
STATUTORY INSTRUMENTS

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.

CHAPTER 2

Enforcement procedures

Enforcement of court orders

115. In SMCL administration proceedings, orders of the court may be enforced in the same manner as a judgment to the same effect.

Orders enforcing compliance

116.—(1) The court may, on an application by the SMCL 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); or
- (b) section 235 of the 1986 Act (duty to co-operate with SMCL administrator).

(2) An order of the court under this Rule may provide that all costs of and incidental to the application for it are to be borne by the person against whom the order is made.

Warrant under section 236 of the 1986 Act

117.—(1) For the purpose of the issue of a warrant under section 236 of the 1986 Act⁽¹⁾ (inquiry into insolvent company's dealings), the persons referred to in that section as the prescribed officer of the court are the tipstaff and the tipstaff's assistants of the court.

(2) In this Rule, references to property include books, papers and other documents and records.

(3) When a person is arrested under a warrant issued under section 236 of the 1986 Act ("the arrested person"), the arresting officer 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.

(4) 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.

(5) 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.

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

- (a) direct the governor of the prison to produce the arrested person for examination at the time and place appointed; and
- (b) as soon as reasonably practicable deliver notice of the venue to the SMCL administrator.

(7) Where any property in the arrested person's possession is seized, the property must, as directed by the warrant, be—

- (a) delivered to whoever is specified in the warrant as authorised to receive it, or otherwise dealt with in accordance with the directions in the warrant; or
- (b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal.

CHAPTER 3

The court file

Court file

118.—(1) The court must open and maintain a file (the "court file") in any case 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 the court file, or obtain from the court a copy of the court file, or of any document in the court file—

- (a) the SMCL administrator;

(1) Section 236 was amended by [S.I. 2010/18](#).

- (b) the Secretary of State;
 - (c) a creditor who provides the court with a statement confirming that the person is a creditor of the SMCL;
 - (d) a person who is, or at any time has been, a director or officer of the SMCL; and
 - (e) a person who is a member of the SMCL.
- (4) A person's right to inspect or obtain copies may be exercised on that person's behalf by someone authorised to do so by that person.
- (5) Any person who is not otherwise entitled to inspect the court file or obtain copies may do so if the court gives permission.
- (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) or (4) without the permission of the court.
- (7) An application for a direction under paragraph (6) may be made by—
- (a) the SMCL administrator; or
 - (b) any person appearing to the court to have an interest.
- (8) Inspection of the court file, with permission if required, may be at any reasonable time.
- (9) The right to a copy of a document is subject to payment of the fee chargeable under an order made under section 92 of the Courts Act 2003(2).
- (10) The following applications may be made without notice to any other party, but the court may direct that notice must be delivered to any person who would be affected by its decision—
- (a) an application for permission to inspect the court file or obtain a copy of a document under paragraph (5); or
 - (b) an application for a direction under paragraph (6).
- (11) If for the purposes of powers conferred by the 1986 Act or these Rules, the Secretary of State or the SMCL administrator requests the transmission of the court file, the court must comply with the request (unless the file is for the time being in use for the court's own purposes).

Office copies of documents

- 119.**—(1) The court must provide an office copy of a document from the court file to a person who has under these Rules the right to inspect the court file where that person has requested such a copy and paid the fee under Rule 118(9).
- (2) A person's right under this Rule may be exercised on that person's behalf by someone authorised to do so by that person.
- (3) An office copy provided by the court under this Rule must be in such form as the relevant judge thinks appropriate, and must bear the court's seal.
- (4) In this Rule "relevant judge" means the High Court Judge, Insolvency and Companies Court Judge or district judge of the High Court before whom the proceedings are brought.

(2) 2003 c.39. Section 92 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 4, paragraph 345 and Schedule 11, paragraph 4; and the Crime and Courts Act 2013 (c.22), Schedule 9, paragraph 40 and Schedule 10, paragraph 95.

CHAPTER 4

Costs and detailed assessment

Application of Chapter and interpretation

120.—(1) This Chapter applies to costs of and in connection with SMCL administration proceedings.

(2) In this Chapter, “costs” includes charges and expenses.

(3) CPR Parts 44 and 47(3) (which relate to costs) apply to such costs.

Requirement to assess costs by the detailed procedure

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

(2) In the absence of such agreement, the SMCL administrator may serve notice requiring the person entitled to payment to commence detailed assessment proceedings in accordance with CPR Part 47.

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

(4) Where the costs of any person employed by the SMCL administrator in SMCL administration proceedings are required to be decided by detailed assessment or fixed by order of the court, the SMCL 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 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.

Procedure where detailed assessment required

122.—(1) Before making a detailed assessment of the costs of any person employed in SMCL administration proceedings by the SMCL administrator, the costs officer must require a certificate of employment, which must be endorsed on the bill and authenticated by the SMCL 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 SMCL administration proceedings are required to be decided by detailed assessment must, on being required in writing to do so by the SMCL administrator, commence detailed assessment proceedings in accordance with CPR Part 47.

(4) If that person does not commence detailed assessment proceedings within three months of being required to do so under paragraph (3), or within such further time as the court, on application,

(3) Parts 44 and 47 were substituted for new Parts 44 and 47 by [S.I. 2013/262](#).

may permit, the SMCL administrator may deal with the assets of the SMCL without regard to any claim for costs by that person, whose claim is forfeited by such failure to commence proceedings.

(5) Where in any such case such a claim for costs lies additionally against an SMCL administrator in the SMCL administrator's personal capacity, that claim is also forfeited by such failure to commence proceedings.

Costs paid otherwise than out of the assets of the SMCL

123. 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 SMCL, 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 SMCL administrator

124. Without prejudice to any provision of the 1986 Act or these Rules by virtue of which the SMCL administrator is not in any event to be liable for costs and expenses, where an SMCL administrator is made a party to any proceedings on the application of another party to the proceedings, the SMCL administrator is not to be personally liable for the costs unless the court otherwise directs.

Application for costs

125.—(1) This Rule applies where a party to, or person affected by, SMCL administration proceedings—

- (a) applies to the court for an order allowing their 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 applicant must serve a sealed copy of the application on the SMCL administrator.

(3) The SMCL administrator may appear on the application.

(4) No costs of or incidental to the application are to 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

126.—(1) An officer of the SMCL to which the SMCL administration proceedings relate is not to receive an allowance as a witness in an examination or other proceedings before the court except as directed by the court.

(2) A person making any application in SMCL administration proceedings is not to receive an allowance as a witness for attending the hearing of the application, but the costs officer may allow that person's expenses of travelling and subsistence.

Final costs certificate

127.—(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 5

Persons who lack capacity to manage their affairs

Introductory

128.—(1) The Rules in this Chapter apply where it appears to the court in SMCL administration proceedings that a person affected by the proceedings is unable to manage and administer that person's own property and affairs by reason of—

- (a) lacking capacity within the meaning of the Mental Capacity Act 2005(4);
 - (b) suffering from a physical affliction; or
 - (c) disability.
- (2) Such a person is referred to in this Chapter as “the incapacitated person”.

Appointment of another person to act

129.—(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 a 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;
- (b) any person who appears to the court to be a suitable person to make the application; or
- (c) the SMCL administrator.

(4) An 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 delivered 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 delivered.

Witness statement in support of application

130. An application under Rule 129(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

131. Any notice served on, or sent to, a person appointed under Rule 129 has the same effect as if it had been served on, or sent to, the incapacitated person.

CHAPTER 6

Appeals in SMCL administration proceedings

Appeals and reviews of SMCL administration orders

132.—(1) A court which has jurisdiction in relation to SMCL administration proceedings may review, rescind or vary any order made by it in the exercise of that jurisdiction.

(4) 2005 c.9.

(2) An appeal made in the exercise of the court's jurisdiction in relation to SMCL administration proceedings lies —

- (a) from a decision of an Insolvency and Companies Court Judge or district judge of the High Court, to a High Court Judge; and
- (b) from a decision of a High Court Judge, to the Civil Division of the Court of Appeal.

(3) In this Rule, "Civil Division of the Court of Appeal" means the division of the Court of Appeal established by section 3(1) of the Senior Courts Act 1981⁽⁵⁾.

Procedure on appeal

133.—(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⁽⁶⁾) 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 7

General

Principal court rules and practice to apply

134.—(1) The provisions of the CPR (including any related practice directions) apply to SMCL administration proceedings with any necessary modifications, except so far as disapplied by or inconsistent with these Rules.

(2) SMCL administration proceedings must be allocated to the multi-track, for which CPR Part 29⁽⁷⁾ makes provision, and accordingly those provisions of the CPR which provide for directions questionnaires and track allocation do not apply.

(3) CPR Part 32 (evidence) applies to a false statement in a document verified by a statement of truth made under these Rules as it applies to a false statement in a document verified by a statement of truth made under CPR Part 22 (statements of truth).

Performance of functions by the Court

135.—(1) In SMCL administration proceedings, anything to be done by, to or before the court may be done by, to or before a High Court Judge, Insolvency and Companies Court Judge or district judge of the High Court.

(2) The Insolvency and Companies Court Judge or district judge of the High Court may authorise any act of a formal or administrative character which is not by statute that person's responsibility to be carried out by the chief clerk or any other officer of the court acting on that person's behalf, in accordance with directions given by the Lord Chancellor.

(3) The hearing of an application must be in open court unless the court directs otherwise.

Rights of audience

136. Rights of audience in SMCL administration proceedings are the same as in insolvency proceedings.

⁽⁵⁾ 1981 c.54. Section 3 has been amended but no amendments are relevant to this instrument.

⁽⁶⁾ Part 52 was substituted for a new Part 52 by S.I. 2016/788. It was amended by S.I. 2017/95, S.I. 2017/889 and S.I. 2020/82.

⁽⁷⁾ Part 29 was amended by S.I. 2002/2058, S.I. 2005/2292, S.I. 2013/262 and S.I. 2013/1974.

Formal defects

137. No SMCL administration proceedings are to be invalidated by any formal defect or 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.

Shorthand writers

138.—(1) The court may in writing nominate a person to be official shorthand writer to the court.

(2) The court may, at any time in the course of SMCL administration proceedings, appoint a shorthand writer to take down evidence of a person examined under section 236 of the 1986 Act.

(3) The remuneration of a shorthand writer appointed in SMCL administration proceedings must be paid by the party at whose instance the appointment was made, or out of the assets of the SMCL or otherwise, as the court may direct.

(4) Any question arising as to the rates of remuneration payable under this Rule must be determined by the court.

Payment into court

139. CPR Part 37(8) (miscellaneous provisions about payment into court) applies to money lodged in court under these Rules.

Further information and disclosure

140.—(1) A party to SMCL administration proceedings may apply to the court for an order—

(a) that in accordance with CPR Part 18(9) (further information) another party—

(i) clarify a matter that is in dispute in the proceedings; or

(ii) give additional information in relation to such a matter; or

(b) for disclosure from any person in accordance with CPR Part 31 (disclosure and inspection of documents)(10), save where Rules 18 or 24 apply.

(2) An application under this Rule may be made without notice to any other party.

Court orders

141. Notwithstanding any requirement in these Rules as to the contents of a court order, the court may make such other order or in such form as the court thinks just.

(8) Part 37 was amended by S.I. 2006/3435 and S.I. 2014/3299.

(9) Part 18 was amended by S.I. 2000/221.

(10) Part 31 was amended by S.I. 2000/221, S.I. 2001/4015, S.I. 2010/1953, S.I. 2011/88, S.I. 2012/2208, S.I. 2013/262 and S.I. 2013/1974.