
STATUTORY INSTRUMENTS

2021 No. 1178

The Payment and Electronic Money Institution
Insolvency (England and Wales) Rules 2021

PART 7

Distributions to creditors

CHAPTER 1

Application

Distribution to creditors

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

(2) Where the distribution is to a particular class of creditors, references in this Chapter to creditors shall be a reference to that class of creditors only.

(3) The administrator must give notice to the creditors of their intention to declare and distribute a dividend in accordance with rule 142.

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

- (a) pay any outstanding expenses of a voluntary arrangement that immediately preceded the special administration in accordance with rule 97,
- (b) pay any items payable in accordance with rules 98 and 100,
- (c) pay any amounts (including any debts or liabilities and the administrator's own remuneration and expenses) which would, if the administrator were to cease to be the administrator of the institution, be payable out of the property of which the administrator had custody or control in accordance with paragraph 99, and
- (d) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

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

Debts of institution to rank equally

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

Supplementary provisions as to dividend

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

- (a) any debts which are the subject of claims which have not yet been determined, and
- (b) disputed proofs and claims.

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

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

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

- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838(1), from the time when it was withheld, and
- (b) the costs of the proceedings in which the order to pay is made.

Division of unsold assets

119.—(1) The administrator may, with the permission of the creditors' committee, or if there is no creditors' committee, the creditors, divide in its existing form amongst the institution's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) The administrator must—

- (a) in the receipts and payments account included in the final progress report under rule 182, state the estimated value of the property divided amongst the creditors of the investment during the period to which the report relates, and
- (b) as a note to the account, provide details of the basis of the valuation.

CHAPTER 2

Proofs of debt

Proving a debt

120.—(1) Subject to paragraph (7), a person claiming to be a creditor of the institution and wishing to recover their debt in whole or in part must (subject to any order of the court to the contrary) submit their claim in writing to the administrator.

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

(3) Subject to paragraph (4) and paragraph (6), a proof must—

- (a) be made out by, or under the direction of, the creditor and authenticated by the creditor or a person authorised in that behalf, and
- (b) state the following matters—
 - (i) the creditor's name and address,
 - (ii) if the creditor is a company, its registered number,

- (iii) the total amount of the creditor's claim (including value added tax) as at the date on which the institution entered special administration, less any payments made after that date in respect of the claim, any deduction under rule 131 and any adjustment by way of set-off in accordance with rule 132,
- (iv) whether or not the claim includes outstanding uncapitalised interest,
- (v) particulars of how and when the debt was incurred by the institution,
- (vi) particulars of any security held, the date on which it was given and the value which the creditor puts on it,
- (vii) details of any reservation of title in respect of goods to which the debt refers, and
- (viii) the name, address and authority of the person authenticating the proof (if not the creditor).

(4) There must be specified in the proof details of any documents by reference to which the debt can be substantiated but, subject to paragraph (5), it is not essential that such document be attached to the proof or submitted with it.

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

(6) Where the administrator has become aware that a customer has a shortfall claim, the administrator must—

- (a) keep a record of the shortfall claim, including the details set out in paragraph (3)(b) to the extent relevant,
- (b) treat each record under sub-paragraph (a) as if it were a proof submitted by a customer in respect of its shortfall claim and references to “proofs” and to “proving” shall include all records prepared under sub-paragraph (a), and
- (c) notify the customer that a proof for the shortfall claim has been submitted under this rule as soon as is reasonably practicable.

(7) Where paragraph (6) applies, a customer does not need to submit a separate proof under paragraph (1) for a shortfall claim.

Costs of proving

121. Unless the court otherwise orders—

- (a) every creditor bears the cost of proving their own debt, including costs incurred in providing documents or evidence under rule 120, except where the administrator has proved a debt in relation to a customer's shortfall claim under rule 120(6), and
- (b) costs incurred by the administrator in estimating the quantum of a debt under rule 128 are payable out of the institution's assets as an expense of the special administration.

Administrator to allow inspection of proofs

122. The administrator must, so long as proofs lodged are in the administrator's hands, allow them to be inspected, at all reasonable times on any business day, by—

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

New administrator appointed

123.—(1) If a new administrator is appointed in place of another, the former administrator must as soon as is reasonably practicable transmit to the new administrator all proofs received, together with an itemised list of them.

(2) The new administrator must authenticate the list by way of receipt for the proofs, and return it to the former administrator.

(3) From then on, all proofs of debt must be sent to and retained by the new administrator.

Admission and rejection of proofs for dividend

124.—(1) The administrator may admit or reject a proof in whole or in part.

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

Appeal against decision on proof

125.—(1) If a creditor is dissatisfied with the administrator's decision with respect to their proof (including any decision on the question of preference), that creditor may apply to the court for the decision to be reversed or varied.

(2) An application under paragraph (1) must be made within twenty-one days of the creditor receiving the statement sent under rule 124.

(3) A member or any other creditor may, if dissatisfied with the administrator's decision admitting or rejecting the whole or any part of a proof, make an application to the court for the decision to be reversed or varied within twenty-one days of becoming aware of the administrator's decision.

(4) The applicant must give notice of an application under paragraph (1) or (3) to the FCA

(5) Where an application is made to the court under this rule, the court must fix a venue for the application to be heard.

(6) The applicant must send notice of the venue set by the court under paragraph (5) to—

- (a) the creditor who lodged the proof in question (if the applicant is not that creditor),
- (b) the administrator, and
- (c) the FCA.

(7) The administrator must, on receipt of the notice, file with the court the relevant proof, together (if relevant) with a copy of the statement sent under rule 124.

(8) Where the application is made by a member, the court must not disallow the proof (in whole or in part) unless the member shows that there is (or would be but for the amount claimed in the proof), or that it is likely that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the institution would be entitled.

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

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

Withdrawal or variation of proof

126. A creditor's proof may at any time, by agreement with the administrator, be withdrawn or varied as to the amount claimed.

Exclusion of proof by the court

127.—(1) The court may exclude a proof or reduce the amount claimed—

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

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

- (a) in the case of an application by the administrator, to the creditor who made the proof, and
- (b) in the case of an application by a creditor, to the administrator and to the creditor who made the proof (if the applicant is not the same creditor).

CHAPTER 3

Quantification of claims

Estimate of quantum

128.—(1) The administrator must estimate the value of any debt which, by reason of it being subject to any contingency or for any other reason, does not bear a certain value, and a previous estimation may be revised, if the administrator thinks fit, by reference to any change of circumstances or to information becoming available to the administrator.

(2) The creditors must be informed of the estimation and any revision of it.

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

Negotiable instruments

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

Secured creditors

130.—(1) If a secured creditor realises their security, the creditor may prove for the balance of their debt, after deducting the amount realised.

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

Discounts

131. All trade and other discounts, except any discount for immediate, early or cash settlement, which would have been available to the institution but for it going into special administration, must in every case be deducted from the claim.

Mutual credit and set-off

132.—(1) This rule applies where the administrator has, under rule 142, given notice of a proposal to make a distribution.

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

- (a) any debt arising out of an obligation incurred after the institution entered special administration,
- (b) any debt arising out of an obligation incurred at a time when the creditor had notice that an application for a special administration order was pending, or
- (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) after the institution entered special administration, or
 - (ii) at a time when the creditor had notice that an application for a special administration order was pending.

(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 regarded as being due to or from the institution 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 128 shall apply for the purposes of this rule to any obligation to or from the institution which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 133 to 135 shall apply for the purposes of this rule in relation to any sums due to the institution which—

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

(7) Rule 153 shall apply for the purposes of this rule to any sum due to or from the institution which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the special administration. Alternatively the balance (if any) owed to the institution must be paid to the 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 that debt becomes due and payable.

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

Debt in a foreign currency

133.—(1) A proof for a debt incurred or payable in a foreign currency must state the amount of the debt in that currency.

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

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

(4) A creditor who considers that the rate determined by the 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

134.—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the institution entered special administration.

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

Interest

135.—(1) In this rule, “the relevant date” means the date on which the institution entered special administration.

(2) Where a debt proved in the special 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.

(3) In the following circumstances the creditor’s claim may include interest on the debt for periods before the relevant date, although not previously reserved or agreed.

(4) 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.

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

(6) Interest under paragraph (5) may only be claimed for the period from the date of the demand to the relevant date and for all the purposes of the Regulations and these Rules must be chargeable at a rate not exceeding that mentioned in paragraph (7).

(7) The rate of interest to be claimed under paragraphs (4) and (5) is the rate specified in section 17 of the Judgments Act 1838 on the relevant date.

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

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

(10) The rate of interest payable under paragraph (8) is whichever is the greater of the rate specified under paragraph (7) and the rate applicable to the debt apart from the special administration.

Debt payable at a future time

136. Subject to rule 153, a creditor may prove for a debt of which payment was not yet due on the date when the institution entered special administration.

Value of security

137.—(1) Subject to paragraph (2), a secured creditor may, with the agreement of the administrator or the permission of the court, at any time alter the value which that creditor has, in their proof of debt, put upon their security.

(2) A secured creditor may re-value their security only with the permission of the court if that secured creditor—

- (a) being the applicant for a special administration order, has in the application put a value on their security, or
- (b) has voted in respect of the unsecured balance of their debt.

Surrender for non-disclosure

138.—(1) If a secured creditor omits to disclose their security in their proof of debt, the creditor must surrender their security for the general benefit of creditors, unless the court, on application by that creditor, relieves them from the effect of this rule on the ground that the omission was inadvertent or the result of honest mistake.

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

Redemption by administrator

139.—(1) The administrator may at any time give notice to a creditor whose debt is secured that it is proposed, at the expiration of twenty-eight 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 twenty-one days (or such longer period as the administrator may allow) in which, if the creditor so wishes, to exercise their right to revalue their security (with the permission of the court, where rule 137 applies). If the creditor re-values their security, the administrator may only redeem at the new value.

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

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

Test of security's value

140.—(1) Subject to paragraphs (2) and (3), the administrator may require any property comprised in the security to be offered for sale, if dissatisfied with the value which a secured creditor puts on their security (whether in their proof or by way of re-valuation under rule 137).

(2) The terms of sale must be such as may be agreed, or as the court may direct, and if the sale is by auction, the administrator on behalf of the institution, and the creditor on their own behalf, may appear and bid.

(3) This rule does not apply if the security has been revalued and the revaluation has been approved by the court.

Realisation of security by creditor

141. If a creditor who has valued their security subsequently realises it (whether or not at the instance of the administrator)—

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

Notice of proposed distribution

142.—(1) Where an administrator is proposing to make a distribution to creditors, the administrator must give notice of that fact.

(2) The notice in paragraph (1) must—

- (a) state whether the distribution is to preferential creditors or to preferential creditors and unsecured creditors, and
- (b) where the administrator proposes to make a distribution to unsecured creditors, state the value of the prescribed part, except where the court has made an order under section 176A(5) of the IA 1986.

(3) The notice in paragraph (1) must be given to—

- (a) all creditors whose addresses are known to the administrator, and
- (b) the FCA.

(4) Subject to paragraph (5)(b), before declaring a dividend the administrator must by notice invite the creditors to prove their debts. Such notice—

- (a) must be gazetted, and
- (b) may be advertised in such other manner as the administrator thinks fit.

(5) A notice under paragraph (1) must, in addition to the standard contents—

- (a) state that it is the intention of the administrator to make a distribution to creditors within the period of two months from the last date for proving,
- (b) specify whether the proposed dividend is interim or final, and
- (c) specify a date up to which proofs may be lodged being a date which—
 - (i) is the same date for all creditors, and
 - (ii) is not less than twenty-one days from that of the notice.

(6) Where a dividend is to be declared for preferential creditors—

- (a) the notice under paragraph (1) need only to be given to those creditors in whose case the administrator has reason to believe that their debts are preferential, and
- (b) the notice under paragraph (3) need only be given if the administrator thinks fit.

Admission or rejection of proofs

143.—(1) Unless the administrator has already dealt with them, within fourteen days of the last date for proving, the administrator must—

- (a) admit or reject (in whole or in part) proofs that have been submitted, or
- (b) make such provision in respect of them as the administrator thinks fit.

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

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

Postponement or cancellation of dividend

144.—(1) The administrator may postpone or cancel the dividend if in the period of two months referred to in rule 142(5)—

- (a) the administrator has rejected a proof in whole or in part and application is made to the court for that decision to be reversed or varied, or
- (b) an application is made to the court for the administrator’s decision on a proof to be reversed or varied, or for a proof to be excluded, or for a reduction of the amount claimed.

(2) Where in that same period the administrator considers that, due to the nature of the business of the institution, there is significant complexity in admitting or rejecting proofs of claims submitted, or that the quantum of claims may be affected by any shortfall claims, the administrator may postpone the dividend.

Declaration of a dividend

145.—(1) Where rule 144(2) does not apply and subject to paragraph (2), within the two month period referred to in rule 142(5)(a) the administrator must proceed to declare the dividend to one or more classes of creditor who have been given notice under that rule.

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

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

Notice of declaration of a dividend

146.—(1) Where the administrator declares a dividend, the administrator must give notice of such declaration to—

- (a) all creditors who have proved their debts, and
 - (b) the FCA.
- (2) A notice under paragraph (1) must include the following particulars—
- (a) amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets,
 - (b) payments made by the administrator when acting as such,
 - (c) where the administrator proposed to make a distribution to unsecured creditors, the value of the prescribed part, except where the court has made an order under section 176A(5) of the IA 1986,
 - (d) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes,
 - (e) the total amount of dividend and the rate of dividend, and
 - (f) whether, and if so when, any further dividend is expected to be declared.

Payments of dividend and related matters

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

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

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

Notice of no dividend or no further dividend

148.—(1) If the administrator gives notice to creditors that no dividend (or as the case may be, no further dividend) can be declared, the notice must contain a statement to the effect either—

- (a) that no funds have been realised, or
 - (b) that the funds realised have already been distributed or used or allocated for paying the expenses of the special administration.
- (2) The notice to creditors in paragraph (1) must also be given to the FCA.

Proof altered after payment of dividend

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

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

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

Secured creditors

150.—(1) This rule applies where a creditor re-values their security at a time when a dividend has been declared.

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

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

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

Disqualification from dividend

151.—(1) If a creditor contravenes any provision of the Regulations or these Rules relating to the valuation of securities, the court may, on the application of the administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

(2) Notice of an application under paragraph (1) must be given by the administrator to the FCA and the FCA has the right to appear and be heard at the hearing of the application.

Assignment of right to dividend

152.—(1) If a person who is entitled to a dividend gives notice to the administrator that they wish the dividend to be paid to another person, or that they have assigned that entitlement to another person, the administrator shall pay the dividend to that other person accordingly.

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

Debt payable at a future time

153.—(1) Subject to paragraph (2), where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, that creditor is entitled to dividend equally with other creditors.

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



where—

- (a) "X" is the value of the admitted proof, and
- (b) "n" is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months in a decimalised form.

(3) In paragraph (2) "relevant date" means the date that the institution entered special administration.