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STATUTORY INSTRUMENTS

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**2013 No. 3208**

**The Postal Administration Rules 2013**

**PART 11**

**COURT PROCEDURE AND PRACTICE**

**CHAPTER 1**

*Applications*

**Preliminary**

**95.** This Chapter applies to any application made to the court in postal administration proceedings under the Rules, except an application for a postal administration order.

**Form and contents of application**

**96.—**(1) Each application shall be in writing and shall state—

- (a) the names of the parties;
- (b) the name of company which is the subject of the postal administration proceedings to which the application relates;
- (c) the court (and where applicable, the division or district registry of that court) in which the application is made;
- (d) where the court has previously allocated a number to the postal administration proceedings within which the application is made, that number;
- (e) the nature of the remedy or order applied for or the directions sought from the court;
- (f) the names and addresses of the persons (if any) on whom it is intended to serve the application or that no person is intended to be served;
- (g) where the 1986 Act or Rules require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
- (h) the applicant's address for service.

(2) The application must be authenticated by the applicant if they are acting in person or, when they are not so acting, by or on behalf of their solicitor.

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

**97.—**(1) An application under section 176A(5) of the 1986 Act shall be accompanied by a witness statement by the postal administrator.

(2) The witness statement shall state—

- (a) that the application arises in the course of a postal administration under the 2011 Act;
- (b) a summary of the financial position of the company;

- (c) the information substantiating 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 postal administrator is acting in relation to the company and if so their address.

### **Filing and service of application**

**98.**—(1) An application must be filed with the court, accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application.

(2) Where an application is filed with the court in accordance with paragraph (1) of this Rule, the court must fix a venue for the application to be heard unless—

- (a) it considers it is not appropriate to do so;
- (b) the Rule under which the application is brought provides otherwise; or
- (c) the case is one to which Rule 100 applies.

(3) Unless the court otherwise directs, the applicant shall serve a sealed copy of the application, endorsed with the venue for the hearing, on the respondent named in the application (or on each respondent if more than one).

(4) The court may give any of the following directions—

- (a) that the application be served upon persons other than those specified by the relevant provision of the 1986 Act or the Rules;
- (b) that the giving of notice to any person may be dispensed with;
- (c) that notice be given in some way other than that specified in paragraph (3) of this Rule.

(5) An application must be served at least 14 days before the date fixed for its hearing unless—

- (a) the provision of the 1986 Act or the Rules under which the application is made makes different provision; or
- (b) the case is one of urgency, to which paragraph (6) of this Rule applies.

(6) Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

- (a) hear the application immediately, either with or without notice to, or the attendance of, other parties, or
- (b) authorise a shorter period of service than that provided for by paragraph (5) of this Rule;

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks just.

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

**99.** An application under section 176A(5) of the 1986 Act may be made without the application being served upon or notice being given to any other party.

### **Hearings without notice**

**100.** Where the relevant provisions of the 1986 Act or the Rules do not require service of the application on, or notice of it to be given to, any person—

- (a) the court may hear the application as soon as reasonably practicable without fixing a venue as required by Rule 98(2); or
- (b) it may fix a venue for the application to be heard in which case Rule 98 will apply to the extent that it is relevant;

but nothing in those provisions is to be taken as prohibiting the applicant from giving such notice if the applicant wishes to do so.

### **Hearing of application**

**101.**—(1) Unless the court otherwise directs, the hearing of an application must be in open court.

(2) In a county court, the jurisdiction of the court to hear and determine an application may be exercised by the district judge (to whom any application must be made in the first instance) unless—

- (a) a direction to the contrary has been given, or
- (b) it is not within the district judge’s power to make the order required.

(3) In the High Court the jurisdiction of the court to hear and determine an application may be exercised by the registrar (to whom the application must be made in the first instance) unless—

- (a) a direction to the contrary has been given, or
- (b) it is not within the registrar’s power to make the order required.

(4) Where the application is made to the district judge in the county court or to the registrar in the High Court, the district judge or the registrar may refer to the judge any matter which the district judge or the registrar thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the district judge or the registrar with such directions as that judge thinks just.

(5) Nothing in this Rule precludes an application being made directly to the judge in a proper case.

### **Witness statements—general**

**102.**—(1) Subject to Rule 104, where evidence is required by the 1986 Act or the Rules as to any matter, such evidence may be provided in the form of a witness statement unless—

- (a) in any specific case a Rule or the 1986 Act makes different provision; or
- (b) the court otherwise directs.

(2) The court may, on the application of any party to the matter in question order the attendance for cross-examination of the person making the witness statement.

(3) Where, after such an order has been made, the person in question does not attend, that person’s witness statement must not be used in evidence without the permission of the court.

### **Filing and service of witness statements**

**103.** Unless the provision of the 1986 Act or the Rules under which the application is made provides otherwise, or the court otherwise allows—

- (a) if the applicant intends to rely at the first hearing on evidence in a witness statement, the applicant shall file the witness statement with the court and serve a copy on the respondent, not less than 14 days before the date fixed for the hearing, and
- (b) where a respondent to an application intends to oppose it and to rely for that purpose on evidence in a witness statement, the respondent shall file the witness statement with the court and serve a copy on the applicant, not less than 5 business days before the date fixed for the hearing.

### **Use of reports**

**104.**—(1) A report may be filed in court by the postal administrator instead of a witness statement, unless the application involves other parties or the court otherwise orders.

(2) In any case where a report is filed instead of a witness statement, the report shall be treated for the purposes of Rule 103 and any hearing before the court as if it were a witness statement.

(3) Where the witness statement is made by the postal administrator, the witness statement must state the address at which the postal administrator works.

#### **Adjournment of hearing; directions**

**105.**—(1) The court may adjourn the hearing of an application on such terms as it thinks just.

(2) The court may at any time give such directions as it thinks just as to—

- (a) service or notice of the application on or to any person;
- (b) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application including whether a hearing is necessary;
- (c) the matters to be dealt with in evidence.

(3) The court may give directions as to the manner in which any evidence is to be adduced at a resumed hearing and in particular as to—

- (a) the taking of evidence wholly or partly by witness statement or orally;
- (b) the cross-examination of the maker of a witness statement; or
- (c) any report to be made by the postal administrator.

#### **General power of transfer**

**106.**—(1) Where postal administration proceedings are pending in the High Court, the court may order them to be transferred to a specified county court.

(2) Where postal administration proceedings are pending in a county court, the court may order them to be transferred either to the High Court or to another county court.

(3) In any case where proceedings are transferred to a county court, the transfer must be to a court which has jurisdiction to wind up companies.

(4) A transfer of proceedings under this Rule may be ordered—

- (a) by the court of its own motion, or
- (b) on the application of the postal administrator, or
- (c) on the application of a person appearing to the court to have an interest in the proceedings.

#### **Proceedings commenced in wrong court**

**107.** Where postal administration proceedings are commenced in a court which is, in relation to those proceedings, the wrong court, that court may—

- (a) order the transfer of the proceedings to the court in which they ought to have been commenced;
- (b) order that the proceedings be continued in the court in which they have been commenced; or
- (c) order the proceedings to be struck out.

#### **Applications for transfer**

**108.**—(1) An application by the postal administrator for proceedings to be transferred shall be made with a report by the postal administrator—

- (a) setting out the reasons for the transfer, and

- (b) including a statement that the applicant for the postal administration order consents to the transfer, or that the applicant has been given at least 14 days' notice of the postal administrator's application.

(2) If the court is satisfied from the postal administrator's report that the proceedings can be conducted more conveniently in another court, the proceedings shall be transferred to that court.

#### **Procedure following order for transfer**

**109.**—(1) Subject as follows, the court making an order under Rule 106 shall as soon as reasonably practicable send to the transferee court a sealed copy of the order, and the file of the proceedings.

(2) On receipt of these, the transferee court shall as soon as reasonably practicable send notice of the transfer to the transferor court.

### **CHAPTER 2**

#### *Shorthand Writers*

#### **Nomination and appointment of shorthand writers**

**110.**—(1) In the High Court the judge or registrar and, in a county court, a district judge may in writing nominate one or more persons to be official shorthand writers to the court.

(2) The court may, at any time in the course of the postal administration proceedings, appoint a shorthand writer to take down the evidence of a person examined under section 236 of the 1986 Act.

#### **Remuneration**

**111.**—(1) The remuneration of a shorthand writer appointed in postal administration proceedings shall be paid by the party at whose instance the appointment was made, or out of the assets of the company, or otherwise, as the court may direct.

(2) Any question arising as to the rates of remuneration payable under this Rule shall be determined by the court in its discretion.

### **CHAPTER 3**

#### *Enforcement Procedures*

#### **Enforcement of court orders**

**112.**—(1) In any postal administration proceedings under the Rules, orders of the court may be enforced in the same manner as a judgment to the same effect.

(2) Where a warrant for the arrest of a person is issued by the High Court, the warrant may be discharged by the county court where the person who is the subject of the warrant—

- (a) has been brought before a county court exercising postal administration jurisdiction; and
- (b) has given to the county court an undertaking which is satisfactory to the county court to comply with the obligations that apply to that person under the provisions of the 1986 Act or the Rules.

#### **Orders enforcing compliance with the Rules**

**113.**—(1) The court may, on application by the postal administrator, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

- (a) paragraph 47 (duty to submit statement of affairs in postal administration), or

(b) section 235 of the 1986 Act<sup>(1)</sup> (duty of various persons to co-operate with postal administrator).

(2) An order of the court under this Rule may provide that all costs of and incidental to the application for it shall be borne by the person against whom the order is made.

#### **Warrants under section 236 of the 1986 Act**

**114.**—(1) A warrant issued by the court under section 236 of the 1986 Act (inquiry into insolvent company's dealings) shall be addressed to such officer of the High Court as the warrant specifies, or to any constable.

(2) The persons referred to in section 236(5) of the 1986 Act (court's powers of enforcement) as the prescribed officer of the court are the tipstaff and the tipstaff's assistants of the court.

(3) In this Chapter references to property include books, papers and records.

(4) When a person is arrested under a warrant issued under section 236 of the 1986 Act, the officer arresting them shall as soon as reasonably practicable bring them before the court issuing the warrant in order that they may be examined.

(5) If they cannot immediately be brought up for examination, the officer shall deliver them into the custody of the governor of the prison named in the warrant (or where that prison is not able to accommodate the arrested person, the governor of such other prison with appropriate facilities which is able to accommodate the arrested person), who shall keep them in custody and produce them before the court as it may from time to time direct.

(6) After arresting the person named in the warrant, the officer shall as soon as reasonably practicable report to the court the arrest or delivery into custody (as the case may be) and apply to the court to fix a venue for the person's examination.

(7) The court shall appoint the earliest practicable time for the examination, and shall—

- (a) direct the governor of the prison to produce the person for examination at the time and place appointed, and
- (b) as soon as reasonably practicable give notice of the venue to the person who applied for the warrant.

(8) Any property in the arrested person's possession which may be seized shall be—

- (a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or
- (b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,

as may be directed by the court.

## **CHAPTER 4**

### *Court Records and Returns*

#### **Court file**

**115.**—(1) The court must open and maintain a file in any case where documents are filed with it under the 1986 Act or the Rules.

(2) Any documents which are filed with the court under the 1986 Act or the Rules must be placed on the file opened in accordance with paragraph (1) of this Rule.

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(1) 1986 c. 45; section 235(4)(a) was amended by the Enterprise Act 2002 c. 40, Schedule 17, paragraph 24.

(3) The following persons may inspect or obtain from the court a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) of this Rule—

- (a) the postal administrator;
- (b) the Secretary of State;
- (c) OFCOM;
- (d) any person who is a creditor of the company to which the proceedings relate if that person provides the court with a statement in writing confirming that that person is a creditor; and
- (e) any person who is, or at any time has been, a director or officer of the company to which the postal administration proceedings relate, or who is a member of that company.

(4) The right to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) of this Rule may be exercised on that person's behalf by a person authorised to do so by that person.

(5) Any person who is not otherwise entitled to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) of this Rule may do so if that person has the permission of the court.

(6) The court may direct that the file, a document (or part of it) or a copy of a document (or part of it) must not be made available under paragraph (3) or (4) of this Rule without the permission of the court.

(7) An application for a direction under paragraph (6) of this Rule may be made by—

- (a) the postal administrator; or
- (b) any person appearing to the court to have an interest.

(8) Where any person wishes to exercise the right to inspect the file under paragraph (3), (4) or (5) of this Rule that person—

- (a) if the permission of the court is required, must file with the court an application notice in accordance with the Rules; or
- (b) if the permission of the court is not required, may inspect the file at any reasonable time.

(9) Where any person wishes to exercise the right to obtain a copy of a document under paragraph (3), (4) or (5) of this Rule that person must pay any prescribed fee and—

- (a) if the permission of the court is required, file with the court an application notice in accordance with the Rules; or
- (b) if the permission of the court is not required, file with the court a written request for the document.

(10) An application for—

- (a) permission to inspect the file or obtain a copy of a document under paragraph (5) of this Rule; or
- (b) a direction under paragraph (6) of this Rule,

may be made without notice to any other party, but the court may direct that notice must be given to any person who would be affected by its decision.

(11) If for the purposes of powers conferred by the 1986 Act or the Rules, the Secretary of State or the postal administrator requests the transmission of the file of any postal administration proceedings, the court must comply with the request (unless the file is for the time being in use for the court's own purposes).

## CHAPTER 5

### *Costs and Detailed Assessment*

#### **Application of Chapter 5**

**116.**—(1) This Chapter applies in relation to costs in connection with postal administration proceedings under the Rules.

(2) In this Chapter a reference to costs includes charges and expenses.

#### **Requirement to assess costs by the detailed procedure**

**117.**—(1) Where the costs of any person are payable as an expense out of the assets of the company, the amount payable must be decided by detailed assessment unless agreed between the postal administrator and the person entitled to payment.

(2) In the absence of such agreement as is mentioned in paragraph (1) of this Rule, the postal administrator may serve notice requiring that person to commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(3) Where the costs of any person employed by a postal administrator in postal administration proceedings are required to be decided by detailed assessment or fixed by order of the court, the postal administrator may make payments on account to such person in respect of those costs provided that person undertakes in writing—

- (a) to repay as soon as reasonably practicable any money which may, when detailed assessment is made, prove to have been overpaid; and
- (b) to pay interest on any such sum as is mentioned in sub-paragraph (a) at the rate specified in section 17 of the Judgments Act 1838 on the date payment was made and for the period beginning with the date of payment and ending with the date of repayment.

(4) In any proceedings before the court, the court may order costs to be decided by detailed assessment.

#### **Procedure where detailed assessment required**

**118.**—(1) Before making a detailed assessment of the costs of any person employed in postal administration proceedings by the postal administrator, the costs officer shall require a certificate of employment, which shall be endorsed on the bill and authenticated by the postal administrator.

(2) The certificate shall include—

- (a) the name and address of the person employed,
- (b) details of the functions to be carried out under the employment, and
- (c) a note of any special terms of remuneration which have been agreed.

(3) Every person whose costs in postal administration proceedings are required to be decided by detailed assessment shall, on being required in writing to do so by the postal administrator, commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(4) If that person does not commence detailed assessment proceedings within 3 months of the requirement under paragraph (3) of this Rule, or within such further time as the court, on application, may permit, the postal administrator may deal with the assets of the company without regard to any claim by that person, whose claim is forfeited by such failure to commence proceedings.

(5) Where in any such case such a claim lies additionally against a postal administrator in their personal capacity, that claim is also forfeited by such failure to commence proceedings.



(6) Where costs have been incurred in postal administration proceedings in the High Court and those proceedings are subsequently transferred to a county court, all costs of those proceedings directed by the court or otherwise required to be assessed may nevertheless, on the application of the person who incurred the costs, be ordered to be decided by detailed assessment in the High Court.

#### **Costs paid otherwise than out of the assets of the company**

**119.** Where the amount of costs is decided by detailed assessment under an order of the court directing that those costs are to be paid otherwise than out of the assets of the company, the costs officer shall note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

#### **Award of costs against postal administrator**

**120.** Without prejudice to any provision of the 1986 Act or the Rules by virtue of which the postal administrator is not in any event to be liable for costs and expenses, where a postal administrator is made a party to any proceedings on the application of another party to the proceedings, the postal administrator shall not be personally liable for costs unless the court otherwise directs.

#### **Applications for costs**

**121.—**(1) This Rule applies where a party to, or person affected by, any proceedings under the Rules—

- (a) applies to the court for an order allowing their costs, or part of them, incidental to the proceedings; and
- (b) that application is not made at the time of the proceedings.

(2) The person concerned shall serve a sealed copy of their application on the postal administrator.

(3) The postal administrator may appear on any such application.

(4) No costs of or incidental to the application shall be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceedings.

#### **Costs and expenses of witnesses**

**122.—**(1) Except as directed by the court, no allowance as a witness in any examination or other proceedings before the court shall be made to an officer of the company to which the proceedings relate.

(2) A person making any application in postal administration proceedings shall not be regarded as a witness on the hearing of the application, but the costs officer may allow their expenses of travelling and subsistence.

#### **Final costs certificate**

**123.—**(1) A final costs certificate of the costs officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court.

(2) Where it is proved to the satisfaction of a costs officer that a final costs certificate has been lost or destroyed, they may issue a duplicate.

## CHAPTER 6

### *Persons who Lack Capacity to Manage their Affairs*

#### **Introductory**

**124.**—(1) The Rules in this Chapter apply where in postal administration proceedings it appears to the court that a person affected by the proceedings is one who lacks capacity within the meaning of the Mental Capacity Act 2005(2) to manage and administer their property and affairs either—

- (a) by reason of lacking capacity within the meaning of the Mental Capacity Act 2005, or
- (b) due to physical affliction or disability.

(2) The person concerned is referred to as “the incapacitated person”.

#### **Appointment of another person to act**

**125.**—(1) The court may appoint such person as it thinks just to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for their incapacity.

(3) The court may make the appointment either of its own motion or on application by—

- (a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person, or
- (b) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application, or
- (c) the postal administrator.

(4) Application under paragraph (3) of this Rule may be made without notice to any other party; but the court may require such notice of the application as it thinks necessary to be given to the person alleged to be incapacitated, or any other person, and may adjourn the hearing of the application to enable the notice to be given.

#### **Witness statement in support of application**

**126.** An application under Rule 125(3) must be supported by a witness statement made by a registered medical practitioner as to the mental or physical condition of the incapacitated person.

#### **Service of notices following appointment**

**127.** Any notice served on, or sent to, a person appointed under Rule 125 has the same effect as if it had been served on, or given to, the incapacitated person.

## CHAPTER 7

### *Appeals in Postal Administration Proceedings*

#### **Appeals and reviews of postal administration orders**

**128.**—(1) The High Court may review, rescind or vary any order made by it in the exercise of its jurisdiction as regards postal administration proceedings.

(2) Appeals from decisions made in the exercise of that jurisdiction lie as follows—

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(2) 2005 c.9.

- (a) to a single judge of the High Court where the decision appealed against is made by the county court or the registrar;
- (b) to the Civil Division of the Court of Appeal from a decision of a single judge of the High Court.

(3) A county court is not, in the exercise of its jurisdiction for the purposes of the Rules, subject to be restrained by the order of any other court, and no appeal lies from its decision in the exercise of that jurisdiction except as provided by this Rule.

### **Procedure on appeal**

**129.**—(1) An appeal against a decision at first instance may only be brought with either the permission of the court which made the decision or the permission of the court which has jurisdiction to hear the appeal.

(2) An appellant must file an appellant's notice (within the meaning of CPR Part 52) within 21 days after the date of the decision of the court that the appellant wishes to appeal.

(3) The procedure set out in CPR Part 52 applies to any appeal to which this Chapter applies.

## **CHAPTER 8**

### *General*

### **Principal court rules and practice to apply**

**130.**—(1) The provisions of the CPR (including any related practice direction) apply to postal administration proceedings with any necessary modifications, except so far as inconsistent with the Rules.

(2) All postal administration proceedings must be allocated to the multi-track for which CPR Part 29 makes provision, and accordingly those provisions of the CPR which provide for allocation questionnaires and track allocation do not apply.

(3) CPR Part 32 applies to a false statement in a document verified by a statement of truth made under the Rules as it applies to a false statement in a document verified by a statement of truth made under CPR Part 22.

### **Right of audience**

**131.** Rights of audience in postal administration proceedings are the same as in insolvency proceedings.

### **Formal defects**

**132.** No postal administration proceedings shall be invalidated by any formal defect or by any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

### **Service of orders staying proceedings**

**133.** Where in postal administration proceedings the court makes an order staying any action, execution or other legal process against the property of the company, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the claimant or other party having the carriage of the proceedings to be stayed.

### **Payment into court**

**134.** CPR Part 37 (miscellaneous provisions about payment into court) applies to money lodged in court under the Rules.

### **Further Information and Disclosure**

**135.—**(1) Any party to postal administration proceedings may apply to the court for an order—

- (a) that any other party
  - (i) clarify any matter which is in dispute in the proceedings, or
  - (ii) give additional information in relation to any such matter;
- in accordance with CPR Part 18 (further information); or
- (b) to obtain disclosure from any other party in accordance with CPR Part 31 (disclosure and inspection of documents), except so far as is otherwise provided by the Rules.

(2) An application under this Rule may be made without notice being served on any other party.

### **Office copies of documents**

**136.—**(1) Any person who has under the Rules the right to inspect the court file of postal administration proceedings may require the court to provide them with an office copy of any document from the file.

(2) A person's rights under this Rule may be exercised on their behalf by their solicitor.

(3) An office copy provided by the court under this Rule shall be in such form as the registrar thinks appropriate, and shall bear the court's seal.