
STATUTORY INSTRUMENTS

2006 No. 772

The Energy Administration (Scotland) Rules 2006

PART 6

Distribution to Creditors

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.