
STATUTORY INSTRUMENTS

2013 No. 1047

**The Energy Supply Company
Administration (Scotland) Rules 2013**

Part 6

Distribution of Assets

Order of priority in distribution

46.—(1) If the funds of the energy supply company’s assets are to be distributed then they shall be distributed by the energy administrator to meet the following expenses and debts in the order in which they are mentioned—

- (a) the expenses of the energy supply company administration;
- (b) any preferential debts within the meaning of section 386 of the 1986 Act (categories of preferential debts)(1) (excluding any interest which has been accrued thereon to the date on which the energy supply company entered energy supply company administration);
- (c) ordinary debt, that is to say a debt which is neither a secured debt nor a debt mentioned in any other sub-paragraph of this paragraph;
- (d) interest at the official rate on—
 - (i) the preferential debts, and
 - (ii) the ordinary debts,

between the said date on which the energy supply company entered energy supply company administration and the date of payment of the debt; and

- (e) any postponed debt.

(2) In the above paragraph—

- (a) “postponed debt” means a creditor’s right to any alienation which has been reduced or restored to the energy supply company’s assets under section 242 of the 1986 Act (gratuitous alienations)(2) or to the proceeds of sale of such an alienation; and
- (b) “official rate” shall be construed in accordance with subsection (4) of section 189 of the 1986 Act (interest on debts) and, for the purposes of paragraph (a) of that subsection, as applied to Scotland by subsection (5), the rate specified in these Rules shall be 15 per centum per annum.

(3) The expenses of the energy supply company administration mentioned in sub-paragraph (a) of paragraph (1) above are payable in the order of priority mentioned in Rule 47.

(4) Subject to the provisions of paragraph (5), any debt falling within any of sub-paragraphs (b) to (e) of paragraph (1) shall have the same priority as any other debt falling within the same sub

(1) Section 386 was amended by the Enterprise Act 2002 (c.40), section 251 and by the Pension Schemes Act 1993 (c.48), Schedule 8 paragraph 18.

(2) Section 242 was amended by the Enterprise Act 2002 (c.40), Schedule 17 paragraph 28.

paragraph and, where the funds of the energy supply company's assets are inadequate to enable the debts mentioned in this paragraph to be paid in full, they shall abate in equal proportions.

(5) So far as the assets of the energy supply company available for payment of general creditors are insufficient to meet them, preferential debts have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by, the energy supply company, and shall be paid accordingly out of any property comprised in or subject to that charge.

(6) Any surplus remaining, after all expenses and debts mentioned in paragraph (1) have been paid in full, shall (unless the articles of the energy supply company otherwise provide) be distributed among the members according to their rights and interests in the company.

(7) Nothing in this Rule shall affect—

- (a) the right of a secured creditor which is preferable to the rights of the energy administrator;
or
- (b) any preference of the holder of a lien over a title deed or other document which has been delivered to the energy administrator.