
STATUTORY INSTRUMENTS

2019 No. 138

The Further Education Bodies (Insolvency) Regulations 2019

PART 3

Specific modifications to relevant insolvency legislation

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⁽¹⁾;
- (c) the governing body of an institution designated under section 28 of the Further and Higher Education Act 1992⁽²⁾;
- (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⁽³⁾);

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

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

(3) 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.

- (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⁽⁴⁾);
 - (g) a university receiving funding under section 65 of the Further and Higher Education Act 1992⁽⁵⁾;
 - (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⁽⁶⁾, 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⁽⁷⁾ 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⁽⁸⁾.”.

(4) 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).

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

(6) 1996 c. 65. Section 485 was amended by S.I. 2010/1158.

(7) 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.

(8) 2011 c. 25. The definitions of “charity” and “charitable purposes” are set out in sections 1 and 2 respectively of that Act.