

## SCHEDULES

### SCHEDULE 4

Section 26

#### CONDUCT OF EDUCATION ADMINISTRATION: COMPANIES

##### *Introductory*

- 1 (1) The provisions of the Insolvency Act 1986 mentioned in sub-paragraph (2) apply in relation to an education administration of a further education body that is a company as they apply in relation to administration under that Act, but with the modifications set out in this Schedule.
- (2) The provisions are—
- (a) sections 233 to 237 (management by administrators, liquidators etc);
  - (b) sections 238 to 241 (transactions at an undervalue and preferences);
  - (c) section 244 (extortionate credit bargains);
  - (d) section 246 (unenforceability of liens on books, etc);
  - (e) section 246ZA to 246ZC (fraudulent and wrongful trading);
  - (f) section 246ZD (power to assign certain causes of action);
  - (g) section 246B (use of websites);
  - (h) section 246C (creditors' ability to opt out of receiving certain notices);
  - (i) sections 247, 248(b), 249 and 251 (interpretation);
  - (j) the applicable provisions of Schedule B1 (conduct of administration).
- (3) The applicable provisions of Schedule B1 are—
- (a) paragraphs 1, 40 to 49, 54, 59, 60, 61 to 68, 70 to 75, 79, 83 to 91, 98 to 104, 106 and 107 and 109 to 111, and
  - (b) paragraph 50 (until the repeal of that paragraph by Schedule 10 to the Small Business, Enterprise and Employment Act 2015 comes into force).

##### *General modifications*

- 2 The provisions of the Insolvency Act 1986 applied by paragraph 1 are to have effect as if for any term specified in column 1 of the table there were substituted the term specified in column 2.

<i>Term</i>	<i>Modification</i>
administration application	education administration application
administration order	education administration order
administrator	education administrator
enters administration	enters education administration
in administration	in education administration

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<i>Term</i>	<i>Modification</i>
purpose of administration	objective of the education administration
the rules	the education administration rules

*Specific modifications to Schedule B1 to the Insolvency Act 1986*

- 3 Paragraphs 4 to 35 set out modifications to the applicable provisions of Schedule B1 to the Insolvency Act 1986 as applied by paragraph 1 above.
- 4 Paragraph 1 (administration) is to have effect as if—
- (a) for sub-paragraph (1) there were substituted—
- “(1) In this Schedule “education administrator”, in relation to a company, means a person appointed by the court for the purposes of an education administration order to manage its affairs, business and property.”, and
- (b) in sub-paragraph (2), for “Act” there were substituted “Schedule”.
- 5 Paragraph 40 (dismissal of pending winding-up petition) is to have effect as if sub-paragraphs (1)(b), (2) and (3) were omitted.
- 6 Paragraph 42 (moratorium on insolvency proceedings) is to have effect as if sub-paragraphs (4) and (5) were omitted.
- 7 Paragraph 43 (moratorium on other legal process) is to have effect as if sub-paragraphs (5) and (6A) were omitted.
- 8 Paragraph 44 (interim moratorium) is to have effect as if sub-paragraphs (2) to (4), (6) and (7)(a) to (c) were omitted.
- 9 Paragraph 45(2) (publicity) is to have effect as if after paragraph (b) there were inserted—
- “(ba) a member of the governing body of the relevant institution,
- (bb) any senior post holder or principal of the relevant institution.”.
- 10 Paragraph 46(6) (date for notifying administrator’s appointment) is to have effect as if for paragraphs (a) to (c) there were substituted “the date on which the education administration order comes into force”.
- 11 Paragraph 47 (statement of affairs) is to have effect as if—
- (a) in sub-paragraph (3), after paragraph (a) there were inserted—
- “(aa) a member of the governing body of the relevant institution,
- (ab) any senior post holder or principal of the relevant institution, and”, and
- (b) sub-paragraph (5) were omitted.
- 12 Paragraph 49 (administrator’s proposals) is to have effect as if—
- (a) sub-paragraphs (2)(b) and, (3) were omitted,
- (b) in sub-paragraph (4), after paragraph (a) there were inserted—
- “(aa) to the appropriate national authority,
- (ab) to the director of children’s services at the local authority or combined authority in whose area the relevant institution is based, and to any other director of

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- children’s services that the education administrator thinks appropriate.”, and
- (c) sub-paragraph (5)(b) and (6) were omitted.
- 13 Paragraph 54 is to have effect as if the following were substituted for it—
- “54 (1) The education administrator of a company may on one or more occasions revise the proposals included in the statement made under paragraph 49 in relation to the company.
- (2) If the education administrator thinks that a revision is substantial, the education administrator must send a copy of the revised proposals—
- (a) to the registrar of companies,
- (b) to the appropriate national authority,
- (c) to any director of children’s services to whom the statement of proposals was sent under paragraph 49,
- (d) to every creditor of the company, other than an opted-out creditor, of whose claim and address the education administrator is aware, and
- (e) to every member of the company of whose address the education administrator is aware.
- (3) A copy sent in accordance with sub-paragraph (2) must be sent within the prescribed period.
- (4) The education administrator is to be taken to have complied with sub-paragraph (2)(d) if the education administrator publishes, in the prescribed manner, a notice undertaking to provide a copy of the revised proposals free of charge to any member of the company who applies in writing to a specified address.
- (5) An education administrator who fails without reasonable excuse to comply with this paragraph commits an offence.”
- 14 Paragraph 60 (powers of an administrator) is to have effect as if the following were substituted for it—
- “60 (1) The education administrator of a company has the powers specified in Schedule 1 to this Act.
- (2) The education administrator of a company has the power to act on behalf of the company for the purposes of provision contained in any legislation which confers a power on the company or imposes a duty on it.
- (3) In sub-paragraph (2) “legislation” means provision made by or under any Act.”
- 15 Paragraph 61 is to have effect as if the following were substituted for it—
- “61 The education administrator—
- (a) may appoint or remove a director of the company,
- (b) may appoint or remove a member of the governing body of the relevant institution,
- (c) may appoint or remove the chief executive of the relevant institution, and
- (d) may appoint or remove the principal of the relevant institution.”

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- 16 Paragraph 64 (management powers may not be exercised without consent of the administrator) is to have effect as if in sub-subparagraph (1) after “an officer of a company in administration” there were inserted “or the chief executive of the relevant institution”.
- 17 Paragraph 68 (management duties of an administrator) is to have effect as if—
- (a) in sub-paragraph (1), for paragraphs (a) to (c) there were substituted “the proposals as—
    - “(a) set out in the statement made under paragraph 49 in relation to the company, and
    - (b) from time to time revised under paragraph 54,

for achieving the objective of the education administration.”, and
  - (b) in sub-paragraph (3), for paragraphs (a) to (d) there were substituted “the directions are consistent with the achievement of the objective of the education administration”.
- 18 Paragraph 73 (protection for secured or preferential creditor) is to have effect as if in sub-paragraph (3) for “or modified” there were substituted “under paragraph 54”.
- 19 Paragraph 74 (challenge to administrator’s conduct) is to have effect as if—
- (a) for sub-paragraph (2) there were substituted—
    - “(2) Where a company is in education administration, the appropriate national authority, a creditor or member may apply to the court claiming that the education administrator is not carrying out his or her functions in accordance with section 24(2) or (5) of the Technical and Further Education Act 2017 (general functions of education administrator).”,
  - (b) sub-paragraph (6)—
    - (i) at the end of paragraph (b) there were inserted “or”, and
    - (ii) paragraph (c) (and the “or” before it) were omitted, and
  - (c) after that sub-paragraph there were inserted—
    - “(7) In the case of a claim made by a creditor or member, the court may grant a remedy or relief or make an order under this paragraph only if it has given the appropriate national authority a reasonable opportunity of making representations about the claim and the proposed remedy, relief or order.
    - (8) Before the making of an order of the kind mentioned in sub-paragraph (4)(d)—
      - (a) the court must notify the education administrator of the proposed order and of a period during which the education administrator is to have the opportunity of taking steps falling within sub-paragraph (9), and
      - (b) the period notified must have expired without the taking of such of those steps as the court thinks should have been taken,

and that period must be a reasonable period.
    - (9) The steps referred to in sub-paragraph (8) are—

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- (a) remedying the failure to carry out functions in accordance with section 24(2) or (5) of the Technical and Further Education Act 2017, and
  - (b) ensuring that the failure is not repeated.”
- 20 Paragraph 75(2) (misfeasance) is to have effect as if after paragraph (b) there were inserted—
  - “(ba) a person appointed as an administrator of the company under the provisions of this Act as they have effect in relation to administrators other than education administrators.”.
- 21 Paragraph 79 (end of administration) is to have effect as if—
  - (a) for sub-paragraphs (1) and (2) there were substituted—
    - “(1) On an application made by a person mentioned in sub-paragraph (2), the court may provide for the appointment of an education administrator of a company to cease to have effect from a specified time.
    - (2) An application may be made to the court under this paragraph—
      - (a) by the appropriate national authority, or
      - (b) with the consent of the appropriate national authority, by the education administrator.”, and
    - (b) sub-paragraph (3) were omitted.
- 22 Paragraph 83 (notice to registrar when moving to voluntary liquidation) is to have effect as if—
  - (a) sub-paragraph (2) were omitted, and
  - (b) in sub-paragraph (3) after “may” there were inserted “, with the consent of the appropriate national authority.”.
- 23 Paragraph 84 (notice to registrar when moving to dissolution) is to have effect as if—
  - (a) in sub-paragraph (1), for “to the registrar of companies” there were substituted—
    - “(a) to the appropriate national authority, and
    - (b) if directed to do so by the appropriate national authority, to the registrar of companies”.
  - (b) sub-paragraph (2) were omitted, and
  - (c) in sub-paragraphs (3) to (6), for “(1)”, in each place, there were substituted “(1)(b)”.
- 24 Paragraph 87(2) (resignation of administrator) is to have effect as if for paragraphs (a) to (d) there were substituted “by notice in writing to the court”.
- 25 Paragraph 89(2) (administrator ceasing to be qualified) is to have effect as if for paragraphs (a) to (d) there were substituted “to the court”.
- 26 Paragraph 90 (filling vacancy in office of administrator) is to have effect as if for “Paragraphs 91 to 95 apply” there were substituted “Paragraph 91 applies”.
- 27 Paragraph 91 (vacancies in court appointments) is to have effect as if—
  - (a) for sub-paragraph (1) there were substituted—
    - “(1) The court may replace the education administrator on an application made—

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- (a) by the appropriate national authority, or
  - (b) where more than one person was appointed to act jointly as the education administrator, by any of those persons who remains in office.”, and
- (b) sub-paragraph (2) were omitted.
- 28 Paragraph 98 (discharge from liability on vacation of office) is to have effect as if sub-paragraphs (2)(b) and (ba), (3) and (3A) were omitted.
- 29 Paragraph 99 (charges and liabilities upon vacation of office by administrator) is to have effect as if after sub-paragraph (6) there were inserted—
- “(7) Where a loan is made under section 27 of the Technical and Further Education Act 2017 before cessation, sub-paragraph (4) does not apply in relation to the loan or interest on it and—
- (a) if the terms of the loan provide for this paragraph to apply, any sum that must be paid by the company in respect of the loan or interest shall be—
    - (i) charged on and payable out of property of which the education administrator had custody or control immediately before cessation, and
    - (ii) payable in priority to any charge arising under sub-paragraph (3);
  - (b) if the terms of the loan provide for this paragraph to apply, any sum that must be paid by the company in respect of the loan or interest shall be treated as an unsecured debt that is not a preferential debt,
  - (c) if the terms of the loan provide for this paragraph to apply, any sum that must be paid by the company in respect of the loan or interest shall be payable after all other creditors have been paid in full.”
- 30 Paragraph 100 (joint and concurrent administrators) is to have effect as if sub-paragraph (2) were omitted.
- 31 Paragraph 101(3) (joint administrators) is to have effect as if after “87 to” there were inserted “91, 98 and”.
- 32 Paragraph 103 (appointment of additional administrators) is to have effect as if—
- (a) in sub-paragraph (2) the words from the beginning to “order” were omitted,
  - (b) for paragraph (a) there were substituted—
    - “(a) the appropriate national authority, or”, and
  - (c) sub-paragraphs (3) to (5) were omitted.
- 34 Paragraph 109 (references to extended periods) is to have effect as if “or 108” were omitted.
- 35 Paragraph 111 (interpretation) is to have effect as if the following were substituted for it—
- “111 (1) In this Schedule—
- “administrative receiver” has the meaning given by section 251,
  - ““appropriate national authority”—

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- (a) in relation to a company conducting a designated further education institution in England, means the Secretary of State;
  - (b) in relation to a company conducting a designated further education institution in Wales, means the Welsh Ministers;
- “designated further education institution” has the meaning given by section 5;
- “education administrator” includes a reference to a former education administrator, where the context requires;
- “enters education administration” has the meaning given by paragraph 1;
- “floating charge” means a charge which is a floating charge on its creation;
- “governing body”, in relation to a designated further education institution, means any board of governors of the institution or any persons responsible for the management of the institution, whether or not formally constituted as a governing body or board of governors;
- “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;
- “in education administration” has the meaning given by paragraph 1;
- “market value” means the amount which would be realised on a sale of property in the open market by a willing vendor;
- “the relevant institution” in relation to company, means the institution which the company is established to conduct;
- “senior post holder”, in relation to a relevant institution, means a person appointed as a senior post holder at the institution.
- (2) For the purposes of this Schedule a reference to an education administration order includes a reference to an appointment under paragraph 91 or 103.
- (3) In this Schedule a reference to action includes a reference to inaction.”

*Specific modifications to section 251 of the Insolvency Act 1986*

- 36 Section 251 of the Insolvency Act 1986 (definitions) as applied by paragraph 1 above is to have effect as if—
- (a) for the definition of “prescribed” there were substituted—

““prescribed” means prescribed by rules made under section 411 of the Insolvency Act 1986 as a result of section 32 of the Technical and Further Education Act 2017;”,
  - (b) the definition of “the rules” were omitted, and
  - (c) at the appropriate places, there were inserted—

““combined authority” means an authority established under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009;”,

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““director of children’s services” means—

- (a) in respect of a local authority, a person appointed under section 18 of the Children Act 2004;
- (b) in respect of a combined authority, a person appointed to discharge functions corresponding to those of a person appointed under section 18 of the Children Act 2004;”,

““education administration application” has the meaning given by section 18 of the Technical and Further Education Act 2017;”,

““education administration order” has the meaning given by section 17 of the Technical and Further Education Act 2017;”,

““education administration rules” has the meaning given by section 35 of the Technical and Further Education Act 2017;”,

““education administrator” has the meaning given by section 35 of the Technical and Further Education Act 2017;”,

““local authority” has the meaning given in section 65 of the Children Act 2004;”,

““objective”, in relation to an education administration, is to be read in accordance with section 16 of the Technical and Further Education Act 2017;”.

*Power to add modifications*

- 37 (1) The Secretary of State may by regulations—
- (a) amend paragraph 1(3)(a) so as to add further provisions to the list of applicable provisions in Schedule B1 to the Insolvency Act 1986;
  - (b) amend this Schedule so as to add further modifications to that Schedule.
- (2) Regulations under this paragraph are subject to the affirmative resolution procedure.