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STATUTORY INSTRUMENTS

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**2020 No. 629**

**The Smart Meter Communication Licensee  
Administration (England and Wales) Rules 2020**

**PART 7**

**Claims by and distributions to creditors**

**CHAPTER 1**

**Machinery of proving a debt**

**Proving a debt**

**48.**—(1) A person claiming to be a creditor of the SMCL and wishing to recover the person's debt in whole or part must submit the person's claim in writing to the SMCL administrator, unless this Rule or an order of the court provides otherwise.

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

(3) A proof must—

(a) be made out by, or under the direction of, the creditor and be authenticated by the creditor or a person authorised on the creditor's 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 any value added tax) as at the date on which the SMCL entered SMCL administration, less any payments made after that date in respect of the claim, any deduction under Rule 58 and any adjustment by way of set off in accordance with Rule 59;

(iv) whether or not the claim includes outstanding uncapitalised interest;

(v) particulars of how and when the debt was incurred by the SMCL;

(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 authenticating the proof (if a person other than the creditor).

(4) There must be specified in the proof details of any document by reference to which the debt can be substantiated; but the document need not be delivered with the proof unless the SMCL administrator has requested it.

(5) The SMCL administrator may call for the creditor to produce any document or other evidence which the SMCL administrator considers is necessary to substantiate the whole or any part of a claim.

(6) A creditor is deemed to have proved for the purposes of determination and payment of a dividend but not otherwise where—

- (a) the debt is a small debt;
- (b) a notice has been delivered to the creditor under Rule 73 which complies with Rule 74 (further contents of notice to creditors owed small debts); and
- (c) the creditor has not advised the SMCL administrator that the debt is incorrect or not owed.

(7) For the purposes of this Part “small debt” means a debt (being the total amount owed to a creditor) which does not exceed £1,000 (which amount is prescribed for the purposes of paragraph 13A of Schedule 8 to the 1986 Act<sup>(1)</sup>).

### **Provable debts**

**49.**—(1) Subject as follows, in SMCL administration proceedings all claims by creditors are provable as debts against the SMCL, 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>(2)</sup> is not provable.

(3) The following are not provable except at a time when all other claims of creditors in the SMCL administration proceedings (other than any of a kind mentioned in this paragraph) have been paid in full with interest under Rule 62—

- (a) any claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000<sup>(3)</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.

### **Costs of proving**

**50.** 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 48<sup>(5)</sup>; and
- (b) costs incurred by the SMCL administrator in estimating the value of a debt under Rule 57 are payable out of the assets as an expense of the SMCL administration.

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

**51.** The SMCL administrator must, so long as proofs delivered to the SMCL administrator are in the possession of the SMCL administrator, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

- (a) any creditor who has delivered a proof (unless the creditor’s proof has been wholly rejected for purposes of dividend or otherwise);
- (b) any contributory of the SMCL; and
- (c) any person acting on behalf of either of the above.

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(1) Paragraph 13A was inserted into Schedule 8 by the Small Business, Enterprise and Employment Act 2015 (c. 26), section 131.

(2) 2002 c.29.

(3) 2000 c.8. Section 382(1) was amended by the Financial Services Act 2012 (c.21), Schedule 9, paragraph 21.

### **New SMCL administrator appointed**

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

(2) As soon as reasonably practicable following receipt of the itemised list and all of the proofs listed by it, the itemised list must be authenticated by the new SMCL administrator and returned to the former SMCL administrator.

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

**53.**—(1) The SMCL administrator may admit or reject a proof for dividend (in whole or in part).

(2) If the SMCL administrator rejects a proof in whole or in part, the SMCL administrator must deliver to the creditor a statement of the SMCL administrator's reasons for doing so, as soon as reasonably practicable.

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

**54.**—(1) If a creditor is dissatisfied with the SMCL administrator's decision with respect to the creditor's proof (including any decision on whether the debt is preferential), the creditor may apply to the court for the decision to be reversed or varied.

(2) The application must be made within 21 days of the creditor receiving the statement delivered under Rule 53(2).

(3) A member or any other creditor may, if dissatisfied with the SMCL 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 SMCL administrator's decision.

(4) Where an 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 delivered the proof in question (if the applicant is not the creditor who delivered the proof) and the SMCL administrator.

(5) The SMCL administrator must, on receipt of the notice, file the relevant proof with the court, together (if appropriate) with a copy of the statement sent under Rule 53(2).

(6) 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 SMCL would be entitled.

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

(8) The SMCL 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**

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

### **Exclusion of proof by the court**

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

- (a) on the SMCL administrator's application, where the SMCL administrator thinks that the proof has been improperly admitted, or ought to be reduced; or

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