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STATUTORY INSTRUMENTS

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**2019 No. 138**

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

**PART 3**

Specific modifications to relevant insolvency legislation

**Section 1 (Those who may propose an arrangement)**

7. Section 1 of the Act(1) is to be read as if subsections (4) to (6) were omitted.

**Section 41 (Enforcement of duty to make returns)**

8. Section 41(2) of the Act is to be read as if “member or” were omitted.

**Chapter 1 of Part 4 (Contributories)**

9. The Act is to be read as if sections 74 to 83 were omitted.

**Section 85 (Notice of resolution to wind up)**

10. Section 85 of the Act is to be read as if, after subsection (1), there were inserted—  
“(1A) At the same time as the statutory corporation gives the notice required under subsection (1), it must send a copy of the resolution to the registrar of companies.”.

**Section 88 (Avoidance of share transfers, etc. after winding up resolution)**

11. The Act is to be read as if section 88 were omitted.

**Section 99 (Directors to lay statement of affairs before creditors)**

12. Section 99 of the Act(2) is to be read as if there were inserted at the end of subsection (1)(b)—  
“(c) and to the appropriate national authority.”

**Section 104A (Progress report to company and creditors... (England and Wales))**

13. Section 104A of the Act(3) is to be read as if, in subsection (1)(b)—  
(a) at the end of sub-paragraph (i) “and” were omitted;  
(b) after sub-paragraph (i) there were inserted—

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(1) Section 1 was amended by paragraph 2 of Schedule 2 to the Insolvency Act 2000, paragraph 10 of Schedule 17 to the Enterprise Act 2002, paragraph 20 of Schedule 6 to the Deregulation Act 2015 (c. 20) and S.I. 2002/1240, 2009/1941, and 2017/1941.  
(2) Section 99 was amended by paragraph 23 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 and S.I. 2010/18. Other amendments have been made which refer to Scotland only and are not relevant to this instrument.  
(3) Section 104A was inserted by S.I. 2010/18 and has been amended by section 136 of and paragraph 27 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 and SSI 2016/141.

“(ia) the appropriate national authority; and”.

### **Section 106 (Final account prior to dissolution)**

14. Section 106 of the Act(4) is to be read as if, after subsection (2)(a) there were inserted—  
“(ab) send a copy of the account to the appropriate national authority.”.

### **Section 107 (Distribution of company’s property)**

15. The Act is to be read as if, for section 107, there were substituted—

#### **“Distribution of statutory corporation’s property**

**107.**—(1) Subject to the provisions of this Act as to preferential payments, the statutory corporation’s property in a voluntary winding up shall on the winding up be applied in satisfaction of the statutory corporation’s liabilities *pari passu*, and, where a surplus remains in the statutory corporation’s estate, in accordance with subsections (2) to (8).

(2) The statutory corporation’s property, where a surplus remains after the application of the statutory corporation’s property in accordance with subsection (1), is to be transferred in accordance with the appropriate national authority’s direction.

(3) The appropriate national authority may direct, subject to subsection (6), that the statutory corporation’s property is to be transferred to one or more of the persons listed in subsection (5).

(4) In determining which one or more persons are to be the recipient of the transfer, the appropriate national authority must seek to—

- (a) avoid or minimise the disruption to the studies of any of the statutory corporation’s students; and
- (b) ensure the continued use of the statutory corporation’s property for the provision of educational facilities and services.

(5) The persons to whom the appropriate national authority may direct a transfer are—

- (a) a further education corporation;
- (b) a sixth form college corporation, as defined in section 90 of the Further and Higher Education Act 1992(5);
- (c) the governing body of an institution designated under section 28 of the Further and Higher Education Act 1992(6);
- (d) the governing body of a school maintained by a local authority (within the meaning of section 20 of the School Standards and Framework Act 1998(7));
- (e) a local authority;
- (f) a person concerned with the running of an Academy (within the meaning of section 1 of the Academies Act 2010(8));

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(4) Section 106 was amended by paragraph 29 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 and [S.I. 2017/702](#).

(5) Section 90 has been amended, but those amendments are not relevant to the definition of sixth form college corporation.

(6) Section 28 has been amended, but those amendments are not relevant to this instrument.

(7) [1998 c. 31](#). Section 20 was amended by paragraph 95 of Schedule 21 to the Education Act 2002 ([c. 32](#)), paragraph 13 of Schedule 3 to the Education and Inspections Act 2006 ([c. 40](#)), paragraph 19 of Schedule 5 to the School Standards and Organisation (Wales) Act 2013 ([2013 anaw 1](#)) and [S.I. 2010/1158](#).

(8) [2010 c. 32](#). Section 1 was amended by section 53 of the Education Act 2011 ([c. 21](#)) and paragraph 95 of Schedule 3 to the Children and Families Act 2014 ([c. 6](#)).

- (g) a university receiving funding under section 65 of the Further and Higher Education Act 1992(9);
- (h) a higher education corporation (within the meaning of section 90 of the Further and Higher Education Act 1992);
- (i) a body corporate established for purposes which include the provision of educational facilities or educational services;
- (j) a person who is in receipt of a grant or eligible to receive a grant under regulations made under section 485 of the Education Act 1996(10), for the purposes of, or in connection with, the provision, or proposed provision, of educational services; and
- (k) a person who is in receipt of financial assistance under section 14 of the Education Act 2002(11) for, or in connection with, the provision, or proposed provision, of education or of educational services.

(6) The appropriate national authority may not direct a transfer under this section unless the recipient of the transfer consents to that transfer.

(7) Where the recipient of a transfer is not a charity established for charitable purposes which are exclusively educational purposes, any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes.

(8) In subsection (7) “charity” and “charitable purposes” have the same meanings as in the Charities Act 2011(12).”.

#### **Section 124A (Petition for winding up on grounds of public interest)**

16. The Act is to be read as if section 124A(13) were omitted.

#### **Section 130 (Consequences of winding-up order)**

17. Section 130 of the Act(14) is to be read as if after subsection (1) there were inserted—

“(1A) At the same time as a copy of the order is to be forwarded to the registrar of companies under (1), a copy must also be forwarded to the appropriate national authority.”.

#### **Section 143 (General functions in winding up by the court)**

18. Section 143 of the Act is to be read as if—

(a) for subsection (1) there were substituted—

“(1) The functions of the liquidator of a statutory corporation which is being wound up by the court are to secure that the property of the statutory corporation is got in, realised and distributed to the statutory corporation’s creditors, and, if there is a surplus, to transfer the property encompassing that surplus in accordance with the direction of the appropriate national authority.”;

(b) after subsection (2) there were inserted—

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(9) Section 65 has been amended, but those amendments are not relevant to this instrument.

(10) 1996 c. 65. Section 485 was amended by S.I. 2010/1158.

(11) Section 14 was amended by section 59 of the Children Act 2004 (c. 31), paragraph 23 of Schedule 14 to the Education Act 2005 (c. 18), section 15(2) of the Education Act 2011, and S.I. 2010/1158.

(12) 2011 c. 25. The definitions of “charity” and “charitable purposes” are set out in sections 1 and 2 respectively of that Act.

(13) Section 124A was inserted by section 60(3) of the Companies Act 2006 (c. 46). Amendments have been made, but those are not relevant to this instrument.

(14) Section 130 was amended by paragraph 29 of Schedule 8 to the Finance (No. 2) Act 2015 (c. 33) and S.I. 2009/1941.

“(3) The appropriate national authority may direct, subject to subsection (6), that the statutory corporation’s property is to be transferred to one or more of the persons listed in subsection (5).

(4) In determining which one or more persons are to be the recipient of the transfer, the appropriate national authority must seek to—

- (a) avoid or minimise the disruption to the studies of any of the statutory corporation’s students; and
- (b) ensure the continued use of the statutory corporation’s property for the provision of educational facilities and services.

(5) The persons to whom the appropriate national authority may direct a transfer are—

- (a) a further education corporation;
- (b) a sixth form college corporation, as defined in section 90 of the Further and Higher Education Act 1992;
- (c) the governing body of an institution designated under section 28 of the Further and Higher Education Act 1992;
- (d) the governing body of a school maintained by a local authority (within the meaning of section 20 of the School Standards and Framework Act 1998);
- (e) a local authority;
- (f) a person concerned with the running of an Academy (within the meaning of section 1 of the Academies Act 2010);
- (g) a university receiving funding under section 65 of the Further and Higher Education Act 1992);
- (h) a higher education corporation (within the meaning of section 90 of the Further and Higher Education Act 1992);
- (i) a body corporate established for purposes which include the provision of educational facilities or educational services;
- (j) a person who is in receipt of a grant or eligible to receive a grant under regulations made under section 485 of the Education Act 1996, for the purposes of, or in connection with, the provision, or proposed provision, of educational services; and
- (k) a person who is in receipt of financial assistance under section 14 of the Education Act 2002 for, or in connection with, the provision, or proposed provision, of education or of educational services.

(6) The appropriate national authority may not direct a transfer under this section unless the recipient of the transfer consents to that transfer.

(7) Where the recipient of a transfer is not a charity established for charitable purposes which are exclusively educational purposes, any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes.

(8) In subsection (7) “charity” and “charitable purposes” have the same meanings as in the Charities Act 2011.”.

### **Section 146 (Final account)**

19. Section 146(4) of the Act(15) is to be read as if, after “the court”, there were inserted “, the appropriate national authority”.

### **Section 187 (Power to make over assets to employees)**

20. The Act is to be read as if section 187(16) were omitted.

### **Section 218 (Prosecution of delinquent officers and members of the company)**

21. Section 218 of the Act(17) is to be read as if subsection (5) were omitted.

### **Section 250 (“Member” of a company)**

22. The Act is to be read as if section 250 were omitted.

### **Section 251 (Expressions used generally)**

23. The Act is to be read as if, in section 251, the definition of “officer” was omitted.

### **Section 432 (Offences by bodies corporate)**

24. Section 432 of the Act(18) is to be read as if in subsection (2) for “, manager, secretary or other similar officer” there were substituted “or officer”.

### **Paragraphs 4A to 4K of Schedule A1**

25. Schedule A1 is to be read as if paragraphs 4A to 4K(19) were omitted.

### **Paragraph 46 of Schedule B1**

26. Paragraph 46(4) of Schedule B1 is to be read as if after “registrar of companies” there were inserted “and the appropriate national authority”.

### **Paragraph 49 of Schedule B1**

27. Paragraph 49(4) of Schedule B1(20) is to be read as if—

- (a) at the end of paragraph (b) “and” were omitted;
- (b) at the end of paragraph (c) “, and” were inserted; and
- (c) after paragraph (c), there were inserted—
  - “(d) the appropriate national authority.”.

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(15) Section 146 was substituted by paragraph 38 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 and subsections (6) and (7) were inserted by [S.I. 2017/702](#) in relation to England and Wales.

(16) Section 187 has been amended, but no amendments are relevant to this instrument.

(17) Section 218 was amended by section 10 of the Insolvency Act 2000.

(18) Section 432 was amended by paragraph 11 of Schedule 1 to the Insolvency Act 2000.

(19) Paragraphs 4A to 4K were inserted by [S.I. 2002/1990](#). Other amendments have been made to these paragraphs, but none are relevant to this instrument.

(20) Paragraph 49(4) of Schedule B1 was amended by paragraph 10(2) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 and [S.I. 2008/948](#).

### **Paragraph 53 of Schedule B1**

28. Paragraph 53(2) of Schedule B1(21) is to be read as if—
- (a) at the end of paragraph (b) “and” were omitted; and
  - (b) after paragraph (b) there were inserted—
    - “(ba) the appropriate national authority, and”.

### **Paragraph 54 of Schedule B1**

29. Paragraph 54(6) of Schedule B1(22) is to be read as if—
- (a) at the end of paragraph (b) “and” were omitted; and
  - (b) after paragraph (b) there were inserted—
    - “(ba) the appropriate national authority, and”.

### **Paragraph 78 of Schedule B1**

30. Paragraph 78(5) of Schedule B1(23) is to be read as if—
- (a) at the end of paragraph (a) “and” were omitted; and
  - (b) after paragraph (b) there were inserted—
    - “, and
    - (c) notify the appropriate national authority”.

### **Paragraph 83 of Schedule B1**

31. Paragraph 83(5) of Schedule B1(24) is to be read as if, at the end of paragraph (b), there were inserted “, and the appropriate national authority”.

### **Paragraph 84 of Schedule B1**

32. Paragraph 84(5) of Schedule B1(25) is to be read as if, at the end of paragraph (b), there were inserted “, and the appropriate national authority”.

### **Modification of the Insolvency (England and Wales) Rules 2016**

33.—(1) Paragraph (2) of rule 1.6 of the Rules is to be read as if the general modification of company in regulation 4 had not been made and as if, after “company other than one which is the subject of proceedings”, there were inserted—

- (a) in the first column, “Statutory corporation”; and
- (b) in the second column—
  - “In the case of a statutory corporation—
    - (la) the full name of the statutory corporation;

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(21) Paragraph 53 of Schedule B1 was amended by paragraph 10(9) and (10) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.

(22) Paragraph 54 of Schedule B1 was amended by paragraph 10(11) to (16) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.

(23) Paragraph 78 of Schedule B1 was amended by paragraph 10(25) to (28) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.

(24) Paragraph 83 of Schedule B1 was amended by section 128(3) of and paragraph 10(31) and (32) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.

(25) Paragraph 84 of Schedule B1 was amended by paragraph 10(33) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 and [S.I. 2017/702](#).

(lb) the address given for the statutory corporation in the UK Register of Learning Providers; and

(lc) where the registrar has allocated to the statutory corporation a number pursuant to section 1066 of the Companies Act 2006, that number.”.

(2) Rule 1.20(26) of the Rules is to be read as if, in paragraph (1), after sub-paragraph (o), there were inserted—

“(p) a resolution made under section 85 of the Act;

(q) a notice by a liquidator of his appointment, delivered under section 109 of the Act”.

(3) Rule 1.21 of the Rules is to be read as if, in paragraph (1)(b), before paragraph (i) there were inserted—

“(ai) the address of the statutory corporation,

(aia) where the registrar has allocated to the statutory corporation a number pursuant to section 1066 of the Companies Act 2006, that number,”.

(4) The Rules are to be read as if, for rule 2.35, there were substituted—

“**2.35.** A member is entitled to vote in accordance with either the rights set out in the statutory corporation’s instrument and articles of government or, if no rights are given in the instrument of government and articles of government, in accordance with the provisions on meetings set out in regulation 5 of the Further Education Bodies (Statutory Corporations) (Insolvency) Regulations 2018.”.

(5) Rule 2.36(1) of the Rules is to be read as if “(in value)” were omitted.

(6) Rule 3.10 of the Rules is to be read as if paragraphs (b) and (c) were omitted.

(7) Where provision is made in rules 3.55(2) and rule 18.6(4) of the Rules for a person to send to any other person a report, or any other document, those documents must also be sent to the appropriate national authority.