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STATUTORY INSTRUMENTS

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**2013 No. 1046**

**The Energy Supply Company Administration Rules 2013**

PART 11

Court procedure and practice

CHAPTER 1

Applications

**Preliminary**

**95.** This Chapter applies to any application made to the court in energy supply company administration proceedings, except an application for an esc administration order.

**Form and contents of application**

**96.—**(1) Each application must be in writing and must state—

- (a) that the application is made under the 1986 Act;
- (b) the names of the parties;
- (c) the name of the energy supply company which is the subject of the energy supply company administration proceedings;
- (d) the court (and where applicable, the division or district registry of that court) in which the application is made;
- (e) where the court has previously allocated a number to the energy supply company administration proceedings within which the application is made, that number;
- (f) the nature of the remedy or order applied for or the directions sought from the court;
- (g) 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;
- (h) where the 1986 Act or these 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
- (i) the applicant's address for service.

(2) The application must be authenticated by the applicant if the applicant is acting in person or, when the applicant is not so acting, by or on behalf of the applicant's solicitor.

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

**97.—**(1) An application under section 176A(5) of the 1986 Act<sup>(1)</sup> must be accompanied by a witness statement by the energy administrator.

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

- (2) The witness statement must state—
- (a) that the application arises in the course of an energy supply company administration;
  - (b) a summary of the financial position of the energy supply 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 office holder is acting in relation to the energy supply company and if so that office holder’s address.

**Filing and service of application**

**98.**—(1) An application must 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) Where an application is filed with the court in accordance with paragraph (1), the court must fix a venue for the application to be heard unless—

- (a) it considers it is not appropriate to do so;
- (b) the Rule under which the application is brought provides otherwise; or
- (c) the case is one to which Rule 100 applies.

(3) Unless the court otherwise directs, the applicant must serve a sealed copy of the application, endorsed with the venue for 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 or these 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) An application must be served at least 14 days before the date fixed for its hearing unless—

- (a) the provision of the 1986 Act or these Rules under which the application is made make different provision; or
- (b) the case is one of urgency, to which paragraph (6) applies.

(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 just.

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

**99.** 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.

**Hearings without notice**

**100.** Where the relevant provisions of the 1986 Act or these Rules do not require service of the application on, or notice of it to be given to, any person—

- (a) the court may hear the application as soon as reasonably practicable without fixing a venue as required by Rule 98; or
- (b) it may fix a venue for the application to be heard in which case Rule 98 applies to the extent that it is relevant;

but nothing in those provisions is to be taken as prohibiting the applicant from giving such notice if the applicant wishes to do so.

### **Hearing of application**

**101.**—(1) Unless the court otherwise directs, the hearing of an application must be in open court.

(2) In a county court, the jurisdiction of the court to hear and determine an application may be exercised by the district judge (to whom any application must be made in the first instance) unless—

- (a) a direction to the contrary has been given, or
- (b) it is not within the district judge’s power to make the order required.

(3) In the High Court, the jurisdiction of the court to hear and determine an application may be exercised by the registrar (to whom any application must be made in the first instance) unless—

- (a) a direction to the contrary has been given, or
- (b) it is not within the registrar’s power to make the order required.

(4) Where the application is made to the district judge in the county court or to the registrar in the High Court, the district judge or the registrar may refer to the judge any matter which the district judge or registrar thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the district judge or the registrar with such directions as that judge thinks just.

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

### **Witness statements - general**

**102.**—(1) Subject to Rule 104, where evidence is required by the 1986 Act or these Rules as to any matter, such evidence may be provided in the form of a witness statement unless—

- (a) in any specific case a Rule or the 1986 Act makes different provision; or
- (b) the court otherwise directs.

(2) The court may, on the application of any party to the matter in question order the attendance for cross-examination of the person making the witness statement.

(3) Where, after such an order has been made, the person in question does not attend, that person’s witness statement shall not be used in evidence without the permission of the court.

### **Filing and service of witness statements**

**103.** Unless the provisions of the 1986 Act or these 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 evidence in a witness statement, the applicant must file the witness statement with the court and serve a copy on the respondent, not less than 14 days before the date fixed for the hearing;
- (b) where a respondent to an application intends to oppose it and rely for that purpose on evidence in a witness statement, the respondent must file the witness statement with the court and serve a copy on the applicant, not less than 5 business days before the date fixed for the hearing.

### **Use of reports**

**104.**—(1) A report may be filed in court by the energy administrator instead of a witness statement, unless the application involves other parties or the court otherwise orders.

(2) In any case where a report is filed instead of a witness statement, the report shall be treated for the purposes of Rule 102 and any hearing before the court as if it were a witness statement.

(3) Where the witness statement is made by the energy administrator, the witness statement must state the address at which the energy administrator works.

### **Adjournment of hearings; directions**

**105.**—(1) The court may adjourn the hearing of an application on such terms as it thinks just.

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

- (a) service or notice of the application on or to any other person;
- (b) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application including whether a hearing is necessary;
- (c) the matters to be dealt with in evidence.

(3) The court may give directions as to the manner in which any evidence is to be adduced at a resumed hearing and in particular as to—

- (a) the taking of evidence wholly or partly by witness statement or orally;
- (b) the cross-examination of the maker of a witness statement; or
- (c) any report to be made by the energy administrator.

## **CHAPTER 2**

### **Shorthand writers**

### **Nomination and appointment of shorthand writers**

**106.**—(1) In the High Court the judge or registrar and, in a county court, a district 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 supply company administration proceedings, appoint a shorthand writer to take down the evidence of a person examined under section 236 of the 1986 Act.

### **Remuneration**

**107.**—(1) The remuneration of a shorthand writer appointed in energy supply company administration proceedings must be paid by the party at whose instance the appointment was made, or out of the assets of the energy supply 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**

**108.**—(1) In energy supply company administration proceedings, orders of the court may be enforced in the same manner as a judgment to the same effect.

(2) Where a warrant for the arrest of a person is issued by the High Court, the warrant may be discharged by the county court where the person who is the subject of the warrant—

- (a) has been brought before a county court exercising energy supply company administration jurisdiction; and
- (b) has given to the county court an undertaking which is satisfactory to the county court to comply with the obligations that apply to that person under the provisions of the 1986 Act or these Rules.

### **Orders enforcing compliance with these Rules**

**109.**—(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 supply company administration), or
- (b) section 235 of the 1986 Act<sup>(2)</sup> (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**

**110.**—(1) A warrant issued by the court under section 236 of the 1986 Act (inquiry into insolvent company's dealings) must 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 power of enforcement) as the prescribed officer of the court are the tipstaff and the tipstaff's 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 arrested person"), the officer arresting the arrested person must as soon as reasonably practicable bring the arrested person before the court issuing the warrant in order that the arrested person may be examined.

(5) If the arrested person cannot immediately be brought up for examination, the officer must deliver the arrested person into the custody of the governor of the prison named in the warrant (or where that prison is not able to accommodate the arrested person, the governor of such other prison with appropriate facilities that is able to accommodate the arrested person), who must keep the arrested person in custody and produce the arrested person before the court as it may from time to time direct.

(6) After arresting the person named in the warrant, the officer must as soon as reasonably practicable 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 arrested person's examination.

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

- (a) direct the governor of the prison to produce the person for examination at the time and place appointed, and
- (b) as soon as reasonably practicable 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 must be—

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

- (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

#### **Court file**

**111.**—(1) The court must open and maintain a file in any case (the “court file”) where documents are filed with it under the 1986 Act or these Rules.

(2) Any documents which are filed with the court under the 1986 Act or these Rules must be placed on the court file.

(3) The following persons may inspect or obtain from the court a copy of, or a copy of any document or documents contained in, the court file—

- (a) the energy administrator;
- (b) the Secretary of State;
- (c) any person who is a creditor of the energy supply company to which the proceedings relate if that person provides the court with a statement in writing by confirming that that person is a creditor; and
- (d) every person who is, or at any time has been, a director or officer of the energy supply company to which the energy supply company administration proceedings relate, or who is a member of the energy supply company.

(4) The right to inspect or obtain a copy of, or a copy of any document or documents contained in, the court file may be exercised on that person’s behalf by a person authorised to do so by that person.

(5) Any person who is not otherwise entitled to inspect or obtain a copy of, or a copy of any document or documents contained in, the court file may do so if that person has the permission of the court.

(6) The court may direct that the court file, a document (or part of it) or a copy of a document (or part of it) must not be made available under paragraph (3), (4) or (5) without the permission of the court.

(7) An application for a direction under paragraph (6) may be made by—

- (a) the energy administrator; or
- (b) any person appearing to the court to have an interest.

(8) Where any person wishes to exercise the right to inspect the court file under paragraph (3), (4) or (5), that person—

- (a) if the permission of the court is required, must file in court an application notice in accordance with these Rules; or
- (b) if the permission of the court is not required, may inspect the court file at any reasonable time.

(9) Where any person wishes to exercise the right to obtain a copy of a document under paragraph (3), (4) or (5), that person must pay any prescribed fee and—

- (a) if the permission of the court is required, file in court an application notice in accordance with these Rules; or

(b) if the permission of the court is not required, file in court a written request for the document.

(10) An application for—

(a) permission to inspect the court file or obtain a copy of a document under paragraph (5); or

(b) a direction under paragraph (6),

may be made without notice to any other party, but the court may direct that notice must be given to any person who would be affected by its decision.

(11) If for the purposes of powers conferred by the 1986 Act or these Rules, the Secretary of State or the energy administrator requests the transmission of the file of any insolvency proceedings, the court must comply with the request (unless the file is for the time being in use for the court's own purposes).

## CHAPTER 5

### Costs and detailed assessment

#### Application of Chapter 8

**112.**—(1) This Chapter applies in relation to costs in connection with energy supply company administration proceedings.

(2) In this Chapter a reference to costs includes charges and expenses.

#### Requirement to assess costs by the detailed procedure

**113.**—(1) Where the costs of any person are payable as an expense out of the assets of the energy supply company, the amount payable must be decided by detailed assessment unless agreed between the energy administrator and the person entitled to payment.

(2) In the absence of such agreement as is mentioned in paragraph (1), the energy administrator may serve notice requiring that person to commence detailed assessment proceedings in accordance with CPR Part 47.

(3) Detailed assessment proceedings must be commenced in the court to which the energy supply company administration proceedings are allocated.

(4) Where the costs of any person employed by the energy administrator in energy supply company administration proceedings are required to be decided by detailed assessment or fixed by order of the court, the energy administrator may make payments on account to such person in respect of those costs provided that person undertakes in writing—

(a) to repay as soon as reasonably practicable any money which may, when detailed assessment is made, prove to have been overpaid; and

(b) to pay interest on any such sum as is mentioned in sub-paragraph (a) at the rate specified in section 17 of the Judgments Act 1838<sup>(3)</sup> on the date payment was made and for the period beginning with the date of payment and ending with the date of repayment.

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

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(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).

### **Procedure where detailed assessment required**

**114.**—(1) Before making a detailed assessment of the costs of any person employed in energy supply company administration proceedings by the energy administrator, the costs officer must require a certificate of employment, which must be endorsed on the bill and authenticated by the energy administrator.

(2) The certificate must 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 supply company administration proceedings are required to be decided by detailed assessment must, on being required in writing to do so by the energy administrator, commence detailed 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 energy supply 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 the energy administrator's personal capacity, that claim is also forfeited by such failure to commence proceedings.

(6) Where costs have been incurred in energy supply company administration proceedings in the High Court and those proceedings are subsequently transferred to a county court, all costs of those proceedings directed by the court or otherwise required to be assessed may nevertheless, on the application of the person who incurred the costs, be ordered to be decided by detailed assessment in the High Court.

### **Costs paid otherwise than out of the assets of the energy supply company**

**115.** 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 energy supply company, the costs officer must 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**

**116.** Without prejudice to any provision of the 1986 Act or these 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, the energy administrator shall not be personally liable for costs unless the court otherwise directs.

### **Application for costs**

**117.**—(1) This Rule applies where a party, or person affected by, any energy supply company administration proceedings—

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



(2) The person concerned must serve a sealed copy of the person's 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**

**118.**—(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 energy supply company to which the energy supply company administration proceedings relate.

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

### **Final costs certificate**

**119.**—(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 CPR.

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

## **CHAPTER 6**

### **Persons who lack capacity to manage their affairs**

#### **Introductory**

**120.**—(1) The Rules in this Chapter apply where in energy supply company administration proceedings it appears to the court that a person affected by the proceedings is one who lacks capacity within the meaning of the Mental Capacity Act 2005(4) to manage and administer the person's property and affairs either—

- (a) by reason of lacking capacity within the meaning of the Mental Capacity Act 2005; 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**

**121.**—(1) The court may appoint such person as it thinks just 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 the incapacitated person's 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

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(4) 2005 c. 9.

(c) the energy administrator.

(4) Application under paragraph (3) may be made without notice to any other party; 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.

#### **Witness statement in support of application**

**122.** An application under Rule 121(3) must be supported by a witness statement made by a registered medical practitioner as to the mental or physical condition of the incapacitated person.

#### **Service of notices following appointment**

**123.** Any notice served on, or sent to, a person appointed under Rule 121 has the same effect as if it had been served on, or sent to, the incapacitated person.

### **CHAPTER 7**

#### **Appeals in energy supply company administration proceedings**

#### **Appeals and reviews of esc administration orders**

**124.**—(1) Every court having jurisdiction under the 1986 Act or these Rules may review, rescind or vary any order made by it in the exercise of that jurisdiction.

(2) Appeals in civil matters in proceedings under these Rules lie as follows—

- (a) to a single judge of the High Court where the decision appealed against is made by the county court or the registrar;
- (b) to the Civil Division of the Court of Appeal from a decision of a single judge of the High Court.

(3) A county court is not, in the exercise of its jurisdiction for the purposes of these Rules, subject to be restrained by the order of any other court, and no appeal lies from its decision in the exercise of that jurisdiction except as provided by this Rule.

#### **Procedure on appeal**

**125.**—(1) An appeal against a decision at first instance may only be brought with either the permission of the court which made the decision or the permission of the court which has jurisdiction to hear the appeal.

(2) An appellant must file an appellant's notice (within the meaning of CPR Part 52) within 21 days after the date of the decision of the court that the appellant wishes to appeal.

(3) The procedure set out in CPR Part 52 applies to any appeal to which this Chapter applies.

### **CHAPTER 8**

#### **General**

#### **Principal court rules and practice to apply**

**126.**—(1) The CPR and the practice and procedure of the High Court (including any practice directions) apply to energy supply company administration proceedings with any necessary modifications, except so far as inconsistent with these Rules.

(2) All energy supply company 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.

### **Rights of audience**

**127.** Rights of audience in energy supply company administration proceedings are the same as in insolvency proceedings.

### **Formal defects**

**128.** No energy supply company 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.

### **Service of orders staying proceedings**

**129.** Where in energy supply company administration proceedings the court makes an order staying any action, execution or other legal process against the property of the energy supply 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.

### **Payment into court**

**130.** CPR Part 37 (miscellaneous provisions about payment into court) applies to money lodged in court under these Rules.

### **Further information and disclosure**

**131.—(1)** Any party to energy supply company 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**

**132.—(1)** Any person who has under these Rules the right to inspect the court file of energy supply company administration proceedings may require the court to provide the person with an office copy of any document on the file.

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

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

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**Status:** *This is the original version (as it was originally made).*

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