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STATUTORY INSTRUMENTS

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**2019 No. 138**

**The Further Education Bodies (Insolvency) Regulations 2019**

**PART 2**

**General modifications to relevant insolvency legislation**

**General modifications of relevant insolvency legislation**

4.—(1) Relevant insolvency legislation is to be read, in relation to statutory corporations, as if, for the terms appearing in the first column of the table there were substituted the corresponding terms in the second column—

<b>Provision</b>	<b>Modification</b>
company, including company registered under the Companies Act 2006 in England and Wales	statutory corporation
subject to (2), director	(i) member of the statutory corporation,  (ii) principal of the statutory corporation, or  (iii) if the context requires, both of the above
subject to (2), officer (in relation to a company)	(i) member of the statutory corporation,  (ii) clerk to the statutory corporation,  (iii) chief executive of the statutory corporation,  (iv) senior post holder or principal of the statutory corporation, or  (v) if the context requires, all of the above
registered office	address of the statutory corporation given in the UK Register of Learning Providers
Memorandum and Articles of Association, including where separately referred to as memorandum or articles	instrument of government and articles of government of the statutory corporation
Member, except in Part 17 of the Rules	member of a statutory corporation as set out in that statutory corporation's instrument of government and articles of government
Secretary	clerk to the statutory corporation

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<b>Provision</b>	<b>Modification</b>
a reference to a company being wound up by a court in England and Wales	a reference to the statutory corporation being wound up by the court
a reference to a winding up	a reference to the winding up of a statutory corporation.

(2) But, in sections 85, 99, 131, 188, 210 of the Act and paragraphs 6, 9, 16, 20 and 42 of Schedule A1 and paragraphs 22, 45, 47 and 48 of Schedule B1, “officer” or “director” do not include a student member.

(3) The relevant insolvency legislation is also to be read as if—

- (a) any reference to contributories or to the liability of contributories is omitted;
- (b) any reference to shares or shareholdings is omitted;
- (c) any reference to a special resolution is to be read in accordance with the statutory corporation’s instrument of government and articles of government, or, if the instrument and articles do not contain such provision, in accordance with regulation 5(14).

## **Meetings**

**5.—(1)** Subject to paragraph (15), in sections 3(1), 84 and 100 of the Act, paragraph 62 of Schedule B1 and rules 2.33, 2.35, 2.36, 6.20 and 15.41 of the Rules, references to—

- (a) company meetings, or the company in general meeting;
- (b) meetings of members;
- (c) the summoning of such meetings; and
- (d) the voting procedures at such meetings

are to be read as references to the provisions for meetings set out in the statutory corporation’s instrument of government and articles of government and any references to resolutions are to be read as references to the equivalent provisions set out in the instrument of government and articles of government.

(2) In the event that the statutory corporation has no provisions for meetings set out in its instrument of government and articles of government, the references set out at paragraph (1)(a) to (d) above in sections 3, 84 and 100 of the Act, paragraph 62 of Schedule B1 and rules 2.33, 2.35, 2.36, 6.20 and 15.41 of the Rules are to be read as references to meetings complying with paragraphs (3) to (13), and references to resolutions are to be read as references to a decision made under paragraph (9).

(3) A meeting must—

- (a) be called by the clerk to the statutory corporation; and
- (b) be quorate, within the meaning of paragraph (7).

(4) Paragraph (3)(a) does not apply where a meeting is called under section 3 of the Act, paragraph 62 of Schedule B1 or rule 15.41 of the Rules.

(5) A special meeting may be called at any time by the clerk to the statutory corporation at the written request of any five members.

(6) No longer than five clear business days’ notice(2) is to be given by the clerk of a special meeting.

(7) A meeting is quorate if at least 40% of the total number of members is present at the meeting.

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(1) Section 3 was amended by paragraph 3 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c. 26).

(2) “Business day” is defined in section 251 of the Insolvency Act 1986.

(8) The members present at the meeting must elect one of their number to be the chair for the purposes of that meeting.

(9) Questions to be decided at a meeting must be decided by a majority of the votes cast by members present and entitled to vote on the question.

(10) Whether a member is entitled to vote on any question must be determined by the members present at the meeting in advance of any vote, excluding the member whose entitlement is to be determined.

(11) Where there is an equal division of votes on a question to be decided, the chair of the meeting is to have a second or casting vote.

(12) A member must not vote by proxy or in any way in their absence.

(13) A student member who is under the age of 18 is not entitled to vote at a meeting of a statutory corporation on any question concerning any proposal—

- (a) for the expenditure of money by the statutory corporation; or
- (b) under which the statutory corporation, or any of its members, would enter into any contract, or would incur any debt or liability, whether immediate, contingent or otherwise.

(14) References in the relevant insolvency legislation to a company passing a resolution at a meeting are to be read as including references to a vote validly passed at a meeting of a statutory corporation.

(15) Where a meeting is called under section 3 of the Act, paragraph 62 of Schedule B1 or rule 15.41 of the Rules, that meeting must be called by the person responsible for calling that meeting under the respective provision.

## **Moratorium**

**6.—(1)** Where notice has been given under section 9(3), 10(4), 11(2), 12(3) or 13 of the Technical and Further Education Act 2017 the following provisions also apply until a period of at least 14 days has elapsed since notice was given under any of those sections, unless the appropriate national authority confirms in writing to the person who served the notice that it does not intend to apply for an education administration order.

(2) No step may be taken to repossess goods in the statutory corporation's possession under a hire-purchase agreement except—

- (a) with the consent of the appropriate national authority; or
- (b) with the permission of the court.

(3) A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to a statutory corporation except—

- (a) with the consent of the appropriate national authority; or
- (b) with the permission of the court.

(4) No legal process (including legal proceedings or execution) may be instituted or continued against the statutory corporation or property of the statutory corporation except—

- (a) with the consent of the appropriate national authority; or
- (b) with the permission of the court.

(5) Where the court gives the permission referred to in any of paragraphs (2) to (4), it may impose a condition on or requirement in connection with the matter in respect of which permission is given.

(6) In this regulation—

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“hire-purchase agreement” has the same meaning as the Consumer Credit Act 1974<sup>(3)</sup>; and  
“landlord” includes a person to whom rent is payable.

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(3) 1974 c. 39. See section 189(1). Section 189 has been amended but those amendments are not relevant to this instrument.