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STATUTORY INSTRUMENTS

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**2016 No. 900**

**The Postal Administration (Scotland) Rules 2016**

**PART 12**

**General Provisions**

**Validity of proceedings**

**89.** Where in accordance with the 1986 Act or these 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**

**90.** A report of proceedings at a meeting of the company or of the creditors in a postal administration, signed by the chair of that meeting, shall be deemed, unless the contrary is shown, to be sufficient evidence of the matters contained in that report.

**Right to list of creditors and copy documents**

**91.—(1)** Subject to Rule 91, in any postal administration proceedings, a creditor who has the right to inspect documents also has the right to require the postal administrator to furnish the creditor with a list of the company's creditors and the amounts of their respective debts.

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

(3) Subject to Rule 91, 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**

**92.—(1)** Where the postal 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,

the postal administrator 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 postal 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 postal administrator to decline to allow inspection of any claim or proxy.

#### **Postal administrator's caution**

**93.**—(1) Wherever under these Rules any person has to appoint a person to the office of postal administrator, the person making the appointment must be satisfied that the person appointed or to be appointed has caution for the proper performance of that person's functions.

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

#### **Punishment of offences**

**94.** Section 431 (summary proceedings) of the 1986 Act(1), as it applies to Scotland, has effect in relation to offences under these Rules as to offences under the 1986 Act.

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

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

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

#### **Electronic submission of information instead of submission of forms to the Secretary of State, postal administrators and of copies to the registrar of companies**

**96.**—(1) This Rule applies in any case where information in a prescribed form is required by these Rules to be sent by any person to the Secretary of State or the postal administrator, or a copy of a prescribed form is to be sent to the registrar of companies.

(2) A requirement of the kind mentioned in paragraph (1) is treated as having been satisfied where—

- (a) the information is submitted electronically with the agreement of the person to whom the information is sent;
- (b) the form in which the electronic submission is made satisfies the requirements of the person to whom the information is sent (which may include a requirement that the information supplied can be reproduced in the format of the prescribed form);
- (c) all the information required to be given in the prescribed form is provided in the electronic submission; and
- (d) the person to whom the information is sent can provide in legible form the information so submitted.

(3) Where information in a prescribed form is permitted to be sent electronically under paragraph (2), any requirement in the prescribed form that the prescribed form be accompanied by a signature is taken to be satisfied—

- (a) if the identity of the person who is supplying the information in the prescribed form and whose signature is required is confirmed in a manner specified by the recipient; or
- (b) where no such manner has been specified by the recipient, if the communication contains or is accompanied by a statement of the identity of the person who is providing the

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(1) Section 431 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 61.

information in the prescribed form, and the recipient has no reason to doubt the truth of that statement.

(4) Where information required in a prescribed form has been supplied to a person, whether or not it has been supplied electronically in accordance with paragraph (2), and a copy of that information is required to be supplied to another person falling within paragraph (1), the requirements contained in paragraph (2) apply in respect of the supply of the copy to that other person, as they apply in respect of the original.

### **Electronic submission of information instead of submission of forms in all other cases**

**97.**—(1) Subject to paragraph (4), this Rule applies in any case where Rule 94 does not apply, where information in a prescribed form is required by these Rules to be sent by any person.

(2) A requirement of the kind mentioned in paragraph (1) is treated as having been satisfied where—

- (a) the person to whom the information is sent has agreed—
  - (i) to receiving the information electronically and to the form in which it is to be sent; and
  - (ii) to the specified manner in which paragraph (3) is to be satisfied;
- (b) all the information required to be given in the prescribed form is provided in the electronic submission; and
- (c) the person to whom the information is sent can provide in legible form the information so submitted.

(3) Any requirement in a prescribed form that it be accompanied by a signature is taken to be satisfied if the identity of the person who is supplying the information and whose signature is required, is confirmed in the specified manner.

(4) Where information required in prescribed form has been supplied to a person, whether or not it has been supplied electronically in accordance with paragraph (2), and a copy of that information is required to be supplied to another person falling within paragraph (1), the requirements contained in paragraph (2) apply in respect of the supply of the copy to that other person, as they apply in respect of the original.

### **Contents of notices to be published in the Edinburgh Gazette under the 1986 Act or these Rules**

**98.**—(1) Where under the 1986 Act or these Rules a notice must be published in the Edinburgh Gazette, in addition to any content specifically required by the 1986 Act or any other provision of these Rules, the content of such a notice must be as set out in this Rule.

(2) All notices published must specify insofar as it is applicable in relation to the particular notice—

- (a) the name and postal address of the postal administrator acting in the proceedings;
- (b) the capacity in which the postal administrator is acting and the date of appointment;
- (c) either an e-mail address, or a telephone number, through which the postal administrator may be contacted;
- (d) the name of any person other than the postal administrator (if any) who may be contacted regarding the proceedings;
- (e) the number assigned to the postal administrator by the Secretary of State;
- (f) the court name and any number assigned to the proceedings by the court;

- (g) the registered name of the company;
- (h) the registered number of the company;
- (i) the registered office of the company, or if an unregistered company, the postal address of its principal place of business;
- (j) any principal trading address of the company if this is different from its registered office;
- (k) any name under which the company was registered in the 12 months prior to the date of the commencement of the proceedings which are the subject of the Gazette notice; and
- (l) any name or style (other than the company's registered name) under which—
  - (i) the company carried on business; and
  - (ii) any debt owed to a creditor was incurred.

#### **Notices otherwise advertised under the 1986 Act or these Rules**

**99.**—(1) Where under the 1986 Act or these Rules a notice may be advertised otherwise than in the Edinburgh Gazette, in addition to any content specifically required by the 1986 Act or any other provision of these Rules, the content of such a notice must be as set out in this Rule.

(2) All notices published must specify insofar as it is applicable in relation to the particular notice—

- (a) the name and postal address of the postal administrator acting in the proceedings to which the notice relates;
- (b) either an e-mail address, or a telephone number, through which the postal administrator may be contacted;
- (c) the registered name of the company;
- (d) the registered number of the company;
- (e) any name under which the company was registered in the 12 months prior to the date of the commencement of the proceedings which are the subject of the notice; and
- (f) any name or style (other than the company's registered name) under which—
  - (i) the company carried on business; and
  - (ii) any debt owed to a creditor was incurred.

#### **Notices otherwise advertised – other additional provisions**

**100.** The information required to be contained in a notice to which Rule 97 applies must be included in the advertisement of that notice in a manner that is reasonably likely to ensure, in relation to the form of the advertising used, that a person reading, hearing or seeing the advertisement, will be able to read, hear or see that information.

#### **Omission of unobtainable information**

**101.** Information required under Rules 97 and 98 to be included in a notice may be omitted if it is not reasonably practicable to obtain it.

#### **Fees, expenses, etc.**

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

- 103.**—(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, the 2011 Act or these Rules, make an order waiving any such failure and, so far as practicable, restoring any person prejudiced by the failure to the position that person 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 postal 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 postal administration proceedings;
  - (b) extend or waive any time limit specified in the 1986 Act, the 2011 Act or these Rules.
- (3) An application under paragraph (1)—
- (a) may at any time be remitted by the sheriff to the Court of Session, of the sheriff’s 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 postal administrator shall record in the sederunt book the decision of the court.

### **Sederunt book**

- 104.**—(1) The postal administrator shall maintain a sederunt book during the postal administrator’s term of office for the purpose of providing an accurate record of the postal 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 these Rules.
- (3) The postal 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 in the sederunt book, except where it is founded on by the postal administrator in the postal administrator’s own interest.
- (5) Without prejudice to paragraph (3), the postal 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 postal administration ends.
- (6) Where the sederunt book is maintained in non-documentary form it shall be capable of reproduction in legible form.

### **Disposal of company’s books, papers and other records**

- 105.**—(1) Where a company has been the subject of postal administration proceedings (“the original proceedings”) which have terminated and other insolvency proceedings (“the subsequent proceedings”) have commenced in relation to that company, the postal 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 the postal administrator to do so by the responsible insolvency practitioner appointed in relation to the subsequent proceedings; or  
(b) the period of 6 months after the company entered postal administration,  
deliver to the responsible insolvency practitioner appointed in relation to the subsequent proceedings the books, papers and other records of the company.

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

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

#### **Information about time spent on a case**

**106.**—(1) Subject as set out in this Rule, the postal 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 or member of the company; and
- (b) any director of the company.

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

- (a) the total number of hours spent on the case by the postal 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 postal administrator has completed any period in office which is a multiple of six months or, where the postal administrator has vacated office, the date that the postal administrator vacated office.

(5) Where the postal 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 on which the postal administrator vacated 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 postal administrator.