
STATUTORY INSTRUMENTS

2006 No. 772

The Energy Administration (Scotland) Rules 2006

PART 1

Construction and Interpretation

Citation and commencement

1. These Rules may be cited as the Energy Administration (Scotland) Rules 2006 and shall come into force on 6th April 2006.

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⁾;

“GEMA” means the Gas and Electricity Markets Authority;

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

“the Insolvency Rules” means the Insolvency (Scotland) Rules 1986⁽²⁾;

“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;

“responsible insolvency practitioner” means, in relation to any insolvency proceedings, the person acting as supervisor of a voluntary arrangement under Part I of the 1986 Act, or as receiver, liquidator or provisional liquidator;

“the Rules” means the Energy Administration (Scotland) Rules 2006; and

“venue” means, in respect of any proceedings or meetings, the time, date and place for the proceedings or meeting.

(2) 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.

(3) 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.

(4) Where the protected energy company is a non GB company within the meaning of section 171 of the 2004 Act, references in these 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.

(1) 1985 c. 6.

(2) S.I. 1986/1915, as amended by S.I. 1987/1921, 1999/1820, 2001/4040, 2002/2709, 2003/2108, 2003/2109 and 2003/2111.

(5) 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)(3) or 718(4) of the Companies Act.

Application

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

PART 2

Appointment of Energy Administrator by Court

Form of application

4.—(1) Where an application is made by way of petition for an energy administration order to be made in relation to a protected energy company, there shall be lodged together with the petition a Statement of the Proposed Energy Administrator.

(2) In this Part, references to a Statement of the Proposed Energy Administrator are to a statement by each of the persons proposed to be energy administrator of a protected energy company, in the form required by Form EA1(S) stating—

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

(3) Where an application is made by GEMA, it shall also state that it is made with the consent of the Secretary of State.

Service of petition

5.—(1) In addition to those persons referred to in section 156(2)(a) to (c) of the 2004 Act, notice of a petition shall be given by the petitioner in Form EA2(S) to—

- (a) an administrative receiver, if appointed;
- (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, the applicant;
- (c) if a petition for the winding up of the protected energy company has been presented but no order for winding up has yet been made, the petitioner under that petition;
- (d) 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) a provisional liquidator, if appointed;
- (f) the person proposed in the petition to be the energy administrator;
- (g) if the applicant is the Secretary of State, GEMA;
- (h) if the applicant is GEMA, the Secretary of State;
- (i) the protected energy company;
- (j) the registrar of companies;

(3) 1985 c. 6, as amended by S.I. 2000/3373 and 2002/912.

(4) As amended by S.I. 1996/2827 and 2001/1228.

- (k) the Keeper of the Register of Inhibitions and Adjudications for recording in that register; and
- (l) the supervisor of a voluntary arrangement under Part I of the 1986 Act, if such has been appointed.

(2) Notice of the petition shall also be given to the persons upon whom the court orders that the petition be served.

Expenses

6. If the court makes an energy administration order, the expenses of the petitioner, and of any other party whose expenses are allowed by the court, shall be regarded as expenses of the energy administration.

Notice of dismissal of application for an energy administration order

7. If the court dismisses the petition the petitioner shall as soon as reasonably practicable send notice of the court's order dismissing the petition to all those to whom the petition was notified under Rule 5 in Form EA3(S).

PART 3

Process of Energy Administration

Notification and advertisement of energy administrator's appointment

8.—(1) As soon as is reasonably practicable, the energy administrator shall advertise his appointment, in Form EA4(S), once in the Edinburgh Gazette and once in a newspaper circulating in the area where the protected energy company has its principal place of business or in such newspaper as he thinks appropriate for ensuring that the order comes to the notice of the protected energy company's creditors.

(2) The energy administrator shall at the same time give notice of his appointment to the following persons—

- (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) a receiver or an administrative receiver, if appointed;
- (d) a petitioner in a petition for the winding up of the protected energy company, if that petition is pending;
- (e) any provisional liquidator of the protected energy company, if appointed;
- (f) 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;
- (g) any supervisor of a voluntary arrangement under Part 1 of the 1986 Act;
- (h) 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;

- (i) 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; and
 - (j) the Keeper of the Register of Inhibitions and Adjudications for recording in that register.
- (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 EA5(S).

Notice requiring statement of affairs

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

(2) The energy administrator shall send a notice in Form EA6(S) 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 (duty to co-operate with office-holder)(5).

(4) The energy administrator shall furnish each relevant person upon whom he has sent notice in Form EA6(S) with the forms required for the preparation of the statement of affairs.

Statements of affairs and statements of concurrence

10.—(1) The statement of the protected energy company's affairs shall be in Form EA7(S), contain all the particulars required by that form and shall be a statutory declaration.

(2) Where more than one relevant person is required to submit a statement of affairs the energy administrator may require one or more such persons to submit, in place of a statement of affairs, a statement of concurrence in Form EA8(S); and where the energy administrator does so, he shall inform the person making the statement of affairs of that fact.

(3) The person making the statutory declaration in support of a statement of affairs shall send the statement, together with one copy thereof, to the energy administrator, and a copy of the statement to each of those persons whom the energy administrator has required to submit a statement of concurrence.

(4) A person required to submit a statement of concurrence shall deliver to the energy administrator the statement of concurrence, together with one copy thereof, 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 statement of affairs, he considers that statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.

(6) A statement of concurrence shall be a statutory declaration.

(5) 1986 c. 45; section 235 was amended by the Enterprise Act 2002 (c. 40), Schedule 17, paragraph 24.

- (7) Subject to Rule 11, the energy administrator shall—
- (a) as soon as is reasonably practicable, file a copy of the statement of affairs and any statement of concurrence with the registrar of companies in Form EA9(S), and
 - (b) insert any statement of affairs submitted to him, together with any statement of concurrence, in the sederunt book.

Limited disclosure

11.—(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 order that the statement or, as the case may be, the specified part of it, shall not be filed with the registrar of companies or entered in the sederunt book.

(3) The energy administrator shall as soon as reasonably practicable file a copy of that order with the registrar of companies, and shall place a copy of the order in the sederunt book.

(4) If a creditor seeks disclosure of the 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.

(5) The court may attach to an order for disclosure any conditions as to confidentiality, duration and scope of the order in any material change of circumstances, and other matters as it sees fit.

(6) If there is a material change in circumstances rendering the limit on disclosure unnecessary, the energy administrator shall, as soon as reasonably practicable after the change, apply to the court for the order to be discharged or varied; and upon the discharge or variation of the order the energy administrator shall, as soon as reasonably practicable—

- (a) file a copy of the full statement of affairs (or so much of the statement of affairs as is no longer subject to the order) with the registrar of companies;
- (b) where he has previously sent a copy of his proposals to the creditors in accordance with paragraph 49 of Schedule B1 to the 1986 Act, provide the creditors with a copy of the full statement of affairs (or so much of the statement as is no longer subject to the order) or a summary thereof; and
- (c) place a copy of the full statement of affairs (or so much of the statement as is no longer subject to the order) in the sederunt book.

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

12.—(1) The power of the energy administrator under paragraph 48(2) of Schedule B1 to the 1986 Act to revoke a requirement under 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 instance, or at the request of any relevant person.

(2) A relevant person whose request under this Rule has been refused by the energy administrator may apply to the court for a release or extension of time.

(3) An applicant under this Rule shall bear his own expenses in the application and, unless the court otherwise orders, no allowance towards such expenses shall be made out of the assets of the protected energy company.

Expenses of statement of affairs

13.—(1) A relevant person who provides to the energy administrator a 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 from any obligation to provide a statement of affairs or statement of concurrence, or to provide information to the energy administrator.

Energy administrator's proposals

14.—(1) The statement required to be made by the energy administrator under paragraph 49 of Schedule B1 to the 1986 Act shall include, in addition to the matters set out in that paragraph—

- (a) details of the court which granted the energy administration order and the relevant court reference number (if any);
- (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 which they have in the protected energy company;
- (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 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 and addresses of the creditors, and details of the debts owed to, and security held by, each of them;
- (i) if no statement of affairs has been submitted—
 - (i) 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);
 - (ii) the names and addresses of the creditors, and details of the debts owed to, and security held by, each of them; and
 - (iii) 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—
 - (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 the court under section 176A(5) of the 1986 Act and whether or not section 176A(3) of the 1986 Act applies); and

- (bb) an estimate of the value of the protected energy company's net property, provided that such estimates shall not be required to include any information the disclosure of which could seriously prejudice the commercial interests of the protected energy company, but if such information is excluded the estimates shall be accompanied by a statement to that effect; and
 - (ii) whether and, if so, why the energy administrator proposes to make an application to the 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;
 - (l) where a creditors' voluntary liquidation is proposed—
 - (i) details of the proposed liquidator; and
 - (ii) a statement that, in accordance with paragraph 83(7) of Schedule B1 to the 1986 Act and Rule 47(3), creditors may nominate a different person to act as liquidator, provided that the nomination is made at a meeting of creditors called for that purpose;
 - (m) where it is proposed to make distributions to creditors in accordance with Part 6, the classes of creditors to whom it is proposed that distributions be made and whether or not the energy administrator intends to make an application to the court under paragraph 65(3) of Schedule B1 to the 1986 Act;
 - (n) 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
 - (o) such other information (if any) as the energy administrator thinks necessary.
- (2) A copy of the energy administrator's statement of his proposals shall be sent to the registrar of companies together with a notice in Form EA10(S).
- (3) Where the court orders, upon an application by the energy administrator under paragraph 107 of the 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 EA11(S) 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.
- (4) 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 the Edinburgh Gazette and once in the newspaper in which the energy administrator's appointment was advertised. 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 any member of the protected energy company may apply in writing for a copy of the statement of proposals to be provided free of charge.
- (5) 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 and in any case no later than 8 weeks (or such other period as may be ordered by the court) from the date that the protected energy company entered energy administration.

PART 4

Meetings and Reports

Meetings generally and notice

15.—(1) This Rule and Rule 16 apply to any meetings summoned by the energy administrator under paragraph 62 of Schedule B1 to the 1986 Act.

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

(3) Subject to Rule 20, the energy administrator shall give not less than 21 days' notice of the venue for the meeting to every person known to him as being entitled to attend the meeting.

(4) The energy administrator may also publish notice of the venue of the meeting in a newspaper circulating in the areas of the principal place of business of the protected energy company or in such other newspaper as he thinks most appropriate for ensuring that it comes to the notice of the persons who are entitled to attend the meeting.

(5) Any notice published under paragraph (4) shall be published not less than 21 days before the meeting.

(6) Any notice under this Rule shall state—

- (a) the purpose of the meeting;
- (b) the persons who are entitled to attend and vote at the meeting;
- (c) the effects of Rule 21 and of the relevant provisions of Rule 24; and
- (d) in the case of a meeting of creditors—

(i) that proxies may be lodged at or before the meeting and the place where they may be lodged; and

(ii) that claims may be lodged by those who have not already done so at or before the meeting and the place where they may be lodged.

(7) With the notice given under paragraph (1), the energy administrator shall also send out a proxy form.

(8) In the case of any meeting of creditors, the court may order that notice of the meeting be given by public advertisement in such form as may be specified in the order and not by individual notice to the persons concerned. In considering whether to make such an order, the court shall have regard to the cost of the public advertisement, to the amount of the assets available and to the extent of the interest of creditors or any particular class of them.

Adjournment

16.—(1) This Rule applies to meetings of creditors.

(2) If, within a period of 30 minutes from the time appointed for the commencement of a meeting, a quorum is not present, then, unless the chairman otherwise decides, the meeting shall be adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(3) In the course of any meeting, the chairman may, in his discretion, and shall, if the meeting so resolves, adjourn it to such venue as seems to him to be appropriate in the circumstances.

(4) An adjournment under paragraph (2) or (3) shall not be for a period of more than 21 days and notice of the adjourned meeting may be given by the chairman.

(5) Where a meeting is adjourned, any proxies given for the original meeting may be used at the adjourned meeting.

The chairman at meetings

17.—(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.

Quorum at meeting of creditors

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

(2) Subject to paragraph (3), 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 claims 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.

Chairman of meeting as proxy holder

19. Where the chairman at a meeting of creditors holds a proxy which requires him to vote for a particular resolution and no other person proposes that resolution—

- (a) he shall propose it himself, unless he considers that there is good reason for not doing so, and
- (b) if he does not propose it, he shall forthwith after the meeting notify the person who granted him the proxy of the reason why he did not do so.

Meeting following nomination of alternative liquidator

20.—(1) Where under Rules 14(1)(k), (1)(l) or 26(2)(h), 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), summon 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 summon 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) 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 (creditors and members)

21.—(1) Except Rule 29(2) and (3), Part 5 (claims in energy administration) applies for the purpose of determining a creditor's entitlement to vote at any creditors' meeting in an energy administration.

(2) Members of a protected energy company at their meetings shall vote according to their rights attaching to their shares in accordance with the articles of association.

(3) The reference in paragraph (2) to a member's share shall include any other interests which he may have as a member of the protected energy company.

Hire-purchase, conditional sale and hiring agreements

22.—(1) Subject as follows, an owner of goods under a hire-purchase agreement or under an agreement for the hire of goods for more than 3 months, 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.

Disposal of secured property

23.—(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) If an order is made under paragraphs 71 or 72 of Schedule B1 to the 1986 Act, the energy administrator shall as soon as reasonably practicable send a copy of it certified by the clerk of court to the person who is the holder of the security or owner under the agreement.

(3) The energy administrator shall send to the registrar of companies a copy of the order, certified by the clerk of court, together with Form EA12(S), and shall place a copy of the order in the sederunt book.

Resolutions

24.—(1) Subject to paragraph (2) and (3), at a creditors' or members' 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 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.

Report of Meeting

25.—(1) The chairman of the meeting shall cause a report to be made of the proceedings at the meeting which shall be signed by him.

(2) The report shall include—

- (a) a list of all the creditors who attended the meeting, either in person or by proxy; and
- (b) a copy of every resolution passed.

(3) The chairman shall keep a copy of the report of the meeting as part of the sederunt book in the energy administration.

Revision of the energy administrator's proposals

26.—(1) Where the energy administrator revises his proposals under paragraph 54 of Schedule B1 to the 1986 Act, he shall send a statement of the revised proposals in Form EA13(S) as soon as reasonably practicable to all those to whom he is required to do so.

(2) The statement of revised proposals shall include—

- (a) details of the court which granted the energy administration order and the relevant court reference number (if any);
- (b) the full name, registered address, registered number and any other trading names of the protected energy company;
- (c) details relating to the appointment of the 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 which they have in the protected energy company;
- (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 it is proposed, by virtue of the revision, to make distributions to creditors in accordance with Part 6, the classes of creditors to whom it is proposed that distributions be made and whether or not the energy administrator intends to make an application to the court under paragraph 65(3) of Schedule B1 to the 1986 Act;
- (h) where the revision includes a proposal to move from energy administration to a creditors' voluntary liquidation—
 - (i) details of the proposed liquidator; and

- (ii) a statement that, in accordance with paragraph 83(7) of Schedule B1 to the 1986 Act and Rule 47(3), creditors may nominate another person to act as liquidator, provided that the nomination is made at a meeting of creditors called for that purpose; and
 - (i) any other information that the energy administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.
- (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) A notice under paragraph 54(4) of Schedule B1 to the 1986 Act shall be published once in the Edinburgh Gazette and once in the newspaper in which the energy administrator's appointment was advertised, and 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, to be provided free of charge; and
 - (d) be published as soon as reasonably practicable after the energy administrator sends the statement to creditors.

Reports to creditors

27.—(1) The energy administrator shall—

- (a) within six weeks after the end of each accounting period; and
- (b) within six weeks after he ceases to act as energy administrator,

send to the court, the registrar of companies, each creditor, the Secretary of State and GEMA, a progress report attached to Form EA14(S).

(2) For the purposes of this Part, “accounting period”, in relation to an energy administration, shall be construed in accordance with Rule 41.

(3) For the purposes of this Part, “progress report” means a report which includes—

- (a) the name of the court which granted the energy administration order, and the court reference number (if any);
- (b) details of the protected energy company's name, address and registration number;
- (c) details of the energy administrator's name and address, date of appointment and name and address of the applicant for the energy administration order, 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 to date, including a receipts and payments account which states what assets of the protected energy company have been realised, for what value, and what payments have been made to creditors;
- (e) details of what assets remain to be realised;
- (f) where a distribution is to be made in accordance with Part 7 in respect of an accounting period, the scheme of division; and
- (g) any other relevant information for the creditors.

(4) For the purposes of paragraph (3)(d), the account shall be in the form of an abstract showing—

- (a) receipts and payments during the relevant accounting period; or

- (b) where the energy administrator has ceased to act, receipts and payments during the period from the end of the last accounting period to the time when he so ceased (or, where he has made no previous progress report, receipts and payments in the period since his appointment as energy administrator).
- (5) In a receipts and payments account falling within paragraph (4)(b), the energy administrator 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).
- (6) The court may, on the application of the energy administrator, extend the period of six weeks referred to in paragraph (1) of this Rule.
- (7) If the energy administrator makes default in complying with this Rule without reasonable excuse, he shall be guilty of an offence.
- (8) An energy administrator convicted of an offence under paragraph (7) shall be liable—
 - (a) on summary conviction to a fine not exceeding one-fifth of the statutory maximum; or
 - (b) in relation to a second or subsequent conviction of the offence, to a daily default fine of one-fiftieth of the statutory maximum in respect of each day on which the contravention is continued.
- (9) This Rule is without prejudice to the requirements of Part 6 (distribution to creditors).

PART 5

Claims in Energy Administration

Submission of claims

28.—(1) A creditor, in order to obtain an adjudication as to his entitlement to vote at any meeting of the creditors in the energy administration or to a dividend (so far as funds are available) out of the assets of the protected energy company in respect of any accounting period, shall submit his claim to the energy administrator—

- (a) at or before the meeting; or,
 - (b) not later than 8 weeks before the end of the accounting period.
- (2) A creditor shall submit his claim by producing to the energy administrator—
- (a) a statement of claim in the Form EA15(S); and
 - (b) an account or voucher (according to the nature of the debt claimed) which constitutes prima facie evidence of the debt,

but the energy administrator may dispense with any requirement of this paragraph in respect of any debt or any class of debt.

(3) A claim submitted by a creditor, which has been accepted in whole or in part by the energy administrator for the purpose of voting at a meeting or of drawing a dividend in respect of any accounting period, shall be deemed to have been resubmitted for the purpose of obtaining an adjudication as to his entitlement both to vote at any subsequent meeting and (so far as funds are available) to a dividend in respect of an accounting period or, as the case may be, any subsequent accounting period.

(4) A creditor, who has submitted a claim, may at any time submit a further claim specifying a different amount for his claim;

Provided that a secured creditor shall not be entitled to produce a further claim specifying a different value for the security at any time after the energy administrator has required the creditor to discharge, or convey or assign, the security under Rule 29(2).

Secured debts

29.—(1) In calculating the amount of his claim, a secured creditor shall deduct the value of any security as estimated by him;

Provided that if he surrenders, or undertakes in writing to surrender, a security for the benefit of the protected energy company's assets, he shall not be required to make a deduction of the value of that security.

(2) The energy administrator may, at any time after the expiry of 12 weeks from the date on which the protected energy company enters energy administration, require a secured creditor to discharge the security or convey or assign it to the energy administrator on payment to the creditor of the value specified by the creditor (the expense of such discharge, conveyance or assignation being met from the assets of the protected energy company); and the amount in respect of which the creditor shall then be entitled to claim shall be any balance of his debt remaining after receipt of such payment.

(3) In calculating the amount of his claim, a creditor whose security has been realised shall deduct the amount (less the expenses of realisation) which he has received, or is entitled to receive, from the realisation.

Entitlement to vote and draw dividend

30.—(1) A creditor who has had his claim accepted in whole or in part by the energy administrator or on appeal under paragraph (5) of Rule 31 shall be entitled—

- (a) in a case where the acceptance is under (or on appeal arising from) paragraph (1) of Rule 31, to vote on any matter at the meeting of creditors for the purpose of voting at which the claim is accepted; and
- (b) in a case where the acceptance is under (or on appeal arising from) paragraph (2) of Rule 31, to payment out of the assets of the protected energy company of a dividend in respect of the distribution for the purposes of which the claim is accepted; but such entitlement to payment shall arise only in so far as the protected energy company has funds available to make that payment, having regard to Rule 39, and payment would be consistent with the power and duties of the energy administrator.

(2) Votes are calculated according to the amount of a creditor's debt as at the date on which the protected energy company entered energy administration, deducting any amount paid in respect of that debt after that date.

(3) No vote shall be cast by virtue of a debt more than once on any resolution put to the meeting.

(4) Any reference in this Rule and Rules 28 to 36 to the energy administrator includes, where applicable, a reference to the chairman of the meeting.

Adjudication of claims

31.—(1) At the commencement of every meeting of creditors, the energy administrator shall, for the purposes of Rule 30 so far as it relates to voting at that meeting, accept or reject the claim of each creditor.

(2) Where funds are available for payment of a dividend out of the assets of the protected energy company in respect of an accounting period, the energy administrator for the purpose of determining who is entitled to such a dividend shall, not later than 4 weeks before the end of the period, accept or reject every claim submitted or deemed to have been re-submitted to him under these Rules; and shall

at the same time make a decision on any matter requiring to be specified under sub-paragraph (a) or (b) of paragraph (4).

(3) Where the energy administrator rejects a claim, he shall forthwith notify the creditor giving reasons for the rejection.

(4) Where the energy administrator accepts or rejects a claim, he shall record in the sederunt book his decision on the claim specifying—

- (a) the amount of the claim accepted by him;
- (b) the category of debt, and the value of any security, as decided by him, and
- (c) if he is rejecting the claim, his reasons therefor.

(5) Any member or creditor may, if dissatisfied with the acceptance or rejection of any claim (or, in relation to such acceptance or rejection, with a decision in respect of any matter requiring to be specified under paragraph (4)(a) or (b) above), appeal therefrom to the court—

- (a) if the acceptance or rejection is under paragraph (1) above, within 2 weeks of that acceptance or rejection;
- (b) if the acceptance or rejection is under paragraph (2) above, not later than 2 weeks before the end of the accounting period,

and the energy administrator shall record the court's decision in the sederunt book.

(6) Any reference in this Rule to the acceptance or rejection of a claim shall be construed as a reference to the acceptance or rejection of the claim in whole or in part.

Evidence in relation to claims

32.—(1) The energy administrator, for the purpose of satisfying himself as to the validity or amount of a claim submitted by a creditor may require—

- (a) the creditor to produce further evidence; or
- (b) any other person who he believes can produce relevant evidence, to produce such evidence,

and, if the creditor or other person refuses or delays to do so, the energy administrator may apply to the court for an order requiring the creditor or other person to attend for his private examination before the court.

(2) On an application being made in accordance with paragraph (1), the court may make an order requiring the creditor or other person to attend for private examination before it on a date (being not earlier than 8 days nor later than 16 days after the date of the order) and at a time specified in the order.

(3) A person who fails without reasonable excuse to comply with an order made under paragraph (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

(4) The examination shall be taken on oath.

(5) At any private examination, a solicitor or counsel may act on behalf of the energy administrator or he may appear himself.

Criminal offences in relation to false claims or evidence

33.—(1) If a creditor produces under Rule 28 a statement of claim, account, voucher or other evidence which is false, the creditor shall be guilty of an offence unless he shows that he neither knew nor had reason to believe that the statement of claim, account, voucher or other evidence was false.

(2) A person convicted of an offence under paragraph (1) shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum or—

- (i) to imprisonment for a term not exceeding three months; or
 - (ii) if he has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at such appropriation, to imprisonment for a term not exceeding six months, or (in the case of either sub-paragraph) to both such fine and such imprisonment; or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both.

Amount which may be claimed generally

34.—(1) Subject to Rules 29 and 35, the amount in respect of which a creditor shall be entitled to claim shall be the accumulated sum of principal and any interest which is due on the debt as at the date upon which the protected energy company entered energy administration.

(2) If a debt does not depend on a contingency but would not be payable but for the energy administration until after the date upon which the protected energy company entered energy administration, the amount of the claim shall be calculated as if the debt were payable on the date when the protected energy company entered energy administration but subject to the deduction of interest at the rate specified in section 17 of the Judgments Act 1838⁽⁶⁾ on the date when the protected energy company entered energy administration from the said date until the date for payment of the debt.

(3) In calculating the amount of his claim, a creditor shall deduct any discount (other than any discount for payment in cash) which is allowable by contract or course of dealing between the creditor and the protected energy company or by the usage of trade.

Debts depending on contingency

35.—(1) Subject to paragraph (2), the amount which a creditor shall be entitled to claim shall not include a debt in so far as its existence or amount depends upon a contingency.

(2) On an application by the creditor to the energy administrator, the energy administrator shall put a value on the debt in so far as it is contingent, and the amount in respect of which the creditor shall then be entitled to claim shall be that value but no more; and, where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.

Liabilities and rights of co-obligants

36.—(1) Where a creditor has an obligant (in this Rule referred to as the “co-obligant”) bound to him along with the protected energy company for the whole or part of the debt, the co-obligant shall not be freed or discharged from his liability for the debt by reason of the dissolution of the protected energy company or by virtue of the creditor’s voting or drawing a dividend.

(2) Where—

(a) a creditor has had a claim accepted in whole or in part; and

(b) a co-obligant holds a security over any part of the assets of the protected energy company, the co-obligant shall account to the energy administrator so as to put the protected energy company in the same position as if the co-obligant had paid the debt to the creditor and thereafter had had his claim accepted in whole or in part in the energy administration after deduction of the value of the security.

(3) Without prejudice to any right under any rule of law of a co-obligant who has paid the debt, the co-obligant may require and obtain at his own expense from the creditor an assignation of the

(6) 1838 c. 110, as amended by S.I. 1998/2940.

debt on payment of the amount thereof, and thereafter may in respect of that debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.

(4) In this Rule a “co-obligant” includes a cautioner.

Claims in foreign currency

37.—(1) A creditor may state the amount of his claim in currency other than sterling where—

- (a) his claim is constituted by decree or other order made by a court ordering the protected energy company to pay the creditor a sum expressed in a currency other than sterling, or
- (b) where it is not so constituted, his claim arises from a contract or bill of exchange in terms of which payment is or may be required to be made by the protected energy company to the creditor in a currency other than sterling.

(2) Where a claim is stated in currency other than sterling for the purposes of the preceding paragraph, it shall be converted into sterling at the official exchange rate prevailing on the date when the protected energy company entered energy administration.

PART 6

Distribution to Creditors

Application of Part and general

38.—(1) This Part applies where the energy administrator makes, or proposes to make, a distribution to creditors or any class of them.

(2) Where the distribution is to a particular class of creditors, references in this Part (except in rule 41(5)(c)) to creditors shall, in so far as the context requires, be a reference to that class of creditors only.

(3) This Part and Part 5 apply with regard to a dividend out of the assets of the protected energy company in energy administration.

Order of priority in distribution

39.—(1) If the funds of the protected energy company’s assets are to be distributed then they shall be distributed by the energy administrator to meet the following expenses and debts in the order in which they are mentioned—

- (a) the expenses of the energy administration;
- (b) any preferential debts within the meaning of section 386 of the 1986 Act (excluding any interest which has been accrued thereon to the date on which the protected energy company entered energy administration);
- (c) ordinary debt, that is to say a debt which is neither a secured debt nor a debt mentioned in any other sub-paragraph of this paragraph;
- (d) interest at the official rate on—
 - (i) the preferential debts, and
 - (ii) the ordinary debts,between the said date on which the protected energy company entered energy administration and the date of payment of the debt; and
- (e) any postponed debt.

(2) In the above paragraph—

- (a) “postponed debt” means a creditor’s right to any alienation which has been reduced or restored to the protected energy company’s assets under section 242 of the 1986 Act or to the proceeds of sale of such an alienation; and
- (b) “official rate” shall be construed in accordance with subsection (4) of section 189 of the 1986 Act and, for the purposes of paragraph (a) of that subsection, as applied to Scotland by subsection (5), the rate specified in the Rules shall be 15 per centum per annum.

(3) The expenses of the energy administration mentioned in sub-paragraph (a) of paragraph (1) above are payable in the order of priority mentioned in Rule 40.

(4) Subject to the provisions of paragraph (5), any debt falling within any of sub-paragraphs (b) to (e) of paragraph (1) shall have the same priority as any other debt falling within the same sub paragraph and, where the funds of the protected energy company’s assets are inadequate to enable the debts mentioned in this paragraph to be paid in full, they shall abate in equal proportions.

(5) So far as the assets of the protected energy company available for payment of general creditors are insufficient to meet them, preferential debts have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the protected energy company, and shall be paid accordingly out of any property comprised in or subject to that charge.

(6) Any surplus remaining, after all expenses and debts mentioned in paragraph (1) have been paid in full, shall (unless the articles of the protected energy company otherwise provide) be distributed among the members according to their rights and interests in the company.

(7) Nothing in this Rule shall affect—

- (a) the right of a secured creditor which is preferable to the rights of the energy administrator; or
- (b) any preference of the holder of a lien over a title deed or other document which has been delivered to the energy administrator.

Expenses of the energy administration

40.—(1) The expenses of the energy administration are payable out of the assets 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 caution provided by the energy administrator in accordance with the 1986 Act or the Rules;
- (c) where an energy administration order was made, the expenses of the applicant and any person appearing on the hearing of the application whose expenses are allowed by the court;
- (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 expenses 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 2004 Act, Schedule B1 to the 1986 Act or the Rules;

- (h) the remuneration of the energy administrator agreed under Part 6 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 otherwise).

(2) Nothing in this Rule applies to or affects the power of any court in proceedings by or against the protected energy company, to order expenses to be paid by the protected energy company or the energy administrator, nor does it affect the rights of any person to whom such expenses are ordered to be paid.

(3) The priorities laid down by paragraph (1) of this Rule are subject to the power of the court to make orders under paragraph (4) of this Rule where the assets are insufficient to satisfy the liabilities.

(4) 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 expense incurred in the energy administration in such order of priority as the court thinks just.

Assets to be distributed

41.—(1) The energy administrator shall make up accounts of his intromissions with the protected energy company's assets in respect of each accounting period.

(2) In this Rule "accounting period" shall be construed as follows—

- (a) the first accounting period shall be the period of six months beginning with the date on which the protected energy company entered energy administration; and
- (b) any subsequent accounting period shall be the period of six months beginning with the end of the last accounting period; except that in a case where the energy administrator determines that the accounting period shall be such other period beginning with the end of the last accounting period as may be determined, it shall be that other period.

(3) A determination in paragraph (2)(b)—

- (a) may be made in respect of one or more than one accounting period;
- (b) may be made before the beginning of the accounting period in relation to which it has effect and, in any event, shall not have effect unless made before the day on which such accounting period would, but for the determination, have ended;
- (c) may provide for different accounting periods to be of different durations,

and shall be recorded in the sederunt book by the energy administrator.

(4) Subject to the following paragraphs, the energy administrator may, if the funds of the protected energy company are sufficient and after making allowance for future contingencies, pay under Rule 42(7) a dividend out of the assets of the protected energy company to the creditors in respect of each accounting period.

(5) The energy administrator may make a distribution to secured or preferential creditors or, where he has the permission of the court, to unsecured creditors only if—

- (a) he has sufficient funds for the purpose;
- (b) he does not intend to give notice pursuant to paragraph 83 of Schedule B1 to the 1986 Act;
- (c) his statement of proposals contains a proposal to make a distribution to the class of creditors in question; and
- (d) the payment of a dividend is consistent with the powers and duties of the energy administrator and any proposals made by him or which he intends to make.

(6) The energy administrator may pay—

- (a) the expenses of the energy administration mentioned in Rule 40(1)(a), other than his own remuneration, at any time;
 - (b) the preferential debts at any time.
- (7) If the energy administrator—
- (a) is not ready to pay a dividend in respect of an accounting period; or
 - (b) considers it would be inappropriate to pay such a dividend because the expense of doing so would be disproportionate to the amount of the dividend,

he may postpone such payment to a date not later than the time for payment of a dividend in respect of the next accounting period.

(8) Where an appeal is taken under Rule 31(5) against the acceptance or rejection of a creditor's claim, the energy administrator shall, at the time of payment of dividends and until the appeal is determined, set aside an amount which would be sufficient, if the determination in the appeal were to provide for the claim being accepted in full, to pay a dividend in respect of that claim.

(9) Where a creditor—

- (a) has failed to produce evidence in support of his claim earlier than eight weeks before the end of an accounting period on being required by the energy administrator to do so under Rule 32(1); and
- (b) has given a reason for such failure which is acceptable to the energy administrator,

the energy administrator shall set aside, for such time as is reasonable to enable him to produce that evidence or any other evidence that will enable the energy administrator to be satisfied under that Rule, an amount which would be sufficient, if the claim were accepted in full, to pay a dividend in respect of that claim.

(10) Where a creditor submits a claim to the energy administrator later than eight weeks before the end of an accounting period but more than eight weeks before the end of a subsequent accounting period in respect of which, after making allowance for contingencies, funds are available for the payment of a dividend, the energy administrator shall, if he accepts the claim in whole or in part, pay to the creditor—

- (a) the same dividend or dividends as has or have already been paid to creditors of the same class in respect of any accounting period or periods; and
- (b) whatever dividend may be payable to him in respect of the said subsequent accounting period,

provided that sub-paragraph (a) above shall be without prejudice to any dividend which has already been paid.

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

(12) 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, provided that such notice specifies the name and address of that other.

Procedure after accounting period

42.—(1) Within two weeks after the end of an accounting period, the energy administrator shall in respect of that period submit to the court—

- (a) his accounts of his intromissions with the assets of the protected energy company for audit and, where funds are available after making allowance for contingencies, a scheme of division of the divisible funds; and

- (b) a claim for the outlays reasonably incurred by him and for his remuneration.
- (2) The energy administrator may, at any time before the end of an accounting period, submit to the court an interim claim in respect of that period for the outlays reasonably incurred by him and for his remuneration and the court may make an interim determination in relation to the amount of the outlays and remuneration payable to the energy administrator and, where it does so, it shall take into account that interim determination when making its determination under paragraph (3)(a)(ii).
- (3) Within six weeks after the end of an accounting period—
- (a) the court—
- (i) may audit the accounts; and
- (ii) shall issue a determination fixing the amount of the outlays and the remuneration payable to the energy administrator; and
- (b) the energy administrator shall make the audited accounts, scheme of division and the said determination available for inspection by the members and the creditors.
- (4) The basis for fixing the amount of the remuneration payable to the energy administrator shall take into account—
- (a) the work which, having regard to that value, was reasonably undertaken by him; and
- (b) the extent of his responsibilities in administering the protected energy company's assets.
- (5) In fixing the amount of such remuneration in respect of any accounting period, the court may take into account any adjustment which it may wish to make in the amount of the remuneration and outlays fixed in respect of any earlier accounting period.
- (6) Not later than eight weeks after the end of an accounting period, the energy administrator, the protected energy company or any creditor may appeal against a determination issued under paragraph (2) or (3)(a)(ii) above and the decision of the court on such appeal shall be final.
- (7) On the expiry of the period within which an appeal may be taken under paragraph (5) above or, if an appeal is so taken, on the final determination of the last such appeal, the energy administrator shall pay to the creditors their dividends in accordance with the scheme of division.
- (8) Any dividend—
- (a) allocated to a creditor which is not cashed or uplifted; or
- (b) dependent on a claim in respect of which an amount has been set aside under paragraphs (8) or (9) of Rule 41,
- shall be deposited by the energy administrator in an appropriate bank or institution.
- (9) If a creditor's claim is revalued, the energy administrator may—
- (a) in paying any dividend to that creditor, make such adjustment to it as he considers necessary to take account of that revaluation; or
- (b) require the creditor to repay him the whole or part of a dividend already paid to him.
- (10) The energy administrator shall insert in the sederunt book the audited accounts, the scheme of division and final determination in relation to the energy administrator's outlays and remuneration.
- (11) 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 Rule 40.
- (12) Where there are joint energy administrators –
- (a) it is for them to agree between themselves as to how the remuneration payable should be apportioned,
- (b) if they cannot agree as to how the remuneration payable should be apportioned, any one of them may refer the issue for determination by the court.

Unclaimed Dividends

43.—(1) Any person, producing evidence of his right, may apply to the court to receive a dividend deposited under Rule 42, if the application is made not later than seven years after the date of such deposit.

(2) If the court is satisfied of the applicant's right to the dividend, it shall authorise the appropriate bank or institution to pay to the applicant the amount of that dividend and of any interest which accrued thereon.

(3) The court shall, at the expiry of seven years from the date of deposit of any unclaimed dividend or unapplied balance under Rule 42, hand over the deposit receipt or other voucher relating to such dividend or balance to the Secretary of State, who shall thereupon be entitled to payment of the amount due, principal and interest, from the bank or institution in which the deposit was made.

PART 7

Ending Energy Administration

Final progress reports

44.—(1) In this Part reference to a progress report is to a report in the form specified in Rule 27.

(2) The final progress report means a progress report which includes a summary of—

- (a) the energy administrator's original 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

45.—(1) An application under paragraph 79 of Schedule B1 to the 1986 Act for an order providing for the appointment of an energy administrator of the protected energy company to cease to have effect shall be accompanied by a progress report for the period since the last such report (if any) and a statement indicating what the applicant thinks should be the next steps for the protected energy company (if applicable).

(2) Subject to paragraph (3), where the applicant applies to the court he shall give to—

- (a) the applicant for the energy administration order (unless the applicant in both cases is the same); and
- (b) the creditors of the protected energy company,

at least 7 days' written notice of his intention so to apply.

(3) Where an applicant other than the energy administrator applies to the court—

- (a) the applicant shall give to the energy administrator at least 7 days' written notice of his intention so to apply; 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, it 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 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 of whether he intends to seek appointment as liquidator.

Notification by energy administrator of court order

46.—(1) Where the court makes an order to end the energy administration, the energy administrator shall notify the registrar of companies in Form EA16(S), attaching a copy of the court order and a copy of the final progress report.

(2) Where the court makes an order to end the energy administration and the applicant was not the energy administrator then that applicant shall give a copy of the order to the energy administrator.

Moving from energy administration to creditors' voluntary liquidation

47.—(1) A notice pursuant to paragraph 83(3) of Schedule B1 to the 1986 Act shall be in Form EA17(S) and shall be accompanied by a final progress report which includes 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 accompanying documents 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 14(1)(l) or Rule 26(2)(h) 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 20, 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

48.—(1) The notice required by paragraph 84(1) of Schedule B1 to the 1986 Act shall be in Form EA18(S) and shall be accompanied by a final progress report.

(2) As soon as reasonably practicable a copy of the notice and accompanying documents shall be sent 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, the Secretary of State; and
- (c) where GEMA did not receive notice of the energy administrator's appointment, to GEMA.

(3) Where the 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 notice required by paragraph 84(8) of Schedule B1 to the 1986 Act shall be in Form EA19(S).

(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

49. Where the energy administration ends pursuant to paragraphs 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 8

Replacing energy administrator

Grounds for resignation

50.—(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 leave of the court, give notice of his resignation on grounds other than those specified in paragraph (1).

Notice of intention to resign

51. The energy administrator must give to the persons specified below at least 7 days' notice in Form EA20(S) of his intention to resign, or to apply for the court's leave to do so—

- (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

52. The notice of resignation shall be in Form EA21(S), lodged in 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 lodged in court, to all those to whom notice of intention to resign was sent.

Application to court to remove energy administrator from office

53.—(1) An application to the court to remove an energy administrator from office shall be served upon—

- (a) the energy administrator;

- (b) the Secretary of State;
- (c) GEMA;
- (d) the joint energy administrator (if any); and
- (e) the protected energy company and all the creditors, including any floating charge holders, where there is no joint energy administrator.

(2) An applicant under this Rule shall, within 5 business days of the order being made, send a copy of the order to—

- (a) all those to whom notice of the application was sent; and
- (b) the registrar of companies in Form EA22(S).

Incapacity to act, through death or otherwise

54.—(1) Subject to paragraph (2), where the energy administrator has died, it is the duty of his executors or, where the deceased energy administrator was a partner in a firm, of a partner of that firm to give notice of that fact to the court and to the registrar of companies, specifying the date of death, in Form EA22(S).

(2) Notice of the death may also be given by any person.

(3) Where an 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(2) of Schedule B1 to the 1986 Act, he shall also give notice to the registrar of companies.

Application to replace

55.—(1) Where an application is made to the court under paragraph 91 of Schedule B1 to the 1986 Act to appoint a replacement energy administrator, the application shall be accompanied by a Statement of the Proposed Administrator in Form EA1(S).

(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 5, on the person who made the application for the energy administration order.

(3) Where the court makes an order filling a vacancy in the office of energy administrator, the same provisions shall apply, subject to such modification as may be necessary, in respect of giving notice of, and advertising, the appointment as in the case of the original appointment of an energy administrator.

Joint or concurrent appointments

56.—(1) 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 paragraph (2).

(2) The replacement or additional energy administrator shall send notice of the appointment in Form EA23(S) to the registrar of companies.

Notification and advertisement of appointment of replacement energy administrator

57.—(1) This Rule applies where any person has appointed an energy administrator in accordance with these Rules and a replacement energy administrator is appointed.

(2) The same provisions apply in respect of giving notice of, and advertising, the replacement appointment as in the case of an initial appointment, and all statements, consents and other documents as required shall also be required in this case.

Hand-over of assets to successor energy administrator

58.—(1) This Rule applies where a person appointed as energy administrator (“the succeeding energy administrator”) succeeds a previous energy administrator (“the former energy administrator”).

(2) When the succeeding energy administrator’s appointment takes effect, the former energy administrator shall forthwith do all that is required for putting the succeeding energy administrator into possession of the protected energy company’s assets.

(3) The former energy administrator shall give to the succeeding energy administrator all such information, relating to the affairs of the protected energy company and the course of the energy administration, as the succeeding energy administrator considers to be reasonably required for the effective discharge by him of his duties as such and shall hand over all books, accounts, statements of affairs, statements of claim and other records and documents in his possession relating to the affairs of the protected energy company and its energy administration.

PART 9

Prescribed Part

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

59. An application under section 176A(5) of the 1986 Act shall include averments as to—

- (a) the fact that the application arises in the course of an energy administration;
- (b) the financial position of the protected energy company;
- (c) the basis of 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.

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

60.—(1) Where the court makes an order under section 176A(5) of the 1986 Act the energy administrator shall, as soon as reasonably practicable after the making of the order—

- (a) send to the protected energy company a copy of the order certified by the clerk of court;
- (b) send to the registrar of companies a copy of the order together with Form EA24(S); and
- (c) give notice of the order to each creditor of whose claim and address he is aware.

(2) The court may direct that the requirement of paragraph (1)(c) of this Rule be met by the publication of a notice in a newspaper calculated to come to the attention of the unsecured creditors stating that the court has made an order disapplying the requirement to set aside the prescribed part.

PART 10

Proxies and Company representation

Definition of “proxy”

61.—(1) For the purposes of these Rules, a person (“the principal”) may authorise another person (“the proxy-holder”) to attend, speak and vote as his representative at meetings of creditors or of

the protected energy company in energy administration proceedings, and such authority is referred to as a proxy.

(2) A proxy may be given either generally for all meetings in energy administration proceedings or specifically for any meeting or class of meetings.

(3) Only one proxy may be given by the principal for any one meeting; and it may only be given to one person, being an individual aged 18 or over. The principal may nevertheless nominate one or more other such persons 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 any person to whom such a proxy is given cannot decline to be a proxy-holder in relation to that proxy.

(5) A proxy may require the holder to vote on behalf of the principal on matters arising for determination at any meeting, or to abstain, either as directed or in accordance with the holder's own discretion; and it may authorise or require the holder to propose, in the principal's name, a resolution to be voted on by the meeting.

Form of proxy

62.—(1) With every notice summoning a meeting of creditors or of the protected energy company in energy administration proceedings there shall be sent out forms of proxy in Form EA25(S).

(2) A form of proxy shall not be sent out with the name or description of any person inserted in it.

(3) A proxy shall be in the form sent out with the notice summoning the meeting or in a form substantially to the same effect.

(4) A form of proxy shall be filled out and signed by the principal, or by some person acting under his authority and, where it is signed by someone other than the principal, the nature of his authority shall be stated on the form.

Use of proxy at meeting

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

(2) A proxy may be lodged at or before the meeting at which it is to be used.

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

(4) 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.

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

(6) 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

64.—(1) 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).

- (3) The energy administrator shall retain all proxies in the sederunt book.

Right of inspection

65.—(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 claim has been wholly rejected for 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 claims)—

- (a) to be used in connection with that meeting; or
- (b) sent or given to the chairman of that meeting or to any other person by a creditor or member for the purpose of that meeting, whether or not they are to be used at it.

Proxy-holder with financial interest

66.—(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 of the assets of the protected energy company, unless the proxy specifically directs him to vote 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 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 in accordance with Rule 63(3); and in the application of this Rule to any such person, the proxy-holder is deemed an associate of his.

Representation of corporations

67.—(1) Where a person is authorised under section 375 of the Companies Act 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 executed in accordance with the provisions of section 36B(2) of the Companies Act, 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 11

Miscellaneous and General

Giving of notices, etc.

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

(2) Any reference in the 1986 Act, Schedule B1 to the 1986 Act, the 2004 Act or the Rules to giving, sending or delivering a notice or any such document means, without prejudice to any other way and unless it is otherwise provided, that the notice or document may be sent by post, and that, subject to Rule 69, any form of post may be used. Personal service of the notice or document is permissible in all cases.

(3) Where under the 1986 Act, Schedule B1 to the 1986 Act, the 2004 Act or the Rules a notice or other document is required or authorised to be given, sent or delivered by a person (“the sender”) to another (“the recipient”), it may be given, sent or delivered by any person duly authorised by the sender to do so to any person duly authorised by the recipient to receive or accept it.

(4) Where two or more persons are acting jointly as the energy administrator in energy administration proceedings, the giving, sending or delivering of a notice or document to one of them is to be treated as the giving, sending or delivering of a notice or document to each or all.

Sending by post

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

(2) Any document to be sent by post may be sent to the last known address of the person to whom the document is to be sent.

(3) Where first class post is used, the document is to be deemed to be received 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 to be deemed to be received on the fourth business day after the date of posting, unless the contrary is shown.

Certificate of giving notice, etc.

70.—(1) Where in any proceedings a notice or document is required to be given, sent or delivered by the energy administrator, the date of giving, sending or delivery of it may be proved by means of a certificate signed by him or on his behalf by his solicitor, or a partner or an employee of either of them, that the notice or document was duly given, posted or otherwise sent, or delivered on the date stated in the certificate.

(2) In the case of a notice or document to be given, sent or delivered by a person other than the energy administrator, the date of giving, sending or delivery of it may be proved by means of a certificate by that person that he gave, posted or otherwise sent or delivered the notice or document on the date stated in the certificate, or that he instructed another person (naming him) to do so.

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

(4) A certificate purporting to be signed by or on behalf of the energy administrator, or by the person mentioned in paragraph (2), shall be deemed, unless the contrary is shown, to be sufficient evidence of the matters stated therein.

Validity of proceedings

71. Where in accordance with the 1986 Act, Schedule B1 to the 1986 Act or the Rules a meeting of creditors or other persons is summoned by notice, the meeting is presumed to have been duly summoned and held, notwithstanding that not all those to whom the notice is to be given have received it.

Evidence of proceedings at meetings

72. A report of proceedings at a meeting of the protected energy company or of the creditors in an energy administration, which is signed by a person describing himself as the chairman of that meeting, shall be deemed, unless the contrary is shown, to be sufficient evidence of the matters contained that report.

Right to list of creditors and copy documents

73.—(1) Subject to Rule 74, in any energy administration proceedings, a creditor who has the right to inspect documents also has the right to require the energy administrator to furnish him with a list of the protected energy company's creditors and the amounts of their respective debts.

(2) Where the energy administrator is requested by the Secretary of State, GEMA, a creditor or member to supply a copy of any document, he is entitled to require payment of the appropriate fee in respect of the supply of that copy.

(3) Subject to Rule 74, where a person has the right to inspect documents, the right includes that of taking copies of those documents, on payment of the appropriate fee.

(4) In this Rule, the appropriate fee means 15 pence per A4 or A5 page and 30 pence per A3 page.

Confidentiality of documents

74.—(1) Where the energy administrator considers, in the case of a document forming part of the records of those proceedings—

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

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 refuses inspection of a document, the person who made that request may apply to the court for an order to overrule the refusal and the court may either overrule it altogether, or sustain it, either unconditionally or 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 inspection of any claim or proxy.

Energy administrator's caution

75.—(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 caution for the proper performance of his functions.

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

Punishment of offences

76. Section 431 (summary proceedings), as it applies to Scotland, has effect in relation to offences under the Rules as to offences under the 1986 Act.

Forms for use in energy administration proceedings

77.—(1) The forms contained in the Schedule 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.

Fees, expenses, etc.

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

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

Power of court to cure defects in procedure

79.—(1) The court may, on the application of any person having an interest—

- (a) if there has been a failure to comply with any requirement of the 1986 Act, Schedule B1 to the 1986 Act, the 2004 Act or the Rules, make an order waiving any such failure and, so far as practicable, restoring any person prejudiced by the failure to the position he would have been in but for the failure;
- (b) if for any reason anything required or authorised to be done in, or in connection with, the energy administration proceedings cannot be done, make such order as may be necessary to enable that thing to be done.

(2) The court, in an order under paragraph (1), may impose such conditions, including conditions as to expenses, as it thinks fit and may—

- (a) authorise or dispense with the performance of any act in the energy administration proceedings;
- (b) extend or waive any time limit specified in the 1986 Act, Schedule B1 to the 1986 Act, the 2004 Act or the Rules.

(3) An application under paragraph (1)—

- (a) may at any time be remitted by the sheriff to the Court of Session, of his own accord or on an application by any person having an interest;
- (b) shall be so remitted, if the Court of Session so directs on an application by any such person,

if the sheriff or the Court of Session, as the case may be, considers that the remit is desirable because of the importance or complexity of the matters raised by the application.

(4) The energy administrator shall record in the sederunt book the decision of the court.

Sederunt book

80.—(1) The energy administrator shall maintain a sederunt book during his term of office for the purpose of providing an accurate record of the administration of the energy administration.

(2) Without prejudice to the generality of the above paragraph, there shall be inserted in the sederunt book a copy of anything required to be recorded in it by any provision of the 1986 Act or of the Rules.

(3) The energy administrator shall make the sederunt book available for inspection at all reasonable hours by any interested person.

(4) Any entry in the sederunt book shall be sufficient evidence of the facts stated therein, except where it is founded on by the energy administrator in his own interest.

(5) Without prejudice to paragraph (3), the energy administrator shall retain, or shall make arrangements for retention of, the sederunt book for a period of ten years from the date on which the energy administration ends.

(6) Where the sederunt book is maintained in non-documentary form it shall be capable of reproduction in legible form.

Disposal of protected energy company's books, papers and other records

81.—(1) Where a protected energy company has been the subject of energy administration proceedings (“the original proceedings”) which have terminated and other insolvency proceedings (“the subsequent proceedings”) have commenced in relation to that protected energy company, the energy administrator appointed in relation to the original proceedings, shall, before the expiry of the later of—

(a) the period of 30 days following a request to him to do so by the responsible insolvency practitioner appointed in relation to the subsequent proceedings; or

(b) the period of 6 months after the protected energy company entered energy administration, deliver to the responsible insolvency practitioner appointed in relation to the subsequent proceedings the books, papers and other records of the protected energy company.

(2) The energy administrator shall dispose of the books, papers and records of the protected energy company in accordance with the directions of the court or, if by the date which is 12 months after dissolution of the protected energy company no such directions have been given, he may do so after that date in such a way as he deems appropriate.

(3) The energy administrator or former energy administrator shall within 14 days of a request by the Secretary of State give the Secretary of State particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the protected energy company or dividends or other sums due to any person as a member or former member of the protected energy company.

Information about time spent on a case

82.—(1) Subject as set out in this Rule, in respect of any energy administration in which he acts, the energy administrator shall on request in writing made by any person mentioned in paragraph (2), supply free of charge to that person a statement of the kind described in paragraph (3).

(2) The persons referred to in paragraph (1) are—

(a) any creditor in the case; and

(b) any director of the protected energy company.

(3) The statement referred to in paragraph (1) shall comprise in relation to the period beginning with the date of the energy administrator's appointment and ending with the relevant date the following details—

(a) the total number of hours spent on the case by the energy administrator and any staff assigned to the case during that period;

(b) for each grade of individual so engaged, the average hourly rate at which any work carried out by individuals in that grade is charged; and

(c) the number of hours spent by each grade of staff during that period.

(4) In relation to paragraph (3) the “relevant date” means the date next before the date of the making of the request on which the energy administrator has completed any period in office which is a multiple of six months or, where the energy administrator has vacated office, the date that he vacated office.

(5) Where the energy administrator has vacated office, an obligation to provide information under this Rule shall only arise in relation to a request that is made within 2 years of the date he vacates office.

(6) Any statement required to be provided to any person under this Rule shall be supplied within 28 days of the date of the receipt of the request by the energy administrator.

13th March 2006

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