
STATUTORY INSTRUMENTS

2018 No. 1135

The Education Administration Rules 2018

PART 4

COURT PROCEDURE AND PRACTICE

CHAPTER 1

General

Court rules and practice to apply

4.1.—(1) The provisions of the CPR (including any related Practice Directions) apply for the purposes of education administration with any necessary modifications, except so far as disappplied by or inconsistent with these Rules.

(2) Education administration proceedings must be allocated to the multi-track, for which CPR Part 29 makes provision, and accordingly those provisions of the CPR which provide for directions questionnaires and track allocation do not apply.

(3) CPR Part 32 applies to a false statement in a document verified by a statement of truth made under these Rules as it applies to a false statement in a document verified by a statement of truth made under CPR Part 22.

Performance of functions by the Court

4.2.—(1) Anything to be done under or by virtue of the Act or these Rules by, to or before the court may be done by, to or before a judge.

(2) A judge may authorise any act of a formal or administrative character which is not by statute that person's responsibility to be carried out by the chief clerk or any other officer of the court acting on that person's behalf, in accordance with directions given by the Lord Chancellor.

(3) The hearing of an application must be in open court unless the court directs otherwise.

(4) For the purposes of this rule, "judge" includes a judge exercising the court's discretion in relation to an appeal or a review made in accordance with rule 4.39.

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.

CHAPTER 3

Transfer of Proceedings

Applications for transfer

- 4.23.** Where an application to transfer the proceedings is made by the education administrator, that application must be accompanied by a report by the education administrator which must—
- (a) set out the reasons for the transfer; and
 - (b) include a statement that the appropriate national authority either has consented to the transfer or was given at least 14 days’ notice of the education administrator’s application.

Procedure following order for transfer

- 4.24.**—(1) Where a court makes an order for the transfer of proceedings, it must as soon as reasonably practicable deliver to the transferee court a sealed copy of the order, and the file of the proceedings.
- (2) A transferee court which receives such an order and the file in education administration proceedings must, as soon as reasonably practicable, deliver notice of the transfer to the transferor court.

CHAPTER 4

Court file

Court file

- 4.25.**—(1) Where documents are filed with the court under the Act or these Rules, the court must open and maintain a court file and place those documents on the file.

- (2) The following may inspect the court file, or obtain from the court a copy of the court file, or of any document in the court file—
- (a) the education administrator;
 - (b) the appropriate national authority;
 - (c) a creditor who provides the court with a statement confirming that the person is a creditor of the further education body;
 - (d) a relevant officer or a former relevant officer; and
 - (e) a member of the further education body.
- (3) The right to inspect and obtain copies may be exercised on a person's behalf by someone authorised to do so by that person.
- (4) Other persons may inspect the file or obtain copies, if the court gives permission.
- (5) The right to a copy of a document is subject to payment of the fee chargeable under an order made under section 92 of the Courts Act 2003⁽¹⁾.
- (6) Inspection of the file, with permission if required, may be at any reasonable time.
- (7) The court may direct that the file, a document (or part of it) or a copy of a document (or part of it) must not be made available under paragraphs (2) or (3) without the permission of the court.
- (8) An application for a direction under paragraph (7) may be made by—
- (a) the education administrator; or
 - (b) any person appearing to the court to have an interest.
- (9) The following applications may be made without notice to any other party, but the court may direct that notice must be delivered to any person who would be affected by its decision—
- (a) an application for permission to inspect the file or obtain a copy of a document under paragraph (4); and
 - (b) an application for a direction under paragraph (7).
- (10) If, for the purposes of powers conferred by the Act or these Rules, the appropriate national authority or the education administrator makes a request to inspect, or requests the transmission of, the court file, the court must comply with the request (unless the file is for the time being in use for the court's own purposes).

Office copies of documents

- 4.26.**—(1) The court must provide an office copy of a document from the court file of education administration proceedings to a person who has under these Rules the right to inspect the court file where that person has requested such a copy and paid the appropriate fee under rule 4.25(5).
- (2) A person's right under this rule may be exercised on that person's behalf by someone authorised to do so by that person.
- (3) An office copy must be in such form as the judge thinks appropriate, and must bear the court's seal.

(1) 2003 c. 39. There are amendments to section 92 which are not relevant to this instrument.

CHAPTER 5

Costs

Application of Chapter and interpretation

4.27.—(1) This Chapter applies to the costs of and in connection with education administration proceedings.

(2) In this Chapter “costs” includes charges and expenses.

(3) CPR Parts 44(2) and 47(3) (which relate to costs) apply to such costs.

Requirement to assess costs by the detailed procedure

4.28.—(1) Where the costs of any person are payable as an expense out of the insolvent estate, the amount payable must be decided by detailed assessment unless agreed between the education administrator and the person entitled to payment.

(2) In the absence of agreement, the education administrator may serve notice requiring the person entitled to payment to commence detailed assessment proceedings in accordance with CPR Part 47.

(3) Detailed assessment proceedings must be commenced in the court to which the education administration proceedings are allocated.

(4) In any proceedings before the court, the court may order any costs to be decided by summary assessment.

Procedure where detailed assessment is required

4.29.—(1) A person whose costs in education administration proceedings are required to be decided by detailed assessment must, on receipt of a notice given by the education administrator under rule 4.28(2), commence detailed assessment proceedings in accordance with CPR Part 47.

(2) If that person does not commence such proceedings within 3 months of being required to do so under rule 4.28(2), or within such further time as the court, on application, may permit, the education administrator may deal with the administration without regard to any claim for costs by that person, whose claim is forfeited by such failure to commence proceedings.

(3) Where in any such case such a claim for costs lies additionally against an education administrator in their personal capacity, that claim is also forfeited by such failure to commence proceedings.

Costs paid otherwise than out of the assets of the further education body

4.30. Where the amount of costs is decided by detailed assessment under an order of the court directing that those costs are to be paid otherwise than out of the assets of the further education body, the costs officer must note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

Award of costs against the education administrator

4.31. Without prejudice to any provision of the Act by virtue of which the education administrator is not in any event to be liable for costs and expenses, where an education administrator is made a party to any proceedings on the application of another party to the proceedings, the education administrator is not to be personally liable for the costs unless the court otherwise directs.

(2) Part 44 is substituted for a new Part 44 by [S.I. 2013/262](#).

(3) Part 47 is substituted for a new Part 47 by [S.I. 2013/262](#).

Applications for costs

4.32.—(1) This rule applies where a party to, or a person affected by, education administration proceedings applies to the court for an order allowing their costs of or incidental to the proceedings, or any part of those costs, and that application is not made at that time of the proceedings.

(2) The applicant must serve a sealed copy of the application on the education administrator.

(3) The education administrator may appear on any such application.

(4) No costs of or incidental to the application are to be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceedings.

Costs and expenses of witnesses

4.33.—(1) Except as directed by the court no allowance as a witness in any examination or other proceedings before the court may be made to a relevant officer of the further education body to which the proceedings relate.

(2) A person making any application in education administration proceedings is not to be regarded as a witness on the hearing of the application, but a costs officer may allow their expenses of travelling and subsistence.

Final costs certificate

4.34.—(1) A final costs certificate of the costs officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court.

(2) Where it is demonstrated to the satisfaction of a costs officer that a final costs certificate has been lost or destroyed, the costs officer may issue a duplicate.

CHAPTER 6

Enforcement procedures

Orders enforcing compliance

4.35.—(1) The court may, on an application by the education administrator, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

(a) paragraph 47 of Schedule B1; or

(b) section 235(4) of the Act.

(2) An order of the court under this rule may provide that all the costs of and incidental to the application for it are to be borne by the person against whom the order is made.

Warrants under section 236

4.36.—(1) When a person is arrested under a warrant issued under section 236(5), the arresting officer must as soon as reasonably practicable bring the arrested person before the court issuing the warrant in order that the arrested person may be examined.

(2) If the arrested person cannot immediately be brought up for examination, the officer must deliver that person into the custody of the governor of the prison named in the warrant (or where that prison is not able to accommodate the arrested person, the governor of such other prison with appropriate facilities which is able to accommodate the arrested person), who must keep the arrested person in custody and produce that person before the court as it may from time to time direct.

(4) Section 235 was amended by paragraph 24 of Schedule 17 to the Enterprise Act 2002.

(3) After arresting the person named in the warrant, the officer must as soon as reasonably practicable report to the court the arrest or delivery into custody (as the case may be) and apply to the court to fix a venue for the arrested person’s examination.

(4) The court must appoint the earliest practicable time for the examination, and must—

(a) direct the governor of the prison to produce the arrested person for examination at the venue appointed; and

(b) as soon as reasonably practicable deliver notice of the venue to the education administrator.

(5) Where any property in the arrested person’s possession is seized, the property must, in accordance with any directions of the court, be—

(a) delivered to whoever is specified in the warrant as authorised to receive it, or otherwise dealt with in accordance with the directions in the warrant; or

(b) kept by the officer after seizing it pending the receipt of written orders from the court as to its disposal.

(6) In this Rule references to property include books, papers and other documents and records.

(7) A warrant issued by the court under section 236 must be addressed to such officer of the High Court or of the county court as the warrant specifies, or to any constable.

(8) The person referred to in section 236(5) as the prescribed officer of the court is—

(a) in the case of the High Court, the tipstaff and the tipstaff’s assistants of the court; and

(b) in the case of the county court, a bailiff.

CHAPTER 7

Appeals in education administration

Application of CPR

4.37. CPR Part 52(5) applies to appeals under this Chapter as varied by any applicable Practice Direction.

Appeals and reviews of in education administration proceedings

4.38.—(1) A court which has jurisdiction in relation to education administration proceedings may review, rescind or vary any order made by it in the exercise of that jurisdiction.

(2) An appeal made in the exercise of the court’s jurisdiction in relation to education administration proceedings lies—

(a) from the decision of an Insolvency and Companies Court Judge sitting in the High Court, to a High Court Judge; and

(b) from a decision of a High Court Judge, to the Civil Division of the Court of Appeal.

(3) Any application for the rescission of a winding-up order must be made within five business days after the date on which the order was made.

(4) In this rule—

“Civil Division of the Court of Appeal” means the division of the Court of Appeal established by section 3(1) of the Senior Courts Act 1981(6);

(5) Part 52 is amended by S.I.s 1987/2024, 2998/3132, 2000/221, 2000/2092, 2003/2113, 2003/3361, 2004/2072/2005/2483, 2005/3515, 2006/1689/2006/3435, 2007/2204, 2009/2092/2009/3390, 2010/1953, 2012/2208, 2013/262, 2013/1412, 2013/1974, 2014/407, 2104/879, 2014/2044, 2014/3299, paragraph 1(2) of Schedule 11 to the Constitutional Reform Act 2005 (c. 4), and sections 59 and 60 of the Access to Justice Act 1999 (c. 22).

(6) 1981 c. 54. Section 3 has been amended but no amendments are relevant to this instrument.

“High Court Judge” means a judge listed in section 4(1) of the Senior Courts Act 1981(7); and
 “Insolvency and Companies Court Judge of the High Court” means a person appointed to the office of Insolvency and Companies Court Judge under section 89(1) of the Senior Courts Act 1981(8).

Procedure on appeal

4.39.—(1) An appeal against a decision of a judge of the High Court may be brought only with the permission of the High Court or the Court of Appeal.

(2) An appellant must file an appeal notice(9) within 21 days after the date of the decision of the court that the appellant wishes to appeal.

CHAPTER 8

Court orders, formal defects and shorthand writers

Court orders

4.40. Notwithstanding any requirement in these Rules as to the contents of a court order, the court may make such other order or in such form as the court thinks just.

Formal defects

4.41. No education administration proceedings are to be invalidated by any formal defect or any irregularity unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the court.

Shorthand writers

4.42.—(1) The court may in writing nominate a person to be official shorthand writer to the court.

(2) The court may, at any time in the course of education administration proceedings, appoint a shorthand writer to take down the evidence of a person examined under rule 4.17 or section 236 of the Act.

(3) Where the education administrator applies to the court for an order appointing a shorthand writer, the education administrator must name the person that the education administrator proposes for the appointment.

(4) The remuneration of a shorthand writer appointed in education administration proceedings must be paid by the party at whose instance the appointment was made, or out of the estate, or otherwise, as the court may direct.

(5) Any question arising as to the rates of remuneration payable under this rule must be determined by the court.

(7) Section 4 was amended by section 72 of the Courts and Legal Services Act 1990 (c. 41), section 69 of the Access to Justice Act 1999 (c. 22), paragraphs 114 and 114 of Schedule 15 to the Constitutional Reform Act 2005, and paragraphs 12 and 13 of Schedule 13 to the Crime and Courts Act 2013. There are other amendments but those are not relevant to this instrument.

(8) The definition was inserted in section 89(1) by paragraph 3(a) of Schedule 1 to S.I. 2018/130. Other amendments have been made to section 89(1), but those are not relevant to this instrument.

(9) “Appeal notice” is defined in CPR 52.1(3)(f).