

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 31: Dissolution and Restoration to the Register

Chapter 3: Restoration to the Register

1272. Under the 1985 Act, where a company has been struck off the register, mechanisms are available (sections 651 and 653) by which the company may be restored to the register following a court order. The CLR (Final Report, pages 227 to 229) recommended that an alternative, administrative restoration procedure should be available in certain circumstances. Sections 1024 to 1028 make provision implementing that recommendation.

Section 1024: Application for administrative restoration to the register

1273. This section provides that an application may be made to restore a company that has been struck off under sections 1000 or 1001; that it can be made whether or not the company has also been dissolved; that the application must be made by a former director or former member of the company, and that it must be made within six years of the date of dissolution.

Section 1025: Requirements for administrative restoration

1274. This section sets out the requirements for restoration, including the conditions that the company was carrying on business or in operation at the time of its striking off; that the Crown representative has given any consent that may be necessary; and that the applicant has delivered any documents necessary to bring the registrar's records up to date and has paid any penalties due at the date of dissolution or striking off.

Section 1026: Application to be accompanied by statement of compliance

1275. This section provides that an application for restoration must be accompanied by a statement that the applicant has the necessary standing to make the application and that the requirements for administrative restoration have been met. The registrar may accept the statement of compliance as sufficient evidence of the matters stated in it.

Section 1027: Registrar's decision on application for administrative restoration

1276. This section provides that the registrar must give notice of her decision, and that (if the decision is that the company is restored) the restoration takes effect from the date that notice is sent. The section also sets out the consequential actions the registrar must take.

Section 1028: Effect of administrative restoration

1277. This section provides that the effect of restoration is that the company is deemed to have continued in existence as if it had not been struck off, and that application may be made to the court within three years of restoration for the court to make such directions

as may be needed to place the company itself, and other persons, in the same position as they would have been had the company not been struck off.

Restoration to the register by the court

1278. These sections bring together what are currently two separate procedures for a company to be restored to the register by court order (under sections 651 and 653 of the 1985 Act). The CLR recommended (Final report pages 227 to 229) that the two separate procedures be replaced by a single new procedure, which should largely be based on the precedent of the procedure under section 653 of the 1985 Act.

Section 1029: Application to court for restoration to the register

1279. The section sets out that an application may be made for the restoration of companies which have been dissolved, are deemed to be dissolved, or have been struck off under the various provisions set out in *subsection (1)*. *Subsection (2)* sets out the persons who may make such an application.

Section 1030: When application to the court may be made

1280. At the moment, applications to the court under section 651 of the 1985 Act must be made within two years, and under section 653 within twenty years. This new section provides that the time limit for the new single procedure will generally be six years, although special provision is made (*subsection (5)*) for situations where an application for administrative restoration has been made and refused.

1281. *Subsection (1)* makes clear that there is no time limit where the application is for the purpose of bringing proceedings against the company for damages for personal injury.

Section 1031: Decision on application for restoration by the court

1282. This section sets out the circumstances in which the court may order restoration (including any case in which the court considers it just to do so) and provides that restoration takes effect when the court's order is delivered to the registrar. It also requires the registrar to give appropriate public notice of the restoration.

Section 1032: Effect of court order for restoration to the register

1283. This section provides that the effect of restoration is that the company is deemed to have continued in existence as if it had not been struck off, and that the court may make such directions as are needed to place the company itself, and other persons, in the same position as they would have been had the company not been struck off. The court may also make directions as to the issues set out in *subsection (4)* to do with the company's file at Companies House and costs.

Restoration to the register: supplementary provisions

Section 1033: Company's name on restoration

1284. This section establishes the fundamental position that a company is restored to the register with the name it had before it was struck off, but also makes new provision for circumstances where restoration of a company would have the effect that two companies with the same or very similar names would appear in the registrar's index. There is a procedure for the restored company to change its name.

Section 1034: Effect of restoration to the register where property has vested a bona vacantia

1285. This section replaces section 655 of the 1985 Act with little change of substance. However, it makes new provision (*subsection (3)*) that, where a company's property

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has passed to the Crown and been disposed of, the Crown, in reimbursing the newly restored company, may deduct the reasonable costs of sale which were incurred.