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STATUTORY INSTRUMENTS

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**2013 No. 1046**

**The Energy Supply Company Administration Rules 2013**

**PART 2**

**Appointment of energy administrator by court**

**Witness statement**

4. Where it is proposed to apply to the court for an esc administration order to be made in relation to an energy supply company, the energy supply company administration application must be in Form ESCA1 and a witness statement complying with Rule 6 must be prepared with a view to it being filed with the court in support of the application.

**Form of application**

5.—(1) The application must state by whom it is made and the applicant's address for service.

(2) Where it is made by GEMA, the application must contain a statement that it is made with the consent of the Secretary of State.

(3) There must be attached to the application a written statement which must be in Form ESCA2 by each of the persons proposed to be energy administrator stating—

- (a) that the person consents to accept appointment; and
- (b) details of any prior professional relationship(s) that the person has had with the energy supply company to which that person is to be appointed as energy administrator.

**Contents of application and witness statement**

6.—(1) The energy supply company administration application must state that the company is an energy supply company.

(2) The application must state one or both of the following—

- (a) the applicant's belief that the energy supply company is, or is likely to be, unable to pay its debts;
- (b) the Secretary of State has certified that it would be appropriate to petition for the winding up of the energy supply company under section 124A of the 1986 Act <sup>MI</sup> (petition for winding up on grounds of public interest).

(3) There must be attached to the application a witness statement in support which must contain—

- (a) a statement of the energy supply company's financial position, specifying (to the best of the applicant's knowledge and belief) the company's assets and liabilities, including contingent and prospective liabilities;
- (b) details of any security known or believed to be held by the creditors of the energy supply company and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver or to appoint an administrator under paragraph 14 of

Schedule B1 to the 1986 Act; if an administrative receiver has been appointed, that fact must be stated;

- (c) details of any insolvency proceedings in relation to the energy supply company including any petition that has been presented for the winding up of the energy supply company so far as within the immediate knowledge of the applicant;
- (d) details of any notice served in accordance with section 164 of the 2004 Act by any person intending to enforce any security over the energy supply company's assets, so far as within the immediate knowledge of the applicant;
- (e) details of any step taken to enforce any such security, so far as within the immediate knowledge of the applicant;
- (f) details of any application for permission of the court to pass a resolution for the voluntary winding up of the energy supply company, so far as within the immediate knowledge of the applicant;
- (g) where it is intended to appoint a number of persons as energy administrators, details of the matters set out in section 158(5) of the 2004 Act regarding the exercise of the powers and duties of the energy administrator;
- (h) any other matters which, in the opinion of those intending to make the application for an esc administration order, will assist the court in deciding whether to make such an order, so far as within the knowledge or belief of the applicant.

#### Marginal Citations

**M1** 1986 c. 45; section 124A was inserted by the Companies Act 1989 (c. 40), section 60(3) and was amended by S.I. 2001/3694; the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) and S.I. 2004/3322.

#### Filing of application

7.—(1) The application (and all supporting documents) must be filed with the court, with a sufficient number of copies for service and use as provided by Rule 8.

(2) Each of the copies must have applied to it the seal of the court and be issued to the applicant; and on each copy there must be endorsed the date and time of filing.

(3) The court must fix a venue for the hearing of the application and this also must be endorsed on each copy of the application issued under paragraph (2).

(4) After the application is filed, it is the duty of the applicant to notify the court in writing of the existence of any insolvency proceedings, in relation to the energy supply company, as soon as the applicant becomes aware of them.

#### Service of application

8.—(1) In the following paragraphs of this Rule, references to the application are to a copy of the application issued by the court under Rule 7(2) together with the witness statement required by Rule 4 and the documents attached to the application.

(2) Notification for the purposes of section 156(2) of the 2004 Act must be by way of service in accordance with Rule 10, verified in accordance with Rule 11.

(3) The application must be served in addition to those persons referred to in section 156(2) of the 2004 Act—

- (a) if an administrative receiver has been appointed, on the administrative receiver;

- (b) if there is pending an administration application under Schedule B1 to the 1986 Act, without the modifications made by Schedule 20 to the 2004 Act, on the applicant;
- (c) if there is pending a petition for the winding up of the energy supply company, on the petitioner (and also on the provisional liquidator, if any);
- (d) on any creditor who has served notice in accordance with section 164 of the 2004 Act of the creditor's intention to enforce the creditor's security over property of the energy supply company;
- (e) on the person proposed as energy administrator;
- (f) on the energy supply company;
- (g) if the applicant is the Secretary of State, on GEMA;
- (h) if the applicant is GEMA, on the Secretary of State;
- (i) if a supervisor of a voluntary arrangement under Part I of the 1986 Act has been appointed, on that person.

#### **Notice to officers charged with execution of writs or other process**

9. The applicant must as soon as reasonably practicable after filing the application give notice of its being made to—

- (a) any enforcement officer or other officer who to the applicant's knowledge is charged with an execution or other legal process against the energy supply company or its property; and
- (b) any person who to the applicant's knowledge has distrained against the energy supply company or its property.

#### **Manner in which service to be effected**

10.—(1) Service of the application in accordance with Rule 8 must be effected by the applicant, or the applicant's solicitor, or by a person instructed by the applicant or the applicant's solicitor, not less than 2 business days before the date fixed for the hearing.

(2) Service must be effected as follows—

- (a) on the energy supply company (subject to paragraph (3)), by delivering the documents to its registered office;
- (b) on any other person (subject to paragraph (4)), by delivering the documents to that person's proper address;
- (c) in either case, in such other manner as the court may direct.

(3) If delivery to an energy supply company's registered office is not practicable or if the energy supply company is an unregistered company, service may be effected by delivery to its last known principal place of business in England and Wales.

(4) Subject to paragraph (5), for the purposes of paragraph (2)(b), a person's proper address is any which that person has previously notified as the person's address for service, but if the person has not notified any such address, service may be effected by delivery to the person's usual or last known address.

(5) In the case of a person who—

- (a) is an authorised deposit-taker or a former authorised deposit-taker;
- (b) either—
  - (i) has appointed, or is or may be entitled to appoint, an administrative receiver of the energy supply company; or

(ii) is or may be entitled to appoint an administrator of the energy supply company under paragraph 14 of Schedule B1 to the 1986 Act; and

(c) has not notified an address for service,

the proper address is the address of an office of that person where, to the knowledge of the applicant, the energy supply company maintains a bank account or, where no such office is known to the applicant, the registered office of that person or, if there is no such office, that person's usual or last known address.

(6) In this Rule—

(a) “authorised deposit-taker” means a person with permission under [F1Part 4A of the Financial Services and Markets Act 2000]M2 to accept deposits;

(b) “former authorised deposit-taker” means a person who—

(i) is not an authorised deposit-taker,

(ii) was formerly—

(aa) an authorised institution under the Banking Act 1987 M3, or a recognised bank or a licensed institution under the Banking Act 1979 M4; or

(bb) a person with permission under Part 4 [F2or Part 4A] of the Financial Services and Markets Act 2000; and

(iii) continues to have liability in respect of any deposit for which it had a liability at a time when it was an institution, bank or person mentioned in paragraph (ii).

(7) Paragraph (6)(a) and (b) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 22 to that Act.

- F1** Words in rule 10(6)(a) substituted (19.12.2013) by [The Energy Supply Company Administration \(Amendment\) Rules 2013 \(S.I. 2013/2950\)](#), art. 1, [rule 2\(a\)](#)
- F2** Words in rule 10(6)(b)(ii)(bb) inserted (19.12.2013) by [The Energy Supply Company Administration \(Amendment\) Rules 2013 \(S.I. 2013/2950\)](#), art. 1, [rule 2\(b\)](#)

#### Marginal Citations

**M2** 2000 c. 8.

**M3** 1987 c. 22; repealed by [S.I. 2001/3649](#), [article 3\(1\)\(d\)](#).

**M4** 1979 c. 37; repealed by the [Banking Act 1987 \(c. 22\)](#), section 108, [Schedule 7](#), Part 1.

#### Proof of service

**11.**—(1) Service of the application must be verified by a certificate of service.

(2) The certificate of service must be sufficient to identify the application served and must specify—

(a) the name and registered number of the energy supply company;

(b) the address of the registered office of the energy supply company;

(c) the name of the applicant;

(d) the court to which the application was made and the court reference number;

(e) the date of the application;

- (f) whether the copy served was a sealed copy;
- (g) the date on which service was effected; and
- (h) the manner in which service was effected.

(3) The certificate of service must be filed with the court as soon as reasonably practicable after service, and in any event not less than 1 business day before the hearing of the application.

### **The hearing**

**12.**—(1) At the hearing of the energy supply company administration application, any of the following may appear or be represented—

- (a) the Secretary of State;
- (b) GEMA;
- (c) the energy supply company;
- (d) one or more of the directors;
- (e) if an administrative receiver has been appointed, that person;
- (f) any person who has presented a petition for the winding-up of the energy supply company;
- (g) the person proposed for appointment as energy administrator;
- (h) any person that is the holder of a qualifying floating charge;
- (i) any person who has applied to the court for an administration order under Schedule B1 to the 1986 Act, without the modifications made by Schedule 20 to the 2004 Act;
- (j) any creditor who has served notice in accordance with section 164 of the 2004 Act of the creditor's intention to enforce the creditor's security over the energy supply company's property;
- (k) any supervisor of a voluntary arrangement under Part I of the 1986 Act;
- (l) with the permission of the court, any other person who appears to have an interest justifying the person's appearance.

(2) If the court makes an esc administration order, it must be in Form ESCA3.

(3) If the court makes an esc administration order, the costs of the applicant, and of any person whose costs are allowed by the court, are payable as an expense of the energy supply company administration.

### **Notice of esc administration order**

**13.**—(1) If the court makes an esc administration order, it must as soon as reasonably practicable send two copies of the order to the person who made the application.

(2) The applicant must send a sealed copy of the order as soon as reasonably practicable to the person appointed as energy administrator.

(3) If the court makes an order under section 157(1)(d) of the 2004 Act or any other order under section 157(1)(f) of the 2004 Act, it must give directions as to the persons to whom, and how, notice of that order is to be given.

**Changes to legislation:**

There are currently no known outstanding effects for the The Energy Supply Company Administration Rules 2013, PART 2.