

Department for Business Enterprise & Regulatory Reform (BERR)

The Companies Act 2006 (commencement no. 7 and transitional provisions)
order:
Restoration of companies to the register in respect of personal injury or fatal
accident



A response by the Association of Personal Injury Lawyers

June 2008

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

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Introduction

APIL welcomes the opportunity to respond to this revised draft of the Companies Act 2006 (Commencement No.7 and Transitional Provisions) Order published on 22 May 2008. APIL's response deals only with the Companies Act 2006, chapter 3 of part 31, section 1030. We have no comments regarding section 1030 (4). We are disappointed that the proposed changes do not go further namely to abolish the need for companies to be resorted to the register and allowing the claimant a direct right of action against the insurer.

Response to draft order

APIL has long campaigned for amendments to section 653 (2) of the Companies Act 1985 and section 651 (4) of the Companies Act 1985 as inserted by section 141 (3) of the Companies Act 1989 governing the restoration of companies to the register after dissolution.

APIL welcomes the proposal to remove all provisions that currently prevent companies being restored to the register. We support the proposal in section 1030 of the 2006 Act which will allow applications to reinstate the company to the register at any time for the purpose of bringing a personal injury or fatal accident claim. The current 1969 bar which prevented the restoration of companies dissolved before 16 November 1969 (11 March 1971 in Northern Ireland) and the bar on companies being restored to the register where they were dissolved over 20 years prior to applications to re-instate, mean that some ex-employees or their families are unable to bring a claim for compensation in respect of personal injury or fatal accident. Removing these provisions will ensure a fairer system for sufferers of diseases such as mesothelioma.

What is not clear from the draft order and what APIL feels needs further clarification for practitioners, is whether or not the removal of the bars preventing restoration to

the register will be retrospective. If the provision is not retrospective then any company dissolved and removed from the register prior to 1986, or even on one possible interpretation, any company dissolved or struck off under the "old" law, will not be able to be restored and the current injustice will continue for those ex-employees pursuing personal injury claims or their families pursuing fatal accident claims.

The Government proposal to implement the Seventh Commencement Order, as from 1 October 2008 rather than October 2009 as previously proposed is welcomed by APIL. We believe that the sooner the changes are implemented the better as this will ensure a fairer system for sufferers of long tail diseases.

APIL is disappointed that the proposed changes do not go further. Any application to apply for a company to be restored to the register is expensive, slow and cumbersome. APIL has always maintained its view that the ideal solution to this problem is to give the claimant a right of action direct against the insurer as under the European Communities (Rights against Insurers) Regulations 2002 which allows claimants in road traffic accident cases to issue proceedings directly against the insurance company. This would remove the need for claimants to go to the time and expense of resurrecting a dissolved company.