STATUTORY INSTRUMENTS

2016 No. 900

INSOLVENCY, SCOTLAND

The Postal Administration (Scotland) Rules 2016

Made - - - -	*8th September 2016*
Laid before Parliament	*9th September 2016*
Coming into force - -	*1st October 2016*

The Secretary of State makes the following Rules, in exercise of the powers conferred by section 411 of the Insolvency Act 1986(**1**) and section 73(3) of the Postal Services Act 2011(**2**).

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);

(**1**) 1986 c.45. Section 411 has been amended on a number of occasions, but those amendments are not relevant for present purposes. Relevant amendments to the Act are, where appropriate, set out in the footnotes below.
(**2**) 2011 c.5.

"the Companies Act" means the Companies Act 2006(**3**);

"insolvency proceedings" means any proceedings under the first group of parts in the 1986 Act or under the Insolvency (Scotland) Rules 1986(**4**);

"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)(**5**);

"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

(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(**6**) 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.

(**3**) 2006 c.46.
(**4**) 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.
(**5**) Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252.
(**6**) Schedule B1 was inserted by the Enterprise Act 2002 (c.40), Schedule 16.

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.

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)(**7**).

(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;

(**7**) 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.

(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;

(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)(**8**).

(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.

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