
STATUTORY INSTRUMENTS

2005 No. 2483

The Energy Administration Rules 2005

PART 7

DISTRIBUTION OF CREDITORS

CHAPTER 3

Quantification of claims

Estimate of quantum

49.—(1) The energy administrator shall estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and he may revise any estimate previously made, if he thinks fit by reference to any change of circumstances or to information becoming available to him. He shall inform the creditor as to his estimate and any revision of it.

(2) Where the value of a debt is estimated under this Rule, the amount provable in the energy administration in the case of that debt is that of the estimate for the time being.

Commencement Information

I1 Rule 49 in force at 1.10.2005, see [rule 1](#)

Negotiable instruments, etc

50. Unless the energy administrator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or his authorised representative to be a true copy.

Commencement Information

I2 Rule 50 in force at 1.10.2005, see [rule 1](#)

Secured creditors

51.—(1) If a secured creditor realises his security, he may prove for the balance of his debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders his security for the general benefit of creditors, he may prove for his whole debt, as if it were unsecured.

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Commencement Information

I3 Rule 51 in force at 1.10.2005, see [rule 1](#)

Discounts

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

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Commencement Information

I4 Rule 52 in force at 1.10.2005, see [rule 1](#)

Mutual credits and set-off

53.—(1) This Rule applies where the energy administrator, being authorised to make the distribution in question, has pursuant to Rule 63, given notice that he proposes to make it.

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

- (a) any debt arising out of an obligation incurred after the protected energy company entered energy administration;
- (b) any debt arising out of an obligation incurred at a time when the creditor had notice that an application for an energy administration order was pending;
- (c) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement where that agreement was entered into between the creditor and any other party—
 - (i) after the protected energy company entered energy administration; or
 - (ii) at a time when the creditor had notice that an application for an energy administration order was pending.

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

(4) A sum shall be regarded as being due to or from the protected energy company 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 as a matter of opinion.

(5) Rule 49 shall apply for the purposes of this Rule to an obligation to or from the protected energy company which, by virtue of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 54 to 56 shall apply for the purposes of this Rule in relation to any sums due to the protected energy company which—

- (a) are payable in a currency other than sterling;

- (b) are of a periodical nature; or
- (c) bear interest.

(7) Rule 73 shall apply for the purposes of this Rule to any sum due to or from the protected energy company which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the energy administration. Alternatively the balance (if any) owed to the protected energy company shall be paid to the energy 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) shall be paid if and when the debt becomes due and payable.

(9) In this Rule “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

Commencement Information

15 Rule 53 in force at 1.10.2005, see [rule 1](#)

Debt in foreign currency

54.—(1) For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date when the protected energy company entered energy administration.

(2) “The official exchange rate” is the middle exchange rate on the London Foreign Exchange Market at the close of business, as published for the date in question. In the absence of any such published rate, it is such rate as the court determines.

Commencement Information

16 Rule 54 in force at 1.10.2005, see [rule 1](#)

Payments of a periodical nature

55.—(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 when the protected energy company entered energy administration.

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

Commencement Information

17 Rule 55 in force at 1.10.2005, see [rule 1](#)

Interest

56.—(1) Where a debt proved in the energy 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 protected energy company entered energy administration.

(2) In the following circumstances the creditor's claim may include interest on the debt for periods before the protected energy company entered energy administration, 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 date when the protected energy company entered energy administration.

(4) If the debt is due otherwise, interest may only be claimed if, before that date, a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice 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 that of the protected energy company's entering energy administration and for all the purposes of the 1986 Act and the Rules shall be chargeable 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 on the date when the protected energy company entered energy administration.

(7) Any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the protected energy company entered energy administration.

(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) or the rate applicable to the debt apart from the energy administration.

Commencement Information

18 Rule 56 in force at 1.10.2005, see [rule 1](#)

Debt payable at future time

57. A creditor may prove for a debt of which payment was not yet due on the date when the protected energy company entered energy administration, subject to Rule 73 (adjustment of dividend where payment made before time).

Commencement Information

19 Rule 57 in force at 1.10.2005, see [rule 1](#)

Value of security

58.—(1) A secured creditor may, with the agreement of the energy administrator or the leave of the court, at any time alter the value which he has, in his proof of debt, put upon his security.

(2) However, if a secured creditor has voted in respect of the unsecured balance of his debt he may re-value his security only with permission of the court.

Commencement Information

110 Rule 58 in force at 1.10.2005, see [rule 1](#)

Surrender for non-disclosure

59.—(1) If a secured creditor omits to disclose his security in his proof of debt, he shall surrender his security for the general benefit of creditors, unless the court, on application by him, relieves him from the effect of this Rule on the ground 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 of debt to be amended, on such terms as may be just.

Commencement Information

I11 Rule 59 in force at 1.10.2005, see [rule 1](#)

Redemption by energy administrator

60.—(1) The energy administrator may at any time give notice to a creditor whose debt is secured that he 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 energy administrator may allow) in which, if he so wishes, to exercise his right to revalue his security (with the permission of the court, where Rule 58(2) applies).

If the creditor re-values his security, the energy administrator may only redeem at the new value.

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

(4) A secured creditor may at any time, by a notice in writing, call on the energy administrator to elect whether he will or will not exercise his power to redeem the security at the value then placed on it; and the energy administrator then has 3 months in which to exercise the power or determine not to exercise it.

Commencement Information

I12 Rule 60 in force at 1.10.2005, see [rule 1](#)

Test of security's value

61.—(1) Subject as follows, the energy administrator, if he is dissatisfied with the value which a secured creditor puts on his security (whether in his proof or by way of re-valuation under Rule 58), may require any property comprised in the security to be offered for sale.

(2) The terms of sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the energy administrator on behalf of the protected energy company, and the creditor on his own behalf, may appear and bid.

Commencement Information

I13 Rule 61 in force at 1.10.2005, see [rule 1](#)

Realisation of security by creditor

62. If a creditor who has valued his security subsequently realises it (whether or not at the instance of the energy administrator)—

- (a) the net amount realised shall be substituted for the value previously put by the creditor on the security; and
- (b) that amount shall be treated in all respects as an amended valuation made by him.

Commencement Information

I14 Rule 62 in force at 1.10.2005, see [rule 1](#)

Notice of proposed distribution

63.—(1) Where an energy administrator is proposing to make a distribution to creditors he shall give 28 days' notice of that fact.

(2) The notice given pursuant to paragraph (1) shall—

- (a) be sent to all creditors whose addresses are known to the energy administrator;
- (b) state whether the distribution is to preferential creditors or preferential creditors and unsecured creditors; and
- (c) where the energy administrator proposes to make a distribution 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⁽¹⁾.

(3) Subject to paragraph (5), the energy administrator shall not declare a dividend unless he has by public advertisement invited creditors to prove their debts.

(4) A notice pursuant to paragraphs (1) or (3) shall—

- (a) state that it is the intention of the energy administrator to make a distribution to creditors within the period of 2 months from the last date for proving;
- (b) specify whether the proposed dividend is interim or final;
- (c) specify a date up to which proofs may be lodged 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.

(5) A notice pursuant to paragraph (1) where a dividend is to be declared for preferential creditors, need only be given to those creditors in whose case he has reason to believe that their debts are preferential and public advertisement of the intended dividend need only be given if the energy administrator thinks fit.

Commencement Information

I15 Rule 63 in force at 1.10.2005, see [rule 1](#)

Admission or rejection of proofs

64.—(1) Unless he has already dealt with them, within 7 days of the last date for proving, the energy administrator shall—

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

- (a) admit or reject proofs submitted to him; or
 - (b) make such provision in respect of them as he thinks fit.
- (2) The energy administrator is not obliged to deal with proofs lodged after the last date for proving, but he may do so, if he thinks fit.
- (3) In the declaration of a dividend no payment shall be made more than once by virtue of the same debt.

Commencement Information

I16 Rule 64 in force at 1.10.2005, see [rule 1](#)

Declaration of dividend

65.—(1) Subject to paragraph (2), within the 2 month period referred to in Rule 63(4)(a) the energy administrator shall proceed to declare the dividend to one or more classes of creditor of which he gave notice.

(2) Except with the permission of the court, the energy administrator shall not declare a dividend so long as there is pending any application to the court to reverse or vary a decision of his on a proof, or to expunge a proof or to reduce the amount claimed.

Commencement Information

I17 Rule 65 in force at 1.10.2005, see [rule 1](#)

Notice of declaration of a dividend

66.—(1) Where the energy administrator declares a dividend he shall give notice of that fact to all creditors who have proved their debts.

(2) The notice shall include the following particulars relating to the energy administration—

- (a) amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
- (b) payments made by the energy administrator when acting as such;
- (c) where the energy administrator proposes 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 of dividend and the rate of dividend;
- (f) how he proposes to distribute the dividend; and
- (g) whether, and if so when, any further dividend is expected to be declared.

Commencement Information

I18 Rule 66 in force at 1.10.2005, see [rule 1](#)

Payments of dividends and related matters

67.—(1) The dividend may be distributed simultaneously with the notice declaring it.

(2) Payment of dividend may be made by post, or arrangements may be made with any creditor for it to be paid to him in another way, or held for his collection.

(3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

Commencement Information

I19 Rule 67 in force at 1.10.2005, see [rule 1](#)

Notice of no dividend, or no further dividend

68. If the energy administrator gives notice to creditors that he is unable to declare any dividend or (as the case may be) any further dividend, the notice shall 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 defraying the expenses of energy administration.

Commencement Information

I20 Rule 68 in force at 1.10.2005, see [rule 1](#)

Proof altered after payment of dividend

69.—(1) If after payment of dividend the amount claimed by a creditor in his proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive.

(2) Any dividend or dividends payable under paragraph (1) shall 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 expunged, or the amount is reduced, the creditor is liable to repay to the energy administrator any amount overpaid by way of dividend.

Commencement Information

I21 Rule 69 in force at 1.10.2005, see [rule 1](#)

Secured creditors

70.—(1) The following applies where a creditor re-values his security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of his unsecured claim ranking for dividend, the creditor shall forthwith repay to the energy administrator, for the credit of the energy administration, any amount received by him as dividend in excess of that to which he would be entitled having regard to the revaluation of the security.

(3) If the revaluation results in an increase of his unsecured claim, the creditor is entitled to receive from the energy 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 or dividends which he has failed to receive, having regard to the revaluation of the security.

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

Commencement Information

I22 Rule 70 in force at 1.10.2005, see [rule 1](#)

Disqualification from dividend

71. If a creditor contravenes any provision of the 1986 Act or the Rules relating to the valuation of securities, the court may, on the application of the energy administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

Commencement Information

I23 Rule 71 in force at 1.10.2005, see [rule 1](#)

Assignment of right to dividend

72.—(1) 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.

(2) A notice given under this Rule must specify the name and address of the person to whom payment is to be made.

Commencement Information

I24 Rule 72 in force at 1.10.2005, see [rule 1](#)

Debt payable at future time

73.—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, he is entitled to 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 him, the amount remaining outstanding in respect of his admitted proof) shall be reduced by applying the following formula—

$$\frac{X}{1.05^r}$$

where—

- a "X" is the value of the admitted proof; and
- b "r" is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months in a decimalised form.

Changes to legislation: *There are currently no known outstanding effects for the The Energy Administration Rules 2005, CHAPTER 3. (See end of Document for details)*

(3) In paragraph (2) “relevant date” means the date that the protected energy company entered energy administration.

Commencement Information

I25 Rule 73 in force at 1.10.2005, see [rule 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Energy Administration Rules 2005, CHAPTER 3.