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STATUTORY INSTRUMENTS

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**2018 No. 1135**

**The Education Administration Rules 2018**

**PART 6**

**THE EDUCATION ADMINISTRATOR**

**CHAPTER 1**

**Replacing the Education Administrator**

**Grounds for resignation**

- 6.1.**—(1) An education administrator may resign—
- (a) on grounds of ill health;
  - (b) because of the intention to cease to practise as an insolvency practitioner; or
  - (c) because the further discharge of the duties of education administrator is prevented or made impractical by—
    - (i) a conflict of interest; or
    - (ii) a change of personal circumstances.
- (2) The education administrator may, with the permission of the court, resign on other grounds.

**Notice of intention to resign**

- 6.2.**—(1) The education administrator must give at least five business days' notice of intention—
- (a) to resign in a case falling within rule 6.1(1); or
  - (b) to apply for the court's permission to resign in a case falling within rule 6.1(2).
- (2) The notice must contain—
- (a) identification details for the proceedings; and
  - (b) the date of appointment of the education administrator.
- (3) The notice must also contain—
- (a) the date with effect from which the education administrator intends to resign; or
  - (b) where permission of the court is required under rule 6.1(2), the date on which the education administrator intends to file with the court an application for permission to resign.
- (4) Notice must be delivered to—
- (a) the appropriate national authority;
  - (b) if there is a continuing education administrator of the further education body, to that continuing education administrator; and
  - (c) if there is no such continuing education administrator, to—
    - (i) the further education body, and

(ii) all the further education body's creditors, including any floating charge holders.

(5) The notice must be accompanied by a summary of the education administrator's receipts and payments.

### **Notice of resignation**

**6.3.**—(1) A resigning education administrator must, within five business days of delivering the notice under paragraph 87(2) of Schedule B1, deliver a copy of the notice to—

- (a) the registrar of companies;
- (b) all persons to whom notice of intention to resign was delivered under rule 6.2.

(2) The notice must contain—

- (a) identification details for the proceedings;
- (b) the date of the appointment of the education administrator; and
- (c) the name of the person who made the education administration application.

(3) The notice must state—

- (a) the date from which the resignation is to have effect; and
- (b) where the resignation is with the permission of the court, the date on which permission was given.

(4) Notice of resignation given under paragraph 87(2) of Schedule B1 must be given by filing the notice with the court.

### **Application to court to remove education administrator from office**

**6.4.**—(1) An application for an order under paragraph 88 of Schedule B1 that the education administrator be removed from office must state the grounds on which the order is requested.

(2) A copy of the application must be delivered, not less than five business days before the date fixed for the hearing—

- (a) to the education administrator;
- (b) to the appropriate national authority;
- (c) to any other education administrator appointed to act jointly or concurrently; and
- (d) where there is no other education administrator appointed to act jointly or concurrently, to the further education body and all the creditors, including any floating charge holders.

(3) The court must deliver to the applicant a copy of any order removing the education administrator.

(4) The applicant must deliver a copy of the order—

- (a) as soon as reasonably practicable, and in any event within five business days of the copy order being delivered to the applicant, to the education administrator, and
- (b) within five business days of the copy order being delivered to the applicant, to—
  - (i) all other persons to whom notice of the application was delivered; and
  - (ii) the registrar of companies.

### **Notice of vacation of office when education administrator ceases to be qualified to act**

**6.5.** An education administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the further education body and who gives notice in accordance with paragraph 89 of Schedule B1 must also deliver notice to—

- (a) the appropriate national authority;
- (b) the registrar of companies.

#### **Deceased education administrator**

**6.6.**—(1) If an education administrator dies, notice of the fact and date of death must be filed with the court.

- (2) The notice must be filed as soon as reasonably practicable by one of the following—
  - (a) a surviving joint education administrator;
  - (b) a member of the deceased education administrator’s firm (if the deceased was a member or employee of a firm);
  - (c) an officer of the deceased education administrator’s company (if the deceased was an officer or employee of a company);
  - (d) a personal representative of the deceased education administrator.

(3) If such a notice has not been filed within the 21 days following the education administrator’s death, then any other person may file the notice.

(4) The person who files the notice must also deliver a notice to the registrar of companies which contains—

- (a) identification details for the proceedings;
- (b) the name of the person who made the education administration application;
- (c) the date of the appointment of the education administrator; and
- (d) the fact and date of death.

#### **Application to replace**

**6.7.**—(1) Where an application to court is made under paragraph 91(1) of Schedule B1 to appoint a replacement education administrator, the application must be accompanied by the proposed replacement education administrator’s consent to act.

- (2) A copy of the application must be delivered to—
  - (a) whichever of the appropriate national authority or the education administrator is not the applicant; and
  - (b) to those persons set out at rule 2.5(3).

(3) Rules 2.9, 2.10 and 2.11 apply to an application made under paragraph 91(1) of Schedule B1 as they apply to an application for an education administration order.

#### **Appointment of a replacement or additional education administrator**

**6.8.** Where a replacement education administrator is appointed or an additional education administrator is appointed to act jointly or concurrently—

- (a) rule 3.1 applies;
- (b) all documents must clearly identify the appointment as of a replacement education administrator or an additional education administrator appointed to act jointly or concurrently.

### **Education administrator's duties on vacating office**

**6.9.**—(1) An education administrator who ceases to be in office as a result of removal, resignation or ceasing to be qualified to act as an insolvency practitioner in relation to the further education body must as soon as reasonably practicable deliver to the person succeeding as education administrator—

- (a) the assets (after deduction of any expenses properly incurred and distributions made by the departing education administrator);
- (b) the records of the education administration, including correspondence, proofs and other documents relating to the education administration while it was within the responsibility of the departing education administrator; and
- (c) the further education body's records.

(2) An education administrator who fails to comply with this rule is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine, as set out in Schedule 1.

## **CHAPTER 2**

### **Remuneration and expenses**

#### **Basis of remuneration**

**6.10.**—(1) An education administrator is entitled to receive remuneration for services provided as education administrator.

(2) The basis of such remuneration is to be fixed by reference to the time properly spent by the education administrator and the education administrator's staff in attending to matters arising in the education administration.

(3) The education administrator's remuneration must, on the education administrator's application, be fixed by the court.

(4) The education administrator must give at least 14 days' notice of the application made under paragraph (3) to the following who may appear or be represented—

- (a) the appropriate national authority; and
- (b) the creditors of the further education body.

(5) In fixing the remuneration, the court must have regard to the following matters—

- (a) the complexity (or otherwise) of the case;
- (b) any respects in which, in connection with a further education body's affairs, there falls on the education administrator any responsibility of an exceptional kind or degree;
- (c) the effectiveness with which the education administrator appears to be carrying out, or to have carried out, the education administrator's duties as such; and
- (d) the value and nature of the property with which the education administrator has had to deal.

(6) Where there are joint education administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned and any dispute arising between them may be referred to the court, for settlement by order.

(7) If the education administrator is a solicitor and employs the education administrator's own firm, or any partner in it, to act on behalf of the further education body, profit costs must not be paid unless this is authorised by the court.

#### **Pre-administration costs**

**6.11.** Where the education administrator has made a statement of pre-administration costs under rule 3.8(10)(a), the education administrator (where the costs consist of fees charged or expenses

incurred by the education administrator) or other insolvency practitioner (where the costs consist of fees charged or expenses incurred by that practitioner) must, before paying such costs, apply to the court for a determination of whether and to what extent the unpaid pre-administration costs are approved for payment.

#### **Remuneration of former education administrator**

**6.12.** If an education administrator has ceased to act as such for any reason, the education administrator (or the education administrator's estate, as the case may be) is to be entitled to any amounts outstanding on the basis of the services which that education administrator provided in accordance with rule 6.10.

#### **Remuneration of new education administrator**

**6.13.** If a new education administrator is appointed in place of another education administrator, any court order in effect under rule 6.10 immediately before the former education administrator ceased to hold office continues to apply in respect of the remuneration of the new education administrator until a further court order is made in accordance with those provisions.