Draft Regulations laid before Parliament under section 45 of the Technical and Further Education Act 2017, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

EDUCATION, ENGLAND AND WALES
INSOLVENCY, ENGLAND AND WALES

The Further Education Bodies (Insolvency) Regulations 2018

Made - - - - ***

Coming into force in accordance with regulation 1(1)

The Secretary of State makes the following Regulations, in exercise of the powers conferred by sections 6(2)(a), 7(1), 8(1) to (3) and 33(1) of the Technical and Further Education Act 2017(**1**).

In accordance with section 45(2) of the Technical and Further Education Act 2017, a draft of these Regulations was laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introductory

Citation, commencement and application

1.—(1) These Regulations may be cited as the Further Education Bodies (Insolvency) Regulations 2018 and come into force on the day after the day on which they are made.

(2) These Regulations apply to statutory corporations only, except for Part 4 (but not regulation 34) and regulation 40, which apply in addition to companies conducting designated further education institutions in England and Wales(**2**).

Interpretation

2. In these Regulations—

"the Act" means the Insolvency Act 1986(**3**);

(**1**) 2017 c. 19.
(**2**) Companies conducting further education institutions are further education bodies, as defined in section 4 of the Technical and Further Education Act 2017.
(**3**) 1986 c. 45.

"the 2006 Act" means the Companies Act 2006(**4**);

"Schedule A1" means Schedule A1 to the Act(**5**);

"Schedule B1" means Schedule B1 to the Act(**6**);

"the Rules" means the Insolvency (England and Wales) Rules 2016(**7**);

"education administration" means administration entered into pursuant to the making of an education administration order;

"member" means a member of a statutory corporation as set out in that statutory corporation's instrument of government and articles of government as required by section 20 or 33I of the Further and Higher Education Act 1992(**8**);

"statutory corporation" means a further education body as defined in sections 4(2)(a) and (b) and (3)(a) of the Technical and Further Education Act 2017; and

"student member" means a member of a statutory corporation who is or was a student at the statutory corporation at the time during which that person is or was a member.

Application of normal insolvency procedures to statutory corporations: modifications and omissions

3. These Regulations have effect as follows—

(a) the relevant insolvency legislation(**9**) which is applied to statutory corporations by section 6(2) of the Technical and Further Education Act 2017 is modified—

(i) generally in Part 2, and

(ii) specifically in Part 3;

(b) the provisions set out in Part 4 apply to statutory corporations and (except for the provision referred to in regulation 34) to companies conducting designated further education institutions in England and Wales with the modifications set out in that Part;

(c) the provisions of the 2006 Act set out in regulation 39, and section 1117 of the 2006 Act, apply to statutory corporations, with the modifications set out in regulations 39 to 42.

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—

(**4**) 2006 c. 46.
(**5**) Schedule A1 was inserted by paragraph 4 of Schedule 1 to the Insolvency Act 2000 (c. 39).
(**6**) Schedule B1 was inserted by section 248 of the Enterprise Act 2002 (c. 40).
(**7**) S.I. 2016/1024. The Rules were amended by S.I. 2017/366 and 2017/1115.
(**8**) 1992 c. 13. Section 20 was amended by paragraph 5 of Schedule 12 to the Education Act 2011 (c. 21) and section 2 of the Further Education and Higher Education (Governance and Information) (Wales) Act 2014 (2014 anaw 1). Section 33I was inserted by paragraph 3 of Schedule 8 to the Apprenticeship, Skills, Children and Learning Act 2009 (c. 22).
(**9**) "Relevant insolvency legislation" is defined in section 6(3) of the Technical and Further Education Act 2017.

Provision	*Modification*
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
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(**10**), 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(**11**) 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.

(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.

(**10**) Section 3 was amended by paragraph 3 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c. 26).
(**11**) "Business day" is defined in section 251 of the Insolvency Act 1986.

(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—

"hire-purchase agreement" has the same meaning as the Consumer Credit Act 1974(**12**); and

"landlord" includes a person to whom rent is payable.

PART 3

Specific modifications to relevant insolvency legislation

Section 1 (Those who may propose an arrangement)

7. Section 1 of the Act(**13**) 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.

(**12**) 1974 c. 39. See section 189(1). Section 189 has been amended but those amendments are not relevant to this instrument.
(**13**) 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.