
STATUTORY INSTRUMENTS

2013 No. 1047

**The Energy Supply Company
Administration (Scotland) Rules 2013**

Part 5

Claims in Energy Administration

Submission of claims

36.—(1) A creditor, in order to obtain an adjudication as to the creditor's entitlement to vote at any meeting of the creditors in the energy supply company administration or to a dividend (so far as funds are available) out of the assets of the energy supply company in respect of any accounting period, shall submit the creditor's claim to the energy administrator—

- (a) at or before the meeting; or
- (b) not later than 8 weeks before the end of the accounting period.

(2) A creditor shall submit the creditor's claim by producing to the energy administrator—

- (a) a statement of claim in the Form ESCA15(S); and
- (b) an account or voucher (according to the nature of the debt claimed) which constitutes prima facie evidence of the debt,

but the energy administrator may dispense with any requirement of this paragraph in respect of any debt or any class of debt.

(3) A claim submitted by a creditor, which has been accepted in whole or in part by the energy administrator for the purpose of voting at a meeting or of drawing a dividend in respect of any accounting period, shall be deemed to have been resubmitted for the purpose of obtaining an adjudication as to the creditor's entitlement both to vote at any subsequent meeting and (so far as funds are available) to a dividend in respect of an accounting period or, as the case may be, any subsequent accounting period.

(4) A creditor, who has submitted a claim, may at any time submit a further claim specifying a different amount for the creditor's claim;

Provided that a secured creditor shall not be entitled to produce a further claim specifying a different value for the security at any time after the energy administrator has required the creditor to discharge, or convey or assign, the security under Rule 37(2).

Secured debts

37.—(1) A secured creditor shall deduct the estimated value of any security in calculating the amount of the secured creditor's claim;

Provided that if a secured creditor surrenders, or undertakes in writing to surrender, a security for the benefit of the energy supply company's assets, that secured creditor shall not be required to make a deduction of the value of that security.

(2) The energy administrator may, at any time after the expiry of 12 weeks from the date on which the energy supply company enters energy supply administration, require a secured creditor to discharge the security or convey or assign it to the energy administrator on payment to the creditor of the value specified by the creditor (the expense of such discharge, conveyance or assignation being met from the assets of the energy supply company); and the amount in respect of which the creditor shall then be entitled to claim shall be any balance of the creditor's debt remaining after receipt of such payment.

(3) In calculating the amount of the creditor's claim, a creditor whose security has been realised shall deduct the amount (less the expenses of realisation) which that creditor has received, or is entitled to receive, from the realisation.

Entitlement to vote and draw dividend

38.—(1) A creditor who has had a claim accepted in whole or in part by the energy administrator or on appeal under Rule 39(5) shall be entitled—

- (a) in a case where the acceptance is under (or on appeal arising from) Rule 39(1), to vote on any matter at the meeting of creditors for the purpose of voting at which the claim is accepted; and
- (b) in a case where the acceptance is under (or on appeal arising from) Rule 39(2), to payment out of the assets of the energy supply company of a dividend in respect of the distribution for the purposes of which the claim is accepted; but such entitlement to payment shall arise only in so far as the energy supply company has funds available to make that payment, having regard to Rule 46, and payment would be consistent with the power and duties of the energy administrator.

(2) Votes are calculated according to the amount of a creditor's debt as at the date on which the energy supply company entered energy supply company administration, deducting any amount paid in respect of that debt after that date.

(3) No vote shall be cast by virtue of a debt more than once on any resolution put to the meeting.

(4) Any reference in this Part to the energy administrator includes, where applicable, a reference to the chair of the meeting.

Adjudication of claims

39.—(1) At the commencement of every meeting of creditors, the energy administrator shall, for the purposes of Rule 38 so far as it relates to voting at that meeting, accept or reject the claim of each creditor.

(2) Where funds are available for payment of a dividend out of the assets of the energy supply company in respect of an accounting period, the energy administrator for the purpose of determining who is entitled to such a dividend shall, not later than 4 weeks before the end of the period, accept or reject every claim submitted or deemed to have been re-submitted to the energy administrator under these Rules; and shall at the same time make a decision on any matter requiring to be specified under sub-paragraph (a) or (b) of paragraph (4).

(3) Where the energy administrator rejects a claim, the energy administrator shall forthwith notify the creditor giving reasons for the rejection.

(4) Where the energy administrator accepts or rejects a claim, the energy administrator shall record the decision on the claim in the sederunt book specifying—

- (a) the amount of the claim accepted by the energy administrator;
- (b) the category of debt, and the value of any security, as decided by the energy administrator, and

(c) if the energy administrator is rejecting the claim, the energy administrator's reasons for doing so.

(5) Any member or creditor may, if dissatisfied with the acceptance or rejection of any claim (or, in relation to such acceptance or rejection, with a decision in respect of any matter requiring to be specified under paragraph (4)(a) or (b) above), appeal to the court—

(a) if the acceptance or rejection is under paragraph (1) above, within 2 weeks of that acceptance or rejection;

(b) if the acceptance or rejection is under paragraph (2) above, not later than 2 weeks before the end of the accounting period,

and the energy administrator shall record the court's decision in the sederunt book.

(6) Any reference in this Rule to the acceptance or rejection of a claim shall be construed as a reference to the acceptance or rejection of the claim in whole or in part.

Evidence in relation to claims

40.—(1) The energy administrator, for the purpose of being satisfied as to the validity or amount of a claim submitted by a creditor may require—

(a) the creditor to produce further evidence; or

(b) any other person who the energy administrator believes can produce relevant evidence, to produce such evidence,

and, if the creditor or other person refuses or delays to do so, the energy administrator may apply to the court for an order requiring the creditor or other person to attend for private examination before the court.

(2) On an application being made in accordance with paragraph (1), the court may make an order requiring the creditor or other person to attend for private examination before it on a date (being not earlier than 8 days nor later than 16 days after the date of the order) and at a time specified in the order.

(3) A person who fails without reasonable excuse to comply with an order made under paragraph (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

(4) The examination shall be taken on oath.

(5) At any private examination, a solicitor or counsel may act on behalf of the energy administrator or the energy administrator may appear personally.

Criminal offences in relation to false claims or evidence

41.—(1) If a creditor produces under Rule 36 a statement of claim, account, voucher or other evidence which is false, the creditor shall be guilty of an offence unless the creditor shows that the creditor neither knew nor had reason to believe that the statement of claim, account, voucher or other evidence was false.

(2) A person convicted of an offence under paragraph (1) shall be liable—

(a) on summary conviction to a fine not exceeding the statutory maximum or—

(i) to imprisonment for a term not exceeding three months; or

(ii) if the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at such appropriation, to imprisonment for a term not exceeding six months, or (in the case of either sub-paragraph) to both such fine and such imprisonment; or

- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both.

Amount which may be claimed generally

42.—(1) Subject to Rules 30, 37 and 43, the amount in respect of which a creditor shall be entitled to claim shall be the accumulated sum of principal and any interest which is due on the debt as at the date upon which the energy supply company entered energy supply company administration.

(2) If a debt does not depend on a contingency but would not be payable but for the energy supply company administration until after the date upon which the energy supply company entered energy supply company administration, the amount of the claim shall be calculated as if the debt were payable on the date when the energy supply company entered energy supply company administration but subject to the deduction of interest at the rate specified in section 17 of the Judgments Act 1838 (judgment debts to carry interest)⁽¹⁾ on the date when the energy supply company entered energy supply company administration from the said date until the date for payment of the debt.

(3) In calculating the amount of the creditor’s claim, a creditor shall deduct any discount (other than any discount for payment in cash) which is allowable by contract or course of dealing between the creditor and the energy supply company or by the usage of trade.

Debts depending on contingency

43.—(1) Subject to paragraph (2), the amount which a creditor shall be entitled to claim shall not include a debt in so far as its existence or amount depends upon a contingency.

(2) On an application by the creditor to the energy administrator, the energy administrator shall put a value on the debt in so far as it is contingent, and the amount in respect of which the creditor shall then be entitled to claim shall be that value but no more; and, where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.

Liabilities and rights of co-obligants

44.—(1) Where a creditor has an obligant (in this Rule referred to as the “co-obligant”) bound to the creditor along with the energy supply company for the whole or part of the debt, the co-obligant shall not be freed or discharged from liability for the debt by reason of the dissolution of the energy supply company or by virtue of the creditor’s voting or drawing a dividend or assenting to, or not opposing—

- (a) a scheme of arrangement; or
- (b) a company voluntary arrangement.

(2) Where—

- (a) a creditor has had a claim accepted in whole or in part; and
- (b) a co-obligant holds a security over any part of the assets of the energy supply company,

the co-obligant shall account to the energy administrator so as to put the energy supply company in the same position as if the co-obligant had paid the debt to the creditor and thereafter had had the co-obligant’s claim accepted in whole or in part in the energy supply company administration after deduction of the value of the security.

(3) Without prejudice to any right under any rule of law of a co-obligant who has paid the debt, the co-obligant may require and obtain at the co-obligant’s own expense from the creditor an assignation of the debt on payment of the amount thereof, and thereafter may in respect of that debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.

(1) 1838 c.110, as amended by S.I. 1998/2940, Article 3.

(4) In this Rule a “co-obligant” includes a cautioner.

Claims in foreign currency

45.—(1) A creditor may state the amount of the creditor’s claim in currency other than sterling where—

- (a) the creditor’s claim is constituted by decree or other order made by a court ordering the energy supply company to pay the creditor a sum expressed in a currency other than sterling, or
- (b) where it is not so constituted, the creditor’s claim arises from a contract or bill of exchange in terms of which payment is or may be required to be made by the energy supply company to the creditor in a currency other than sterling.

(2) Where a claim is stated in currency other than sterling for the purposes of the preceding paragraph, it shall be converted into sterling at the official exchange rate prevailing on the date when the energy supply company entered energy supply company administration.