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STATUTORY INSTRUMENTS

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**2005 No. 2483**

The Energy Administration Rules 2005

PART 1

INTRODUCTORY PROVISIONS

**Citation and commencement**

1. These Rules may be cited as the Energy Administration Rules 2005 and shall come into force on 1st October 2005.

**Construction and interpretation**

2.—(1) In these Rules—

“the 1986 Act” means the Insolvency Act 1986;

“the 2004 Act” means the Energy Act 2004;

“administrative receiver” has the same meaning as in section 156(4) of the 2004 Act;

“the Companies Act” means the Companies Act 1985(1);

“CPR” means the Civil Procedure Rules 1998(2) and “CPR” followed by a Part or rule number means the Part or rule with that number in those Rules;

“enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003(3);

“GEMA” means the Gas and Electricity Markets Authority;

“insolvency proceedings” has the same meaning as in Rule 13.7 of the Insolvency Rules;

“the Insolvency Rules” means the Insolvency Rules 1986(4);

“qualifying floating charge” has the same meaning as in paragraph 14(2) of Schedule B1 to the 1986 Act, without the modifications made by Schedule 20 to the 2004 Act;

“the Rules” means the Energy Administration Rules 2005.

(2) References in the Rules to *ex parte* hearings shall be construed as references to hearings without notice being served on any other party; references to applications made *ex parte* as references to applications made without notice being served on any other party and other references which include the expression “*ex parte*” shall be similarly construed.

(3) References to provisions of Schedule B1 to the 1986 Act are references to those provisions as modified and applied by Schedule 20 to the 2004 Act unless otherwise stated.

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(1) 1985 c. 6.

(2) S.I. 1998/3132.

(3) 2003 c. 39.

(4) S.I. 1986/1925, as amended by S.I. 1987/1919, 1989/397, 1991/495, 1993/602, 1995/586, 1999/359, 1999/1022, 2001/763, 2002/1307, 2002/2712, 2003/1730, 2004/584, 2004/1070 and 2005/527.

(4) References to other provisions of the 1986 Act are, where those provisions have been modified by Schedule 20 to the 2004 Act, references to those provisions as so modified.

(5) Where the protected energy company is a non-GB company within the meaning of section 171 of the 2004 Act, references in the Rules to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain unless otherwise stated.

(6) Where the protected energy company is an unregistered company, any requirement to send information to the registrar of companies applies only if the company is subject to a requirement imposed by virtue of section 691(1)(5) or 718(6) of the Companies Act.

(7) Subject to paragraphs (1), (2), (3), (4), (5) and (6), Part 15 of the Rules has effect for their interpretation and application.

### **Extent**

3. The Rules apply in relation to protected energy companies which the courts in England and Wales have jurisdiction to wind up.

## **PART 2**

### **APPOINTMENT OF ENERGY ADMINISTRATOR BY COURT**

#### **Affidavit in support of energy administration application**

4. Where it is proposed to apply to the court for an energy administration order to be made in relation to a protected energy company, the energy administration application shall be in Form EA1 and an affidavit complying with Rule 6 must be prepared and sworn, with a view to its being filed with the court in support of the application.

#### **Form of application**

5.—(1) The application shall state by whom it is made and the applicant's address for service.

(2) Where it is made by GEMA, the application shall contain a statement that it is made with the consent of the Secretary of State.

(3) There shall be attached to the application a written statement which shall be in Form EA2 by each of the persons proposed to be energy administrator stating—

- (a) that he consents to accept the appointment; and
- (b) details of any prior professional relationship(s) that he has had with the protected energy company to which he is to be appointed as energy administrator.

#### **Contents of application and affidavit in support**

6.—(1) The energy administration application shall state that the company is a protected energy company.

(2) The application shall state one or both of the following—

- (a) the applicant's belief that the protected energy company is, or is likely to be, unable to pay its debts;

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(5) 1985 c. 6 as amended by S.I. 2000/3373 and 2002/912.

(6) As amended by S.I. 1996/2827 and 2001/1228, and the Statute Law (Repeals) Act 2004 c. 14.

- (b) the Secretary of State has certified that it would be appropriate for him to petition for the winding up of the protected energy company under section 124A of the 1986 Act<sup>(7)</sup> (petition for winding up on grounds of public interest).
- (3) There shall be attached to the application an affidavit in support which shall contain—
  - (a) a statement of the protected energy company’s financial position, specifying (to the best of the applicant’s knowledge and belief) the company’s assets and liabilities, including contingent and prospective liabilities;
  - (b) details of any security known or believed to be held by the creditors of the protected energy company 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, without the modifications made by Schedule 20 to the 2004 Act. If an administrative receiver has been appointed, that fact shall be stated;
  - (c) details of any insolvency proceedings in relation to the protected energy company including any petition that has been presented for the winding up of the protected energy company so far as within the immediate knowledge of the applicant;
  - (d) details of any notice served in accordance with section 164 of the 2004 Act by any person intending to enforce any security over the protected energy company’s assets, so far as within the immediate knowledge of the applicant;
  - (e) details of any step taken to enforce any such security, so far as within the immediate knowledge of the applicant;
  - (f) details of any application for leave of the court to pass a resolution for the voluntary winding up of the protected energy company, so far as within the immediate knowledge of the applicant;
  - (g) where it is intended to appoint a number of persons as energy 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 energy administrator;
  - (h) any other matters which, in the opinion of those intending to make the application for an energy administration order, will assist the court in deciding whether to make such an order, so far as lying within the knowledge or belief of the applicant.

### **Filing of application**

7.—(1) The application (and all supporting documents) shall be filed with the court, with a sufficient number of copies for service and use as provided by Rule 8.

(2) Each of the copies filed shall have applied to it the seal of the court and be issued to the applicant; and on each copy there shall be endorsed the date and time of filing.

(3) The court shall fix a venue for the hearing of the application and this also shall be endorsed on each copy of the application issued under paragraph (2).

(4) After the application is filed, it is the duty of the applicant to notify the court in writing of the existence of any insolvency proceedings, in relation to the protected energy company, as soon as the applicant becomes aware of them.

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(7) 1986 c. 45; section 124A was inserted by the Companies Act 1989 c. 40, section 60(3) and amended by S.I. 2001/3649, article 305, and the Companies (Audit, Investigations and Community Enterprise) Act 2004 c. 27, section 25(1), Schedule 2, paragraph 27.

**Service of application**

**8.**—(1) In the following paragraphs of this Rule, references to the application are to a copy of the application issued by the court under Rule 7(2) together with the affidavit in support of it and the documents attached to the application.

(2) Notification for the purposes of section 156(2) of the 2004 Act shall be by way of service in accordance with Rule 10, verified in accordance with Rule 11.

(3) The application shall be served in addition to those persons referred to in section 156(2) of the 2004 Act—

- (a) if an administrative receiver has been appointed, on him;
- (b) 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;
- (c) if there is pending a petition for the winding-up of the protected energy company, on the petitioner (and also on the provisional liquidator, if any);
- (d) on any creditor who has served notice in accordance with section 164 of the 2004 Act of his intention to enforce his security over property of the protected energy company;
- (e) on the person proposed as energy administrator;
- (f) on the protected energy company;
- (g) if the applicant is the Secretary of State, on GEMA;
- (h) if the applicant is GEMA, on the Secretary of State;
- (i) if a supervisor of a voluntary arrangement under Part I of the 1986 Act has been appointed, on him.

**Notice to officers charged with execution of writs or other process, etc**

**9.** The applicant shall as soon as reasonably practicable after filing the application give notice of its being made to—

- (a) any enforcement officer or other officer who to the applicant's knowledge is charged with an execution or other legal process against the protected energy company or its property; and
- (b) any person who to the applicant's knowledge has distrained against the protected energy company or its property.

**Manner in which service to be effected**

**10.**—(1) Service of the application in accordance with Rule 8 shall be effected by the applicant, or the applicant's solicitor, or by a person instructed by the applicant or the applicant's solicitor, not less than 2 days before the date fixed for the hearing.

(2) Service shall be effected as follows—

- (a) on the protected energy company (subject to paragraph (3) below), by delivering the documents to its registered office;
- (b) on any other person (subject to paragraph (4) below), by delivering the documents to his proper address;
- (c) in either case, in such other manner as the court may direct.

(3) If delivery to a protected energy company's registered office is not practicable or if the protected energy company is an unregistered company, service may be effected by delivery to its last known principal place of business in England and Wales.

(4) Subject to paragraph (5), for the purposes of paragraph (2)(b) above, a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address.

(5) In the case of a person who—

- (a) is an authorised deposit-taker or a former authorised deposit-taker;
- (b) (i) has appointed, or is or may be entitled to appoint, an administrative receiver of the protected energy company, or  
(ii) is, or may be entitled to appoint an administrator of the protected energy company under paragraph 14 of Schedule B1 to the 1986 Act, without the modifications made by Schedule 20 to the 2004 Act; and
- (c) has not notified an address for service,

the proper address is the address of an office of that person where, to the knowledge of the applicant, the protected energy company maintains a bank account or, where no such office is known to the applicant, the registered office of that person, or, if there is no such office, his usual or last known address.

(6) Delivery of the documents to any place or address may be made by leaving them there, or sending them by first class post.

### **Proof of service**

**11.**—(1) Service of the application shall be verified by an affidavit of service in Form EA3, specifying the date on which, and the manner in which, service was effected.

(2) The affidavit of service, with a sealed copy of the application exhibited to it, shall be filed with the court as soon as reasonably practicable after service, and in any event not less than 1 day before the hearing of the application.

### **The hearing**

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

- (a) the Secretary of State;
- (b) GEMA;
- (c) the protected energy company;
- (d) one or more of the directors;
- (e) if an administrative receiver has been appointed, that person;
- (f) any person who has presented a petition for the winding-up of the protected energy company;
- (g) the person proposed for appointment as energy administrator;
- (h) any person that is the holder of a qualifying floating charge;
- (i) 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;
- (j) any creditor who has served notice in accordance with section 164 of the 2004 Act of his intention to enforce his security over the protected energy company's property;
- (k) any supervisor of a voluntary arrangement under Part I of the 1986 Act;
- (l) with the permission of the court, any other person who appears to have an interest justifying his appearance.

(2) If the court makes an energy administration order, it shall be in Form EA4.

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

#### **Notice of energy administration order**

**13.**—(1) If the court makes an energy administration order, it shall as soon as reasonably practicable send two sealed copies of the order to the person who made the application.

(2) The applicant shall send a sealed copy of the order as soon as reasonably practicable to the person appointed as energy 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 shall give directions as to the persons to whom, and how, notice of that order is to be given.

## **PART 3**

### **PROCESS OF ENERGY ADMINISTRATION**

#### **Notification and advertisement of energy administrator's appointment**

**14.**—(1) The energy administrator shall advertise his appointment once in the Gazette, and once in such newspaper as he thinks most appropriate for ensuring that the appointment comes to the notice of the protected energy company's creditors. The advertisement shall be in Form EA5.

(2) The energy administrator shall, as soon as reasonably practicable after the date specified in paragraph 46(6) of Schedule B1 to the 1986 Act, give notice of his appointment—

- (a) if the application for the energy administration order was made by the Secretary of State, to GEMA;
- (b) if the application for the energy administration order was made by GEMA, to the Secretary of State;
- (c) if a receiver or an administrative receiver has been appointed, to him;
- (d) if there is pending a petition for the winding up of the protected energy company, to the petitioner (and to the provisional liquidator, if any);
- (e) to 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, in relation to the protected energy company;
- (f) to any enforcement officer who, to the energy administrator's knowledge, is charged with execution or other legal process against the protected energy company;
- (g) to any person who, to the energy administrator's knowledge, has distrained against the protected energy company or its property;
- (h) to any supervisor of a voluntary arrangement under Part I of the 1986 Act;
- (i) to any holder of a qualifying floating charge who, to the energy administrator's knowledge, has served notice in accordance with section 163 of the 2004 Act that he is seeking to appoint an administrator; and
- (j) to any creditor who, to the energy administrator's knowledge, has served notice in accordance with section 164 of the 2004 Act of his intention to enforce his security over property of the protected energy company.

(3) Where, under a provision of Schedule B1 to the 1986 Act or these Rules, the energy administrator is required to send a notice of his appointment to any person, he shall do so in Form EA6.

#### **Notice requiring statement of affairs**

**15.**—(1) In this Part “relevant person” shall have the meaning given to it in paragraph 47(3) of Schedule B1 to the 1986 Act.

(2) The energy administrator shall send notice in Form EA7 to each relevant person whom he determines appropriate requiring him to prepare and submit a statement of the protected energy company’s affairs.

(3) The notice shall inform each of the relevant persons—

- (a) of the names and addresses of all others (if any) to whom the same notice has been sent;
- (b) of the time within which the statement must be delivered;
- (c) of the effect of paragraph 48(4) of Schedule B1 to the 1986 Act (penalty for non-compliance); and
- (d) of the application to him, and to each other relevant person, of section 235 of the 1986 Act<sup>(8)</sup> (duty to provide information, and to attend on the energy administrator, if required).

(4) The energy administrator shall furnish each relevant person to whom he has sent notice in Form EA7 with the forms required for the preparation of the statement of affairs.

#### **Verification and filing**

**16.**—(1) The statement of the protected energy company’s affairs shall be in Form EA8, contain all the particulars required by that form and shall be verified by a statement of truth by the relevant person.

(2) The energy administrator may require any relevant person to submit a statement of concurrence in Form EA9 stating that he concurs in the statement of affairs. Where the energy administrator does so, he shall inform the person making the statement of affairs of that fact.

(3) The statement of affairs shall be delivered by the relevant person making the statement of truth, together with a copy, to the energy administrator. The relevant person shall also deliver a copy of the statement of affairs to all those persons whom the energy administrator has required to make a statement of concurrence.

(4) A person required to submit a statement of concurrence shall do so before the end of the period of 5 business days (or such other period as the energy administrator may agree) beginning with the day on which the statement of affairs being concurred with is received by him.

(5) A statement of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the statement of concurrence is not in agreement with the relevant person, or he considers the statement of affairs to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.

(6) Every statement of concurrence shall be verified by a statement of truth and be delivered to the energy administrator by the person who makes it, together with a copy of it.

(7) Subject to Rule 17 below, the energy administrator shall as soon as reasonably practicable send to the registrar of companies and file with the court a Form EA10 together with a copy of the statement of affairs and any statement of concurrence.

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(8) 1986 c. 45; section 235 was amended by the Enterprise Act 2002 c. 40, Schedule 17, paragraph 24.

### **Limited disclosure**

17.—(1) Where the energy administrator thinks that it would prejudice the conduct of the energy administration for the whole or part of the statement of the protected energy company's affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may, on such application, order that the statement or, as the case may be, the specified part of it, shall not be filed with the registrar of companies.

(3) The energy administrator shall as soon as reasonably practicable send to the registrar of companies a Form EA10 together with a copy of the order and the statement of affairs (to the extent provided by the order) and any statement of concurrence.

(4) If a creditor seeks disclosure of a statement of affairs or a specified part of it in relation to which an order has been made under this Rule, he may apply to the court for an order that the energy administrator disclose it or a specified part of it. The application shall be supported by written evidence in the form of an affidavit.

(5) The applicant shall give the energy administrator notice of his application at least 3 days before the hearing.

(6) The court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees fit.

(7) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the energy administrator shall, as soon as reasonably practicable after the change, apply to the court for the order or any part of it to be rescinded.

(8) The energy administrator shall, as soon as reasonably practicable after the making of an order under paragraph (7) above, file with the registrar of companies Form EA10 together with a copy of the statement of affairs to the extent provided by the order.

(9) When the statement of affairs is filed in accordance with paragraph (8), the energy administrator shall, where he has sent a statement of proposals under paragraph 49 of Schedule B1 to the 1986 Act, provide the creditors with a copy of the statement of affairs as filed, or a summary thereof.

(10) The provisions of Part 31 of the CPR shall not apply to an application under this Rule.

### **Release from duty to submit statement of affairs; extension of time**

18.—(1) The power of the energy administrator under paragraph 48(2) of Schedule B1 to the 1986 Act to give a release from the obligation imposed by paragraph 47(1) of Schedule B1 to the 1986 Act, or to grant an extension of time, may be exercised at the energy administrator's own discretion, or at the request of any relevant person.

(2) A relevant person may, if he requests a release or extension of time and it is refused by the energy administrator, apply to the court for it.

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it without a hearing but it shall not do so without giving the relevant person at least 7 days' notice, upon receipt of which the relevant person may request the court to list the application for a without notice hearing. If the application is not dismissed, the court shall fix a venue for it to be heard, and give notice to the relevant person accordingly.

(4) The relevant person shall, at least 14 days before the hearing, send to the energy administrator a notice stating the venue and accompanied by a copy of the application and of any evidence which he (the relevant person) intends to adduce in support of it.



(5) The energy administrator may appear and be heard on the application and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the court's attention.

If such a report is filed, a copy of it shall be sent by the energy administrator to the relevant person, not later than 5 days before the hearing.

(6) Sealed copies of any order made on the application shall be sent by the court to the relevant person and the energy administrator.

(7) On any application under this Rule the relevant person's costs shall be paid in any event by him and, unless the court otherwise orders, no allowance towards them shall be made out of the assets.

### **Expenses of statement of affairs**

**19.**—(1) A relevant person making the statement of the protected energy company's affairs or statement of concurrence shall be allowed, and paid by the energy administrator out of his receipts, any expenses incurred by the relevant person in so doing which the energy administrator considers reasonable.

(2) Any decision by the energy administrator under this Rule is subject to appeal to the court.

(3) Nothing in this Rule relieves a relevant person of any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the energy administrator.

### **Energy administrator's proposals**

**20.**—(1) The energy administrator shall, under paragraph 49 of Schedule B1 to the 1986 Act, make a statement which he shall send to the registrar of companies attached to Form EA11.

(2) The statement shall include, in addition to those matters set out in paragraph 49 of Schedule B1 to the 1986 Act—

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) the full name, registered address, registered number and any other trading names of the protected energy company;
- (c) details relating to his appointment as energy administrator, including the date of appointment and whether the application was made by the Secretary of State or GEMA and, where there are joint energy administrators, details of the matters set out in section 158(5) of the 2004 Act;
- (d) the names of the directors and secretary of the protected energy company and details of any shareholdings in the protected energy company they may have;
- (e) an account of the circumstances giving rise to the appointment of the energy administrator;
- (f) if a statement of the protected energy company's affairs has been submitted, a copy or summary of it, with the energy administrator's comments, if any;
- (g) if an order limiting the disclosure of the statement of affairs (under Rule 17) has been made, a statement of that fact, as well as—
  - (i) details of who provided the statement of affairs;
  - (ii) the date of the order of limited disclosure; and
  - (iii) the details or a summary of the details that are not subject to that order;
- (h) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held;

- (i) if no statement of affairs has been submitted, details of the financial position of the protected energy company at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the protected energy company entered energy administration), a list of the protected energy company's creditors including their names, addresses and details of their debts, including any security held, and an explanation as to why there is no statement of affairs;
- (j) (except where the energy administrator proposes a voluntary arrangement in relation to the protected energy company and subject to paragraph (3))—
  - (i) to the best of the energy administrator's knowledge and belief—
    - (aa) an estimate of the value of the prescribed part (whether or not he proposes to make an application to court under section 176A(5) of the 1986 Act<sup>(9)</sup> or section 176A(3) of the 1986 Act applies); and
    - (bb) an estimate of the value of the protected energy company's net property; and
  - (ii) whether, and, if so, why, the energy administrator proposes to make an application to court under section 176A(5) of the 1986 Act;
- (k) how it is envisaged the objective of the energy administration will be achieved and how it is proposed that the energy administration shall end. If a creditors' voluntary liquidation is proposed, details of the proposed liquidator must be provided, and a statement that, in accordance with paragraph 83(7) of Schedule B1 to the 1986 Act and Rule 78(3), creditors may nominate a different person as the proposed liquidator, provided that the nomination is made at a meeting of creditors called for that purpose;
- (l) the manner in which the affairs and business of the protected energy company—
  - (i) have, since the date of the energy administrator's appointment, been managed and financed, including, where any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made; and
  - (ii) will continue to be managed and financed; and
- (m) such other information (if any) as the energy administrator thinks necessary.

(3) Nothing in paragraph (2)(j) is to be taken as requiring any such estimate to include any information, the disclosure of which could seriously prejudice the commercial interests of the protected energy company. If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.

(4) Where the court orders, upon an application by the energy administrator under paragraph 107 of Schedule B1 to the 1986 Act, an extension of the period of time in paragraph 49(5) of Schedule B1 to the 1986 Act, the energy administrator shall notify in Form EA12 all the persons set out in paragraph 49(4) of Schedule B1 to the 1986 Act as soon as reasonably practicable after the making of the order.

(5) Where the energy administrator wishes to publish a notice under paragraph 49(6) of Schedule B1 to the 1986 Act he shall publish the notice once in such newspaper as he thinks most appropriate for ensuring that the notice comes to the attention of the protected energy company's members. The notice shall—

- (a) state the full name of the protected energy company;
- (b) state the full name and address of the energy administrator;
- (c) give details of the energy administrator's appointment; and
- (d) specify an address to which members can write for a copy of the statement of proposals.

(9) 1986 c. 45; section 176A inserted by the Enterprise Act 2002 c. 40, section 252.

(6) This notice must be published as soon as reasonably practicable after the energy administrator sends his statement of proposals to the protected energy company's creditors but no later than 8 weeks (or such other period as the court may order) from the date that the protected energy company entered energy administration.

## PART 4

### MEETINGS AND REPORTS

#### CHAPTER 1

##### *Creditors' meetings*

##### **Creditors' meetings generally**

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

(2) Notice of a creditors' meeting shall be in Form EA13.

(3) In fixing the venue for the meeting, the energy administrator shall have regard to the convenience of creditors and the meeting shall be summoned for commencement between 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

(4) Subject to paragraphs (6) and (7) below and Rule 23, at least 14 days' notice of the meeting shall be given to all creditors who are known to the energy administrator and had claims against the protected energy company at the date when the protected energy company entered energy administration unless that creditor has subsequently been paid in full; and the notice shall—

- (a) specify the purpose of the meeting;
- (b) contain a statement of the effect of Rule 24 (entitlement to vote); and
- (c) contain the forms of proxy.

(5) If within 30 minutes from the time fixed for the commencement of the meeting there is no person present to act as chairman, 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.

(6) The meeting may be adjourned once, if the chairman thinks fit, but not for more than 14 days from the date on which it was fixed to commence, subject to the direction of the court.

(7) If a meeting is adjourned the energy administrator shall as soon as reasonably practicable notify the creditors of the venue of the adjourned meeting.

##### **The chairman at meetings**

**22.**—(1) At any meeting of creditors summoned by the energy administrator, either he shall be chairman, or a person nominated by him in writing to act in his place.

(2) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the protected energy company, or
- (b) an employee of the energy administrator or his firm who is experienced in insolvency matters.

**Creditors' meeting for nomination of alternative liquidator**

23.—(1) Where under Rule 20(2)(k) or 31(2)(g), the energy administrator has proposed that the protected energy company enter creditors' voluntary liquidation once the energy administration has ended, the energy administrator shall, 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 energy administrator's proposals or revised proposals.

(2) The energy administrator shall call a meeting of creditors where such a meeting is requested by creditors of the protected energy company whose debts amount to at least 25 per cent of the total debts of the protected energy company.

(3) The request for a creditors' meeting for the purpose set out in paragraph (1) shall be in Form EA14. A request for such a meeting shall be made within 21 days of the date on which the energy administrator's statement of proposals is sent out, or where revised proposals have been sent out and a proposed revision relates to the ending of the energy administration by a creditors' voluntary liquidation, within 21 days from the date on which the revised statement of proposals is sent out.

(4) A request under this Rule shall include—

- (a) a list of creditors concurring with the request, showing the amounts of their respective debts in the energy administration; and
- (b) from each creditor concurring, written confirmation of his concurrence,

but sub-paragraph (a) does not apply if the requesting creditor's debt is alone sufficient without the concurrence of other creditors.

(5) A meeting requested under this Rule shall be held within 21 days of the energy administrator's receipt of the notice requesting the meeting.

**Entitlement to vote**

24.—(1) Subject as follows, at a meeting of creditors in energy administration proceedings a person is entitled to vote only if—

- (a) he has given to the energy administrator, not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the debt which he claims to be due to him from the protected energy company;
- (b) the claim has been duly admitted under the following provisions of this Rule; and
- (c) there has been lodged with the energy administrator any proxy which he intends to be used on his behalf,

and details of the debt must include any calculation for the purposes of Rules 26 to 28.

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

(3) The chairman of the meeting may call for any document or other evidence to be produced to him, where he 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 a creditor's claim as at the date on which the protected energy company entered energy administration, less any payments that have been made to him after that date in respect of his claim and any adjustment by way of set-off in accordance with Rule 53 as if that Rule were applied on the date that the votes are counted.

(5) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman 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 shall be cast by virtue of a claim more than once on any resolution put to the meeting.

### **Admission and rejection of claims**

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

(2) The chairman's decision under this Rule, or in respect of any matter arising under Rule 24, is subject to appeal to the court by any creditor.

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

(4) If on appeal the chairman'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 fit.

(5) Neither the energy administrator nor any person nominated by him to be chairman 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**

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

### **Holders of negotiable instruments**

**27.** A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

- (a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the protected energy company, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and
- (b) to estimate the value of the security and, for the purpose of his entitlement to vote, to deduct it from his claim.

### **Hire-purchase, conditional sale and chattel leasing agreements**

**28.**—(1) Subject as follows, 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 him by the protected energy company on the date that the protected energy company entered energy administration.

(2) In calculating the amount of any debt for this purpose, no account shall 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 energy administration application or any matter arising as a consequence, or of the protected energy company entering energy administration.

### **Resolutions**

**29.**—(1) Subject as follows, at a creditors' meeting in energy administration proceedings, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of it.

(2) Any resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chairman's belief, persons connected with the protected energy company.

(3) In the case of a resolution for the nomination of a person to act as liquidator once the energy 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; and
- (c) in any other case, the chairman of the meeting shall 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 energy administrator's proposals or revised proposals shall be the liquidator once the energy administration has ended.

(6) The chairman 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 protected energy company" has the same meaning as the phrase "connected with a company" in section 249 of the 1986 Act.

### **Minutes**

**30.**—(1) The chairman of the meeting shall cause minutes of its proceedings to be entered in the protected energy company's minute book.

(2) The minutes shall include a list of the names and addresses of creditors who attended (personally or by proxy).

### **Revision of the energy administrator's proposals**

**31.**—(1) The energy administrator shall, as soon as reasonably practicable, under paragraph 54 of Schedule B1 of the 1986 Act, make a statement setting out the proposed revisions to his proposals which he shall attach to Form EA15 and send to all those to whom he is required to send a copy of his revised proposals.

(2) The statement of revised proposals shall include—

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) the full name, registered address, registered number and any other trading names of the protected energy company;
- (c) details relating to his appointment as energy administrator, including the date of appointment and whether the energy administration application was made by the Secretary of State or by GEMA;
- (d) the names of the directors and secretary of the protected energy company and details of any shareholdings in the protected energy company they may have;
- (e) a summary of the initial proposals and the reason(s) for proposing a revision;

- (f) details of the proposed revision including details of the energy administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors (as the case may be);
- (g) where a proposed revision relates to the ending of the energy administration by a creditors' voluntary liquidation and the nomination of a person to be the proposed liquidator of the protected energy company, a statement that, in accordance with paragraph 83(7) of Schedule B1 to the 1986 Act and Rule 78(3), creditors may nominate a different person as the proposed liquidator, provided that the nomination is made at a meeting of creditors called for that purpose; and
- (h) any other information that the energy administrator thinks necessary.

(3) Subject to paragraph 54(4) of Schedule B1 to the 1986 Act, within 5 days of sending out the statement in paragraph (1) above, the energy administrator shall send a copy of the statement to every member of the protected energy company.

(4) When the energy administrator is acting under paragraph 54(4) of Schedule B1 to the 1986 Act, the notice shall be published once in such newspaper as he thinks most appropriate for ensuring that the notice comes to the attention of the protected energy company's members. The notice shall—

- (a) state the full name of the protected energy company;
- (b) state the name and address of the energy administrator;
- (c) specify an address to which members can write for a copy of the statement; and
- (d) be published as soon as reasonably practicable after the energy administrator sends the statement to creditors.

## **Reports to creditors**

**32.**—(1) “Progress report” means a report which includes—

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) full details of the protected energy company's name, address of registered office and registered number;
- (c) full details of the energy administrator's name and address, date of appointment and name and address of the applicant for the energy administration application, including any changes in office-holder, and, in the case of joint energy administrators, their functions as set out in the statement made for the purposes of section 158(5) of the 2004 Act;
- (d) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (2) below);
- (e) details of any assets that remain to be realised; and
- (f) any other relevant information for the creditors.

(2) A receipts and payments account shall state what assets of the protected energy company have been realised, for what value, and what payments have been made to creditors or others. The account is to be in the form of an abstract showing receipts and payments during the period of the report and where the energy administrator has ceased to act, the receipts and payments account shall include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the 1986 Act (prescribed part).

(3) The progress report shall cover—

- (a) the period of 6 months commencing on the date that the protected energy company entered energy administration, and every subsequent period of 6 months; and
- (b) when the energy administrator ceases to act, any period from the date of the previous report, if any, and from the date that the protected energy company entered energy

administration if there is no previous report, until the time that the energy administrator ceases to act.

(4) The energy administrator shall send a copy of the progress report, attached to Form EA16, within 1 month of the end of the period covered by the report, to—

- (a) the Secretary of State;
- (b) GEMA;
- (c) the creditors;
- (d) the court; and
- (e) the registrar of companies.

(5) The court may, on the energy administrator's application, extend the period of 1 month mentioned in paragraph (4) above, or make such other order in respect of the content of the report as it thinks fit.

(6) If the energy administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

## CHAPTER 2

### *Company meetings*

#### **Venue and conduct of company meeting**

**33.**—(1) Where the energy administrator summons a meeting of members of the protected energy company, he shall fix a venue for it having regard to their convenience.

(2) The chairman of the meeting shall be the energy administrator or a person nominated by him in writing to act in his place.

(3) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the protected energy company, or
- (b) an employee of the energy administrator or his 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 chairman, 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 as above, the meeting shall be summoned and conducted as if it were a general meeting of the protected energy company summoned under the company's articles of association, and in accordance with the applicable provisions of the Companies Act(10).

(6) The chairman of the meeting shall cause minutes of its proceedings to be entered in the protected energy company's minute book.



## PART 5

### DISPOSAL OF CHARGED PROPERTY

#### **Authority to dispose of property**

**34.**—(1) The following applies where the energy administrator applies to the court under paragraphs 71 or 72 of Schedule B1 to the 1986 Act for authority to dispose of property of the protected energy company which is subject to a security (other than a floating charge), or goods in the possession of the protected energy company under a hire purchase agreement.

(2) The court shall fix a venue for the hearing of the application, and the energy administrator shall as soon as reasonably practicable give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.

(3) If an order is made under paragraphs 71 or 72 of Schedule B1 to the 1986 Act the court shall send two sealed copies to the energy administrator.

(4) The energy administrator shall send one of them to that person who is the holder of the security or owner under the agreement.

(5) The energy administrator shall send a Form EA17 to the registrar of companies with a copy of the sealed order.

## PART 6

### EXPENSES OF THE ENERGY ADMINISTRATION

#### **Priority of expenses of energy administration**

**35.**—(1) The expenses of the energy administration are payable in the following order of priority—

- (a) expenses properly incurred by the energy administrator in performing his functions in the energy administration of the protected energy company;
- (b) the cost of any security provided by the energy administrator in accordance with the 1986 Act or the Rules;
- (c) where an energy administration order was made, the costs of the applicant and any person appearing on the hearing of the application;
- (d) any amount payable to a person employed or authorised, under Part 3 of the Rules, to assist in the preparation of a statement of affairs or statement of concurrence;
- (e) any allowance made, by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs or statement of concurrence;
- (f) any necessary disbursements by the energy administrator in the course of the energy administration (but not including any payment of corporation tax in circumstances referred to in sub-paragraph (i) below);
- (g) the remuneration or emoluments of any person who has been employed by the energy administrator to perform any services for the protected energy company, as required or authorised under the 1986 Act or the 2004 Act, Schedule B1 to the 1986 Act or the Rules;
- (h) the remuneration of the energy administrator agreed under Part 8 of the Rules;
- (i) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the protected energy company (without regard to whether the realisation is effected

by the energy administrator, a secured creditor, or a receiver or manager appointed to deal with a security).

(2) The priorities laid down by paragraph (1) of this Rule are subject to the power of the court to make orders under paragraph (3) of this Rule where the assets are insufficient to satisfy the liabilities.

(3) The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the energy administration in such order of priority as the court thinks just.

(4) For the purposes of paragraph 99(3) of Schedule B1 to the 1986 Act, the former energy administrator's remuneration and expenses shall comprise all those items set out in paragraph (1) of this Rule.

## PART 7

### DISTRIBUTION OF CREDITORS

#### CHAPTER 1

##### *Application of Part and general*

#### **Distribution to creditors generally**

**36.**—(1) This Part applies where the energy administrator makes, or proposes to make, a distribution to any class of creditors. Where the distribution is to a particular class of creditors, references in this Part to creditors shall, in so far as the context requires, be a reference to that class of creditors only.

(2) The energy administrator shall give notice to the creditors of his intention to declare and distribute a dividend in accordance with Rule 63.

(3) Where it is intended that the distribution is to be a sole or final dividend, the energy administrator shall, after the date specified in the notice referred to in paragraph (2)—

- (a) defray any items payable in accordance with the provisions of paragraph 99 of Schedule B1 to the 1986 Act;
- (b) defray any amounts (including any debts or liabilities and his own remuneration and expenses) which would, if the energy administrator were to cease to be the energy administrator of the protected energy company, be payable out of the property of which he 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.

(4) The court may, on the application of any person, postpone the date specified in the notice.

#### **Debts of insolvent company to rank equally**

**37.** Debts other than preferential debts rank equally between themselves in the energy administration and, after the preferential debts, shall 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**

**38.**—(1) In the calculation and distribution of a dividend the energy administrator shall make provision for—

- (a) any debts which appear to him 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 his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—
- (a) when he has proved that debt he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive; and
  - (b) any dividends payable under sub-paragraph (a) shall be paid before the money is applied to the payment of any such further dividend.
- (3) No action lies against the energy administrator for a dividend; but if he refuses to pay a dividend the court may, if it thinks fit, order him to pay it and also to pay, out of his own money—
- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838(11), from the time when it was withheld; and
  - (b) the costs of the proceedings in which the order to pay is made.

### **Division of unsold assets**

**39.** The energy administrator may, with the permission of the creditors, divide in its existing form amongst the protected energy company’s creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

## **CHAPTER 2**

### *Machinery of proving a debt*

#### **Proving a debt**

**40.—(1)** A person claiming to be a creditor of the protected energy company and wishing to recover his debt in whole or in part must (subject to any order of the court to the contrary) submit his claim in writing to the energy administrator.

(2) A creditor who claims is referred to as “proving” for his debt and a document by which he seeks to establish his claim is his “proof”.

(3) Subject to the next paragraph, a proof must—

- (a) be made out by, or under the direction of, the creditor and signed by him or a person authorised in that behalf; and
- (b) state the following matters—
  - (i) the creditor’s name and address;
  - (ii) the total amount of his claim as at the date on which the protected energy company entered energy administration, less any payments that have been made to him after that date in respect of his claim and any adjustment by way of set-off in accordance with Rule 53;
  - (iii) whether or not the claim includes outstanding uncapitalised interest;

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(11) 1838 c. 110, as amended by the Civil Procedure Acts Repeal Act 1879, section 2, Schedule 1, Part 1, the Statute Law Revision (No. 2) Act 1888, S.I. 1993/564, article 2, 1998/2940, article 3(a), (b) and (c).

- (iv) whether or not the claim includes value added tax;
- (v) whether the whole or any part of the debt falls within any, and if so, which categories of preferential debts under section 386(12) of the 1986 Act;
- (vi) particulars of how and when the debt was incurred by the protected energy company;
- (vii) particulars of any security held, the date on which it was given and the value which the creditor puts on it;
- (viii) details of any reservation of title in respect of goods to which the debt refers; and
- (ix) the name, address and authority of the person signing the proof (if other than the creditor himself).

(4) There shall be specified in the proof details of any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such document be attached to the proof or submitted with it.

(5) The energy administrator may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

#### **Claim established by affidavit**

**41.**—(1) The energy administrator may, if he thinks it necessary, require a claim of debt to be verified by means of an affidavit in Form EA18.

(2) An affidavit may be required notwithstanding that a proof of debt has already been lodged.

#### **Costs of proving**

**42.** Unless the court otherwise orders—

- (a) every creditor bears the cost of proving his own debt, including costs incurred in providing documents or evidence under Rule 40(5); and
- (b) costs incurred by the energy administrator in estimating the quantum of a debt under Rule 49 are payable out of the assets as an expense of the energy administration.

#### **Energy administrator to allow inspection of proofs**

**43.** The energy administrator shall, so long as proofs lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

- (a) any creditor who has submitted a proof of debt (unless his proof has been wholly rejected for purposes of dividend or otherwise);
- (b) any contributory of the protected energy company; and
- (c) any person acting on behalf of either of the above.

#### **New energy administrator appointed**

**44.**—(1) If a new energy administrator is appointed in place of another, the former energy administrator shall transmit to him all proofs which he has received, together with an itemised list of them.

(2) The new energy administrator shall sign the list by way of receipt for the proofs, and return it to his predecessor.

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(12) 1986 c. 45, as amended by the Pension Schemes Act 1993 c. 48, section 190 and Schedule 8, paragraph 18 and the Enterprise Act 2002 c. 40, section 251(3).

### **Admission and rejection of proofs for dividend**

**45.**—(1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) If the energy administrator rejects a proof in whole or in part, he shall prepare a written statement of his reasons for doing so, and send it as soon as reasonably practicable to the creditor.

### **Appeal against decision on proof**

**46.**—(1) If a creditor is dissatisfied with the energy administrator's decision with respect to his proof (including any decision on the question of preference), he may apply to the court for the decision to be reversed or varied. The application must be made within 21 days of his receiving the statement sent under Rule 45(2).

(2) Any other creditor may, if dissatisfied with the energy administrator's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the energy administrator's decision.

(3) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the creditor who lodged the proof in question (if it is not himself) and the energy administrator.

(4) The energy administrator shall, on receipt of the notice, file with the court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 45(2).

(5) After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the energy administrator.

(6) The energy administrator is not personally liable for costs incurred by any person in respect of an application under this Rule unless the court otherwise orders.

### **Withdrawal or variation of proof**

**47.** A creditor's proof may at any time, by agreement between himself and the energy administrator, be withdrawn or varied as to the amount claimed.

### **Expunging of proof by the court**

**48.**—(1) The court may expunge a proof or reduce the amount claimed—

- (a) on the energy administrator's application, where he thinks that the proof has been improperly admitted, or ought to be reduced; or
- (b) on the application of a creditor, if the energy administrator declines to interfere in the matter.

(2) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant—

- (a) in the case of an application by the energy administrator, to the creditor who made the proof; and
- (b) in the case of an application by a creditor, to the energy administrator and to the creditor who made the proof (if not himself).

## CHAPTER 3

### *Quantification of claims*

#### **Estimate of quantum**

**49.**—(1) The energy administrator shall estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and he may revise any estimate previously made, if he thinks fit by reference to any change of circumstances or to information becoming available to him. He shall inform the creditor as to his estimate and any revision of it.

(2) Where the value of a debt is estimated under this Rule, the amount provable in the energy administration in the case of that debt is that of the estimate for the time being.

#### **Negotiable instruments, etc**

**50.** Unless the energy administrator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or his authorised representative to be a true copy.

#### **Secured creditors**

**51.**—(1) If a secured creditor realises his security, he may prove for the balance of his debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders his security for the general benefit of creditors, he may prove for his whole debt, as if it were unsecured.

#### **Discounts**

**52.** There shall in every case be deducted from the claim all trade and other discounts which would have been available to the protected energy company but for its energy administration except any discount for immediate, early or cash settlement.

#### **Mutual credits and set-off**

**53.**—(1) This Rule applies where the energy administrator, being authorised to make the distribution in question, has pursuant to Rule 63, given notice that he proposes to make it.

(2) In this Rule “mutual dealings” means mutual credits, mutual debts or other mutual dealings between the protected energy company and any creditor of the protected energy company proving or claiming to prove for a debt in the energy administration but does not include any of the following—

- (a) any debt arising out of an obligation incurred after the protected energy company entered energy administration;
- (b) any debt arising out of an obligation incurred at a time when the creditor had notice that an application for an energy administration order was pending;
- (c) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement where that agreement was entered into between the creditor and any other party—
  - (i) after the protected energy company entered energy administration; or
  - (ii) at a time when the creditor had notice that an application for an energy administration order was pending.

(3) An account shall be taken as at the date of the notice referred to in paragraph (1) of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(4) A sum shall be regarded as being due to or from the protected energy company for the purposes of paragraph (3) whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules as a matter of opinion.

(5) Rule 49 shall apply for the purposes of this Rule to an obligation to or from the protected energy company which, by virtue of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 54 to 56 shall apply for the purposes of this Rule in relation to any sums due to the protected energy company which—

- (a) are payable in a currency other than sterling;
- (b) are of a periodical nature; or
- (c) bear interest.

(7) Rule 73 shall apply for the purposes of this Rule to any sum due to or from the protected energy company which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the energy administration. Alternatively the balance (if any) owed to the protected energy company shall be paid to the energy administrator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when the debt becomes due and payable.

(9) In this Rule “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

### **Debt in foreign currency**

**54.**—(1) For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date when the protected energy company entered energy administration.

(2) “The official exchange rate” is the middle exchange rate on the London Foreign Exchange Market at the close of business, as published for the date in question. In the absence of any such published rate, it is such rate as the court determines.

### **Payments of a periodical nature**

**55.**—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the protected energy company entered energy administration.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

## **Interest**

**56.**—(1) Where a debt proved in the energy administration bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the protected energy company entered energy administration.

(2) In the following circumstances the creditor's claim may include interest on the debt for periods before the protected energy company entered energy administration, although not previously reserved or agreed.

(3) If the debt is due by virtue of a written instrument, and payable at a certain time, interest may be claimed for the period from that time to the date when the protected energy company entered energy administration.

(4) If the debt is due otherwise, interest may only be claimed if, before that date, a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.

(5) Interest under paragraph (4) may only be claimed for the period from the date of the demand to that of the protected energy company's entering energy administration and for all the purposes of the 1986 Act and the Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (6).

(6) The rate of interest to be claimed under paragraphs (3) and (4) is the rate specified in section 17 of the Judgments Act 1838 on the date when the protected energy company entered energy administration.

(7) Any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the protected energy company entered energy administration.

(8) All interest payable under paragraph (7) ranks equally whether or not the debts on which it is payable rank equally.

(9) The rate of interest payable under paragraph (7) is whichever is the greater of the rate specified under paragraph (6) or the rate applicable to the debt apart from the energy administration.

## **Debt payable at future time**

**57.** A creditor may prove for a debt of which payment was not yet due on the date when the protected energy company entered energy administration, subject to Rule 73 (adjustment of dividend where payment made before time).

## **Value of security**

**58.**—(1) A secured creditor may, with the agreement of the energy administrator or the leave of the court, at any time alter the value which he has, in his proof of debt, put upon his security.

(2) However, if a secured creditor has voted in respect of the unsecured balance of his debt he may re-value his security only with permission of the court.

## **Surrender for non-disclosure**

**59.**—(1) If a secured creditor omits to disclose his security in his proof of debt, he shall surrender his security for the general benefit of creditors, unless the court, on application by him, relieves him from the effect of this Rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just.



### **Redemption by energy administrator**

**60.**—(1) The energy administrator may at any time give notice to a creditor whose debt is secured that he proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the energy administrator may allow) in which, if he so wishes, to exercise his right to revalue his security (with the permission of the court, where Rule 58(2) applies).

If the creditor re-values his security, the energy administrator may only redeem at the new value.

(3) If the energy administrator redeems the security, the cost of transferring it is payable out of the assets.

(4) A secured creditor may at any time, by a notice in writing, call on the energy administrator to elect whether he will or will not exercise his power to redeem the security at the value then placed on it; and the energy administrator then has 3 months in which to exercise the power or determine not to exercise it.

### **Test of security's value**

**61.**—(1) Subject as follows, the energy administrator, if he is dissatisfied with the value which a secured creditor puts on his security (whether in his proof or by way of re-valuation under Rule 58), may require any property comprised in the security to be offered for sale.

(2) The terms of sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the energy administrator on behalf of the protected energy company, and the creditor on his own behalf, may appear and bid.

### **Realisation of security by creditor**

**62.** If a creditor who has valued his security subsequently realises it (whether or not at the instance of the energy administrator)—

- (a) the net amount realised shall be substituted for the value previously put by the creditor on the security; and
- (b) that amount shall be treated in all respects as an amended valuation made by him.

### **Notice of proposed distribution**

**63.**—(1) Where an energy administrator is proposing to make a distribution to creditors he shall give 28 days' notice of that fact.

(2) The notice given pursuant to paragraph (1) shall—

- (a) be sent to all creditors whose addresses are known to the energy administrator;
- (b) state whether the distribution is to preferential creditors or preferential creditors and unsecured creditors; and
- (c) where the energy administrator proposes to make a distribution 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<sup>(13)</sup>.

(3) Subject to paragraph (5), the energy administrator shall not declare a dividend unless he has by public advertisement invited creditors to prove their debts.

(4) A notice pursuant to paragraphs (1) or (3) shall—

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(13) 1986 c. 45; section 176A inserted by the Enterprise Act 2002 c. 40, section 252.

- (a) state that it is the intention of the energy administrator to make a distribution to creditors within the period of 2 months from the last date for proving;
- (b) specify whether the proposed dividend is interim or final;
- (c) specify a date up to which proofs may be lodged 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.

(5) A notice pursuant to paragraph (1) where a dividend is to be declared for preferential creditors, need only be given to those creditors in whose case he has reason to believe that their debts are preferential and public advertisement of the intended dividend need only be given if the energy administrator thinks fit.

#### **Admission or rejection of proofs**

**64.**—(1) Unless he has already dealt with them, within 7 days of the last date for proving, the energy administrator shall—

- (a) admit or reject proofs submitted to him; or
- (b) make such provision in respect of them as he thinks fit.

(2) The energy administrator is not obliged to deal with proofs lodged after the last date for proving, but he may do so, if he thinks fit.

(3) In the declaration of a dividend no payment shall be made more than once by virtue of the same debt.

#### **Declaration of dividend**

**65.**—(1) Subject to paragraph (2), within the 2 month period referred to in Rule 63(4)(a) the energy administrator shall proceed to declare the dividend to one or more classes of creditor of which he gave notice.

(2) Except with the permission of the court, the energy administrator shall not declare a dividend so long as there is pending any application to the court to reverse or vary a decision of his on a proof, or to expunge a proof or to reduce the amount claimed.

#### **Notice of declaration of a dividend**

**66.**—(1) Where the energy administrator declares a dividend he shall give notice of that fact to all creditors who have proved their debts.

- (2) The notice shall include the following particulars relating to the energy administration—
- (a) amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
  - (b) payments made by the energy administrator when acting as such;
  - (c) where the energy administrator proposes 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 of dividend and the rate of dividend;
  - (f) how he proposes to distribute the dividend; and
  - (g) whether, and if so when, any further dividend is expected to be declared.

### **Payments of dividends and related matters**

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

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

(3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

### **Notice of no dividend, or no further dividend**

68. If the energy administrator gives notice to creditors that he is unable to declare any dividend or (as the case may be) any further dividend, the notice shall 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 defraying the expenses of energy administration.

### **Proof altered after payment of dividend**

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

(2) Any dividend or dividends payable under paragraph (1) shall 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 expunged, or the amount is reduced, the creditor is liable to repay to the energy administrator any amount overpaid by way of dividend.

### **Secured creditors**

70.—(1) The following applies where a creditor re-values his security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of his unsecured claim ranking for dividend, the creditor shall forthwith repay to the energy administrator, for the credit of the energy administration, any amount received by him as dividend in excess of that to which he would be entitled having regard to the revaluation of the security.

(3) If the revaluation results in an increase of his unsecured claim, the creditor is entitled to receive from the energy 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 or dividends which he has failed to receive, having regard to the revaluation of the security.

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

### **Disqualification from dividend**

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

**Assignment of right to dividend**

72.—(1) If a person entitled to a dividend gives notice to the energy administrator that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, the energy administrator shall pay the dividend to that other accordingly.

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

**Debt payable at future time**

73.—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, he is entitled to 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 him, the amount remaining outstanding in respect of his admitted proof) shall 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 relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months in a decimalised form.

(3) In paragraph (2) "relevant date" means the date that the protected energy company entered energy administration.

**PART 8****THE ENERGY ADMINISTRATOR****Fixing of remuneration**

74.—(1) The energy administrator is entitled to receive remuneration for his services as such.

(2) The remuneration shall be fixed by reference to the time properly given by the insolvency practitioner (as energy administrator) and his staff in attending to matters arising in the energy administration.

(3) The remuneration of the energy administrator shall be fixed by the court and the energy administrator shall make an application to court accordingly.

(4) The energy administrator shall give at least 14 days' notice of his application to the following, who may appear or be represented—

- (a) the Secretary of State;
- (b) GEMA; and
- (c) the creditors of the protected energy company.

(5) In fixing the remuneration, the court shall have regard to the following matters—

- (a) the complexity (or otherwise) of the case;
- (b) any respects in which, in connection with the protected energy company's affairs, there falls on the energy administrator any responsibility of an exceptional kind or degree;

- (c) the effectiveness with which the energy administrator appears to be carrying out, or to have carried out, his duties as such; and
  - (d) the value and nature of the property with which he has to deal.
- (6) Where there are joint energy administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred to the court for settlement by order.
- (7) If the energy administrator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the protected energy company, profit costs shall not be paid unless this is authorised by the court.

## PART 9

### ENDING ENERGY ADMINISTRATION

#### **Final progress reports**

- 75.—(1) In this Part reference to a progress report is to a report in the form specified in Rule 32.
- (2) The final progress report means a progress report which includes a summary of—
- (a) the energy administrator’s proposals;
  - (b) any major amendments to, or deviations from, those proposals;
  - (c) the steps taken during the energy administration; and
  - (d) the outcome.

#### **Application to court**

- 76.—(1) An application to court under paragraph 79 of Schedule B1 to the 1986 Act for an order ending an energy administration shall have attached to it a progress report for the period since the last progress report (if any) or the date the protected energy company entered energy administration and a statement indicating what the applicant thinks should be the next steps for the protected energy company (if applicable).
- (2) Where such an application is made, the applicant shall—
- (a) give notice in writing to the applicant for the energy administration order (unless the applicant in both cases is the same) and the creditors of the protected energy company of his intention to apply to court at least 7 days before the date that he intends to make his application; and
  - (b) attach to the application to court a statement that he has notified the creditors, and copies of any response from creditors to that notification.
- (3) Where such an application is to be made other than by the energy administrator—
- (a) the applicant shall also give notice in writing to the energy administrator of his intention to apply to court at least 7 days before the date that he intends to make his application; and
  - (b) upon receipt of such written notice the energy administrator shall, before the end of the 7 day notice period, provide the applicant with a progress report for the period since the last progress report (if any) or the date the protected energy company entered energy administration.
- (4) Where the application is made other than by the Secretary of State, the application shall also state that it is made with the consent of the Secretary of State.

(5) Where the energy administrator applies to court under paragraph 79 of Schedule B1 to the 1986 Act in conjunction with a petition under section 124 of the 1986 Act<sup>(14)</sup> for an order to wind up the protected energy company, he shall, in addition to the requirements of paragraphs (2) and (4), notify the creditors whether he intends to seek appointment as liquidator.

#### **Notification by energy administrator of court order**

77.—(1) Where the court makes an order to end the energy administration, the energy administrator shall notify the registrar of companies in Form EA19, attaching a copy of the court order and a copy of the final progress report.

(2) Where the court makes such an order, it shall, where the applicant is not the energy administrator, give a copy of the order to the energy administrator.

#### **Moving from energy administration to creditors' voluntary liquidation**

78.—(1) Where for the purposes of paragraph 83(3) of Schedule B1 to the 1986 Act, the energy administrator sends a notice of moving from energy administration to creditors' voluntary liquidation to the registrar of companies, he shall do so in Form EA20 and shall attach to that notice a final progress report which must include details of the assets to be dealt with in the liquidation.

(2) As soon as reasonably practicable the energy administrator shall send a copy of the notice and attached document to—

- (a) all those who received notice of the energy administrator's appointment;
- (b) where the Secretary of State did not receive notice of the energy administrator's appointment, to the Secretary of State; and
- (c) where GEMA did not receive notice of the energy administrator's appointment, to GEMA.

(3) For the purposes of paragraph 83(7) of Schedule B1 to the 1986 Act, a person shall be nominated as liquidator in accordance with the provisions of Rule 20(2)(k) or Rule 31(2)(g) and his appointment takes effect—

- (a) by virtue of the energy administrator's proposals or revised proposals; or
- (b) where a creditors' meeting is held in accordance with Rule 23, as a consequence of such a meeting.

(4) GEMA must notify the Secretary of State before consenting to the energy administrator sending a notice of moving from energy administration to creditors' voluntary liquidation to the registrar of companies.

#### **Moving from energy administration to dissolution**

79.—(1) Where, for the purposes of paragraph 84(1) of Schedule B1 to the 1986 Act, the energy administrator sends a notice of moving from energy administration to dissolution to the registrar of companies, he shall do so in Form EA21 and shall attach to that notice a final progress report.

(2) As soon as reasonably practicable a copy of the notice and the attached document shall be sent to—

- (a) all those who received notice of the energy administrator's appointment;

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<sup>(14)</sup> 1986 c. 45; section 124 was amended by the Criminal Justice Act 1988 c. 33, section 62(2); the Companies Act 1989 c. 40, section 60(2); the Access to Justice Act 1999 c. 22, Schedule 13, paragraph 133; the Insolvency Act 2000 c. 39, section 1, Schedule 1, paragraphs 1 and 7; S.I. 2002/1240, regulation 8, the Courts Act 2003 c. 39, Schedule 8, paragraph 294, S.I. 2004/2326, regulation 73(4)(a), and the Companies (Audit, Investigations and Community Enterprise) Act 2004, c. 27, section 50(3).

- (b) where the Secretary of State did not receive notice of the energy administrator's appointment, the Secretary of State; and
  - (c) where GEMA did not receive notice of the energy administrator's appointment, to GEMA.
- (3) Where a court makes an order under paragraph 84(7) of Schedule B1 to the 1986 Act, it shall, where the applicant is not the energy administrator, give a copy of the order to the energy administrator.
- (4) The energy administrator shall use Form EA22 to notify the registrar of companies in accordance with paragraph 84(8) of Schedule B1 to the 1986 Act of any order made by the court under paragraph 84(7) of Schedule B1 to the 1986 Act.
- (5) GEMA must notify the Secretary of State before directing the energy administrator to send a notice of moving from energy administration to dissolution to the registrar of companies.

#### **Provision of information to the Secretary of State**

**80.** Where the energy administration ends pursuant to paragraph 79, 83 or 84 of Schedule B1 to the 1986 Act, the energy administrator shall, within 5 business days from the date of the end of the energy administration, provide the Secretary of State with the following information—

- (a) a breakdown of the relevant debts (within the meaning of section 169(4) of the 2004 Act) of the protected energy company, which remain outstanding; and
- (b) details of any shortfall (within the meaning of section 169(3)(a) of the 2004 Act) in the property of the protected energy company available for meeting those relevant debts.

## **PART 10**

### **REPLACING ENERGY ADMINISTRATOR**

#### **Grounds for resignation**

**81.—**(1) The energy administrator may give notice of his resignation on grounds of ill health or because—

- (a) he intends ceasing to be in practice as an insolvency practitioner, or
- (b) there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of energy administrator.

(2) The energy administrator may, with the permission of the court, give notice of his resignation on grounds other than those specified in paragraph (1).

#### **Notice of intention to resign**

**82.** The energy administrator shall in all cases give at least 7 days notice in Form EA23 of his intention to resign, or to apply for the court's permission to do so, to the following persons—

- (a) the Secretary of State;
- (b) GEMA;
- (c) if there is a continuing energy administrator of the protected energy company, to him; and
- (d) if there is no such energy administrator, to the protected energy company and its creditors.

#### **Notice of resignation**

**83.—**(1) The notice of resignation shall be in Form EA24.

(2) The notice shall be filed with the court, and a copy sent to the registrar of companies. A copy of the notice of resignation shall be sent not more than 5 business days after it has been filed with the court to all those to whom notice of intention to resign was sent.

#### **Application to court to remove energy administrator from office**

**84.**—(1) Any application under paragraph 88 of Schedule B1 to the 1986 Act shall state the grounds on which it is requested that the energy administrator should be removed from office.

(2) Service of the notice of the application shall be effected on the energy administrator, the Secretary of State, GEMA, the joint energy administrator (if any), and where there is not a joint energy administrator, to the protected energy company and all the creditors, including any floating charge holders, not less than 5 business days before the date fixed for the application to be heard.

(3) Where a court makes an order removing the energy administrator it shall give a copy of the order to the applicant who as soon as reasonably practicable shall send a copy to the energy administrator.

(4) The applicant shall also within 5 business days of the order being made send a copy of the order to all those to whom notice of the application was sent.

(5) A copy of the order shall also be sent to the registrar of companies in Form EA25 within the same time period.

#### **Notice of vacation of office when energy administrator ceases to be qualified to act**

**85.** Where the energy administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the protected energy company gives notice in accordance with paragraph 89 of Schedule B1 to the 1986 Act, he shall also give notice to the registrar of companies in Form EA25.

#### **Energy administrator deceased**

**86.**—(1) Subject as follows, where the energy administrator has died, it is the duty of his personal representatives to give notice of the fact to the court, specifying the date of death. This does not apply if notice has been given under either paragraph (2) or (3) of this Rule.

(2) If the deceased energy administrator was a partner in a firm, notice may be given by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.

(3) Notice of the death may be given by any person producing to the court the relevant death certificate or a copy of it.

(4) Where a person gives notice to the court under this Rule, he shall also give notice to the registrar of companies in Form EA25.

#### **Application to replace**

**87.**—(1) Where an application is made to court under paragraph 91(1) of Schedule B1 to the 1986 Act to appoint a replacement energy administrator, the application shall be accompanied by a written statement in Form EA2 by the person proposed to be the replacement energy administrator.

(2) A copy of the application shall be served, in addition to those persons listed in section 156(2) of the 2004 Act and Rule 8(3), on the person who made the application for the energy administration order.

(3) Rule 10 shall apply to the service of an application under paragraph 91(1) of Schedule B1 of the 1986 Act as it applies to service in accordance with Rule 8.



(4) Rules 11, 12 and 13(1) and 13(2) apply to an application under paragraph 91(1) of Schedule B1 to the 1986 Act.

#### **Notification and advertisement of appointment of replacement energy administrator**

**88.** Where a replacement energy administrator is appointed, the same provisions apply in respect of giving notice of, and advertising, the replacement appointment as in the case of the appointment (subject to Rule 90), and all statements, consents etc as are required shall also be required in the case of the appointment of a replacement. All forms and notices shall clearly identify that the appointment is of a replacement energy administrator.

#### **Notification and advertisement of appointment of joint energy administrator**

**89.** Where, after an initial appointment has been made, an additional person or persons are to be appointed as joint energy administrator the same Rules shall apply in respect of giving notice of and advertising the appointment as in the case of the initial appointment, subject to Rule 90.

#### **Notification to registrar of companies**

**90.** The replacement or additional energy administrator shall send notice of the appointment in Form EA26 to the registrar of companies.

#### **Energy administrator's duties on vacating office**

**91.—(1)** Where the energy administrator ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner, he is under obligation as soon as reasonably practicable to deliver up to the person succeeding him as energy administrator the assets (after deduction of any expenses properly incurred and distributions made by him) and further to deliver up to that person—

- (a) the records of the energy administration, including correspondence, proofs and other related papers appertaining to the energy administration while it was within his responsibility; and
- (b) the protected energy company's books, papers and other records.

(2) If the energy administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

## **PART 11**

### **COURT PROCEDURE AND PRACTICE**

#### **CHAPTER 1**

##### *Applications*

#### **Preliminary**

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

#### **Interpretation**

**93.—(1)** In this Chapter, except in so far as the context otherwise requires—

“originating application” means an application to the court which is not an application in pending proceedings before the court; and

“ordinary application” means any other application to the court.

(2) Every application shall be in the form appropriate to the application concerned.

### **Form and contents of application**

**94.**—(1) Each application shall be in writing and shall state—

- (a) the names of the parties;
- (b) the nature of the relief or order applied for or the directions sought from the court;
- (c) the names and addresses of the persons (if any) on whom it is intended to serve the application or that no person is intended to be served;
- (d) where the 1986 Act, Schedule B1 to the 1986 Act or the Rules require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
- (e) the applicant’s address for service.

(2) An originating application shall set out the grounds on which the applicant claims to be entitled to the relief or order sought.

(3) The application must be signed by the applicant if he is acting in person or, when he is not so acting, by or on behalf of his solicitor.

### **Application under section 176A(5) of the 1986 Act to disapply section 176A of the 1986 Act**

**95.**—(1) An application under section 176A(5) of the 1986 Act<sup>(15)</sup> shall be accompanied by an affidavit prepared and sworn by the energy administrator.

(2) The affidavit shall state—

- (a) that the application arises in the course of an energy administration;
- (b) a summary of the financial position of the protected energy company;
- (c) the information substantiating the energy administrator’s view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits; and
- (d) whether any other insolvency practitioner is acting in relation to the protected energy company and if so his address.

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

**96.**—(1) The application shall be filed in court, 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) Subject as follows in this Rule and in the next, or unless the Rule under which the application is brought provides otherwise, or the court otherwise orders, upon the presentation of the documents mentioned in paragraph (1), the court shall fix a venue for the application to be heard.

(3) Unless the court otherwise directs, the applicant shall serve a sealed copy of the application, endorsed with the venue of the hearing, on the respondent named in the application (or on each respondent if more than one).

(4) The court may give any of the following directions—

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<sup>(15)</sup> 1986 c. 45; section 176A inserted by the Enterprise Act 2002 c. 40, section 252.

- (a) that the application be served upon persons other than those specified by the relevant provision of the 1986 Act, Schedule B1 to the 1986 Act or the Rules;
- (b) that the giving of notice to any person may be dispensed with;
- (c) that notice be given in some way other than that specified in paragraph (3).

(5) Unless the provision of the 1986 Act, Schedule B1 to the 1986 Act or the Rules under which the application is made provides otherwise, and subject to the next paragraph, the application must be served at least 14 days before the date fixed for the hearing.

(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 fit.

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

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

#### **Other hearings *ex parte***

**98.**—(1) Where the relevant provisions of the 1986 Act, Schedule B1 to the 1986 Act or the Rules do not require service of the application on, or notice of it to be given to, any person, the court may hear the application *ex parte*.

(2) Where the application is properly made *ex parte*, the court may hear it forthwith, without fixing a venue as required by Rule 96(2).

(3) Alternatively, the court may fix a venue for the application to be heard, in which case Rule 96(2) applies (so far as relevant).

#### **Hearing of application**

**99.**—(1) Unless allowed or authorised to be made otherwise, every application before the registrar shall, and every application before the judge may, be heard in chambers.

(2) Unless either—

- (a) the judge has given a general or special direction to the contrary, or
- (b) it is not within the registrar's power to make the order required,

the jurisdiction of the court to hear and determine the application may be exercised by the registrar, and the application shall be made to the registrar in the first instance.

(3) Where the application is made to the registrar he may refer to the judge any matter which he thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the registrar with such direction as he thinks fit.

(4) Nothing in this Rule precludes an application being made directly to the judge in a proper case.

**Use of affidavit evidence**

**100.**—(1) In any proceedings evidence may be given by affidavit unless by any provision of the Rules it is otherwise provided or the court otherwise directs; but the court may, on the application of any party, order the attendance for cross-examination of the person making the affidavit.

(2) Where, after such an order has been made, the person in question does not attend, his affidavit shall not be used in evidence without the leave of the court.

**Filing and service of affidavits**

**101.**—(1) Unless the provisions of the 1986 Act, Schedule B1 to the 1986 Act or the Rules under which the application is made provide otherwise, or the court otherwise allows—

- (a) if the applicant intends to rely at the first hearing on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies 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 to rely for that purpose on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the applicant, not less than 7 days before the date fixed for the hearing.

(2) Any affidavit may be sworn by the applicant or by the respondent or by some other person possessing direct knowledge of the subject matter of the application.

**Use of reports**

**102.**—(1) A report may be filed in court instead of an affidavit, unless the application involves other parties or the court otherwise orders, by the energy administrator.

(2) In any case where a report is filed instead of an affidavit, the report shall be treated for the purpose of Rule 101(1) and any hearing before the court as if it were an affidavit.

**Adjournment of hearings; directions**

**103.**—(1) The court may adjourn the hearing of an application on such terms (if any) as it thinks fit.

(2) The court may at any time give such directions as it thinks fit as to—

- (a) service or notice of the application on or to any person, whether in connection with the venue of a resumed hearing or for any other purpose;
- (b) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application;
- (c) the manner in which any evidence is to be adduced at a resumed hearing and in particular (but without prejudice to the generality of this sub-paragraph) as to—
  - (i) the taking of evidence wholly or in part by affidavit or orally;
  - (ii) the cross-examination either before the judge or registrar on the hearing in court or in chambers, of any deponents to affidavits; and
  - (iii) any report to be given by the energy administrator;
- (d) the matters to be dealt with in evidence.

## CHAPTER 2

### *Shorthand writers*

#### **Nomination and appointment of shorthand writers**

**104.**—(1) In the High Court the judge may in writing nominate one or more persons to be official shorthand writers to the court.

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

#### **Remuneration**

**105.**—(1) The remuneration of a shorthand writer appointed in energy administration proceedings shall be paid by the party at whose instance the appointment was made, or out of the assets of the protected energy company, or otherwise, as the court may direct.

(2) Any question arising as to the rates of remuneration payable under this Rule shall be determined by the court in its discretion.

## CHAPTER 3

### *Enforcement procedures*

#### **Enforcement of court orders**

**106.** In any energy administration proceedings, orders of the court may be enforced in the same manner as a judgment to the same effect.

#### **Orders enforcing compliance with the Rules**

**107.**—(1) The court may, on application by the energy 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 in energy administration), or
- (b) section 235 of the 1986 Act<sup>(16)</sup> (duty of various persons to co-operate with energy administrator).

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

#### **Warrant under section 236 of the 1986 Act**

**108.**—(1) A warrant issued by the court under section 236 of the 1986 Act (inquiry into insolvent company's dealings) shall be addressed to such officer of the High Court as the warrant specifies, or to any constable.

(2) The persons referred to in section 236(5) of the 1986 Act (court's powers of enforcement) as the prescribed officer of the court are the tipstaff and his assistants of the court.

(3) In this Chapter references to property include books, papers and records.

(4) When a person is arrested under a warrant issued under section 236 of the 1986 Act, the officer arresting him shall forthwith bring him before the court issuing the warrant in order that he may be examined.

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<sup>(16)</sup> 1986 c. 45; section 235 amended by the Enterprise Act 2002 c. 40, Schedule 17, paragraph 24.

(5) If he cannot immediately be brought up for examination, the officer shall deliver him into the custody of the governor of the prison named in the warrant, who shall keep him in custody and produce him before the court as it may from time to time direct.

(6) After arresting the person named in the warrant, the officer shall forthwith 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 person's examination.

(7) The court shall appoint the earliest practicable time for the examination, and shall—

- (a) direct the governor of the prison to produce the person for examination at the time and place appointed, and
- (b) forthwith give notice of the venue to the person who applied for the warrant.

(8) Any property in the arrested person's possession which may be seized shall be—

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

as may be directed by the court.

## CHAPTER 4

### *Court records and returns*

#### **Title of proceedings**

**109.** Every energy administration proceeding shall, with any necessary additions, be intitled "IN THE MATTER OF . . . (naming the protected energy company to which the proceedings relate) AND IN THE MATTER OF THE INSOLVENCY ACT 1986 AND THE ENERGY ACT 2004".

#### **Court records**

**110.** The court shall keep records of all energy administration proceedings, and shall cause to be entered in the records the taking of any step in the proceedings, and such decisions of the court in relation thereto, as the court thinks fit.

#### **Inspection of records**

**111.—**(1) Subject as follows, the court's records of energy administration proceedings shall be open to inspection by any person.

(2) If in the case of a person applying to inspect the records the registrar is not satisfied as to the propriety of the purpose for which inspection is required, he may refuse to allow it. That person may then apply forthwith and *ex parte* to the judge, who may refuse the inspection or allow it on such terms as he thinks fit.

(3) The decision of the judge under paragraph (2) is final.

#### **File of court proceedings**

**112.—**(1) In respect of all energy administration proceedings, the court shall open and maintain a file for each case; and (subject to directions of the registrar) all documents relating to such proceedings shall be placed on the relevant file.

(2) No energy administration proceedings shall be filed in the Central office of the High Court.

### **Right to inspect file**

**113.**—(1) In the case of any energy administration proceedings, the following have the right, at all reasonable times, to inspect the court's file of the proceedings—

- (a) the Secretary of State;
- (b) GEMA;
- (c) the energy administrator;
- (d) any person stating himself in writing to be a creditor of the protected energy company to which the energy administration proceedings relate; and
- (e) every person who is, or at any time has been, a director or officer of the protected energy company to which the energy administration proceedings relate, or who is a member of the protected energy company.

(2) The right of inspection conferred as above on any person may be exercised on his behalf by a person properly authorised by him.

(3) Any person may, by leave of the court, inspect the file.

(4) The right of inspection conferred by this Rule is not exercisable in the case of documents, or parts of documents, as to which the court directs (either generally or specially) that they are not to be made open to inspection without the court's leave.

An application for a direction of the court under this paragraph may be made by the energy administrator or by any party appearing to the court to have an interest.

(5) If, for the purpose of powers conferred by the 1986 Act, Schedule B1 to the 1986 Act, the Rules or the Insolvency Rules, the Secretary of State, the Department or the official receiver wishes to inspect the file of any energy administration proceedings, and requests the transmission of the file, the court shall comply with such request (unless the file is for the time being in use for the court's purposes).

(6) Paragraphs (2) and (3) of Rule 111 apply in respect of the court's file of any energy administration proceedings as they apply in respect of court records.

### **Filing of Gazette notices and advertisements**

**114.**—(1) In any court in which energy administration proceedings are pending, an officer of the court shall file a copy of every issue of the Gazette which contains an advertisement relating to those proceedings.

(2) Where there appears in a newspaper an advertisement relating to energy administration proceedings pending in any court, the person inserting the advertisement shall file a copy of it in that court.

The copy of the advertisement shall be accompanied by, or have endorsed on it, such particulars as are necessary to identify the proceedings and the date of the advertisement's appearance.

(3) An officer of any court in which energy administration proceedings are pending shall from time to time file a memorandum giving the dates of, and other particulars relating to, any notice published in the Gazette, and any newspaper advertisements, which relate to proceedings so pending.

The officer's memorandum is prima facie evidence that any notice or advertisement mentioned in it was duly inserted in the issue of the newspaper or the Gazette which is specified in the memorandum.

## CHAPTER 5

### *Costs and detailed assessment*

#### **Application of CPR**

**115.** Subject to provision to inconsistent effect made as follows in this Chapter, CPR Part 43 (scope of costs rules and definitions), Part 44 (general rules about costs), Part 45 (fixed costs), Part 47 (procedure for detailed assessment of costs and default provisions) and Part 48 (costs-special cases) shall apply to energy administration proceedings with any necessary modifications.

#### **Requirement to assess costs by the detailed procedure**

**116.**—(1) Subject as follows, where the costs, charges or expenses of any person are payable out of the assets of the protected energy company, the amount of those costs, charges or expenses shall be decided by detailed assessment unless agreed between the energy administrator and the person entitled to payment, and in the absence of such agreement the energy administrator may serve notice in writing requiring that person to commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions) in the court to which the energy administration proceedings are allocated or, where in relation to a protected energy company there is no such court, in any court having jurisdiction to wind up the protected energy company.

(2) Where the amount of the costs, charges or expenses of any person employed by a energy administrator in energy administration proceedings are required to be decided by detailed assessment or fixed by order of the court this does not preclude the energy administrator from making payments on account to such person on the basis of an undertaking by that person to repay immediately any money which may, when detailed assessment is made, prove to have been overpaid, with interest at the rate specified in section 17 of the Judgments Act 1838(17) on the date payment was made and for the period from the date of payment to that of repayment.

(3) In any proceedings before the court, the court may order costs to be decided by detailed assessment.

#### **Procedure where detailed assessment required**

**117.**—(1) Before making a detailed assessment of the costs of any person employed in energy administration proceedings by an energy administrator, the costs officer shall require a certificate of employment, which shall be endorsed on the bill and signed by the energy administrator.

(2) The certificate shall 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 energy administration proceedings are required to be decided by detailed assessment shall, on being required in writing to do so by the energy administrator, commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(4) If that person does not commence detailed assessment proceedings within 3 months of the requirement under paragraph (3), or within such further time as the court, on application, may permit,

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(17) 1838 c. 110, as amended by the Civil Procedure Acts Repeal Act 1879, section 2, Schedule 1, Part 1, the Statute Law Revision (No. 2) Act 1888, S.I. 1993/564, article 2, 1998/2940, article 3(a), (b) and (c).



the energy administrator may deal with the assets of the protected energy company without regard to any claim by that person, whose claim is forfeited by such failure to commence proceedings.

(5) Where in any such case such a claim lies additionally against an energy administrator in his personal capacity, that claim is also forfeited by such failure to commence proceedings.

#### **Costs paid otherwise than out of the assets of the protected energy company**

**118.** 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 protected energy company, the costs officer shall note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

#### **Award of costs against energy administrator**

**119.** Without prejudice to any provision of the 1986 Act, Schedule B1 to the 1986 Act or the Rules by virtue of which the energy administrator is not in any event to be liable for costs and expenses, where an energy administrator is made a party to any proceedings on the application of another party to the proceedings, he shall not be personally liable for costs unless the court otherwise directs.

#### **Application for costs**

**120.—(1)** This Rule applies where a party to, or person affected by, any energy administration proceedings—

- (a) applies to the court for an order allowing his costs, or part of them, incidental to the proceedings, and
- (b) that application is not made at the time of the proceedings.

(2) The person concerned shall serve a sealed copy of his application on the energy administrator.

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

(4) No costs of or incidental to the application shall 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**

**121.—(1)** Except as directed by the court, no allowance as a witness in any examination or other proceedings before the court shall be made to an officer of the protected energy company to which the energy administration proceedings relate.

(2) A person making any application in energy administration proceedings shall not be regarded as a witness on the hearing of the application, but the costs officer may allow his expenses of travelling and subsistence.

#### **Final costs certificate**

**122.—(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 rules of the court.

(2) Where it is proved to the satisfaction of a costs officer that a final costs certificate has been lost or destroyed, he may issue a duplicate.

## CHAPTER 6

### *Persons incapable of managing their affairs*

#### **Introductory**

**123.**—(1) The Rules in this Chapter apply where in energy administration proceedings it appears to the court that a person affected by the proceedings is one who is incapable of managing and administering his property and affairs either—

- (a) by reason of mental disorder within the meaning of the Mental Health Act 1983(18); or
- (b) due to physical affliction or disability.

(2) The person concerned is referred to as “the incapacitated person”.

#### **Appointment of another person to act**

**124.**—(1) The court may appoint such person as it thinks fit to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for his 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, or
- (b) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application, or
- (c) the energy administrator.

(4) Application under paragraph (3) may be made *ex parte*; but the court may require such notice of the application as it thinks necessary to be given 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 given.

#### **Affidavit in support of application**

**125.** An application under Rule 124(3) shall be supported by an affidavit of a registered medical practitioner as to the mental or physical condition of the incapacitated person.

#### **Services of notices following appointment**

**126.** Any notice served on, or sent to, a person appointed under Rule 124 has the same effect as if it had been served on, or given to, the incapacitated person.

## CHAPTER 7

### *Appeals in energy administration proceedings*

#### **Appeals and reviews of energy administration orders**

**127.**—(1) Every court having jurisdiction under the 1986 Act to wind up companies may review, rescind or vary any order made by it in the exercise of that jurisdiction.

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(18) 1983 c. 20.

(2) An appeal from a decision made in the exercise of that jurisdiction by a registrar of the High Court lies to a single judge of the High Court; and an appeal from a decision of that judge on such an appeal lies, with the leave of that judge or the Court of Appeal, to the Court of Appeal.

### **Procedure on appeal**

**128.**—(1) Subject as follows, the procedure and practice of the Supreme Court relating to appeals to the Court of Appeal apply to appeals in energy administration proceedings.

(2) In relation to any appeal to a single judge of the High Court under Rule 127 above, any reference in the CPR to the Court of Appeal is replaced by a reference to that judge and any reference to the registrar of civil appeals is replaced by a reference to the registrar of the High Court who deals with energy administration proceedings.

(3) In energy administration proceedings, the procedure under CPR Part 52 (appeals to the Court of Appeal) is by ordinary application and not by application notice.

## **CHAPTER 8**

### *General*

### **Principal court rules and practice to apply**

**129.**—(1) The CPR and the practice and procedure of the High Court (including any practice direction) apply to energy administration proceedings with any necessary modifications, except so far as inconsistent with the Rules.

(2) All energy administration proceedings shall be allocated to the multi-track for which CPR Part 29 (the multi-track) makes provision; accordingly those provisions of the CPR which provide for allocation questionnaires and track allocation will not apply.

### **Right of audience**

**130.** Rights of audience in energy administration proceedings are the same as obtain in insolvency proceedings.

### **Right of attendance**

**131.**—(1) Subject as follows, in energy administration proceedings, any person stating himself in writing, in records kept by the court for that purpose, to be a creditor or member of the protected energy company is entitled, at his own cost, to attend in court or in chambers at any stage of the proceedings.

(2) Attendance may be by the person himself, or his solicitor.

(3) A person so entitled may request the court in writing to give him notice of any step in the energy administration proceedings; and, subject to his paying the costs involved and keeping the court informed as to his address, the court shall comply with the request.

(4) If the court is satisfied that the exercise by a person of his rights under this Rule has given rise to costs for the assets of the protected energy company which would not otherwise have been incurred and ought not, in the circumstances, to fall on that estate, it may direct that the costs be paid by the person concerned, to an amount specified.

The rights of that person under this Rule shall be in abeyance so long as those costs are not paid.

(5) The court may appoint one or more persons to represent the creditors or the members of a protected energy company, or any class of them, to have the rights conferred by this Rule, instead of the rights being exercised by any or all of them individually.

If two or more persons are appointed under this paragraph to represent the same interest, they must (if at all) instruct the same solicitor.

### **Energy administrator's solicitor**

**132.** Where in energy administration proceedings the attendance of the energy administrator's solicitor is required, whether in court or in chambers, the energy administrator himself need not attend, unless directed by the court.

### **Formal defects**

**133.** No energy administration proceedings shall be invalidated by any formal defect or by 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.

### **Restriction on concurrent proceedings and remedies**

**134.** Where in energy administration proceedings the court makes an order staying any action, execution or other legal process against the property of a protected energy company, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the claimant or other party having the carriage of the proceedings to be stayed.

### **Affidavits**

**135.—(1)** Subject to the following paragraphs of this Rule, the practice and procedure of the High Court with regard to affidavits, their form and contents, and the procedure governing their use, are to apply to all energy administration proceedings.

(2) Where in energy administration proceedings, an affidavit is made by the energy administrator he shall state the capacity in which he makes it, the position which he holds and the address at which he works.

(3) A creditor's affidavit of debt may be sworn before his own solicitor.

(4) Any officer of the court duly authorised in that behalf, may take affidavits and declarations.

(5) Subject to paragraph (6), where the Rules provide for the use of an affidavit, a witness statement verified by a statement of truth may be used as an alternative.

(6) Paragraph (5) does not apply to Rules 149 and 150.

(7) Where paragraph (5) applies, any form prescribed by Rule 160 shall be modified accordingly.

### **Security in court**

**136.—(1)** Where security has to be given to the court (otherwise than in relation to costs), it may be given by guarantee, bond or the payment of money into court.

(2) A person proposing to give a bond as security shall give notice to the party in whose favour the security is required, and to the court, naming those who are to be sureties to the bond.

(3) The court shall forthwith give notice to the parties concerned of a venue for the execution of the bond and the making of any objection to the sureties.

(4) The sureties shall make an affidavit of their sufficiency (unless dispensed with by the party in whose favour the security is required) and shall, if required by the court, attend the court to be cross-examined.

### **Payment into court**

137. The CPR relating to payment into and out of court of money lodged in court as security for costs apply to money lodged in court under the Rules.

### **Further information and disclosure**

138.—(1) Any party to energy administration proceedings may apply to the court for an order—

(a) that any other party—

(i) clarify any matter which is in dispute in the proceedings, or

(ii) give additional information in relation to any such matter,

in accordance with CPR Part 18 (further information); or

(b) to obtain disclosure from any other party in accordance with CPR Part 31 (disclosure and inspection of documents).

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

### **Office copies of documents**

139.—(1) Any person who has under the Rules the right to inspect the court file of energy administration proceedings may require the court to provide him with an office copy of any document from the file.

(2) A person's right under this Rule may be exercised on his behalf by his solicitor.

(3) An office copy provided by the court under this Rule shall be in such form as the registrar thinks appropriate, and shall bear the court's seal.

## **PART 12**

### **PROXIES AND COMPANY REPRESENTATION**

#### **Definition of proxy**

140.—(1) For the purposes of the Rules, a proxy is an authority given by a person ("the principal") to another person ("the proxy-holder") to attend a meeting and speak and vote as his representative.

(2) Proxies are for use at creditors' meetings or company meetings summoned or called under Schedule B1 to the 1986 Act or the Rules.

(3) Only one proxy may be given by a person for any one meeting at which he desires to be represented; and it may only be given to one person, being an individual aged 18 years or over. But the principal may specify one or more other such individuals to be proxy-holder in the alternative, in the order in which they are named in the proxy.

(4) Without prejudice to the generality of paragraph (3), a proxy for a particular meeting may be given to whoever is to be the chairman of the meeting; and such chairman cannot decline to be the proxy-holder in relation to that proxy.

(5) A proxy requires the holder to give the principal's vote on matters arising for determination at the meeting, or to abstain, or to propose, in the principal's name, a resolution to be voted on by the meeting, either as directed or in accordance with the holder's own discretion.

**Issue and use of forms**

**141.**—(1) When notice is given of a meeting to be held in energy administration proceedings and forms of proxy are sent out with the notice, no form so sent out shall have inserted in it the name or description of any person.

(2) No form of proxy shall be used at any meeting except that which is sent with the notice summoning the meeting, or a substantially similar form.

(3) A form of proxy shall be signed by the principal, or by some person authorised by him (either generally or with reference to a particular meeting). If the form is signed by a person other than the principal, the nature of the authority of that person shall be stated.

**Use of proxies at meetings**

**142.**—(1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

(2) Where the energy administrator holds proxies to be used by him as chairman of a meeting, and some other person acts as chairman, that other person may use the energy administrator's proxies as if he were himself proxy-holder.

(3) Where a proxy directs a proxy-holder to vote for or against a resolution for the appointment of a person other than the energy administrator as proposed liquidator of the protected energy company, the proxy-holder may, unless the proxy states otherwise, vote for or against (as he thinks fit) any resolution for the appointment of that person jointly with another or others.

(4) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which by virtue of the proxy he would be entitled to vote.

(5) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at his discretion on resolutions put to the meeting which are not dealt with in the proxy.

**Retention of proxies**

**143.**—(1) Subject as follows, proxies used for voting at any meeting shall be retained by the chairman of the meeting.

(2) The chairman shall deliver the proxies forthwith after the meeting to the energy administrator (where that is someone other than himself).

**Right of inspection**

**144.**—(1) The energy administrator shall, so long as proxies lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by—

- (a) the creditors, in the case of proxies used at a meeting of creditors, and
- (b) a protected energy company's members, in the case of proxies used at a meeting of the protected energy company.

(2) The reference in paragraph (1) to creditors is a reference to those persons who have submitted in writing a claim to be creditors of the protected energy company but does not include a person whose proof or claim has been wholly rejected for the purposes of voting, dividend or otherwise.

(3) The right of inspection given by this Rule is also exercisable by the directors of the protected energy company.

(4) Any person attending a meeting in energy administration proceedings is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents (including proofs) sent or given, in accordance with directions contained in any notice convening the meeting, to the

chairman of that meeting or to any other person by a creditor or member for the purpose of that meeting.

#### **Proxy-holder with financial interest**

**145.**—(1) A proxy-holder shall not vote in favour of any resolution which would directly or indirectly place him, or any associate of his, in a position to receive any remuneration out of the assets of the protected energy company, unless the proxy specifically directs him to vote in that way.

(2) Where a proxy-holder has signed the proxy as being authorised to do so by his principal and the proxy specifically directs him to vote in the way mentioned in paragraph (1), he shall nevertheless not vote in that way unless he produces to the chairman of the meeting written authorisation from his principal sufficient to show that the proxy-holder was entitled so to sign the proxy.

(3) This Rule applies also to any person acting as chairman of a meeting and using proxies in that capacity under Rule 142; and in its application to him, the proxy-holder is deemed an associate of his.

(4) In this Rule “associate” shall have the same meaning as in section 435 of the 1986 Act.

#### **Company representation**

**146.**—(1) Where a person is authorised under section 375 of the Companies Act(19) to represent a corporation at a meeting of creditors or of the protected energy company he shall produce to the chairman of the meeting a copy of the resolution from which he derives his authority.

(2) The copy resolution must be under the seal of the corporation, or certified by the secretary or a director of the corporation to be a true copy.

(3) Nothing in this Rule requires the authority of a person to sign a proxy on behalf of a principal which is a corporation to be in the form of a resolution of that corporation.

## **PART 13**

### **EXAMINATION OF PERSONS IN ENERGY ADMINISTRATION PROCEEDINGS**

#### **Preliminary**

**147.**—(1) The Rules in this Part relate to applications to the court, made by the energy administrator, for an order under section 236 of the 1986 Act (inquiry into protected energy company’s dealings when it is, or is alleged to be, insolvent).

(2) The following definitions apply—

- (a) the person in respect of whom an order is applied for is “the respondent”;
- (b) “section 236” means section 236 of the 1986 Act.

#### **Form and contents of application**

**148.**—(1) The application shall be in writing, and be accompanied by a brief statement of the grounds on which it is made.

(2) The respondent must be sufficiently identified in the application.

(3) It shall be stated whether the application is for the respondent—

- (a) to be ordered to appear before the court, or

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(19) 1985 c. 6.

- (b) to be ordered to clarify any matter which is in dispute in the proceedings or to give additional information in relation to any such matter and if so CPR Part 18 (further information) shall apply to any such order, or
  - (c) to submit affidavits (if so, particulars are to be given of the matters to which he is required to swear), or
  - (d) to produce books, papers or other records (if so, the items in question are to be specified), or for any two or more of those purposes.
- (4) The application may be made *ex parte*.

### **Order for examination, etc**

**149.**—(1) The court may, whatever the purpose of the application, make any order which it has power to make under section 236.

(2) The court, if it orders the respondent to appear before it, shall specify a venue for his appearance, which shall be not less than 14 days from the date of the order.

(3) If he is ordered to submit affidavits, the order shall specify—

- (a) the matters which are to be dealt with in his affidavits, and
- (b) the time within which they are to be submitted to the court.

(4) If the order is to produce books, papers or other records, the time and manner of compliance shall be specified.

(5) The order must be served forthwith on the respondent; and it must be served personally, unless the court otherwise orders.

### **Procedure for examination**

**150.**—(1) At any examination of the respondent, the energy administrator may attend in person, or be represented by a solicitor with or without counsel, and may put such questions to the respondent as the court may allow.

(2) If the respondent is ordered to clarify any matter or to give additional information, the court shall direct him as to the questions which he is required to answer, and as to whether his answers (if any) are to be made on affidavit.

(3) Where application has been made under section 236 on information provided by a creditor of the protected energy company, that creditor may, with the leave of the court and if the energy administrator does not object, attend the examination and put questions to the respondent (but only through the energy administrator).

(4) The respondent may at his own expense employ a solicitor with or without counsel, who may put to him such questions as the court may allow for the purpose of enabling him to explain or qualify any answers given by him, and may make representations on his behalf.

(5) There shall be made in writing such record of the examination as the court thinks proper. The record shall be read over either to or by the respondent and signed by him at a venue fixed by the court.

(6) The written record may, in any proceedings (whether under the 1986 Act or otherwise), be used as evidence against the respondent of any statement made by him in the course of his examination.



### **Record of examination**

**151.**—(1) Unless the court otherwise directs, the written record of the respondent’s examination, and any response given by him to any order under CPR Part 18, and any affidavits submitted by him in compliance with an order of the court under section 236, shall not be filed in court.

(2) The written record, responses and affidavits shall not be open to inspection, without an order of the court, by any person other than the energy administrator.

(3) Paragraph (2) applies also to so much of the court file as shows the grounds of the application for an order under section 236 and to any copy of any order sought under CPR Part 18.

(4) The court may from time to time give directions as to the custody and inspection of any documents to which this Rule applies, and as to the furnishing of copies of, or extracts from, such documents.

### **Costs of proceedings under section 236**

**152.**—(1) Where the court has ordered an examination of a person under section 236, and it appears to it that the examination was made necessary because information had been unjustifiably refused by the respondent, it may order that the costs of the examination be paid by him.

(2) Where the court makes an order against a person under section 237(1) or (2) of the 1986 Act (court’s enforcement powers under section 236), the costs of the application for the order may be ordered by the court to be paid by the respondent.

(3) Subject to paragraphs (1) and (2) above, the energy administrator’s costs shall, unless the court otherwise orders, be paid out of the assets of the protected energy company.

(4) A person summoned to attend for examination under this Part shall be tendered a reasonable sum in respect of travelling expenses incurred in connection with his attendance. Other costs falling on him are at the court’s discretion.

## **PART 14**

### **MISCELLANEOUS AND GENERAL**

#### **Power of Secretary of State to regulate certain matters**

**153.**—(1) Pursuant to paragraph 27 of Schedule 8 to the 1986 Act the Secretary of State may, subject to the 1986 Act, the 2004 Act, Schedule B1 to the 1986 Act and the Rules, make regulations with respect to any matter provided for in the Rules as relates to the carrying out of the functions of an energy administrator of a protected energy company, including, without prejudice to the generality of the foregoing provision, with respect to the following matters arising in an energy administration—

- (a) the preparation and keeping of books, accounts and other records, and their production to such persons as may be authorised or required to inspect them;
- (b) the auditing of an energy administrator’s accounts;
- (c) the manner in which an energy administrator is to act in relation to the protected energy company’s books, papers and other records, and the manner of their disposal by the energy administrator or others;
- (d) the supply by the energy administrator to creditors and members of the protected energy company of copies of documents relating to the energy administration and the affairs of the protected energy company (on payment, in such cases as may be specified by the regulations, of the specified fee).

(2) Regulations made pursuant to paragraph (1) may—

- (a) confer discretion on the court;
- (b) make non-compliance with any of the regulations a criminal offence;
- (c) make different provision for different cases, including different provision for different areas; and
- (d) contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient.

### **Costs, expenses, etc**

**154.**—(1) All fees, costs, charges and other expenses incurred in the course of the energy administration proceedings are to be regarded as expenses of the energy administration.

(2) The costs associated with the prescribed part shall be paid out of the prescribed part.

### **Provable debts**

**155.**—(1) Subject as follows, in energy administration all claims by creditors are provable as debts against the protected energy company, whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) Any obligation arising under a confiscation order made under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002<sup>(20)</sup> is not provable.

(3) The following are not provable except at a time when all other claims of creditors in the energy administration proceedings (other than any of a kind mentioned in this paragraph) have been paid in full with interest under Rule 56—

- (a) any claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000<sup>(21)</sup>, not being a claim also arising by virtue of section 382(1)(b) of that Act;
- (b) any claim which by virtue of the 1986 Act or any other enactment is a claim the payment of which is to be postponed.

(4) Nothing in this Rule prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

### **Notices**

**156.**—(1) All notices required or authorised by or under the 1986 Act, the 2004 Act, Schedule B1 to the 1986 Act or the Rules to be given must be in writing, unless it is otherwise provided, or the court allows the notice to be given in some other way.

(2) Where in energy administration proceedings a notice is required to be sent or given by the energy administrator, the sending or giving of it may be proved by means of a certificate by him, or his solicitor, or a partner or an employee of either of them, that the notice was duly posted.

(3) In the case of a notice to be sent or given by a person other than the energy administrator, the sending or giving of it may be proved by means of a certificate by that person that he posted the notice, or instructed another person (naming him) to do so.

(4) A certificate under this Rule may be endorsed on a copy or specimen of the notice to which it relates.

<sup>(20)</sup> 2002 c. 29.

<sup>(21)</sup> 2000 c. 8.

### **Quorum at meeting of creditors**

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

(2) Subject to the next paragraph, a quorum is at least one creditor entitled to vote.

(3) For the purposes of this Rule, the reference to the creditor necessary to constitute a quorum is to those persons present or represented by proxy by any person (including the chairman) and includes persons duly represented under section 375 of the Companies Act.

(4) 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 chairman alone, or

(ii) one other person in addition to the chairman, and

(b) the chairman 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 shall not commence until at least the expiry of 15 minutes after the time appointed for its commencement.

### **Evidence of proceedings at meetings**

**158.**—(1) A minute of proceedings at a meeting (held under the 1986 Act, Schedule B1 to the 1986 Act or the Rules) of the creditors or of the members of a protected energy company, signed by a person describing himself as, or appearing to be, the chairman of that meeting is admissible in energy administration proceedings without further proof.

(2) The minute is prime facie evidence that—

(a) the meeting was duly convened and held,

(b) all resolutions passed at the meeting were duly passed, and

(c) all proceedings at the meeting took place.

### **Documents issuing from Secretary of State**

**159.**—(1) Any document purporting to be, or to contain, any order, directions or certificate issued by the Secretary of State shall be received in evidence and deemed to be or (as the case may be) contain that order or certificate, or those directions, without further proof, unless the contrary is shown.

(2) Paragraph (1) applies whether the document is signed by the Secretary of State himself or an officer on his behalf.

(3) Without prejudice to the foregoing, a certificate signed by the Secretary of State or an officer on his behalf and confirming—

(a) the making of an order,

(b) the issuing of any document, or

(c) the exercise of any discretion, power or obligation arising or imposed under the 1986 Act, the 2004 Act, Schedule B1 to the 1986 Act or the Rules,

is conclusive evidence of the matters dealt with in the certificate.

### **Forms for use in energy administration proceedings**

**160.**—(1) The forms contained in Schedule 1 to the Rules shall be used in, and in connection with, energy administration proceedings.

(2) The forms shall be used with such variations, if any, as the circumstances may require.

### **Energy administrator's security**

**161.**—(1) Wherever under the Rules any person has to appoint a person to the office of energy administrator, he is under a duty to satisfy himself that the person appointed or to be appointed has security for the proper performance of his functions.

(2) In any energy administration proceedings the cost of the energy administrator's security shall be defrayed as an expense of the energy administration.

### **Time-limits**

**162.**—(1) The provisions of CPR(22) Rule 2.8 (time) apply, as regards computation of time, to anything required or authorised to be done by the Rules.

(2) The provisions of CPR rule 3.1(2)(a) (the court's general powers of management) apply so as to enable the court to extend or shorten the time for compliance with anything required or authorised to be done by the Rules.

### **Service by post**

**163.**—(1) For a document to be properly served by post, it must be contained in an envelope addressed to the person on whom service is to be effected, and pre-paid for either first or second class post.

(2) A document to be served by post may be sent to the last known address of the person to be served.

(3) Where first class post is used, the document is treated as served on the second business day after the date of posting, unless the contrary is shown.

(4) Where second class post is used, the document is treated as served on the fourth business day after the date of posting, unless the contrary is shown.

(5) The date of posting is presumed, unless the contrary is shown, to be the date shown in the post-mark on the envelope in which the document is contained.

### **General provisions as to service and notice**

**164.** Subject to Rule 163 and 165, CPR Part 6 (service of documents) applies as regards any matter relating to the service of documents and the giving of notice in energy administration proceedings.

### **Service outside the jurisdiction**

**165.**—(1) CPR Part 6, paragraphs 6.17 to 6.35 (service of process, etc, out of the jurisdiction) do not apply in energy administration proceedings.

(2) Where for the purposes of energy administration proceedings any process or order of the court, or other document, is required to be served on a person who is not in England and Wales, the court may order service to be effected within such time, on such person, at such place and in such manner as it thinks fit, and may also require such proof of service as it thinks fit.

(3) An application under this Rule shall be supported by an affidavit stating—

(a) the grounds on which the application is made, and

- (b) in what place or country the person to be served is, or probably may be found.

### **Confidentiality of documents**

**166.**—(1) Where in energy administration proceedings the energy administrator considers, in the case of a document forming part of the records of the proceedings, that—

- (a) it should be treated as confidential, or
- (b) it is of such a nature that its disclosure would be calculated to be injurious to the interests of the creditors or members of a protected energy company,

he may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) Where under this Rule the energy administrator determines to refuse inspection of a document, the person wishing to inspect it may apply to the court for that determination to be overruled; and the court may either overrule it altogether, or sustain it subject to such conditions (if any) as it thinks fit to impose.

(3) Nothing in this Rule entitles the energy administrator to decline to allow the inspection of any proof or proxy.

### **Notices sent simultaneously to the same person**

**167.** Where under the 1986 Act, the 2004 Act, Schedule B1 to the 1986 Act or the Rules, a document of any description is to be sent to a person (whether or not as a member of a class of persons to whom that same document is to be sent), it may be sent as an accompaniment to any other document or information which the person is to receive, with or without modification or adaptation of the form applicable to that document.

### **Right to copy documents**

**168.** Where the 1986 Act or the Rules confer a right for any person to inspect documents, the right includes that of taking copies of those documents, on payment—

- (a) in the case of documents on the court's file of proceedings, of the fee chargeable under any order made under section 92 of the Courts Act 2003(23) and
- (b) otherwise, of the appropriate fee.

### **Charge for copy documents**

**169.** Where the energy administrator is requested by a creditor or member to supply copies of any documents he is entitled to require the payment of the appropriate fee in respect of the supply of the documents.

### **Non-receipt of notice of meeting**

**170.** Where in accordance with the 1986 Act, Schedule B1 to the 1986 Act or the Rules a meeting of creditors or other persons is called or 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 given have received it.

### **Right to have list of creditors**

**171.**—(1) In energy administration proceedings a creditor who under the Rules has the right to inspect documents on the court file also has the right to require the energy administrator to furnish

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(23) 2003 c. 39.

him with a list of the creditors of the protected energy company and the amounts of their respective debts.

This does not apply if a statement of the protected energy company's affairs has been filed in court.

(2) The energy administrator, on being required by any person to furnish that list, shall send it to him, but is entitled to charge the appropriate fee for doing so.

### **False claim of status as creditor**

**172.**—(1) Where the Rules provide for creditors or members of a protected energy company a right to inspect any documents, whether on the court's file or in the hands of the energy administrator or other person, it is an offence for a person, with the intention of obtaining a sight of documents which he has not under the Rules any right to inspect, falsely to claim a status which would entitle him to inspect them.

(2) A person guilty of an offence under this Rule is liable to imprisonment or a fine, or both.

### **The Gazette**

**173.**—(1) A copy of the Gazette containing any notice required by the 1986 Act, Schedule B1 to the 1986 Act or the Rules to be gazetted is evidence of any fact stated in the notice.

(2) In the case of an order of the court notice of which is required by the 1986 Act, Schedule B1 to the 1986 Act or the Rules to be gazetted, a copy of the Gazette containing the notice may in any proceedings be produced as conclusive evidence that the order was made on the date specified in the notice.

(3) Where an order of the court which is gazetted has been varied, and where any matter has been erroneously or inaccurately gazetted, the person whose responsibility it was to procure the requisite entry in the Gazette shall forthwith cause the variation of the order to be gazetted or, as the case may be, a further entry to be made in the Gazette for the purpose of correcting the error or inaccuracy.

### **Punishment of offences**

**174.**—(1) Schedule 2 to the Rules has effect with respect to the way in which contraventions of the Rules are punishable on conviction.

(2) In relation to an offence under a provision of the Rules specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.

(3) The fourth column shows, in relation to an offence, the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily), a reference to a period of years or months being to a term of imprisonment of that duration.

(4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).

(5) Section 431 of the 1986 Act (summary proceedings), as it applies to England and Wales, has effect in relation to offences under the Rules as to offences under the 1986 Act.

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

**175.**—(1) Where the court makes an order under section 176A(5) of the 1986 Act, it shall as soon as reasonably practicable send two sealed copies of the order to the energy administrator.

(2) Where the court has made an order under section 176A(5) of the 1986 Act, the energy administrator shall, as soon as reasonably practicable, send a sealed copy of the order to the protected energy company.

(3) Where the court has made an order under section 176A(5) of the 1986 Act, the energy administrator shall, as soon as reasonably practicable, give notice to each creditor of whose claim and address he is aware.

(4) Paragraph (3) shall not apply where the court directs otherwise.

(5) The court may direct that the requirement in paragraph (3) is complied with by the energy administrator publishing a notice in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the protected energy company's unsecured creditors stating that the court has made an order disapplying the requirement to set aside the prescribed part.

(6) The energy administrator shall send a copy of the order to the registrar of companies as soon as reasonably practicable after the making of the order.

## **PART 15**

### **INTERPRETATION AND APPLICATION**

#### **Introductory**

**176.** This Part of the Rules has effect for their interpretation and application; and any definition given in this Part applies except, and in so far as, the context otherwise requires.

#### **“The court”; “the registrar”**

**177.**—(1) Anything to be done in energy administration proceedings by, to or before the court may be done by, to or before a judge or the registrar.

(2) The registrar may authorise any act of a formal or administrative character which is not by statute his responsibility to be carried out by the chief clerk or any other officer of the court acting on his behalf, in accordance with directions given by the Lord Chancellor.

(3) In energy administration proceedings, “the registrar” means—

- (a) subject to the following paragraph, a Registrar in Bankruptcy of the High Court;
- (b) where the proceedings are in the District Registry of Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne or Preston, the District Registrar.

#### **“Give notice” etc**

**178.**—(1) A reference in the Rules to giving notice, or to delivering, sending or serving any document, means that the notice or document may be sent by post, unless under a particular Rule personal service is expressly required.

(2) Any form of post may be used, unless under a particular Rule a specified form is expressly required.

(3) Personal service of a document is permissible in all cases.

(4) Notice of the venue fixed for an application may be given by service of the sealed copy of the application under Rule 96(3).

**Notice, etc to solicitors**

179. Where in energy administration proceedings a notice or other document is required or authorised to be given to a person, it may, if he has indicated that his solicitor is authorised to accept service on his behalf, be given instead to the solicitor.

**Notice to joint energy administrators**

180. Where two or more persons are acting jointly as the energy administrator in energy administration proceedings, delivery of a document to one of them is to be treated as delivery to them all.

**“Venue”**

181. References to the “venue” for any proceedings or attendance before the court, or for a meeting, are to the time, date and place for the proceedings, attendance or meeting.

**“Energy administration proceedings”**

182. “Energy administration proceedings” means any proceedings under sections 154 to 171 of, and Schedules 20 and 21 to, the 2004 Act or the Rules.

**“The appropriate fee”**

183. “The appropriate fee” means 15 pence per A4 or A5 page and 30 pence per A3 page.

**“Debt”, “liability”**

184.—(1) “Debt”, in relation to the energy administration of a protected energy company, means (subject to the next paragraph) any of the following—

- (a) any debt or liability to which the protected energy company is subject at the date on which it goes into energy administration;
- (b) any debt or liability to which the protected energy company may become subject after that date by reason of any obligation incurred before that date; and
- (c) any interest provable as mentioned in Rule 56(1).

(2) In determining for the purposes of any provision of the 1986 Act, section 154 to 171 of and Schedules 20 and 21 to the 2004 Act, Schedule B1 to the 1986 Act or the Rules, whether any liability in tort is a debt provable in the energy administration, the protected energy company is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued.

(3) For the purposes of references in any provision of the 1986 Act, section 154 to 171 of and Schedules 20 and 21 to the 2004 Act, Schedule B1 to the 1986 Act or the Rules, to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.

(4) In any provision of the 1986 Act, section 154 to 171 of and Schedules 20 and 21 to the 2004 Act, Schedule B1 to the 1986 Act or the Rules, except in so far as the context otherwise requires, “liability” means (subject to paragraph (3) above) a liability to pay money or money’s worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution.



### **“Authorised deposit-taker and former authorised deposit-taker”**

**186.**—(1) “Authorised deposit-taker” means a person with permission under Part 4 of the Financial Services and Markets Act to accept deposits.

(2) “Former authorised deposit-taker” means a person who—

- (a) is not an authorised deposit-taker,
- (b) was formerly an authorised institution under the Banking Act 1987<sup>(24)</sup>, or a recognised bank or a licensed institution under the Banking Act 1979<sup>(25)</sup>, and
- (c) continues to have liability in respect of any deposit for which it had a liability at a time when it was an authorised institution, recognised bank or licensed institution.

(3) Paragraphs (1) and (2) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 22 to that Act.

### **Expressions used generally**

**186.**—(1) “Business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain under or by virtue of the Banking and Financial Dealings Act 1971<sup>(26)</sup>.

(2) “The Department” means the Department of Trade and Industry.

(3) “File in court” and “file with the court” means deliver to the court for filing.

(4) “The Gazette” means the London Gazette.

(5) “Practice direction” means a direction as to the practice and procedure of any court within the scope of the CPR.

(6) “Prescribed part” has the same meaning as it does in section 176A(2) of the 1986 Act.

### **Application**

**187.** The Rules apply to energy administration proceedings commenced on or after the date on which the Rules come into force. Nothing contained in the Insolvency Rules shall apply to such proceedings commenced on or after that date.

*Falconer of Thoroton C.*

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<sup>(24)</sup> 1987 c. 22; repealed by S.I. 2001/3649, article 3(1)(d).

<sup>(25)</sup> 1979 c. 37; repealed by the Banking Act 1987, section 108, Schedule 7, Part 1.

<sup>(26)</sup> 1971 c. 80.

I concur, on behalf of the Secretary of State,

2nd September 2005

*Malcolm Wicks*  
Minister of State for Energy  
Department of Trade and Industry