

**EXPLANATORY MEMORANDUM TO  
THE COMPANIES ACT 2006 (COMMENCEMENT NO. 7, TRANSITIONAL  
PROVISIONS AND SAVINGS) ORDER 2008**

**2008 No. 1886 (C.83)**

**1.** 1.1 This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 The Companies Act 2006 is being commenced progressively in tranches between Royal Assent in November 2006 and October 2009. The present order will:

(a) bring into force provisions of the Companies Act 2006 with effect from 1 October 2008 about the following:-

- the reduction of share capital of private companies supported by a solvency statement;
- the treatment of reserves arising from the reduction by any means of the capital of any company with a share capital;
- the extension to Northern Ireland of enactments about limited liability partnerships (LLPs) previously extending only to Great Britain so far as they relate to the application to LLPs of Parts 15 (accounts and reports), 16 (audit) and 42 (statutory auditors) of the Act;
- the amendment of the definition of “regulated market” in section 103(1) of the Financial Services and Markets Act 2000;

(b) bring into force with effect from 1 October 2008 the repeal of the second sentences of section 141(4) of the Companies Act 1989 and Article 75(4) of the Companies (No. 2) (Northern Ireland) Order 1990, which prevent the restoration to the register of companies dissolved before 16th November 1969 (under the 1989 Act) or 11th March 1971 (under the 1990 Order);

(c) make transitional provisions and savings.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

## **4. Legislative Background**

4.1 The Companies Act 2006 was given Royal Assent on 8 November 2006. It started its passage through Parliament in November 2005, as the Company Law Reform Bill, after the “Company Law Reform” White Paper was published in March 2005. Its name was then changed to the Companies Bill as a result of an amendment made during Commons committee proceedings. The Companies Act 2006 has substantially rewritten company law to make it easier to understand and more flexible, especially for small businesses. The Act partly restates some of the previous Companies Acts 1985 and 1989; partly rewrites some of the previous Companies Acts 1985 and 1989 to make the provisions simpler and easier to understand; and partly introduces new provisions.

4.2 The Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007 will bring into effect most of the provisions to be commenced with effect from 1 October 2008. This Order completes the commencement of provisions with effect from 1 October 2008.

### *Other Issues*

4.3 Articles 3 to 5 contain transitional adaptations of provisions brought into force by this Order.

4.4 Article 7 contains transitional provisions and savings.

4.5 Article 8 amends (on 11<sup>th</sup> August 2008) the Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007 by inserting an additional transitional provision about the rights of resigning auditors.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 Gareth Thomas MP, Parliamentary Under Secretary of State at the Department for Business, Enterprise and Regulatory Reform, has made the following statement regarding Human Rights:

“In my view the provisions of the Companies Act 2006 (Commencement No. 7, Transitional Provisions and Savings) Order 2008 are compatible with the Convention rights.”

## **7. Policy background**

7.1 As explained above, this Order brings into effect certain provisions of the Companies Act 2006, with appropriate transitional provisions.

7.2 The Department published a draft of the Order for consultation on 2 May 2008. It has made technical improvements to the Order in the light of the responses to this consultation. In particular the provisions on the distribution of reserves arising from reductions of share capital will apply irrespective of when the capital reduction took place.

#### *Restoration to the register of companies*

7.3 Under the Companies Act 1985 (as amended by the Companies Act 1989) and the equivalent legislation in Northern Ireland, the normal time limit for applying to have a company restored to the register is currently two years from the date of the dissolution of the company. The position is different in respect of damages for personal injury. In such cases there is currently no time limit, except that companies dissolved before 16 November 1969 (11 March 1971 in Northern Ireland) cannot be restored.

7.4 The current bar to restoration of companies dissolved before those dates means that some ex-employees or their estates are unable to press claims for compensation in respect of personal injury or fatal accident, against either the employing company, its insurers or the Financial Services Compensation Scheme, simply because the company was dissolved prior to those dates.

7.5 The Parliamentary Under-Secretary of State for Trade and Consumer Affairs, Gareth Thomas, announced to Parliament by Written Statement on 22 May 2008 that the Government proposed to repeal the current bar with effect from 1 October 2008, as part of the next scheduled tranche of provisions to implement the Companies Act 2006. The Department invited comments on this approach, and published a revised draft of the Order for this purpose. The Department also wrote to interested parties, including the chairmen of the relevant all-party committees, trade unions and the main insurance company representative body, to make them aware of the proposed approach on removal of the bar.

7.6 The Department received three written responses to this consultation, all supporting removal of the current bar with effect from 1 October 2008.

7.7 In the light of this response, the Government has decided that the current bar should be removed with effect from 1 October 2008. Article 2(f) of the Order therefore provides for repeal of the bar by commencing section 1295 of the 2006 Act, and Schedule 16 (repeals), so far as relating to the repeals of the second sentence of section 141(4) of the Companies Act 1989 and of the second sentence of Article 75(4) of the Companies (No.2) (Northern Ireland) Order 1990.

## **8. Impact**

8.1 The Regulatory Impact Assessment relating to the Companies Act 2006 (<http://www.berr.gov.uk/files/file29937.pdf>), provisions of which are commenced or applied by this Order, is available on the website of the Department for Business, Enterprise and Regulatory Reform.

## **9. Contact**

9.1 Phillip Nicholls at the Department for Business, Enterprise and Regulatory Reform (telephone: 0207 215 3091 or e-mail: [phil.nicholls@berr.gsi.gov.uk](mailto:phil.nicholls@berr.gsi.gov.uk)) can answer any queries regarding the instrument.