

## **PROPERTY OF A DISSOLVED COMPANY: TRANSITIONALS AND SAVINGS FOR SECTIONS 1012 TO 1023**

1.1 The Department wishes to invite views on a possible change of approach to the transitional provisions and savings for sections 1012 to 1023 of the Companies Act 2006. The change of approach concerns the time periods for disclaimer by the Crown of title to the property of dissolved companies, which vests in the Crown as bona vacantia. The time periods have changed in the 2006 Act (see section 1013 of the 2006 Act and section 656 of the Companies Act 1985).

1.2 The Companies Act 2006 extends to Northern Ireland. The Companies Act 1985 does not, but the Companies (Northern Ireland) Order 1986 makes equivalent provision in this area. For convenience, this document refers only to the 1985 Act.

1.3 Could you please send your views and comments on the proposed change of approach, and the draft replacement for paragraph 88 of Schedule 2 to the 8<sup>th</sup> Commencement Order, to [companiesact2006@bis.gsi.gov.uk](mailto:companiesact2006@bis.gsi.gov.uk) by **Friday 21 August**.

### **The existing transitional provisions and savings**

2.1 The law in the Companies Act 2006 relating to disclaimer by the Crown of title to property of a dissolved company vesting in the Crown as bona vacantia is different from the law in the Companies Act 1985. The following are the relevant differences.

(a) Under section 1013(3) of the 2006 Act, bona vacantia may be disclaimed within three years of it first coming to the notice of the Crown representative that the property may have vested in the Crown - unless ownership of the property is not established when this comes to the Crown representative's notice, in which case the three year period runs from the end of the period reasonably necessary to establish ownership. Under section 656(3)(a) of the 1985 Act, the period is 12 months, running from the date on which the actual (rather than possible) vesting of the property in the Crown came to the Crown representative's notice.

(b) Under section 1013(4) of the 2006 Act, anyone interested in the property may force a decision by the Crown representative by making a written application. The Crown representative will then have 12 months in which to decide whether or not to disclaim (unless the court extends the period). The same is true under section 656(3)(b) of the 1985 Act, except that the Crown representative has to decide within 3 months of receiving the application.

(c) Under section 1013(2) of the 2006 Act, the Crown representative can waive the right to disclaim, and must do so either expressly or by taking possession. Under section 656(2) of the 1985 Act, waiver of disclaimer may also be effected by any "other act evincing that intention".

2.2 Transitional provisions and savings for sections 1012 to 1023 of the Companies Act 2006 were included in the 8<sup>th</sup> Commencement Order, which comes into force on 1 October 2009. They provide that sections 1012 to 1023 apply only in relation to the property of a company dissolved on or after 1 October 2009, and that the corresponding provisions of the 1985 Act continue to apply in relation to the property of a company dissolved before that date.

### **Proposed replacement transitionals and savings**

3.1 It has become apparent that the approach in Paragraph 88 of Schedule 2 to the 8<sup>th</sup> Commencement Order may cause practical difficulties because there can be a lengthy period of time between a company being dissolved and the relevant Crown representative receiving notice of the existence of assets, or possible assets, of the company. This will affect the Bona Vacantia Division of the Treasury Solicitor's Department, and the other Crown representatives, but the existing transitional provisions and savings may also cause uncertainty for solicitors dealing with bona vacantia and therefore additional expense for their clients.

3.2 The problem stems from the change in the time-periods for disclaiming bona vacantia and the change in the manner of effecting a waiver of the Crown's right to disclaim. By providing that the old law continues to apply to the property of a company dissolved before 1 October 2009, we are requiring the Crown representatives to operate, for potentially a very long period, two systems for dealing with the disclaimer, taking account of the different time limits and the different ways of waiving the right to disclaim. It is thought that this will also place on solicitors dealing with bona vacantia, and their clients, an additional burden which could be reduced by adopting a different approach.

3.3 We therefore invite views on a different approach. **The different approach would affect only the property of companies dissolved before 1 October 2009.** In broad terms, it would involve the new law on disclaiming bona vacantia (rather than the old law in the Companies Act 1985) applying to such property if, at 1 October 2009, the Crown representative has neither had notice of the actual vesting of the property in the Crown, nor received an application to consider disclaimer, nor waived the right to disclaim. A draft replacement for paragraph 88 is attached as an annex to this paper. References in it to "the 1985 Act" are to the Companies Act 1985; and references to "the 1986 Order" are to the Companies (Northern Ireland) Order 1986.

3.4 The replacement provisions are intended to have the following effects on and after 1 October 2009 in relation to property of a company dissolved **before** 1 October 2009.

3.5 The new law in the 2006 Act will apply to property of the company if, as at 1 October 2009 –

(a) the Crown representative has not had notice of the actual vesting of the property in the Crown (even if he has had notice of possible vesting); *and*

(b) no application has been made to the Crown representative under section 656(3)(b) of the 1985 Act obliging the Crown representative to decide whether to disclaim the property; *and*

(c) the Crown representative has not waived the right to disclaim the property.

3.5 In these circumstances, the new time limits in the 2006 Act for the disclaimer of title to the property (and the new law about waiver) will apply to the property in question. This means that:

- if, for example, the Crown representative subsequently receives an application for a decision whether to disclaim, the representative will have 12 months rather than three months in which to make a decision (under the transitional provisions as they currently stand in the 8<sup>th</sup> Commencement Order, an application would have to be decided within three months);
- but if, for example, the Crown representative has already received (before 1 October 2009) an application for a decision about whether to disclaim title to particular property of a dissolved company, the representative will still only have three months in which to make a decision about that property despite the coming into force of the 2006 Act provisions.

3.7 This approach will result in section 1013 applying, in many cases, to property which has (or may have) vested under section 654 of the 1985 Act (or indeed under earlier provisions) rather than under section 1012 of the 2006 Act. It is important to note in particular that, under our proposals, the application of the new law rather than the old law would hinge on events which may only be within the knowledge of the Crown representative.

**Next steps**

4.1 The Department will consider responses to this consultation paper in late August with a view to including a possible replacement for paragraph 88 of Schedule 2 to the 8<sup>th</sup> Commencement Order in an amending Order (which would also have a commencement date of 1 October 2009).

4.2 Any change to these transitional provisions would also need to be carried over to limited liability partnerships.

**DRAFT REPLACEMENT FOR PARAGRAPH 88 OF SCHEDULE 2 TO THE EIGHTH  
COMMENCEMENT ORDER**

**Property of dissolved company (ss. 1012 to 1023)**

**88.**—(1) Sections 1012 to 1023 of the Companies Act 2006 (property of dissolved company) apply in relation to the property of a company dissolved on or after 1st October 2009.

(2) Subject to paragraph 88A, the corresponding provisions of the 1985 Act or 1986 Order continue to apply in relation to the property of a company dissolved before that date.

**88A.**—(1) Section 1013 of the Companies Act 2006 (Crown disclaimer of property vesting as bona vacantia) applies in relation to property of a company dissolved before 1st October 2009 if at that date—

- (a) no period has begun to run in relation to the property under section 656(3)(a) or (b) of the 1985 Act or Article 607(3)(a) or (b) of the 1986 Order (period within which notice of disclaimer must be executed), and
- (b) the right to disclaim has not ceased to be exercisable in relation to the property by virtue of section 656(2) of the 1985 Act or Article 607(2) of the 1986 Order (waiver of right to disclaim).

(2) In section 1013 as it applies by virtue of this paragraph the references to property vesting under section 1012 shall be read as references to its vesting under section 654 of the 1985 Act or Article 605 of the 1986 Order (or corresponding earlier provisions).

(3) Where section 1013 applies by virtue of this paragraph—

- (a) the other provisions of sections 1012 to 1022 of the Companies Act 2006 apply accordingly, and
- (b) the corresponding provisions of the 1985 Act or 1986 Order do not apply.