



Technical and Further Education Act 2017

2017 CHAPTER 19

PART 2

FURTHER EDUCATION BODIES: INSOLVENCY ETC

CHAPTER 4

FURTHER EDUCATION BODIES: SPECIAL ADMINISTRATION

Introduction to education administration

15 Overview of Chapter

- (1) This Chapter creates a procedure to be known as education administration.
- (2) The main features of an education administration are that—
 - (a) it can be used where a further education body is unable to pay its debts or is likely to become unable to pay its debts,
 - (b) the court appoints an education administrator on the application of the appropriate national authority, and
 - (c) the education administrator manages the body's affairs, business and property with a view to avoiding or minimising disruption to the studies of existing students.

16 Objective of education administration

- (1) The objective of an education administration is to—
 - (a) avoid or minimise disruption to the studies of the existing students of the further education body as a whole, and
 - (b) ensure that it becomes unnecessary for the body to remain in education administration for that purpose.

- (2) The means by which the education administrator may achieve that objective include—
- (a) rescuing the further education body as a going concern,
 - (b) transferring some or all of its undertaking to another body,
 - (c) keeping it going until existing students have completed their studies, or
 - (d) making arrangements for existing students to complete their studies at another institution.

Process

17 Education administration order

- (1) An education administration order is an order of the court appointing a person as the education administrator of a further education body.
- (2) A person is eligible for appointment as an education administrator only if the person would be qualified to act as an insolvency practitioner in relation to the further education body.
- (3) While an education administration order is in force the further education body may be described as being “in education administration”.

18 Application for education administration order

- (1) An education administration order may be made only on an application by the appropriate national authority.
- (2) The appropriate national authority must give notice of an application—
 - (a) to the further education body to which the application relates, and
 - (b) to any person specified in education administration rules (for those rules, see section 32).
- (3) An application for an education administration order is referred to in this Chapter as an “education administration application”.

19 Grounds for making an education administration order

- (1) The court may make an education administration order on an application only if satisfied that the further education body—
 - (a) is unable to pay its debts, or
 - (b) is likely to become unable to pay its debts.
- (2) The court has no power to make an education administration order in relation to a further education body which—
 - (a) is in administration under Schedule B1 to the Insolvency Act 1986, or
 - (b) has gone into liquidation (within the meaning of section 247(2) of the Insolvency Act 1986).
- (3) For the purposes of this section a further education body is unable to pay its debts if it is deemed to be unable to pay its debts under section 123 of the Insolvency Act 1986.

20 Powers of the court on hearing an application

- (1) On hearing an education administration application the court may—
 - (a) grant the application,
 - (b) adjourn the application conditionally or unconditionally,
 - (c) dismiss the application,
 - (d) make an interim order,
 - (e) treat that application as a winding-up petition and make any order the court could make under section 125 of the Insolvency Act 1986 (power of court on hearing winding-up petition), or
 - (f) make any other order that it thinks appropriate.
- (2) An interim order under subsection (1)(d) may, in particular—
 - (a) restrict the exercise of a power of the further education body,
 - (b) in the case of a further education body that is a statutory corporation, restrict the exercise of a power of its members,
 - (c) in the case of a further education body that is a company, restrict the exercise of a power of its directors, and
 - (d) make provision conferring a discretion on a person who would be qualified to act as an insolvency practitioner in relation to the further education body.
- (3) An education administration order comes into force—
 - (a) at the time appointed by the court, or
 - (b) if no time is appointed by the court, when the order is made.

21 Appointment of two or more education administrators

If an education administration order appoints two or more persons as the education administrator of a further education body, the order must set out—

- (a) which (if any) of the functions of the education administrator are to be carried out only by the appointees acting jointly,
- (b) the circumstances (if any) in which the functions of an education administrator are to be carried out by one of the appointees, or by particular appointees, acting alone, and
- (c) the circumstances (if any) in which things done in relation to one of the appointees, or in relation to particular appointees, are to be treated as done in relation to all of them.

22 Duty to dismiss ordinary administration application

- (1) On the making of an education administration order in relation to a further education body, the court must dismiss any ordinary administration application made in relation to the body which is outstanding.
- (2) In this section “ordinary administration application” means an application in accordance with paragraph 12 of Schedule B1 to the Insolvency Act 1986.
- (3) Subsections (2) to (4) of section 14 (meaning of “outstanding”) apply for the purposes of this section.

23 Status of education administrator

- (1) An education administrator is an officer of the court.
- (2) In carrying out functions in relation to a further education body an education administrator acts as its agent.

Functions of administrator and conduct of administration

24 General functions of education administrator

- (1) Where an education administration order is in force in relation to a further education body, the body's affairs, business and property are to be managed by the education administrator.
- (2) The education administrator must carry out his or her functions for the purpose of achieving the objective of the education administration.
- (3) In pursuing the objective of the education administration set out in section 16(1)(a) the education administrator must, in particular, take into account the needs of existing students who have special educational needs.
- (4) The education administrator of a further education body that is a statutory corporation must, so far as is consistent with the objective of the education administration, carry out his or her functions in a way that achieves the best result for the further education body's creditors as a whole.
- (5) The education administrator of a further education body that is a company must, so far as is consistent with the objective of the education administration, carry out his or her functions in a way that achieves the best result for—
 - (a) the company's creditors as a whole, and
 - (b) subject to that, the company's members as a whole.
- (6) For the purposes of this section an existing student has "special educational needs" if he or she has a learning difficulty which calls for special educational provision to be made for him or her.
- (7) In subsection (6)—

"special educational provision", in relation to an existing student, means provision for education or training that is additional to, or different from, that made generally for other students of the same age;

"learning difficulty" is to be read in accordance with section 19(6) and (7) of the Further and Higher Education Act 1992.

25 Transfer schemes

Schedule 2 gives an education administrator the power to make transfer schemes.

26 Conduct of administration

- (1) Schedule 3 applies provisions of the Insolvency Act 1986, with modifications, in relation to the education administration of a further education body that is a statutory corporation.

Status: This is the original version (as it was originally enacted).

- (2) Schedule 4 makes similar provision in relation to the education administration of a further education body that is a company.

Financial support for bodies in education administration

27 Grants and loans where education administration order is made

- (1) If an education administration order has been made in relation to a further education body, the appropriate national authority may make grants or loans to the body for the purpose of achieving the objective of the education administration.
- (2) A grant or loan under this section may be made on whatever terms the appropriate national authority considers appropriate (including terms relating to repayment of the grant or loan, with or without interest).
- (3) In the case of a loan, the terms must provide for paragraph 99(7)(a), (b) or (c) of Schedule B1 to the Insolvency Act 1986 (vacation of office: charges and liabilities) to apply in relation to any sum that must be paid by the further education body in respect of the loan or interest on it.
- (4) In subsection (3) the reference to paragraph 99 of Schedule B1 to the Insolvency Act 1986 is to that Schedule as applied by Schedule 3 or 4 to this Act.

28 Indemnities where education administration order is made

- (1) If an education administration order has been made in relation to a further education body, the appropriate national authority may agree to indemnify persons in respect of one or both of the following—
- (a) liabilities incurred in connection with the carrying out of functions by the education administrator, and
 - (b) loss or damage sustained in that connection.
- (2) The agreement may be made in whatever manner, and on whatever terms, the appropriate national authority considers appropriate.
- (3) As soon as possible after agreeing to indemnify persons under this section, the appropriate national authority must lay a statement of the agreement before Parliament or the National Assembly for Wales (as appropriate).
- (4) For repayment of sums paid by the appropriate national authority in consequence of an indemnity agreed to under this section, see section 29.
- (5) The power of the appropriate national authority to agree to indemnify persons—
- (a) is confined to a power to agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as relevant persons, but
 - (b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.
- (6) The following are relevant persons for the purposes of this section—
- (a) the education administrator;
 - (b) an employee of the education administrator;

Status: This is the original version (as it was originally enacted).

- (c) a partner or employee of a firm of which the education administrator is a partner or employee;
 - (d) a partner of a firm of which the education administrator was an employee or partner at a time when the order was in force;
 - (e) a body corporate which is the employer of the education administrator;
 - (f) an officer, employee or member of such a body corporate;
 - (g) a Scottish firm which is the employer of the education administrator or of which the education administrator is a partner.
- (7) For the purposes of subsection (6)—
- (a) references to the education administrator are to be read, where two or more persons are appointed as the education administrator, as references to any one or more of them, and
 - (b) references to a firm of which a person was a partner or employee at a particular time include a firm which holds itself out to be the successor of a firm of which the person was a partner or employee at that time.

29 Indemnities: repayment by further education bodies etc

- (1) This section applies where a sum is paid out by the appropriate national authority in consequence of an indemnity agreed to under section 28 in relation to the education administration of a further education body.
- (2) The further education body must pay the appropriate national authority—
 - (a) any amounts in or towards the repayment of that sum that the appropriate national authority directs, and
 - (b) interest on amounts outstanding under this subsection at whatever rates the appropriate national authority directs.
- (3) The payments must be made by the further education body at times, and in a manner, determined by the appropriate national authority
- (4) Subsection (2) does not apply in the case of a sum paid by the appropriate national authority for indemnifying a person in respect of a liability to the further education body.
- (5) The appropriate national authority must lay before Parliament or the National Assembly for Wales (as appropriate) a statement relating to the sum paid out in consequence of the indemnity—
 - (a) as soon as possible after the end of the financial year in which the sum is paid out, and
 - (b) if subsection (2) applies to the sum, as soon as possible after the end of each subsequent financial year in relation to which the repayment condition has not been met.
- (6) The repayment condition is met in relation to a financial year if—
 - (a) the whole of the sum has been repaid to the appropriate national authority before the beginning of the year, and
 - (b) the further education body was not at any time during the year liable to pay interest on amounts that became due in respect of the sum.

30 Guarantees where education administration order is made

- (1) If an education administration order has been made in relation to a further education body the appropriate national authority may guarantee—
 - (a) the repayment of any sum borrowed by the body while that order is in force,
 - (b) the payment of interest on any sum borrowed by the body while that order is in force, and
 - (c) the discharge of any other financial obligation of the body in connection with the borrowing of any sum while that order is in force.
- (2) The appropriate national authority may give the guarantees in whatever manner, and on whatever terms, the appropriate national authority considers appropriate.
- (3) As soon as possible after giving a guarantee under this section, the appropriate national authority must lay a statement of the guarantee before Parliament or the National Assembly for Wales (as appropriate).
- (4) For repayment of sums paid by the appropriate national authority under a guarantee given under this section, see section 31.

31 Guarantees: repayment by further education body etc

- (1) This section applies where a sum is paid out by the appropriate national authority under a guarantee given by the appropriate national authority under section 30 in relation to a further education body.
- (2) The further education body must pay the appropriate national authority—
 - (a) any amounts in or towards the repayment of that sum that the appropriate national authority directs, and
 - (b) interest on amounts outstanding under this subsection at whatever rates the appropriate national authority directs.
- (3) The payments must be made by the further education body at times, and in a manner, determined by the appropriate national authority.
- (4) The appropriate national authority must lay before Parliament or the National Assembly for Wales (as appropriate) a statement relating to the sum paid out under the guarantee—
 - (a) as soon as possible after the end of the financial year in which the sum is paid out, and
 - (b) as soon as possible after the end of each subsequent financial year in relation to which the repayment condition has not been met.
- (5) The repayment condition is met in relation to a financial year if—
 - (a) the whole of the sum has been repaid to the appropriate national authority before the beginning of the year, and
 - (b) the further education body was not at any time during the year liable to pay interest on amounts that became due in respect of the sum.

Supplementary

32 Education administration rules

- (1) The power to make rules under section 411 of the Insolvency Act 1986 is to apply for the purpose of giving effect to this Chapter as it applies for the purpose of giving effect to Parts 1 to 7 of that Act (and, accordingly, as if references in that section to those Parts included references to this Chapter).
- (2) Section 413(2) of the Insolvency Act 1986 (duty to consult Insolvency Rules Committee about rules) does not apply to rules made under section 411 of the Insolvency Act 1986 as a result of this section.

33 Application of other insolvency law

- (1) The Secretary of State may make regulations, in consequence of this Chapter or subordinate legislation made under it—
 - (a) providing for any legislation about insolvency to apply in relation to a further education body (with or without modifications);
 - (b) amending, or modifying, any legislation about insolvency as it applies in relation to a further education body.
- (2) In subsection (1) “legislation about insolvency” includes any legislation that makes provision by reference to anything that is or may be done under any provision of the Insolvency Act 1986, or under any provision of subordinate legislation made under that Act, as applied by this Chapter.
- (3) Regulations under this section that apply, amend or modify a provision of an Act are subject to the affirmative resolution procedure.
- (4) Any other regulations under this section are subject to the negative resolution procedure.
- (5) In this section “legislation” means any provision made by or under an Act passed before or in the same session as this Act.

34 Modification of this Chapter under the Enterprise Act 2002

A power to modify or apply enactments conferred on the Secretary of State by section 248 or 277 of the Enterprise Act 2002 includes power to make such consequential modifications of this Chapter as the Secretary of State considers appropriate in connection with any other provision made under that section.

35 Interpretation of Chapter

- (1) In this Chapter—
 - “business”, “property” and “security” have the same meaning as in the Insolvency Act 1986;
 - “the court”, in relation to a further education body, means the court having jurisdiction to wind up the body;
 - “education administration application” has the meaning given by section 18;
 - “education administration order” has the meaning given by section 17;

Status: This is the original version (as it was originally enacted).

“education administration rules” means rules made under section 411 of the Insolvency Act 1986 as a result of section 32 above;

“education administrator” means a person appointed by an education administration order and is to be read in accordance with subsection (2) below;

“existing student”, in relation to a further education body that is in education administration, means a person who—

- (a) is a student at the relevant institution when the administration order is made, or
- (b) has accepted a place on a course at the relevant institution when the administration order is made;

“financial year” means a period of 12 months ending with 31 March;

“member”, in relation to a further education body that is a company, has the same meaning as in the Insolvency Act 1986;

“objective of the education administration” is to be read in accordance with section 16;

“the relevant institution”—

- (a) in relation to a further education corporation, means the institution which the corporation is established to conduct;
- (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;
- (c) in relation to a company conducting a designated further education institution, means that designated further education institution;

“Scottish firm” means a firm constituted under the law of Scotland.

- (2) In this Chapter references to the education administrator of a further education body—
 - (a) include a person appointed under paragraph 91 or 103 of Schedule B1 to the Insolvency Act 1986, as applied by Schedule 3 or 4 to this Act, to be the education administrator of the further education body, and
 - (b) if two or more persons are appointed as the education administrator of the further education body, are to be read in accordance with the provision made under section 21.
- (3) References in this Chapter to a person qualified to act as an insolvency practitioner in relation to a further education body are to be read in accordance with Part 13 of the Insolvency Act 1986.
- (4) In relation to a further education body that is a statutory corporation, references in this Chapter to a provision of the Insolvency Act 1986 (except the references in sections 27, 32 and 33 and Schedule 3 and in subsection (2) above) are to that provision as it applies to further education bodies by virtue of section 6.