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STATUTORY INSTRUMENTS

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**2006 No. 772**

**The Energy Administration (Scotland) Rules 2006**

**PART 6**

**Distribution to Creditors**

**Application of Part and general**

**38.**—(1) This Part applies where the energy administrator makes, or proposes to make, a distribution to creditors or any class of them.

(2) Where the distribution is to a particular class of creditors, references in this Part (except in rule 41(5)(c)) to creditors shall, in so far as the context requires, be a reference to that class of creditors only.

(3) This Part and Part 5 apply with regard to a dividend out of the assets of the protected energy company in energy administration.

**Order of priority in distribution**

**39.**—(1) If the funds of the protected energy 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 administration;
- (b) any preferential debts within the meaning of section 386 of the 1986 Act (excluding any interest which has been accrued thereon to the date on which the protected energy company entered energy 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 protected energy company entered energy 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 protected energy company's assets under section 242 of the 1986 Act 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 and, for the purposes of paragraph (a) of that subsection, as applied to Scotland by subsection (5), the rate specified in the Rules shall be 15 per centum per annum.

(3) The expenses of the energy administration mentioned in sub-paragraph (a) of paragraph (1) above are payable in the order of priority mentioned in Rule 40.

(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 paragraph and, where the funds of the protected energy 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 protected energy 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 protected energy 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 protected energy 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.

### **Expenses of the energy administration**

**40.**—(1) The expenses of the energy administration are payable out of the assets in the following order of priority—

- (a) expenses properly incurred by the energy administrator in performing his functions in the energy administration of the protected energy company;
- (b) the cost of any caution provided by the energy administrator in accordance with the 1986 Act or the Rules;
- (c) where an energy administration order was made, the expenses of the applicant and any person appearing on the hearing of the application whose expenses are allowed by the court;
- (d) any amount payable to a person employed or authorised, under Part 3 of the Rules, to assist in the preparation of a statement of affairs or statement of concurrence;
- (e) any allowance made, by order of the court, towards expenses 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 administration (but not including any payment of corporation tax in circumstances referred to in sub-paragraph (i) below);
- (g) the remuneration or emoluments of any person who has been employed by the energy administrator to perform any services for the protected energy company, as required or authorised under the 1986 Act or 2004 Act, Schedule B1 to the 1986 Act or the Rules;
- (h) the remuneration of the energy administrator agreed under Part 6 of the Rules;
- (i) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the protected energy company (without regard to whether the realisation is effected by the energy administrator, a secured creditor, or otherwise).

(2) Nothing in this Rule applies to or affects the power of any court in proceedings by or against the protected energy company, to order expenses to be paid by the protected energy company or the energy administrator, nor does it affect the rights of any person to whom such expenses are ordered to be paid.

(3) The priorities laid down by paragraph (1) of this Rule are subject to the power of the court to make orders under paragraph (4) of this Rule where the assets are insufficient to satisfy the liabilities.

(4) 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 expense incurred in the energy administration in such order of priority as the court thinks just.

### **Assets to be distributed**

**41.**—(1) The energy administrator shall make up accounts of his intromissions with the protected energy company's assets in respect of each accounting period.

(2) In this Rule "accounting period" shall be construed as follows—

- (a) the first accounting period shall be the period of six months beginning with the date on which the protected energy company entered energy administration; and
- (b) any subsequent accounting period shall be the period of six months beginning with the end of the last accounting period; except that in a case where the energy administrator determines that the accounting period shall be such other period beginning with the end of the last accounting period as may be determined, it shall be that other period.

(3) A determination in paragraph (2)(b)—

- (a) may be made in respect of one or more than one accounting period;
- (b) may be made before the beginning of the accounting period in relation to which it has effect and, in any event, shall not have effect unless made before the day on which such accounting period would, but for the determination, have ended;
- (c) may provide for different accounting periods to be of different durations,

and shall be recorded in the sederunt book by the energy administrator.

(4) Subject to the following paragraphs, the energy administrator may, if the funds of the protected energy company are sufficient and after making allowance for future contingencies, pay under Rule 42(7) a dividend out of the assets of the protected energy company to the creditors in respect of each accounting period.

(5) The energy administrator may make a distribution to secured or preferential creditors or, where he has the permission of the court, to unsecured creditors only if—

- (a) he has sufficient funds for the purpose;
- (b) he does not intend to give notice pursuant to paragraph 83 of Schedule B1 to the 1986 Act;
- (c) his statement of proposals contains a proposal to make a distribution to the class of creditors in question; and
- (d) the payment of a dividend is consistent with the powers and duties of the energy administrator and any proposals made by him or which he intends to make.

(6) The energy administrator may pay—

- (a) the expenses of the energy administration mentioned in Rule 40(1)(a), other than his own remuneration, at any time;
- (b) the preferential debts at any time.

(7) If the energy administrator—

- (a) is not ready to pay a dividend in respect of an accounting period; or
- (b) considers it would be inappropriate to pay such a dividend because the expense of doing so would be disproportionate to the amount of the dividend,

he may postpone such payment to a date not later than the time for payment of a dividend in respect of the next accounting period.

(8) Where an appeal is taken under Rule 31(5) against the acceptance or rejection of a creditor's claim, the energy administrator shall, at the time of payment of dividends and until the appeal is determined, set aside an amount which would be sufficient, if the determination in the appeal were to provide for the claim being accepted in full, to pay a dividend in respect of that claim.

(9) Where a creditor—

(a) has failed to produce evidence in support of his claim earlier than eight weeks before the end of an accounting period on being required by the energy administrator to do so under Rule 32(1); and

(b) has given a reason for such failure which is acceptable to the energy administrator, the energy administrator shall set aside, for such time as is reasonable to enable him to produce that evidence or any other evidence that will enable the energy administrator to be satisfied under that Rule, an amount which would be sufficient, if the claim were accepted in full, to pay a dividend in respect of that claim.

(10) Where a creditor submits a claim to the energy administrator later than eight weeks before the end of an accounting period but more than eight weeks before the end of a subsequent accounting period in respect of which, after making allowance for contingencies, funds are available for the payment of a dividend, the energy administrator shall, if he accepts the claim in whole or in part, pay to the creditor—

(a) the same dividend or dividends as has or have already been paid to creditors of the same class in respect of any accounting period or periods; and

(b) whatever dividend may be payable to him in respect of the said subsequent accounting period,

provided that sub-paragraph (a) above shall be without prejudice to any dividend which has already been paid.

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

(12) If a person entitled to a dividend gives notice to the energy administrator that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, the energy administrator shall pay the dividend to that other accordingly, provided that such notice specifies the name and address of that other.

### **Procedure after accounting period**

**42.—**(1) Within two weeks after the end of an accounting period, the energy administrator shall in respect of that period submit to the court—

(a) his accounts of his intromissions with the assets of the protected energy company for audit and, where funds are available after making allowance for contingencies, a scheme of division of the divisible funds; and

(b) a claim for the outlays reasonably incurred by him and for his remuneration.

(2) The energy administrator may, at any time before the end of an accounting period, submit to the court an interim claim in respect of that period for the outlays reasonably incurred by him and for his remuneration and the court may make an interim determination in relation to the amount of the outlays and remuneration payable to the energy administrator and, where it does so, it shall take into account that interim determination when making its determination under paragraph (3)(a)(ii).

(3) Within six weeks after the end of an accounting period—

(a) the court—

(i) may audit the accounts; and

- (ii) shall issue a determination fixing the amount of the outlays and the remuneration payable to the energy administrator; and
- (b) the energy administrator shall make the audited accounts, scheme of division and the said determination available for inspection by the members and the creditors.
- (4) The basis for fixing the amount of the remuneration payable to the energy administrator shall take into account—
  - (a) the work which, having regard to that value, was reasonably undertaken by him; and
  - (b) the extent of his responsibilities in administering the protected energy company's assets.
- (5) In fixing the amount of such remuneration in respect of any accounting period, the court may take into account any adjustment which it may wish to make in the amount of the remuneration and outlays fixed in respect of any earlier accounting period.
- (6) Not later than eight weeks after the end of an accounting period, the energy administrator, the protected energy company or any creditor may appeal against a determination issued under paragraph (2) or (3)(a)(ii) above and the decision of the court on such appeal shall be final.
- (7) On the expiry of the period within which an appeal may be taken under paragraph (5) above or, if an appeal is so taken, on the final determination of the last such appeal, the energy administrator shall pay to the creditors their dividends in accordance with the scheme of division.
- (8) Any dividend—
  - (a) allocated to a creditor which is not cashed or uplifted; or
  - (b) dependent on a claim in respect of which an amount has been set aside under paragraphs (8) or (9) of Rule 41,shall be deposited by the energy administrator in an appropriate bank or institution.
- (9) If a creditor's claim is revalued, the energy administrator may—
  - (a) in paying any dividend to that creditor, make such adjustment to it as he considers necessary to take account of that revaluation; or
  - (b) require the creditor to repay him the whole or part of a dividend already paid to him.
- (10) The energy administrator shall insert in the sederunt book the audited accounts, the scheme of division and final determination in relation to the energy administrator's outlays and remuneration.
- (11) 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 Rule 40.
- (12) Where there are joint energy administrators —
  - (a) it is for them to agree between themselves as to how the remuneration payable should be apportioned,
  - (b) if they cannot agree as to how the remuneration payable should be apportioned, any one of them may refer the issue for determination by the court.

### **Unclaimed Dividends**

- 43.**—(1) Any person, producing evidence of his right, may apply to the court to receive a dividend deposited under Rule 42, if the application is made not later than seven years after the date of such deposit.
- (2) If the court is satisfied of the applicant's right to the dividend, it shall authorise the appropriate bank or institution to pay to the applicant the amount of that dividend and of any interest which accrued thereon.
- (3) The court shall, at the expiry of seven years from the date of deposit of any unclaimed dividend or unapplied balance under Rule 42, hand over the deposit receipt or other voucher relating to such

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dividend or balance to the Secretary of State, who shall thereupon be entitled to payment of the amount due, principal and interest, from the bank or institution in which the deposit was made.