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STATUTORY INSTRUMENTS

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**2016 No. 900**

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

**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)<sup>(1)</sup> (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)<sup>(2)</sup> 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.

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<sup>(1)</sup> 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.

<sup>(2)</sup> Section 242 was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraph 28.

(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;
- (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>(3)</sup>;
- (c) the postal administrator's statement of proposals contains a proposal to make a distribution to the class of creditors in question; and
- (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

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(3) 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).

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.