
STATUTORY INSTRUMENTS

2018 No. 1135

The Education Administration Rules 2018

PART 5

CLAIMS BY AND DISTRIBUTIONS TO CREDITORS

CHAPTER 3

Distribution to creditors

Application of Chapter to particular class of creditors and to distributions

5.25.—(1) This Chapter applies where the education administrator makes, or proposes to make, a distribution to any class of creditors other than secured creditors.

(2) Where the distribution is to a particular class of creditors in an education administration, a reference in this Chapter to creditors is a reference to that class of creditors only.

Individual notices to creditors etc of intended dividend or distribution

5.26.—(1) Where the education administrator intends to make a distribution to creditors or declare a dividend, the education administrator must deliver a notice of that intention to all the creditors in the education administration.

(2) Where the intended dividend is only for preferential creditors, the education administrator is only required to deliver such a notice to the preferential creditors.

(3) Where the education administrator intends to declare a dividend to unsecured creditors, the notice must also state the value of the prescribed part or that the court has made an order under section 176A(5) of the Act.

Contents of notice of intention to declare a dividend or make a distribution

5.27. A notice under 5.26 must contain the following—

- (a) a statement that the education administrator intends to make a distribution to creditors or declare a dividend (as the case may be) within the period of two months from the last date for proving;
- (b) a statement whether the proposed distribution or dividend is interim or final;
- (c) the last date by which proofs may be delivered which must be—
 - (i) the same date for all creditors who prove, and
 - (ii) not less than 21 days from the date of the notice;
- (d) a statement of the place to which proofs must be delivered; and
- (e) the additional information required by rule 5.28 where the education administrator intends to treat a small debt as proved for the purposes of paying a dividend.

Further contents of notice to creditors owed small debts etc.

5.28.—(1) The education administrator may treat a debt, which is a small debt according to the accounting records or the statement of affairs of the further education body, as if it were proved for the purposes of paying a dividend.

(2) Where the education administrator intends to treat such a debt as if it were proved, the notice delivered under rule 5.26 must also—

- (a) state the amount of the debt which the education administrator believes to be owed to the creditor according to the accounting records or statement of affairs of the further education body;
- (b) state that the education administrator will treat the debt which is stated in the notice, being for £1,000 or less, as proved for the purposes of paying a dividend unless the creditor advises the education administrator that the amount of the debt is incorrect or that no debt is owed;
- (c) require the creditor to notify the education administrator by the last date for proving if the amount of the debt is incorrect or if no debt is owed; and
- (d) inform the creditor that where the creditor advises the education administrator that the amount of the debt is incorrect the creditor must also submit a proof to receive a dividend.

(3) The information required by paragraph (2)(a) may take the form of a list of small debts which the education administration intends to treat as proved which includes the debt owed to the particular creditor upon whom the notice is being delivered.

Gazette notice of intended first dividend or distribution

5.29.—(1) Subject to paragraphs (2) and (4) where the education administrator intends to declare a first dividend or distribution, the education administrator must gazette a notice containing—

- (a) a statement that the education administrator intends to declare a first dividend or distribution;
- (b) the date by which and place to which proofs must be delivered.

(2) Where the intended dividend is only to preferential creditors, the education administrator need only gazette a notice if the education administrator thinks fit.

(3) The education administrator may in addition advertise such a notice in such other manner (if any) as the education administrator thinks fit.

(4) Paragraph (1) does not apply where the education administrator has previously, by a notice which has been gazetted, invited creditors to prove their debts.

Admission or rejection of proofs following last date for proving

5.30.—(1) Unless the education administrator has already dealt with them, the education administrator must within 14 days of the last date for proving set out in the notice under rule 5.26—

- (a) admit or reject (in whole or in part) proofs delivered to the education administrator; or
- (b) make such provision in relation to them as the education administrator thinks fit.

(2) The education administrator is not obliged to deal with a proof delivered after the last date for proving, but the education administrator may do if the education administrator thinks fit.

(3) In the declaration of a dividend a payment must not be made more than once by virtue of the same debt.

Postponement or cancellation of dividend

5.31.—(1) The education administrator may postpone or cancel the dividend in the period of two months from the last date for proving if an application is made to the court for the education administrator’s decision on a proof to be reversed or varied, or for a proof to be excluded, or for a reduction of the amount claimed.

(2) The education administrator may postpone a dividend if the education administrator considers that, due to the nature of the affairs of the further education body to which the education administration relates, there is real complexity in admitting or rejecting proofs of claims submitted.

(3) Where the dividend is postponed or cancelled a new notice under rule 5.26 will be required if the dividend is paid subsequently.

Declaration of dividend

5.32.—(1) The education administrator must declare the dividend in the two month period referred to in rule 5.27(a) in accordance with the notice of intention to declare a dividend unless the education administrator has had cause to postpone or cancel the dividend.

(2) The education administrator must not declare a dividend so long as there is pending an application to the court to reverse or vary a decision of the education administrator on a proof, or to exclude a proof or to reduce the amount claimed unless the court gives permission.

(3) If the court gives such permission, the education administrator must make such provision in relation to the proof as the court directs.

Notice of declaration of a dividend

5.33.—(1) Where the education administrator declares a dividend, the education administrator must deliver notice of that fact to all creditors who have proved for their debts (subject to paragraph (5)).

(2) The notice declaring a dividend may be delivered at the same time as the dividend is distributed.

(3) The notice must include the following in relation to the education administration proceedings—

- (a) the amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
- (b) the payments made by the education administrator in carrying out the education administrator’s functions;
- (c) the provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;
- (d) the total amount to be distributed and the rate of dividend; and
- (e) whether, and if so when, any further dividend is to be expected.

(4) Where the education administrator intends to make a distribution to unsecured creditors, the notice must also state the value of the prescribed part unless there is no prescribed part or the court has made an order under section 176A(5).

(5) Where the education administrator declares a dividend for preferential creditors only, the notice under paragraph (1) need only be delivered to those preferential creditors who have proved for their debts.

Notice of no dividend or no further dividend

5.34.—(1) This rule applies where the education administrator is unable to declare any dividend or (as the case may be) any further dividend.

(2) Where this rule applies, the education administrator must deliver a notice, containing a statement to the effect that either—

- (a) no funds have been realised; or
 - (b) the funds realised have already been distributed or used or allocated for paying the expenses of the education administration.
- (3) The information required by paragraph (2) may be contained in a progress report.

Sole or final dividend

5.35.—(1) Where it is intended that the distribution is to be a sole or final dividend, after the date specified as the last date for proving in the notice under rule 5.26, the education administrator must—

- (a) pay any outstanding pre-administration expenses;
- (b) pay any items payable in accordance with the provisions of paragraph 99 of Schedule B1(1);
- (c) pay any amount outstanding (including debts or liabilities and the education administrator's own remuneration and expenses) which would, if the education administrator were to cease to be the education administrator of the further education body, be payable out of the property of which the education administrator had custody or control in accordance with the provisions of paragraph 99 of Schedule B1; and
- (d) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(2) The reference in paragraph (1)(d) to debts that have not been proved does not include small debts treated as proved by the education administrator.

(3) The court may, on the application of any person, postpone the date specified in the notice delivered under rule 5.26.

Provisions as to dividends

5.36. In the calculation and distribution of a dividend, the education administrator must make provision for—

- (a) any debts which are the subject of claims which have not yet been determined; and
- (b) any disputed proofs and claims.

Supplementary provisions as to dividends

5.37.—(1) A creditor is not entitled to disturb the payment of any dividend or the making of any distribution because—

- (a) the amount claimed in the creditor's proof is increased after payment of the dividend; or
- (b) the creditor did not prove for a debt before the declaration of the dividend.

(2) However the creditor is entitled to be paid a dividend or receive a distribution which the creditor has failed to receive out of any money for the time being available for the payment of a further dividend or making a further distribution.

(1) Paragraph 99 was amended by paragraph 27 of Schedule 6 to the Deregulation Act 2015 (c. 20).

(3) Such a dividend must be paid or distribution made before that money is applied to the payment of any further dividend or the making of any further distribution.

(4) If, after a creditor's proof has been admitted, the proof is withdrawn or excluded, or the amount of it is reduced, the creditor is liable to repay to the education administrator, for the credit of the further education body's estate, any amount overpaid by way of dividend.

Secured creditors

5.38.—(1) The following applies where a creditor alters the value of a security after a dividend has been declared.

(2) If the alteration reduces the creditor's unsecured claim ranking for dividend, the creditor must as soon as reasonably practicable repay to the education administrator, for the credit of the further education body's estate, any amount received by the creditor as dividend in excess of that to which the creditor would be entitled, having regard to the alteration of the value of the security.

(3) If the alteration increases the creditor's unsecured claim, the creditor is entitled to receive from the education administrator, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the alteration of the value of the security.

(4) The creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the alteration.

Disqualification from dividend

5.39. If a creditor contravenes any provision of the Act or these Rules relating to the valuation of securities, the court may, on the application of the education administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

Assignment of right to dividend

5.40.—(1) If a person entitled to a dividend ("the entitled person") delivers notice to the education administrator that the entitled person wishes the dividend to be paid to another person, or that the entitled person has assigned the entitlement to another person, the education administrator must pay the dividend to that other person accordingly.

(2) A notice delivered under this rule must specify the name and address of the person to whom payment is to be made.

Debt payable at future time

5.41.—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of a dividend, the creditor is entitled to the dividend equally with other creditors, but subject as follows.

(2) For the purpose of the dividend (and no other purpose) the amount of the creditor's admitted proof must be discounted by applying the following formula—

$$\frac{X}{1.05^n}$$

where—

(a) "X" is the value of the admitted proof; and

- (b) “*n*” is the period beginning with the relevant date and ending with the date on which the payment of the creditor’s debt would otherwise be due, expressed in years (part of a year being expressed as a decimal fraction of a year).

Non payment of dividend

5.42.—(1) No action lies against an education administrator for payment of a dividend.

(2) However, if the education administrator refuses to pay a dividend the court may, if it thinks just, order the education administrator to pay it and also to pay, out of the education administrator’s own money—

- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838, from the time when it was withheld; and
- (b) the costs of the proceedings in which the order to pay is made.

Reporting distribution of property to creditors under rule 5.13

5.43.—(1) This rule applies where there has been a distribution of property to creditors under rule 5.13.

(2) In any account or summary of receipts and payments which is required to be included in a notice or report prepared under a rule listed in paragraph (3), the education administrator must—

- (a) state the estimated value of the property divided among the creditors of the further education body during the period to which the account or summary relates; and
- (b) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.

(3) Paragraph (2) applies to the following—

- (a) rule 3.13 (progress reports); and
- (b) rule 6.2 (notice of intention to resign).