Government Response to the Consultation on the Final Commencement Order for the Companies Act 2006

Introduction

1 The provisions of the Companies Act 2006 have been commenced in tranches since Royal Assent in November 2006. On 20 June, BERR published a draft of the final commencement order on its website with a short consultation paper.

2 This note summarises the responses and explains the two areas where we have decided to adjust the draft in the light of the consultation.

Summary

3 We received five responses to the consultation, including from the Law Society and from the Institute of Chartered Accountants of England & Wales.

4 All the responses contained useful technical comments on the detailed drafting, which have been taken into account in the final version of the order.

5 There were two substantive issues where we have recast the order in the light of comments received – restoration to the register, and availability of powers to change capital for existing companies.

Restoration to the register

6 A company that has been dissolved can be restored to the register in certain cases. As explained in the June consultation document, where the reason for restoration is that someone wishes to claim damages from the company because of personal injury, there is no time limit for restoration in the Companies Act 2006, and the previous bar to restoration of any company dissolved before 16 November 1969 (11 March 1971 in Northern Ireland) has been removed with effect from 1 October 2008.

7 Where the reason for applying for restoration is not personal injury, the Companies Act 2006 extends the time limit from two years to six years. The consultation document invited views on the application of the new six-year time limit and outlined three main options.

8 There were three responses on this point. One respondent supported option 2, to apply the six-year time limit to companies dissolved on or after 1 October 2007. The second preferred option 3, to apply the new six-year limit only to companies dissolved on or after 1 October 2009. The third respondent could support either option 2 or 3.

9 In view of the responses, the Government has decided to follow the approach in option 2 – to apply the new six-year time limit to companies dissolved on or after 1 October 2007. This will not affect the position of companies dissolved more than two years before 1 October 2009, but companies dissolved between October 2007 and October 2009 will be liable to be restored for a longer period.
Availability of new powers to existing companies

10 Among other deregulatory measures in the Companies Act 2006, it will give companies certain power to change their capital by default that are currently available only if there is explicit provision in the company’s articles. The powers in question are to:

- Reduce its share capital with court approval
- Issue redeemable shares (in relation to private companies only)
- Purchase its own shares
- Purchase its own shares out of capital (private companies only)

11 A new company formed under the Companies Act 2006 will be able to exercise these powers without explicit authorisation in the articles, though they will still need shareholder approval by means of a resolution (and the articles can exclude or restrict the availability of the powers).

12 The draft order published for consultation would have made these freedoms available to existing companies whose articles contained no express authorisation only if the shareholders passed a special resolution to that effect.

13 The response to the consultation has raised new issues about possible disadvantages of this approach. The Law Society and the Institute of Chartered Accountants in England and Wales pointed out that the methods of preserving existing bargains would create complexity and real risks for the unwary. And they argued that no extra safeguard is provided by requiring a company to pass a resolution, as the exercise of the powers requires shareholder approval in any case.

14 We have considered these arguments, and we have decided that for each of these four powers, existing companies should be put in the same position as new companies. That is, existing companies will have the power to do any of the four things listed in paragraph 10 above unless the articles specifically prevent them. This change will not affect the majority of existing companies, who in any event have express authority in their articles to exercise the powers in question.

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