

---

STATUTORY INSTRUMENTS

---

**2013 No. 1047**

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

**Part 4**

**Meetings and Reports**

**Meetings generally and notice**

**18.**—(1) This Rule and Rule 19 apply to any meetings summoned by the energy administrator under paragraph 62 of Schedule B1 to the 1986 Act.

(2) In fixing the venue for a meeting, the energy administrator shall have regard to the convenience of the persons who are to attend and the meeting shall be summoned for commencement between 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

(3) Subject to Rule 28, the energy administrator shall give not less than 14 days' notice of the venue for the meeting to every person known to the energy administrator as being entitled to attend the meeting.

(4) The energy administrator shall also publish notice of the venue for the meeting in the Edinburgh Gazette and in such other manner as the energy administrator thinks fit to ensure the meeting comes to the attention of any persons who are entitled to attend.

(5) Any notice published under paragraph (4) shall be published not less than 14 days before the meeting.

(6) Any notice under this Rule shall, in addition to the standard content, state—

- (a) the venue fixed for the meeting;
- (b) the purpose of the meeting;
- (c) the persons who are entitled to attend and vote at the meeting;
- (d) the effects of Rule 29 and of the relevant provisions of Rule 31; and
- (e) in the case of a meeting of creditors—
  - (i) that proxies may be lodged at or before the meeting and the place where they may be lodged; and
  - (ii) that claims may be lodged by those who have not already done so at or before the meeting and the place where they may be lodged.

(7) With the notice given under paragraph (3), the energy administrator shall also send out a proxy form.

(8) In the case of any meeting, the court may order that notice of the meeting be given by public advertisement in such form as may be specified in the order and not by individual notice to the persons concerned. In considering whether to make such an order, the court shall have regard to the cost of the public advertisement, to the amount of the assets available and to the extent of the interest of creditors or any particular class of them.

### **The chair at meetings**

**19.**—(1) At any meeting of creditors summoned by the energy administrator, either the energy administrator or a person nominated by the energy administrator in writing shall chair.

(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.

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

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

(2) Subject to paragraph (3), 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 not confined to those persons present or represented under section 323 of the Companies Act (representation of corporations at meetings)(1) but includes those represented by proxy by any person (including the chair).

(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 claims and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote,

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

### **Chair of meeting as proxy holder**

**21.** Where the chair at a meeting of creditors holds a proxy which requires the chair to vote for a particular resolution and no other person proposes that resolution—

- (a) the chair shall propose the resolution unless there is good reason for not doing so, and
- (b) if the chair does not propose it, the chair shall forthwith after the meeting notify the person who granted the proxy of the reason why not.

### **Suspension and Adjournment**

**22.**—(1) This Rule applies to meetings of creditors.

(2) If, within 30 minutes from the time appointed for the commencement of a 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.

(3) Once only in the course of the meeting, the chair may, without an adjournment, declare the meeting suspended for any period up to one hour.

(4) In the course of any meeting, the chair may, and shall, if the meeting so resolves, adjourn it to such date, time and place as seems to the chair to be appropriate in the circumstances.

---

(1) Section 323 was amended by [S.I. 2009/1632](#) reg. 6.

(5) An adjournment under paragraph (4) must not be for a period of more than 14 days, subject to a direction from the court.

(6) If there are subsequent 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.

(7) Where a meeting is adjourned under this Rule, proxies may be used if lodged at or before the adjourned meeting.

(8) Where a meeting is adjourned, any proxies given for the original meeting may be used at the adjourned meeting.

### **Correspondence instead of creditors' meetings**

**23.**—(1) This Rule applies where the energy administrator proposes to conduct the business of a creditors' meeting by correspondence in accordance with paragraph 58 of Schedule B1 to the 1986 Act.

(2) Notice of the business to be conducted shall be given to all who are entitled to be notified of a creditors' meeting by virtue of paragraph 51 of Schedule B1 to the 1986 Act.

(3) The energy administrator may seek to obtain the agreement of the creditors to a resolution by sending to every creditor a copy of the proposed resolution.

(4) The energy administrator shall send to the creditors a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.

(5) The energy administrator shall set a closing date for receipt of votes and comments. The closing date shall be set at the discretion of the energy administrator, but shall not be less than 14 days from the date of issue of the notice under paragraph (1) of this Rule.

(6) In order to be considered, votes and comments must be received by the energy administrator by the closing date and must be accompanied by the statement of claim and account or voucher referred to in Rule 36, except where the statement of claim and account or voucher have already been submitted by the creditor.

(7) For the conduct of business to proceed, the energy administrator must receive at least one response which satisfies the requirement of paragraph (6) of this Rule.

(8) If no responses are received by the closing date, then the energy administrator shall summon a creditors' meeting.

(9) Any single creditor, or a group of creditors, of the energy supply company whose debts amount to at least 10 per cent of the total debts of the energy supply company may, within 5 business days from the date of the energy administrator sending out a resolution or proposals, require him to summon a creditors' meeting to consider the matters raised therein.

(10) If the energy administrator's proposals or revised proposals are rejected by the creditors pursuant to this Rule, the administrator may summon a creditors' meeting.

(11) A reference in these Rules to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in accordance with this Rule; and Rule 17 shall apply to the business of a creditors' meeting conducted by correspondence as it applies to a creditors' meeting.

### **Remote attendance at meetings**

**24.**—(1) This Rule applies to a request to the administrator under section 246A(9) of the 1986 Act (remote attendance at meetings)(2) to specify a place for the meeting.

---

(2) Section 246A was inserted by [S.I. 2010/18](#), Article 3.

- (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 energy administrator sent the notice of the meeting in question.
- (4) Where the energy administrator considers that the request has been properly made in accordance with the 1986 Act and this Rule, the energy administrator 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) whether the date and time are to remain the same or not;
  - (b) specify a venue for the meeting, the date of which must not be more than 28 days after the original date for the meeting; and
  - (c) give at least 14 days’ notice of the venue of the meeting 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 administrator 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**

- 25.**—(1) In this Rule, and Rules 26 and 27, 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 (remote attendance at meetings); 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 27 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 one hour.

### **Indication to excluded person**

**26.**—(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.

(2) A request under paragraph (1) must be made as soon as reasonably practicable and, in any event, no later than 4 p.m. 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 p.m. on the business day following the day on which the request was made under paragraph (1).

### **Complaint**

**27.**—(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,

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 prejudice.

(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—
  - (i) a resolution was put to the meeting; and
  - (ii) 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) A complaint must be made as soon as reasonably practicable and, in any event, by 4 p.m. on the business day following—

- (a) the day on which the person was excluded; or
- (b) where an indication is requested under Rule 26, the day on which the complainant received the indication.

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

(9) A complainant who is not satisfied by the action of the relevant person may apply to the court for a direction to be given to the relevant person as to the action to be taken in respect of the complaint, and any application must be made no more than 2 business days from the date of receiving the decision of the relevant person.

### **Meeting following nomination of alternative liquidator**

**28.**—(1) Where under Rules 15(1)(l) or 33(1)(h), 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 shall, in the circumstances detailed in paragraph (2), summon 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 shall summon 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) A request for such a meeting shall be made within 21 days of the date on which the energy administrator's statement of proposals is sent out, or where revised proposals have been sent out and a proposed revision relates to the ending of the energy supply company administration by a creditors' voluntary liquidation, within 21 days from the date on which the revised statement of proposals is sent out.

(4) A request under this Rule shall include—

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

but sub-paragraph (a) 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 shall be held within 21 days of the energy administrator's receipt of the notice requesting the meeting.

### **Entitlement to vote (creditors and members)**

**29.**—(1) Part 5 (claims in energy supply company administration) (except Rule 37(2) and (3)) applies for the purpose of determining a creditor's entitlement to vote at any creditors' meeting in an energy supply company administration.

(2) Members of an energy supply company at their meetings shall vote according to the rights attaching to their shares in accordance with the articles of association.

(3) The reference in paragraph (2) to a member's share shall include any other interests which the member may have as a member of the energy supply company.

### **Hire-purchase, conditional sale and hiring agreements**

**30.**—(1) Subject as follows, an owner of goods under a hire-purchase agreement or under an agreement for the hire of goods for more than 3 months, 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**

**31.**—(1) Subject to paragraph (2) and (3), at a creditors’ or members’ 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) Every resolution passed must be recorded in writing and authenticated by the chair, either separately or as part of the minutes of the meeting, and the record must be kept as part of the sederunt book.

(3) 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.

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

### **Report of Meeting**

**32.**—(1) The chair of any meeting shall cause a report to be made of the proceedings at the meeting which shall be signed by the chair.

(2) The report shall include—

- (a) a list of all the creditors who attended the meeting, either in person or by proxy; and
- (b) a copy of every resolution passed.

(3) The chair shall keep a copy of the report of the meeting as part of the sederunt book in the energy supply company administration.

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

**33.**—(1) A statement of revised proposals under paragraph 54 of Schedule B1 to the 1986 Act shall include—

- (a) details of the court which granted the energy supply company administration order or in which the notice of appointment was lodged and the relevant court reference number (if any);
- (b) the full name, registered address, registered number and any other trading names of the energy supply company;
- (c) details relating to the appointment of the energy administrator, including the date of appointment and whether the energy supply company administration application was made by the Secretary of State or by GEMA;
- (d) the names of the directors and secretary of the energy supply company and details of any shareholdings which they have in the energy supply company;
- (e) a summary of the initial proposals and the reason 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 it is proposed, by virtue of the revision, to make distributions to creditors in accordance with Part 6, the classes of creditors to whom it is proposed that distributions be made and whether or not the energy administrator intends to make an application to the court under paragraph 65(3) of Schedule B1 to the 1986 Act;
- (h) where the revision includes a proposal to move from energy supply company administration to a creditors’ voluntary liquidation—
  - (i) details of the proposed liquidator; and
  - (ii) a statement that, in accordance with paragraph 83(7) of Schedule B1 to the 1986 Act and Rule 57, creditors may nominate another person to act as liquidator, provided that the nomination is made at a meeting of creditors called for that purpose;
  - (iii) any other information that the energy administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions; and
  - (iv) where applicable, the declaration required by section 231(appointment to office of two or more persons) of the 1986 Act.

(2) The energy administrator shall send a copy of the statement in paragraph (1) above together with a notice in Form ESCA12(S) to the registrar of companies at the same time as it is sent to the creditors of the energy supply company and, 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, shall send a copy of the statement to every member of the energy supply company.

(3) Where the energy administrator wishes to publish a notice under paragraph 54(3) of Schedule B1 to the 1986 Act, the notice shall be advertised in such manner as the energy administrator thinks fit.

- (4) The notice referred to in paragraph (3) shall—
  - (a) state the full name of the energy supply company;
  - (b) state the name and address of the energy administrator;
  - (c) specify an address to which any member of the company can write to request that a copy of the statement be provide free of charge; and
  - (d) be published as soon as is reasonably practicable after the administrator sends the statement to creditors.

### **Progress Reports**

**34.—**(1) The energy administrator shall—

- (a) within six weeks after the end of each accounting period; and
- (b) within six weeks after the energy administrator ceases to act as energy administrator,

send to the court, the registrar of companies, each creditor, the Secretary of State and GEMA, a progress report attached to Form ESCA13(S).

(2) For the purposes of this Rule, “progress report” means a report which includes—

- (a) the name of the court which granted the energy supply company administration order or in which the notice of appointment was lodged, and the court reference number (if any);
- (b) details of the energy supply company’s name, address and registration number;
- (c) 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 order, 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 (energy administrators);

- (d) details of progress to date, including a receipts and payments account which states what assets of the energy supply company have been realised, for what value, and what payments have been made to creditors, in the form of an abstract showing—
  - (i) receipts and payments during the relevant accounting period;
  - (ii) where the energy administrator has ceased to act, receipts and payments during the period from the end of the last accounting period to the time when the energy administrator so ceased (or, where the energy administrator has made no previous progress report, receipts and payments in the period since appointment);
- (e) details of any assets that remain to be realised;
- (f) where a distribution is to be made in accordance with Part 6 in respect of an accounting period, the scheme of division; and
- (g) any other relevant information for the creditors.

(3) In a receipts and payments account falling within paragraph (2)(d)(ii), the energy supply company administrator shall include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the 1986 Act (share of assets for unsecured creditors)(3).

(4) The court may, on the application of the energy administrator, extend the period of six weeks referred to in paragraph (1) of this Rule.

(5) If the energy administrator makes default in complying with this Rule without reasonable excuse, the energy administrator shall be guilty of an offence.

- (6) An energy administrator convicted of an offence under paragraph (5) shall be liable—
  - (a) on summary conviction to a fine not exceeding one-fifth of the statutory maximum; or
  - (b) in relation to a second or subsequent conviction of the offence, to a daily default fine of one-fiftieth of the statutory maximum in respect of each day on which the contravention is continued.

(7) This Rule is without prejudice to the requirements of Part 6 (distribution to creditors).

### **Disposal of secured 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) If an order is made under paragraphs 71 or 72 of Schedule B1 to the 1986 Act, the energy administrator shall as soon as reasonably practicable send a copy of it certified by the clerk of court to the person who is the holder of the security or owner under the agreement.

(3) The energy administrator shall place a copy of the order in the sederunt book.

(4) The notice required by paragraph 72(4) of Schedule B1 to the 1986 Act shall be in Form ESCA14(S).