
STATUTORY INSTRUMENTS

2005 No. 2483

The Energy Administration Rules 2005

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.

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Commencement Information

I1 Rule 14 in force at 1.10.2005, see [rule 1](#)

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(1) (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.

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Commencement Information

I2 Rule 15 in force at 1.10.2005, see [rule 1](#)

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.

(1) 1986 c. 45; section 235 was amended by the Enterprise Act 2002 c. 40, Schedule 17, paragraph 24.

(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.

Commencement Information

I3 Rule 16 in force at 1.10.2005, see [rule 1](#)

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.

Commencement Information

I4 Rule 17 in force at 1.10.2005, see [rule 1](#)

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.

Commencement Information

I5 Rule 18 in force at 1.10.2005, see [rule 1](#)

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.

Commencement Information

I6 Rule 19 in force at 1.10.2005, see [rule 1](#)

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⁽²⁾ 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—

(2) 1986 c. 45; section 176A inserted by the Enterprise Act 2002 c. 40, section 252.

- (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.

(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.

Commencement Information

I7 Rule 20 in force at 1.10.2005, see [rule 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Energy Administration Rules 2005, PART 3.