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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 2

#### Appointment of SMCL administrator by court

##### Form of application

- 5.—(1) An application for an SMCL administration order must—
- (a) be headed “Smart meter communication licensee administration application”;
  - (b) include immediately below the heading, the full name, registered address, registered number and any other trading names of the SMCL; and
  - (c) 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) The application must contain a statement—
- (a) of the nominal capital of the SMCL, the number of shares into which the capital is divided and the nominal value of each share;
  - (b) of the amount of capital paid up or treated as paid up of the SMCL;
  - (c) of the name and address of the proposed SMCL administrator;
  - (d) that—
    - (i) the applicant believes, for the reasons set out in the witness statement in support of the application that the SMCL is, or is likely to become, unable to pay its debts; or
    - (ii) the Secretary of State has certified that it would be appropriate to wind up the SMCL under section 124A of the 1986 Act<sup>(1)</sup>; and
  - (e) that the applicant requests the court—
    - (i) to make an SMCL administration order in relation to the SMCL;
    - (ii) to appoint the proposed person to be the SMCL administrator; and
    - (iii) to make such ancillary order as the applicant may request, and such other order as the court thinks appropriate.
- (4) The application must be authenticated by the applicant or the applicant’s solicitor and dated.

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(1) Section 124A was inserted by the Companies Act 1989 (c.40), section 60(3) and was amended by S.I. 2001/3649 and the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27), Schedule 2, paragraph 27.

**Proposed SMCL administrator's statement and consent to act**

6.—(1) References in this Part to a statement and consent to act are to a statement by a proposed SMCL administrator which complies with the requirements of paragraphs (2) to (4).

(2) The statement must—

- (a) be headed “Proposed SMCL administrator’s statement and consent to act”; and
- (b) include immediately below the heading, the full name, registered address, registered number and any other trading names of the SMCL.

(3) The statement must contain—

- (a) a certificate that the proposed SMCL administrator is qualified to act as an insolvency practitioner in relation to the SMCL;
- (b) the proposed SMCL administrator’s IP number;
- (c) the name of the relevant recognised professional body which is the source of the proposed SMCL administrator’s authorisation to act in relation to the SMCL;
- (d) a statement that the proposed SMCL administrator consents to act as SMCL administrator of the SMCL;
- (e) a statement whether or not the proposed SMCL administrator has had any prior professional relationship with the SMCL and, if so, a short summary of that relationship;
- (f) the name of the applicant; and
- (g) a statement that the proposed SMCL administrator is of the opinion that the objective of the SMCL administration is reasonably likely to be achieved in the particular case.

(4) The statement must be authenticated and dated by the proposed SMCL administrator.

(5) Where a number of persons are proposed to be appointed to act jointly or concurrently as the SMCL administrator each must make a separate statement and consent to act.

**Witness statement in support of the application**

7.—(1) An application for an SMCL administration order must be accompanied by a witness statement which complies with this Rule

(2) The witness statement must state the nature of the authority of the person making it and the means of that person’s knowledge of the matters to which the witness statement relates.

(3) The witness statement must set out—

- (a) the financial position of the SMCL, specifying, to the best of the applicant’s knowledge and belief, the SMCL’s assets and liabilities, including contingent and prospective liabilities;
- (b) details of any security known or believed to be held by creditors of the SMCL 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;
- (c) a statement that an administrative receiver has been appointed if that is the case;
- (d) details of any insolvency proceedings in relation to the SMCL including any petition that has been presented for the winding up of the SMCL so far as within the immediate knowledge of the applicant;
- (e) details of any notice served in accordance with section 164 of the 2004 Act by any person intending to enforce any security over the SMCL’s assets, so far as within the immediate knowledge of the applicant;
- (f) details of any step taken to enforce any such security, so far as within the immediate knowledge of the applicant;

- (g) details of any application for permission of the court to pass a resolution for the voluntary winding up of the SMCL, so far as within the immediate knowledge of the applicant;
- (h) where it is intended to appoint a number of persons as SMCL 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 SMCL administrator; and
- (i) any other matters which, in the opinion of those intending to make the application for an SMCL 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.

### **Filing of application**

- 8.—**(1) An application for an SMCL administration order must be commenced in the High Court.
- (2) The application must be filed with the court together with the witness statement in support and the proposed SMCL administrator's statement and consent to act.
- (3) An application filed with the court in hard copy form must be accompanied by a sufficient number of copies of the application and the witness statement for service in accordance with Rule 9.
- (4) The court must fix a venue for the hearing of the application.
- (5) Each copy of the application filed with the court must—
- (a) have applied to it the seal of the court;
  - (b) be endorsed with—
    - (i) the date and time of filing; and
    - (ii) the venue fixed by the court; and
  - (c) be delivered by the court to the applicant.
- (6) After the application has been filed and until an order is made, it is the duty of the applicant to file with the court notice of the existence of any insolvency proceedings in relation to the SMCL, as soon as the applicant becomes aware of them.

### **Service of application**

- 9.—**(1) In this Rule, references to the application are to a copy of the application delivered by the court under Rule 8(5)(c) and the witness statement required by Rule 7.
- (2) Notification for the purposes of section 156(2) of the 2004 Act must be by service of the application.
- (3) In addition to those persons referred to in section 156(2) of the 2004 Act, the applicant must serve the application—
- (a) on the person proposed as SMCL administrator;
  - (b) on the SMCL;
  - (c) if an administrative receiver has been appointed, on the administrative receiver;
  - (d) 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;
  - (e) if there is pending a petition for the winding up of the SMCL, on—
    - (i) the petitioner; and
    - (ii) any provisional liquidator;
  - (f) if a supervisor of a voluntary arrangement under Part 1 of the 1986 Act has been appointed, on that person;

- (g) 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 SMCL;
  - (h) if the applicant is the Secretary of State, on GEMA; and
  - (i) if the applicant is GEMA, on the Secretary of State.
- (4) A certificate of service which complies with the requirements in Rule 174 must be filed with the court as soon as reasonably practicable after service, and in any event no later than the business day before the hearing of the application.

#### **Notice to officers charged with distress or other legal process**

**10.** The applicant must as soon as reasonably practicable after filing the application deliver a notice of it being made to—

- (a) any enforcement officer, enforcement agent or other officer who to the applicant's knowledge is charged with distress or other legal process against the SMCL or its property; and
- (b) any person who to the applicant's knowledge has distrained against the SMCL or its property.

#### **The hearing**

**11.—(1)** At the hearing of the SMCL administration application, any of the following may appear or be represented—

- (a) the person proposed for appointment as SMCL administrator;
  - (b) the SMCL;
  - (c) the Secretary of State;
  - (d) GEMA;
  - (e) one or more of the directors of the SMCL;
  - (f) any person that is the holder of a qualifying floating charge;
  - (g) if an administrative receiver has been appointed, that person;
  - (h) 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;
  - (i) any person who has presented a petition for the winding up of the SMCL;
  - (j) any supervisor of a voluntary arrangement under Part 1 of the 1986 Act;
  - (k) 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 SMCL;
  - (l) with the permission of the court, any other person who appears to have an interest justifying the person's appearance.
- (2) Where the court makes an SMCL administration order the order must—
- (a) be headed "SMCL administration order";
  - (b) include immediately below the heading—
    - (i) the full name, registered address, registered number and any other trading names of the SMCL; and
    - (ii) details of the court where the proceedings are and the relevant court reference number; and
  - (c) set out the matters mentioned in paragraph (3) and as the case may be, paragraph (4).

(3) The matters are—

- (a) the name and title of the judge making the order;
- (b) the address for service of the applicant;
- (c) details of any other parties (including the SMCL) appearing and by whom represented;
- (d) an order that during the period the order is in force the affairs, business and property of the SMCL are to be managed by the SMCL administrator;
- (e) the name of the person appointed as SMCL administrator;
- (f) an order that that person is appointed as SMCL administrator of the SMCL;
- (g) the date of the order (and if the court so orders, the time); and
- (h) such other provisions if any as the court thinks just.

(4) Where two or more SMCL administrators are appointed the order must also specify—

- (a) which functions (if any) are to be exercised by those persons acting jointly; and
- (b) which functions (if any) are to be exercised by any or all of those persons.

(5) If the court makes an SMCL administration order, the costs of the applicant, and of any other person whose costs are allowed by the court, are payable as an expense of the SMCL administration.

#### **Notice of SMCL administration order**

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

(2) The applicant must deliver a sealed copy of the order as soon as reasonably practicable to the person appointed as SMCL 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 delivered.