
STATUTORY INSTRUMENTS

2013 No. 3208

The Postal Administration Rules 2013

PART 2

Appointment of Postal Administrator by Court

Witness statement

4. Where it is proposed to apply to the court for a postal administration order to be made in relation to a company, the administration application shall be in Form PA1 and a witness statement complying with Rule 6 must be prepared with a view to its being filed with the court in support of the application.

Form of application

5.—(1) The application shall state whether it is made by OFCOM or the Secretary of State and the applicant's address for service.

(2) Where it is made by OFCOM, the application shall contain a statement that it is made with the consent of the Secretary of State.

(3) There shall be attached to the application a written statement which shall be in Form PA2 made by each of the persons proposed to be postal administrator stating—

- (a) that the person consents to accept the appointment; and
- (b) details of any prior professional relationship(s) that the person has had with the company to which that person is to be appointed as postal administrator.

Contents of application and witness statement

6.—(1) The postal administration application shall state that the company is a universal service provider.

(2) The application shall state one or both of the following—

- (a) the applicant's belief that the company is unable, or is likely to be unable, to pay its debts;
- (b) 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(1) of the 1986 Act (petition for winding up on grounds of public interest).

(3) There shall be attached to the application a witness statement in support which shall contain—

- (a) a statement of the company's financial position, specifying (to the best of the applicant's knowledge and belief) its assets and liabilities, including contingent and prospective liabilities;

(1) 1986 c. 45; section 124A was inserted by the Companies Act 1989 (c. 40), section 60(3) and was amended by S.I. 2001/3694; the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) and S.I. 2004/3322.

- (b) details of any security known or believed to be held by creditors of the company, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver or to appoint an administrator under paragraph 14. If an administrative receiver has been appointed, that fact shall be stated;
- (c) details of any insolvency proceedings in relation to the company including any petition that has been presented for the winding up of the company so far as within the immediate knowledge of the applicant;
- (d) details of any notice served in accordance with section 78 of the 2011 Act by any person intending to enforce any security over the company's assets, so far as within the immediate knowledge of the applicant;
- (e) details of any step taken to enforce any such security, so far as within the immediate knowledge of the applicant;
- (f) details of any application for permission of the court to pass a resolution for the voluntary winding up of the company, so far as within the immediate knowledge of the applicant;
- (g) where it is intended to appoint a number of persons as postal administrators, details of the matters set out in section 72(5) of the 2011 Act regarding the exercise of the powers and duties of the postal administrators; and
- (h) any other matters which, in the opinion of those intending to make the application for a postal administration order, will assist the court in deciding whether to make such an order, so far as lying within the knowledge or belief of the applicant.

Filing of application

7.—(1) The application (and all supporting documents) shall be filed with the court, with a sufficient number of copies for service and use as provided by Rule 8.

(2) Each of the copies filed shall have applied to it the seal of the court and be issued to the applicant; and on each copy there shall be endorsed the date and time of filing.

(3) The court shall fix a venue for the hearing of the application and this also shall be endorsed on each copy of the application issued under paragraph (2) of this Rule.

(4) After the application is filed, it is the duty of the applicant to notify the court in writing of the existence of any insolvency proceedings in relation to the company, as soon as the applicant becomes aware of them.

Service of application

8.—(1) In the following paragraphs of this Rule, references to the application are to a copy of the application issued by the court under Rule 7(2) together with the witness statement required by Rule 6 and the documents attached to the application.

(2) Notification for the purposes of section 70(2) of the 2011 Act shall be by way of service in accordance with Rule 10, verified in accordance with Rule 11.

(3) The application shall be served, in addition to those persons referred to in section 70(2) of the 2011 Act—

- (a) on any administrative receiver that has been appointed;
- (b) if there is pending an administration application under Schedule B1 to the 1986 Act, without the modifications made by Schedule 10 to the 2011 Act, on the applicant;
- (c) if there is pending a petition for the winding-up of the company, on the petitioner (and also on the provisional liquidator, if any);

- (d) on any creditor who has served notice in accordance with section 78(1) of the 2011 Act of their intention to enforce their security over property of the company;
- (e) on the person proposed as postal administrator;
- (f) on the company;
- (g) if the applicant is the Secretary of State, on OFCOM;
- (h) if the applicant is OFCOM, on the Secretary of State;
- (i) on any supervisor of a voluntary arrangement under Part I of the 1986 Act who has been appointed.

Notice to officers charged with execution of writs or other process

9. The applicant shall as soon as reasonably practicable after filing the application give notice of its being made to—

- (a) any enforcement officer or other officer who to the applicant's knowledge is charged with an execution or other legal process against the company or its property; and
- (b) any person who to the applicant's knowledge has distrained against the company or its property.

Manner in which service to be effected

10.—(1) Service of the application in accordance with Rule 8 shall be effected by the applicant, or the applicant's solicitor, or by a person instructed by the applicant or the applicant's solicitor, not less than 5 business days before the date fixed for the hearing.

(2) Service shall be effected as follows—

- (a) on the company (subject to paragraph (3) of this Rule), by delivering the documents to its registered office;
- (b) on any other person (subject to paragraph (4) of this Rule), by delivering the documents to their proper address;
- (c) in either case, in such other manner as the court may direct.

(3) If delivery to the company's registered office is not practicable or if the company is an unregistered company, service may be effected by delivery to its last known principal place of business in England and Wales.

(4) Subject to paragraph (5) of this Rule, for the purposes of paragraph (2)(b) of this Rule, a person's proper address is any which they have previously notified as their address for service; but if they have not notified any such address, service may be effected by delivery to their usual or last known address.

(5) In the case of a person who—

- (a) is an authorised deposit-taker or former authorised deposit-taker;
- (b) either-
 - (i) has appointed, or is or may be entitled to appoint, an administrative receiver of the company, or
 - (ii) is, or may be, entitled to appoint an administrator of the company under paragraph 14; and
- (c) has not notified an address for service,

the proper address is the address of an office of that person where, to the knowledge of the applicant, the company maintains a bank account or, where no such office is known to the

applicant, the registered office of that person, or, if there is no such office, their usual or last known address.

Proof of service

11.—(1) Service of the application must be verified by a certificate of service.

(2) The certificate of service must be sufficient to identify the application served and must specify—

- (a) the name and registered number of the company;
- (b) the address of the registered office of the company;
- (c) the name of the applicant;
- (d) the court to which the application was made and the court reference number;
- (e) the date of the application;
- (f) whether the copy served was a sealed copy;
- (g) the date on which service was effected; and
- (h) the manner in which service was effected.

(3) The certificate of service shall be filed with the court as soon as reasonably practicable after service, and in any event not less than 1 business day before the hearing of the application.

The hearing

12.—(1) At the hearing of the postal administration application, any of the following may appear or be represented—

- (a) The Secretary of State;
- (b) OFCOM;
- (c) the company;
- (d) one or more of the directors;
- (e) if an administrative receiver has been appointed, that person;
- (f) any person who has presented a petition for the winding-up of the company;
- (g) the person proposed for appointment as postal administrator;
- (h) any person that is the holder of a qualifying floating charge;
- (i) 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 ;
- (j) any creditor who has served notice in accordance with section 78(1) of the 2011 Act of their intention to enforce their security over property of the company;
- (k) any supervisor of a voluntary arrangement under Part I of the 1986 Act;
- (l) with the permission of the court, any other person who appears to have an interest justifying their appearance.

(2) If the court makes a postal administration order, it shall be in Form PA3.

(3) If the court makes a postal administration order, the costs of the applicant, and of any person whose costs are allowed by the court, are payable as an expense of the postal administration.

Notice of postal administration order

13.—(1) If the court makes a postal administration order, it shall as soon as reasonably practicable send two sealed copies of the order to the person who made the application.

(2) The applicant shall send a sealed copy of the order as soon as reasonably practicable to the person appointed as postal administrator.

(3) If the court makes an order under section 71(1)(d) of the 2011 Act or any other order under section 71(1)(f) of the 2011 Act, it shall give directions as to the persons to whom, and how, notice of that order is to be given.