

EXPLANATORY MEMORANDUM TO
THE POSTAL ADMINISTRATION (SCOTLAND) RULES 2016
2016 No. 900

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy & Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of these Rules is to set out the procedure for the conduct of postal administration proceedings in Scotland.
- 2.2 Postal administration is a special insolvency regime specifically created for companies that are designated under section 35 of the Postal Services Act 2011 (c.5) (the 2011 Act) as universal service providers.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.
- 3.2 This entire instrument applies only to Scotland.

4. Legislative Context

- 4.1 These Rules are based upon the provisions of the existing Insolvency (Scotland) Rules 1986 (S.I. 1986/1915) but are a stand-alone set of rules applicable only to postal administration proceedings. These Rules apply to universal service providers which the courts in Scotland have jurisdiction to wind up. There are separate Rules (The Postal Administration Rules 2013 – S.I. 2013/3208) which apply to universal service providers which the courts in England and Wales have jurisdiction to wind up.
- 4.2 Part 1 of these Rules contains the interpretation and application provisions. Rule 4 provides that these Rules must be reviewed by 1 October 2021.
- 4.3 Part 2 sets out the procedure to be followed in relation to proceedings for the appointment of a postal administrator and on whom such proceedings must be served.
- 4.4 Part 3 details the initial steps to be taken in postal administration proceedings. These include the notification and advertisement of the postal administrator's appointment and the preparation of a statement of the company's affairs. Part 3 also sets out the information that must be given to creditors in the postal administrator's proposals.
- 4.5 Part 4 governs the conduct of creditors and company meetings called by a postal administrator during postal administration proceedings. Part 4 also deals with the provision of progress reports relating to the administration and applications by the administrator to dispose of secured property.

- 4.6 Part 5 makes provision in respect of claims in the postal administration and how they are to be established and quantified, as well as the voting rights that flow from claims which are accepted. It also provides for a criminal offence in respect of false claims by creditors.
- 4.7 Part 6 concerns distributions to creditors of the company and the expenses of the postal administration. It sets out the order of priority in any distribution and the mechanism for calculating the outlays and remuneration of the postal administrator.
- 4.8 Part 7 sets out the arrangements for ending a postal administration. There are specific provisions detailing the ending of a postal administration by court order, as well as the process by which a company administration moves into either a creditors' voluntary liquidation or dissolution of the company.
- 4.9 Part 8 deals with the requirements and procedures for replacing a postal administrator and includes provisions relating to the resignation of a postal administrator and the removal of a postal administrator from office by court order.
- 4.10 Part 9 makes provision in respect of the share of the assets of the company for unsecured creditors (the prescribed part).
- 4.11 Part 10 makes provision for the use of proxies at creditors' or members' meetings held during a postal administration, including the rights of inspection of such proxies and the procedure to be followed where a proxy-holder has a financial interest in the outcome of a resolution to be voted on at the meeting.
- 4.12 Part 11 deals with the rules relating to the giving of notices in relation to the postal administration. It includes provisions relating to electronic delivery and the use of websites by the postal administrator.
- 4.13 Part 12 deals with miscellaneous provisions, including the postal administrator's caution, electronic submission of forms, content of notices and provides the court with power to cure defects in procedure.
- 4.14 The Schedule to the Rules contains the forms that are to be used in postal operator administration proceedings. The forms in this Schedule are based upon the forms contained in the Insolvency (Scotland) Rules 1986 which deal with ordinary administration, but have been modified for the purposes of postal administration.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Scotland.
- 5.2 The territorial application of this instrument is Scotland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 Part of the Postal Services Act 2011 (PSA11) establishes a Postal Administration regime for the postal sector. The provisions enable the Secretary of State (or Ofcom with SoS approval) to apply to the court for a Postal Administration order. If approved by the court, the objective of the postal administrator would be to secure the

provision of the universal postal service (rather than securing the best deal for creditors).

- 7.2 It was considered necessary to put a Postal Administration regime in place given that the PSA11 enabled the sale of Royal Mail shares. Prior to this a special administration regime was not thought necessary as the Government as owner would always have more control over the company and could step in to prevent insolvency.
- 7.3 The Scotland Rules would apply if a universal service provider (currently the Royal Mail Group) is wound up in the jurisdiction of the Scottish Courts. These Rules are based upon the provisions of the existing Insolvency (Scotland) Rules 1986 (S.I. 1986/1915) but they are substantively the same as the Postal Administration Rules 2013 which apply to postal administrations in the jurisdiction of the English and Welsh courts.

Consolidation

- 7.4 The Scotland Rules are being made now as they were a lower priority than the 2013 Rules as administration within the Scottish jurisdiction is less likely than in England (where Royal Mail has its headquarters).

8. Consultation outcome

- 8.1 These Rules were developed in consultation with the Office of the Attorney General in Scotland. They are integral to the special administration regime contained in the Act.

9. Guidance

- 9.1 There was no guidance as such prepared for the Rules. The Rules in themselves clarify how the special administration procedure is to be applied in relation to a company which is a universal service provider.

10. Impact

- 10.1 There is no impact on businesses, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal and would only become an issue in the unlikely event of a company which is a universal service provider getting into financial difficulty.
- 10.3 A full impact assessment has not been produced for this instrument. An Impact Assessment for the 2011 Act is available on website of the Department for Business, Innovation and Skills - <https://www.gov.uk/government/publications/postal-services-bill-2010>

11. Regulating small business

- 11.1 The legislation does not apply to small business. It relates to the procedures of the court and the exercise of a postal administrator's powers.

12. Monitoring & review

- 12.1 Section 88 of the Act requires that the regulatory aspects of the Act, including the special administration regime, must be reviewed. A Review will be conducted by October 2021.

13. Contact

- 13.1 Michael Maynard at the Department for Business, Energy & Industrial Strategy; Telephone: 020 7215 0167; email: michael.maynard@beis.gov.uk can answer any queries regarding the instrument.