meeting.

(2) Where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may—

- (a) continue the meeting;
- (b) declare the meeting void and convene the meeting again;
- (c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.

(3) Where the chair continues the meeting, the meeting is valid unless—

- (a) the chair decides in consequence of a complaint under Rule 176 to declare the meeting void and hold the meeting again; or
- (b) the court directs otherwise.

(4) Without prejudice to paragraph (2), where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may, in the chair's discretion and without an adjournment, declare the meeting suspended for any period up to 1 hour.

### Indication to excluded person

**175.**—(1) A person who claims to be an excluded person may request an indication of what occurred during the period of that person's claimed exclusion (an “indication”).

(2) A request under paragraph (1) must be made as soon as reasonably practicable and, in any event, no later than 4.00 pm on the business day following the day on which the exclusion is claimed to have occurred.

(3) A request under paragraph (1) must be made to—

- (a) the chair, where it is made during the course of the business of the meeting; or
- (b) the energy administrator where it is made after the conclusion of the business of the meeting.

(4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made under paragraph (3) must give the indication as soon as reasonably practicable and, in any event, no later than 4.00 pm on the business day following the day on which the request was made under paragraph (1).

### Complaint

**176.**—(1) Any person who—

- (a) is, or claims to be, an excluded person; or
- (b) attends the meeting (in person or by proxy) and considers that they have been adversely affected by a person's actual, apparent or claimed exclusion,

(“the complainant”) may make a complaint.

(2) The person to whom the complaint must be made (“the relevant person”) is—

- (a) the chair, where it is made during the course of the meeting; or
- (b) the energy administrator, where it is made after the meeting.

(3) The relevant person must—

- (a) consider whether there is an excluded person; and
- (b) where satisfied that there is an excluded person, consider the complaint; and
- (c) where satisfied that there has been prejudice, take such action as the relevant person considers fit to remedy the situation.

(4) Paragraph (5) applies where—

- (a) the relevant person is satisfied that the complainant is an excluded person;
- (b) during the period of the person's exclusion a resolution was put to the meeting and voted on; and
- (c) the excluded person asserts how the excluded person intended to vote on the resolution.

(5) Subject to paragraph (6), where satisfied that the effect of the intended vote in paragraph (4), if cast, would have changed the result of the resolution, the relevant person must—

- (a) count the intended vote as being cast in accordance with the complainant's stated intention;
- (b) amend the record of the result of the resolution; and
- (c) where those entitled to attend the meeting have been notified of the result of the resolution, notify them of the change.

(6) Where satisfied that more than one complainant in paragraph (4) is an excluded person, the relevant person must have regard to the combined effect of the intended votes.

(7) The relevant person must notify the complainant in writing of any decision.

(8) A complaint must be made as soon as reasonably practicable and, in any event, no later than 4.00 pm on the business day following—

- (a) the day on which the person was, appeared or claimed to be excluded; or
- (b) where an indication is sought under Rule 175, the day on which the complainant received the indication.

(9) A complainant who is not satisfied by the action of the relevant person may apply to the court for directions and any application must be made no more than 2 business days from the date of receiving the decision of the relevant person.

## CHAPTER 5

### Forms

#### **Forms for use in energy supply company administration proceedings**

**177.**—(1) Subject to Rules 178 and 179, the forms contained in Schedule 1 to these Rules must be used in energy supply company administration proceedings as provided for in specific Rules.

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

(3) The Secretary of State or the energy administrator may incorporate a barcode or other reference or recognition mark into any form in Schedule 1 to these Rules a copy of which is received by any of them or is sent to any person by any of them.

#### **Electronic submission of information instead of submission of forms to the Secretary of State, energy administrators**

**178.**—(1) This Rule applies in any case where information in a prescribed form is required by these Rules to be sent by any person to the Secretary of State or the energy administrator, or a copy of a prescribed form is to be sent to the registrar of companies.

(2) A requirement of the kind mentioned in paragraph (1) is treated as having been satisfied where—

- (a) the information is submitted electronically with the agreement of the person to whom the information is sent;
- (b) the form in which the electronic submission is made satisfies the requirements of the person to whom the information is sent (which may include a requirement that the information supplied can be reproduced in the format of the prescribed form);
- (c) all the information required to be given in the prescribed form is provided in the electronic submission; and
- (d) the person to whom the information is sent can provide in legible form the information so submitted.

(3) Where information in a prescribed form is permitted to be sent electronically under paragraph (2), any requirement in the prescribed form that the prescribed form be accompanied by a signature is taken to be satisfied—

- (a) if the identity of the person who is supplying the information in the prescribed form and whose signature is required is confirmed in a manner specified by the recipient, or
- (b) where no such manner has been specified by the recipient, if the communication contains or is accompanied by a statement of the identity of the person who is providing the information in the prescribed form, and the recipient has no reason to doubt the truth of that statement.



(4) Where information required in a prescribed form has been supplied to a person, whether or not it has been supplied electronically in accordance with paragraph (2), and a copy of that information is required to be supplied to another person falling within paragraph (1), the requirements contained in paragraph (2) apply in respect of the supply of the copy to that other person, as they apply in respect of the original.

### **Electronic submission of information instead of submission of forms in all other cases**

**179.**—(1) Subject to paragraph (5), this Rule applies in any case where Rule 178 does not apply, where information in a prescribed form is required by these Rules to be sent by any person.

(2) A requirement of the kind mentioned in paragraph (1) is treated as having been satisfied where—

- (a) the person to whom the information is sent has agreed—
  - (i) to receiving the information electronically and to the form in which it is to be sent; and
  - (ii) to the manner in which paragraph (3) is to be satisfied (“the specified manner”);
- (b) all the information required to be given in the prescribed form is provided in the electronic submission; and
- (c) the person to whom the information is sent can provide in legible form the information so submitted.

(3) Any requirement in a prescribed form that it be accompanied by a signature is taken to be satisfied if the identity of the person who is supplying the information and whose signature is required, is confirmed in the specified manner.

(4) Where information required in prescribed form has been supplied to a person, whether or not it has been supplied electronically in accordance with paragraph (2), and a copy of that information is required to be supplied to another person falling within paragraph (1), the requirements contained in paragraph (2) apply in respect of the supply of the copy to that other person, as they apply in respect of the original.

## **CHAPTER 6**

### **Gazette notices**

#### **Contents of notices to be gazetted under the 1986 Act or these Rules**

**180.**—(1) Where under the 1986 Act or these Rules a notice is gazetted, in addition to any content specifically required by the 1986 Act or any other provision of these Rules, the content of such a notice must be as set out in this Chapter.

(2) All notices published must specify insofar as it is applicable in relation to the particular notice—

- (a) the name and postal address of the energy administrator acting in the proceedings;
- (b) the capacity in which the energy administrator is acting and the date of appointment;
- (c) either an e-mail address, or a telephone number, through which the energy administrator may be contacted;
- (d) the name of any person other than the energy administrator (if any) who may be contacted regarding the proceedings;
- (e) the number assigned to the energy administrator by the Secretary of State;
- (f) the court name and any number assigned to the proceedings by the court;
- (g) the registered name of the energy supply company;

- (h) the energy supply company's registered number;
- (i) the energy supply company's registered office, or if an unregistered company, the postal address of its principal place of business;
- (j) any principal trading address of the energy supply company if this is different from its registered office;
- (k) any name under which the energy supply company was registered in the 12 months prior to the date of the commencement of the proceedings which are the subject of the Gazette notice; and
- (l) any name or style (other than the energy supply company's registered name) under which—
  - (i) the energy supply company carried on business; and
  - (ii) any debt owed to a creditor was incurred.

### **Omission of unobtainable information**

**181.** Information required under this Chapter to be included in a notice to be gazetted may be omitted if it is not reasonably practicable to obtain it.

### **The Gazette – general**

**182.**—(1) A copy of the Gazette containing any notice required by the 1986 Act or these Rules to be gazetted is evidence of any facts stated in the notice.

(2) In the case of an order of the court notice of which is required by the 1986 Act or these 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 must as soon as reasonably practicable cause the variation of the order to be gazetted or a further entry to be made in the Gazette for the purpose of correcting the error or inaccuracy.

## **CHAPTER 7**

### **Notice advertised otherwise than in the Gazette**

#### **Notices otherwise advertised under the 1986 Act or these Rules**

**183.**—(1) Where under the 1986 Act or these Rules a notice may be advertised otherwise than in the Gazette, in addition to any content specifically required by the 1986 Act or any other provision of these Rules, the content of such a notice must be as set out in this Chapter.

(2) All notices published must specify insofar as it is applicable in relation to the particular notice—

- (a) the name and postal address of the energy administrator acting in the proceedings to which the notice relates;
- (b) the capacity in which the energy administrator is acting;
- (c) either an e-mail address, or a telephone number, through which the energy administrator may be contacted;
- (d) the registered name of the energy supply company;
- (e) the energy supply company's registered number;

- (f) any name under which the energy supply company was registered in the 12 months prior to the date of the commencement of the proceedings which are the subject of the notice; and
- (g) any name or style (other than the energy supply company's registered name) under which—
  - (i) the energy supply company carried on business; and
  - (ii) any debt owed to a creditor was incurred.

#### **Non-Gazette notices – other provisions**

**184.**—(1) The information required to be contained in a notice to which this Chapter applies must be included in the advertisement of that notice in a manner that is reasonably likely to ensure, in relation to the form of the advertising used, that a person reading, hearing or seeing the advertisement, will be able to read, hear or see that information.

(2) Information required under this Chapter to be included in a notice may be omitted if it is not reasonably practicable to obtain it.

### **CHAPTER 8**

#### **Notifications to the registrar of companies**

##### **Application of this Chapter**

**185.** This Chapter applies where under the 1986 Act or these Rules information is to be delivered to the registrar of companies.

##### **Information to be contained in all notifications to the registrar**

**186.** Where under the 1986 Act or these Rules a return, notice or any other document or information is to be delivered to the registrar of companies, that notification must—

- (a) specify—
  - (i) the registered name of the energy supply company;
  - (ii) its registered number;
  - (iii) the nature of the notification;
  - (iv) the provision of the 1986 Act or the Rule under which the notification is made;
  - (v) the date of the notification;
  - (vi) the name and postal address of the person making the notification;
  - (vii) the capacity in which that person is acting in respect of the energy supply company; and
- (b) be authenticated by the person making the notification.

##### **Notifications relating to the office of energy administrators**

**187.** In addition to the information required by Rule 186, a notification relating to the office of the energy administrator must also specify—

- (a) the name of the energy administrator;
- (b) the date of the event notified;
- (c) where the notification relates to an appointment, the person, body or court making the appointment;

- (d) where the notification relates to the termination of an appointment, the reason for that termination (for example, resignation); and
- (e) the postal address of the energy administrator.

#### **Notification relating to documents**

**188.** In addition to the information required by Rule 186, a notification relating to a document (for example, a statement of affairs) must also specify—

- (a) the nature of the document; and
- (b) either—
  - (i) the date of the document; or
  - (ii) where the document relates to a period of time (for example a report) the period of time to which the document relates.

#### **Notifications relating to court orders**

**189.** In addition to the information required by Rule 186, a notification relating to a court order must also specify—

- (a) the nature of the court order; and
- (b) the date of the order.

#### **Returns or reports of meetings**

**190.** In addition to the information required by Rule 186, the notification of a return or a report of a meeting must specify—

- (a) the purpose of the meeting including the provision of the 1986 Act or the Rule under which it was convened;
- (b) the venue fixed for the meeting;
- (c) whether a required quorum was present for the meeting to take place; and
- (d) if the meeting took place, the outcome of the meeting (including any resolutions passed at the meeting).

#### **Notifications relating to other events**

**191.** In addition to the information required by Rule 186, a notification relating to any other event must specify—

- (a) the nature of the event including the provision of the 1986 Act or Rule under which it took place; and
- (b) the date the event occurred.

#### **Notifications of more than one nature**

**192.** A notification which includes a notification of more than one nature must satisfy the requirements applying in respect of each of those notifications.

### **Notifications made to other persons at the same time**

**193.**—(1) Where under the 1986 Act or these Rules a notice or other document is to be sent to another person at the same time that it is to be delivered to the registrar of companies, that requirement may be satisfied by sending to that other person a copy of the notification to the registrar.

(2) Paragraph (1) does not apply—

- (a) where a form is prescribed for the notification to the other person; or
- (b) where the notification to the registrar of companies is incomplete.

## **CHAPTER 9**

### **Inspection of documents and the provision of information**

#### **Confidentiality of documents – grounds for refusing inspection**

**194.**—(1) Where in energy supply company administration proceedings the energy administrator considers that a document forming part of the records of those proceedings—

- (a) should be treated as confidential; or
- (b) is of such a nature that its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence against any person,

the energy administrator 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 just.

#### **Right to copy documents**

**195.** Where the 1986 Act or these 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 <sup>M19</sup>; and
- (b) in any other case, of the appropriate fee.

#### **Marginal Citations**

**M19** 2003 c. 39, as amended by the [Constitutional Reform Act 2005 \(c. 4\)](#).

#### **Charges for copy documents**

**196.** Except where prohibited by these Rules, the energy administrator is entitled to require the payment of the appropriate fee for the supply of documents requested by a creditor or member.

#### **Right to have list of creditors**

**197.**—(1) A creditor has the right to require the energy administrator to provide a list of the creditors and the amounts of their respective debts unless paragraph (4) applies.

(2) The energy administrator on being required to furnish the list under paragraph (1)—

- (a) as soon as reasonably practicable must send it to the person requiring the list to be furnished; and

(b) may charge the appropriate fee for doing so.

(3) The name and address of any creditor may be omitted from the list furnished under paragraph (2) where the energy administrator is of the view that its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence against any person provided that—

(a) the amount of the debt in question is shown in the list; and

(b) a statement is included in the list that the name and address of the creditor has been omitted in respect of that debt.

(4) Paragraph (1) does not apply where a statement of affairs has been delivered to the registrar of companies.

## CHAPTER 10

### Computation of time and time limits

#### **Time limits**

**198.**—(1) The provisions of CPR rule 2.8 (time) apply, as regards computation of time, to anything required or authorised to be done under these 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 these Rules.

## CHAPTER 11

### Security

#### **Energy administrator's security**

**199.**—(1) Wherever under these Rules any person has to appoint a person to the office of energy administrator that person must, before making the appointment, be satisfied that the person appointed or to be appointed has security for the proper performance of the office of energy administrator.

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

## CHAPTER 12

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

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

**200.**—(1) Where the court makes an order under section 176A(5) of the 1986 Act, it must 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 must, as soon as is reasonably practicable give notice to each creditor of whose address and claim the energy administrator is aware.

(3) Paragraph (2) does not apply where the court directs otherwise.

(4) The court may direct that the requirement in paragraph (2) is complied with if a notice has been published by the energy administrator which, in addition to containing the standard contents, states that the court has made an order disapplying the requirement to set aside the prescribed part.

(5) As soon as reasonably practicable a notice under paragraph (4)—

- (a) must be gazetted; and
  - (b) may be advertised in such other manner as the energy administrator thinks fit.
- (6) The energy administrator must deliver a copy of the order to the registrar of companies as soon as reasonably practicable after the making of the order.

## PART 16

### Interpretation and application

#### Introductory

**201.** This Part of these Rules has effect for their interpretation and application.

#### “The court”; “the registrar”

**202.**—(1) In energy supply company administration proceedings, anything to be done by, to or before the court may be done by, to or before a judge, district judge or the registrar.

(2) The registrar or district judge may authorise any act of a formal or administrative character which is not by statute the registrar's or district judge's responsibility to be carried out by the chief clerk or any other officer of the court acting on the registrar's or district judge's behalf, in accordance with directions given by the Lord Chancellor.

(3) In energy supply company administration proceedings, “the registrar” means [<sup>F4</sup>a Registrar in Bankruptcy of the High Court][<sup>F4</sup>an Insolvency and Companies Court Judge].

**F4** Words in rule 202(3) substituted (E.W.) (26.2.2018) by [The Alteration of Judicial Titles \(Registrar in Bankruptcy of the High Court\) Order 2018 \(S.I. 2018/130\)](#), art. 1, **Sch. para. 12(1)(i)**

#### “Energy supply company administration proceedings”

**203.** “Energy supply company administration proceedings” means any proceedings under sections 154 to 171 of, and Schedules 20 and 21 to, the 2004 Act or these Rules.

#### “The appropriate fee”

**204.** “The appropriate fee” means 15 pence per A4 or A5 page and 30 pence per A3 page.

#### “Debt”, “liability”

**205.**—(1) “Debt”, in relation to the energy supply company administration of an energy supply company, means (subject to the next paragraph) any of the following—

- (a) any debt or liability to which the energy supply company is subject at the date on which it goes into energy supply company administration;
- (b) any debt or liability to which the energy supply company may become subject after that date by reason of any obligation incurred before that date; and
- (c) any interest provable as mentioned in Rule 57(1).

(2) For the purpose of any provision of the 1986 Act, section 154 to 171 of and Schedule 20 and 21 to the 2004 Act, section 93 to 102 of the 2011 Act, or these Rules about energy supply company administration, any liability in tort is a debt provable in the energy supply company administration if either—

- (a) the cause of action has accrued at the date on which the energy supply company entered energy supply company administration; or
- (b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.

(3) For the purposes of references in any provision of the 1986 Act, section 154 to 171 of and Schedules 20 and 21 to the 2004 Act, or these Rules, to a debt or liability, it is immaterial whether the amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.

(4) In any provision of the 1986 Act, section 154 to 171 of and Schedule 20 and 21 to the 2004 Act, or these Rules, except in so far as the context otherwise requires, “liability” means (subject to paragraph (3) above) a liability to pay money or money's worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution.

### “Venue”

**206.** References to the “venue” for any proceeding or attendance before the court, or for a meeting, are to the time, date and place for the proceeding, attendance or meeting or to the time and date for a meeting which is held in accordance with section 246A of the 1986 Act without any place being specified for it.

### Expressions used generally

**207.**—(1) In these Rules expressions defined in section 102 of the 2011 Act have the meanings given to them in that section.

(2) A reference in these Rules to a numbered form is to the form so numbered in Schedule 1 to these Rules.

(3) In these Rules—

“Business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain under or by virtue of the Banking and Financial Dealings Act 1971 <sup>M20</sup>; a “certificate of service” means a certificate of service verified by a statement of truth;

“costs officer” has the meaning given to it in CPR Part 43;

“File in court” means deliver to the court for filing;

“The Gazette” means the London Gazette;

“Gazetted” means advertised once in the Gazette;

“Practice direction” means a direction as to the practice and procedure of any court within the scope of the CPR;

“Prescribed part” has the same meaning as it does in section 176A(2) of the 1986 Act and the Insolvency Act 1986 (Prescribed Part) Order 2003 <sup>M21</sup>;

“Standard contents” means—

- (a) in relation to a notice to be gazetted, the contents specified in Rule 180; and
  - (b) in relation to a notice to be advertised in any other way, the contents specified in Rule 183;
- a “statement of truth” means a statement of truth in accordance with CPR Part 22; a “witness statement” means a witness statement verified by a statement of truth in accordance with CPR Part 22.



**Marginal Citations**

**M20** 1971 c. 80.

**M21** S.I. 2003/2097.

**Application**

**208.** These Rules apply to energy supply company administration proceedings commenced on or after the date on which these Rules come into force. Nothing contained in the Insolvency Rules shall apply to such proceedings commenced on or after that date.

Signed, by the authority of the Lord Chancellor

Ministry of Justice

*Helen Grant*  
Parliamentary Under Secretary

I concur, on behalf of the Secretary of State

Department of Energy and Climate Change

*Michael Fallon*  
Minister of State

**Changes to legislation:**

There are currently no known outstanding effects for the The Energy Supply Company Administration Rules 2013.