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STATUTORY INSTRUMENTS

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**2018 No. 1135**

**The Education Administration Rules 2018**

**PART 4**

**COURT PROCEDURE AND PRACTICE**

**CHAPTER 2**

**Making applications to court**

**Preliminary**

**4.3.** This Chapter applies to all applications to a court made within education administration proceedings except an application for an education administration order.

**Form and content of applications**

**4.4.—(1)** An application must be in writing and state—

- (a) that the application is made in education administration proceedings;
- (b) the rule under which it is made;
- (c) the names of the parties;
- (d) the name of the further education body which is the subject of the education administration proceedings to which the application relates;
- (e) the court (and where applicable, the division or district registry of that court) in which the application is made;
- (f) where the court has previously allocated a number to the education administration proceedings within which the application is made, that number;
- (g) the nature of the remedy or order applied for or the directions sought from the court;
- (h) 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;
- (i) where the Act or Rules require that notice of the application is to be delivered to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
- (j) 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.

**Filing of applications**

**4.5.—(1)** An application filed with the court in hard-copy form must be 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) A document may not be delivered to a court by electronic means unless this is expressly permitted by the CPR, a Practice Direction, or these Rules.

(3) A document delivered by electronic means is treated as delivered to the court at the time it is recorded by the court as having been received, or otherwise as the CPR, a Practice Direction or these Rules provide.

### **Fixing the venue**

**4.6.** When an application is filed the court must fix a venue for it to be heard unless—

- (a) it considers that 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 4.10 applies.

### **Service or delivery of an application**

**4.7.—**(1) The applicant must serve a sealed copy of the application, endorsed with the venue for the hearing, on the respondent named in the application unless the court directs or these Rules provide otherwise.

(2) The court may also give one or more of the following directions—

- (a) that the application be served upon persons other than those specified by the relevant provision of the Act or these Rules;
- (b) that service upon, or the delivery of a notice to any person may be dispensed with;
- (c) that such persons be notified of the application and venue of the hearing in such other way as the court specifies; or
- (d) such other directions as the court sees fit.

(3) The sealed copy of the application must be served, or notice of the application and venue must be delivered, at least 14 days before the date fixed for its hearing unless—

- (a) the provision of the Act or these Rules under which the application is made makes different provision;
- (b) the case is urgent and the court acts under rule 4.8; or
- (c) the court extends or abridges the time limit.

### **Hearing in urgent case**

**4.8.—**(1) Where the case is urgent, the court may (without prejudice to its general power to extend or abridge time limits) hear the application immediately with or without notification to, or the attendance of, the other parties.

(2) The application may be heard on such terms providing for the filing or service of documents, notification, or the carrying out of other formalities as the court thinks just.

### **Directions**

**4.9.** 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 the application is to be served and generally the procedure on the application including whether a hearing is necessary;
- (c) the matters, if any, to be dealt with in evidence;

- (d) the manner in which any evidence is to be provided and in particular as to—
  - (i) the taking of evidence wholly or partly by witness statement or orally,
  - (ii) any report to be made by the education administrator, and
  - (iii) the cross-examination of the maker of a witness statement or of a report.

#### **Hearings and determination without notice**

**4.10.**—(1) Where the Act and these Rules do not require service of a sealed copy of the application on, or notice of it to be delivered to, any person, the court may—

- (a) hear the application as soon as reasonably practicable;
- (b) fix a venue for the application to be heard, in which case rule 4.7 applies to the extent that it is relevant;
- (c) determine the application without a hearing.

(2) However nothing in the Act or these Rules is to be taken as prohibiting the applicant from giving notice.

#### **Adjournment of the hearing of an application**

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

(2) The court may give directions as to the manner in which any evidence is to be provided 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 of a report; or
- (c) any report to be made by the education administrator.

#### **Application under section 176A(5) to disapply section 176A**

**4.12.**—(1) An application under section 176A(5) of the Act must be accompanied by a witness statement of the education administrator.

(2) The witness statement must—

- (a) state that the application arises in education administration proceedings;
- (b) contain a summary of the financial position of the further education body; and
- (c) contain the information substantiating the education administrator’s view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

#### **Notice of an application under section 176A(5)**

**4.13.** An application under section 176A(5) may be made without the application being served upon, or notification to, any other party.

#### **Notice of an order under section 176A(5)**

**4.14.**—(1) Where the court makes an order under section 176A(5), the court must, as soon as reasonably practicable, deliver the sealed order to the education administrator.

(2) The education administrator must, as soon as reasonably practicable, deliver notice of the order to each creditor unless the court directs otherwise.

(3) The court may direct that the requirement in paragraph (2) is complied with if a notice is published by the education administrator which states that the court has made an order disapplying the requirement to set aside the prescribed part.

(4) As soon as reasonably practicable the notice—

(a) must be gazetted; and

(b) may be advertised in such other manner as the education administrator thinks fit.

(5) The education administrator must deliver a copy of the order to the registrar of companies as soon as reasonably practicable after the making of the order.

### **Contents of application to the court under section 236 of the Act**

**4.15.**—(1) An application to the court made under section 236 of the Act must state—

(a) the grounds on which it is made; and

(b) which one or more of the following orders is sought—

(i) for the respondent to appear before the court,

(ii) for the respondent to clarify any matter which is in dispute in the proceedings or to give additional information in relation to any such matter (if so Part 18 CPR applies to any such order),

(iii) for the respondent to submit witness statements (if so, particulars must be given of the matters to be included), or

(iv) for the respondent to produce books, papers or other records (if so, the items in question to be specified).

(2) An application may be made without notice to any other party.

(3) The court may, whatever the order sought in the application, make any order which it has power to make under section 236 of the Act.

### **Order for examination etc**

**4.16.**—(1) Where the court orders the respondent to appear before it, it must specify the venue for the appearance.

(2) The date for the appearance must not be less than 14 days from the date of the order.

(3) If the respondent is ordered to file with the court a witness statement or a written account, the order must specify—

(a) the matters which are to be dealt with in it; and

(b) the time within which it is to be delivered.

(4) If the order is to produce documents or other records, the time and manner of compliance must be specified.

(5) The applicant must serve a copy of the order on the respondent as soon as reasonably practicable.

### **Procedure for examination**

**4.17.**—(1) The applicant may attend an examination of the respondent, in person, or be represented by an appropriately qualified legal representative, and may put such questions to the respondent as the court may allow.

(2) Unless the applicant objects, the following persons may also attend the examination with the permission of the court and may put questions to the respondent (but only through the applicant)—

- (a) any person who could have applied for an order under section 236 of the Act; and
  - (b) any creditor who has provided information on which the application was made under section 236 of the Act.
- (3) If the respondent is ordered to clarify any matter or to give additional information, the court must direct the respondent as to the questions which the respondent is required to answer, and as to whether the respondent's answers (if any) are to be made in a witness statement.
- (4) The respondent may employ an appropriately qualified legal representative at the respondent's own expense, who may—
- (a) put to the respondent such questions as the court may allow for the purpose of enabling the respondent to explain or qualify any answers given by the respondent; and
  - (b) make representations on the respondent's behalf.
- (5) Such written record of the examination must be made as the court thinks proper and such record must be read either to or by the respondent and authenticated by the respondent at a venue fixed by the court.
- (6) The record may, in any proceedings (whether under the Act or otherwise), be used as evidence against the respondent of any statement made by the respondent in the course of the respondent's examination.

#### **Record of examination**

- 4.18.**—(1) Unless the court otherwise directs, the record of questions put to the respondent, the respondent's answers and any witness statement or written account delivered to the court by the respondent in compliance with an order of the court under section 236 of the Act are not to be filed with the court.
- (2) The documents listed in paragraph (3) may not be inspected without the permission of the court, except by—
- (a) the applicant for an order under section 236 of the Act; or
  - (b) any person who could have applied for such an order in relation to the affairs of the further education body.
- (3) The documents are—
- (a) the written record of the respondent's examination;
  - (b) copies of questions put to the respondent or proposed to be put to the respondent and answers to questions given by the respondent;
  - (c) any witness statement delivered to the court by the respondent; and
  - (d) any document on the court file that shows the grounds for the application for the order.
- (4) The court may from time to time give directions as to the custody and inspection of any documents to which this rule applies, and as to the provision of copies of, or extracts from, such documents.

#### **Costs of proceedings under section 236 of the Act**

- 4.19.**—(1) Where the court has ordered an examination of a person under section 236 of the Act, and it appears to it that the examination was made necessary because information had been unjustifiably refused by the respondent, it may order that the respondent pay the costs of the examination.
- (2) Where the court makes an order against a person under—

- (a) section 237(1) (to deliver up property in any person's possession which belongs to the further education body's estate); or
  - (b) section 237(2) (to pay any amount in discharge of a debt due to the further education body);
- the costs of the application for the order may be ordered by the court to be paid by the respondent.

(3) Subject to paragraphs (1) and (2), the applicant's costs must, unless the court orders otherwise, be paid as an expense of the education administration.

(4) A person summoned to attend for examination must be tendered a reasonable sum for travelling expenses incurred in connection with that person's attendance but any other costs falling on that person are at the court's discretion.

#### **Further information and disclosure**

**4.20.**—(1) A party to education administration proceedings may apply to the court for an order—

- (a) that in accordance with CPR Part 18 (further information) another party—
    - (i) clarify a matter that is in dispute in the proceedings, or
    - (ii) give additional information in relation to such a matter; or
  - (b) for disclosure from any person in accordance with CPR Part 31 (disclosure and inspection of documents), save where Chapter 7 of Part 3 applies.
- (2) An application under this rule may be made without notice to any other party.

#### **Witness statements and reports**

**4.21.**—(1) Where the Act or these Rules require evidence as to a matter, such evidence may be given by witness statement unless—

- (a) in a specific case a rule or the Act makes different provision; or
  - (b) the court otherwise directs.
- (2) Unless either the provision of the Act or rule under which the application is made provides otherwise or the court directs otherwise—
- (a) if the applicant intends to rely at the first hearing on evidence in a witness statement or report, the applicant must file the witness statement or report with the court and serve a copy of it on the respondent not less than 14 days before the date fixed for the hearing; and
  - (b) where the respondent intends to oppose the application and rely for that purpose on evidence contained in a witness statement or report, the respondent must file the witness statement or report with the court and serve a copy of it on the applicant not less than five business days before the date fixed for the hearing.
- (3) The court may order a person who has made a witness statement or written report to attend for cross-examination.
- (4) Where a person who has been ordered to attend fails to do so the witness statement or report must not be used in evidence without the court's permission.

#### **Evidence provided by the education administrator**

**4.22.**—(1) The education administrator may file a report instead of a witness statement for the purpose of any application, unless the application involves other parties or the court otherwise directs.

(2) Where a report is filed instead of a witness statement the report must be treated, for the purpose of rule 4.21 and any hearing before the court, as if it were a witness statement.