
STATUTORY INSTRUMENTS

2020 No. 629

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

PART 4

Meetings

CHAPTER 1

Creditors' meetings

Creditors' meetings generally

27.—(1) This Rule applies to creditors' meetings summoned by the SMCL administrator under paragraph 62 of Schedule B1 to the 1986 Act⁽¹⁾.

(2) Subject to paragraphs (7), (8) and (10), where the SMCL administrator summons a meeting of creditors the SMCL administrator must deliver at least 14 days' notice of the meeting to all creditors who are known to the SMCL administrator and had claims against the SMCL at the date when the SMCL entered SMCL administration unless that creditor has subsequently been paid in full.

(3) The notice must—

- (a) be headed "Notice of a meeting of creditors";
- (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) state the venue for the meeting.

(4) In fixing the venue for the meeting, the SMCL administrator must have regard to the convenience of creditors and the meeting must be summoned for commencement between 10.00 am and 4.00 pm on a business day, unless the court otherwise directs.

(5) The notice must also—

- (a) specify the purpose of the meeting;
- (b) contain a statement of the effect of Rule 31 (entitlement to vote); and
- (c) be accompanied by a blank proxy complying with Rule 144.

(6) As soon as reasonably practicable after notice of the meeting has been given, the SMCL administrator must have gazetted a notice which must—

- (a) state—

⁽¹⁾ Paragraph 62 was amended by the Small Business, Enterprise and Employment Act 2015 (c.26), Schedule 9, paragraph 10; but those amendments do not apply to proceedings under the Smart Meters Act 2018, as a result of the savings made by S.I. 2017/540.

- (i) that a creditors' meeting is to take place;
- (ii) the venue fixed for the meeting; and
- (iii) the purpose of the meeting; and

(b) contain a statement of the effect of Rule 31 (entitlement to vote).

(7) If within 30 minutes from the time fixed for the commencement of the meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, the business day immediately following.

(8) If within 30 minutes from the time fixed for the commencement of the meeting those persons attending the meeting do not constitute a quorum, the chair may adjourn the meeting to such time and place as the chair may appoint.

(9) Once only in the course of the meeting the chair may, without an adjournment, declare the meeting suspended for a period up to one hour.

(10) The chair may, and must if the meeting so resolves, adjourn the meeting to such time and place as seems to the chair to be appropriate in the circumstances.

(11) An adjournment under paragraph (10) must not be for a period of more than 14 days, subject to any direction of the court.

(12) If there are subsequently further adjournments, the final adjournment must not be to a day later than 14 days after the date on which the meeting was originally held, subject to any direction of the court.

(13) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to midday on the business day immediately before resumption of the adjourned meeting.

(14) Paragraph (4) applies to the venue fixed for a meeting adjourned under this Rule.

Quorum at meeting of creditors

28.—(1) Any meeting of creditors in SMCL administration proceedings is competent to act if a quorum is present.

(2) A quorum is at least one creditor who is—

- (a) entitled to vote; and
- (b) present or represented by proxy by any person (including the chair).

(3) Where at any meeting of creditors—

- (a) the provisions of this Rule as to a quorum being present are satisfied by the attendance of—
 - (i) the chair alone; or
 - (ii) one other person in addition to the chair; and
- (b) the chair is aware, by virtue of proofs and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote,

the meeting must not commence until at least the expiry of 15 minutes after the time appointed for its commencement.

The chair at meetings

29.—(1) At any meeting of creditors summoned by the SMCL administrator, either the SMCL administrator must be chair, or a person nominated by the SMCL administrator in writing to act in the SMCL administrator's place.

(2) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the SMCL; or
- (b) an employee of the SMCL administrator or the SMCL administrator's firm who is experienced in insolvency matters.

Creditors' meeting for nomination of alternative liquidator

30.—(1) Where under Rules 21(7) or 25(3)(e) the SMCL administrator has proposed that the SMCL enter creditors' voluntary liquidation once the SMCL administration has ended, the SMCL administrator must, in the circumstances detailed in paragraph (2), call a meeting of creditors for the purpose of nominating a person other than the person named as proposed liquidator in the SMCL administrator's statement of proposals or revised proposals ("the relevant statement of proposals").

(2) The SMCL administrator must call a meeting of creditors where such a meeting is requested by creditors of the SMCL whose debts amount to at least 10% of the total debts of the SMCL.

(3) The request for a creditors' meeting for the purpose set out in paragraph (1) must be made by notice delivered to the SMCL administrator within eight business days of the date on which the relevant statement of proposals was sent to the creditor making the request.

(4) The notice must—

- (a) be headed "Creditor's request for a meeting"; and
- (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.

(5) The notice must include—

- (a) the name and address of the creditor making the request, and the amount of the requesting creditor's debt in the SMCL administration;
- (b) a list of creditors concurring with the request, showing the amounts of their respective debts in the SMCL administration; and
- (c) from each creditor concurring, written confirmation of the creditor's concurrence,

but sub-paragraphs (b) and (c) do not apply if the requesting creditor's debt is alone sufficient without the concurrence of other creditors.

(6) A meeting requested under this Rule must be held within 28 days of the SMCL administrator's receipt of the notice requesting the meeting.

Entitlement to vote

31.—(1) A person is entitled to vote at a meeting of creditors in SMCL administration proceedings only if—

- (a) the person has delivered to the SMCL administrator, no later than midday on the business day before the meeting, details in writing of the debt which the person claims to be due to that person from the SMCL and those details include any calculation for the purposes of Rules 33 and 34;
- (b) the claim has been duly admitted under Rule 32 or this Rule; and
- (c) there has been lodged with the SMCL administrator any proxy which the person intends to be used on the person's behalf.

(2) The chair of the meeting may allow a creditor to vote, notwithstanding that the creditor has failed to comply with paragraph (1)(a), if satisfied that the failure was due to circumstances beyond the creditor's control.

(3) The chair of the meeting may call for any document or other evidence to be produced to the chair, where the chair thinks it necessary for the purpose of substantiating the whole or any part of the claim.

(4) Votes are calculated according to the amount of each creditor's claim as at the date on which the SMCL entered SMCL administration, less—

- (a) any payments that have been made to the creditor after that date in respect of the claim; and
- (b) any adjustment by way of set-off which has been made in accordance with Rule 59 or would have been made if that Rule were applied on the date on which the votes are counted.

(5) A creditor may not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chair agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(6) No vote may be cast by virtue of a claim more than once on any resolution put to the meeting.

Admission and rejection of claims

32.—(1) At any creditors' meeting the chair has power to admit or reject a creditor's claim for the purpose of the creditor's entitlement to vote; and the power is exercisable with respect to the whole or any part of the claim.

(2) The chair's decision under this Rule, or in respect of any matter arising under Rule 31, is subject to appeal to the court by any creditor.

(3) If the chair is in doubt whether a claim should be admitted or rejected, the chair must mark it as objected to and allow the creditor to vote, subject to the creditor's vote being subsequently declared invalid if the objection to the claim is sustained.

(4) If on appeal the chair's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just.

(5) An application to the court by way of appeal under this Rule against a decision of the chair must be made no later than 21 days after the date of the meeting.

(6) Neither the SMCL administrator nor any person nominated by the SMCL administrator to be chair is personally liable for costs incurred by any person in respect of an appeal to the court under this Rule, unless the court makes an order to that effect.

Secured creditors

33. At a meeting of creditors a secured creditor is entitled to vote only in respect of the balance (if any) of the creditor's debt after deducting the value of the creditor's security as estimated by the creditor.

Hire-purchase, conditional sale and chattel leasing agreements

34.—(1) Subject to paragraph (2), an owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to the owner by the SMCL on the date on which the SMCL entered SMCL administration.

(2) In calculating the amount of any debt for this purpose, no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement so far as the right has become

exercisable solely by virtue of the making of an SMCL administration application or any matter arising as a consequence, or of the SMCL entering SMCL administration.

Resolutions

35.—(1) Except where this Rule provides otherwise, a resolution is passed at a creditors’ meeting when a majority (in value) of those voting (in person or by proxy) have voted in favour of it.

(2) A resolution is not passed if those voting against it include more than half in value of the creditors to whom notice of the meeting was delivered and who are not, to the best of the chair’s belief, persons connected with the SMCL.

(3) In the case of a resolution for the nomination of a person to act as liquidator once the SMCL administration has ended—

- (a) subject to paragraph (4), if on any vote there are two persons put forward by creditors for nomination as liquidator, the person who obtains the most support is nominated as liquidator;
- (b) if there are three or more persons put forward by creditors for nomination as liquidator and one of them has a clear majority over both or all the others together, that one is nominated as liquidator;
- (c) in any other case, the chair of the meeting must continue to take votes (disregarding at each vote any person who has withdrawn and, if no person has withdrawn, the person who obtained the least support last time), until a clear majority is obtained for any one person.

(4) The support referred to in paragraph (3)(a) must represent a majority (in value) of all those present (in person or by proxy) at the meeting and entitled to vote.

(5) Where on such a resolution no person is nominated as liquidator, the person named as proposed liquidator in the SMCL administrator’s proposals or revised proposals under Rules 21(7) or 25(3)(e) is nominated to act as liquidator once the SMCL administration has ended.

(6) The chair may at any time put to the meeting a resolution for the joint appointment of any two or more persons put forward by creditors for nomination as liquidator.

(7) In this Rule “connected with the SMCL” has the same meaning as “connected with a company” in section 249 of the 1986 Act.

Minutes

36.—(1) The chair of the creditors’ meeting must ensure that minutes of its proceedings are kept.

(2) The minutes must be authenticated by the chair, and be retained by the SMCL administrator as part of the records of the SMCL administration.

(3) The minutes must include—

- (a) a list of the names of creditors who attended (personally or by proxy) and their claims; and
- (b) a record of every decision made and how creditors voted.

CHAPTER 2

Company meetings

Venue and conduct of company meeting

37.—(1) Where the SMCL administrator summons a meeting of members of the SMCL, the SMCL administrator must fix a venue for it having regard to their convenience.

(2) The chair of the meeting must be the SMCL administrator or a person nominated by the SMCL administrator in writing to act in the SMCL administrator’s place.

- (3) A person so nominated must be either—
- (a) one who is qualified to act as an insolvency practitioner in relation to the SMCL, or
 - (b) an employee of the SMCL administrator or the SMCL administrator’s firm who is experienced in insolvency matters.
- (4) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that day is not a business day, to the business day immediately following.
- (5) Subject to anything to the contrary in the 1986 Act and these Rules, the meeting must be summoned and conducted—
- (a) in accordance with the law of England and Wales, including any applicable provision in or made under the Companies Act 2006, in the case of an SMCL incorporated—
 - (i) in England and Wales; or
 - (ii) outside the United Kingdom other than in an EEA state;
 - (b) in accordance with the law of the state applicable to meetings of the SMCL, in the case of an SMCL incorporated in an EEA state other than the United Kingdom.
- (6) The chair of the meeting must ensure that minutes of its proceedings are entered in the SMCL’s minute book.

CHAPTER 3

Remote attendance

Remote attendance at meetings

- 38.**—(1) This Rule applies to a request to the convener of a meeting under section 246A(9) of the 1986 Act to specify a place for the meeting.
- (2) The request must be accompanied by—
- (a) in the case of a request by creditors, a list of the creditors making or concurring with the request and the amounts of their respective debts in the SMCL administration;
 - (b) in the case of a request by members, a list of the members making or concurring with the request and their voting rights; and
 - (c) from each person concurring, written confirmation of that person’s concurrence.
- (3) The request must be delivered to the convener within seven business days of the date on which the convener delivered the notice of the meeting in question.
- (4) Where the convener considers that the request has been properly made in accordance with the 1986 Act and this Rule, the convener must—
- (a) deliver notice to all those previously given notice of the meeting—
 - (i) that it is to be held at a specified place; and
 - (ii) as to whether the date and time are to remain the same or not;
 - (b) set a venue (including specification of a place) for the meeting, the date of which must be no later than 28 days after the original date for the meeting; and
 - (c) deliver at least 14 days’ notice of that venue to all those previously given notice of the meeting.
- (5) The notices required by paragraphs (4)(a) and (c) may be delivered at the same or different times.

(6) Where the convener has specified a place for the meeting in response to a request to which this Rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

Action where person excluded

39.—(1) In this Rule and Rules 40 and 41 an “excluded person” means a person who has taken all steps necessary to attend a meeting under the arrangements which—

- (a) have been put in place by the convener of the meeting under section 246A(6) of the 1986 Act; but
- (b) do not enable that person to attend the whole or part of that meeting.

(2) Where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may—

- (a) continue the meeting;
- (b) declare the meeting void and convene the meeting again; or
- (c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.

(3) Where the chair continues the meeting, the meeting is valid unless—

- (a) the chair decides in consequence of a complaint under Rule 41 to declare the meeting void and hold the meeting again; or
- (b) the court directs otherwise.

(4) Without prejudice to paragraph (2), where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may, in the chair’s discretion and without an adjournment, declare the meeting suspended for any period up to one hour.

Indication to excluded person

40.—(1) A person who claims to be an excluded person may request an indication of what occurred during the period of that person’s claimed exclusion (an “indication”).

(2) A request under paragraph (1) must be made as soon as reasonably practicable and, in any event, no later than 4.00 pm on the business day following the day on which the exclusion is claimed to have occurred.

(3) A request under paragraph (1) must be made to—

- (a) the chair, where it is made during the course of the business of the meeting; or
- (b) the SMCL administrator where it is made after the conclusion of the business of the meeting.

(4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made under paragraph (3) must give the indication as soon as reasonably practicable and, in any event, no later than 4.00 pm on the business day following the day on which the request was made under paragraph (1).

Complaint

41.—(1) Any person may make a complaint who—

- (a) is, or claims to be, an excluded person; or
- (b) attends the meeting (in person or by proxy) and claims to have been adversely affected by the actual, apparent or claimed exclusion of another person.

- (2) The person to whom the complaint must be made (“the appropriate person”) is—
 - (a) the chair, where it is made during the course of the meeting; or
 - (b) the SMCL administrator, where it is made after the meeting.
- (3) The appropriate person must, as soon as reasonably practicable following receipt of the complaint—
 - (a) consider whether there is an excluded person;
 - (b) where satisfied that there is an excluded person, consider the complaint; and
 - (c) where satisfied that there has been prejudice, take such action as the appropriate person considers fit to remedy the prejudice.
- (4) Paragraph (5) applies where—
 - (a) the appropriate person is satisfied that the complainant is an excluded person;
 - (b) during the period of the person’s exclusion a resolution was put to the meeting and voted on; and
 - (c) the excluded person asserts how the excluded person intended to vote on the resolution.
- (5) Subject to paragraph (6), where satisfied that the effect of the intended vote in paragraph (4), if cast, would have changed the result of the resolution, the appropriate person must—
 - (a) count the intended vote as being cast in accordance with the complainant’s stated intention;
 - (b) amend the record of the result of the resolution; and
 - (c) where notice of the result of the resolution has been delivered to those entitled to attend the meeting, deliver notice to them of the change.
- (6) Where satisfied that more than one complainant is an excluded person, the appropriate person must have regard to the combined effect of the intended votes.
- (7) The appropriate person must deliver notice to the complainant of any decision as soon as reasonably practicable.
- (8) A complaint must be made as soon as reasonably practicable and, in any event, no later than 4.00 pm on the business day following—
 - (a) the day on which the person was, appeared or claimed to be excluded; or
 - (b) where an indication is sought under Rule 40, the day on which the complainant received the indication.
- (9) A complainant who is not satisfied by the action of the appropriate person may apply to the court for directions and any application must be made no more than two business days from the date of receiving the decision of the appropriate person.

CHAPTER 4

Notice of meetings

Notice of meetings by advertisement only

42.—(1) The court may order that notice of any meeting be given by advertisement and not by individual notice to the persons concerned.

(2) In considering whether to make such an order, the court must have regard to the cost of advertisement, the amount of assets available and the extent of the interest of creditors and members or any particular class of either.

Non-receipt of notice of meeting

43. Where in accordance with the 1986 Act or these Rules, a meeting of creditors or other persons is summoned by notice, the meeting is presumed to have been duly summoned and held, notwithstanding that not all those to whom the notice is to be delivered have received it.