
STATUTORY INSTRUMENTS

2013 No. 1046

The Energy Supply Company Administration Rules 2013

PART 3

Process of energy supply company administration

Notification and advertisement of energy administrator's appointment

14.—(1) The notice of appointment to be given by the energy administrator as soon as reasonably practicable after appointment must be gazetted and may be advertised in such other manner as the energy administrator thinks fit.

(2) In addition to the standard contents, the notice under paragraph (1) must state—

- (a) that an energy administrator has been appointed;
- (b) the date of the appointment; and
- (c) the nature of the business of the energy supply company.

(3) The energy administrator must, as soon as reasonably practicable after the date of the esc administration order, give notice of the appointment—

- (a) if the application for the esc administration order was made by the Secretary of State, to GEMA;
- (b) if the application for the esc administration order was made by GEMA, to the Secretary of State;
- (c) if a receiver or an administrative receiver has been appointed, to that person;
- (d) if there is pending a petition for the winding up of the energy supply company, to the petitioner (and to the provisional liquidator, if any);
- (e) to 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, in relation to the energy supply company;
- (f) to any enforcement officer who, to the energy administrator's knowledge, is charged with execution or other legal process against the energy supply company;
- (g) to any person who, to the energy administrator's knowledge, has distrained against the energy supply company or its property;
- (h) to any supervisor of a voluntary arrangement under Part I of the 1986 Act;
- (i) to any holder of a qualifying floating charge who, to the energy administrator's knowledge, has served notice in accordance with section 163 of the 2004 Act that the person is seeking to appoint an administrator; and
- (j) to any creditor who, to the energy administrator's knowledge, has served notice in accordance with section 164 of the 2004 Act of that person's intention to enforce that person's security over property of the energy supply company.

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(4) Where, under a provision of Schedule B1 to the 1986 Act or these Rules, the energy administrator is required to send a notice of the appointment to any person other than the registrar of companies, the energy administrator must do so in Form ESCA4.

Notice requiring statement of affairs

15.—(1) In this Part “relevant person” shall have the meaning given to it in paragraph 47(3) of Schedule B1 to the 1986 Act.

(2) The energy administrator must send notice in Form ESCA5 to each relevant person whom the energy administrator determines appropriate requiring that person to prepare and submit a statement of the energy supply company's affairs.

(3) The notice must inform each of the relevant persons—

- (a) of the names and addresses of all others (if any) to whom the same notice has been sent;
- (b) of the time within which the statement must be delivered;
- (c) of the effect of paragraph 48(4) of Schedule B1 to the 1986 Act (penalty for non-compliance); and
- (d) of the application to that person, and to each other relevant person, of section 235 of the 1986 Act (duty to provide information, and to attend on the energy administrator, if required).

(4) The energy administrator must furnish each relevant person to whom the energy administrator has sent notice in Form ESCA5 with the forms required for the preparation of the statement of affairs.

Verification and filing

16.—(1) The statement of the energy supply company's affairs must be in Form ESCA6, contain all the particulars required by that form and be verified by a statement of truth by the relevant person.

(2) The energy administrator may require any relevant person to submit a statement of concurrence in Form ESCA7 stating that the person concurs in the statement of affairs. Where the energy administrator does so, the energy administrator must inform the person making the statement of affairs of that fact.

(3) The statement of affairs must be delivered by the relevant person making the statement of truth, together with a copy, to the energy administrator. The relevant person must also deliver a copy of the statement of affairs to all those persons whom the energy administrator has required to make a statement of concurrence.

(4) A person required to submit a statement of concurrence must do so before the end of the period of 5 business days (or such other period as the energy administrator may agree) beginning with the day on which the statement of affairs being concurred with is received by that person.

(5) A statement of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the statement of concurrence is not in agreement with the relevant person, or that person considers the statement of affairs to be erroneous or misleading, or that person is without the direct knowledge necessary for concurring with it.

(6) Every statement of concurrence must be verified by a statement of truth and be delivered to the energy administrator by the person who makes it, together with a copy of it.

(7) Subject to Rule 17, the energy administrator must as soon as reasonably practicable deliver to the registrar of companies a copy of the statement of affairs and any statement of concurrence.

Limited disclosure

17.—(1) Where the energy administrator thinks that it would prejudice the conduct of the energy supply company administration or might reasonably be expected to lead to violence against any person for the whole or part of the statement of the energy supply company's affairs to be disclosed, the energy administrator may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may, on such application, order that the statement or, as the case may be, the specified part of it, must not be delivered to the registrar of companies.

(3) The energy administrator must as soon as reasonably practicable deliver to the registrar of companies a copy of the order and the statement of affairs (to the extent provided by the order) and any statement of concurrence.

(4) If a creditor seeks disclosure of a statement of affairs or a specified part of it in relation to which an order has been made under this Rule, the creditor may apply to the court for an order that the energy administrator disclose it or a specified part of it. The application must be supported by written evidence in the form of a witness statement.

(5) The applicant must give the energy administrator notice of the application at least 3 business days before the hearing.

(6) The court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees just.

(7) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the energy administrator must, as soon as reasonably practicable after the change, apply to the court for the order or any part of it to be rescinded.

(8) The energy administrator must, as soon as reasonably practicable after the making of an order under paragraph (7), deliver to the registrar of companies a copy of the statement of affairs to the extent provided by the order.

(9) When the statement of affairs is filed in accordance with paragraph (8), the energy administrator must, where the energy administrator has sent a statement of proposals under paragraph 49 of Schedule B1 to the 1986 Act, provide the creditors with a copy of the statement of affairs as filed, or a summary thereof.

(10) The provisions of Part 31 of the CPR shall not apply to an application under this Rule.

Release from duty to submit statement of affairs; extension of time

18.—(1) The power of the energy administrator under paragraph 48(2) of Schedule B1 to the 1986 Act to give a release from the obligation imposed by paragraph 47(1) of Schedule B1 to the 1986 Act, or to grant an extension of time, may be exercised at the energy administrator's own discretion, or at the request of any relevant person.

(2) A relevant person may, if that person requests a release or extension of time and it is refused by the energy administrator, apply to the court for it.

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it without a hearing but it must not do so without giving the relevant person at least 5 business days' notice, upon receipt of which the relevant person may request the court to list the application for a without notice hearing. If the application is not dismissed, the court must fix a venue for it to be heard, and give notice to the relevant person accordingly.

(4) The relevant person must, at least 14 days before the hearing, send to the energy administrator a notice stating the venue and accompanied by a copy of the application and of any evidence which the relevant person intends to adduce in support of it.

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(5) The energy administrator may appear and be heard on the application and, whether or not the energy administrator appears, the energy administrator may file a written report of any matters which the energy administrator considers ought to be drawn to the court's attention. If such a report is filed, a copy of it must be sent by the energy administrator to the relevant person, not later than 5 business days before the hearing.

(6) Sealed copies of any order made on the application must be sent by the court to the relevant person and the energy administrator.

(7) On any application under this Rule the relevant person's costs must be paid in any event by the relevant person and, unless the court otherwise orders, no allowance towards them shall be made as an expense of the energy supply company administration.

Expenses of statement of affairs

19.—(1) A relevant person making the statement of affairs of the energy supply company or a statement of concurrence must be allowed, and paid by the energy administrator as an expense of the energy supply company administration, any expenses incurred by the relevant person in so doing which the energy administrator considers reasonable.

(2) Any decision by the energy administrator under this Rule is subject to appeal to the court.

(3) Nothing in this Rule relieves a relevant person of any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the energy administrator.

Energy administrator's proposals

20.—(1) The energy administrator must, under paragraph 49 of Schedule B1 to the 1986 Act, make a statement and deliver it to the registrar of companies.

(2) The statement must include, in addition to those matters set out in paragraph 49 of Schedule B1 to the 1986 Act—

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) the full name, registered address, registered number and any other trading names of the energy supply company;
- (c) details relating to the energy administrator's appointment, including the date of appointment and whether the application was made by the Secretary of State or GEMA and, where there are joint energy administrators, details of the matters set out in section 158(5) of the 2004 Act;
- (d) the names of the directors and secretary of the energy supply company and details of any shareholdings in the energy supply company they may have;
- (e) an account of the circumstances giving rise to the appointment of the energy administrator;
- (f) if a statement of the energy supply company's affairs has been submitted, a copy or summary of it, with the energy administrator's comments, if any;
- (g) if an order limiting the disclosure of the statement of affairs (under Rule 17) has been made, a statement of that fact, as well as—
 - (i) details of who provided the statement of affairs;
 - (ii) the date of the order of limited disclosure; and
 - (iii) the details or summary of the details that are not subject to that order;
- (h) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held;

- (i) if no statement of affairs has been submitted, details of the financial position of the energy supply company at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the energy supply company entered energy supply company administration), a list of the energy supply company's creditors including their names, addresses and details of their debts, including any security held, and an explanation as to why there is no statement of affairs;
 - (j) (except where the energy administrator proposes a voluntary arrangement in relation to the energy supply company and subject to paragraph (5))—
 - (i) to the best of the energy administrator's knowledge and belief—
 - (aa) an estimate of the value of the prescribed part (whether or not the energy administrator proposes to make an application to court under section 176A(5) of the 1986 Act ^{M1} or section 176A(3) of the 1986 Act applies); and
 - (bb) an estimate of the value of the energy supply company's net property; and
 - (ii) whether, and if so, why, the energy administrator proposes to make an application to court under section 176A(5) of the 1986 Act;
 - (k) a statement complying with paragraph (3) of any pre-energy supply company administration costs charged or incurred by the energy administrator or, to the energy administrator's knowledge, by any other person qualified to act as an insolvency practitioner;
 - (l) a statement (which must comply with paragraph (4) where that paragraph applies) of how it is envisaged the objective of the energy supply company administration will be achieved and how it is proposed that the energy supply company administration shall end;
 - (m) the manner in which the affairs and business of the energy supply company—
 - (i) have, since the date of the energy administrator's appointment, been managed and financed, including, where any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made; and
 - (ii) will continue to be managed and financed; and
 - (n) such other information (if any) as the energy administrator thinks necessary.
- (3) A statement of pre-energy supply company administration costs complies with this paragraph if it includes—
- (a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;
 - (b) details of the work done for which the fees were charged and expenses incurred;
 - (c) an explanation of why the work was done before the energy supply company entered energy supply company administration and how it would further the achievement of the objective of the energy supply company administration;
 - (d) a statement of the amount of the pre-energy supply company administration costs, setting out separately—
 - (i) the fees charged by the energy administrator;
 - (ii) the expenses incurred by the energy administrator;
 - (iii) the fees charged (to the energy administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately); and

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- (iv) the expenses incurred (to the energy administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately);
 - (e) a statement of the amounts of pre-energy supply company administration costs which have already been paid (set out separately as under sub-paragraph (d));
 - (f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person (set out separately as under sub-paragraph (d));
 - (g) a statement of the amounts of unpaid pre-energy supply company administration costs (set out separately as under paragraph (d)); and
 - (h) a statement that the payment of unpaid pre-energy supply company administration costs as an expense of the energy supply company administration is subject to approval under Rule 37.
- (4) This paragraph applies where it is proposed that the energy supply company administration will end by the energy supply company moving to a creditors' voluntary liquidation; and in that case, the statement required by paragraph (2)(l) must include—
- (a) details of the proposed liquidator;
 - (b) where applicable, the declaration required by section 231 of the 1986 Act; and
 - (c) a statement that the creditors may nominate a different person as liquidator in accordance with paragraph 83(7) of Schedule B1 to the Insolvency Act 1986 and Rule 81(2).
- (5) Nothing in paragraph (2)(j) is to be taken as requiring any such estimate to include any information, the disclosure of which could seriously prejudice the commercial interests of the energy supply company. If such information is excluded from the calculation the estimate must be accompanied by a statement to that effect.
- (6) Where the court orders, upon an application by the energy administrator under paragraph 107 of Schedule B1 to the 1986 Act, an extension of the period of time in paragraph 49(5) of Schedule B1 to the 1986 Act, the energy administrator must as soon as reasonably practicable after the making of the order—
- (a) notify in Form ESCA8 every creditor of the energy supply company and every member of the energy supply company of whose address (in either case) the energy administrator is aware; and
 - (b) deliver a copy of the information to the registrar of companies.
- (7) Where the energy administrator wishes to publish a notice under paragraph 49(6) of Schedule B1 to the 1986 Act, the notice must be advertised in such manner as the energy administrator thinks fit.
- (8) In addition to the standard contents, the notice under paragraph (7) must state—
- (a) that members can write for a copy of the statement of proposals for achieving the purpose of energy supply company administration; and
 - (b) the address to which to write.
- (9) This notice must be published as soon as reasonably practicable after the energy administrator sends the statement of proposals to the energy supply company's creditors but no later than 8 weeks (or such other period as may be agreed by the creditors or as the court may order) from the date that the energy supply company entered energy supply company administration.

Marginal Citations

M1 1986 c. 45; section 176A inserted by the Enterprise Act 2002 (c. 40), section 252.

Limited disclosure of paragraph 49 of Schedule B1 to the 1986 Act statement

21.—(1) Where the energy administrator thinks that it would prejudice the conduct of the energy supply company administration or might reasonably be expected to lead to violence against any person for any of the matters specified in Rule 20(2)(h) and (i) to be disclosed, the energy administrator may apply to the court for an order of limited disclosure in respect of any specified part of the statement under paragraph 49 of Schedule B1 to the 1986 Act.

(2) The court may, on such application, order that some or all of the specified part of the statement must not be delivered to the registrar of companies or to creditors or members of the energy supply company as otherwise required by paragraph 49(4) of Schedule B1 to the 1986 Act.

(3) The energy administrator must as soon as reasonably practicable send to the persons specified in paragraph 49(4) to Schedule B1 to the 1986 Act the statement under paragraph 49 of Schedule B1 to the 1986 Act (to the extent provided by the order) and an indication of the nature of the matter in relation to which the order was made.

(4) The energy administrator must also deliver a copy of the order to the registrar of companies.

(5) A creditor who seeks disclosure of a part of a statement under paragraph 49 of Schedule B1 to the 1986 Act in relation to which an order has been made under this Rule may apply to the court for an order that the energy administrator disclose it. The application must be supported by written evidence in the form of a witness statement.

(6) The applicant must give the energy administrator notice of the application at least 3 business days before the hearing.

(7) The court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees just.

(8) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the energy administrator must, as soon as reasonable practicable after the change, apply to the court for the order or any part of it to be rescinded.

(9) The energy administrator must, as soon as reasonably practicable after the making of an order under paragraph (8), send to the persons specified in paragraph 49(4) of Schedule B1 to the 1986 Act a copy of the statement under paragraph 49 of Schedule B1 to the 1986 Act to the extent provided by the order.

(10) The provisions of CPR Part 31 do not apply to an application under this Rule.

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