
STATUTORY INSTRUMENTS

2018 No. 1135

The Education Administration Rules 2018

PART 3

PROCESS OF EDUCATION ADMINISTRATION

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.