
STATUTORY INSTRUMENTS

2020 No. 629

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

PART 7

Claims by and distributions to creditors

CHAPTER 2

Quantification of claims

Estimate of value of debt

57.—(1) The SMCL administrator must estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not have a certain value; and the SMCL administrator may revise any estimate previously made, if the SMCL administrator thinks fit by reference to any change of circumstances or to information becoming available.

(2) The SMCL administrator must inform the creditor as to the estimate under paragraph (1) and any revision of it.

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

Discounts

58. There must in every case be deducted from the claim all trade and other discounts which would have been available to the SMCL but for its SMCL administration except any discount for immediate, early or cash settlement.

Mutual credits and set off

59.—(1) This Rule applies where the SMCL administrator has delivered a notice under Rule 73 (notice of a proposed distribution).

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

- (a) any debt arising out of an obligation incurred after the SMCL entered SMCL administration;
- (b) any debt arising out of an obligation incurred at a time when the creditor had notice that—
 - (i) an application under section 161 of the 2004 Act (permission to pass resolution for voluntary winding up) was pending;
 - (ii) a petition for the winding up of the SMCL was pending;
 - (iii) an application for an administration order under the 1986 Act was pending;

- (iv) an application for an SMCL administration order was pending; or
 - (v) any person had given notice of intention to appoint an administrator under the 1986 Act;
- (c) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—
- (i) at a time when the creditor had notice that an application under section 161 of the 2004 Act was pending;
 - (ii) at a time when the creditor had notice that a petition for the winding up of the SMCL was pending;
 - (iii) at a time when the creditor had notice that an application for an administration order under the 1986 Act was pending;
 - (iv) at a time when the creditor had notice that an application for an SMCL administration order was pending;
 - (v) at a time when the creditor had notice that any person had given notice of intention to appoint an administrator under the 1986 Act; or
 - (vi) after the SMCL entered SMCL administration.
- (3) An account must be taken as at the date of the notice referred to in paragraph (1) of what is due from each party to the other in respect of the mutual dealings and the sums due from one party must be set off against the sums due from the other.
- (4) A sum must be treated as being due to or from the SMCL for the purposes of paragraph (3) whether—
- (a) it is payable at present or in the future;
 - (b) the obligation by virtue of which it is payable is certain or contingent; or
 - (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
- (5) Rule 57 applies for the purposes of this Rule to any obligation to or from the SMCL which, by virtue of its being subject to any contingency or for any other reason, does not bear a certain value.
- (6) Rules 60 to 62 apply for the purposes of this Rule in relation to any sums due to the SMCL which—
- (a) are payable in a currency other than sterling;
 - (b) are of a periodical nature; or
 - (c) bear interest.
- (7) Rule 86 applies for the purposes of this Rule to any sum due to or from the SMCL which is payable in the future.
- (8) Only the balance (if any) of the account owed to the creditor is provable in the SMCL administration.
- (9) Alternatively the balance (if any) owed to the SMCL must be paid to the SMCL administrator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) must be paid if and when the debt becomes due and payable.
- (10) In this Rule “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

Debt in foreign currency

60.—(1) A proof for a debt incurred or payable in a currency other than sterling must state the amount of the debt in that currency.

(2) The SMCL administrator must convert all such debts into sterling at a single rate for each currency determined by the SMCL administrator by reference to the exchange rates prevailing on the date on which the SMCL entered SMCL administration.

(3) On the next occasion when the SMCL administrator communicates with the creditors the SMCL administrator must advise them of any rate so determined.

(4) A creditor who considers that the rate determined by the SMCL administrator is unreasonable may apply to the court.

(5) If on hearing the application the court finds that the rate is unreasonable it may itself determine the rate.

Payments of a periodical nature

61.—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date on which the SMCL entered SMCL administration.

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

Interest

62.—(1) Where a debt proved in the SMCL administration bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.

(2) In the circumstances set out in this Rule, the creditor's claim may include interest on the debt for periods before the relevant date although not previously reserved or agreed.

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

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

(5) Interest under paragraph (4) may only be claimed for the period from the date of the demand to the relevant date and, for the purposes of the 1986 Act and these Rules, must be charged at a rate not exceeding that mentioned in paragraph (6).

(6) The rate of interest to be claimed under paragraphs (3) and (4) is the rate specified in section 17 of the Judgments Act 1838(1) on the relevant date.

(7) Any surplus remaining after payment of the debts proved must, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date.

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

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

(10) In this Rule, "relevant date" means the date on which the SMCL entered SMCL administration.

(1) 1838 c.110. Section 17 was amended by the Civil Procedure Acts Repeal Act 1879 (c.59), Schedule 1, Part 1; the Statute Law Revision (No. 2) Act 1888; S.I. 1993/564 and S.I. 1998/2940.

Debt payable at future time

63. A creditor may prove for a debt of which payment was not yet due on the date when the SMCL entered SMCL administration, subject to Rule 86 (adjustment of dividend where payment made before time).

Voluntary surrender of security

64. A creditor who voluntarily surrenders a security may prove for the whole of the creditor's debt as if it were unsecured.

Value of security

65.—(1) A secured creditor may, with the agreement of the SMCL administrator or the permission of the court, at any time alter the value which the secured creditor's proof puts upon the secured creditor's security.

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

Surrender for non-disclosure

66.—(1) If a secured creditor fails to disclose a security in the secured creditor's proof, the secured creditor must surrender that security for the general benefit of creditors, unless the court, on application by the secured creditor, relieves the secured creditor from the effect of this Rule on the grounds that the omission was inadvertent or the result of honest mistake.

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

(3) Nothing in this Rule or the following two Rules affects the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immovable assets (including both specific assets and collections of indefinite assets as a whole which change from time to time) belonging to the debtor that are situated outside the United Kingdom.

Redemption by SMCL administrator

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

(2) The creditor then has 21 days (or such longer period as the SMCL administrator may allow) in which, if the creditor so wishes, to alter the value of the creditor's security in accordance with Rule 65.

(3) If the creditor alters the value of the security in accordance with Rule 65, the SMCL administrator may only redeem at the new value.

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

(5) A secured creditor may at any time deliver a notice to the SMCL administrator requiring the SMCL administrator to elect whether or not to redeem the security at the value then placed on it; and the SMCL administrator then has three months in which to redeem the security or elect not to redeem the security.

Test of security's value

68.—(1) If the SMCL administrator is dissatisfied with the value which a secured creditor puts on the creditor's security (whether in the creditor's proof or by way of revaluation under Rule 65), the SMCL administrator may require any property comprised in the security to be offered for sale.

(2) The terms of the sale must be such as may be agreed between the SMCL administrator and the secured creditor, or as the court may direct; and if the sale is by auction, the SMCL administrator on behalf of the SMCL, and the creditor on the creditor's own behalf, may appear and bid.

(3) This Rule does not apply if the value of the security has been altered with the court's permission.

Realisation of security by creditor

69. If a creditor who has valued the creditor's security subsequently realises it (whether or not at the instance of the SMCL administrator)—

- (a) the net amount realised must be treated in all respects (including in relation to any valuation in a proof) as an amended valuation made by the creditor; and
- (b) the creditor may prove for the balance of the creditor's debt.