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STATUTORY INSTRUMENTS

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**2018 No. 1135**

**EDUCATION, ENGLAND AND WALES  
INSOLVENCY, ENGLAND AND WALES**

**The Education Administration Rules 2018**

*Made* - - - - *1st November 2018*  
*Laid before Parliament* *7th November 2018*  
*Coming into force* - - *31st January 2019*

The Lord Chancellor makes the following Rules in exercise of the powers conferred by section 32(1) of the Technical and Further Education Act 2017<sup>(1)</sup> and section 411 of the Insolvency Act 1986<sup>(2)</sup>, with the concurrence of the Secretary of State and, in the case of those rules that affect court procedure, of the Lord Chief Justice.

**PART 1**

**Introductory provisions**

**Citation and commencement**

**1.1.** These Rules may be cited as the Education Administration Rules 2018 and come into force on 31st January 2019.

**Application**

**1.2.** These Rules apply in relation to further education bodies in respect of which the court may make an education administration order under Chapter 4 of Part 2 of the Technical and Further Education Act 2017.

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(1) [2017 c. 19](#).

(2) [1986 c. 45](#). Section 411 confers on the Lord Chancellor the power to make rules in relation to insolvency in England and Wales with the concurrence of the Secretary of State and the Lord Chief Justice (in the case of rules that affect court procedure). Relevant amendments to sections 411 are made by regulations 2 and 3(1), 3(3) and 3(4) of [S.I. 2002/1037](#), paragraphs 185, 188(1) and (3) and 189 (1) and (3) of Schedule 4 to the Constitutional Reform Act [2005 \(c. 4\)](#), paragraph 44 of Schedule 4 to [S.I. 2007/2194](#), section 160(1) and (5)(a) of the Banking Act [2009 \(c. 1\)](#), paragraph 79 of Schedule 1 to [S.I. 2009/1941](#) and paragraphs 1 to 11 of Schedule 10 to the Small Business, Enterprise and Employment Act [2015 \(c. 26\)](#).

## Interpretation

**1.3.**—(1) In these Rules, unless otherwise stated, a reference to a Part, a Chapter or a Schedule is to a Part or Chapter of, or Schedule to, these Rules.

(2) In these Rules the following definitions apply—

“the Act” means the Insolvency Act 1986, and—

(a) a reference to a numbered section without mention of another Act is to that section of the Act; and

(b) a reference to Schedule B1(3) is to that Schedule to the Act;

“the Companies Act” means the Companies Act 2006(4);

“the Technical and Further Education Act” means the Technical and Further Education Act 2017;

“application for an education administration order” and “application for education administration” mean an application made to the court for an education administration order;

“attendance” and “attend”: a person attends, or is in attendance at, a meeting where that person is present or attends remotely in accordance with section 246A(5) of the Act or Chapter 5 or 6 of Part 3, and includes a person who participates in a virtual meeting, whether that person attends the meeting or virtual meeting in person, by proxy, or by corporate representative (in accordance with section 434B(6) of the Act);

“authenticate” means to authenticate in accordance with rule 7.3;

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales;

“consumer” means an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession;

“contributory” has the same meaning as in section 79 of the Act;

“the court” means the High Court;

“CPR” means the Civil Procedure Rules 1998(7);

“debt” and “small debt” have the meanings given in rule 5.1;

“deliver” and “delivery” are to be interpreted in accordance with Chapter 5 of Part 7;

“deliver to the creditors” and similar expressions in these Rules and in the Act are to be interpreted in accordance with rule 7.48;

“document” includes a written notice or statement or anything else in writing capable of being delivered to a recipient;

“education administration proceedings” means the court proceedings and administration following the application for an education administration order;

“enforcement agent” means a person authorised by section 63(2) of the Tribunals, Courts and Enforcement Act 2007(8) to act as an enforcement agent;

“enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003(9);

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(3) Schedule B1 was inserted by section 248 of the Enterprise Act 2002 (c. 40).

(4) 2006 c. 46.

(5) Section 246A was inserted by article 3 of S.I. 2010/18.

(6) Section 434B was inserted by paragraph 105 of Schedule 1 to S.I. 2008/948 and was amended by paragraph 57 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c. 26).

(7) S.I. 1998/3132.

(8) 2007 c.15.

(9) 2003 c. 39.

- “estate” and “insolvent estate” mean the assets of the further education body;
- “file with the court” means deliver to the court for filing and such references are to be read as including “submit” and “submission” to the court;
- “the Gazette” means the London Gazette;
- “Gazette notice” means a notice which is, has been or is to be gazetted;
- “to gazette” means to advertise once in the Gazette;
- “identification details” and similar references to information identifying persons and proceedings are to be interpreted in accordance with rule 7.4;
- “insolvency proceedings” means proceedings in respect of Parts 1 to 11 of the Act;
- “IP number” means the number assigned to an education administrator or liquidator as an insolvency practitioner by the Secretary of State;
- “judge” means a judge exercising the court’s jurisdiction in relation to education administration;
- “meeting”, in relation to a further education body or a further education body’s creditors, means either a physical meeting or a virtual meeting;
- “petitioner” includes a person who has been substituted as such or has been given carriage of the petition;
- “physical meeting” means a meeting at which persons are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place);
- “Practice Direction” means a direction as to the practice and procedure of a court within the scope of the CPR;
- “pre-administration costs” means fees charged, and expenses incurred by the education administrator, or another person qualified to act as an insolvency practitioner in relation to the further education body, before the further education body entered education administration but with a view to it doing so, and “unpaid pre-administration costs” means pre-administration costs which had not been paid when the further education body entered education administration;
- “prescribed part” has the same meaning as in section 176A(2)(a) of the Act<sup>(10)</sup> and the Insolvency Act 1986 (Prescribed Part) Order 2003<sup>(11)</sup>;
- “progress report” means a report which complies with rule 3.13;
- “provable debt” has the meaning set out in rule 5.2;
- “prove” and “proof” have the following meaning—
- (a) a creditor who claims for a debt in writing is referred to as proving that debt;
  - (b) the document by which the creditor makes the claim is referred to as that creditor’s proof; and
  - (c) for the purpose of voting, or objecting to a deemed consent, the requirements for a proof are satisfied by the education administrator having been notified by the creditor in writing of a debt;
- “qualified to act as an insolvency practitioner” in relation to a further education body has the meaning given by Part 13 of the Act;
- “registered” means—

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<sup>(10)</sup> Section 176A was inserted by section 252 of the Enterprise Act 2002.

<sup>(11)</sup> S.I. 2003/2097.

- (a) in relation to a further education body which is a company, registered with the registrar of companies; and
- (b) in relation to a further education body which is a statutory corporation—
  - (i) registered with the registrar of companies, if a record exists for that body with the registrar of companies; or
  - (ii) registered in the UK Register of Learning Providers;

“relevant officer” means a director of the further education body;

“serve” and “service” are to be interpreted in respect of a particular document by reference to the requirements of Schedule 2;

“solicitor” means a solicitor of the Senior Courts and includes any other person who, for the purpose of the Legal Services Act 2007<sup>(12)</sup> is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act) or is exempt from such authorisation by virtue of section 19 of, and Schedule 3 to, that Act;

“standard fee for copies” means 15 pence per A4 or A5 page or 30 pence per A3 page;

“statement of proposals” means a statement made by an education administrator under paragraph 49 of Schedule B1<sup>(13)</sup> setting out proposals for achieving the purpose of an education administration;

“statutory corporation” means a further education body as defined in sections 4(2)(a) and (b) and (3)(a) of the Technical and Further Education Act;

“venue” in relation to any proceedings, attendance before the court, decision procedure or meeting means the time, date and place or platform for the proceedings, attendance, decision procedure or meeting;

“virtual meeting” means a meeting where persons who are not invited to be physically present together may participate in the meeting including communicating directly with all the other participants in the meeting and voting (either directly or via a proxy-holder);

“witness statement” means a witness statement made in accordance with Part 32 of the CPR.

- (3) So far as these Rules apply to a further education body which is a statutory corporation—
  - (a) “director” means—
    - (i) a member of the statutory corporation,
    - (ii) the principal of the statutory corporation, or
    - (iii) if the context requires, both of the above;
  - (b) “member” means a member of a statutory corporation as set out in that statutory corporation’s instrument of government and articles of government as required by section 20 or 33I of the Further and Higher Education Act 1992<sup>(14)</sup>;
  - (c) “officer” means—
    - (i) a member of the statutory corporation,
    - (ii) the clerk to the statutory corporation,
    - (iii) the chief executive of the statutory corporation,
    - (iv) any senior post holder or principal of the statutory corporation, or
    - (v) if the context requires, all of the above;

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<sup>(12)</sup> 2007 c. 29.

<sup>(13)</sup> Paragraph 49 was amended by paragraph 10 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c. 26).

<sup>(14)</sup> 1992 c. 13. Section 20 was amended by paragraph 5 of Schedule 12 to the Education Act 2011 (c. 21) and section 2 of the Further Education and Higher Education (Governance and Information) (Wales) Act 2014 (2014 anaw 1). Section 33I was inserted by paragraph 3 of Schedule 8 to the Apprenticeship, Skills, Children and Learning Act 2009 (c. 22).

- (d) “registered office” means the address given for the statutory corporation in the UK Register of Learning Providers.

### **Punishment of Offences**

1.4. Schedule 1 sets out the punishments for certain contraventions of these Rules.

### **Review**

1.5.—(1) Before the end of the review period, the Secretary of State must—

- (a) carry out a review of these Rules;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Rules;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate, and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) “Review period” means the period of five years beginning with the day on which these Rules come into force.

## **PART 2**

### **APPLICATION FOR AN EDUCATION ADMINISTRATION ORDER**

#### **Commencement of education administration proceedings**

2.1. An application<sup>(15)</sup> for an education administration order must be commenced in the High Court.

#### **Form of application**

2.2. A written statement complying with rule 2.3 must be attached to the application made by each of the persons proposed to be education administrator, stating—

- (a) that the person consents to accept the appointment; and
- (b) details of any prior professional relationship or relationships that the person has had with the further education body to which that person is to be appointed as education administrator.

#### **Contents of application and witness statement**

2.3.—(1) The education administration application must be headed “Education Administration application” and must identify the further education body to which it relates immediately below the heading.

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<sup>(15)</sup> Section 18 of the Technical and Further Education Act provides that an education administration order may only be made on the application of the appropriate national authority (the Secretary of State or the Welsh Ministers).

(2) The application must state the applicant's belief that the further education body is unable, or is likely to be unable, to pay its debts.

(3) The application must also—

- (a) if the further education body is a company registered under the Companies Act—
  - (i) contain details of any issued and called-up capital, the number of shares into which the capital is divided, the nominal value of each share and the amount of capital paid up or treated as paid up, or
  - (ii) state that it is a company limited by guarantee; and
- (b) contain a witness statement that the applicant requests the court—
  - (i) to make an education administration order in relation to the further education body,
  - (ii) to appoint the proposed person or persons to be education administrator, and
  - (iii) to make such ancillary order or orders as the applicant may request, and such other order or orders as the court thinks appropriate.

(4) The witness statement required by rule (3)(b) must state the nature of the authority of the person making it and the means of that person's knowledge of the matters to which the witness statement relates.

(5) The witness statement must also contain—

- (a) a statement of the further education body's financial position, specifying (to the best of the applicant's knowledge and belief) the further education body's assets and liabilities, including contingent and prospective liabilities;
- (b) details of any security known or believed to be held by creditors of the further education body, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver or to appoint an administrator under paragraph 14 of Schedule B1;
- (c) a statement that an administrative receiver has been appointed if that is the case;
- (d) details of any insolvency proceedings in relation to the further education body, including any petition that has been presented for the winding up of the further education body, so far as known to the applicant;
- (e) where it is intended to appoint a number of persons as education administrators, a proposed order relating to their functions pursuant to section 21 of the Technical and Further Education Act; and
- (f) any other matters which, in the applicant's opinion, will assist the court in deciding whether to make an education administration order.

### **Filing of application**

**2.4.**—(1) The education administration application must be filed with the court together with the witness statement in support and the proposed education administrator's consent to act.

(2) The court must fix a venue for the hearing of the application.

(3) There must also be filed, at the same time as the application or at any time after that, a sufficient number of copies of the application and the statement for service in accordance with rule 2.5.

(4) Each of the copies filed must—

- (a) have applied to it the seal of the court;
- (b) be endorsed with—
  - (i) the date and time of filing, and

- (ii) the venue fixed by the court; and
- (c) be delivered by the court to the applicant.

(5) After the application is filed, it is the duty of the applicant to notify the court in writing of the existence of any insolvency proceedings in relation to the further education body, as soon as the applicant becomes aware of them.

### **Service of application**

**2.5.—**(1) In this rule, references to the application are to a copy of the application and witness statement filed with the court under rule 2.4.

(2) Notification for the purposes of section 18(2) of the Technical and Further Education Act must be by way of service of the application in accordance with rule 2.7, verified in accordance with rule 2.8.

(3) The applicant must, as soon as practicable after it is made, serve the application on the following (in addition to serving it on the further education body to which the application relates in accordance with section 18(2) of the Technical and Further Education Act)—

- (a) an administrative receiver of the further education body;
- (b) if there is pending an administration application under Schedule B1, on the applicant;
- (c) if an administrative receiver has been appointed in respect of the further education body, the person who appointed that administrative receiver;
- (d) every person who is or may be entitled to appoint an administrative receiver in respect of the further education body;
- (e) every person who is or may be entitled to make an application in relation to the further education body under paragraph 14 of Schedule B1;
- (f) if there is a petition pending for the winding up of the further education body—
  - (i) the petitioner; and
  - (ii) any provisional liquidator;
- (g) any person who has served notice on the appropriate national authority<sup>(16)</sup> in accordance with any of sections 9 to 13 of the Technical and Further Education Act;
- (h) any person proposed to be education administrator;
- (i) any supervisor of a voluntary arrangement under Part 1 of the Act who has been appointed.

### **Notice to enforcement agents charged with distress or other legal process, etc.**

**2.6.** The applicant must as soon as reasonably practicable after filing the application deliver a notice of its being made to—

- (a) any enforcement agent or other officer who to the knowledge of the applicant is charged with distress or other legal process against the further education body or its property; and
- (b) any person who to the knowledge of the applicant has distrained against the further education body or its property.

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<sup>(16)</sup> “Appropriate national authority” is defined in section 5 of the Technical and Further Education Act.

### **Manner in which service to be effected**

**2.7.**—(1) Service of the application in accordance with rule 2.5 must be effected by the applicant, or the applicant’s solicitor, or by a person instructed by the applicant or the applicant’s solicitor, not less than 5 business days before the date fixed for the hearing.

(2) Schedule 2 sets out the manner in which service is to be effected.

### **Proof of service**

**2.8.**—(1) A certificate in accordance with the following provisions of this rule must be filed with the court as soon as reasonably practicable after service, and in any event not less than 1 business day before the hearing of the application.

(2) The certificate is proof that a document has been duly served on the recipient in accordance with this Chapter unless the contrary is shown.

(3) The certificate must state the method of service and the date of the sending, posting or delivery (as the case may be).

(4) In the case of a proposed education administrator, the certificate must be given by—

- (a) the proposed education administrator;
- (b) the proposed education administrator’s solicitor; or
- (c) a partner or employee of either of them.

(5) In the case of a person other than the education administrator, the certificate must be given by that person and must state—

- (a) that the document was delivered by that person; or
- (b) that another person (named in the certificate) was instructed to deliver it.

(6) A certificate under this rule may be endorsed on a copy of the document to which it relates.

### **The hearing**

**2.9.**—(1) At the hearing of the education administration application, any of the following may appear or be represented—

- (a) the appropriate national authority;
- (b) the further education body;
- (c) a relevant officer of the further education body;
- (d) if an administrative receiver has been appointed, that person;
- (e) any person who has presented a petition for the winding up of the further education body;
- (f) each person proposed for appointment as education administrator;
- (g) any person who is the holder of a qualifying floating charge;
- (h) any person who is the holder of security over property of the further education body;
- (i) any person who has applied to the court for an administration order under Schedule B1;
- (j) any supervisor of a voluntary arrangement under Part 1 of the Act;
- (k) with the permission of the court, any other person who appears to have an interest justifying their appearance.

(2) If the court makes an education administration order, the costs of the applicant and of any other person whose costs are allowed by the court, are payable as an expense of the administration.



## **The order**

**2.10.** Where the court makes an education administration order the court's order must be headed "Education Administration order" and must contain the following—

- (a) the name of the court in which the order is made;
- (b) the name and title of the judge making the order;
- (c) identification details for the further education body;
- (d) the address for service of the applicant;
- (e) details of any other parties (including the further education body) appearing and by whom represented;
- (f) an order that during the period the order is in force the affairs, business and property of the further education body are to be managed by the education administrator;
- (g) the name of the person appointed as education administrator;
- (h) an order that that person is appointed as education administrator of the further education body;
- (i) the date of the order (and if the court so orders the time);
- (j) where more than one education administrator is appointed, the information required by section 21(a) to (c) of the Technical and Further Education Act; and
- (k) such other provisions, if any, as the court thinks just.

## **Notice of education administration order**

**2.11.**—(1) The applicant must as soon as reasonably practicable deliver a sealed copy of the order to the person appointed as education administrator, or each of them in the event that two or more education administrators have been appointed.

(2) If the court makes an order under section 20(1)(e) or any other order under section 20(1)(f) of the Technical and Further Education Act, it must give directions as to the persons to whom, and how, notice of that order is to be given.

# **PART 3**

## **PROCESS OF EDUCATION ADMINISTRATION**

### **CHAPTER 1**

#### **Notice of education administrator's appointment**

## **Notification and advertisement of education administrator's appointment**

**3.1.**—(1) A notice of appointment, to be published by the education administrator as soon as reasonably practicable under paragraph 46(2)(b) of Schedule B1, must be gazetted and may be advertised in such other manner as the education administrator thinks fit.

(2) The notice under paragraph (1) must state—

- (a) that an education administrator has been appointed; and
- (b) the date of the appointment.

(3) The education administrator must, as soon as reasonably practicable after the date of the education administration order deliver a notice of the appointment—

- (a) to the appropriate national authority;

- (b) to the registrar of companies;
- (c) to the local authority in whose area the further education body is situated;
- (d) to the combined authority, if the further education body is situated in the area of a combined authority;
- (e) if a receiver or administrative receiver has been appointed, to that person;
- (f) if a petition is pending for the winding up of the further education body, to the petitioner (and also to the provisional liquidator, if any);
- (g) to any enforcement officer, enforcement agent or other officer who, to the education administrator's knowledge, is charged with distress or other legal process against the further education body or its property; and
- (h) any supervisor of a voluntary arrangement under Part 1 of the Act.

(4) Where, under Schedule B1 or these Rules, the education administrator is required to deliver a notice of appointment to the registrar of companies, or any other person, it must be headed "Notice of education administrator's appointment" and must contain—

- (a) the education administrator's name, address and IP number;
- (b) identification details for the proceedings; and
- (c) a statement that the education administrator has been appointed as education administrator of the further education body.

(5) The notice must be authenticated and dated by the education administrator.

## CHAPTER 2

### Statement of affairs

#### **Notice requiring statement of affairs and delivery to the education administrator**

**3.2.**—(1) A requirement under paragraph 47(1) of Schedule B1 for one or more relevant persons to provide the education administrator with a statement of the affairs of the further education body must be made by a notice delivered to such persons.

(2) A relevant person who is required to provide a statement of affairs is called a nominated person in this Chapter.

(3) The notice must be headed "Notice requiring statement of affairs" and must—

- (a) require each nominated person to whom the notice is delivered to prepare and submit to the education administrator a statement of the affairs of the further education body; and
- (b) inform each nominated person of—
  - (i) the names and addresses of all others (if any) to whom the same notice has been delivered,
  - (ii) the requirement to deliver the statement of affairs to the education administrator no later than eleven days after receipt of the notice requiring the statement of affairs, and
  - (iii) the effect of paragraph 48(4) of Schedule B1 and section 235 of the Act, if applicable.

(4) The education administrator must inform each nominated person to whom notice is delivered that a document for the preparation of the statement of affairs capable of completion in compliance with rule 3.3 will be supplied if requested.

(5) The nominated person (or one of them, if more than one) must deliver the statement of affairs to the education administrator with the statement of truth required by paragraph 47(2)(a) of Schedule B1 and a copy of each statement.

### **Content of statement of affairs**

**3.3.**—(1) The statement of the further education body’s affairs must be headed “Statement of affairs” and must—

- (a) identify the further education body immediately below the heading; and
- (b) state that it is a statement of affairs of the further education body on a specified date, being the date on which it entered education administration.

(2) The statement of affairs must contain (in addition to the matters required by paragraph 47(2) of Schedule B1)—

- (a) a summary of the assets of the further education body, setting out the book value and the estimated realisable value of—
  - (i) any assets subject to a fixed charge,
  - (ii) any assets subject to a floating charge,
  - (iii) any uncharged assets,
  - (iv) the total value of all the assets;
- (b) a summary of the liabilities of the further education body, setting out—
  - (i) the amount of preferential debts,
  - (ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts,
  - (iii) an estimate of the prescribed part, if applicable,
  - (iv) the amount of debt secured by floating charges,
  - (v) an estimate of the total assets available to pay debts secured by floating charges,
  - (vi) an estimate of the deficiency with respect of debts secured by floating charges or the surplus available after paying the debts secured by fixed or floating charges,
  - (vii) the amount of unsecured debts (excluding preferential debts),
  - (viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts,
  - (ix) any issued and called-up capital, where appropriate,
  - (x) an estimate of the deficiency with respect to, or surplus available to, members of the further education body;
- (c) a list of the further education body’s creditors with the further particulars required by paragraph (3) indicating—
  - (i) any creditors under hire-purchase, chattel leasing or conditional sales agreements,
  - (ii) any creditors who are consumers claiming amounts paid in advance for the supply of goods or services,
  - (iii) any creditors claiming retention of title over property in the further education body’s possession; and
- (d) the name and address of each member of the further education body and full details of their interest in the further education body.

(3) The particulars required relating to each creditor are as follows—

- (a) the name and postal address of each creditor;
- (b) the amount of the debt owed to the creditor;
- (c) details of any security held by the creditor;
- (d) the date on which the security was given;

- (e) the value of any such security.
- (4) Paragraph (5) applies where the particulars required by paragraph (3) relate to creditors who are either—
  - (a) employees or former employees of the further education body; or
  - (b) consumers claiming amounts paid in advance for the supply of goods or services.
- (5) Where this paragraph applies—
  - (a) the statement of affairs itself must state separately for each of paragraph (4)(a) and (b) the number of such creditors and the total of the debts owed to each of them;
  - (b) the particulars required by paragraph (3) must be set out in separate schedules to the statement of affairs for each of paragraphs (4)(a) and (b).

### **Statement of concurrence**

- 3.4.**—(1) The education administrator may require a relevant person, as defined by paragraph 47(3) of Schedule B1, to deliver to the education administrator a statement of concurrence.
- (2) A statement of concurrence is a statement, verified by a statement of truth in accordance with the CPR, that that person concurs in the statement of affairs by a nominated person.
- (3) The education administrator must inform the nominated person who has been required to submit a statement of affairs that the relevant person has been required to deliver a statement of concurrence.
- (4) The nominated person must deliver a copy of the statement of affairs to every relevant person who has been required to submit a statement of concurrence.
- (5) A statement of concurrence—
  - (a) must identify the further education body; and
  - (b) may be qualified in relation to matters dealt with in the statement of affairs where the relevant person—
    - (i) is not in agreement with the statement of affairs,
    - (ii) considers the statement of affairs to be erroneous or misleading, or
    - (iii) is without the direct knowledge necessary to concur with it.
- (6) The relevant person must deliver the required statement of concurrence to the education administrator before the end of the period of five business days or such other period as the education administrator may agree beginning with the day on which the relevant person receives the statement of affairs.

### **Filing of statement of affairs**

- 3.5.**—(1) The education administrator must as soon as is reasonably practicable deliver to the registrar of companies a copy of—
  - (a) any statement of affairs; and
  - (b) any statement of concurrence.
- (2) However, the education administrator must not deliver to the registrar of companies with the statement of affairs any schedule required by rule 3.3(5)(b).
- (3) The requirement to deliver the statement of affairs is subject to any order of the court made under rule 3.31(2).

### **Release from requirement to provide statement of affairs and extension of time**

**3.6.—**(1) The power of the education administrator under paragraph 48(2) of Schedule B1 to revoke a requirement to provide a statement of affairs or to extend the period within which it must be submitted may be exercised upon the education administrator’s own initiative or at the request of the relevant person who has been required to provide it.

(2) A relevant person may apply to the court if the education administrator refuses that person’s request for a revocation or extension.

(3) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.

(4) Unless the application is dismissed, the court must fix a venue for it to be heard.

(5) The applicant must, at least 14 days before any hearing, deliver to the education administrator a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.

(6) The education administrator may do either or both of the following—

- (a) file a report of any matters which the education administrator thinks ought to be drawn to the court’s attention; or
- (b) appear and be heard on the application.

(7) If a report is filed, the education administrator must deliver a copy of it to the applicant not later than five business days before the hearing.

(8) Sealed copies of any order made on the application must be delivered by the court to the applicant and the education administrator.

(9) On an application under this rule, the applicant’s costs must be paid by the applicant in any event; but the court may order that an allowance of all or part of them may be payable as an expense of the education administration.

### **Expenses of statement of affairs**

**3.7.—**(1) The expenses of a relevant person which the education administrator considers to have been reasonably incurred in the making of a statement of affairs or a statement of concurrence must be paid by the education administrator as an expense of the education administration.

(2) A decision by the education administrator that expenses were not reasonably incurred (and are therefore not payable as an expense of the education administration) may be appealed to the court.

## **CHAPTER 3**

### **Education administrator’s proposals**

#### **Education administrator’s proposals - additional content**

**3.8.—**(1) The education administrator’s statement of proposals made under paragraph 49 of Schedule B1(17) must identify the proceedings and, in addition to the matters set out in paragraph 49, contain—

- (a) any other trading names of the further education body;
- (b) details of the education administrator’s appointment, including—
  - (i) the date of the appointment, and
  - (ii) the person who made the application for the appointment;

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(17) Paragraph 49(4) is amended by paragraph 10(2) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c. 26).

- (c) the names of the relevant officers of the further education body and details of any interest in the further education body they may have;
  - (d) an account of the circumstances giving rise to the appointment of the education administrator;
  - (e) the date on which the proposals were sent to the creditors;
  - (f) if a statement of the further education body's affairs has been submitted—
    - (i) a copy or summary of it, except so far as an order under rule 3.31 or 3.32 limits disclosure of it, and excluding any schedule referred to in rule 3.3(5), or the particulars relating to individual creditors contained in any such schedule,
    - (ii) details of who provided the statement of affairs, and
    - (iii) any comments which the education administrator may have on the statement of affairs;
  - (g) if an order under rule 3.31 or 3.32 has been made—
    - (i) a statement of that fact, and
    - (ii) the date of the order;
  - (h) if no statement of affairs has been submitted—
    - (i) details of the financial position of the further education body at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the further education body entered into education administration), and
    - (ii) an explanation as to why there is no statement of affairs;
  - (i) a full list of the further education body's creditors if either—
    - (i) no statement of affairs has been submitted, or
    - (ii) a statement of affairs has been submitted but does not include such a list, or the education administrator believes the list included is less than full;
  - (j) a statement (which must comply with paragraph (4) of this rule where that paragraph applies) of how it is envisaged that the purpose of the education administration will be achieved and how it is proposed that the education administration will end;
  - (k) the manner in which the affairs and business of the further education body—
    - (i) have, since the date of the education administrator's appointment, been managed and financed, including, where any assets have been disposed of, the reasons for the disposals and the terms upon which the disposals were made, and
    - (ii) will continue to be managed and financed.
- (2) The list of creditors required by paragraph (1)(i) must contain the details set out in paragraph (3) except where paragraphs (5) and (6) apply.
- (3) The particulars required by paragraph (2) are as follows and must be given in this order—
- (a) the name and postal address of each creditor;
  - (b) the amount of the debt owed to the creditor;
  - (c) details of any security held by the creditor;
  - (d) the date on which any such security was given; and
  - (e) the value of any such security.
- (4) This paragraph applies where it is proposed that the education administration will end by the further education body moving to a creditors' voluntary liquidation, and, in that case, the statement required by paragraph (1)(j) of this rule must include—

- (a) details of the proposed liquidator;
  - (b) where applicable, the declaration required by section 231 of the Act; and
  - (c) a statement that creditors may nominate a different person as liquidator in accordance with paragraph 83(7)(a) of Schedule B1 and rule 3.40(6).
- (5) This paragraph applies where the particulars required by paragraph (3) relate to creditors who are either—
- (a) employees or former employees of the further education body; or
  - (b) consumers claiming amounts paid in advance for the supply of goods or services.
- (6) Where paragraph (5) applies—
- (a) the list of creditors required by paragraph (1)(i) must state separately for each of paragraphs (5)(a) and (b) the number of creditors and the total of the debt owed to them; and
  - (b) the particulars required by paragraph (3) in respect of such creditors must be set out in separate schedules to the list of creditors for each of paragraphs (5)(a) and (b); and
  - (c) the education administrator must not deliver any such schedule to the registrar of companies with the statement of proposals.
- (7) The statement made by the education administrator must also include—
- (a) to the best of the education administrator’s knowledge and belief, an estimate of the value of—
    - (i) the prescribed part (whether or not the education administrator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts), and
    - (ii) the further education body’s net property (as defined by section 176A(6)); and
  - (b) a statement whether the education administrator proposes to make an application to the court under section 176A(5) and, if so, the reason for the application.
- (8) The education administrator may exclude from an estimate under paragraph (7)(a) information the disclosure of which could seriously prejudice the commercial interests of the further education body.
- (9) If the exclusion of such information affects the calculation of an estimate, the report must say so.
- (10) Where applicable, the statement of proposals must also include—
- (a) a statement of any pre-administration costs charged or incurred by the education administrator or, to the education administrator’s knowledge, by any other person qualified to act as an insolvency practitioner;
  - (b) a statement that the payment of any unpaid pre-administration costs as an expense of the education administration is subject to approval by the court under rule 6.11.

### **Statement of pre-administration costs**

- 3.9.** A statement of pre-administration costs under rule 3.8(10)(a) must include—
- (a) details of any agreement under which the fees were charged and expenses incurred including the parties to the agreement and the date on which the agreement was made;
  - (b) details of the work done for which the fees were charged and expenses incurred;
  - (c) an explanation of why the work was done before the further education body entered education administration and how it had been intended to further the achievement of the objective in section 16 of the Technical and Further Education Act;

- (d) a statement of the amount of the pre-administration costs, setting out separately—
  - (i) the fees charged by the education administrator,
  - (ii) the expenses incurred by the education administrator,
  - (iii) any fees charged (to the education administrator’s knowledge) by any other person qualified to act as an insolvency practitioner (and if more than one, by each separately), and
  - (iv) any expenses incurred (to the education administrator’s knowledge) by any other person qualified to act as an insolvency practitioner (and if more than one, by each separately);
- (e) a statement of the amounts of pre-administration costs which have already been paid (set out separately as under sub-paragraph (d));
- (f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person (set out separately as under sub-paragraph (d));
- (g) a statement of the amount of unpaid pre-administration costs (set out separately as under sub-paragraph (d)).

#### **Ancillary provisions about delivery of education administrator’s proposals**

**3.10.—**(1) Where the court orders, upon an application by the education administrator under paragraph 107 of Schedule B1, an extension of the period for providing the education administrator’s proposals, the education administrator must as soon as reasonably practicable after the making of the order deliver a notice of the extension to—

- (a) every creditor of the further education body;
  - (b) every member of the further education body of whose address the education administrator is aware;
  - (c) the registrar of companies; and
  - (d) the appropriate national authority.
- (2) The notice must—
- (a) identify the proceedings;
  - (b) identify the registered office of the further education body; and
  - (c) state the date to which the court has ordered the extension.
- (3) The education administrator is taken to comply with paragraph (1)(b) if the education administrator publishes a notice complying with paragraph (4).
- (4) A notice under paragraph (3) must—
- (a) be advertised in such manner as the education administrator thinks fit;
  - (b) state that members of the further education body may request in writing a copy of the statement of proposals or notice of the extension, and state the address to which to write; and
  - (c) be published as soon as reasonably practicable after the education administrator has delivered the statement of proposals or notice of the extension to the further education body’s creditors.



### **Revision of education administrator’s proposals**

**3.11.**—(1) Where paragraph 54(1) of Schedule B1(18) applies, the education administrator’s revised proposals must identify the proceedings and include—

- (a) any other trading names of the further education body;
- (b) details of the education administrator’s appointment, including—
  - (i) the date of the appointment, and
  - (ii) the person who made the application for the appointment;
- (c) details of the relevant officers and details of any interest in the further education body which they may have;
- (d) a summary of the original proposals and the reason or reasons for the revised proposals;
- (e) details of the revised proposals, including details of the education administrator’s assessment of the likely impact of the revised proposal upon creditors generally or upon each class of creditor;
- (f) where the revised proposals relate to the ending of the education administration by a creditors’ voluntary winding up and the nomination of a person to be the liquidator of the further education body—
  - (i) details of the proposed liquidator,
  - (ii) where applicable, the declaration required by section 231 of the Act, and
  - (iii) a statement that the creditors may nominate a different person as liquidator in accordance with paragraph 83(7)(a) of Schedule B1 and rule 3.40(6); and
- (g) any other information that the education administrator thinks necessary.

(2) In accordance with paragraph 54(2) of Schedule B1, the education administrator must send a copy of the revised proposals to the persons set out in that paragraph of Schedule B1 within 14 days after the education administrator’s revision of those proposals.

(3) A notice under paragraph 54(4) of Schedule B1, where the further education body is a company, must—

- (a) be advertised in such manner as the education administrator thinks fit; and
- (b) state that members may request in writing a copy of the revised proposals, and state the address to which to write.

(4) As soon as reasonably practicable after sending the copy of the revised proposals, the education administrator must deliver a copy to the registrar of companies accompanied by a notice which must contain—

- (a) identification details for the proceedings; and
- (b) the date of the revised proposals.

## **CHAPTER 4**

### **Education Administrator’s reports**

#### **Reporting by the education administrator**

**3.12.** The education administrator must prepare and deliver reports in accordance with this Chapter.

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(18) Paragraph 54 is modified by paragraph 14 of Schedule 3 and paragraph 13 of Schedule 4 to the Technical and Further Education Act 2017.

### **Progress reports**

**3.13.**—(1) The education administrator must prepare a progress report covering the periods of—

- (a) six months starting on the date the further education body entered education administration; and
- (b) thereafter each subsequent period of six months.

(2) The periods for which progress reports are required under paragraph (1) are unaffected by any change in the education administrator.

(3) However where an education administrator ceases to act, the succeeding education administrator must, as soon as reasonably practicable after being appointed, deliver a notice to the creditors of any matters about which the succeeding education administrator thinks the creditors should be informed.

(4) The education administrator must deliver a copy of each progress report to the registrar of companies and the creditors within one month of the end of the period covered by the report unless the report is a final progress report under rule 3.15.

(5) An education administrator who makes default in delivering a progress report within the time limit in paragraph (4) is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine as set out in Schedule 1.

### **Contents of progress reports**

**3.14.**—(1) The education administrator’s progress reports must contain the following—

- (a) identification details for the proceedings;
- (b) identification details for the further education body;
- (c) identification and contact details for the education administrator;
- (d) the date of appointment of the education administrator and any changes in the education administrator in accordance with paragraphs (2) and (3);
- (e) details of progress during the period of the report, including a summary account of receipts and payments during the period of the report;
- (f) the information relating to distributions required by rule 5.43, if there has been a distribution;
- (g) details of what remains to be done to bring the education administration to an end; and
- (h) any other information of relevance to the creditors.

(2) A change in the education administrator is only required to be shown in the next report after the change.

(3) However if the current education administrator is seeking the repayment of pre-administration expenses from a former education administrator the change in the education administrator must continue to be shown until the next report after the claim is settled.

### **Final progress report**

**3.15.** “Final progress report” means a progress report which must contain an account of the education administrator’s administration including—

- (a) a summary of the education administrator’s proposals;
- (b) any major amendments to, or deviations from, those proposals;
- (c) the steps taken during the education administration;

- (d) a statement as to the amount paid to unsecured creditors by virtue of section 176A of the Act; and
- (e) the outcome of the education administration.

### **Information about pre-administration costs**

**3.16.**—(1) Where the education administrator has made a statement of pre-administration costs under rule 3.8(10)(a)—

- (a) if they are approved under rule 6.11, the first progress report after the approval must include a statement setting out the date of approval and the amounts approved;
- (b) while any of the costs remain unapproved each successive report must include a statement of any steps taken to obtain approval.

(2) However if either the education administrator has decided not to seek approval under rule 6.11, or another insolvency practitioner entitled to seek approval has told the education administrator of that practitioner’s decision not to seek approval under that rule then—

- (a) the report next due after the decision or notification must include a statement that the education administrator or insolvency practitioner (as the case may be) has decided not to seek approval to pay those costs; and
- (b) no statement under paragraph (1)(b) is required in subsequent reports.

## **CHAPTER 5**

### **Further education body: meetings of members**

#### **Application of this Chapter**

**3.17.** This Chapter applies where the education administrator calls a meeting of members of the further education body under paragraph 62 of Schedule B1(19).

#### **Meetings of the further education body**

**3.18.**—(1) Unless the Act or these Rules provide otherwise, where the education administrator calls a meeting of the further education body, that meeting must be called and conducted, and records of the meeting must be kept, in accordance with the law of England and Wales.

(2) But, where a further education body is a company incorporated in an EEA state other than the United Kingdom, a meeting must be called and conducted, and records of the meeting must be kept, in accordance with the law of the state applicable to meetings of that further education body.

(3) In calling a meeting of the further education body, the education administrator must have regard to the convenience of the members when fixing the venue.

#### **Nature of meetings**

**3.19.**—(1) Meetings called by the education administrator may be physical meetings or virtual meetings.

- (2) Where the meeting is to be a virtual meeting, notification of that meeting must contain—
  - (a) any necessary information as to how to access the virtual meeting including any telephone number, access code or password required; and
  - (b) a statement that the meeting may be suspended or adjourned by the chair of the meeting (and must be adjourned if it is so resolved at the meeting).

### **Remote attendance: notification requirements**

**3.20.** When a meeting is to be summoned and held in accordance with section 246A(3) of the Act, the education administrator must notify all those to whom notice of the meeting is being given of—

- (a) the ability of a person claiming to be an excluded person to request an indication in accordance with rule 3.24;
- (b) the ability of a person within rule 3.25(1) to make a complaint in accordance with that rule; and
- (c) the period within which such a request or complaint must be made.

### **Location of meetings**

**3.21.—(1)** This rule applies to a request made under section 246A(9) to specify a place for the meeting.

(2) The request must be accompanied by—

- (a) a list of the members making or concurring with the request and their voting rights; and
- (b) from each person concurring, confirmation of that person’s concurrence.

(3) The request must be delivered to the education administrator within seven business days of the date on which the education administrator delivered the notice of the meeting in question.

(4) Where the education administrator considers that the request has been properly made in accordance with the Act and this rule, the education administrator must—

- (a) deliver notice to all those previously given notice of the meeting—
  - (i) that it is to be held at a specified place, and
  - (ii) as to whether the date and time are to remain the same or not;
- (b) set a venue (including specification of a place) for the meeting, the date of which must not be later than 28 days after the original date for the meeting; and
- (c) deliver at least 14 days’ notice of that venue to all those previously given notice of the meeting;

and the notices required by sub-paragraphs (a) and (c) may be delivered at the same or different times.

(5) Where the education administrator has specified a place for the meeting in response to a request to which this rule applies, the education administrator, or a person appointed by the education administrator to act as chair of the meeting, must attend the meeting by being present in person at that place.

### **Chair of the meeting**

**3.22.** The chair of a meeting of the members of the further education body must be either the education administrator or a person nominated by the education administrator to act as chair.

### **Action where person is excluded**

**3.23.—(1)** In this rule and rules 3.24 and 3.25, “excluded person” means a person who has taken all steps necessary to attend a meeting of the members of the further education body under arrangements which—

- (a) have been put in place by the education administrator under section 246A(6); but
- (b) do not enable that person to attend the whole or part of that meeting.

(2) Where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may—

- (a) continue the meeting;
  - (b) declare the meeting void and convene the meeting again; or
  - (c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.
- (3) Where the chair continues the meeting, the meeting is valid unless—
- (a) the chair decides in consequence of a complaint under rule 3.25 to declare the meeting void and convene the meeting again; or
  - (b) the court directs otherwise.
- (4) Without prejudice to paragraph (2), where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may, in the chair’s discretion and without an adjournment, declare the meeting suspended for any period of up to 1 hour.

### **Indication to excluded person**

**3.24.—**(1) A person who claims to be an excluded person may request an indication of what occurred during the period of that person’s claimed exclusion.

(2) A request under paragraph (1) must be made in accordance with paragraph (3) as soon as reasonably practicable, and in any event not later than 4pm on the business day following the day on which the exclusion is claimed to have occurred.

(3) A request under paragraph (1) must be made to—

- (a) the chair, where it is made during the course of the business of the meeting; or
- (b) the education administrator, where it is made after the conclusion of the business of the meeting.

(4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made in accordance with paragraph (3) must deliver the requested indication to the excluded person as soon as reasonably practicable, and in any event not later than 4pm on the business day following the day on which the request was made under paragraph (1).

### **Complaint**

**3.25.—**(1) A person may make a complaint who—

- (a) is, or claims to be, an excluded person; or
- (b) attends the meeting and claims to have been adversely affected by the actual, apparent or claimed exclusion of another person.

(2) The complaint must be made to the appropriate person who is—

- (a) the chair, where the complaint is made during the course of the meeting; or
- (b) the education administrator where it is made after the meeting.

(3) The complaint must be made as soon as reasonably practicable and, in any event, no later than 4pm on the business day following—

- (a) the day on which the person was, appeared or claimed to be excluded; or
- (b) where an indication is requested under rule 3.24, the day on which the complainant received the indication.

(4) The appropriate person must, as soon as reasonably practicable following receipt of the complaint—

- (a) consider whether there is an excluded person;
- (b) where satisfied that there is an excluded person, consider the complaint; and

- (c) where satisfied that there has been prejudice, take such action as the appropriate person considers fit to remedy the prejudice.
- (5) Paragraph (6) applies where the appropriate person is satisfied that the complainant is an excluded person and—
  - (a) a resolution was voted on at the meeting during the period of the person’s exclusion; and
  - (b) the excluded person asserts how the excluded person intended to vote on the resolution.
- (6) Where the appropriate person is satisfied that, if the excluded person had voted as that person intended, it would have changed the result of the resolution then the appropriate person must, as soon as reasonably practicable—
  - (a) count the intended vote as having been cast in that way;
  - (b) amend the record of the result of the resolution; and
  - (c) where notice of the result of the resolution has been delivered to those entitled to attend the meeting, deliver notice to them of the change and the reason for it; or
  - (d) where notice of the result of the resolution has yet to be delivered to those entitled to attend the meeting, the notice must include details of the change and the reason for it.
- (7) Where satisfied that more than one complainant is an excluded person, the appropriate person must have regard to the combined effect of the intended votes.
- (8) The appropriate person must deliver notice to the complainant of any decision as soon as reasonably practicable.
- (9) A complainant who is not satisfied by the action of the appropriate person may apply to the court for directions and any application must be made no more than two business days from the date of receiving the decision of the appropriate person.

## CHAPTER 6

### Creditors’ decisions

#### **Application of this Chapter 6**

**3.26.** This Chapter applies where the education administrator seeks a decision from the creditors of the further education body in accordance with paragraph 62 of Schedule B1.

#### **Creditors’ decisions**

**3.27.** The education administrator may, and in the circumstances set out in rule 3.28 must, seek a decision from the further education body’s creditors under paragraph 62 of Schedule B1.

#### **Creditors’ decisions for the nomination of alternative liquidator**

**3.28.—(1)** Where, under rule 3.8(4)(c) or rule 3.11(1)(f)(iii) the education administrator has proposed that the education administration will end by the further education body entering creditors’ voluntary liquidation, the education administrator must, in the circumstances detailed in paragraph (2), seek a decision from the further education body’s creditors for the purpose of nominating a person other than the person named as the proposed liquidator in the education administrator’s proposals or revised proposals.

(2) The education administrator must seek a decision from the further education body’s creditors where such decision is requested by creditors of the further education body whose debts amount to at least 10 per cent of the total debts of the further education body.

(3) The request for a decision from the further education body’s creditors for the purpose set out in paragraph (1) must be made within 8 days of the date on which the education administrator’s

statement of proposals is delivered, or, where revised proposals have been sent out relating to the ending of the education administration by a creditors' voluntary liquidation, within 8 days from the date on which the revised proposals are delivered.

(4) A request under this rule must include—

- (a) a list of the creditors concurring with the request, showing the amounts of their respective debts in the education administration; and
- (b) from each creditor concurring, written confirmation of that creditor's concurrence,

but sub-paragraph (a) does not apply if the requesting creditor's debt is alone sufficient without the concurrence of other creditors.

(5) Where a decision has been requested under this rule, the provisions of rule 15.19, as modified by rule 3.29, of the Insolvency (England and Wales) Rules 2016(20) apply in relation to the expenses of the decision.

(6) A decision requested under this rule must be reached within 21 days of the education administrator's receipt of the notice requesting the decision procedure.

### **Decision making**

**3.29.**—(1) Where the education administrator seeks a decision from the creditors on any issue and subject to paragraph (3), Chapters 2, 3, 6, 7, 8, 9 and 11 of Part 15 and Part 16 of the Insolvency (England and Wales) Rules 2016 apply to that decision, as they apply to administration, but with the modifications set out in paragraph (2).

(2) The provisions applied by paragraph (1) are subject to the following modifications—

- (a) for “administration”, in each place, substitute “education administration”;
- (b) for “administrator”, in each place, substitute “education administrator”;
- (c) for “company”, in each place, substitute “further education body”;
- (d) for “convener”, in each place, substitute “education administrator”;
- (e) the following is substituted for rule 15.21—

“**15.21.** The chair of the meeting must be either the education administrator or a person nominated by the education administrator to act as chair.”;

- (f) in rule 15.8, the reference to rule 14.31(1) is a reference to rule 5.28(1) of these Rules;
- (g) in rule 15.31, the reference to rule 14.24 is a reference to rule 5.24 of these Rules; and
- (h) in rule 16.6 the reference to rule 1.58 is a reference to rule 7.37 of these Rules.

(3) In the application of Part 15 of the Insolvency (England and Wales) Rules 2016 to a decision sought by the education administrator in an education administration, rules 15.16, 15.24, 15.28(6), 15.29 and 15.30 do not apply.

## **CHAPTER 7**

### **Limited disclosure of statements of affairs and proposals**

#### **Application of Chapter 7**

**3.30.** This Chapter applies to the disclosure of information which would be likely to prejudice the conduct of the education administration or might reasonably be expected to lead to violence against any person.

### **Orders limiting disclosure of statement of affairs etc**

**3.31.**—(1) If the education administrator thinks that the circumstances in rule 3.30 apply in relation to the disclosure of—

- (a) the whole or part of the statement of the further education body's affairs;
- (b) the education administrator's statement of proposals or any of the matters specified in rule 3.8; or
- (c) a statement of concurrence provided in accordance with rule 3.4,

the education administrator may apply to the court for an order in relation to the particular document or a specified part of it.

(2) The court may order that the whole of, or a specified part of, a document referred to in paragraph (1) must not be delivered to the registrar of companies or, in the case of the statement of proposals, to creditors or members of the further education body.

(3) If the court makes an order under paragraph (2), the education administrator must as soon as reasonably practicable deliver to the registrar of companies—

- (a) a copy of the order;
- (b) the statement of affairs or the statement of proposals to the extent provided by the order;
- (c) any statement of concurrence to the extent provided by the order; and
- (d) if the order relates to the statement of proposals, an indication of the nature of the matter in relation to which the order was made.

(4) If the order relates to the statement of proposals, the education administrator must as soon as reasonably practicable also deliver to the creditors and members of the further education body—

- (a) the statement of proposals to the extent provided by the order; and
- (b) an indication of the nature of the matter in relation to which the order was made.

### **Order for disclosure**

**3.32.**—(1) A creditor may apply to the court for an order that the education administrator disclose the following in relation to which an order has been made under rule 3.31(2)—

- (a) a statement of affairs;
- (b) a specified part of it; or
- (c) a part of a statement of proposals.

(2) The application must be supported by a witness statement.

(3) The applicant must deliver to the education administrator notice of the application at least three business days before the hearing.

(4) In an order for disclosure, the court may include conditions as to confidentiality, duration, and the scope of the order in the event of any change of circumstances or such other matters as it thinks just.

### **Rescission or amendment of order for limited disclosure**

**3.33.**—(1) If there is a material change in circumstances rendering an order for limited disclosure under rule 3.31(2) wholly or partly unnecessary, the education administrator must, as soon as reasonably practicable after the change, apply to the court for the order to be rescinded or amended.

(2) If the court makes such an order, the education administrator must as soon as reasonably practicable deliver to the registrar of companies—



- (a) a copy of the order; and
  - (b) the statement of affairs or the statement of proposals to the extent provided by the order;
- (3) If the order relates to the statement of proposals, the education administrator must as soon as reasonably practicable also deliver to the creditors and members the statement of proposals to the extent allowed by the order.

### **Publication etc. of statement of affairs and statement of proposals**

**3.34.**—(1) Part 31 of the CPR does not apply to an application under rule 3.31, 3.32 or 3.33.

(2) If, after the education administrator has sent a statement of proposals under paragraph 49(4) of Schedule B1, a statement of affairs is delivered to the registrar of companies in accordance with rule 3.33(2) as the result of the rescission or amendment of an order, the education administrator must deliver to the creditors a copy or summary of the statement of affairs as delivered to the registrar of companies.

(3) The education administrator is taken to comply with the requirements for delivery to members of the further education body in rule 3.31(4) or 3.33(3) if the education administrator publishes the required notice.

- (4) The required notice must—
- (a) be advertised in such manner as the education administrator thinks fit;
  - (b) state that members can request in writing—
    - (i) a copy of the statement of proposals to the extent provided by the order, and
    - (ii) an indication of the nature of the matter in relation to which the order was made; and
  - (c) state the address to which such a written request is to be made;
  - (d) be published as soon as reasonably practicable after the education administrator has delivered the statement of proposals to the extent provided by the order to the further education body's creditors.

## **CHAPTER 8**

### **Disposal of Charged Property**

#### **Disposal of charged property**

**3.35.**—(1) This rule applies where the education administrator applies to the court under paragraph 71 or 72 of Schedule B1 for authority to dispose of—

- (a) property which is subject to a security other than a floating charge; or
- (b) goods in the possession of the further education body under a hire-purchase agreement.

(2) The court must fix a venue for the hearing of the application.

(3) As soon as reasonably practicable after the court has done so, the education administrator must deliver notice of the venue to the holder of the security or the owner of the goods.

(4) If an order is made under paragraph 71 or 72 of Schedule B1, the court must deliver two sealed copies to the education administrator.

- (5) The education administrator must deliver—
- (a) one of the sealed copies to the holder of the security or the owner of the goods; and
  - (b) a copy of the sealed order to the registrar of companies.

## CHAPTER 9

### Expenses of the Education Administration

#### Expenses

**3.36.**—(1) All fees, costs, charges and other expenses incurred in the course of the education administration are to be treated as expenses of the education administration.

(2) The expenses associated with the prescribed part must be paid out of the prescribed part.

(3) The cost of the security required by section 390(3) of the Act for the proper performance of an education administrator's functions is an expense of the education administration.

(4) For the purposes of paragraph 99(3) of Schedule B1, the former education administrator's remuneration and expenses comprise all the items in rule 3.37.

#### Order of priority

**3.37.**—(1) The expenses of the education administration are payable in the following order of priority, subject to an order of the court under paragraph (2)—

- (a) expenses properly incurred by the education administrator in performing the education administrator's functions;
- (b) the cost of any security provided by the education administrator in accordance with the Act or these Rules;
- (c) the costs of the applicant and any other person appearing at the hearing of the application for an education administration order whose costs were allowed by the court;
- (d) any amount payable to a person in respect of assistance in the preparation of a statement of affairs or statement of concurrence;
- (e) any allowance made by order of the court in respect of the costs on an application for release from the obligation to submit a statement of affairs or deliver a statement of concurrence;
- (f) any necessary disbursements by the education administrator incurred in the course of the administration;
- (g) the remuneration or emoluments of any person who has been employed by the education administrator to perform any services for the further education body, as required or authorised under the Act or these Rules;
- (h) the education administrator's remuneration the basis of which has been fixed under Part 6 and unpaid pre-administration costs approved under rule 6.11;
- (i) the amount of any tax payable on chargeable gains accruing on the realisation of any asset of the further education body (irrespective of the person by whom the realisation is effected).

(2) If the assets are insufficient to satisfy the liabilities, the court may make an order as to the payment out of the assets of the expenses incurred in the education administration in such order of priority as it thinks just.

## CHAPTER 10

### Ending of education administration

#### **Application for an order ending education administration**

**3.38.** An application to the court under paragraph 79 of Schedule B1 for an order ending an education administration must be accompanied by—

- (a) a progress report for the period since—
  - (i) the last progress report (if any), or
  - (ii) if there has been no previous progress report, the date on which the further education body entered education administration; and
- (b) a statement indicating what the education administrator thinks should be the next steps for the further education body (if applicable).

#### **Notification of application for an order ending education administration**

**3.39.** Where an application to the court is made—

- (a) the applicant must, at least five days before the application is filed, deliver notice of the applicant's intention to apply to court to all the creditors; and
- (b) the application must be accompanied by—
  - (i) a statement that notice has been delivered to the creditors, and
  - (ii) copies of any response from the creditors to that notice.

#### **Notice of court order ending education administration**

**3.40.** Where the court makes an order ending the education administration, the applicant must, as soon as reasonably practicable, deliver a copy of the order and of the final progress report to—

- (a) the appropriate national authority, unless the appropriate national authority is the applicant;
- (b) the education administrator, unless the education administrator is the applicant;
- (c) the registrar of companies;
- (d) the relevant officers of the further education body; and
- (e) all other persons to whom notice of the education administrator's appointment was delivered.

#### **Moving from education administration to creditors' voluntary winding up**

**3.41.—(1)** This rule applies where the education administrator delivers to the registrar of companies a notice under paragraph 83(3) of Schedule B1 of moving from education administration to creditors' voluntary winding up.

(2) The notice must contain—

- (a) identification details for the proceedings;
- (b) the name of the person who made the education administration application; and
- (c) the name and IP number of the proposed liquidator.

(3) The notice to the registrar of companies must be accompanied by a copy of the education administrator's final progress report.

(4) A copy of the notice and the final progress report must be sent, as soon as reasonably practicable after delivery of the notice, to all those persons to whom notice of the education

administrator's appointment was delivered in addition to the creditors (as required by paragraph 83(5)(b) of Schedule B1).

(5) The person who ceases to be education administrator on the registration of the notice must inform the person who becomes liquidator of anything which happens after the date of the final progress report and before the registration of the notice which the education administrator would have included in the final report had it happened before the date of the report.

(6) For the purposes of paragraph 83(7)(a) of Schedule B1, a person is nominated as liquidator in accordance with rule 3.8(4) or 3.11(1)(f)(iii) and that person's appointment takes effect following registration under paragraph (1) of this rule—

- (a) by virtue of the education administrator's proposals or revised proposals; or
- (b) following a decision sought by the education administrator under rule 3.28(2).

(7) Where the creditors nominate a different person in accordance with rule 3.11(1)(f)(iii), the nomination must, where applicable, include the declaration required by section 231 of the Act.

### **Moving from education administration to dissolution**

**3.42.—**(1) This rule applies where the education administrator delivers to the registrar of companies a notice under paragraph 84(1) of Schedule B1 of moving from education administration to dissolution.

(2) The notice must identify the proceedings.

(3) As soon as reasonably practicable after sending the notice, the education administrator must deliver a copy of the notice to all persons to whom notice of the education administrator's appointment was delivered (in addition to the creditors mentioned in paragraph 84(5)(b)).

(4) A final progress report must accompany the notice to the registrar of companies and also every other copy of the notice which is filed or otherwise delivered.

(5) Where a court makes an order under paragraph 84(7) of Schedule B1 it must, where the applicant is not the education administrator, deliver a copy of the order to the education administrator.

(6) The education administrator must deliver a copy of the order to the registrar of companies with the notice required by paragraph 84(8).

## **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 disapplied 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<sup>(21)</sup>.

(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

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(21) 2003 c. 39. There are amendments to section 92 which are not relevant to this instrument.

(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.

## **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(**22**) and 47(**23**) (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.

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(22) Part 44 is substituted for a new Part 44 by S.I. 2013/262.

(23) Part 47 is substituted for a new Part 47 by S.I. 2013/262.

### **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.

### **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(24) 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.

(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(25) 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(26);

“High Court Judge” means a judge listed in section 4(1) of the Senior Courts Act 1981(27); 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(28).

#### 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(29) within 21 days after the date of the decision of the court that the appellant wishes to appeal.

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(25) 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).

(26) 1981 c. 54. Section 3 has been amended but no amendments are relevant to this instrument.

(27) 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.

(28) 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.

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

## 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.

## PART 5

### CLAIMS BY AND DISTRIBUTIONS TO CREDITORS

#### CHAPTER 1

##### Interpretation

#### **Interpretation**

**5.1.—**(1) In this Part, the following definitions apply—

“debt” means (subject to the next paragraph) any of the following—

- (a) any debt or liability to which the further education body is subject at the relevant date;
- (b) any debt or liability to which the further education body may become subject after the relevant date by reason of any obligation incurred before that date;
- (c) any interest provable as mentioned in rule 5.23;

“dividend” includes a distribution;

“provable debt” is to be interpreted in accordance with rule 5.2;



“relevant date” means the date on which the further education body entered education administration; and

“small debt” means a debt (being the total amount owed to a creditor) which does not exceed £1,000 (which amount is prescribed for the purposes of paragraph 13A of Schedule 8 to the Act<sup>(30)</sup>).

- (2) Any liability in tort is a debt provable in the education administration, if either—
- (a) the cause of action has accrued at the relevant date; or
  - (b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.

(3) It is immaterial whether a debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and reference to owing a debt are to be read accordingly.

(4) “Liability” means (subject to paragraph (2)) a liability to pay money or money’s worth, including any liability under an enactment, a liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution.

## CHAPTER 2

### Creditors’ claims in education administration

#### Provable debts

**5.2.**—(1) All claims by creditors, except as provided in this rule, are provable as debts against the further education body, whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) An obligation arising under a confiscation order made under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002<sup>(31)</sup> is not provable.

(3) The following claims are not provable until after all other claims of creditors have been paid in full with interest under rule 5.23—

- (a) a claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000<sup>(32)</sup>, unless it is also a claim arising by virtue of sub-paragraph (b) of that section (a person who has suffered loss etc.); and
- (b) a claim which by virtue of the Act or any other enactment is a claim the payment of which is to be postponed.

(4) Nothing in this rule prejudices any enactment or rules of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

#### Proving a debt

**5.3.**—(1) A creditor wishing to recover a debt must submit a proof to the education administrator unless this rule or an order of the court provides otherwise.

(2) A creditor is deemed to have proved for the purposes of determination and payment of a dividend but not otherwise where—

- (a) the debt is a small debt;

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<sup>(30)</sup> Paragraph 13A was inserted into Schedule 8 by section 131 of the Small Business, Enterprise and Employment Act 2015 (c. 26).

<sup>(31)</sup> 2002 c. 29. Relevant amendments are made by paragraph 75(1) and (2) of Part 2 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), Part 1 of Schedule 8 and paragraphs 1 and 2 of Schedule 14 to the Serious Crime Act 2007 (c. 27), and paragraphs 11 and 12 of the Schedule to the Prevention of Social Housing Fraud Act 2013 (c. 3).

<sup>(32)</sup> 2000 c. 8. Section 382 has been amended by paragraph 21 of Schedule 9 to the Financial Services Act 2012 (c. 21).

- (b) a notice has been delivered to the creditor of notice of intention to declare a dividend or make a distribution under rule 5.26 which complies with rule 5.27 and 5.28; and
- (c) the creditor has not advised the education administrator that the debt is incorrect or not owed in response to the notice.

### **Requirements for proof**

**5.4.**—(1) A proof must—

- (a) be made out by, or under the direction of, the creditor and authenticated by the creditor or a person authorised on the creditor's behalf;
- (b) state the creditor's name and address;
- (c) identify the further education body;
- (d) state the total amount of the creditor's claim (including any value added tax) as at the relevant date, less any payments made after that date in relation to the claim, any deduction under rule 5.20 and any adjustment by way of set-off in accordance with rule 5.24;
- (e) state whether or not the claim includes any outstanding uncapitalised interest;
- (f) contain particulars of how and when the debt was incurred;
- (g) contain particulars of any security held, the date on which it was given and the value which the creditor puts on it;
- (h) provide details of any reservation of title in relation to goods to which the debt refers;
- (i) provide details of any document by reference to which the debt can be substantiated;
- (j) be dated and authenticated; and
- (k) state the name, postal address and authority of the person authenticating the proof (if someone other than the creditor).

(2) Where paragraph (1)(i) applies the document need not be delivered with the proof unless the education administrator has requested it.

(3) The education administrator may call for the creditor to produce any document or other evidence which the education administrator considers is necessary to substantiate the whole or part of any claim.

### **Costs of proving**

**5.5.** Unless the court otherwise orders—

- (a) each creditor bears the cost of proving for that creditor's own debt, including costs incurred in providing documents or evidence under rule 5.4(3); and
- (b) costs incurred by the education administrator in estimating the value of a debt under rule 5.14 are payable out of the assets as an expense of the education administration.

### **Allowing inspection of proofs**

**5.6.** The education administrator must, so long as proofs delivered to the education administrator are in the possession of the education administrator, allow them to be inspected, at all reasonable times on any business day, by the following—

- (a) a creditor who has delivered a proof (unless the proof has been wholly rejected for the purposes of dividend or otherwise or withdrawn);
- (b) a member or contributory of the further education body;
- (c) a person acting on behalf of any of the above.

### **Admission and rejection of proofs for dividend**

**5.7.**—(1) The education administrator may admit or reject a proof for dividend (in whole or in part).

(2) If the education administrator rejects a proof in whole or in part, the education administrator must deliver to the creditor a statement of the reasons for doing so, as soon as reasonably practicable.

### **Appeal against decision on proof**

**5.8.**—(1) If a creditor is dissatisfied with the education administrator's decision under rule 5.7 in relation to the creditor's own proof (including a decision whether the debt is preferential), the creditor may apply to the court for the decision to be reversed or varied.

(2) The application must be made within 21 days of the creditor receiving the statement delivered under rule 5.7(2).

(3) A member, a contributory, or any other creditor may, if dissatisfied with the education administrator's decision admitting or rejecting the whole or any part of a proof or agreeing to revalue a creditor's security under rule 5.15, apply to the court for the decision to be reversed or varied within 21 days of becoming aware of the education administrator's decision.

(4) The court must fix a venue for the application to be heard.

(5) The applicant must deliver notice of the date and venue to the creditor who delivered the proof in question (unless it is the applicant's own proof) and the education administrator.

(6) The education administrator must, on receipt of the notice, file the relevant proof with the court, together (if appropriate) with a copy of the statement sent under rule 5.7(2).

(7) After the application has been heard and determined, a proof which was submitted by the creditor in hard copy form must be returned by the court to the education administrator.

### **Education administrator not liable for costs under rule 5.8**

**5.9.** The education administrator is not personally liable for costs incurred by any person in respect of an application under rule 5.8 unless the court otherwise orders.

### **Withdrawal or variation of proof**

**5.10.**—(1) A creditor may withdraw a proof at any time by delivering a written notice to the education administrator.

(2) The amount claimed by a creditor's proof may be varied at any time by agreement between the creditor and the education administrator.

### **Exclusion of proof by the court**

**5.11.**—(1) The court may exclude a proof or reduce the amount claimed—

- (a) on the education administrator's application, where the education administrator thinks that the proof has been improperly admitted, or ought to be reduced; or
- (b) on the application of a creditor, a contributory, or a member, if the education administrator declines to interfere in the matter.

(2) Where an application is made under paragraph (1), the court must fix a venue for the application to be heard.

(3) The applicant must deliver notice of the venue—

- (a) if the applicant is the education administrator, to the creditor who submitted the proof;

- (b) if the applicant is a creditor, a contributory, or a member, to the education administrator and to the creditor who made the proof (if not the applicant).

#### **Debts of further education bodies to rank equally**

**5.12.** Debts of further education bodies other than preferential debts rank equally between themselves and, after preferential debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

#### **Division of unsold assets**

**5.13.—**(1) This rule applies to any property which, from its peculiar nature or other special circumstances, cannot be readily or advantageously sold.

(2) The education administrator may with agreement of the creditors divide the property in its existing form among the further education body's creditors according to its estimated value.

#### **Estimate of value of debt**

**5.14.—**(1) The education administrator must estimate the value of a debt that does not have a certain value because it is subject to a contingency or for any other reason.

(2) The education administrator may revise such an estimate by reference to a change of circumstances or to information becoming available to the education administrator.

(3) The education administrator must inform the creditor of the education administrator's estimate and any revision.

(4) Where the value of a debt is estimated under this rule, or by the court under section 168(3) or (5), the amount provable in the case of that debt is that of the estimate for the time being.

#### **Secured creditor: value of security**

**5.15.—**(1) A secured creditor may, with the agreement of the education administrator or the permission of the court, at any time alter the value which that creditor has put upon a security in a proof.

(2) Where a secured creditor has voted in respect of the unsecured balance of the debt—

- (a) the secured creditor may re-value the security only with the agreement of the education administrator or the permission of the court; and
- (b) where the revaluation was by agreement, the education administrator must deliver a notice of the revaluation to the creditors within five business days after the education administrator's agreement.

#### **Secured creditor: surrender for non-disclosure**

**5.16.—**(1) If a secured creditor fails to disclose a security in a proof, the secured creditor must surrender that security for the general benefit of creditors, unless the court, on application by the secured creditor, relieves the secured creditor from the effect of this rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof to be amended, on such terms as may be just.

### **Secured creditor: redemption by education administrator**

**5.17.**—(1) The education administrator may at any time deliver a notice to a creditor whose debt is secured that the education administrator proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor’s proof.

(2) The creditor then has 21 days (or such longer period as the education administrator may allow) in which to alter the value of the security in accordance with rule 5.15.

(3) If the creditor alters the value of the security with the agreement of the education administrator or the court then the education administrator may only redeem at the new value.

(4) If the education administrator redeems the security the cost of transferring it is payable as an expense out of the estate.

(5) A creditor whose debt is secured may at any time deliver a notice to the education administrator requiring the education administrator to elect whether or not to redeem the security at the value then placed on it.

(6) The education administrator then has three months in which to redeem the security or elect not to redeem the security.

### **Secured creditor: test of security’s value**

**5.18.**—(1) If the education administrator is dissatisfied with the value which a secured creditor puts on a security in the creditor’s proof, the education administrator may require any property comprised in the security to be offered for sale.

(2) The terms of sale is to be as agreed between the education administrator and the secured creditor, or as the court may direct.

(3) If the sale is by auction, the education administrator, on behalf of the further education body or the estate, and the creditor may bid.

(4) This rule does not apply if the value of the security has been altered with the court’s permission.

### **Realisation or surrender of security by creditor**

**5.19.**—(1) If a creditor who has valued a security subsequently realises the security (whether or not at the instance of the education administrator)—

(a) the net amount realised must be treated in all respects (including in relation to any valuation in a proof) as an amended valuation made by the creditor; and

(b) the creditor may prove for the balance of the creditor’s debt.

(2) A creditor who voluntarily surrenders a security may prove for the whole of the creditor’s debt as if it were unsecured.

### **Discounts**

**5.20.** All trade and other discounts (except a discount for immediate or early settlement) which would have been available to the further education body or the debtor but for the education administration proceedings must be deducted from the claim.

### **Debts in foreign currency**

**5.21.**—(1) A proof for a debt incurred or payable in a foreign currency must state the amount of the debt in that currency.

(2) The education administrator must convert all such debts into sterling at a single rate for each currency determined by the education administrator by reference to the exchange rates prevailing on the relevant date.

(3) On the next occasion when the education administrator communicates with the creditors, the education administrator must advise them of any rate so determined.

(4) A creditor who considers that the rate determined by the education administrator is unreasonable may apply to the court.

(5) If, on hearing the application, the court finds that the rate is unreasonable it may itself determine the rate.

### **Payments of a periodical nature**

**5.22.—**(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the relevant date.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have been due at that date, if accruing from day to day.

### **Interest**

**5.23.—**(1) Where a debt proved in education administration proceedings bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.

(2) In the circumstances set out in this rule, the creditor's claim may include interest on the debt for periods before the relevant date although not previously reserved or agreed.

(3) If the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from that time to the relevant date.

(4) If the debt is due otherwise, interest may only be claimed if demand for payment of the debt was made in writing by or on behalf of the creditor and notice was delivered that interest would be payable from the date of the demand to the date of payment before the relevant date.

(5) Interest under paragraph (4) may only be claimed for the period from the date of the demand to the relevant date and, for the purposes of the Act and these Rules, must be charged at a rate not exceeding that mentioned in paragraph (6).

(6) The rate of interest to be claimed under paragraphs (3) and (4) is the rate specified in section 17 of the Judgments Act 1838(33) on the relevant date.

(7) In an education administration—

- (a) any surplus remaining after payment of the debts proved must, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date;
- (b) all interest payable under sub-paragraph (a) ranks equally whether or not the debts on which it is payable rank equally; and
- (c) the rate of interest payable under sub-paragraph (a) is whichever is the greater of the rate specified in paragraph (6) and the rate applicable to the debt apart from the education administration.

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(33) 1838 c. 110. Section 17 was amended by the Statute Law Revision (No. 2) Act 1988 (c. 57), article 2 of S.I. 1993/564, article 3 of S.I. 1998/2940, Part 1 of the Schedule to the Civil Procedure Acts Repeal Act 1879 (c. 59) and article 3(c) of S.I. 1998/3132.

## **Mutual dealings and set-off**

**5.24.**—(1) This rule applies where the education administrator intends to make a distribution and has delivered a notice under rule 5.26.

(2) An account must be taken as at the date of the notice of what is due from the further education body and a creditor to each other in respect of their mutual dealings and the sums due from the one must be set off against the sums due from the other.

(3) If there is a balance owed to the creditor then only that balance is provable in the education administration.

(4) If there is a balance owed to the further education body that must be paid to the education administrator as part of the assets.

(5) However if all or part of the balance owed to the further education body results from a contingent or prospective debt owed by the creditor then the balance (or that part of it which results from the contingent or prospective debt) must be paid in full (without being discounted under rule 5.41) if and when that debt becomes due and payable.

(6) In this rule—

“obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise; and

“mutual dealings” means mutual credits, mutual debts or other mutual dealings between the further education body and a creditor proving or claiming to prove for a debt in the education administration but does not include any of the following—

- (a) a debt arising out of an obligation incurred after the further education body entered education administration;
- (b) a debt arising out of an obligation incurred at a time when the creditor had notice that an application for an education administration order was pending;
- (c) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into—
  - (i) after the further education body entered education administration, or
  - (ii) at a time when the creditor had notice that an application for an education administration order was pending.

(7) A sum must be treated as being due to or from the further education body for the purposes of paragraph (2) whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(8) For the purposes of this rule—

- (a) rule 5.14 applies to an obligation which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value;
- (b) rules 5.21 to 5.23 apply to sums due to the further education body which—
  - (i) are payable in a currency other than sterling,
  - (ii) are of a periodical nature, or
  - (iii) bear interest; and
- (c) rule 5.41 applies to a sum due to or from the further education body which is payable in the future.

## 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<sup>(34)</sup>;
- (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.

(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

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

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).

## **PART 6**

### **THE EDUCATION ADMINISTRATOR**

#### **CHAPTER 1**

#### **Replacing the Education Administrator**

### **Grounds for resignation**

**6.1.**—(1) An education administrator may resign—

- (a) on grounds of ill health;
- (b) because of the intention to cease to practise as an insolvency practitioner; or
- (c) because the further discharge of the duties of education administrator is prevented or made impractical by—
  - (i) a conflict of interest; or
  - (ii) a change of personal circumstances.

(2) The education administrator may, with the permission of the court, resign on other grounds.

### **Notice of intention to resign**

**6.2.**—(1) The education administrator must give at least five business days' notice of intention—

- (a) to resign in a case falling within rule 6.1(1); or
- (b) to apply for the court's permission to resign in a case falling within rule 6.1(2).

(2) The notice must contain—

- (a) identification details for the proceedings; and
- (b) the date of appointment of the education administrator.

(3) The notice must also contain—

- (a) the date with effect from which the education administrator intends to resign; or
- (b) where permission of the court is required under rule 6.1(2), the date on which the education administrator intends to file with the court an application for permission to resign.

(4) Notice must be delivered to—

- (a) the appropriate national authority;
  - (b) if there is a continuing education administrator of the further education body, to that continuing education administrator; and
  - (c) if there is no such continuing education administrator, to—
    - (i) the further education body, and
    - (ii) all the further education body’s creditors, including any floating charge holders.
- (5) The notice must be accompanied by a summary of the education administrator’s receipts and payments.

### **Notice of resignation**

**6.3.—**(1) A resigning education administrator must, within five business days of delivering the notice under paragraph 87(2) of Schedule B1, deliver a copy of the notice to—

- (a) the registrar of companies;
  - (b) all persons to whom notice of intention to resign was delivered under rule 6.2.
- (2) The notice must contain—
- (a) identification details for the proceedings;
  - (b) the date of the appointment of the education administrator; and
  - (c) the name of the person who made the education administration application.
- (3) The notice must state—
- (a) the date from which the resignation is to have effect; and
  - (b) where the resignation is with the permission of the court, the date on which permission was given.
- (4) Notice of resignation given under paragraph 87(2) of Schedule B1 must be given by filing the notice with the court.

### **Application to court to remove education administrator from office**

**6.4.—**(1) An application for an order under paragraph 88 of Schedule B1 that the education administrator be removed from office must state the grounds on which the order is requested.

(2) A copy of the application must be delivered, not less than five business days before the date fixed for the hearing—

- (a) to the education administrator;
  - (b) to the appropriate national authority;
  - (c) to any other education administrator appointed to act jointly or concurrently; and
  - (d) where there is no other education administrator appointed to act jointly or concurrently, to the further education body and all the creditors, including any floating charge holders.
- (3) The court must deliver to the applicant a copy of any order removing the education administrator.
- (4) The applicant must deliver a copy of the order—
- (a) as soon as reasonably practicable, and in any event within five business days of the copy order being delivered to the applicant, to the education administrator, and
  - (b) within five business days of the copy order being delivered to the applicant, to—
    - (i) all other persons to whom notice of the application was delivered; and

- (ii) the registrar of companies.

#### **Notice of vacation of office when education administrator ceases to be qualified to act**

**6.5.** An education administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the further education body and who gives notice in accordance with paragraph 89 of Schedule B1 must also deliver notice to—

- (a) the appropriate national authority;
- (b) the registrar of companies.

#### **Deceased education administrator**

**6.6.—**(1) If an education administrator dies, notice of the fact and date of death must be filed with the court.

(2) The notice must be filed as soon as reasonably practicable by one of the following—

- (a) a surviving joint education administrator;
- (b) a member of the deceased education administrator's firm (if the deceased was a member or employee of a firm);
- (c) an officer of the deceased education administrator's company (if the deceased was an officer or employee of a company);
- (d) a personal representative of the deceased education administrator.

(3) If such a notice has not been filed within the 21 days following the education administrator's death, then any other person may file the notice.

(4) The person who files the notice must also deliver a notice to the registrar of companies which contains—

- (a) identification details for the proceedings;
- (b) the name of the person who made the education administration application;
- (c) the date of the appointment of the education administrator; and
- (d) the fact and date of death.

#### **Application to replace**

**6.7.—**(1) Where an application to court is made under paragraph 91(1) of Schedule B1 to appoint a replacement education administrator, the application must be accompanied by the proposed replacement education administrator's consent to act.

(2) A copy of the application must be delivered to—

- (a) whichever of the appropriate national authority or the education administrator is not the applicant; and
- (b) to those persons set out at rule 2.5(3).

(3) Rules 2.9, 2.10 and 2.11 apply to an application made under paragraph 91(1) of Schedule B1 as they apply to an application for an education administration order.

#### **Appointment of a replacement or additional education administrator**

**6.8.** Where a replacement education administrator is appointed or an additional education administrator is appointed to act jointly or concurrently—

- (a) rule 3.1 applies;

- (b) all documents must clearly identify the appointment as of a replacement education administrator or an additional education administrator appointed to act jointly or concurrently.

### **Education administrator's duties on vacating office**

**6.9.**—(1) An education administrator who ceases to be in office as a result of removal, resignation or ceasing to be qualified to act as an insolvency practitioner in relation to the further education body must as soon as reasonably practicable deliver to the person succeeding as education administrator—

- (a) the assets (after deduction of any expenses properly incurred and distributions made by the departing education administrator);
- (b) the records of the education administration, including correspondence, proofs and other documents relating to the education administration while it was within the responsibility of the departing education administrator; and
- (c) the further education body's records.

(2) An education administrator who fails to comply with this rule is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine, as set out in Schedule 1.

## CHAPTER 2

### Remuneration and expenses

#### **Basis of remuneration**

**6.10.**—(1) An education administrator is entitled to receive remuneration for services provided as education administrator.

(2) The basis of such remuneration is to be fixed by reference to the time properly spent by the education administrator and the education administrator's staff in attending to matters arising in the education administration.

(3) The education administrator's remuneration must, on the education administrator's application, be fixed by the court.

(4) The education administrator must give at least 14 days' notice of the application made under paragraph (3) to the following who may appear or be represented—

- (a) the appropriate national authority; and
- (b) the creditors of the further education body.

(5) In fixing the remuneration, the court must have regard to the following matters—

- (a) the complexity (or otherwise) of the case;
- (b) any respects in which, in connection with a further education body's affairs, there falls on the education administrator any responsibility of an exceptional kind or degree;
- (c) the effectiveness with which the education administrator appears to be carrying out, or to have carried out, the education administrator's duties as such; and
- (d) the value and nature of the property with which the education administrator has had to deal.

(6) Where there are joint education administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned and any dispute arising between them may be referred to the court, for settlement by order.

(7) If the education administrator is a solicitor and employs the education administrator's own firm, or any partner in it, to act on behalf of the further education body, profit costs must not be paid unless this is authorised by the court.



### **Pre-administration costs**

**6.11.** Where the education administrator has made a statement of pre-administration costs under rule 3.8(10)(a), the education administrator (where the costs consist of fees charged or expenses incurred by the education administrator) or other insolvency practitioner (where the costs consist of fees charged or expenses incurred by that practitioner) must, before paying such costs, apply to the court for a determination of whether and to what extent the unpaid pre-administration costs are approved for payment.

### **Remuneration of former education administrator**

**6.12.** If an education administrator has ceased to act as such for any reason, the education administrator (or the education administrator's estate, as the case may be) is to be entitled to any amounts outstanding on the basis of the services which that education administrator provided in accordance with rule 6.10.

### **Remuneration of new education administrator**

**6.13.** If a new education administrator is appointed in place of another education administrator, any court order in effect under rule 6.10 immediately before the former education administrator ceased to hold office continues to apply in respect of the remuneration of the new education administrator until a further court order is made in accordance with those provisions.

## **PART 7**

### **TIME, RULES ABOUT DOCUMENTS AND INTERPRETATION**

#### **CHAPTER 1**

##### **Time**

### **Calculation of time periods**

**7.1.—**(1) The rules in CPR 2.8(35) with the exception of paragraph (4) apply for the calculation of periods expressed in days in the Act and these Rules.

(2) The calculation of the beginning and end of a period expressed in months is to be determined as follows—

- (a) if the beginning of the period is specified—
  - (i) the month in which the period ends is the specified number of months after the month in which it begins, and
  - (ii) the date in the month on which the period ends is—
    - (aa) the day before the date corresponding to the date in the month on which it begins, or
    - (bb) if there is no such date in the month on which it ends, the last day of that month;
- (b) if the end of the period is specified—
  - (i) the month in which the period begins is the specified number of months before the month in which it ends, and
  - (ii) the date in the month on which the period begins is—

(aa) the day after the date corresponding to the date in the month on which it ends, or

(bb) if there is no such date in the month in which it begins, the last day of that month.

(3) The provisions of CPR 3.1(2)(a)(36) apply so as to enable the court to extend or shorten the time for compliance with anything required or authorised to be done by these Rules.

(4) Paragraph (3) is subject to any time limits expressly stated in the Act and to any specific powers in the Act or these Rules to extend or shorten the time for compliance.

## CHAPTER 2

### Form and content of documents

#### Notices or statements in writing

7.2.—(1) A notice or statement must be in writing unless the Act or these Rules provide otherwise.

(2) A document in electronic form must be capable of being—

- (a) read by the recipient in electronic form; and
- (b) reproduced by the recipient in hard-copy form.

#### Authentication

7.3.—(1) A document in electronic form is sufficiently authenticated—

- (a) if the identity of the sender is confirmed in a manner specified by the recipient; or
- (b) where the recipient has not so specified, if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.

(2) A document in hard-copy form is sufficiently authenticated if it is signed.

(3) If a document is authenticated by the signature of an individual on behalf of—

- (a) a body of persons, the document must also state the position of that individual in relation to the body;
- (b) a body corporate of which the individual is the sole member, the document must also state that fact.

#### Information required to identify persons and proceedings etc.

7.4.—(1) Where the Act or these Rules require a document to identify, or to contain identification details in respect of, a person or proceedings the information as follows must be given—

- (a) for a further education body which is the subject of the proceedings, the name or names, number and address with which that further education body is registered;
- (b) for a further education body other than one which is the subject of the proceedings—
  - (i) the name and number with which that further education body is registered, and
  - (ii) where that further education body is a company incorporated outside the United Kingdom, the country or territory in which it is incorporated;
- (c) for a company other than a further education body which is the subject of the proceedings—

- (i) the name and number with which that company is registered with the registrar of companies, and
- (ii) where that company is a company incorporated outside the United Kingdom, the country or territory in which it is incorporated;
- (d) for the education administrator—
  - (i) the name of the education administrator,
  - (ii) a postal address for the education administrator, and
  - (iii) either an email address, or a telephone number, through which the education administrator can be contacted;
- (e) for the proceedings—
  - (i) information identifying the further education body,
  - (ii) the full name of the court in which the proceedings are, or are to be, conducted or where documents relating to the proceedings have been or will be filed; and, if applicable, and
  - (iii) any number assigned by the court to those proceedings.

#### **Prescribed format of documents**

**7.5.**—(1) Where a rule sets out requirements as to the contents of any document any title required by the rule must appear at the beginning of the document.

(2) Any other contents required by the rule (or rules where more than one apply to a particular document) must be provided in the order listed in the rule (or rules) or in another order which the maker of the document considers would be convenient for the intended recipient.

#### **Variations from prescribed contents**

**7.6.** Where a rule sets out the required contents of a document, the document may depart from the required contents if—

- (a) the circumstances require such a departure (including where the requirement is not applicable in the particular case); or
- (b) the departure (whether or not intentional) is immaterial.

### **CHAPTER 3**

Standard contents of documents to be delivered to the registrar of companies

#### **Standard contents for documents delivered to the registrar of companies**

**7.7.**—(1) Where the Act or these Rules require a document to be delivered to the registrar of companies the document must contain the standard contents set out in this Chapter (in addition to any content specifically required by the Act or any other provision of these Rules).

(2) A document of more than one type must satisfy the requirements which apply to each.

(3) However requirements as to the contents of a document which is to be delivered to another person at the same time as the registrar of companies may be satisfied by delivering to that other person a copy of the document delivered to the registrar of companies.

### **Registrar of companies: cover sheets**

**7.8.**—(1) This rule applies where the Act or these Rules require an education administrator to deliver the following documents to the registrar of companies—

- (a) a court order;
- (b) a statement of the education administrator’s proposals (including a statement of revised proposals);
- (c) notice of an education administrator’s resignation under paragraph 87(2) of Schedule B1;
- (d) any report, including—
  - (i) a final progress report, and
  - (ii) a progress report.

(2) The education administrator must deliver to the registrar of companies with a document mentioned in paragraph (1) a notice containing the standard contents required by this Part.

(3) Such a notice may relate to more than one document where those documents relate to the same proceedings and are delivered together to the registrar of companies.

### **Standard contents of all documents to be delivered to the registrar of companies**

**7.9.**—(1) A document to be delivered to the registrar of companies must—

- (a) identify the further education body;
- (b) state—
  - (i) the nature of the document,
  - (ii) the section of the Act, the paragraph of Schedule B1 or the rule under which the document is delivered,
  - (iii) the date of the document,
  - (iv) the name and address of the person delivering the document,
  - (v) the capacity in which that person is acting in relation to the further education body; and
- (c) be authenticated by the person delivering the document.

(2) Where the person delivering the document is the education administrator the address may be omitted if it has previously been notified to the registrar of companies in the proceedings and is unchanged.

### **Standard contents of documents relating to the office of education administrator**

**7.10.**—(1) A document relating to the office of the education administrator must also identify the education administrator and state—

- (a) the date of the event of which notice is delivered or of the notice (as applicable);
- (b) where the document relates to an appointment, the person, body or court making the appointment;
- (c) where the document relates to the termination of an appointment, the reason for that termination; and
- (d) the contact details for the education administrator.

(2) Where the person delivering the document is the education administrator, the address may be omitted if it has previously been notified to the registrar of companies in the proceedings and is unchanged.

**Standard contents of documents relating to other documents**

- 7.11. A document relating to another document must also state—
- (a) the nature of the other document;
  - (b) the date of the other document; and
  - (c) where the other document relates to a period of time, the period of time to which it relates.

**Standard contents of documents relating to court orders**

- 7.12. A document relating to a court order must also specify—
- (a) the nature of the order; and
  - (b) the date of the order.

CHAPTER 4

Standard contents of notices for delivery to other persons etc.

**Standard contents of notices to be delivered to persons other than the registrar of companies**

7.13.—(1) Where the Act or these Rules require a notice to be delivered to a person other than the registrar of companies in respect of proceedings under the education administration, the notice must also contain the standard contents set out in this Chapter (in addition to any content specifically required by the Act or another provision of these Rules).

(2) A notice of more than one type must satisfy the requirements which apply to each.

(3) However the requirements in respect of a document which is to be delivered to another person at the same time as the registrar of companies may be satisfied by delivering to that other person a copy of the document delivered to the registrar of companies.

**Standard contents of all notices**

- 7.14. A notice must—
- (a) state the nature of the notice;
  - (b) identify the further education body;
  - (c) state the section of the Act, the paragraph of Schedule B1 or the rule under which the notice is given;
  - (d) in the case of a notice delivered by the education administrator, state the contact details for the education administrator.

**Standard contents of notice relating to the office of education administrator**

7.15. A notice relating to the office of the education administrator must also identify the education administrator and state—

- (a) the date of the event of which notice is delivered;
- (b) where the notice relates to an appointment, the person, body or court making the appointment;
- (c) where the notice relates to the termination of an appointment, the reason for that termination.

### **Standard contents of notices relating to documents**

**7.16.** A notice relating to a document must also state—

- (a) the nature of the document; and
- (b) the date of the document; or
- (c) where the document relates to a period of time, the period of time to which the document relates.

### **Standard contents of notices relating to court proceedings or orders**

**7.17.** A notice relating to court proceedings must also identify those proceedings and if the notice relates to a court order state—

- (a) the nature of the order; and
- (b) the date of the order.

### **Standard contents of returns or reports of decisions**

**7.18.** A return or report of a decision procedure, deemed consent procedure or meeting must also state—

- (a) the purpose of the procedure or meeting;
- (b) a description of the procedure or meeting used;
- (c) in the case of a decision procedure or meeting, the venue;
- (d) whether, in the case of a meeting, the required quorum was in place;
- (e) the outcome (including any decisions made or resolutions passed); and
- (f) the date of any decision made or resolution passed.

### **Standard contents of notices of the results of decisions**

**7.19.** A notice of the result of a decision procedure, deemed consent procedure or meeting must also state—

- (a) the purpose of the procedure or meeting;
- (b) a description of the procedure or meeting used;
- (c) in the case of a decision procedure or meeting, the venue;
- (d) whether, in the case of a meeting, the required quorum was in place; and
- (e) the outcome (including any decisions made or resolutions passed).

### **Standard contents of documents relating to other events**

**7.20.** A document relating to any other event must also state—

- (a) the nature of the event, including the section of the Act, the paragraph of Schedule B1 or the rule under which it took place; and
- (b) the date on which the event occurred.

## CHAPTER 5

### Delivery of documents

#### Application of Chapter

**7.21.**—(1) This Chapter applies where a document is required under the Act or these Rules to be delivered, filed, forwarded, furnished, given, sent or submitted in respect of education administration proceedings unless the Act, a rule or an order of the court makes different provision, including one requiring service of the document.

- (2) However, in respect of delivery of a document to the registrar of companies—
- (a) subject to sub-paragraph (b) only the following rules in this Chapter apply: rules 7.24, 7.25, 7.26 and 7.28; and
  - (b) where a document is to be delivered to the registrar of companies, the registrar’s rules under section 1117 of the Companies Act 2006 apply to determine the date when any document is received by the registrar of companies.

#### Delivery of documents to authorised recipients

**7.22.** Where under the Act or these Rules a document is to be delivered to a person (other than being served on that person), it may be delivered instead to any other person authorised in writing to accept delivery on behalf of the first-mentioned person.

#### Delivery of documents to joint education administrators

**7.23.** Where joint education administrators have been appointed, delivery of a document to one of them is to be treated as delivery to all of them.

#### Postal delivery of documents

**7.24.**—(1) A document is delivered if it is sent by post in accordance with the provisions of this rule.

- (2) First class or second class post may be used to deliver a document.
- (3) Unless the contrary is shown—
- (a) a document sent by first class post is treated as delivered on the second business day after the day on which it is posted;
  - (b) a document sent by second class post is treated as delivered on the fourth business day after the day on which it is posted;
  - (c) where a post-mark appears on the envelope in which a document was posted, the date of that post-mark is to be treated as the date on which the document was posted.
- (4) In this rule “post-mark” means a mark applied by a postal operator which records the date on which a letter entered the postal system of the postal operator.

#### Delivery by document exchange

**7.25.**—(1) A document is delivered to a member of a document exchange if it is delivered to that document exchange.

- (2) Unless the contrary is shown, a document is treated as delivered to a document exchange—
- (a) one business day after the day it is delivered to the document exchange where the sender and the intended recipient are members of the same document exchange; or

- (b) two business days after the day it is delivered to the departure facility of the sender's document exchange where the sender and the intended recipient are members of different document exchanges.

#### **Personal delivery of documents**

**7.26.** A document is delivered if it is personally delivered in accordance with the rules for personal service in CPR Part 6.

#### **Electronic delivery of documents**

**7.27.**—(1) A document is delivered if it is sent by electronic means and the following conditions apply.

- (2) The conditions are that the intended recipient of the document has—
  - (a) given actual or deemed consent for the electronic delivery of the document;
  - (b) not revoked that consent before the document is sent; and
  - (c) provided an electronic address for the delivery of the document.

(3) Consent may relate to a specific case or generally.

(4) For the purposes of paragraph (2)(a) an intended recipient is deemed to have consented to the electronic delivery of a document by the education administrator where the intended recipient and the person who is the subject of the education administration order had customarily communicated with each other by electronic means before the proceedings commenced.

(5) Unless the contrary is shown, a document is to be treated as delivered by electronic means to an electronic address where the sender can produce a copy of the electronic communication which—

- (a) contains the document; and
- (b) shows the time and date the communication was sent and the electronic address to which it was sent.

(6) Unless the contrary is shown, a document sent electronically is treated as delivered to the electronic address to which it is sent at 9.00 am on the next business day after it was sent.

#### **Electronic delivery of notices to enforcement officers**

**7.28.** Where anything in the Act or these Rules provides for the delivery of a notice to an enforcement officer or enforcement agent, it may be delivered by electronic means to a person who has been authorised to receive such a notice on behalf of a specified enforcement officer or enforcement agent or on behalf of enforcement officers or enforcement agents generally.

#### **Electronic delivery of documents to the court**

**7.29.**—(1) 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.

(2) A document delivered by electronic means is to be 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.

#### **Electronic delivery by education administrator**

**7.30.**—(1) Where an education administrator delivers a document by electronic means, the document must contain—



- (a) or be accompanied by, a statement that the recipient may request a hard copy of the document; and
  - (b) a telephone number, email address and postal address which may be used to make that request.
- (2) An education administrator must deliver a hard copy of the document to the recipient within five business days of receipt of a request.
- (3) An education administrator must not require the person requesting a hard copy to pay a fee for supplying it.

### **Proof of delivery of documents**

**7.31.**—(1) A certificate complying with this rule is proof that a document has been duly delivered to the recipient in accordance with this Chapter unless the contrary is shown.

(2) A certificate must state the method of delivery and the date of the sending, posting or delivery (as the case may be).

(3) In the case of the education administrator, the certificate must be given by—

- (a) the education administrator;
- (b) the education administrator’s solicitor; or
- (c) a partner or employee of either of them.

(4) In the case of a person other than the education administrator, the certificate must be given by that person and must state—

- (a) that the document was delivered by that person; or
- (b) that another person (named in the certificate) was instructed to deliver it.

(5) A certificate under this rule may be endorsed on a copy of the document to which it relates.

### **Delivery of proofs and details of claims**

**7.32.** Once a proof has, or details of a claim have, been delivered to an education administrator in accordance with these Rules that proof or those details need not be delivered again, and accordingly, where a provision of these Rules requires delivery of a proof or details of a claim by a certain time, that requirement is satisfied if the proof has or the details have already been delivered.

## **CHAPTER 6**

### **Inspection of documents, copies and provision of information**

#### **Right to copy documents**

**7.33.** Where the Act or these Rules give a person the right to inspect documents, that person has a right to be supplied on request with copies of those documents on payment of the standard fee for copies.

#### **Charges for copies of documents provided by the education administrator**

**7.34.** Except where prohibited by these Rules, an education administrator is entitled to require the payment of the standard fee for copies of documents requested by a creditor, member or contributory.

### **Offence in relation to inspection of documents**

**7.35.**—(1) It is an offence for a person who does not have a right under these Rules to inspect a relevant document falsely to claim to be a creditor, a member of a company or other further education body or a contributory of a company with the intention of gaining sight of the document.

(2) A relevant document is one which is on the court file or held by the education administrator or any other person and which a member of a company or other further education body or a contributory of a company has the right to inspect under these Rules.

(3) A person guilty of an offence under this rule is liable to imprisonment or a fine, or both as set out in Schedule 1.

### **Right to list of creditors**

**7.36.**—(1) A creditor has the right to require the education administrator to provide a list of the names and addresses of the creditors and the amounts of their respective debts.

(2) The education administrator on being required to provide such a list—

- (a) must deliver it to the person requiring the list as soon as reasonably practicable; and
- (b) may charge the standard fee for copies for a hard copy.

(3) The education administrator may omit the name and address of a creditor if the education administrator thinks its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence against any person.

(4) In such a case the list must include—

- (a) the amount of that creditor’s debt; and
- (b) a statement that the name and the address of the creditor has been omitted for that debt.

### **Confidentiality of documents – grounds for refusing inspection**

**7.37.**—(1) Where an education administrator considers that a document forming part of the records of an education administration—

- (a) should be treated as confidential; or
- (b) is of such a nature that its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence against any person,

the education administrator may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) Where the education administrator refuses inspection of a document the person wishing to inspect it may apply to the court which may reconsider the education administrator’s decision.

### **Proposed education administrator’s statement and consent to act**

**7.38.**—(1) References in these Rules to a consent to act are to a statement by a proposed education administrator headed “Proposed education administrator’s statement and consent to act” which contains the following—

- (a) identification details for the further education body immediately below the heading;
- (b) a certificate that the proposed education administrator is authorised under Part 13(37) of the Act to act as an insolvency practitioner;

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(37) Part 13 is amended by section 17 and paragraphs 11, 18, 19 and 21 of the Deregulation Act 2015 (c. 20), paragraph 57 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c. 24) and sections 137 to 143 of the Small Business, Enterprise and Employment Act 2015 (c. 26).

- (c) the proposed education administrator’s IP number;
  - (d) the name of the relevant recognised professional body which is the source of the proposed education administrator’s authorisation;
  - (e) a statement that the proposed education administrator consents to act as education administrator of the further education body;
  - (f) a statement whether or not the proposed education administrator has had any prior professional relationship with the further education body and if so a short summary of the relationship;
  - (g) the name of the applicant in the case of an application to the court for an appointment; and
  - (h) a statement that the proposed education administrator is of the opinion that the purpose of education administration is reasonably likely to be achieved in the particular case.
- (2) The statement and consent to act must be authenticated and dated by the proposed education administrator.
- (3) Where a number of persons are proposed to be appointed to act jointly or concurrently as the education administrator of a further education body, each must make a separate statement and consent to act.

## CHAPTER 7

### Use of websites

#### **Use of website by education administrator to deliver a particular document**

- 7.39.**—(1) This rule applies for the purposes of section 246B of the Act.
- (2) An education administrator who is required to deliver a document to any person may (except where personal delivery is required) satisfy that requirement by delivering a notice to that person which contains—
- (a) a statement that the document is available for viewing and downloading on a website;
  - (b) the website’s address and any password necessary to view and download the document; and
  - (c) a statement that the person to whom the notice is delivered may request a hard copy of the document with a telephone number, email address and postal address which may be used to make that request.
- (3) An education administrator who receives such a request must deliver a hard copy of the document to the recipient free of charge within five business days of receipt of the request.
- (4) A document to which a notice under paragraph (2) relates must—
- (a) remain available on the website for the period required by rule 7.41; and
  - (b) be in a format that enables it to be downloaded within a reasonable time of an electronic request being made for it to be downloaded.
- (5) A document which is delivered to a person by means of a website in accordance with this rule is deemed to have been delivered—
- (a) when the document is first made available on the website; or
  - (b) when the notice under paragraph (2) is delivered to that person, if that is later.

#### **General use of website to deliver documents**

- 7.40.**—(1) The education administrator may deliver a notice to each person to whom a document will be required to be delivered in the education administration proceedings which contains—

- (a) a statement that future documents in the proceedings other than those mentioned in paragraph (2) will be made available for viewing and downloading on a website without notice to the recipient and that the education administrator will not be obliged to deliver any such documents to the recipient of the notice unless the education administrator is requested to do so by that person;
  - (b) a telephone number, email address and postal address which may be used to make a request for a hard copy of a document;
  - (c) a statement that the recipient of the notice may at any time request a hard copy of any or all of the following—
    - (i) all documents currently available for viewing on the website,
    - (ii) all future documents which may be made available there; and
  - (d) the address of the website and any password required to view and download a relevant document from that site.
- (2) A statement under paragraph (1)(a) does not apply to the following documents—
- (a) a document for which personal delivery is required;
  - (b) a notice under rule 5.26 of intention to declare a dividend; and
  - (c) a document which is not delivered generally.
- (3) A document is delivered generally if it is delivered to some or all of the following classes of person—
- (a) members;
  - (b) contributories;
  - (c) creditors;
  - (d) any class of members, contributories or creditors.
- (4) An education administrator who has delivered a notice under paragraph (1) is under no obligation—
- (a) to notify a person to whom the notice has been delivered when a document to which the notice applies has been made available on the website; or
  - (b) to deliver a hard copy of such a document unless a request is received under paragraph (1) (c).
- (5) An education administrator who receives such a request—
- (a) in respect of a document which is already available on the website must deliver a hard copy of the document to the recipient free of charge within five business days of receipt of the request; and
  - (b) in respect of all future documents must deliver each such document in accordance with the requirements for delivery of such a document in the Act and these Rules.
- (6) A document to which a statement under paragraph (1)(a) applies must—
- (a) remain available on the website for the period required by rule 7.41; and
  - (b) be in such a format as to enable it to be downloaded within a reasonable time of an electronic request being made for it to be downloaded.
- (7) A document which is delivered to a person by means of a website in accordance with this rule is deemed to have been delivered—
- (a) when the relevant document was first made available on the website; or
  - (b) if later, when the notice under paragraph (1) was delivered to that person.

(8) Paragraph (7) does not apply in respect of a person who has made a request under paragraph (1)(c)(ii) for hard copies of all future documents.

#### **Retention period for documents made available on websites**

**7.41.**—(1) This rule applies to a document which is made available on a website under rules 7.39 and 7.40.

(2) Such a document must continue to be made available on the website until two months after the end of the education administration proceedings or the release of the last person to act as education administrator in those proceedings.

### **CHAPTER 8**

#### **Standard contents of Gazette notices**

##### **Contents of notices to be gazetted under the Act or Rules**

**7.42.**—(1) Where the Act or these Rules require or permit a notice to be gazetted the notice must also contain the standard contents set out in this Chapter in addition to any content specifically required by the Act or any other provision of these Rules.

(2) Information which this Chapter requires to be included in a Gazette notice may be omitted if it is not reasonably practicable to obtain it.

##### **Standard contents of all notices**

**7.43.** A notice must, if it is relevant to the particular notice, identify the education administrator and state—

- (a) the education administrator’s contact details;
- (b) the education administrator’s IP number;
- (c) the name of any person other than the education administrator who may be contacted about the proceedings;
- (d) the date of the education administrator’s appointment;
- (e) the court name and any number assigned by the court to the proceedings;
- (f) the further education body;
- (g) the registered office of the further education body;
- (h) any name under which the further education body was registered in the 12 months before the date of the commencement of the education administration proceedings;
- (i) any other name or style under which the further education body —
  - (i) carried on business, and
  - (ii) in which any debt owed to a creditor was incurred.

##### **Gazette – as evidence, variations and errors**

**7.44.**—(1) A copy of the Gazette containing a notice required or permitted by the Act or these Rules to be gazetted is evidence of any facts stated in the notice.

(2) Where the Act or these Rules require an order of the court to be gazetted, a copy of the Gazette containing the notice may be produced in any proceedings as conclusive proof that the order was made on the date specified in the notice.

(3) Where an order of the court which is gazetted has been varied, or any matter has been erroneously or inaccurately gazetted, the person whose responsibility it was to gazette the order or other matter must as soon as is reasonably practicable cause the variation to be gazetted or a further entry to be made in the Gazette for the purpose of correcting the error or inaccuracy.

## CHAPTER 9

### Standard contents of notices advertised otherwise than in the Gazette

#### **Standard contents of notices advertised otherwise than in the Gazette**

**7.45.**—(1) Where the Act or these Rules provide that a notice may be advertised otherwise than in the Gazette the notice must contain the standard contents set out in this Chapter (in addition to any content specifically required by the Act or any other provision of these Rules).

(2) A notice must, if it is relevant to the particular notice, identify the education administrator and specify the education administrator’s contact details.

(3) Information which this Chapter requires to be included may be omitted if it is not reasonably practicable to obtain it.

#### **Non-Gazette notices relating to a further education body**

**7.46.** A notice relating to a further education body must also identify the further education body and state—

- (a) its registered office of the further education body;
- (b) any name under which it was registered in the 12 months before the date of the education administration proceedings; and
- (c) any name or style under which—
  - (i) the further education body carried on business, and
  - (ii) any debt owed to a creditor was incurred.

#### **Non-Gazette notices – other provisions**

**7.47.** Information which this Chapter requires to be stated in a notice must be included in an advertisement of that notice in a way that is clear and comprehensible.

## CHAPTER 10

### Delivery of documents and opting out

#### **Delivery to the creditors and opting out**

**7.48.**—(1) Where the Act or a rule requires an education administrator to deliver a document to the creditors, or the creditors in a class, the requirement is satisfied by the delivery of the document to all such creditors of whose address the education administrator is aware other than opted-out creditors (where the opt out applies).

- (2) Where a creditor has opted out from receiving documents, the opt out does not apply to—
- (a) a notice which the Act requires to be delivered to all creditors without expressly excluding opted-out creditors;
  - (b) a notice of a change in the education administrator or the contact details for the education administrator;
  - (c) a notice as provided for by section 246C(2) of the Act; or

(d) a document which these Rules require to accompany a notice within sub-paragraphs (a) to (c).

(3) The education administrator must begin to treat a creditor as an opted-out creditor as soon as reasonably practicable after delivery of the creditor's election to opt out.

#### **Creditor's election to opt out**

**7.49.**—(1) A creditor may at any time elect to be an opted-out creditor.

(2) The creditor's election to opt out must be by a notice in writing authenticated and dated by the creditor.

(3) The creditor must deliver the notice to the education administrator.

(4) A creditor becomes an opted-out creditor when the notice is delivered to the education administrator.

(5) An opted-out creditor—

(a) will remain an opted-out creditor for the duration of the proceedings unless the opt out is revoked; and

(b) is deemed to be an opted-out creditor in respect of any subsequent insolvency proceedings of a different kind relating to that further education body.

(6) The creditor may at any time revoke the election to opt out by a further notice in writing, authenticated and dated by the creditor and delivered to the education administrator.

(7) The creditor ceases to be an opted-out creditor from the date the notice is received by the education administrator.

#### **Education administrator to provide information to creditors on opting-out**

**7.50.**—(1) The education administrator must, in the first communication with a creditor, inform the creditor in writing that the creditor may elect to opt out of receiving further documents relating to the proceedings.

(2) The communication must contain—

(a) identification and contact details for the education administrator;

(b) a statement that the creditor has the right to elect to opt out of receiving further documents about the proceedings unless—

(i) the Act requires a document to be delivered to all creditors without expressly excluding opted-out creditors,

(ii) it is a notice relating to a change in the education administrator or the education administrator's contact details, or

(iii) it is a notice of a dividend or proposed dividend or a notice which the court orders to be sent to all creditors or all creditors of a particular category to which the creditor belongs;

(c) a statement that opting-out will not affect the creditor's entitlement to receive dividends should any be paid to creditors;

(d) a statement that unless these Rules provide to the contrary opting-out will not affect any right the creditor may have to vote in a decision procedure or a participate in a deemed consent procedure in the proceedings although the creditor will not receive notice of it;

(e) a statement that a creditor who opts out will be treated as having opted out in respect of any consecutive insolvency proceedings of a different kind in respect of the same further education body; and

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(f) information about how the creditor may elect to be or cease to be an opted-out creditor.

1st November 2018

*David Gauke*  
Lord Chancellor

I concur

1st November 2018

*Burnett of Maldon*  
Lord Chief Justice of England and Wales

I concur

1st November 2018

*Anne Milton*  
Minister of State for Apprenticeship and Skills  
Department for Education



## SCHEDULE 1

Rule 1.4

## Punishment of offences under these Rules

<i>Rule creating offence</i>	<i>General nature of offence</i>	<i>Mode of prosecution</i>	<i>of Punishment</i>	<i>Daily default fine (if applicable)</i>
3.13(5)	Education administrator failing to deliver progress reports in accordance with rule 3.13	Summary	Level 3 on the standard scale.	One tenth of level 3 on the standard scale.
6.9(2)	Failing to comply with education administrator's duties on vacating office	Summary	Level 3 on the standard scale.	One tenth of level 3 on the standard scale.
7.35(3)	Falsely claiming to be a person entitled to inspect a document with the intention of gaining sight of it.	1. On indictment 2. Summary	2 years, or a fine, or both.  6 months, or a fine, or both.	Not applicable.

## SCHEDULE 2

Rule 2.7(2)

## Service of documents

1.—(1) This Schedule sets out the requirements for service where a document is required to be served.

(2) Service is to be carried out in accordance with Part 6 of the CPR as that Part applies to either a “claim form” or a “document other than a claim form” except where this Schedule provides otherwise or the court otherwise approves or directs.

(3) However where a document is required or permitted to be served at a company's registered office service may be effected at a previous registered office in accordance with section 87(2) of the Companies Act.

(4) In the case of an overseas company service may be effected in any manner provided for by section 1139(2) of the Companies Act.

(5) If, for any reason, it is impracticable to effect service as provided for in paragraphs (2) to (4) then service may be effected in such other manner as the court may approve or direct.

(6) The following documents are treated as “claim forms” for the purposes of applying Part 6 of the CPR—

- (a) an application for education administration;
- (b) any other application to the court; and
- (c) an application for costs

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and must be served by the applicant.

(7) Any other documents required to be served by these Rules are to be treated as “documents other than the claim form” for the purposes of Part 6 of the CPR.

(8) Part 6 of the CPR applies to the service of documents outside the jurisdiction with such modifications as the court may approve or direct.

### **Service of application for education administration**

2.—(1) An application to the court for an education administration order must be served by delivering the documents as follows—

- (a) to the further education body at its registered office or if its registered office is not practicable or it has no registered office at its last known principal place of business in England and Wales;
- (b) to any other person at that person’s proper address.

(2) A person’s proper address is any which that person has previously notified as the address for service, but if that person has not notified such an address then the documents may be served at their usual or last known address.

(3) Paragraph (4) sets out the proper address for service for an authorised deposit-taker who—

- (a) has appointed, or is or may be entitled to appoint, an administrative receiver of the further education body; and
- (b) has not notified an address for service.

(4) The proper address for service is—

- (a) that of an office of the authorised deposit-taker where the applicant knows the further education body maintains a bank account; or
- (b) where the applicant does not know of any such office, the registered office; or
- (c) if there is no such registered office, the usual or last known address.

### **Service on joint education administrators**

3. Service of a document on one of joint education administrators is to be treated as service on all of them.

### **Certificate of service**

4.—(1) The service of an application must be verified by a certificate of service.

(2) The certificate of service must—

- (a) identify the application;
- (b) identify the further education body;
- (c) identify the applicant;
- (d) specify—
  - (i) the court in which the application was made, and the court reference number,
  - (ii) the date of the application,
  - (iii) whether the copy served was a sealed copy,
  - (iv) all persons served, and
  - (v) the manner of service and the date of service; and

(e) be verified by a statement of truth.

(3) Where substituted service has been ordered, the certificate must be accompanied by a sealed copy of the order for substituted service.

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules set out the detailed procedures for the conduct of education administration, as provided by Chapter 4 of Part 2 of the Technical and Further Education 2017 (“the Act”). Education administration is a special administration regime which applies to further education bodies.

The main features of education administration are:

- (a) the further education body enters the procedure by court order on application by the appropriate national authority, defined in the Act as, where the further education body is in England, the Secretary of State and, where the further education body is in Wales, the Welsh Ministers;
- (b) the order appoints an education administrator;
- (c) the objective of education administration is to avoid or minimise disruption to the studies of the existing students of that further education body and to ensure that it becomes unnecessary for the body to remain in education administration for that purpose. The Act sets out various means by which the education administrator may achieve the objective.

Part 2 of these Rules sets out the procedure for applying for an education administration order, provisions about the hearing of the application and the grant of the order.

Part 3 of these Rules sets out the process of education administration.

Part 4 of these Rules contains general provisions detailing court practice and procedure for the education administration.

Part 5 of these Rules contains provisions relating to distribution to creditors, including proving debts and quantifying claims.

Part 6 of these Rules contains provisions about the education administrator, including how and when the education administrator may be replaced, and the education administrator’s remuneration.

Part 7 of these Rules contains provisions about time and general rules about documents.

Schedule 1 to these Rules contains specific details of the punishment of offences under these Rules.

Schedule 2 to these Rules contains specific requirements for the service of documents within education administration proceedings.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An impact assessment for the Act is available from the Department for Education, 20 Great Smith Street, London, SW1P 3BT.