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STATUTORY INSTRUMENTS

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**2020 No. 629**

**The Smart Meter Communication Licensee  
Administration (England and Wales) Rules 2020**

**PART 11**

**Court procedure and practice**

**CHAPTER 1**

**Applications**

**Preliminary**

**105.** This Chapter applies to any application made to the court in SMCL administration proceedings, except an application for an SMCL administration order.

**Contents of application**

**106.—(1)** Each application must state—

- (a) that the application is made under the 1986 Act or these Rules (as applicable);
- (b) the section of the 1986 Act or paragraph of a Schedule to the 1986 Act or the number of the Rule under which it is made;
- (c) the names of the parties;
- (d) the name of the SMCL which is the subject of the SMCL administration proceedings;
- (e) the court (and where applicable, the division or district registry of that court) in which the application is made;
- (f) where the court has previously allocated a number to the SMCL administration proceedings within which the application is made, that number;
- (g) the nature of the remedy or order applied for or the directions sought from the court;
- (h) the names and addresses of the persons on whom it is intended to serve the application or that no person is intended to be served;
- (i) where the 1986 Act or these Rules require that notice of the application is to be delivered to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
- (j) 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**

**107.**—(1) An application under section 176A(5) of the 1986 Act must be accompanied by a witness statement by the SMCL administrator.

(2) The witness statement must—

- (a) state that the application arises in the course of an SMCL administration;
- (b) contain a summary of the financial position of the SMCL; and
- (c) contain the information substantiating the SMCL administrator’s view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

(3) An application under section 176A(5) of the 1986 Act may be made without the application being served upon or notification to any other party.

### **Notice of order under section 176A(5) of the 1986 Act**

**108.**—(1) Where the court makes an order under section 176A(5) of the 1986 Act, it must as soon as reasonably practicable deliver two sealed copies of the order to the SMCL administrator.

(2) Where the court has made an order under section 176A(5) of the 1986 Act, the SMCL administrator must as soon as reasonably practicable deliver notice of the order to each creditor of whose address and claim the SMCL administrator is aware.

(3) Paragraph (2) does not apply where the court directs otherwise.

(4) The court may direct that the requirement in paragraph (2) is complied with if a notice is published by the SMCL administrator which, in addition to containing the contents required by Chapter 4 of Part 14, states that the court has made an order disapplying the requirement to set aside the prescribed part.

(5) As soon as reasonably practicable a notice under paragraph (4)—

- (a) must be gazetted; and
- (b) may be advertised in such other manner as the SMCL administrator thinks fit.

(6) The SMCL administrator must deliver a copy of the order to the registrar of companies as soon as reasonably practicable after the making of the order.

### **Filing and service of application**

**109.**—(1) An application filed with the court in hard copy form must be 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, 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 110 applies.

(3) The applicant must serve a sealed copy of the application, endorsed with the venue for the hearing, on the respondent named in the application unless the court directs or these Rules provide otherwise.

(4) The court may also give one or more 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 service upon any person may be dispensed with;

- (c) that such persons be notified of the application and venue in such other a way as the court specifies; or
  - (d) such other directions as the court sees fit.
- (5) A sealed copy of the 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 makes 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.

### **Hearings without notice**

- 110.** Where the provisions of the 1986 Act or these Rules do not require service of the application on, or notice of it to be delivered to, any person, the court may—
- (a) hear the application as soon as reasonably practicable without fixing a venue;
  - (b) fix a venue for the application to be heard in which case Rule 109 applies to the extent that it is relevant; or
  - (c) determine the application without a hearing,

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**

- 111.**—(1) In the High Court, the jurisdiction of the court to hear and determine an application may be exercised by an Insolvency and Companies Court Judge or district judge of the High Court (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 judge’s power to make the order required.
- (2) Where the application is made to an Insolvency and Companies Court Judge or district judge of the High Court, that judge may refer to a High Court Judge any matter which the Insolvency and Companies Court Judge or district judge of the High Court thinks should properly be decided by a High Court Judge, and the High Court Judge may either dispose of the matter or refer it back to the Insolvency and Companies Court Judge or district judge of the High Court with such directions as the High Court Judge thinks just.
- (3) Nothing in this Rule precludes an application being made directly to a High Court Judge in a proper case.

### **Witness statements**

- 112.**—(1) Subject to Rule 113, where evidence is required by the 1986 Act or these Rules as to any matter, such evidence may be given by witness statement unless—

- (a) in any specific case a Rule or the 1986 Act makes different provision; or
  - (b) the court otherwise directs.
- (2) Unless the provisions of the 1986 Act or these Rules under which the application is made provide otherwise, or the court otherwise directs—
- (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; and
  - (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 five business days before the date fixed for the hearing.
- (3) 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.
- (4) Where, after such an order has been made, the person in question does not attend, that person's witness statement must not be used in evidence without the permission of the court.

#### **Use of reports**

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

(2) In any case where a report is filed instead of a witness statement, the report is to be treated for the purposes of Rule 112 and any hearing before the court as if it were a witness statement.

#### **Directions; adjournment of hearings**

**114.**—(1) 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 the application is to be served and generally the procedure on the application including whether a hearing is necessary;
  - (c) the matters, if any, to be dealt with in evidence; and
  - (d) the manner in which any evidence is to be provided and in particular as to—
    - (i) the taking of evidence wholly or partly by witness statement or orally;
    - (ii) any report to be made by the SMCL administrator; and
    - (iii) the cross-examination of the maker of a witness statement or of a report.
- (2) The court may adjourn the hearing of an application on such terms as it thinks just.