
STATUTORY INSTRUMENTS

2005 No. 2483

The Energy Administration Rules 2005

PART 11

COURT PROCEDURE AND PRACTICE

CHAPTER 1

Applications

Preliminary

92. This Chapter applies to any application made to the court in energy administration proceedings, except an application for an energy administration order.

Interpretation

93.—(1) In this Chapter, except in so far as the context otherwise requires—

“originating application” means an application to the court which is not an application in pending proceedings before the court; and

“ordinary application” means any other application to the court.

(2) Every application shall be in the form appropriate to the application concerned.

Form and contents of application

94.—(1) Each application shall be in writing and shall state—

- (a) the names of the parties;
- (b) the nature of the relief or order applied for or the directions sought from the court;
- (c) the names and addresses of the persons (if any) on whom it is intended to serve the application or that no person is intended to be served;
- (d) where the 1986 Act, Schedule B1 to the 1986 Act or the Rules require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
- (e) the applicant’s address for service.

(2) An originating application shall set out the grounds on which the applicant claims to be entitled to the relief or order sought.

(3) The application must be signed by the applicant if he is acting in person or, when he is not so acting, by or on behalf of his solicitor.

Application under section 176A(5) of the 1986 Act to disapply section 176A of the 1986 Act

95.—(1) An application under section 176A(5) of the 1986 Act⁽¹⁾ shall be accompanied by an affidavit prepared and sworn by the energy administrator.

(2) The affidavit shall state—

- (a) that the application arises in the course of an energy administration;
- (b) a summary of the financial position of the protected energy company;
- (c) the information substantiating the energy administrator's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits; and
- (d) whether any other insolvency practitioner is acting in relation to the protected energy company and if so his address.

Filing and service of application

96.—(1) The application shall be filed in court, accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application.

(2) Subject as follows in this Rule and in the next, or unless the Rule under which the application is brought provides otherwise, or the court otherwise orders, upon the presentation of the documents mentioned in paragraph (1), the court shall fix a venue for the application to be heard.

(3) Unless the court otherwise directs, the applicant shall serve a sealed copy of the application, endorsed with the venue of the hearing, on the respondent named in the application (or on each respondent if more than one).

(4) The court may give any of the following directions—

- (a) that the application be served upon persons other than those specified by the relevant provision of the 1986 Act, Schedule B1 to the 1986 Act or the Rules;
- (b) that the giving of notice to any person may be dispensed with;
- (c) that notice be given in some way other than that specified in paragraph (3).

(5) Unless the provision of the 1986 Act, Schedule B1 to the 1986 Act or the Rules under which the application is made provides otherwise, and subject to the next paragraph, the application must be served at least 14 days before the date fixed for the hearing.

(6) Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

- (a) hear the application immediately, either with or without notice to, or the attendance of, other parties, or
- (b) authorise a shorter period of service than that provided for by paragraph (5);

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks fit.

Notice of application under section 176A(5) of the 1986 Act

97. An application under section 176A(5) of the 1986 Act may be made without the application being served upon or notice being given to any other party.

(1) 1986 c. 45; section 176A inserted by the Enterprise Act 2002 c. 40, section 252.

Other hearings *ex parte*

98.—(1) Where the relevant provisions of the 1986 Act, Schedule B1 to the 1986 Act or the Rules do not require service of the application on, or notice of it to be given to, any person, the court may hear the application *ex parte*.

(2) Where the application is properly made *ex parte*, the court may hear it forthwith, without fixing a venue as required by Rule 96(2).

(3) Alternatively, the court may fix a venue for the application to be heard, in which case Rule 96(2) applies (so far as relevant).

Hearing of application

99.—(1) Unless allowed or authorised to be made otherwise, every application before the registrar shall, and every application before the judge may, be heard in chambers.

(2) Unless either—

- (a) the judge has given a general or special direction to the contrary, or
- (b) it is not within the registrar's power to make the order required,

the jurisdiction of the court to hear and determine the application may be exercised by the registrar, and the application shall be made to the registrar in the first instance.

(3) Where the application is made to the registrar he may refer to the judge any matter which he thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the registrar with such direction as he thinks fit.

(4) Nothing in this Rule precludes an application being made directly to the judge in a proper case.

Use of affidavit evidence

100.—(1) In any proceedings evidence may be given by affidavit unless by any provision of the Rules it is otherwise provided or the court otherwise directs; but the court may, on the application of any party, order the attendance for cross-examination of the person making the affidavit.

(2) Where, after such an order has been made, the person in question does not attend, his affidavit shall not be used in evidence without the leave of the court.

Filing and service of affidavits

101.—(1) Unless the provisions of the 1986 Act, Schedule B1 to the 1986 Act or the Rules under which the application is made provide otherwise, or the court otherwise allows—

- (a) if the applicant intends to rely at the first hearing on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the respondent, not less than 14 days before the date fixed for the hearing, and
- (b) where a respondent to an application intends to oppose it and to rely for that purpose on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the applicant, not less than 7 days before the date fixed for the hearing.

(2) Any affidavit may be sworn by the applicant or by the respondent or by some other person possessing direct knowledge of the subject matter of the application.

Use of reports

102.—(1) A report may be filed in court instead of an affidavit, unless the application involves other parties or the court otherwise orders, by the energy administrator.

(2) In any case where a report is filed instead of an affidavit, the report shall be treated for the purpose of Rule 101(1) and any hearing before the court as if it were an affidavit.

Adjournment of hearings; directions

103.—(1) The court may adjourn the hearing of an application on such terms (if any) as it thinks fit.

(2) The court may at any time give such directions as it thinks fit as to—

- (a) service or notice of the application on or to any person, whether in connection with the venue of a resumed hearing or for any other purpose;
- (b) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application;
- (c) the manner in which any evidence is to be adduced at a resumed hearing and in particular (but without prejudice to the generality of this sub-paragraph) as to—
 - (i) the taking of evidence wholly or in part by affidavit or orally;
 - (ii) the cross-examination either before the judge or registrar on the hearing in court or in chambers, of any deponents to affidavits; and
 - (iii) any report to be given by the energy administrator;
- (d) the matters to be dealt with in evidence.

CHAPTER 2

Shorthand writers

Nomination and appointment of shorthand writers

104.—(1) In the High Court the judge may in writing nominate one or more persons to be official shorthand writers to the court.

(2) The court may, at any time in the course of energy administration proceedings, appoint a shorthand writer to take down the evidence of a person examined under section 236 of the 1986 Act.

Remuneration

105.—(1) The remuneration of a shorthand writer appointed in energy administration proceedings shall be paid by the party at whose instance the appointment was made, or out of the assets of the protected energy company, or otherwise, as the court may direct.

(2) Any question arising as to the rates of remuneration payable under this Rule shall be determined by the court in its discretion.

CHAPTER 3

Enforcement procedures

Enforcement of court orders

106. In any energy administration proceedings, orders of the court may be enforced in the same manner as a judgment to the same effect.

Orders enforcing compliance with the Rules

107.—(1) The court may, on application by the energy administrator, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

- (a) paragraph 47 of Schedule B1 to the 1986 Act (duty to submit statement of affairs in energy administration), or
- (b) section 235 of the 1986 Act⁽²⁾ (duty of various persons to co-operate with energy administrator).

(2) An order of the court under this Rule may provide that all costs of and incidental to the application for it shall be borne by the person against whom the order is made.

Warrant under section 236 of the 1986 Act

108.—(1) A warrant issued by the court under section 236 of the 1986 Act (inquiry into insolvent company's dealings) shall be addressed to such officer of the High Court as the warrant specifies, or to any constable.

(2) The persons referred to in section 236(5) of the 1986 Act (court's powers of enforcement) as the prescribed officer of the court are the tipstaff and his assistants of the court.

(3) In this Chapter references to property include books, papers and records.

(4) When a person is arrested under a warrant issued under section 236 of the 1986 Act, the officer arresting him shall forthwith bring him before the court issuing the warrant in order that he may be examined.

(5) If he cannot immediately be brought up for examination, the officer shall deliver him into the custody of the governor of the prison named in the warrant, who shall keep him in custody and produce him before the court as it may from time to time direct.

(6) After arresting the person named in the warrant, the officer shall forthwith report to the court the arrest or delivery into custody (as the case may be) and apply to the court to fix a venue for the person's examination.

(7) The court shall appoint the earliest practicable time for the examination, and shall—

- (a) direct the governor of the prison to produce the person for examination at the time and place appointed, and
- (b) forthwith give notice of the venue to the person who applied for the warrant.

(8) Any property in the arrested person's possession which may be seized shall be—

- (a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or
- (b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,

as may be directed by the court.

CHAPTER 4

Court records and returns

Title of proceedings

109. Every energy administration proceeding shall, with any necessary additions, be intitled "IN THE MATTER OF . . . (naming the protected energy company to which the proceedings relate) AND IN THE MATTER OF THE INSOLVENCY ACT 1986 AND THE ENERGY ACT 2004".

(2) 1986 c. 45; section 235 amended by the Enterprise Act 2002 c. 40, Schedule 17, paragraph 24.

Court records

110. The court shall keep records of all energy administration proceedings, and shall cause to be entered in the records the taking of any step in the proceedings, and such decisions of the court in relation thereto, as the court thinks fit.

Inspection of records

111.—(1) Subject as follows, the court's records of energy administration proceedings shall be open to inspection by any person.

(2) If in the case of a person applying to inspect the records the registrar is not satisfied as to the propriety of the purpose for which inspection is required, he may refuse to allow it. That person may then apply forthwith and *ex parte* to the judge, who may refuse the inspection or allow it on such terms as he thinks fit.

(3) The decision of the judge under paragraph (2) is final.

File of court proceedings

112.—(1) In respect of all energy administration proceedings, the court shall open and maintain a file for each case; and (subject to directions of the registrar) all documents relating to such proceedings shall be placed on the relevant file.

(2) No energy administration proceedings shall be filed in the Central office of the High Court.

Right to inspect file

113.—(1) In the case of any energy administration proceedings, the following have the right, at all reasonable times, to inspect the court's file of the proceedings—

- (a) the Secretary of State;
- (b) GEMA;
- (c) the energy administrator;
- (d) any person stating himself in writing to be a creditor of the protected energy company to which the energy administration proceedings relate; and
- (e) every person who is, or at any time has been, a director or officer of the protected energy company to which the energy administration proceedings relate, or who is a member of the protected energy company.

(2) The right of inspection conferred as above on any person may be exercised on his behalf by a person properly authorised by him.

(3) Any person may, by leave of the court, inspect the file.

(4) The right of inspection conferred by this Rule is not exercisable in the case of documents, or parts of documents, as to which the court directs (either generally or specially) that they are not to be made open to inspection without the court's leave.

An application for a direction of the court under this paragraph may be made by the energy administrator or by any party appearing to the court to have an interest.

(5) If, for the purpose of powers conferred by the 1986 Act, Schedule B1 to the 1986 Act, the Rules or the Insolvency Rules, the Secretary of State, the Department or the official receiver wishes to inspect the file of any energy administration proceedings, and requests the transmission of the file, the court shall comply with such request (unless the file is for the time being in use for the court's purposes).

(6) Paragraphs (2) and (3) of Rule 111 apply in respect of the court's file of any energy administration proceedings as they apply in respect of court records.

Filing of Gazette notices and advertisements

114.—(1) In any court in which energy administration proceedings are pending, an officer of the court shall file a copy of every issue of the Gazette which contains an advertisement relating to those proceedings.

(2) Where there appears in a newspaper an advertisement relating to energy administration proceedings pending in any court, the person inserting the advertisement shall file a copy of it in that court.

The copy of the advertisement shall be accompanied by, or have endorsed on it, such particulars as are necessary to identify the proceedings and the date of the advertisement's appearance.

(3) An officer of any court in which energy administration proceedings are pending shall from time to time file a memorandum giving the dates of, and other particulars relating to, any notice published in the Gazette, and any newspaper advertisements, which relate to proceedings so pending.

The officer's memorandum is prima facie evidence that any notice or advertisement mentioned in it was duly inserted in the issue of the newspaper or the Gazette which is specified in the memorandum.

CHAPTER 5

Costs and detailed assessment

Application of CPR

115. Subject to provision to inconsistent effect made as follows in this Chapter, CPR Part 43 (scope of costs rules and definitions), Part 44 (general rules about costs), Part 45 (fixed costs), Part 47 (procedure for detailed assessment of costs and default provisions) and Part 48 (costs-special cases) shall apply to energy administration proceedings with any necessary modifications.

Requirement to assess costs by the detailed procedure

116.—(1) Subject as follows, where the costs, charges or expenses of any person are payable out of the assets of the protected energy company, the amount of those costs, charges or expenses shall be decided by detailed assessment unless agreed between the energy administrator and the person entitled to payment, and in the absence of such agreement the energy administrator may serve notice in writing requiring that person to commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions) in the court to which the energy administration proceedings are allocated or, where in relation to a protected energy company there is no such court, in any court having jurisdiction to wind up the protected energy company.

(2) Where the amount of the costs, charges or expenses of any person employed by a energy administrator in energy administration proceedings are required to be decided by detailed assessment or fixed by order of the court this does not preclude the energy administrator from making payments on account to such person on the basis of an undertaking by that person to repay immediately any money which may, when detailed assessment is made, prove to have been overpaid, with interest at the rate specified in section 17 of the Judgments Act 1838(3) on the date payment was made and for the period from the date of payment to that of repayment.

(3) [1838 c. 110](#), as amended by the Civil Procedure Acts Repeal Act 1879, section 2, Schedule 1, Part 1, the Statute Law Revision (No. 2) Act 1888, [S.I. 1993/564](#), article 2, [1998/2940](#), article 3(a), (b) and (c).

(3) In any proceedings before the court, the court may order costs to be decided by detailed assessment.

Procedure where detailed assessment required

117.—(1) Before making a detailed assessment of the costs of any person employed in energy administration proceedings by an energy administrator, the costs officer shall require a certificate of employment, which shall be endorsed on the bill and signed by the energy administrator.

(2) The certificate shall include—

- (a) the name and address of the person employed;
- (b) details of the functions to be carried out under the employment; and
- (c) a note of any special terms of remuneration which have been agreed.

(3) Every person whose costs in energy administration proceedings are required to be decided by detailed assessment shall, on being required in writing to do so by the energy administrator, commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(4) If that person does not commence detailed assessment proceedings within 3 months of the requirement under paragraph (3), or within such further time as the court, on application, may permit, the energy administrator may deal with the assets of the protected energy company without regard to any claim by that person, whose claim is forfeited by such failure to commence proceedings.

(5) Where in any such case such a claim lies additionally against an energy administrator in his personal capacity, that claim is also forfeited by such failure to commence proceedings.

Costs paid otherwise than out of the assets of the protected energy company

118. Where the amount of costs is decided by detailed assessment under an order of the court directing that the costs are to be paid otherwise than out of the assets of the protected energy company, the costs officer shall note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

Award of costs against energy administrator

119. Without prejudice to any provision of the 1986 Act, Schedule B1 to the 1986 Act or the Rules by virtue of which the energy administrator is not in any event to be liable for costs and expenses, where an energy administrator is made a party to any proceedings on the application of another party to the proceedings, he shall not be personally liable for costs unless the court otherwise directs.

Application for costs

120.—(1) This Rule applies where a party to, or person affected by, any energy administration proceedings—

- (a) applies to the court for an order allowing his costs, or part of them, incidental to the proceedings, and
- (b) that application is not made at the time of the proceedings.

(2) The person concerned shall serve a sealed copy of his application on the energy administrator.

(3) The energy administrator may appear on the application.

(4) No costs of or incidental to the application shall be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceedings.

Costs and expenses of witnesses

121.—(1) Except as directed by the court, no allowance as a witness in any examination or other proceedings before the court shall be made to an officer of the protected energy company to which the energy administration proceedings relate.

(2) A person making any application in energy administration proceedings shall not be regarded as a witness on the hearing of the application, but the costs officer may allow his expenses of travelling and subsistence.

Final costs certificate

122.—(1) A final costs certificate of the costs officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court.

(2) Where it is proved to the satisfaction of a costs officer that a final costs certificate has been lost or destroyed, he may issue a duplicate.

CHAPTER 6

Persons incapable of managing their affairs

Introductory

123.—(1) The Rules in this Chapter apply where in energy administration proceedings it appears to the court that a person affected by the proceedings is one who is incapable of managing and administering his property and affairs either—

- (a) by reason of mental disorder within the meaning of the Mental Health Act 1983(4); or
 - (b) due to physical affliction or disability.
- (2) The person concerned is referred to as “the incapacitated person”.

Appointment of another person to act

124.—(1) The court may appoint such person as it thinks fit to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for his incapacity.

(3) The court may make the appointment either of its own motion or on application by—

- (a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person, or
- (b) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application, or
- (c) the energy administrator.

(4) Application under paragraph (3) may be made *ex parte*; but the court may require such notice of the application as it thinks necessary to be given to the person alleged to be incapacitated, or any other person, and may adjourn the hearing of the application to enable the notice to be given.

(4) 1983 c. 20.

Affidavit in support of application

125. An application under Rule 124(3) shall be supported by an affidavit of a registered medical practitioner as to the mental or physical condition of the incapacitated person.

Services of notices following appointment

126. Any notice served on, or sent to, a person appointed under Rule 124 has the same effect as if it had been served on, or given to, the incapacitated person.

CHAPTER 7*Appeals in energy administration proceedings***Appeals and reviews of energy administration orders**

127.—(1) Every court having jurisdiction under the 1986 Act to wind up companies may review, rescind or vary any order made by it in the exercise of that jurisdiction.

(2) An appeal from a decision made in the exercise of that jurisdiction by a registrar of the High Court lies to a single judge of the High Court; and an appeal from a decision of that judge on such an appeal lies, with the leave of that judge or the Court of Appeal, to the Court of Appeal.

Procedure on appeal

128.—(1) Subject as follows, the procedure and practice of the Supreme Court relating to appeals to the Court of Appeal apply to appeals in energy administration proceedings.

(2) In relation to any appeal to a single judge of the High Court under Rule 127 above, any reference in the CPR to the Court of Appeal is replaced by a reference to that judge and any reference to the registrar of civil appeals is replaced by a reference to the registrar of the High Court who deals with energy administration proceedings.

(3) In energy administration proceedings, the procedure under CPR Part 52 (appeals to the Court of Appeal) is by ordinary application and not by application notice.

CHAPTER 8*General***Principal court rules and practice to apply**

129.—(1) The CPR and the practice and procedure of the High Court (including any practice direction) apply to energy administration proceedings with any necessary modifications, except so far as inconsistent with the Rules.

(2) All energy administration proceedings shall be allocated to the multi-track for which CPR Part 29 (the multi-track) makes provision; accordingly those provisions of the CPR which provide for allocation questionnaires and track allocation will not apply.

Right of audience

130. Rights of audience in energy administration proceedings are the same as obtain in insolvency proceedings.

Right of attendance

131.—(1) Subject as follows, in energy administration proceedings, any person stating himself in writing, in records kept by the court for that purpose, to be a creditor or member of the protected

energy company is entitled, at his own cost, to attend in court or in chambers at any stage of the proceedings.

(2) Attendance may be by the person himself, or his solicitor.

(3) A person so entitled may request the court in writing to give him notice of any step in the energy administration proceedings; and, subject to his paying the costs involved and keeping the court informed as to his address, the court shall comply with the request.

(4) If the court is satisfied that the exercise by a person of his rights under this Rule has given rise to costs for the assets of the protected energy company which would not otherwise have been incurred and ought not, in the circumstances, to fall on that estate, it may direct that the costs be paid by the person concerned, to an amount specified.

The rights of that person under this Rule shall be in abeyance so long as those costs are not paid.

(5) The court may appoint one or more persons to represent the creditors or the members of a protected energy company, or any class of them, to have the rights conferred by this Rule, instead of the rights being exercised by any or all of them individually.

If two or more persons are appointed under this paragraph to represent the same interest, they must (if at all) instruct the same solicitor.

Energy administrator's solicitor

132. Where in energy administration proceedings the attendance of the energy administrator's solicitor is required, whether in court or in chambers, the energy administrator himself need not attend, unless directed by the court.

Formal defects

133. No energy administration proceedings shall be invalidated by any formal defect or by any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

Restriction on concurrent proceedings and remedies

134. Where in energy administration proceedings the court makes an order staying any action, execution or other legal process against the property of a protected energy company, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the claimant or other party having the carriage of the proceedings to be stayed.

Affidavits

135.—(1) Subject to the following paragraphs of this Rule, the practice and procedure of the High Court with regard to affidavits, their form and contents, and the procedure governing their use, are to apply to all energy administration proceedings.

(2) Where in energy administration proceedings, an affidavit is made by the energy administrator he shall state the capacity in which he makes it, the position which he holds and the address at which he works.

(3) A creditor's affidavit of debt may be sworn before his own solicitor.

(4) Any officer of the court duly authorised in that behalf, may take affidavits and declarations.

(5) Subject to paragraph (6), where the Rules provide for the use of an affidavit, a witness statement verified by a statement of truth may be used as an alternative.

(6) Paragraph (5) does not apply to Rules 149 and 150.

(7) Where paragraph (5) applies, any form prescribed by Rule 160 shall be modified accordingly.

Security in court

136.—(1) Where security has to be given to the court (otherwise than in relation to costs), it may be given by guarantee, bond or the payment of money into court.

(2) A person proposing to give a bond as security shall give notice to the party in whose favour the security is required, and to the court, naming those who are to be sureties to the bond.

(3) The court shall forthwith give notice to the parties concerned of a venue for the execution of the bond and the making of any objection to the sureties.

(4) The sureties shall make an affidavit of their sufficiency (unless dispensed with by the party in whose favour the security is required) and shall, if required by the court, attend the court to be cross-examined.

Payment into court

137. The CPR relating to payment into and out of court of money lodged in court as security for costs apply to money lodged in court under the Rules.

Further information and disclosure

138.—(1) Any party to energy administration proceedings may apply to the court for an order—

(a) that any other party—

(i) clarify any matter which is in dispute in the proceedings, or

(ii) give additional information in relation to any such matter,
in accordance with CPR Part 18 (further information); or

(b) to obtain disclosure from any other party in accordance with CPR Part 31 (disclosure and inspection of documents).

(2) An application under this Rule may be made without notice being served on any other party.

Office copies of documents

139.—(1) Any person who has under the Rules the right to inspect the court file of energy administration proceedings may require the court to provide him with an office copy of any document from the file.

(2) A person's right under this Rule may be exercised on his behalf by his solicitor.

(3) An office copy provided by the court under this Rule shall be in such form as the registrar thinks appropriate, and shall bear the court's seal.