

SCHEDULES

SCHEDULE 3

Section 26

CONDUCT OF EDUCATION ADMINISTRATION: STATUTORY CORPORATIONS

Introductory

- 1 (1) The provisions of the Insolvency Act 1986 mentioned in sub-paragraph (2) apply in relation to the education administration of a further education body that is a statutory corporation as they apply in relation to a company administration, 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, 71 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>
company	further education body
administration application	education administration application
administration order	education administration order
administrator	education administrator
director	(a) member of the further education body, (b) principal of the relevant institution, or

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<i>Term</i>	<i>Modification</i>
enters administration	(c) if the context requires, both of the above. enters education administration
in administration	in education administration
officer (in relation to a company)	(a) a member of the further education body, (b) the clerk to the further education body, (c) the chief executive of the relevant institution, (d) any senior post holder or principal of the relevant institution, or (e) if the context requires, all of the above.
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 37 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 further education body, 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 41 (dismissal of administrative or other receiver) is to have effect as if—
- (a) sub-paragraph (1) were omitted;
- (b) in sub-paragraph (3), “administrative receiver or” and “(1) or” were omitted;
- (c) in sub-paragraph (4)(a) and (b), “administrative receiver or” were omitted.
- 7 Paragraph 42 (moratorium on insolvency proceedings) is to have effect as if sub-paragraphs (4) and (5) were omitted.
- 8 Paragraph 43 (moratorium on other legal process) is to have effect as if sub-paragraphs (5) and (6A) were omitted.
- 9 Paragraph 44 (interim moratorium) is to have effect as if sub-paragraphs (2) to (4), (6) and (7) were omitted.
- 10 Paragraph 45(2) (publicity) is to have effect as if for paragraph (b) there were substituted—
- “(b) a member of the further education body,
(ba) the clerk to the further education body,
(bb) the chief executive of the relevant institution,
(bc) any senior post holder or principal of the relevant institution, and”.

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- 11 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”.
- 12 Paragraph 47 (statement of affairs) is to have effect as if—
- (a) for sub-paragraph (3)(a) there were substituted—
 - “(a) a person who is or has been a member of the further education body,
 - (aa) a person who is or has been the clerk to the further education body,
 - (ab) a person who is or has been chief executive of the relevant institution,
 - (ac) a person who is or has been a senior post holder or principal of the relevant institution, and”,
 - (b) in sub-paragraph (3), paragraph (d) were omitted, and
 - (c) sub-paragraph (5) were omitted.
- 13 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 children’s services that the education administrator thinks appropriate,” and
 - (c) sub-paragraphs (5)(b) and (6) were omitted.
- 14 Paragraph 54 is to have effect as if the following were substituted for it—
- “54 (1) The education administrator of a further education body may on one or more occasions revise the proposals included in the statement made under paragraph 49 in relation to the body.
- (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 further education body, other than an opted-out creditor, of whose claim and address the education administrator is aware, and
 - (e) to every member of the further education body 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) An education administrator who fails without reasonable excuse to comply with this paragraph commits an offence.”
- 15 Paragraph 60 is to have effect as if the following were substituted for it—

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- “60 (1) The education administrator of a further education body has the powers specified in Schedule 1 to this Act (reading references in that Schedule to the company as references to the further education body).
- (2) The education administrator of a further education body has the power to act on behalf of the further education body for the purposes of provision contained in any legislation which confers a power on the further education body or imposes a duty on it.
- (3) In sub-paragraph (2) “legislation” means provision made by or under any Act.”
- 16 Paragraph 61 is to have effect as if the following were substituted for it—
- “61 The education administrator—
- (a) may appoint or remove the clerk to the further education body,
- (b) may appoint or remove the chief executive of the relevant institution, and
- (c) may appoint or remove the principal of the relevant institution.”
- 17 Paragraph 64 (management powers may not be exercised without consent of the administrator) is to have effect as if in sub-paragraph (1) for “an officer of a company in administration” there were substituted “the clerk to the further education body or chief executive of the relevant institution”.
- 18 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 further education body, 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”.
- 19 Paragraph 71 (charged property: non-floating charge), is to have effect as if, in sub-paragraph (1), the words “(other than a floating charge)” were omitted.
- 20 Paragraph 73 (protection for secured or preferential creditor) is to have effect as if—
- (a) in sub-paragraph (2), paragraphs (c) and (d) were omitted, and
- (b) in sub-paragraph (3), for “or modified” there were substituted “under paragraph 54”.
- 21 Paragraph 74 (challenge to administrator’s conduct) is to have effect as if—
- (a) sub-paragraph (1) were omitted,
- (b) for sub-paragraph (2) there were substituted—
- “(2) Where a further education body is in education administration the appropriate national authority or a creditor 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 (4) of the Technical and Further Education Act 2017 (general functions of education administrator).”

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- (c) in sub-paragraph (6), paragraphs (b) to (c) were omitted, and
 - (d) after that sub-paragraph there were inserted—
 - “(7) In the case of a claim made by a creditor, 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 steps for—
 - (a) remedying the failure to carry out functions in accordance with section 24(2) or (4) of the Technical and Further Education Act 2017, and
 - (b) ensuring that the failure is not repeated.”
- 22 Paragraph 75(2) (misfeasance) is to have effect as if—
- (a) after paragraph (b) there were inserted—
 - “(ba) a person appointed as an administrator of the further education body under the provisions of this Act as they have effect in relation to administrators other than education administrators,”
 - (b) at the end of paragraph (c) there were inserted “or”, and
 - (c) paragraph (e) (and the “or” before it) were omitted.
- 23 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 further education body 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.
- 24 Paragraph 83 (notice to registrar when moving to voluntary liquidation) is to have effect as if—
- (a) sub-paragraph (2) were omitted, and

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- (b) in sub-paragraph (3) after “may” there were inserted “, with the consent of the appropriate national authority,”.
- 25 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)”.
- 26 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”.
- 27 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”.
- 28 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”.
- 29 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—
- (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.
- 30 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.
- 31 Paragraph 99 (charges and liabilities upon vacation of office by administrator) is to have effect as if—
- (a) in sub-paragraph (3), paragraph (b) were omitted, and
- (b) 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 further education body 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);

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- (b) if the terms of the loan provide for this paragraph to apply, any sum that must be paid by the further education body 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 further education body in respect of the loan or interest shall be payable after all other creditors have been paid in full.”
- 32 Paragraph 100 (joint and concurrent administrators) is to have effect as if sub-paragraph (2) were omitted.
- 33 Paragraph 101(3) (joint administrators) is to have effect as if after “87 to” there were inserted “91, 98 and”.
- 34 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) in sub-paragraph (2), for paragraph (a) there were substituted—
 - “(a) the appropriate national authority, or”, and
 - (c) sub-paragraphs (3) to (5) were omitted.
- 35 Paragraph 106(2) (penalties) is to have effect as if paragraphs (a), (b), (f), (g), (i) and (l) to (n) were omitted.
- 36 Paragraph 109 (references to extended periods) is to have effect as if “or 108” were omitted.
- 37 Paragraph 111 (interpretation) is to have effect as if the following were substituted for it—
 - “111 (1) In this Schedule—
 - “education administrator” includes a reference to a former education administrator, where the context requires;
 - “enters education administration” has the meaning given by paragraph 1;
 - “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.
 - (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 a provision of this Act other than this Schedule is to the provision as it applies to a further education body by virtue of section 6 of the Technical and Further Education Act 2017.
 - (4) In this Schedule a reference to action includes a reference to inaction.”

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Specific modifications to section 251 of the Insolvency Act 1986

- 38 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 definitions of “officer” and “the rules” were omitted, and
 - (c) at the appropriate places, there were inserted—
 - ““appropriate national authority”—
 - (a) in relation to a further education body in England, means the Secretary of State;
 - (b) in relation to a further education body in Wales, means the Welsh Ministers;”,
 - ““combined authority” means an authority established under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009;”,
 - ““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;”,
 - ““further education body” has the meaning given by section 4 of the Technical and Further Education Act 2017;”,
 - ““further education body in England” has the meaning given by section 4 of the Technical and Further Education Act 2017;”,
 - ““further education body in Wales” has the meaning given by section 4 of the Technical and Further Education Act 2017;”,
 - ““local authority” has the meaning given in section 65 of the Children Act 2004;”,
 - ““the principal”, in relation to a relevant institution, means a principal appointed under the further education body’s instrument of government;”,
 - ““objective”, in relation to an education administration, is to be read in accordance with section 16 of the Technical and Further Education Act 2017;”,
 - ““the relevant institution”—

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- (a) in relation to a further education corporation, means the institution which the corporation is established to conduct, and
 - (b) in relation to a sixth form college corporation, means the relevant sixth form college as defined by section 90(1) of the Further and Higher Education Act 1992;”,
- ““senior post holder”, in relation to a relevant institution, means a person appointed as a senior post holder by the further education body;”.”.

Power to add modifications

- 39 (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.