
STATUTORY INSTRUMENTS

2020 No. 629

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

PART 7

Claims by and distributions to creditors

CHAPTER 3

Distributions

Distribution to creditors generally

70.—(1) This Chapter applies where the SMCL administrator makes, or proposes to make, a distribution to any class of creditors other than secured creditors.

(2) Where the distribution is to a particular class of creditors, a reference in this Chapter to creditors is, in so far as the context requires, a reference to that class of creditors only.

Debts of insolvent SMCL to rank equally

71. Debts other than preferential debts rank equally between themselves in the SMCL administration and, after the preferential debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

Supplementary provisions as to dividend

72.—(1) In the calculation and distribution of a dividend the SMCL administrator must make provision for—

- (a) any debts which appear to the SMCL administrator to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs;
- (b) any debts which are the subject of claims which have not yet been determined; and
- (c) disputed proofs and claims.

(2) A creditor who has not proved the creditor's debt before the declaration of any dividend is not entitled to disturb, by reason that the creditor has not participated in it, the distribution of that dividend or any other dividend declared before the creditor's debt was proved, but—

- (a) when the creditor has proved that debt the creditor is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend which the creditor has failed to receive; and
- (b) any dividend payable under sub-paragraph (a) must be paid before the money is applied to the payment of any such further dividend.

(3) No action lies against the SMCL administrator for a dividend, but if the SMCL administrator refuses to pay a dividend the court may, if it thinks just, order the SMCL administrator to pay it and also to pay, out of the SMCL administrator's own money—

- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838, from the time when it was withheld; and
- (b) the costs of the proceedings in which the order to pay is made.

Notice of proposed distribution

73.—(1) Where the SMCL administrator is proposing to make a distribution to creditors or declare a dividend the SMCL administrator must give notice of the fact.

- (2) The notice given pursuant to paragraph (1) must—
 - (a) be delivered to all creditors whose addresses are known to the SMCL administrator;
 - (b) state whether the proposed distribution or dividend is—
 - (i) to preferential creditors; or
 - (ii) preferential creditors and unsecured creditors;
 - (c) state that it is the intention of the SMCL administrator to make a distribution to creditors or declare a dividend (as the case may be) within the period of two months from the last date for proving;
 - (d) specify whether the proposed distribution or dividend is interim or final;
 - (e) specify a date up to which proofs must be delivered being a date which—
 - (i) is the same date for all creditors; and
 - (ii) is not less than 21 days from that of the notice;
 - (f) specify the place to which proofs must be delivered;
 - (g) include the additional information required by Rule 74 where the SMCL administrator intends to treat a small debt as proved for the purposes of paying a dividend; and
 - (h) where the SMCL administrator proposes to declare a dividend to unsecured creditors, state the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act.
- (3) Subject to paragraph (4)(b), a copy of the notice—
 - (a) must be gazetted; and
 - (b) may be advertised in such other manner as the SMCL administrator thinks fit.
- (4) Where the proposed dividend is only to preferential creditors—
 - (a) the notice need only be delivered to those creditors in whose cases the SMCL administrator has reason to believe that their debts are preferential; and
 - (b) the notice need only be gazetted if the SMCL administrator thinks fit.

Further contents of notice to creditors owed small debts etc.

74.—(1) The SMCL administrator may treat a debt, which is a small debt according to the accounting records or the statement of affairs of the SMCL, as if it were proved for the purposes of paying a dividend.

(2) Where the SMCL administrator intends to treat such a debt as if it were proved, the notice delivered under Rule 73 must also—

- (a) state the amount of the debt which the SMCL administrator believes to be owed to the creditor according to the accounting records or statement of affairs of the SMCL;
- (b) state that the SMCL administrator will treat the debt which is stated in the notice, being for £1,000 or less, as proved for the purposes of paying a dividend unless the creditor advises the SMCL administrator that the amount of the debt is incorrect or that no debt is owed;
- (c) require the creditor to notify the SMCL administrator by the last date for proving if the amount of the debt is incorrect or if no debt is owed; and
- (d) inform the creditor that where the creditor advises the SMCL administrator that the amount of the debt is incorrect the creditor must also submit a proof to receive a dividend.

(3) The information required by paragraph (2)(a) may take the form of a list of small debts which the SMCL administrator intends to treat as proved which includes the debt owed to the particular creditor to whom the notice is being delivered.

Sole or final dividend

75.—(1) Where it is intended that the distribution is to be a sole or final dividend, the SMCL administrator must, after the last date for proving set out in the notice under Rule 73—

- (a) pay any sums payable in accordance with the provisions of paragraph 99 of Schedule B1 to the 1986 Act;
- (b) pay any sums (including any debts or liabilities and the SMCL administrator’s own remuneration and expenses) which would, if the SMCL administrator were to cease to be the SMCL administrator of the SMCL, be payable out of the property of which the SMCL administrator had custody or control in accordance with the provisions of paragraph 99 of Schedule B1 to the 1986 Act; and
- (c) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(2) The reference in paragraph (1)(c) to debts that have not been proved does not include small debts treated as proved by the SMCL administrator.

(3) The court may, on the application of any person, postpone the date specified in the notice as the last date for proving.

Admission or rejection of proofs following last date for proving

76.—(1) Unless the SMCL administrator has already dealt with them, the SMCL administrator must within five business days of the last date for proving set out in the notice under Rule 73—

- (a) admit or reject (in whole or in part) proofs delivered to the SMCL administrator; or
- (b) make such provision in respect of them as the SMCL administrator thinks fit.

(2) The SMCL administrator is not obliged to deal with a proof delivered after the last date for proving, but may do so, if the SMCL administrator thinks fit.

(3) In the declaration of a dividend a payment must not be made more than once in respect of the same debt.

Postponement or cancellation of dividend

77. The SMCL administrator may postpone or cancel a dividend, if in the period of two months referred to in Rule 73(2)(c) an application is made to the court for the SMCL administrator’s decision on a proof to be reversed or varied, or for a proof to be excluded, or for a reduction of the amount claimed.

Declaration of dividend

78.—(1) Subject to Rule 77 and paragraph (2), within the two month period referred to in Rule 73(2)(c), the SMCL administrator must proceed to declare the dividend of which the SMCL administrator gave notice.

(2) Except with the permission of the court, the SMCL administrator must not declare a dividend so long as there is pending any application to the court to reverse or vary a decision of the SMCL administrator's on a proof, or to exclude a proof or to reduce the amount claimed.

(3) If the court gives permission under paragraph (2), the SMCL administrator must make such provision in respect of the proof in question as the court directs.

Notice of declaration of a dividend

79.—(1) Where the SMCL administrator declares a dividend the SMCL administrator must deliver notice of that fact to all creditors who have proved their debts.

(2) The notice must include the following particulars relating to the SMCL administration—

- (a) amounts raised from the sale of assets, indicating (so far as is practicable) amounts raised by the sale of particular assets;
- (b) payments made by the SMCL administrator when acting as such;
- (c) where the SMCL administrator proposed to make a distribution to unsecured creditors, the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act;
- (d) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;
- (e) the total amount to be distributed and the rate of dividend; and
- (f) whether, and if so when, any further dividend is expected to be declared.

Payments of dividends and related matters

80.—(1) The dividend may be distributed simultaneously with the notice declaring it.

(2) Payment of the dividend may be made by post, or arrangements may be made with any creditor for it to be paid to the creditor in another way, or held for the creditor's collection.

Notice of no dividend, or no further dividend

81. If the SMCL administrator delivers notice to creditors that the SMCL administrator is unable to declare any dividend or (as the case may be) any further dividend, the notice must contain a statement to the effect either—

- (a) that no funds have been realised; or
- (b) that the funds realised have already been distributed or used or allocated for paying the expenses of SMCL administration.

Proof altered after payment of dividend

82.—(1) If after payment of dividend the amount claimed by a creditor in the creditor's proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but the creditor is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend which the creditor has failed to receive.

(2) Any dividend payable under paragraph (1) must be paid before the money there referred to is applied to the payment of any such further dividend.

(3) If, after a creditor’s proof has been admitted, the proof is withdrawn or excluded, or the amount is reduced, the creditor is liable to repay to the SMCL administrator, for the credit of the SMCL administration, any amount overpaid by way of dividend.

Secured creditors

83.—(1) The following applies where a creditor alters the value of the creditor’s security at a time when a dividend has been declared.

(2) If the alteration results in a reduction of the creditor’s unsecured claim ranking for dividend, the creditor must as soon as reasonably practicable repay to the SMCL administrator, for the credit of the SMCL administration, any amount received by the creditor as dividend in excess of that to which the creditor would be entitled having regard to the alteration of the value of the security.

(3) If the alteration results in an increase of the creditor’s unsecured claim, the creditor is entitled to receive from the SMCL administrator, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend which the creditor has failed to receive, having regard to the alteration of the value of the security.

(4) However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the alteration.

Disqualification from dividend

84. If a creditor contravenes any provision of the 1986 Act or these Rules relating to the valuation of securities, the court may, on the application of the SMCL administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

Assignment of right to dividend

85.—(1) If a person entitled to a dividend (“the entitled person”) delivers notice to the SMCL administrator that the entitled person wishes the dividend to be paid to another person, or that the entitled person has assigned the entitlement to another person, the SMCL administrator must pay the dividend to that other person accordingly.

(2) A notice delivered under this Rule must specify the name and address of the person to whom payment is to be made.

Adjustment where dividend paid before time

86.—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of a dividend, the creditor is entitled to the dividend equally with other creditors, but subject as follows.

(2) For the purpose of dividend (and no other purpose), the amount of the creditor’s admitted proof (or, if a distribution has previously been made to the creditor, the amount remaining outstanding in respect of the creditor’s admitted proof) is to be reduced by applying the following formula—

$$\frac{x}{1.05^n}$$

where—

- (a) “x” is the value of the admitted proof; and
- (b) “n” is the period beginning with the date on which the SMCL entered SMCL administration and ending with the date on which the payment of the creditor’s debt would otherwise be due expressed in years (part of a year being expressed as a decimal fraction of a year).

Division of unsold assets

87.—(1) The SMCL administrator may, with the permission of the creditors, divide in its existing form amongst the SMCL’s creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) The SMCL administrator must—

- (a) in the receipts and payments account included in the progress report under Rule 26, state the estimated value of the property divided amongst the creditors of the SMCL during the period to which the report relates; and
- (b) as a note to the account, provide details of the basis of the valuation.