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STATUTORY INSTRUMENTS

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**2016 No. 900**

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

**PART 1**

**Interpretation, Application and Review**

**Citation and commencement**

1. These Rules may be cited as the Postal Administration (Scotland) Rules 2016 and shall come into force on 1st October 2016.

**Construction and interpretation**

2.—(1) In these Rules—

“the 1986 Act” means the Insolvency Act 1986;

“the 2011 Act” means the Postal Services Act 2011;

“accounting period” shall be construed as follows—

(a) the first accounting period is the period of six months beginning with the date on which the company entered postal administration; and

(b) any subsequent accounting period shall be the period of six months beginning with the end of the last accounting period;

“administrative receiver” has the same meaning as in section 70(4) of the 2011 Act (applications for postal administration orders);

“the Companies Act” means the Companies Act 2006<sup>(1)</sup>;

“insolvency proceedings” means any proceedings under the first group of parts in the 1986 Act or under the Insolvency (Scotland) Rules 1986<sup>(2)</sup>;

“OFCOM” means the Office of Communications;

“pre-postal administration costs” has the meaning given in Rule 15(2)(a);

“prescribed part” has the same meaning as it does in section 176A(2)(a) of the 1986 Act (share of assets for unsecured creditors)<sup>(3)</sup>;

“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;

“standard content” means—

(a) in relation to a notice to be published or advertised in the Edinburgh Gazette, the contents specified in Rule 97(2); and

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(1) 2006 c.46.

(2) S.I. 1986/1915, as amended by S.I. 1987/1921, 1999/1820, 2001/4040, 2002/2709, 2003/2108, 2003/2109, 2003/2111, 2006/734, 2006/735, 2008/393, 2008/662, 2009/662, 2009/2375, 2010/688 and 2014/114.

(3) Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252.

(b) in relation to a notice to be advertised in any other way, the contents specified in Rule 98(2); 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<sup>(4)</sup> are references to those provisions as modified and applied by Schedule 10 to the 2011 Act unless otherwise stated.

(3) References to other provisions of the 1986 Act are, where those provisions have been modified by Schedule 10 to the 2011 Act, references to those provisions as so modified.

(4) Where the universal service provider is a foreign company within the meaning of section 85 of the 2011 Act (interpretation of Part 4), 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 the United Kingdom and to its property in the United Kingdom unless otherwise stated.

(5) Where the universal service provider 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 1043 or 1046 of the Companies Act (unregistered companies).

(6) A document or information given, delivered or sent in hard copy under any Rule is sufficiently authenticated if it is signed by the person sending or supplying it.

(7) A document or information given, delivered or sent in electronic form under any Rule is sufficiently authenticated—

- (a) if the identity of the sender is confirmed in a manner specified by the recipient; or
- (b) where no such manner has been specified by the recipient, if the communication contained or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.

## **Application**

**3.** These Rules apply in relation to a company which is a universal service provider which the courts in Scotland have jurisdiction to wind up.

## **Review**

**4.**—(1) Before the end of the review period, the Secretary of State must—

- (a) carry out a review of these Rules;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The report must in particular—

- (a) Set out the objective intended to be achieved by these Rules;
- (b) Assess the extent to which those objectives are achieved; and
- (c) Assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) “Review period” means the period of five years beginning with the day on which these Rules comes into force.

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(4) Schedule B1 was inserted by the Enterprise Act 2002 (c.40), Schedule 16.

## PART 2

### Appointment of Postal Administrator by Court

#### Form of Application

5.—(1) Where an application is made by way of petition for a postal administration order to be made in relation to a company, the petition shall state—

- (a) that the company is a universal service provider; and
- (b) one or both of the following—
  - (i) the applicant's belief that the company is, or is likely to be, unable to pay its debts;
  - (ii) the Secretary of State has certified that it would be appropriate to petition for the winding up of the universal service provider under section 124A of the 1986 Act (petition for winding up on grounds of public interest)(5).

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

#### Statement of proposed postal administrator

6. There shall be lodged together with the petition a statement of the proposed postal administrator, in the form required by Form PA1(S), stating—

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

#### Service of petition

7.—(1) In addition to those persons referred to in section 70(2) of the 2011 Act (applications for postal administration orders), notice of a petition shall be given by the petitioner in Form PA2(S) to—

- (a) an administrative receiver, if appointed;
- (b) any person who, to the knowledge of the petitioner, has applied to the court for an administration order under Schedule B1 to the 1986 Act, without the modifications made by Schedule 10 to the 2011 Act, in relation to the company;
- (c) if a petition for the winding up of the 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 78(1) of the 2011 Act (enforcement of security) of the creditor's intention to enforce the creditor's security over property of the company;
- (e) a provisional liquidator, if appointed;
- (f) the person proposed in the petition to be the postal administrator;
- (g) the registrar of companies;
- (h) the Keeper of the Register of Inhibitions and Adjudications for recording in that register;
- (i) if the applicant is the Secretary of State, OFCOM;
- (j) if the applicant is OFCOM, the Secretary of State;

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(5) Section 124A was inserted by the Companies Act 1989 (c.40), section 60(3). It was amended by the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27), Schedule 2, paragraph 27 and S.I. 2001/3649, Article 305.

(k) the company; 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**

8. If the court makes a postal 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 postal administration.

### **Notice of dismissal of application for a postal administration order**

9. 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 6 in Form PA3(S).

## **PART 3**

### **Process of Postal Administration**

#### **Notification and advertisement of postal administrator's appointment**

10.—(1) The notice of appointment, which the postal administrator must publish as soon as is reasonably practicable after appointment by virtue of paragraph 46(2)(b) of Schedule B1 to the 1986 Act, shall be advertised in the Edinburgh Gazette in Form PA4(S) and may be advertised in such other manner as the postal administrator thinks fit.

(2) In addition to the standard content, the notice under paragraph (1) must state—

- (a) that a postal administrator has been appointed;
- (b) the date of the appointment; and
- (c) the nature of the business of the company.

(3) The postal administrator shall at the same time give notice of the postal administrator's appointment to the following persons—

- (a) an administrative receiver, if appointed;
- (b) a petitioner in a petition for the winding up of the company, if that petition is pending;
- (c) any provisional liquidator of the company, if appointed;
- (d) 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 10 to the 2011 Act, in relation to the company;
- (e) any supervisor of a voluntary arrangement under Part 1 of the 1986 Act;
- (f) any holder of a qualifying floating charge who, to the postal administrator's knowledge, has served notice in accordance with section 70 of the 2011 Act that the person is seeking to appoint an administrator;
- (g) any creditor who, to the postal administrator's knowledge, has served notice in accordance with section 78 of the 2011 Act (enforcement of security) of the creditor's intention to enforce the creditor's security over property of the company;

- (h) the Keeper of the Register of Inhibitions and Adjudications for recording in that register;
- (i) if the application for the postal administration order was made by the Secretary of State, to OFCOM; and
- (j) if the application for the postal administration order was made by OFCOM, to the Secretary of State.

(4) Where, under a provision of Schedule B1 to the 1986 Act or these Rules, the postal administrator is required to send a notice of the postal administrator's appointment to any person, the postal administrator shall do so in Form PA5(S).

### **Notice requiring statement of affairs**

**11.**—(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 postal administrator shall send to each relevant person upon whom the postal administrator decides to make a requirement under paragraph 47 of Schedule B1 to the 1986 Act a notice in Form PA6(S) requiring that relevant person to prepare and submit a statement of the company's affairs.

(3) The notice shall inform each relevant person—

- (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 the person, and to each other relevant person, of section 235 of the 1986 Act (duty to co-operate with office-holder)(6).

(4) The postal administrator shall furnish each relevant person upon whom the postal administrator decides to make a requirement under paragraph 47 of Schedule B1 to the 1986 Act with the forms required for the preparation of the statement of affairs.

### **Statements of affairs and statements of concurrence**

**12.**—(1) The statement of the company's affairs shall be in Form PA7(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 postal administrator may require one or more such persons to submit, in place of a statement of affairs, a statement of concurrence in Form PA8(S); and where the postal administrator does so, the postal administrator 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 of it, to the postal administrator, and a copy of the statement to each of those persons whom the postal administrator has required to submit a statement of concurrence.

(4) A person required to submit a statement of concurrence shall deliver to the postal administrator the statement of concurrence, together with one copy of it, before the end of the period of 5 business days (or such other period as the postal administrator may agree) beginning with the day on which the statement of affairs being concurred with is received by that person.

(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, considers that statement to be erroneous or misleading, or is without the direct knowledge necessary for concurring with it.

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(6) Section 235 was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraph 24.

- (6) A statement of concurrence shall be a statutory declaration.
- (7) Subject to Rule 12, the postal 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 PA9(S); and
  - (b) insert any statement of affairs submitted to the postal administrator, together with any statement of concurrence, in the sederunt book.

### **Limited disclosure**

**13.**—(1) Where the postal administrator thinks that it would prejudice the conduct of the postal administration or might reasonably be expected to lead to violence against any person for the whole or part of the statement of the company's affairs to be disclosed, the postal administrator 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 postal 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, the creditor may apply to the court for an order that the postal 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 postal 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 postal 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 the postal administrator has previously sent a copy of the postal administrator's 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**

**14.**—(1) The power of the postal administrator under paragraph 48(2) of Schedule B1 to the 1986 Act to revoke a requirement under paragraph 47(1) of that Schedule or to grant an extension of time, may be exercised at the postal 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 postal administrator may apply to the court for a release or extension of time.

(3) An applicant under this Rule shall bear his own expenses, and unless the court otherwise orders, no allowance towards the expenses of an applicant under this Rule in relation to the application shall be made as an expense of the postal administration.

### **Expenses of statement of affairs**

**15.**—(1) A relevant person who provides to the postal administrator a statement of the affairs of the company or statement of concurrence shall be allowed, and paid by the postal administrator as an expense of the postal administration, any expenses incurred by the relevant person in so doing which the postal administrator considers reasonable.

(2) Any decision by the postal 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 postal administrator.

### **Postal administrator's proposals**

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

- (a) details of the court which granted the postal administration order or in which the notice of appointment was lodged, and the relevant court reference number (if any);
- (b) the full name, registered address, registered number and any other trading names of the company;
- (c) details relating to the postal administrator's appointment, including the date of appointment and whether the application was made by the Secretary of State or OFCOM and, where there are joint postal administrators, details of the matters set out in section 72(5) of the 2011 Act (postal administrators);
- (d) the names of the directors and secretary of the company and details of any shareholdings which they have in the company;
- (e) an account of the circumstances giving rise to the appointment of the postal administrator;
- (f) if a statement of the company's affairs has been submitted, a copy or summary of it, with the postal 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 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 company at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the company entered postal 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) a statement complying with paragraph (3) of any pre-postal administration costs charged or incurred by the postal administrator or, to the postal administrator's knowledge, by any other person qualified to act as an insolvency practitioner;
- (k) except where the postal administrator proposes a voluntary arrangement in relation to the company—
  - (i) to the best of the postal administrator's knowledge and belief—

- (aa) an estimate of the value of the prescribed part (whether or not the postal administrator proposes to make an application to court under section 176A(5) of the 1986 Act (share of assets for unsecured creditors)(7) or section 176A(3) of the 1986 Act applies); and
- (bb) an estimate of the value of the 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 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 postal administrator proposes to make an application to court under section 176A(5) of the 1986 Act;
- (l) a statement (which must comply with paragraph (4) where that paragraph applies) of how it is envisaged the objective of the postal administration will be achieved and how it is proposed that the postal administration shall end;
- (m) the manner in which the affairs and business of the company—
  - (i) have, since the date of the postal 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
- (n) such other information (if any) as the postal administrator thinks necessary.
- (2) In this Part—
  - (a) "pre-postal administration costs" are—
    - (i) fees charged; and
    - (ii) expenses incurred,  
by the postal administrator, or another person qualified to act as an insolvency practitioner, before the company entered postal administration but with a view to its doing so; and
  - (b) "unpaid pre-postal administration costs" are pre-postal administration costs which had not been paid when the company entered postal administration.
- (3) A statement of pre-postal administration costs complies with this paragraph if it includes—
  - (a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;
  - (b) details of the work done for which the fees were charged and expenses incurred;
  - (c) an explanation of why the work was done before the company entered postal administration and how it would further the achievement of the objective of the postal administration;
  - (d) a statement of the amount of the pre-postal administration costs, setting out separately—
    - (i) the fees charged by the postal administrator;
    - (ii) the expenses incurred by the postal administrator;
    - (iii) the fees charged (to the postal administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately); and

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(7) Section 176A was inserted by the Enterprise Act 2002 (c. 40), section 252.



- (iv) the expenses incurred (to the postal administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately);
  - (e) a statement of the amounts of pre-postal administration costs which have already been paid (set out separately as under sub-paragraph (d));
  - (f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person (set out separately as under sub-paragraph (d));
  - (g) a statement of the amounts of unpaid pre-postal administration costs (set out separately as under paragraph (d)); and
  - (h) a statement that the payment of unpaid pre-postal administration costs as an expense of the postal administration is subject to approval under Rule 48.
- (4) This paragraph applies where it is proposed that the postal administration will end by the company moving to a creditors' voluntary liquidation; and in that case, the statement required by paragraph (1)(l) must include—
- (a) details of the proposed liquidator;
  - (b) where applicable, the declaration required by section 231 of the 1986 Act (appointment to office of two or more persons); and
  - (c) a statement that the creditors may, nominate a different person as liquidator in accordance with paragraph 83(7) of Schedule B1 to the 1986 Act and Rule 57.
- (5) A copy of the postal administrator's statement of the postal administrator's proposals shall be sent to the registrar of companies together with a notice in Form PA10(S).
- (6) Where the court orders, upon an application by the postal administrator under paragraph 107 of Schedule B1 to the 1986 Act, an extension of the period of time in paragraph 49(5) of that Schedule, the postal administrator must as soon as reasonably practicable after the making of the order notify in Form PA11(S) every creditor of the company and every member of the company of whose address (in either case) the postal administrator is aware.
- (7) Where the postal administrator wishes to publish a notice under paragraph 49(6) of Schedule B1 to the 1986 Act, the notice shall be advertised in such manner as the postal administrator thinks fit.
- (8) A notice published under paragraph (7) must include the standard content and must also state—
- (a) that members can write for a copy of the statement of proposals for achieving the purpose of postal administration; and
  - (b) the address to which to write.
- (9) The notice must be published as soon as reasonably practicable after the postal administrator sends the statement of proposals to the company's creditors but no later than 8 weeks (or such other period as may be agreed by the creditors or as the court may order) from the date that the company entered postal administration.

#### **Limited disclosure of paragraph 49 of Schedule B1 to the 1986 Act statement**

**17.—(1)** Where the postal administrator thinks that it would prejudice the conduct of the postal administration or might reasonably be expected to lead to violence against any person for any of the matters specified in Rule 15(1)(h) and (i) to be disclosed, the postal administrator may apply to the court for an order of limited disclosure in respect of any specified part of the statement under paragraph 49 of Schedule B1 to the 1986 Act containing such matter.

(2) The court may, on such application, order that some or all of the specified part of the statement must not be sent to the registrar of companies or to creditors or members of the company as otherwise required by paragraph 49(4) of Schedule B1 to the 1986 Act.

(3) The postal administrator must as soon as reasonably practicable after the making of an order under paragraph (2), send to the persons specified in paragraph 49(4) to Schedule B1 to the 1986 Act the statement under paragraph 49 of that Schedule (to the extent provided by the order) and an indication of the nature of the matter in relation to which the order was made.

(4) The postal administrator must also send a copy of the order to the registrar of companies.

(5) A creditor who seeks disclosure of a part of a statement under paragraph 49 of Schedule B1 to the 1986 Act in relation to which an order has been made under this Rule may apply to the court for an order that the postal administrator disclose it. The application must be supported by written evidence in the form of an affidavit.

(6) The court may make any order for disclosure subject to any conditions as to confidentiality, duration and scope of the order in the event of any change of circumstances, or other matters, as it sees just.

(7) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the postal administrator must, as soon as reasonable practicable after the change, apply to the court for the order to be discharged or varied.

(8) The postal administrator must, as soon as reasonably practicable after the making of an order under paragraph (7), send to the persons specified in paragraph 49(4) of Schedule B1 to the 1986 Act a copy of the statement under paragraph 49 of that Schedule to the extent provided by the order.

### **Notices to creditors**

**18.**—(1) As soon as reasonably practicable after the conclusion of a meeting of creditors to consider the postal administrator's proposals or revised proposals, or of the conclusion of the business of such a meeting by correspondence in accordance with these Rules, the postal administrator shall—

- (a) send notice of the result of the meeting (including details of any modifications to the proposals that were approved) to every person who received notice of the meeting and to the registrar of companies;
- (b) lodge in court, and send to any creditors who did not receive notice of the meeting and of whose claim the postal administrator has become subsequently aware, a copy of the notice of the result of the meeting along with a copy of the proposals which were considered at that meeting; and
- (c) place a copy of the notice of the result of the meeting in the sederunt book.

(2) Where the business of a creditors' meeting has been carried out by correspondence in accordance with Rule 23, for the references in the foregoing paragraph of this Rule to the result of the meeting and notice of the meeting there shall be substituted references to the result of the correspondence and to the correspondence.

## PART 4

### Meetings and Reports

#### Meetings generally and notice

**19.**—(1) This Rule and Rule 19 apply to any meetings summoned by the postal administrator under paragraph 62 of Schedule B1 to the 1986 Act<sup>(8)</sup>.

(2) In fixing the venue for a meeting, the postal 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 28, the postal administrator shall give not less than 14 days' notice of the venue for the meeting to every person known to the postal administrator as being entitled to attend the meeting.

(4) The postal administrator shall also publish notice of the venue for the meeting in the Edinburgh Gazette and in such other manner as the postal administrator thinks fit to ensure the meeting comes to the attention of any persons who are entitled to attend.

(5) Any notice published under paragraph (4) shall be published not less than 14 days before the meeting.

(6) Any notice under this Rule shall, in addition to the standard content, state—

- (a) the venue fixed for the meeting;
- (b) the purpose of the meeting;
- (c) the persons who are entitled to attend and vote at the meeting;
- (d) the effects of Rule 29 and of the relevant provisions of Rule 31; and
- (e) 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 (3), the postal administrator shall also send out a proxy form.

(8) In the case of any meeting, 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.

#### The chair at meetings

**20.**—(1) At any meeting of creditors summoned by the postal administrator, either the postal administrator or a person nominated by the postal administrator in writing shall chair.

(2) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the company; or
- (b) an employee of the postal administrator or the postal administrator's firm who is experienced in insolvency matters.

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<sup>(8)</sup> Paragraph 62 was amended by the Small Business, Enterprise and Employment Act 2015 (c.26), Schedule 9(1), paragraph 10(23) (not yet in force).

### **Quorum at meeting of creditors**

21.—(1) Any meeting of creditors in postal 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 not confined to those persons present or represented under section 323 of the Companies Act (representation of corporations at meetings)<sup>(9)</sup> but includes those represented by proxy by any person (including the chair).

(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 chair alone, or

(ii) one other person in addition to the chair; and

(b) the chair 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.

### **Chair of meeting as proxy holder**

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

(a) the chair shall propose the resolution unless there is good reason for not doing so, and

(b) if the chair does not propose it, the chair shall forthwith after the meeting notify the person who granted the proxy of the reason why not.

### **Suspension and Adjournment**

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

(2) If, within 30 minutes from the time appointed for the commencement of a meeting, those persons attending the meeting do not constitute a quorum, the chair may adjourn the meeting to such time and place as the chair may appoint.

(3) Once only in the course of the meeting, the chair may, without an adjournment, declare the meeting suspended for any period up to one hour.

(4) In the course of any meeting, the chair may, and shall, if the meeting so resolves, adjourn it to such date, time and place as seems to the chair to be appropriate in the circumstances.

(5) An adjournment under paragraph (4) must not be for a period of more than 14 days, subject to a direction from the court.

(6) If there are subsequent further adjournments, the final adjournment must not be to a day later than 14 days after the date on which the meeting was originally held.

(7) Where a meeting is adjourned under this Rule, proxies may be used if lodged at or before the adjourned meeting.

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

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(9) Section 323 was amended by [S.I. 2009/1632](#), regulation 6.

### **Correspondence instead of creditors' meetings**

**24.**—(1) This Rule applies where the postal administrator proposes to conduct the business of a creditors' meeting by correspondence in accordance with paragraph 58 of Schedule B1 to the 1986 Act<sup>(10)</sup>.

(2) Notice of the business to be conducted shall be given to all who are entitled to be notified of a creditors' meeting by virtue of paragraph 51 of Schedule B1 to the 1986 Act<sup>(11)</sup>.

(3) The postal administrator may seek to obtain the agreement of the creditors to a resolution by sending to every creditor a copy of the proposed resolution.

(4) The postal administrator shall send to the creditors a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.

(5) The postal administrator shall set a closing date for receipt of votes and comments. The closing date shall be set at the discretion of the postal administrator, but shall not be less than 14 days from the date of issue of the notice under paragraph (1) of this Rule.

(6) In order to be considered, votes and comments must be received by the postal administrator by the closing date and must be accompanied by the statement of claim and account or voucher referred to in Rule 36, except where the statement of claim and account or voucher have already been submitted by the creditor.

(7) For the conduct of business to proceed, the postal administrator must receive at least one response which satisfies the requirement of paragraph (6) of this Rule.

(8) If no responses are received by the closing date, then the postal administrator shall summon a creditors' meeting.

(9) Any single creditor, or a group of creditors, of the company whose debts amount to at least 10 per cent of the total debts of the company may, within 5 business days from the date of the postal administrator sending out a resolution or proposals, require him to summon a creditors' meeting to consider the matters raised in the resolution or proposals.

(10) If the postal administrator's proposals or revised proposals are rejected by the creditors pursuant to this Rule, the administrator may summon a creditors' meeting.

(11) A reference in these Rules to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in accordance with this Rule; and Rule 17 shall apply to the business of a creditors' meeting conducted by correspondence as it applies to a creditors' meeting..

### **Remote attendance at meetings**

**25.**—(1) This Rule applies to a request to the postal administrator under section 246A(9) of the 1986 Act (remote attendance at meetings)<sup>(12)</sup> to specify a place for the meeting.

(2) The request must be accompanied by—

- (a) in the case of a request by creditors, a list of the creditors making or concurring with the request and the amounts of their respective debts in the postal administration proceedings in question;

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<sup>(10)</sup> Paragraph 58 is repealed by the Small Business, Enterprise and Employment Act 2015, Schedule 9(1), paragraph 10(22) (not yet in force).

<sup>(11)</sup> Paragraph 51 is amended by the Small Business, Enterprise and Employment Act 2015, Schedule 9(1), paragraph 10(5) (not yet in force).

<sup>(12)</sup> Section 246A was inserted by [S.I. 2010/18](#), Article 3 and amended by the Small Business, Enterprise and Employment Act 2015, Schedule 9(1), paragraph 54(4) (not yet in force).

- (b) in the case of a request by members, a list of the members making or concurring with the request and their voting rights; and
- (c) from each person concurring, written confirmation of that person's concurrence.

(3) The request must be made within 7 business days of the date on which the postal administrator sent the notice of the meeting in question.

(4) Where the postal administrator considers that the request has been properly made in accordance with the 1986 Act and this Rule, the postal administrator must—

- (a) give notice (to all those previously given notice of the meeting)—
  - (i) that it is to be held at a specified place; and
  - (ii) whether the date and time are to remain the same or not;
- (b) specify a venue for the meeting, the date of which must not be more than 28 days after the original date for the meeting; and
- (c) give at least 14 days' notice of the venue of the meeting to all those previously given notice of the meeting,

and the notices required by sub-paragraphs (a) and (c) may be given at the same or different times.

(5) Where the administrator has specified a place for the meeting in response to a request to which this Rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

#### **Action where person excluded**

**26.**—(1) In this Rule, and Rules 26 and 27, an “excluded person” means a person who—

- (a) has taken all steps necessary to attend a meeting under the arrangements put in place to do so by the convener of the meeting under section 246A(6) of the 1986 Act (remote attendance at meetings); and
- (b) those arrangements do not permit that person to attend the whole or part of that meeting.

(2) Where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may—

- (a) continue the meeting;
- (b) declare the meeting void and convene the meeting again;
- (c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.

(3) Where the chair continues the meeting, the meeting is valid unless—

- (a) the chair decides in consequence of a complaint under Rule 27 to declare the meeting void and hold the meeting again; or
- (b) the court directs otherwise.

(4) Without prejudice to paragraph (2), where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may, in the chair's discretion and without an adjournment, declare the meeting suspended for any period up to one hour.

#### **Indication to excluded person**

**27.**—(1) A person who claims to be an excluded person may request an indication of what occurred during the period of that person's claimed exclusion.

(2) A request under paragraph (1) must be made as soon as reasonably practicable and, in any event, no later than 4 p.m. on the business day following the day on which the exclusion is claimed to have occurred.

(3) A request under paragraph (1) must be made to—

- (a) the chair, where it is made during the course of the business of the meeting; or
- (b) the postal administrator where it is made after the conclusion of the business of the meeting.

(4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made under paragraph (3) must give the indication as soon as reasonably practicable and, in any event, no later than 4 p.m. on the business day following the day on which the request was made under paragraph (1).

### **Complaint**

**28.—**(1) Any person who—

- (a) is, or claims to be, an excluded person; or
- (b) attends the meeting (in person or by proxy) and considers that they have been adversely affected by a person’s actual, apparent or claimed exclusion,

may make a complaint.

(2) The person to whom the complaint must be made (“the relevant person”) is—

- (a) the chair, where it is made during the course of the meeting; or
- (b) the postal administrator, where it is made after the meeting.

(3) The relevant person must—

- (a) consider whether there is an excluded person; and
- (b) where satisfied that there is an excluded person, consider the complaint; and
- (c) where satisfied that there has been prejudice, take such action as the relevant person considers fit to remedy the prejudice.

(4) Paragraph (5) applies where—

- (a) the relevant person is satisfied that the complainant is an excluded person;
- (b) during the period of the person’s exclusion—
  - (i) a resolution was put to the meeting; and
  - (ii) voted on; and
- (c) the excluded person asserts how the excluded person intended to vote on the resolution.

(5) Subject to paragraph (6), where satisfied that the effect of the intended vote in paragraph (4), if cast, would have changed the result of the resolution, the relevant person must—

- (a) count the intended vote as being cast in accordance with the complainant’s stated intention;
- (b) amend the record of the result of the resolution; and
- (c) where those entitled to attend the meeting have been notified of the result of the resolution, notify them of the change.

(6) Where satisfied that more than one complainant in paragraph (4) is an excluded person, the relevant person must have regard to the combined effect of the intended votes.

(7) A complaint must be made as soon as reasonably practicable and, in any event, by 4 p.m. on the business day following—

- (a) the day on which the person was excluded; or

(b) where an indication is requested under Rule 26, the day on which the complainant received the indication.

(8) The relevant person must notify the complainant in writing of any decision.

(9) A complainant who is not satisfied by the action of the relevant person may apply to the court for a direction to be given to the relevant person as to the action to be taken in respect of the complaint, and any application must be made no more than 2 business days from the date of receiving the decision of the relevant person.

### **Meeting following nomination of alternative liquidator**

**29.**—(1) Where under Rules 15(1)(l) or 33(1)(h), the postal administrator has proposed that the company enter creditors' voluntary liquidation once the postal administration has ended, the postal 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 postal administrator's proposals or revised proposals.

(2) The postal administrator shall summon a meeting of creditors where such a meeting is requested by creditors of the company whose debts amount to at least 10 per cent of the total debts of the company.

(3) A request for such a meeting shall be made within 21 days of the date on which the postal 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 postal 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 postal administration; and

(b) from each creditor concurring, written confirmation of the creditor's 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 postal administrator's receipt of the notice requesting the meeting.

### **Entitlement to vote (creditors and members)**

**30.**—(1) Part 5 (claims in postal administration) (except Rule 37(2) and (3)) applies for the purpose of determining a creditor's entitlement to vote at any creditors' meeting in a postal administration.

(2) Members of a company at their meetings shall vote according to the 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 the member may have as a member of the company.

### **Hire-purchase, conditional sale and hiring agreements**

**31.**—(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 the owner by the company on the date that the company entered postal 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 a postal administration application or any matter arising as a consequence, or of the company entering postal administration.

### **Resolutions**

**32.**—(1) Subject to paragraph (2) and (3), at a creditors’ or members’ meeting in postal 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) Every resolution passed must be recorded in writing and authenticated by the chair, either separately or as part of the minutes of the meeting, and the record must be kept as part of the sederunt book.

(3) 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 chair’s belief, persons connected with the company.

(4) In this Rule, “connected with the company” has the same meaning as the phrase “connected with a company” in section 249 of the 1986 Act (“connected” with a company).

### **Report of Meeting**

**33.**—(1) The chair of any meeting shall cause a report to be made of the proceedings at the meeting which shall be signed by the chair.

(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 chair shall keep a copy of the report of the meeting as part of the sederunt book in the postal administration.

### **Revision of the postal administrator’s proposals**

**34.**—(1) A statement of revised proposals under paragraph 54 of Schedule B1 to the 1986 Act shall include—

- (a) details of the court which granted the postal administration order or in which the notice of appointment was lodged and the relevant court reference number (if any);
- (b) the full name, registered address, registered number and any other trading names of the company;
- (c) details relating to the appointment of the postal administrator, including the date of appointment and whether the postal administration application was made by the Secretary of State or by OFCOM;
- (d) the names of the directors and secretary of the company and details of any shareholdings which they have in the company;
- (e) a summary of the initial proposals and the reason for proposing a revision;
- (f) details of the proposed revision including details of the postal 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 postal 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 postal 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 57, creditors may nominate another person to act as liquidator, provided that the nomination is made at a meeting of creditors called for that purpose;
  - (iii) any other information that the postal administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions; and
  - (iv) where applicable, the declaration required by section 231(appointment to office of two or more persons) of the 1986 Act.

(2) The postal administrator shall send a copy of the statement in paragraph (1) above together with a notice in Form PA12(S) to the registrar of companies at the same time as it is sent to the creditors of the company and, subject to paragraph 54(4) of Schedule B1 to the 1986 Act, within 5 business days of sending out the statement in paragraph (1) above, shall send a copy of the statement to every member of the company.

(3) Where the postal administrator wishes to publish a notice under paragraph 54(3) of Schedule B1 to the 1986 Act, the notice shall be advertised in such manner as the postal administrator thinks fit.

(4) The notice referred to in paragraph (3) shall—

- (a) state the full name of the company;
- (b) state the name and address of the postal administrator;
- (c) specify an address to which any member of the company can write to request that a copy of the statement be provide free of charge; and
- (d) be published as soon as is reasonably practicable after the administrator sends the statement to creditors.

### **Progress Reports**

**35.**—(1) The postal administrator shall—

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

send to the court, the registrar of companies, each creditor, the Secretary of State and OFCOM, a progress report attached to Form PA13(S).

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

- (a) the name of the court which granted the postal administration order or in which the notice of appointment was lodged, and the court reference number (if any);
- (b) details of the company’s name, address and registration number;
- (c) details of the postal administrator’s name and address, date of appointment and name and address of the applicant for the postal administration order, including any changes in office-holder, and, in the case of joint postal administrators, their functions as set out in the statement made for the purposes of section 72(5) of the 2011 Act (postal administrators);
- (d) details of progress to date, including a receipts and payments account which states what assets of the company have been realised, for what value, and what payments have been made to creditors, in the form of an abstract showing—
  - (i) receipts and payments during the relevant accounting period;
  - (ii) where the postal administrator has ceased to act, receipts and payments during the period from the end of the last accounting period to the time when the postal

administrator so ceased (or, where the postal administrator has made no previous progress report, receipts and payments in the period since appointment);

- (e) details of any assets that remain to be realised;
- (f) where a distribution is to be made in accordance with Part 6 in respect of an accounting period, the scheme of division; and
- (g) any other relevant information for the creditors.

(3) In a receipts and payments account falling within paragraph (2)(d)(ii), the postal 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 (share of assets for unsecured creditors)(13).

(4) The court may, on the application of the postal administrator, extend the period of six weeks referred to in paragraph (1) of this Rule.

(5) If the postal administrator makes default in complying with this Rule without reasonable excuse, the postal administrator shall be guilty of an offence.

- (6) A postal administrator convicted of an offence under paragraph (5) 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.

(7) This Rule is without prejudice to the requirements of Part 6 (distribution to creditors).

### **Disposal of secured property**

**36.—**(1) The following applies where the postal 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 company which is subject to a security (other than a floating charge), or goods in the possession of the 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 postal 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 postal administrator shall place a copy of the order in the sederunt book.

(4) The notice required by paragraph 72(4) of Schedule B1 to the 1986 Act shall be in Form PA14(S).

## **PART 5**

### **Claims in Postal Administration**

#### **Submission of claims**

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

- (a) at or before the meeting; or
- (b) not later than 8 weeks before the end of the accounting period.

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(13) Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252.

- (2) A creditor shall submit the creditor's claim by producing to the postal administrator—
- (a) a statement of claim in the Form PA15(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 postal 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 postal 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 the creditor's 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 the creditor's 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 postal administrator has required the creditor to discharge, or convey or assign, the security under Rule 37(2).

### **Secured debts**

**38.—**(1) A secured creditor shall deduct the estimated value of any security in calculating the amount of the secured creditor's claim;

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

(2) The postal administrator may, at any time after the expiry of 12 weeks from the date on which the company enters postal administration, require a secured creditor to discharge the security or convey or assign it to the postal 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 company); and the amount in respect of which the creditor shall then be entitled to claim shall be any balance of the creditor's debt remaining after receipt of such payment.

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

### **Entitlement to vote and draw dividend**

**39.—**(1) A creditor who has had a claim accepted in whole or in part by the postal administrator or on appeal under Rule 39(5) shall be entitled—

- (a) in a case where the acceptance is under (or on appeal arising from) Rule 39(1), 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) Rule 39(2), to payment out of the assets of the 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 company has funds available to make that payment, having regard to Rule 46, and payment would be consistent with the power and duties of the postal administrator.

(2) Votes are calculated according to the amount of a creditor's debt as at the date on which the company entered postal 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 Part to the postal administrator includes, where applicable, a reference to the chair of the meeting.

### **Adjudication of claims**

**40.**—(1) At the commencement of every meeting of creditors, the postal administrator shall, for the purposes of Rule 38 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 company in respect of an accounting period, the postal 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 the postal administrator under these Rules; and shall at the same time make a decision on any matter requiring to be specified under subparagraph (a) or (b) of paragraph (4).

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

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

- (a) the amount of the claim accepted by the postal administrator;
- (b) the category of debt, and the value of any security, as decided by the postal administrator, and
- (c) if the postal administrator is rejecting the claim, the postal administrator's reasons for doing so.

(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 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 postal 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**

**41.**—(1) The postal administrator, for the purpose of being satisfied 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 the postal administrator believes can produce relevant evidence, to produce such evidence,

and, if the creditor or other person refuses or delays to do so, the postal administrator may apply to the court for an order requiring the creditor or other person to attend for 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 postal administrator or the postal administrator may appear personally.

### **Criminal offences in relation to false claims or evidence**

**42.**—(1) If a creditor produces under Rule 36 a statement of claim, account, voucher or other evidence which is false, the creditor shall be guilty of an offence unless the creditor shows that the creditor 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—

(i) to a fine not exceeding the statutory maximum;

(ii) to imprisonment for a term not exceeding three months or, if the person has 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

(iii) to both such a 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**

**43.**—(1) Subject to Rules 30, 37 and 43, 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 company entered postal administration.

(2) If a debt does not depend on a contingency but would not be payable but for the postal administration until after the date upon which the company entered postal administration, the amount of the claim shall be calculated as if the debt were payable on the date when the company entered postal administration but subject to the deduction of interest at the rate specified in section 17 of the Judgments Act 1838 (judgment debts to carry interest)<sup>(14)</sup> on the date when the company entered postal administration until the date for payment of the debt.

(3) In calculating the amount of the creditor's 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 company or by the usage of trade.

### **Debts depending on contingency**

**44.**—(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.

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<sup>(14)</sup> 1838 c.110, as amended by S.I. 1998/2940, Article 3.

(2) On an application by the creditor to the postal administrator, the postal 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**

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

- (a) a scheme of arrangement; or
- (b) a company voluntary arrangement.

(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 company,

the co-obligant shall account to the postal administrator so as to put the company in the same position as if the co-obligant had paid the debt to the creditor and thereafter had had the co-obligant’s claim accepted in whole or in part in the postal 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 the co-obligant’s own expense from the creditor an assignation of the 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**

**46.**—(1) A creditor may state the amount of the creditor’s claim in currency other than sterling where—

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

## **PART 6**

### **Distribution of Assets**

#### **Order of priority in distribution**

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

- (a) the expenses of the postal administration;

- (b) any preferential debts within the meaning of section 386 of the 1986 Act (categories of preferential debts)(15) (excluding any interest which has been accrued thereon to the date on which the company entered postal 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 date on which the company entered postal 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 company’s assets under section 242 of the 1986 Act (gratuitous alienations)(16) 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 (interest on debts) and, for the purposes of paragraph (a) of that subsection, as applied to Scotland by subsection (5), the rate specified in these Rules shall be 15 per centum per annum.
- (3) The expenses of the company administration mentioned in sub-paragraph (a) of paragraph (1) above are payable in the order of priority mentioned in Rule 47.
- (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 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 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 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 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 postal administrator; or
  - (b) any preference of the holder of a lien over a title deed or other document which has been delivered to the postal administrator.

### **Expenses of the postal administration**

- 48.**—(1) The expenses of the postal administration are payable out of the assets in the following order of priority—
- (a) any outlays properly chargeable or incurred by the postal administrator in carrying out the postal administrator’s functions in the postal administration, except those outlays specifically mentioned in the following sub-paragraphs;

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(15) Section 386 was amended by the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 18 and by the Enterprise Act 2002 (c.40), section 251(3); there are other amending instruments but none is relevant.

(16) Section 242 was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraph 28.



- (b) the cost, or proportionate cost, of any caution provided by the postal administrator in accordance with the 1986 Act or these Rules;
- (c) the expenses of the applicant and any person appearing on the hearing of the application for the postal administration order whose expenses are allowed by the court;
- (d) any amount payable to a person employed or authorised, under Part 3 of these 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) the remuneration or emoluments of any person who has been employed by the postal administrator to perform any services for the company, as required or authorised under the 1986 Act, the 2011 Act, Schedule B1 to the 1986 Act or these Rules;
- (g) the remuneration of the postal administrator determined under Rule 50; and
- (h) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (without regard to whether the realisation is effected by the postal 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 company, to order expenses to be paid by the company or the postal 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 expenses incurred in the postal administration in such order of priority as the court thinks just.

### **Pre-postal administration costs**

**49.** Where the postal administrator has made a statement of pre-postal administration costs under Rule 15, the postal administrator (where the fees were charged or expenses incurred by the postal administrator) or other insolvency practitioner (where the fees were charged or expenses incurred by that practitioner) may apply to the court for a determination of whether and to what extent the unpaid pre-postal administration costs are approved for payment.

### **Assets to be distributed**

**50.—(1)** The postal administrator shall make up accounts of the postal administrator's intrusions with the company's assets in respect of each accounting period.

(2) Subject to the following paragraphs, the postal administrator may, if the funds of the company are sufficient and after making allowance for future contingencies, pay under Rule 51(1) a dividend out of the assets of the company to the creditors in respect of each accounting period.

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

- (a) the postal administrator has sufficient funds for the purpose;
- (b) the postal administrator does not intend to give notice pursuant to paragraph 83 of Schedule B1 to the 1986 Act<sup>(17)</sup>;
- (c) the postal administrator's statement of proposals contains a proposal to make a distribution to the class of creditors in question; and

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<sup>(17)</sup> Paragraph 83 was amended by the Enterprise Act 2002, Schedule 16, paragraph 1 and the Small Business, Enterprise and Employment Act 2015 (c.26), section 128(3) and Schedule 9(1), paragraph 10(31) and (32) (not yet in force).

(d) the payment of a dividend is consistent with the functions and duties of, and any proposals made by (or intended to be made by), the postal administrator.

(4) The postal administrator may at any time pay—

(a) the expenses of the postal administration mentioned in Rule 47(1)(a), other than the postal administrator's own remuneration; and

(b) the preferential debts.

(5) If the postal 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,

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

(6) Where an appeal is taken under Rule 39(5) against the acceptance or rejection of a creditor's claim, the postal 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.

(7) Where a creditor—

(a) has failed to produce evidence in support of the creditor's claim earlier than eight weeks before the end of an accounting period on being required by the postal administrator to do so under Rule 40(1); and

(b) has given a reason for such failure which is acceptable to the postal administrator,

the postal administrator shall set aside, for such time as is reasonable to enable the creditor to produce that evidence or any other evidence that will enable the postal 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.

(8) Where a creditor submits a claim to the postal 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 postal administrator shall, if the postal administrator 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 the creditor in respect of the subsequent accounting period,

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

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

(10) If a person entitled to a dividend gives notice to the postal administrator that the person wishes the dividend to be paid to another person, or has assigned entitlement to another person, the postal administrator shall pay the dividend to that other accordingly, provided that such notice specifies the name and address of that other.

### **Determination of outlays and remuneration**

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

- (a) the postal administrator's accounts of the postal administrator's intromissions with the assets of the 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 the postal administrator and for the postal administrator's remuneration.
- (2) The postal 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 the postal administrator and for the postal administrator's remuneration and the court may make an interim determination in relation to the amount of the outlays and remuneration payable to the postal 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 postal administrator; and
  - (b) the postal administrator shall make the audited accounts, scheme of division and the determination available for inspection by the members and the creditors.
- (4) The basis for fixing the amount of the remuneration payable to the postal administrator may be a commission calculated by reference to the value of the company's assets which have been realised by the postal administrator, but there shall in any event be taken into account—
- (a) the work which, having regard to that value, was reasonably undertaken by the postal administrator; and
  - (b) the extent of the postal administrator's responsibilities in administering the 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 postal administrator 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) The court may, if it appears to be a proper case, order the expenses in relation to any such appeal of the postal administrator or any creditor appearing or being represented to be paid as an expense of the administration.
- (8) Where there are joint postal 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.

### **Payment of dividends**

**52.**—(1) On the expiry of the period within which an appeal may be taken under rule 50(6) or, if an appeal is so taken, on the final determination of the last such appeal, the postal administrator shall pay to the creditors their dividends in accordance with the scheme of division.

- (2) 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 Rule 49(6) or (7),

shall be deposited by the postal administrator in an appropriate bank or institution.

- (3) If a creditor's claim is revalued, the postal administrator may—
- (a) in paying any dividend to that creditor, make such adjustment to it as the postal administrator considers necessary to take account of that revaluation; or
  - (b) require the creditor to repay the postal administrator the whole or part of a dividend already paid to the creditor.

(4) The postal administrator shall insert in the sederunt book the audited accounts, the scheme of division and final determination in relation to the postal administrator's outlays and remuneration.

(5) For the purposes of paragraph 99(3) of Schedule B1 to the 1986 Act, the former postal administrator's remuneration and expenses shall comprise all those items set out in Rule 47(1).

### **Unclaimed Dividends**

**53.**—(1) Any person, producing evidence of the person's right, may apply to the court to receive a dividend deposited under Rule 51(2), 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 51, 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.

### **New postal administrator appointed**

**54.**—(1) If a new postal administrator is appointed in place of another, the former postal administrator must as soon as reasonably practicable transmit to the new postal administrator all the creditors' claims which the former postal administrator has received, together with an itemised list of them.

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

(3) From then on, all creditors' claims must be sent to and retained by the new postal administrator.

## **PART 7**

### **Ending Postal Administration**

#### **Final progress reports**

- 55.** In this Part—
- (a) "progress report" means a report including the matters specified in Rule 34(2); and
  - (b) "final progress report" means a progress report which includes a summary of—
    - (i) the postal administrator's original proposals;
    - (ii) any major amendments to, or deviations from, those proposals;

- (iii) the steps taken during the postal administration; and
- (iv) the outcome.

### **Application to court**

**56.**—(1) An application under paragraph 79 of Schedule B1 to the 1986 Act for an order providing for the appointment of a postal administrator of the 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 company (if applicable).

(2) Subject to paragraph (3), where the postal administrator applies to the court the postal administrator shall give to—

- (a) the applicant for the postal administration order (unless the applicant in both cases is the same) under which the postal administrator was appointed; and
- (b) the creditors of the company,

at least 5 business days' written notice of the applicant's intention so to apply.

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

- (a) the applicant shall give to the postal administrator at least 5 business days' written notice of the applicant's intention so to apply; and
- (b) upon receipt of such written notice the postal administrator shall, before the end of the 5 business day notice period, provide the applicant with a progress report for the period since the last progress report (if any) or the date the company entered postal 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 postal 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 (application for winding-up) for an order to wind up the company, the postal administrator shall, in addition to the requirements of paragraphs (2) and (4), notify the creditors of whether the postal administrator intends to seek appointment as liquidator.

### **Notification by postal administrator of court order**

**57.**—(1) Where the court makes an order to end the postal administration, the postal administrator must send to the registrar of companies in Form PA16(S), attaching a copy of the court order and a copy of postal administrator's final progress report.

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

### **Moving from postal administration to creditors' voluntary liquidation**

**58.**—(1) A notice pursuant to paragraph 83(3) of Schedule B1 to the 1986 Act shall be in Form PA17(S).

(2) As soon as reasonably practicable after the day on which the registrar of companies registers that notice, the person who has ceased to be the postal administrator (whether or not that person becomes the liquidator) must send a final progress report (which must include details of the assets to be dealt with in the liquidation) to the registrar of companies and to—

- (a) all other persons who received notice of the administrator's appointment;
- (b) where the Secretary of State did not receive notice of the postal administrator's appointment, the Secretary of State; and

- (c) where OFCOM did not receive notice of the postal administrator's appointment, OFCOM.
- (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 15(1)(l) or Rule 33(1)(h)—
- (a) by virtue of the postal administrator's proposals or revised proposals; or
  - (b) where a creditors' meeting is held in accordance with Rule 28, as a consequence of such a meeting.
- (4) OFCOM must notify the Secretary of State before consenting to the postal administrator sending a notice of moving from postal administration to creditors' voluntary liquidation to the registrar of companies.
- (5) Where the creditors nominate a different person, the nomination must, where applicable, include the declaration required by section 231 of the 1986 Act (appointment to office of two or more persons).

### **Moving from postal administration to dissolution**

- 59.**—(1) The notice required by paragraph 84(1) of Schedule B1 to the 1986 Act shall be in Form PA18(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 postal administrator's appointment;
  - (b) where the Secretary of State did not receive notice of the postal administrator's appointment, the Secretary of State; and
  - (c) where OFCOM did not receive notice of the postal administrator's appointment, to OFCOM.
- (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 postal administrator, give a copy of the order to the postal administrator.
- (4) The notice required by paragraph 84(8) of Schedule B1 to the 1986 Act shall be in Form PA19(S).
- (5) OFCOM must notify the Secretary of State before directing the postal administrator to send a notice of moving from postal administration to dissolution to the registrar of companies.

### **Provision of information to the Secretary of State**

- 60.** Where the postal administration ends pursuant to paragraphs 79, 83 or 84 of Schedule B1 to the 1986 Act, the postal administrator shall, within 5 business days from the date of the end of the postal administration, provide the Secretary of State with the following information—
- (a) a breakdown of the relevant debts (within the meaning of section 83(6) of the 2011 Act (regulatory conditions to secure funding of postal administration order) of the company, which remain outstanding; and
  - (b) details of any shortfall (within the meaning of section 83(5) of the 2011 Act) in the property of the company available for meeting those relevant debts.

## PART 8

### Replacing a Postal Administrator

#### Grounds for resignation

**61.**—(1) The postal administrator may give notice of the postal administrator's resignation on grounds of ill health or because—

- (a) the postal administrator 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 the postal administrator of the duties of postal administrator.

(2) The postal administrator may, with the leave of the court, give notice of the postal administrator's resignation on grounds other than those specified in paragraph (1).

#### Notice of intention to resign

**62.** The postal administrator must give to the persons specified below at least 5 business days' notice in Form PA20(S) of the postal administrator's intention to resign, or to apply for the court's leave to do so—

- (a) the Secretary of State;
- (b) OFCOM;
- (c) if there is a continuing postal administrator of the company, to the continuing postal administrator; and
- (d) if there is no such postal administrator, to the company and its creditors.

#### Notice of resignation

**63.**—(1) The notice of resignation shall be in Form PA21(S), lodged in court and a copy sent to the registrar of companies.

(2) 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 postal administrator from office

**64.**—(1) An application to the court to remove a postal administrator from office shall be served upon—

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

(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 PA22(S).

### **Incapacity to act, through death or otherwise**

65.—(1) Subject to paragraph (2), where the postal administrator has died, it is the duty of the postal administrator's executors to give notice of that fact to the court and to the registrar of companies, specifying the date of death. .

(2) If the deceased postal administrator was a partner in or an employee of a firm, notice may be given by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.

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

(4) Where a postal administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the company gives notice in accordance with paragraph 89(2) of Schedule B1 to the 1986 Act, the postal administrator shall also give notice to the registrar of companies.

### **Application to replace**

66.—(1) Where an application is made to the court under paragraph 91 of Schedule B1 to the 1986 Act to appoint a replacement postal administrator, the application shall be accompanied by a Statement of the Proposed Postal Administrator in Form PA1(S).

(2) A copy of the application shall be served, in addition to those persons listed in section 70(2) of the 2011 Act (application for postal administration orders) and Rule 6, on the person who made the application for the postal administration order.

(3) Where the court makes an order filling a vacancy in the office of postal 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 a postal administrator.

### **Notification and advertisement of appointment of replacement postal administrator**

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

(2) The replacement postal administrator shall send notice of the appointment in Form PA23(S) to the registrar of companies.

(3) 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.

(4) All forms and notices shall clearly identify that the appointment is of a replacement postal administrator.

### **Joint or concurrent appointments**

68.—(1) Where a person is appointed in accordance with paragraph 103 of Schedule B1 to the 1986 Act to act as postal administrator jointly or concurrently with the persons then acting, the same provisions shall apply, subject to this Rule and to such other modification as may be necessary, in respect of the making of this appointment as in the case of the original appointment of an administrator.

(2) The additional postal administrator shall send notice of the appointment in Form PA23(S) to the registrar of companies.



### **Hand-over of assets to successor postal administrator**

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

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

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

## **PART 9**

### **Prescribed Part**

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

**70.** An application under section 176A(5) of the 1986 Act (share of assets for unsecured creditors)(**18**) shall include averments as to—

- (a) the fact that the application arises in the course of a company administration;
- (b) the financial position of the company;
- (c) the basis of the postal 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 company and, if so, the address of that insolvency practitioner.

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

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

- (a) send to the 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 PA24(S) and
- (c) give notice of the order to each creditor of whose claim and address the postal administrator 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 containing the standard content and stating that the court has made an order disapplying the requirement to set aside the prescribed part.

(3) The notice referred to in paragraph (2) must be published as soon as reasonably practicable in the Edinburgh Gazette and may be advertised in such other manner as the administrator thinks fit.

## PART 10

### Proxies and Company Representation

#### Definition of “proxy”

72.—(1) For the purposes of these Rules, a person (“the principal”) may authorise another person (“the proxy-holder”) to attend, speak and vote as the principal’s representative at meetings of creditors or of the company in postal administration proceedings, and any such authority is referred to as a proxy.

(2) A proxy may be given either generally for all meetings in postal 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 chair 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

73.—(1) With every notice summoning a meeting of creditors or of the company in postal administration proceedings there shall be sent out forms of proxy.

(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 the authority of the principal and, where it is signed by someone other than the principal, the nature of that person’s authority shall be stated on the form.

#### Use of proxy at meeting

74.—(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 postal administrator holds proxies to be used by the postal administrator as chair of the meeting, and some other person acts as chair, the other person may use the postal administrator’s proxies as if that person were the 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 postal administrator as proposed liquidator of the company, the proxy-holder may, unless the proxy states otherwise, vote for or against 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 the proxy-holder 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 on resolutions put to the meeting which are not dealt with in the proxy.

### **Retention of proxies**

75.—(1) Proxies used for voting at any meeting shall be retained by the chair of the meeting.

(2) The chair shall deliver the proxies forthwith after the meeting to the postal administrator (where that is someone other than the chair).

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

### **Right of inspection**

76.—(1) The postal administrator shall, so long as proxies lodged with the postal administrator are in the postal administrator's 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 company's members, in the case of proxies used at a meeting of the 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 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 company.

(4) Any person attending a meeting in postal 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 chair 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**

77.—(1) A proxy-holder shall not vote in favour of any resolution which would directly or indirectly place the proxy-holder, or any associate of the proxy-holder, in a position to receive any remuneration out of the assets of the company, unless the proxy specifically directs the proxy-holder to vote that way.

(2) Where a proxy-holder has signed the proxy as being authorised to do so by the proxy-holder's principal and the proxy specifically directs the proxy-holder to vote in the way mentioned in paragraph (1), the proxy-holder shall nevertheless not vote in that way unless the proxy-holder produces to the chair of the meeting written authorisation from proxy-holder's principal sufficient to show the proxy-holder was entitled so to sign the proxy.

(3) This Rule applies also to any person acting as chair of a meeting and using proxies in that capacity in accordance with Rule 73(3); and in the application of this Rule to any such person, the proxy-holder is deemed an associate of that person.

### **Representation of corporations**

78.—(1) Where a person is authorised under section 323 of the Companies Act (representation of corporations at meetings)(19) to represent a corporation at a meeting of creditors or of the company,

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(19) Section 323 was amended by S.I. 2009/1632 Regulation 6.

that person shall produce to the chair of the meeting a copy of the resolution from which that person derives authority

(2) The copy resolution must be executed in accordance with the provisions of section 48(3) of the Companies Act (execution of documents by companies)(**20**), 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

### Giving of Notice

#### Application

**79.**—(1) Subject to paragraph (2), this Part applies where a notice or other document is required or authorised to be given, delivered or sent under the 1986 Act or these Rules.

(2) This Chapter does not apply to the service of—

- (a) the lodging of any petition or application or other document with the court;
- (b) the service of any application or other document lodged with the court;
- (c) the service of any order of the court; or
- (d) the submission of documents to the registrar of companies.

#### Personal delivery of documents

**80.** Personal delivery of a notice or other document is permissible in any case.

#### Sending by post

**81.**—(1) Unless in any particular case some other form of delivery is required by the 1986 Act, these Rules or an order of the court, a notice or other document may be sent by post, and subject to the following provisions of this Rule, any form of post may be used.

(2) For a notice or other 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.

(3) Any notice or other 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.

(4) 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.

(5) 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.

#### Notice by and to representatives

**82.** Where under the 1986 Act or these 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.

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(20) Section 48(3) was amended by the Land Registration (Scotland) Act 2012 (asp 5), Schedule 5, paragraph 50(2)

### **Notice to joint postal administrators**

**83.** Where two or more persons are acting jointly as the postal administrator in relation to a postal administration, delivery of a document to one of them is to be treated as delivery to them all.

### **The form of notices and other documents**

**84.** Subject to any order of the court, any notice or other document required to be given, delivered or sent must be in writing and where electronic delivery is permitted a notice or other document in electronic form is treated as being in writing if a copy of it is capable of being produced in legible form.

### **Certificate of giving notice etc**

**85.**—(1) Where in any proceedings a notice or other document is required to be given, delivered or sent by the postal administrator, the date of giving, sending or delivering it may be proved by means of a certificate signed by the postal administrator or on the postal administrator's behalf by the postal administrator's solicitor, or a partner or employee of either of them, that the notice or other 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 other document to be given, delivered or sent by a person other than the postal administrator, the giving delivering or sending of it may be proved by means of a certificate by that person—

- (a) that the notice or document was given, delivered or sent by that person; or
- (b) that another person (named in the certificate) was instructed to give, deliver or send it.

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

(4) A certificate purporting to be signed by or on behalf of the postal 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 in the certificate.

### **Electronic delivery in postal administration proceedings – general**

**86.**—(1) Unless in any particular case some other form of delivery is required by the 1986 Act, these Rules or an order of the court and subject to paragraph (3), a notice or other document may be given, delivered or sent by electronic means provided that the intended recipient of the notice or other document has—

- (a) consented (whether in the specific case or generally) to electronic delivery (and has not revoked that consent); and
- (b) provided an electronic address for delivery.

(2) Where a postal administrator gives, sends or delivers a notice or other document to any person by electronic means, it must contain or be accompanied by a statement that the recipient may request a hard copy of the notice or document, and specify a telephone number, e-mail address and postal address which may be used to make such a request.

(3) Where a hard copy of the notice or other document is requested, it must be sent within 5 business days of receipt of the request by the postal administrator, who may not make a charge for sending it in that form.

(4) In the absence of evidence to the contrary, a notice or other document is presumed to have been delivered where—

- (a) the sender can produce a copy of the electronic message which—

- (i) contained the notice or other document, or to which the notice or other document was attached; and
  - (ii) shows the time and date the message was sent; and
  - (b) that electronic message contains the address supplied under paragraph (1)(b).
- (5) A message sent electronically is deemed to have been delivered to the recipient no later than 9.00am on the next business day after it was sent.

### **Use of websites by postal administrator**

- 87.**—(1) This Rule applies for the purposes of section 246B of the 1986 Act (use of websites)(**21**).
- (2) A postal administrator required to give, deliver or send a document to any person may (other than in a case where personal service is required) satisfy that requirement by sending that person a notice—
- (a) stating that the document is available for viewing and downloading on a website;
  - (b) specifying the address of that website together with any password necessary to view and download the document from that site; and
  - (c) containing a statement that the person to whom the notice is given, delivered or sent may request a hard copy of the document and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy.
- (3) Where a notice to which this Rule applies is sent, the document to which it relates must—
- (a) be available on the website for a period of not less than 3 months after the date on which the notice is sent; and
  - (b) must be in such a format as to enable it to be downloaded from the website within a reasonable time of an electronic request being made for it to be downloaded.
- (4) Where a hard copy of the document is requested it must be sent within 5 business days of the receipt of the request by the postal administrator, who may not make a charge for sending it in that form.
- (5) Where a document is given, delivered or sent to a person by means of a website in accordance with this Rule, it is deemed to have been delivered—
- (a) when the document was first made available on the website; or
  - (b) if later, when the notice under paragraph (2) was delivered to that person.

### **Special provision on account of expense as to website use**

- 88.**—(1) Where the court is satisfied that the expense of sending notices in accordance with Rule 86 would, on account of the number of persons entitled to receive them, be disproportionate to the benefit of sending notice in accordance with that Rule, it may order that the requirement to give, deliver or send a relevant document to any person may (other than in a case where personal service is required) be satisfied by the postal administrator sending each of those persons a notice—
- (a) stating that all relevant documents will be made available for viewing and downloading on a website;
  - (b) specifying the address of that website together with any password necessary to view and download a relevant document from that site; and
  - (c) containing a statement that the person to whom the notice is given, delivered or sent may at any time request that hard copies of all, or specific, relevant documents are sent to that

person, and specifying a telephone number, e-mail address and postal address which may be used to make that request.

- (2) A document to which this Rule relates must—
  - (a) be available on the website for a period of not less than 12 months from the date when it was first made available on the website or, if later, from the date upon which the notice was sent; and
  - (b) must be in such a format as to enable it to be downloaded from the website within a reasonable time of an electronic request being made for it to be downloaded.
- (3) Where hard copies of relevant documents have been requested, they must be sent by the postal administrator—
  - (a) within 5 business days of the receipt of the postal administrator of the request to be sent hard copies, in the case of relevant documents first appearing on the website before the request was received; or
  - (b) within 5 business days from the date a relevant document first appears on the website, in all other cases.
- (4) A postal administrator must not require a person making a request under paragraph (3) to pay a fee for the supply of the document.
- (5) Where a relevant document is given, delivered or sent to a person by means of a website in accordance with this Rule, it is deemed to have been delivered—
  - (a) when the relevant document was first made available on the website; or
  - (b) if later, when the notice under paragraph (1) was delivered to that person.
- (6) In this Rule a relevant document means any document which the postal administrator is first required to give, deliver or send to any person after the court has made an order under paragraph (1).

## 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<sup>(22)</sup>, 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—

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<sup>(22)</sup> Section 431 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 61.



- (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 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.

8th September 2016

*Margot James*  
Minister for Small Business, Consumers, and  
Corporate Responsibility  
Department for Business, Energy and Industrial  
Strategy