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## STATUTORY INSTRUMENTS

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# 2018 No. 1135

## The Education Administration Rules 2018

### PART 2

#### APPLICATION FOR AN EDUCATION ADMINISTRATION ORDER

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

**2.1.** An application<sup>(1)</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.

(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.

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<sup>(1)</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).

(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>(2)</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.

#### **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—

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(2) "Appropriate national authority" is defined in section 5 of the Technical and Further Education Act.

- (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.