

# Draft clauses and Schedules

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## CONTENTS

### PART 1

#### FURTHER EDUCATION BODIES: INSOLVENCY

##### CHAPTER 1

###### INTRODUCTION

- 1 Overview of Part
- 2 Meaning of “further education body”

##### CHAPTER 2

###### NORMAL INSOLVENCY PROCEDURES

###### *Application of normal insolvency procedures*

- 3 Application of normal insolvency procedures
- 4 Application of other insolvency law

###### *Restrictions on normal insolvency procedures*

- 5 Making of ordinary administration orders
- 6 Administrator appointments by creditors
- 7 Winding-up order
- 8 Voluntary winding up
- 9 Interpretation of sections 5 to 8

###### *Restrictions on other procedures*

- 10 Enforcement of security

**CHAPTER 3**

## SPECIAL EDUCATION ADMINISTRATION

*Introduction to education administration*

- 11 Overview of Chapter
- 12 Objective of education administration

*Process*

- 13 Education administration order
- 14 Application for education administration order
- 15 Grounds for making an education administration order
- 16 Powers of the court on hearing an application
- 17 Appointment of two or more education administrators
- 18 Duty to dismiss ordinary administration application
- 19 Status of education administrator

*Functions of administrator and conduct of administration*

- 20 General functions of education administrator
- 21 Transfer schemes
- 22 Conduct of administration

*Financial support for bodies in education administration*

- 23 Grants and loans where education administration order is made
- 24 Indemnities where education administration order is made
- 25 Indemnities: repayment by further education bodies etc
- 26 Guarantees where education administration order is made
- 27 Guarantees: repayment by further education body etc

*Supplementary*

- 28 Education administration rules
- 29 Application of other insolvency law
- 30 Modification of this Chapter under the Enterprise Act 2002
- 31 Interpretation of Chapter

**CHAPTER 4**

## RESTRICTIONS ON OTHER DISSOLUTION PROCEDURES

- 32 Restrictions on dissolution of further education corporation
- 33 Restrictions on dissolution of sixth form college corporation

**PART 2**

## SUPPLEMENTARY

- 34 Regulations: general
- 35 Affirmative and negative resolution procedures

- 
- Schedule 1 – Education administration: transfer schemes
  - Schedule 2 – Conduct of education administration



## PART 1

### FURTHER EDUCATION BODIES: INSOLVENCY

#### CHAPTER 1

##### INTRODUCTION

### 1 Overview of Part

This Part is about the insolvency of further education bodies – Chapter 2 applies normal insolvency procedures to them, Chapter 3 creates a special administration regime, and Chapter 4 imposes restrictions on existing procedures for dissolution.

### 2 Meaning of “further education body”

In this Part “further education body” means –

- (a) a further education corporation in England, or
- (b) a sixth form college corporation.

#### CHAPTER 2

##### NORMAL INSOLVENCY PROCEDURES

##### *Application of normal insolvency procedures*

### 3 Application of normal insolvency procedures

- (1) The purpose of this section is to make the following insolvency procedures available in relation to further education bodies –
  - (a) voluntary arrangements,
  - (b) administration,
  - (c) creditors’ voluntary winding up, and
  - (d) winding up by the court,and to make provision about receivers and managers of property.
- (2) For that purpose, the relevant insolvency legislation applies in relation to further education bodies as it applies in relation to companies, subject to –
  - (a) any modifications or omissions specified in regulations made by the Secretary of State, and
  - (b) sections 5 to 8 (restrictions on normal insolvency procedures to facilitate special administration).
- (3) The “relevant insolvency legislation” means any provision made by or under the following provisions of the Insolvency Act 1986 –
  - (a) Part 1 (company voluntary arrangements);
  - (b) Part 2 (administration);

- (c) Part 3 (receivership);
  - (d) Part 4 (winding up);
  - (e) Parts 6, 7 and 12 to 18 (supplementary provision).
- (4) The modifications or omissions that may be made under subsection (2)(a) include modifications or omissions in connection with the interaction between the insolvency procedures made available in relation to further education bodies by this section and education administration under Chapter 3 of this Part.
- (5) Regulations under this section that repeal or amend a provision of an Act are subject to the affirmative resolution procedure.
- (6) Any other regulations under this section are subject to the negative resolution procedure.

#### **4 Application of other insolvency law**

- (1) The Secretary of State may, in consequence of section 3 or regulations made under it, make regulations –
- (a) providing for any legislation about insolvency to apply in relation to a further education body (with or without modifications);
  - (b) amend, or modify, any legislation about insolvency as it applies in relation to a further education body.
- (2) In subsection (1) “legislation about insolvency” includes any legislation that makes provision by reference to anything that is or may be done under any provision of the Insolvency Act 1986, or under any provision of subordinate legislation made under that Act, as applied by section 3.
- (3) Regulations under this section that apply, amend or modify a provision of an Act are subject to the affirmative resolution procedure.
- (4) Any other regulations under this section are subject to the negative resolution procedure.
- (5) In this section “legislation” means any provision made by or under an Act passed before or in the same session as this Act.

#### *Restrictions on normal insolvency procedures*

#### **5 Making of ordinary administration orders**

- (1) This section applies if a person other than the Secretary of State makes an ordinary administration application in relation to a further education body.
- (2) The court must dismiss the application if –
- (a) an education administration order is in force in relation to the further education body, or
  - (b) an education administration order has been made in relation to the further education body but is not yet in force.
- (3) If subsection (2) does not apply, the court, on hearing the application, must not exercise its powers under paragraph 13 of Schedule B1 to the Insolvency Act 1986 (other than its power of adjournment) unless –
- (a) notice of the application has been given to the Secretary of State,

- (b) a period of at least 14 days has elapsed since that notice was given, and
  - (c) there is no outstanding education administration application.
- (4) Paragraph 44 of Schedule B1 to the Insolvency Act 1986 (interim moratorium) does not prevent, or require the permission of the court for, the making of an education administration application.
- (5) In this section “ordinary administration application” means an application in accordance with paragraph 12 of Schedule B1 to the Insolvency Act 1986.

## **6 Administrator appointments by creditors**

- (1) Subsections (2) to (4) make provision about appointments under paragraph 22 of Schedule B1 to the Insolvency Act 1986 (powers to appoint administrators) in relation to a further education body.
- (2) If in any case –
- (a) an education administration order is in force in relation to the further education body,
  - (b) an education administration order has been made in relation to the further education body but is not yet in force, or
  - (c) an education administration application in relation to the further education body is outstanding,
- a person may not take any step to make an appointment.
- (3) In any other case, an appointment takes effect only if each of the following conditions are met.
- (4) The conditions are –
- (a) that notice of the appointment has been given to the Secretary of State, accompanied by a copy of every document in relation to the appointment that is filed or lodged with the court in accordance with paragraph 29 of Schedule B1 to the Insolvency Act 1986,
  - (b) that a period of 14 days has elapsed since that notice was given,
  - (c) that there is no outstanding education administration application in relation to the further education body, and
  - (d) that the making of an education administration application in relation to the further education body has not resulted in the making of an education administration order which is in force or is still to come into force.
- (5) Paragraph 44 of Schedule B1 to the Insolvency Act 1986 (interim moratorium) does not prevent, or require the permission of the court for, the making of an education administration application at any time before the appointment takes effect.

## **7 Winding-up order**

- (1) This section applies if a person other than the Secretary of State petitions for the winding-up of a further education body.
- (2) The court is not to exercise its powers on a winding-up petition unless –
- (a) notice of the petition has been given to the Secretary of State, and
  - (b) a period of at least 14 days has elapsed since that notice was given.

- (3) If an education administration application is made in relation to the further education body before a winding-up order is made on the petition, the court may exercise its powers under sections 15 and 16 (instead of exercising its powers on the petition).
- (4) References in this section to the court's powers on a winding-up petition are to—
  - (a) its powers under section 125 of the Insolvency Act 1986 (other than its power of adjournment), and
  - (b) its powers under section 135 of the Insolvency Act 1986.

## **8 Voluntary winding up**

- (1) A further education body has no power to pass a resolution for voluntary winding up without the permission of the court.
- (2) Permission may be granted by the court only on an application made by the further education body.
- (3) The court may not grant permission unless—
  - (a) notice of the application has been given to the Secretary of State, and
  - (b) a period of at least 14 days has elapsed since that notice was given.
- (4) If an education administration application is made in relation to the further education body after an application for permission under this section has been made and before it is granted, the court may exercise its powers under sections 15 and 16 (instead of granting permission).
- (5) In this section “a resolution for voluntary winding up” has the same meaning as in the Insolvency Act 1986.

## **9 Interpretation of sections 5 to 8**

- (1) In sections 5 to 8—
  - “the court”, in relation to a further education body, means the court having jurisdiction to wind up the body;
  - “education administration application” has the meaning given by section 14;
  - “education administration order” has the meaning given by section 13.
- (2) For the purposes of sections 5 to 8 an application made to the court is outstanding if it—
  - (a) has not yet been granted or dismissed, and
  - (b) has not been withdrawn.
- (3) An application is not to be taken as having been dismissed if an appeal against the dismissal of the application, or a subsequent appeal, is pending.
- (4) An appeal is to be treated as pending for this purpose if—
  - (a) an appeal has been brought and has not been determined or withdrawn,
  - (b) an application for permission to appeal has been made but has not been determined or withdrawn, or
  - (c) no appeal has been brought and the period for bringing one is still running.



- (5) References in sections 5 to 8 to a provision of the Insolvency Act 1986 are to that provision as it applies to further education bodies by virtue of section 3.

*Restrictions on other procedures*

**10 Enforcement of security**

A person may not take any step to enforce a security over property of a further education body unless –

- (a) notice of the intention to do so has been given to the Secretary of State, and
- (b) a period of at least 14 days has elapsed since the notice was given.

**CHAPTER 3**

SPECIAL EDUCATION ADMINISTRATION

*Introduction to education administration*

**11 Overview of Chapter**

- (1) This Chapter creates a procedure to be known as education administration.
- (2) The main features of an education administration are that –
  - (a) it is used where a further education body is unable to pay its debts or is likely to become unable to pay its debts,
  - (b) the court appoints an education administrator on the application of the Secretary of State, and
  - (c) the education administrator manages the body's affairs, business and property with a view to avoiding or minimising disruption to the studies of existing students.

**12 Objective of education administration**

- (1) The objective of an education administration is to –
  - (a) avoid or minimise disruption to the studies of the existing students of the further education body as a whole, and
  - (b) ensure that it becomes unnecessary for the body to remain in education administration for that purpose.
- (2) The means by which the education administrator may achieve that objective include –
  - (a) rescuing the further education body as a going concern,
  - (b) transferring some or all of its undertaking to another body,
  - (c) keeping it going until existing students have completed their studies, or
  - (d) making arrangements for existing students to complete their studies at another institution.

*Process***13 Education administration order**

- (1) An education administration order is an order of the court appointing a person as the education administrator of a further education body.
- (2) A person is eligible for appointment as an education administrator only if the person would be qualified to act as an insolvency practitioner in relation to the further education body.
- (3) While an education administration order is in force the further education body may be described as being “in education administration”.

**14 Application for education administration order**

- (1) An education administration order may be made only on an application by the Secretary of State.
- (2) The Secretary of State must give notice of an application –
  - (a) to the further education body to which the application relates, and
  - (b) to any person specified in education administration rules (for those rules, see section 28).
- (3) An application for an education administration order is referred to in this Chapter as an “education administration application”.

**15 Grounds for making an education administration order**

- (1) The court may make an education administration order on an application only if satisfied that the further education body –
  - (a) is unable to pay its debts, or
  - (b) is likely to become unable to pay its debts.
- (2) The court has no power to make an education administration order in relation to a further education body which –
  - (a) is in administration under Schedule B1 to the Insolvency Act 1986, or
  - (b) has gone into liquidation (within the meaning of section 247(2) of the Insolvency Act 1986).
- (3) For the purposes of this section a further education body is unable to pay its debts if it is deemed to be unable to pay its debts under section 123 of the Insolvency Act 1986.

**16 Powers of the court on hearing an application**

- (1) On hearing an education administration application the court may –
  - (a) grant the application,
  - (b) adjourn the application conditionally or unconditionally,
  - (c) dismiss the application,
  - (d) make an interim order,
  - (e) treat that application as a winding-up petition and make any order the court could make under section 125 of the Insolvency Act 1986 (power of court on hearing winding-up petition), or

- (f) make any other order that it thinks appropriate.
- (2) An interim order under subsection (1)(d) may, in particular –
  - (a) restrict the exercise of a power of the further education body or its members, or
  - (b) make provision conferring a discretion on a person who would be qualified to act as an insolvency practitioner in relation to the further education body.
- (3) An education administration order comes into force –
  - (a) at the time appointed by the court, or
  - (b) if no time is appointed by the court, when the order is made.

### **17 Appointment of two or more education administrators**

If an education administration order appoints two or more persons as the education administrator of a further education body, the order must set out –

- (a) which (if any) of the functions of the education administrator are to be carried out only by the appointees acting jointly,
- (b) the circumstances (if any) in which the functions of an education administrator are to be carried out by one of the appointees, or by particular appointees, acting alone, and
- (c) the circumstances (if any) in which things done in relation to one of the appointees, or in relation to particular appointees, are to be treated as done in relation to all of them.

### **18 Duty to dismiss ordinary administration application**

- (1) On the making of an education administration order in relation to a further education body, the court must dismiss any ordinary administration application made in relation to the body which is outstanding.
- (2) In this section “ordinary administration application” means an application in accordance with paragraph 12 of Schedule B1 to the Insolvency Act 1986.
- (3) Subsections (2) to (4) of section 9 (meaning of “outstanding”) apply for the purposes of this section.

### **19 Status of education administrator**

- (1) An education administrator is an officer of the court.
- (2) In carrying out functions in relation to a further education body an education administrator acts as its agent.

*Functions of administrator and conduct of administration*

### **20 General functions of education administrator**

- (1) Where an education administration order is in force in relation to a further education body, the body’s affairs, business and property are to be managed by the education administrator.
- (2) The education administrator must carry out his or her functions for the purpose of achieving the objective of the education administration (if possible).

- (3) The education administrator must, so far as is consistent with that objective, carry out his or her functions in a way that achieves the best result for the further education body's creditors as a whole.

## **21 Transfer schemes**

Schedule 1 gives an education administrator the power to make transfer schemes.

## **22 Conduct of administration**

Schedule 2 applies provisions of the Insolvency Act 1986, with modifications, in relation to an education administration.

### *Financial support for bodies in education administration*

## **23 Grants and loans where education administration order is made**

- (1) If an education administration order has been made in relation to a further education body, the Secretary of State may make grants or loans to the body for the purpose of achieving the objective of the education administration.
- (2) A grant under this section may be made on any terms and conditions the Secretary of State considers appropriate (including provision for repayment, with or without interest).

## **24 Indemnities where education administration order is made**

- (1) If an education administration order has been made in relation to a further education body, the Secretary of State may agree to indemnify persons in respect of one or both of the following –
  - (a) liabilities incurred in connection with the carrying out of functions by the education administrator, and
  - (b) loss or damage sustained in that connection.
- (2) The agreement may be made in whatever manner, and on whatever terms, the Secretary of State considers appropriate.
- (3) As soon as possible after agreeing to indemnify persons under this section, the Secretary of State must lay a statement of the agreement before Parliament.
- (4) For repayment of sums paid by the Secretary of State in consequence of an indemnity agreed to under this section, see section 25.
- (5) The power of the Secretary of State to agree to indemnify persons –
  - (a) is confined to a power to agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as relevant persons, but
  - (b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.
- (6) The following are relevant persons for the purposes of this section –
  - (a) the education administrator;
  - (b) an employee of the education administrator;

- (c) a partner or employee of a firm of which the education administrator is a partner or employee;
  - (d) a partner of a firm of which the education administrator was an employee or partner at a time when the order was in force;
  - (e) a body corporate which is the employer of the education administrator;
  - (f) an officer, employee or member of such a body corporate;
  - (g) a Scottish firm which is the employer of the education administrator or of which the education administrator is a partner.
- (7) For the purposes of subsection (6)–
- (a) references to the education administrator are to be read, where two or more persons are appointed as the education administrator, as references to any one or more of them, and
  - (b) references to a firm of which a person was a partner or employee at a particular time include a firm which holds itself out to be the successor of a firm of which the person was a partner or employee at that time.

## **25 Indemnities: repayment by further education bodies etc**

- (1) This section applies where a sum is paid out by the Secretary of State in consequence of an indemnity agreed to under section 24 in relation to the education administration of a further education body.
- (2) The further education body must pay the Secretary of State–
  - (a) any amounts in or towards the repayment of that sum that the Secretary of State directs, and
  - (b) interest on amounts outstanding under this subsection at whatever rates the Secretary of State directs.
- (3) The payments must be made by the further education body at times, and in a manner, determined by the Secretary of State.
- (4) Subsection (2) does not apply in the case of a sum paid by the Secretary of State for indemnifying a person in respect of a liability to the further education body.
- (5) The Secretary of State must lay before Parliament a statement, relating to the sum paid out in consequence of the indemnity –
  - (a) as soon as possible after the end of the financial year in which the sum is paid out, and
  - (b) if subsection (2) applies to the sum, as soon as possible after the end of each subsequent financial year in relation to which the repayment condition has not been met.
- (6) The repayment condition is met in relation to a financial year if –
  - (a) the whole of the sum has been repaid to the Secretary of State before the beginning of the year, and
  - (b) the further education body was not at any time during the year liable to pay interest on amounts that became due in respect of the sum.

## **26 Guarantees where education administration order is made**

- (1) If an education administration order has been made in relation to a further education body the Secretary of State may guarantee–
  - (a) the repayment of any sum borrowed by the body while that order is in force,

- (b) the payment of interest on any sum borrowed by the body while that order is in force, and
  - (c) the discharge of any other financial obligation of the body in connection with the borrowing of any sum while that order is in force.
- (2) The Secretary of State may give the guarantees in whatever manner, and on whatever terms, the Secretary of State considers appropriate.
- (3) As soon as possible after giving a guarantee under this section, the Secretary of State must lay a statement of the guarantee before Parliament.
- (4) For repayment of sums paid by the Secretary of State under a guarantee given under this section, see section 27.

## **27 Guarantees: repayment by further education body etc**

- (1) This section applies where a sum is paid out by the Secretary of State under a guarantee given by the Secretary of State under section 26 in relation to a further education body.
- (2) The further education body must pay the Secretary of State –
  - (a) any amounts in or towards the repayment of that sum that the Secretary of State directs, and
  - (b) interest on amounts outstanding under this subsection at whatever rates the Secretary of State directs.
- (3) The payments must be made by the further education body at times, and in a manner, determined by the Secretary of State.
- (4) The Secretary of State must lay before Parliament a statement, relating to the sum paid out under the guarantee –
  - (a) as soon as possible after the end of the financial year in which the sum is paid out, and
  - (b) as soon as possible after the end of each subsequent financial year in relation to which the repayment condition has not been met.
- (5) The repayment condition is met in relation to a financial year if –
  - (a) the whole of the sum has been repaid to the Secretary of State before the beginning of the year, and
  - (b) the further education body was not at any time during the year liable to pay interest on amounts that became due in respect of the sum.

### *Supplementary*

## **28 Education administration rules**

- (1) The power to make rules under section 411 of the Insolvency Act 1986 is to apply for the purpose of giving effect to this Chapter as it applies for the purpose of giving effect to Parts 1 to 7 of that Act (and, accordingly, as if references in that section to those Parts included references to this Chapter).
- (2) Section 413(2) of the Insolvency Act 1986 (duty to consult Insolvency Rules Committee about rules) does not apply to rules made under section 411 of the Insolvency Act 1986 as a result of this section.

## **29 Application of other insolvency law**

- (1) The Secretary of State may, in consequence of this Chapter or subordinate legislation made under it, make regulations –
  - (a) providing for any legislation about insolvency to apply in relation to a further education body (with or without modifications);
  - (b) amend, or modify, any legislation about insolvency as it applies in relation to a further education body.
- (2) In subsection (1) “legislation about insolvency” includes any legislation that makes provision by reference to anything that is or may be done under any provision of the Insolvency Act 1986, or under any provision of subordinate legislation made under that Act, as applied by this Chapter.
- (3) Regulations under this section that apply, amend or modify a provision of an Act are subject to the affirmative resolution procedure.
- (4) Any other regulations under this section are subject to the negative resolution procedure.
- (5) In this section “legislation” means any provision made by or under an Act passed before or in the same session as this Act.

## **30 Modification of this Chapter under the Enterprise Act 2002**

A power to modify or apply enactments conferred on the Secretary of State by section 248 or 277 of the Enterprise Act 2002 includes power to make such consequential modifications of this Chapter as the Secretary of State considers appropriate in connection with any other provision made under that section.

## **31 Interpretation of Chapter**

- (1) In this Chapter –
  - “business”, “property” and “security” have the same meaning as in the Insolvency Act 1986;
  - “the court”, in relation to a further education body, means the court having jurisdiction to wind up the body;
  - “education administration application” has the meaning given by section 14;
  - “education administration order” has the meaning given by section 13;
  - “education administration rules” means rules made under section 411 of the Insolvency Act 1986 as a result of section 28 above;
  - “education administrator” means a person appointed by an education administration order and is to be read in accordance with subsection (2) below;
  - “existing student”, in relation to a further education body that is in education administration, means a person who –
    - (a) is a student at the relevant institution when the administration order is made, or
    - (b) has accepted a place on a course at the relevant institution when the administration order is made;
  - “financial year” means a period of 12 months ending with 31 March;
  - “further education body” has the meaning given by section 2;

“further education corporation” means a body corporate established under section 15 or 16 of the Further and Higher Education Act 1992 or which has become a further education corporation by virtue of section 33D or 47 of that Act;

“further education corporation in England” means a further education corporation established to conduct an institution in England;

“objective of the education administration” is to be read in accordance with section 12;

“the relevant institution” –

(a) in relation to a further education corporation in England, means the institution which the corporation is established to conduct, and

(b) in relation to a sixth form college corporation, means the relevant sixth form college as defined by section 90(1) of the Further and Higher Education Act 1992;

“Scottish firm” means a firm constituted under the law of Scotland;

“sixth form college corporation” means a body corporate –

(a) designated as a sixth form college corporation under section 33A or 33B of the Further and Higher Education Act 1992, or

(b) established under section 33C of that Act.

- (2) In this Chapter references to the education administrator of a further education body –
- (a) include a person appointed under paragraph 91 or 103 of Schedule B1 to the Insolvency Act 1986, as applied by Part 1 of Schedule 2 below, to be the education administrator of the further education body, and
- (b) if two or more persons are appointed as the education administrator of the further education body, are to be read in accordance with the provision made under section 17.
- (3) References in this Chapter to a person qualified to act as an insolvency practitioner in relation to a further education body are to be read in accordance with Part 13 of the Insolvency Act 1986, but as if references in that Part to a company included a further education body.
- (4) References in this Chapter to a provision of the Insolvency Act 1986 (except the references in sections 28 and 29 and Schedule 2 and in subsection (2) above) are to that provision as it applies to further education bodies by virtue of section 3.”

## CHAPTER 4

### RESTRICTIONS ON OTHER DISSOLUTION PROCEDURES

#### **32 Restrictions on dissolution of further education corporation**

- (1) The Further and Higher Education Act 1992 is amended as follows.
- (2) In section 27A (dissolution of further education corporation), after subsection (5) insert –
- “(6) See also section 27C (restrictions on dissolution in insolvency situations: England).”
- (3) After section 27B insert –



**“27C Restrictions on dissolution in insolvency situations: England**

- (1) A further education corporation in England has no power under section 27A to resolve that the corporation should be dissolved if—
  - (a) the corporation is in education administration under Chapter 3 of Part 1 of [the draft clauses and Schedules],
  - (b) a voluntary arrangement in relation to the corporation has been proposed under Part 1 of the Insolvency Act 1986 and the matter has not been finally concluded,
  - (c) the corporation is in administration under Part 2 of the Insolvency Act 1986,
  - (d) paragraph 44 of Schedule B1 to the Insolvency Act 1986 applies (interim moratorium on proceedings where application to the court for an administration order has been made or notice of intention to appoint administrator has been filed), or
  - (e) the corporation is being wound up, whether voluntarily or by the court, under Part 4 of the Insolvency Act 1986 or a petition under that Part for winding up of the corporation by the court has been presented and not finally dealt with or withdrawn.
- (2) For the purposes of subsection (1)(b), the matter is finally concluded if—
  - (a) no meetings are to be summoned under section 3 of the Insolvency Act 1986,
  - (b) meetings summoned under that section fail to approve the arrangement with no, or the same, modifications,
  - (c) an arrangement approved by meetings summoned under that section, or in consequence of a direction under section 6(4)(b) of that Act, has been fully implemented, or
  - (d) the court makes an order under section 6(5) of that Act revoking approval given at previous meetings and, if the court gives any directions under section 6(6) of that Act, the corporation has done whatever it is required to do under those directions.
- (3) In this section—
  - (a) a reference to paragraph 44 of Schedule B1 to the Insolvency Act 1986 is to that paragraph as it applies to a further education corporation in England by virtue of—
    - (i) section 3 of [the draft clauses and Schedules] (application of normal insolvency procedures), or
    - (ii) Schedule 2 to [the draft clauses and Schedules] (special education administration);
  - (b) any other reference to a provision of the Insolvency Act 1986 is to that provision as it applies to a further education corporation in England by virtue of section 3 of [the draft clauses and Schedules].”

**33 Restrictions on dissolution of sixth form college corporation**

- (1) The Further and Higher Education Act 1992 is amended as follows.
- (2) In section 33O (dissolution of sixth form college corporation), after subsection (4) insert—

“(5) See also section 33Q (restrictions on dissolution in insolvency situations).”

(3) After section 33P insert—

**“33Q Restrictions on dissolution in insolvency situations**

- (1) A sixth form college corporation has no power under section 33O to resolve that the corporation should be dissolved if—
  - (a) the corporation is in education administration under Chapter 3 of Part 1 of [the draft clauses and Schedules],
  - (b) a voluntary arrangement in relation to the corporation has been proposed under Part 1 of the Insolvency Act 1986 and the matter has not been finally concluded,
  - (c) the corporation is in administration under Part 2 of the Insolvency Act 1986,
  - (d) paragraph 44 of Schedule B1 to the Insolvency Act 1986 applies (interim moratorium on proceedings where application to the court for an administration order has been made or notice of intention to appoint administrator has been filed), or
  - (e) the corporation is being wound up, whether voluntarily or by the court, under Part 4 of the Insolvency Act 1986 or a petition under that Part for winding up of the corporation by the court has been presented and not finally dealt with or withdrawn.
- (2) For the purposes of subsection (1)(b), the matter is finally concluded if—
  - (a) no meetings are to be summoned under section 3 of the Insolvency Act 1986,
  - (b) meetings summoned under that section fail to approve the arrangement with no, or the same, modifications,
  - (c) an arrangement approved by meetings summoned under that section, or in consequence of a direction under section 6(4)(b) of that Act, has been fully implemented, or
  - (d) the court makes an order under section 6(5) of that Act revoking approval given at previous meetings and, if the court gives any directions under section 6(6) of that Act, the corporation has done whatever it is required to do under those directions.
- (3) In this section—
  - (a) a reference to paragraph 44 of Schedule B1 to the Insolvency Act 1986 is to that paragraph as it applies to a sixth form college corporation by virtue of—
    - (i) section 3 of [the draft clauses and Schedules] (application of normal insolvency procedures), or
    - (ii) Schedule 2 to [the draft clauses and Schedules] (special education administration);
  - (b) any other reference to a provision of the Insolvency Act 1986 is to that provision as it applies to a sixth form college corporation by virtue of section 3 of [the draft clauses and Schedules].”

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**PART 2**

SUPPLEMENTARY

**34 Regulations: general**

- (1) Regulations under [the draft clauses and Schedules] are to be made by statutory instrument.
- (2) Regulations under [the draft clauses and Schedules] may make—
  - (a) consequential, supplementary, incidental, transitional or saving provision;
  - (b) different provision for different purposes.

**35 Affirmative and negative resolution procedures**

- (1) Where regulations under [the draft clauses and Schedules] are subject to “the negative resolution procedure” the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Where regulations under [the draft clauses and Schedules] are subject to “the affirmative resolution procedure” the regulations may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.
- (3) Any provision that may be included in an instrument under [the draft clauses and Schedules] subject to the negative resolution procedure may be made by regulations subject to the affirmative resolution procedure.



## SCHEDULES

### SCHEDULE 1

Section 21

#### EDUCATION ADMINISTRATION: TRANSFER SCHEMES

##### *Power to make a transfer scheme*

- 1 The education administrator of a further education body may make a scheme for the transfer of property, rights and liabilities (a “transfer scheme”) from the further education body (“the transferor”) to one or more persons or bodies prescribed for the purposes of section 27B(1) or 33P(1) of the Further and Higher Education Act 1992 (“the transferee”).
- 2 A transfer scheme takes effect at the time specified in the scheme.

##### *Procedural requirements: consent and approval*

- 3 The education administrator may make a transfer scheme only if—
  - (a) the transferee consents, and
  - (b) the Secretary of State has approved the scheme.
- 4 The Secretary of State may modify a transfer scheme before approving it but only with the consent of the education administrator and the transferee.

##### *Modifying a scheme after it takes effect*

- 5 (1) The Secretary of State may modify a transfer scheme after it takes effect by giving notice to the transferor and the transferee.
  - (2) The Secretary of State may modify a scheme under sub-paragraph (1) only with the consent of the transferor and the transferee.
  - (3) A scheme modified under sub-paragraph (1) is to be treated for all purposes as having come into force at the time specified under paragraph 2.

##### *Property, rights and liabilities that may be transferred*

- 6 A transfer scheme may transfer—
  - (a) property, rights and liabilities that could not otherwise be transferred;
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme.
- 7 (1) A transfer scheme may make consequential, supplementary, incidental or transitional provision and may in particular—
  - (a) create rights, or impose liabilities, in relation to property or rights transferred;

- (b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;
  - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee;
  - (e) make provision for the shared ownership or use of property;
  - (f) if the TUPE regulations do not apply in relation to the transfer, make provision which is the same or similar.
- (2) In sub-paragraph (1)(f) “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
- (3) A transfer scheme may modify the interests, rights or liabilities of third parties in relation to anything to which the scheme relates.
- (4) The reference here to third parties is to persons other than the transferor and transferee.

*Proof of title by certificate*

- 8 A certificate by the Secretary of State that anything specified in the certificate has vested in a person by virtue of a transfer scheme is conclusive evidence for all purposes of that fact.

*Interpretation*

- 9 In this Schedule –
- (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
  - (b) references to the transfer of property include the grant of a lease.

## SCHEDULE 2

Section 22

## CONDUCT OF EDUCATION ADMINISTRATION

*Introductory*

- 1 (1) The provisions of the Insolvency Act 1986 mentioned in sub-paragraph (2) apply in relation to an education administration as they apply in relation to a company administration, but with the modifications set out in this Schedule.
- (2) The provisions are –
- (a) sections 233 to 237 (management by administrators, liquidators etc);
  - (b) sections 238 to 241 (transactions at an undervalue and preferences);
  - (c) section 244 (extortionate credit bargains);
  - (d) section 246 (unenforceability of liens on books, etc);
  - (e) section 246ZA to 246ZC (fraudulent and wrongful trading);
  - (f) section 246ZD (power to assign certain causes of action);

- (g) section 246B (use of websites);
  - (h) section 246C (creditors’ ability to opt out of receiving certain notices);
  - (i) sections 247, 248(b), 249 and 251 (interpretation);
  - (j) the applicable provisions of Schedule B1 (conduct of administration).
- (3) The applicable provisions of Schedule B1 are –
- (a) paragraphs 1, 40 to 49, 54, 59 to 68, 71 to 75, 79, 83 to 91, 98 to 104, 106 and 107 and 109 to 111, and
  - (b) paragraph 50 (until the repeal of that paragraph by Schedule 10 to the Small Business, Enterprise and Employment Act 2015 comes into force).

*General modifications*

- 2 The provisions of the Insolvency Act 1986 applied by paragraph 1 are to have effect as if for any term specified in column 1 of the table there were substituted the term specified in column 2.

| <i>Term</i>                        | <i>Modification</i>  |
|------------------------------------|--|
| company                            | further education body   |
| administration application         | education administration application   |
| administration order               | education administration order   |
| administrator                      | education administrator  |
| director                           | member of the further education body or principal of the relevant institution  |
| enters administration              | enters education administration  |
| in administration                  | in education administration  |
| officer (in relation to a company) | (a) a member of the further education body,<br>(b) the clerk to the further education body,<br>(c) the chief executive of the relevant institution, or<br>(d) any senior post holder or principal of the relevant institution. |
| purpose of administration          | objective of the education administration  |
| the rules                          | the education administration rules   |

*Specific modifications to Schedule B1 to the Insolvency Act 1986*

- 3 Paragraphs 4 to 37 set out modifications to the applicable provisions of Schedule B1 to the Insolvency Act 1986 as applied by paragraph 1 above.

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- 4 Paragraph 1 (administration) is to have effect as if –  
(a) for sub-paragraph (1) there were substituted –  
    “(1) In this Schedule “education administrator”, in relation to a further education body, means a person appointed by the court for the purposes of an education administration order to manage its affairs, business and property.”, and  
(b) in sub-paragraph (2), for “Act” there were substituted “Schedule”.
- 5 Paragraph 40 (dismissal of pending winding-up petition) is to have effect as if sub-paragraphs (1)(b), (2) and (3) were omitted.
- 6 Paragraph 41 (dismissal of administrative or other receiver) is to have effect as if –  
(a) sub-paragraph (1) were omitted;  
(b) in sub-paragraph (3), “administrative receiver or” and “(1) or” were omitted;  
(c) in sub-paragraph (4)(a) and (b), “administrative receiver or” were omitted.
- 7 Paragraph 42 (moratorium on insolvency proceedings) is to have effect as if sub-paragraphs (4) and (5) were omitted.
- 8 Paragraph 43 (moratorium on other legal process) is to have effect as if sub-paragraphs (5) and (6A) were omitted
- 9 Paragraph 44 (interim moratorium) is to have effect as if sub-paragraphs (2) to (4), (6) and (7) were omitted.
- 10 Paragraph 45(2) (publicity) is to have effect as if for paragraph (b) there were substituted –  
    “(b) a member of the further education body,  
    (ba) the clerk to the further education body,  
    (bb) the chief executive of the relevant institution,  
    (bc) any senior post holder or principal of the relevant institution, and”.
- 11 Paragraph 46(6) (date for notifying administrator’s appointment) is to have effect as if for paragraphs (a) to (c) there were substituted “the date on which the education administration order comes into force”.
- 12 Paragraph 47 (statement of affairs) is to have effect as if –  
(a) for sub-paragraph (3)(a) there were substituted –  
    “(a) a person who is or has been a member of the further education body,  
    (aa) a person who is or has been the clerk to the further education body,  
    (ab) a person who is or has been chief executive of the relevant institution,  
    (ac) a person who is or has been a senior post holder or principal of the relevant institution, and”,  
(b) in sub-paragraph (3), paragraph (d) were omitted; and  
(c) sub-paragraph (5) were omitted.
- 13 Paragraph 49 (administrator’s proposals) is to have effect as if –  
(a) sub-paragraphs (2)(b) and, (3) were omitted, and



- (b) in sub-paragraph (4), after paragraph (a) there were inserted –
    - “(aa) to the Secretary of State,” and
  - (c) sub-paragraph (6) were omitted.
- 14 Paragraph 54 is to have effect as if the following were substituted for it –
  - “54 (1) The education administrator of a further education body may on one or more occasions revise the proposals included in the statement made under paragraph 49 in relation to the body.
  - (2) If the education administrator thinks that a revision is substantial, the education administrator must send a copy of the revised proposals –
    - (a) to the registrar of companies,
    - (b) to the Secretary of State,
    - (c) to every creditor of the further education body, other than an opted-out creditor, of whose claim and address the education administrator is aware, and
    - (d) to every member of the further education body of whose address the education administrator is aware.
  - (3) A copy sent in accordance with sub-paragraph (2) must be sent within the prescribed period.
  - (4) An education administrator who fails without reasonable excuse to comply with this paragraph commits an offence.”
- 15 Paragraph 60 is to have effect as if the following were substituted for it –
  - “60 (1) The education administrator of a further education body has the powers specified in Schedule 1 to this Act (reading references in that Schedule to the company as references to the further education body).
  - (2) The education administrator of a further education body has the power to act on behalf of the further education body for the purposes of provision contained in any legislation which confers a power on the further education body or imposes a duty on it.
  - (3) In sub-paragraph (2) “legislation” means provision made by or under any Act.”
- 16 Paragraph 61 is to have effect as if the following were substituted for it –
  - “61 The education administrator –
    - (a) may appoint or remove the clerk to the further education body,
    - (b) may appoint or remove the chief executive of the relevant institution, and
    - (c) may appoint or remove the principal of the relevant institution.”
- 17 Paragraph 64 (management powers may not be exercised without consent of the administrator) is to have effect as if for “an officer of a company in administration” there were substituted “the clerk to the further education body or chief executive of the relevant institution”.

- 18 Paragraph 68 (management duties of an administrator) is to have effect as if –
- (a) in sub-paragraph (1), for paragraphs (a) to (c) there were substituted “the proposals as –
    - (a) set out in the statement made under paragraph 49 in relation to the further education body, and
    - (a) from time to time revised under paragraph 54,  
for achieving the objective of the education administration.”, and
  - (b) in sub-paragraph (3), for paragraphs (a) to (d) there were substituted “the directions are consistent with the achievement of the objective of the education administration”.
- 19 Paragraph 71 (charged property: non-floating charge), is to have effect as if, in sub-paragraph (1), the words “(other than a floating charge)” were omitted.
- 20 Paragraph 73 (protection for secured or preferential creditor) is to have effect as if –
- (a) in sub-paragraph (2), paragraphs (c) and (d) were omitted, and
  - (b) in sub-paragraph (3), for “or modified” there were substituted “under paragraph 54”.
- 21 Paragraph 74 (challenge to administrator’s conduct) is to have effect as if –
- (a) in sub-paragraph (1), the words “or member” and “other members or” (in both places) were omitted,
  - (b) in sub-paragraph (6), paragraphs (b) to (c) were omitted, and
  - (c) after that sub-paragraph there were inserted –
    - “(7) The court may grant a remedy or relief or make an order under this paragraph only if it has given the Secretary of State a reasonable opportunity of making representations about the claim and the proposed remedy, relief or order.
    - (8) Before the making of an order of the kind mentioned in sub-paragraph (4)(d) –
      - (a) the court must notify the education administrator of the proposed order and of a period during which the education administrator is to have the opportunity of taking steps falling within sub-paragraphs (9) and (10), and
      - (b) the period notified must have expired without the taking of such of those steps as the court thinks should have been taken,  
and that period must be a reasonable period.
    - (9) In the case of a claim under sub-paragraph (1)(a), the steps referred to in sub-paragraph (8) are –
      - (a) ceasing to act in a manner that unfairly harms the interests to which the claim relates,
      - (b) remedying any harm unfairly caused to those interests, and

- (c) steps for ensuring that there is no repetition of conduct unfairly causing harm to those interests.
- (10) In the case of a claim under sub-paragraph (1)(b), the steps referred to in sub-paragraph (8) are steps for ensuring that the interests to which the claim relates are not unfairly harmed.”
- 22 Paragraph 75(2) (misfeasance) is to have effect as if –
- (a) after paragraph (b) there were inserted –
    - “(ba) a person appointed as an administrator of the further education body under the provisions of this Act, as they have effect in relation to administrators other than education administrators,”,
  - (b) at the end of paragraph (c) there were inserted “or”, and
  - (c) paragraph (e) (and the “or” before it) were omitted.
- 23 Paragraph 79 (end of administration) is to have effect as if –
- (a) for sub-paragraphs (1) and (2) there were substituted –
    - “(1) On an application made by a person mentioned in sub-paragraph (2), the court may provide for the appointment of an education administrator of a further education body to cease to have effect from a specified time.
    - (2) An application may be made to the court under this paragraph –
      - (a) by the Secretary of State, or
      - (b) with the consent of the Secretary of State, by the education administrator.”, and
  - (b) sub-paragraph (3) were omitted.
- 24 Paragraph 83 (notice to registrar when moving to voluntary liquidation) is to have effect as if –
- (a) sub-paragraph (2) were omitted, and
  - (b) in sub-paragraph (3) after “may” there were inserted “, with the consent of the Secretary of State,”.
- 25 Paragraph 84 (notice to registrar when moving to dissolution) is to have effect as if –
- (a) in sub-paragraph (1), for “to the registrar of companies” there were substituted –
    - “(a) to the Secretary of State, and
    - (b) if directed to do so by the Secretary of State, to the registrar of companies.”,
  - (b) sub-paragraph (2) were omitted, and
  - (c) in sub-paragraphs (3) to (6), for “(1)”, in each place, there were substituted “(1)(b)”.
- 26 Paragraph 87(2) (resignation of administrator) is to have effect as if for paragraphs (a) to (d) there were substituted “by notice in writing to the court”.
- 27 Paragraph 89(2) (administrator ceasing to be qualified) is to have effect as if for paragraphs (a) to (d) there were substituted “to the court”.

- 28 Paragraph 90 (filling vacancy in office of administrator) is to have effect as if for “Paragraphs 91 to 95 apply” there were substituted “Paragraph 91 applies”.
- 29 Paragraph 91 (vacancies in court appointments) is to have effect as if –
- (a) for sub-paragraph (1) there were substituted –
- “(1) The court may replace the education administrator on an application made –
- (a) by the Secretary of State, or
- (b) where more than one person was appointed to act jointly as the education administrator, by any of those persons who remains in office.”
- (b) sub-paragraph (2) were omitted.
- 30 Paragraph 98 (discharge from liability on vacation of office) is to have effect as if sub-paragraphs (2)(b) and (ba), (3) and (3A) were omitted.
- 31 Paragraph 99 (charges and liabilities upon vacation of office by administrator) is to have effect as if –
- (a) in sub-paragraph (4), for the words from the beginning to “cessation”, in the first place, there were substituted “A sum falling within sub-paragraph (4A)”,
- (b) after that sub-paragraph there were inserted –
- “(4A) A sum falls within this sub-paragraph if it is –
- (a) a sum payable in respect of a debt or other liability arising out of a contract that was entered into before cessation by the former education administrator or a predecessor,
- (b) a sum that must be repaid by the further education body in respect of a grant that was made under section 23 of [the draft clauses and Schedules] before cessation,
- (c) a sum that must be repaid by the further education body in respect of a loan made under that section before cessation or that must be paid by the body in respect of interest payable on such a loan,
- (d) a sum payable by the further education body under section 25 of [the draft clauses and Schedules] in respect of an agreement to indemnify made before cessation, or
- (e) a sum payable by the further education body under section 27 of [the draft clauses and Schedules] in respect of a guarantee given before cessation.”, and
- (c) in sub-paragraph (5), for “(4)” there were substituted “(4A)(a)”.
- 32 Paragraph 100 (joint and concurrent administrators) is to have effect as if sub-paragraph (2) were omitted.
- 33 Paragraph 101(3) (joint administrators) is to have effect as if after “87 to” there were inserted “91, 98 and”.
- 34 Paragraph 103 (appointment of additional administrators) is to have effect as if –
- (a) in sub-paragraph (2) the words from the beginning to “order” were

- omitted and for paragraph (a) there were substituted –  
“(a) the Secretary of State, or”, and  
(b) sub-paragraphs (3) to (5) were omitted.
- 35 Paragraph 106(2) (penalties) is to have effect as if paragraphs (a), (b), (f), (g), (i) and (l) to (n) were omitted.
- 36 Paragraph 109 (references to extended periods) is to have effect as if “or 108” were omitted.
- 37 Paragraph 111 (interpretation) is to have effect as if the following were substituted for it –  
“111 (1) In this Schedule –  
“creditors’ meeting” has the meaning given by paragraph 50;  
“education administrator” includes a reference to a former education administrator, where the context requires;  
“enters education administration” has the meaning given by paragraph 1;  
“hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;  
“in education administration” has the meaning given by paragraph 1;  
“market value” means the amount which would be realised on a sale of property in the open market by a willing vendor.  
(2) For the purposes of this Schedule a reference to an education administration order includes a reference to an appointment under paragraph 91 or 103.  
(3) In this Schedule a reference to a provision of this Act other than this Schedule is to the provision as it applies to a further education body by virtue of section 3 of [the draft clauses and Schedules].  
(4) In this Schedule a reference to action includes a reference to inaction.”

*Specific modifications to section 251 of the Insolvency Act 1986*

- 38 Section 251 of the Insolvency Act 1986 (definitions) as applied by paragraph 1 above is to have effect as if –  
(a) the definitions of “officer” and “the rules” were omitted;  
(b) at the appropriate places, there were inserted –  
““education administration application” has the meaning given by section 31 of [the draft clauses and Schedules];”,  
““education administration order” has the meaning given by section 31 of [the draft clauses and Schedules];”,  
““education administration rules” has the meaning given by section 31 of [the draft clauses and Schedules];”,

- “education administrator” has the meaning given by section 31 of [the draft clauses and Schedules];”,
- ““further education body” has the meaning given by section 2 of [the draft clauses and Schedules];”,
- ““the principal”, in relation to a relevant institution, means a principal appointed under the further education body’s instrument of government;”,
- ““objective”, in relation to an education administration, is to be read in accordance with section 12 of [the draft clauses and Schedules];”,
- ““the relevant institution” –
- (a) in relation to further education corporation, means the institution which the corporation is established to conduct, and
  - (b) in relation to a sixth form college corporation, means the relevant sixth form college as defined by section 90(1) of the Further and Higher Education Act 1992;”,
- ““senior post holder”, in relation to a relevant institution, means a person appointed as a senior post holder by the further education body;”.