
STATUTORY INSTRUMENTS

2006 No. 772

The Energy Administration (Scotland) Rules 2006

PART 4

Meetings and Reports

Meetings generally and notice

15.—(1) This Rule and Rule 16 apply to any meetings summoned by the energy administrator under paragraph 62 of Schedule B1 to the 1986 Act.

(2) In fixing the venue for a meeting, the energy administrator shall have regard to the convenience of the persons who are to attend and the meeting shall be summoned for commencement between 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

(3) Subject to Rule 20, the energy administrator shall give not less than 21 days' notice of the venue for the meeting to every person known to him as being entitled to attend the meeting.

(4) The energy administrator may also publish notice of the venue of the meeting in a newspaper circulating in the areas of the principal place of business of the protected energy company or in such other newspaper as he thinks most appropriate for ensuring that it comes to the notice of the persons who are entitled to attend the meeting.

(5) Any notice published under paragraph (4) shall be published not less than 21 days before the meeting.

(6) Any notice under this Rule shall state—

- (a) the purpose of the meeting;
- (b) the persons who are entitled to attend and vote at the meeting;
- (c) the effects of Rule 21 and of the relevant provisions of Rule 24; and
- (d) in the case of a meeting of creditors—
 - (i) that proxies may be lodged at or before the meeting and the place where they may be lodged; and
 - (ii) that claims may be lodged by those who have not already done so at or before the meeting and the place where they may be lodged.

(7) With the notice given under paragraph (1), the energy administrator shall also send out a proxy form.

(8) In the case of any meeting of creditors, the court may order that notice of the meeting be given by public advertisement in such form as may be specified in the order and not by individual notice to the persons concerned. In considering whether to make such an order, the court shall have regard to the cost of the public advertisement, to the amount of the assets available and to the extent of the interest of creditors or any particular class of them.

Adjournment

16.—(1) This Rule applies to meetings of creditors.

(2) If, within a period of 30 minutes from the time appointed for the commencement of a meeting, a quorum is not present, then, unless the chairman otherwise decides, the meeting shall be adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(3) In the course of any meeting, the chairman may, in his discretion, and shall, if the meeting so resolves, adjourn it to such venue as seems to him to be appropriate in the circumstances.

(4) An adjournment under paragraph (2) or (3) shall not be for a period of more than 21 days and notice of the adjourned meeting may be given by the chairman.

(5) Where a meeting is adjourned, any proxies given for the original meeting may be used at the adjourned meeting.

The chairman at meetings

17.—(1) At any meeting of creditors summoned by the energy administrator, either he shall be chairman, or a person nominated by him in writing to act in his place.

(2) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the protected energy company; or
- (b) an employee of the energy administrator or his firm who is experienced in insolvency matters.

Quorum at meeting of creditors

18.—(1) Any meeting of creditors in energy administration proceedings is competent to act if a quorum is present.

(2) Subject to paragraph (3), a quorum is at least one creditor entitled to vote.

(3) For the purposes of this Rule, the reference to the creditor necessary to constitute a quorum is to those persons present or represented by proxy by any person (including the chairman) and includes persons duly represented under section 375 of the Companies Act.

(4) Where at any meeting of creditors—

- (a) the provisions of this Rule as to a quorum being present are satisfied by the attendance of—
 - (i) the chairman alone, or
 - (ii) one other person in addition to the chairman; and
- (b) the chairman is aware, by virtue of claims and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote,

the meeting shall not commence until at least the expiry of 15 minutes after the time appointed for its commencement.

Chairman of meeting as proxy holder

19. Where the chairman at a meeting of creditors holds a proxy which requires him to vote for a particular resolution and no other person proposes that resolution—

- (a) he shall propose it himself, unless he considers that there is good reason for not doing so, and

- (b) if he does not propose it, he shall forthwith after the meeting notify the person who granted him the proxy of the reason why he did not do so.

Meeting following nomination of alternative liquidator

20.—(1) Where under Rules 14(1)(k), (1)(l) or 26(2)(h), the energy administrator has proposed that the protected energy company enter creditors' voluntary liquidation once the energy administration has ended, the energy administrator shall, in the circumstances detailed in paragraph (2), summon a meeting of creditors for the purpose of nominating a person other than the person named as proposed liquidator in the energy administrator's proposals or revised proposals.

(2) The energy administrator shall summon a meeting of creditors where such a meeting is requested by creditors of the protected energy company whose debts amount to at least 25 per cent of the total debts of the protected energy company.

(3) A request for such a meeting shall be made within 21 days of the date on which the energy administrator's statement of proposals is sent out, or where revised proposals have been sent out and a proposed revision relates to the ending of the energy administration by a creditors' voluntary liquidation, within 21 days from the date on which the revised statement of proposals is sent out.

(4) A request under this Rule shall include—

- (a) a list of creditors concurring with the request, showing the amounts of their respective debts in the energy administration; and
- (b) from each creditor concurring, written confirmation of his concurrence,

but sub-paragraph (a) does not apply if the requesting creditor's debt is alone sufficient without the concurrence of other creditors.

(5) A meeting requested under this Rule shall be held within 21 days of the energy administrator's receipt of the notice requesting the meeting.

Entitlement to vote (creditors and members)

21.—(1) Except Rule 29(2) and (3), Part 5 (claims in energy administration) applies for the purpose of determining a creditor's entitlement to vote at any creditors' meeting in an energy administration.

(2) Members of a protected energy company at their meetings shall vote according to their rights attaching to their shares in accordance with the articles of association.

(3) The reference in paragraph (2) to a member's share shall include any other interests which he may have as a member of the protected energy company.

Hire-purchase, conditional sale and hiring agreements

22.—(1) Subject as follows, an owner of goods under a hire-purchase agreement or under an agreement for the hire of goods for more than 3 months, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to him by the protected energy company on the date that the protected energy company entered energy administration.

(2) In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the making of an energy administration application or any matter arising as a consequence, or of the protected energy company entering energy administration.

Disposal of secured property

23.—(1) The following applies where the energy administrator applies to the court under paragraphs 71 or 72 of Schedule B1 to the 1986 Act for authority to dispose of property of the protected energy company which is subject to a security (other than a floating charge), or goods in the possession of the protected energy company under a hire purchase agreement.

(2) If an order is made under paragraphs 71 or 72 of Schedule B1 to the 1986 Act, the energy administrator shall as soon as reasonably practicable send a copy of it certified by the clerk of court to the person who is the holder of the security or owner under the agreement.

(3) The energy administrator shall send to the registrar of companies a copy of the order, certified by the clerk of court, together with Form EA12(S), and shall place a copy of the order in the sederunt book.

Resolutions

24.—(1) Subject to paragraph (2) and (3), at a creditors' or members' meeting in energy administration proceedings, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of it.

(2) Any resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chairman's belief, persons connected with the protected energy company.

(3) In this Rule, "connected with the protected energy company" has the same meaning as the phrase "connected with a company" in section 249 of the 1986 Act.

Report of Meeting

25.—(1) The chairman of the meeting shall cause a report to be made of the proceedings at the meeting which shall be signed by him.

(2) The report shall include—

- (a) a list of all the creditors who attended the meeting, either in person or by proxy; and
- (b) a copy of every resolution passed.

(3) The chairman shall keep a copy of the report of the meeting as part of the sederunt book in the energy administration.

Revision of the energy administrator's proposals

26.—(1) Where the energy administrator revises his proposals under paragraph 54 of Schedule B1 to the 1986 Act, he shall send a statement of the revised proposals in Form EA13(S) as soon as reasonably practicable to all those to whom he is required to do so.

(2) The statement of revised proposals shall include—

- (a) details of the court which granted the energy administration order and the relevant court reference number (if any);
- (b) the full name, registered address, registered number and any other trading names of the protected energy company;
- (c) details relating to the appointment of the energy administrator, including the date of appointment and whether the energy administration application was made by the Secretary of State or by GEMA;
- (d) the names of the directors and secretary of the protected energy company and details of any shareholdings which they have in the protected energy company;

- (e) a summary of the initial proposals and the reason(s) for proposing a revision;
- (f) details of the proposed revision including details of the energy administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors (as the case may be);
- (g) where it is proposed, by virtue of the revision, to make distributions to creditors in accordance with Part 6, the classes of creditors to whom it is proposed that distributions be made and whether or not the energy administrator intends to make an application to the court under paragraph 65(3) of Schedule B1 to the 1986 Act;
- (h) where the revision includes a proposal to move from energy administration to a creditors' voluntary liquidation—
 - (i) details of the proposed liquidator; and
 - (ii) a statement that, in accordance with paragraph 83(7) of Schedule B1 to the 1986 Act and Rule 47(3), creditors may nominate another person to act as liquidator, provided that the nomination is made at a meeting of creditors called for that purpose; and
- (i) any other information that the energy administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.

(3) Subject to paragraph 54(4) of Schedule B1 to the 1986 Act, within 5 days of sending out the statement in paragraph (1) above, the energy administrator shall send a copy of the statement to every member of the protected energy company.

(4) A notice under paragraph 54(4) of Schedule B1 to the 1986 Act shall be published once in the Edinburgh Gazette and once in the newspaper in which the energy administrator's appointment was advertised, and shall—

- (a) state the full name of the protected energy company;
- (b) state the name and address of the energy administrator;
- (c) specify an address to which members can write for a copy of the statement, to be provided free of charge; and
- (d) be published as soon as reasonably practicable after the energy administrator sends the statement to creditors.

Reports to creditors

27.—(1) The energy administrator shall—

- (a) within six weeks after the end of each accounting period; and
- (b) within six weeks after he ceases to act as energy administrator,

send to the court, the registrar of companies, each creditor, the Secretary of State and GEMA, a progress report attached to Form EA14(S).

(2) For the purposes of this Part, “accounting period”, in relation to an energy administration, shall be construed in accordance with Rule 41.

(3) For the purposes of this Part, “progress report” means a report which includes—

- (a) the name of the court which granted the energy administration order, and the court reference number (if any);
- (b) details of the protected energy company's name, address and registration number;
- (c) details of the energy administrator's name and address, date of appointment and name and address of the applicant for the energy administration order, including any changes in office-holder, and, in the case of joint energy administrators, their functions as set out in the statement made for the purposes of section 158(5) of the 2004 Act;

- (d) details of progress to date, including a receipts and payments account which states what assets of the protected energy company have been realised, for what value, and what payments have been made to creditors;
 - (e) details of what assets remain to be realised;
 - (f) where a distribution is to be made in accordance with Part 7 in respect of an accounting period, the scheme of division; and
 - (g) any other relevant information for the creditors.
- (4) For the purposes of paragraph (3)(d), the account shall be in the form of an abstract showing—
- (a) receipts and payments during the relevant accounting period; or
 - (b) where the energy administrator has ceased to act, receipts and payments during the period from the end of the last accounting period to the time when he so ceased (or, where he has made no previous progress report, receipts and payments in the period since his appointment as energy administrator).
- (5) In a receipts and payments account falling within paragraph (4)(b), the energy administrator shall include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the 1986 Act (prescribed part).
- (6) The court may, on the application of the energy administrator, extend the period of six weeks referred to in paragraph (1) of this Rule.
- (7) If the energy administrator makes default in complying with this Rule without reasonable excuse, he shall be guilty of an offence.
- (8) An energy administrator convicted of an offence under paragraph (7) shall be liable—
- (a) on summary conviction to a fine not exceeding one-fifth of the statutory maximum; or
 - (b) in relation to a second or subsequent conviction of the offence, to a daily default fine of one-fiftieth of the statutory maximum in respect of each day on which the contravention is continued.
- (9) This Rule is without prejudice to the requirements of Part 6 (distribution to creditors).