
STATUTORY INSTRUMENTS

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⁽¹⁾).

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⁽²⁾ 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⁽³⁾, 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⁽⁵⁾; 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.

(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

- (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).

CHAPTER 2

Quantification of claims

Estimate of value of debt

57.—(1) The SMCL 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 have a certain value; and the SMCL administrator may revise any estimate previously made, if the SMCL administrator thinks fit by reference to any change of circumstances or to information becoming available.

(2) The SMCL 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 SMCL administration in the case of that debt is that of the estimate for the time being.

Discounts

58. There must in every case be deducted from the claim all trade and other discounts which would have been available to the SMCL but for its SMCL administration except any discount for immediate, early or cash settlement.

Mutual credits and set off

59.—(1) This Rule applies where the SMCL administrator has delivered a notice under Rule 73 (notice of a proposed distribution).

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

- (a) any debt arising out of an obligation incurred after the SMCL entered SMCL administration;
- (b) any debt arising out of an obligation incurred at a time when the creditor had notice that—
 - (i) an application under section 161 of the 2004 Act (permission to pass resolution for voluntary winding up) was pending;
 - (ii) a petition for the winding up of the SMCL was pending;
 - (iii) an application for an administration order under the 1986 Act was pending;
 - (iv) an application for an SMCL administration order was pending; or
 - (v) any person had given notice of intention to appoint an administrator under the 1986 Act;
- (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 under section 161 of the 2004 Act was pending;
- (ii) at a time when the creditor had notice that a petition for the winding up of the SMCL was pending;
- (iii) at a time when the creditor had notice that an application for an administration order under the 1986 Act was pending;
- (iv) at a time when the creditor had notice that an application for an SMCL administration order was pending;
- (v) at a time when the creditor had notice that any person had given notice of intention to appoint an administrator under the 1986 Act; or
- (vi) after the SMCL entered SMCL administration.

(3) An account must 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 must be set off against the sums due from the other.

(4) A sum must be treated as being due to or from the SMCL 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 57 applies for the purposes of this Rule to any obligation to or from the SMCL which, by virtue of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 60 to 62 apply for the purposes of this Rule in relation to any sums due to the SMCL which—

- (a) are payable in a currency other than sterling;
- (b) are of a periodical nature; or
- (c) bear interest.

(7) Rule 86 applies for the purposes of this Rule to any sum due to or from the SMCL which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the SMCL administration.

(9) Alternatively the balance (if any) owed to the SMCL must be paid to the SMCL 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

60.—(1) A proof for a debt incurred or payable in a currency other than sterling must state the amount of the debt in that currency.

(2) The SMCL administrator must convert all such debts into sterling at a single rate for each currency determined by the SMCL administrator by reference to the exchange rates prevailing on the date on which the SMCL entered SMCL administration.

(3) On the next occasion when the SMCL administrator communicates with the creditors the SMCL administrator must advise them of any rate so determined.

(4) A creditor who considers that the rate determined by the SMCL administrator is unreasonable may apply to the court.

(5) If on hearing the application the court finds that the rate is unreasonable it may itself determine the rate.

Payments of a periodical nature

61.—(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 on which the SMCL entered SMCL administration.

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

Interest

62.—(1) Where a debt proved in the SMCL 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 relevant date.

(2) In the circumstances set out in this Rule, the creditor’s claim may include interest on the debt for periods before the relevant date 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 relevant date.

(4) If the debt is due otherwise, interest may only be claimed if, before the relevant date, demand for payment of the debt was made in writing by or on behalf of the creditor, and notice was 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 the relevant date and, for the purposes of the 1986 Act and these Rules, must be charged 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(4) on the relevant date.

(7) Any surplus remaining after payment of the debts proved must, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date.

(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) and the rate applicable to the debt apart from the SMCL administration.

(10) In this Rule, “relevant date” means the date on which the SMCL entered SMCL administration.

Debt payable at future time

63. A creditor may prove for a debt of which payment was not yet due on the date when the SMCL entered SMCL administration, subject to Rule 86 (adjustment of dividend where payment made before time).

(4) 1838 c.110. Section 17 was amended by the Civil Procedure Acts Repeal Act 1879 (c.59), Schedule 1, Part 1; the Statute Law Revision (No. 2) Act 1888; S.I. 1993/564 and S.I. 1998/2940.

Voluntary surrender of security

64. A creditor who voluntarily surrenders a security may prove for the whole of the creditor's debt as if it were unsecured.

Value of security

65.—(1) A secured creditor may, with the agreement of the SMCL administrator or the permission of the court, at any time alter the value which the secured creditor's proof 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

66.—(1) If a secured creditor fails to disclose a security in the secured creditor's proof, 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 grounds 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 to be amended, on such terms as may be just.

(3) Nothing in this Rule or the following two Rules affects the 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 SMCL administrator

67.—(1) The SMCL administrator may at any time deliver a notice to a creditor whose debt is secured that the SMCL 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 SMCL administrator may allow) in which, if the creditor so wishes, to alter the value of the creditor's security in accordance with Rule 65.

(3) If the creditor alters the value of the security in accordance with Rule 65, the SMCL administrator may only redeem at the new value.

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

(5) A secured creditor may at any time deliver a notice to the SMCL administrator requiring the SMCL administrator to elect whether or not to redeem the security at the value then placed on it; and the SMCL administrator then has three months in which to redeem the security or elect not to redeem the security.

Test of security's value

68.—(1) If the SMCL administrator is 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 65), the SMCL administrator may require any property comprised in the security to be offered for sale.

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

(3) This Rule does not apply if the value of the security has been altered with the court's permission.

Realisation of security by creditor

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

- (a) the net amount realised must be treated in all respects (including in relation to any valuation in a proof) as an amended valuation made by the creditor; and
- (b) the creditor may prove for the balance of the creditor's debt.

CHAPTER 3

Distributions

Distribution to creditors generally

70.—(1) This Chapter applies where the SMCL administrator makes, or proposes to make, a distribution to any class of creditors other than secured creditors.

(2) Where the distribution is to a particular class of creditors, a reference in this Chapter to creditors is, in so far as the context requires, a reference to that class of creditors only.

Debts of insolvent SMCL to rank equally

71. Debts other than preferential debts rank equally between themselves in the SMCL 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

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

- (a) any debts which appear to the SMCL 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 which the creditor has failed to receive; and
- (b) any dividend 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 SMCL administrator for a dividend, but if the SMCL administrator refuses to pay a dividend the court may, if it thinks just, order the SMCL administrator to pay it and also to pay, out of the SMCL 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, from the time when it was withheld; and
- (b) the costs of the proceedings in which the order to pay is made.

Notice of proposed distribution

73.—(1) Where the SMCL administrator is proposing to make a distribution to creditors or declare a dividend the SMCL administrator must give notice of the fact.

- (2) The notice given pursuant to paragraph (1) must—
 - (a) be delivered to all creditors whose addresses are known to the SMCL administrator;
 - (b) state whether the proposed distribution or dividend is—
 - (i) to preferential creditors; or
 - (ii) preferential creditors and unsecured creditors;
 - (c) state that it is the intention of the SMCL administrator to make a distribution to creditors or declare a dividend (as the case may be) within the period of two months from the last date for proving;
 - (d) specify whether the proposed distribution or dividend is interim or final;
 - (e) specify a date up to which proofs must be delivered 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;
 - (f) specify the place to which proofs must be delivered;
 - (g) include the additional information required by Rule 74 where the SMCL administrator intends to treat a small debt as proved for the purposes of paying a dividend; and
 - (h) where the SMCL administrator proposes to declare a dividend 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.
- (3) Subject to paragraph (4)(b), a copy of the notice—
 - (a) must be gazetted; and
 - (b) may be advertised in such other manner as the SMCL administrator thinks fit.
- (4) Where the proposed dividend is only to preferential creditors—
 - (a) the notice need only be delivered to those creditors in whose cases the SMCL administrator has reason to believe that their debts are preferential; and
 - (b) the notice need only be gazetted if the SMCL administrator thinks fit.

Further contents of notice to creditors owed small debts etc.

74.—(1) The SMCL administrator may treat a debt, which is a small debt according to the accounting records or the statement of affairs of the SMCL, as if it were proved for the purposes of paying a dividend.

- (2) Where the SMCL administrator intends to treat such a debt as if it were proved, the notice delivered under Rule 73 must also—
 - (a) state the amount of the debt which the SMCL administrator believes to be owed to the creditor according to the accounting records or statement of affairs of the SMCL;

- (b) state that the SMCL administrator will treat the debt which is stated in the notice, being for £1,000 or less, as proved for the purposes of paying a dividend unless the creditor advises the SMCL administrator that the amount of the debt is incorrect or that no debt is owed;
 - (c) require the creditor to notify the SMCL administrator by the last date for proving if the amount of the debt is incorrect or if no debt is owed; and
 - (d) inform the creditor that where the creditor advises the SMCL administrator that the amount of the debt is incorrect the creditor must also submit a proof to receive a dividend.
- (3) The information required by paragraph (2)(a) may take the form of a list of small debts which the SMCL administrator intends to treat as proved which includes the debt owed to the particular creditor to whom the notice is being delivered.

Sole or final dividend

75.—(1) Where it is intended that the distribution is to be a sole or final dividend, the SMCL administrator must, after the last date for proving set out in the notice under Rule 73—

- (a) pay any sums payable in accordance with the provisions of paragraph 99 of Schedule B1 to the 1986 Act;
 - (b) pay any sums (including any debts or liabilities and the SMCL administrator’s own remuneration and expenses) which would, if the SMCL administrator were to cease to be the SMCL administrator of the SMCL, be payable out of the property of which the SMCL 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.
- (2) The reference in paragraph (1)(c) to debts that have not been proved does not include small debts treated as proved by the SMCL administrator.
- (3) The court may, on the application of any person, postpone the date specified in the notice as the last date for proving.

Admission or rejection of proofs following last date for proving

76.—(1) Unless the SMCL administrator has already dealt with them, the SMCL administrator must within five business days of the last date for proving set out in the notice under Rule 73—

- (a) admit or reject (in whole or in part) proofs delivered to the SMCL administrator; or
 - (b) make such provision in respect of them as the SMCL administrator thinks fit.
- (2) The SMCL administrator is not obliged to deal with a proof delivered after the last date for proving, but may do so, if the SMCL administrator thinks fit.
- (3) In the declaration of a dividend a payment must not be made more than once in respect of the same debt.

Postponement or cancellation of dividend

77. The SMCL administrator may postpone or cancel a dividend, if in the period of two months referred to in Rule 73(2)(c) an application is made to the court for the SMCL administrator’s decision on a proof to be reversed or varied, or for a proof to be excluded, or for a reduction of the amount claimed.

Declaration of dividend

78.—(1) Subject to Rule 77 and paragraph (2), within the two month period referred to in Rule 73(2)(c), the SMCL administrator must proceed to declare the dividend of which the SMCL administrator gave notice.

(2) Except with the permission of the court, the SMCL 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 SMCL administrator's on a proof, or to exclude a proof or to reduce the amount claimed.

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

Notice of declaration of a dividend

79.—(1) Where the SMCL administrator declares a dividend the SMCL administrator must deliver notice of that fact to all creditors who have proved their debts.

(2) The notice must include the following particulars relating to the SMCL 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 SMCL administrator when acting as such;
- (c) where the SMCL 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 to be distributed and the rate of dividend; and
- (f) whether, and if so when, any further dividend is expected to be declared.

Payments of dividends and related matters

80.—(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.

Notice of no dividend, or no further dividend

81. If the SMCL administrator delivers notice to creditors that the SMCL 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 paying the expenses of SMCL administration.

Proof altered after payment of dividend

82.—(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 which the creditor has failed to receive.

(2) Any dividend 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 excluded, or the amount is reduced, the creditor is liable to repay to the SMCL administrator, for the credit of the SMCL administration, any amount overpaid by way of dividend.

Secured creditors

83.—(1) The following applies where a creditor alters the value of the creditor's security at a time when a dividend has been declared.

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

(3) If the alteration results in an increase of the creditor's unsecured claim, the creditor is entitled to receive from the SMCL 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 which the creditor has failed to receive, having regard to the alteration of the value of the security.

(4) However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the alteration.

Disqualification from dividend

84. 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 SMCL administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

Assignment of right to dividend

85.—(1) If a person entitled to a dividend ("the entitled person") delivers notice to the SMCL administrator that the entitled person wishes the dividend to be paid to another person, or that the entitled person has assigned the entitlement to another person, the SMCL administrator must pay the dividend to that other person accordingly.

(2) A notice delivered 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

86.—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of a dividend, the creditor is entitled to the 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) is to 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 on which the SMCL entered SMCL administration and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years (part of a year being expressed as a decimal fraction of a year).

Division of unsold assets

87.—(1) The SMCL administrator may, with the permission of the creditors, divide in its existing form amongst the SMCL’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 SMCL administrator must—

- (a) in the receipts and payments account included in the progress report under Rule 26, state the estimated value of the property divided amongst the creditors of the SMCL during the period to which the report relates; and
- (b) as a note to the account, provide details of the basis of the valuation.