



*Companies House*

— *for the record* —

# **Strike-off, Dissolution and Restoration (Scotland)**

***August 2003***

# Strike-off, Dissolution and Restoration (Scotland)

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*This is a guide only and should be read with the relevant legislation.*

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## Introduction

This booklet is a guide to having your company removed from the register of companies. Our booklet, '[Liquidation and Insolvency \(Scotland\)](#)', is also useful if you are considering winding up your company.

A company may be struck off the register and dissolved if:

- it has applied to the Registrar to be struck off; or
- the Registrar concludes that it is not carrying on business or in operation.

You will find the relevant law in the Companies Act 1985, Section 652 and Sections 652A to 652F which were inserted by the Deregulation and Contracting Out Act 1994.

This booklet also covers how, in certain circumstances, your company may be restored to the register.

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## CHAPTER 1

### Voluntary striking-off and dissolution

#### 1. Who can apply to have a company struck off the register?

A private company that is not trading may apply to the Registrar to be struck off the register. It can do this if the company is no longer needed. For example, the active directors may wish to retire and there is no-one to take over from them; or it is a subsidiary whose name is no longer needed; or it was set up to exploit an idea that turned out not to be feasible.

The procedure is not an alternative to formal insolvency proceedings where these are

appropriate, as creditors are likely to prevent the striking off (see questions 4 and 7). Even if the company is struck off and dissolved, creditors and others could apply for it to be restored to the register (see [chapter 3](#)).

A private company can apply to be struck off if, *in the previous three months*, it has not:

- traded or otherwise carried on business;
- changed its name;
- for value, disposed of property or rights that, immediately before it ceased to be in business or trade, it held for disposal or gain in the normal course of its business or trade (for example, a company in business to sell apples could not continue selling apples during that three-month period but it could sell the truck it once used to deliver the apples or the warehouse where they were stored); or
- engaged in any other activity except one necessary or expedient for making a striking-off application, settling the company's affairs or meeting a statutory requirement (for example, a company may seek professional advice on the application, pay the costs of copying the Form 652a, etc). However, a company can apply for striking off if it has settled trading or business debts in the previous three months.

A company cannot apply to be struck off if it is the subject, or proposed subject, of:

- any [insolvency proceedings](#) (such as liquidation, including where a petition has been presented but has not yet been dealt with); or
- a Section 425 scheme (that is a compromise or arrangement between a company and its creditors or members).

## 2. What should I do before applying?

There are safeguards for those who are likely to be affected by a company's dissolution. If your company has creditors, members etc, you are advised to warn all the people listed in question 4, before applying, as any of them may object to the company being struck off. Any loose ends should be dealt with **before** you apply.

It is also advisable to notify any other organisation or party who may have an interest in the company's affairs, otherwise they might later [object](#) to the application. Examples include local authorities, especially if the company is under any obligation involving planning permission or health and safety issues, training and enterprise councils and government agencies.

From the date of dissolution, any assets held by a dissolved company will belong to the Crown - see [chapter 2, question 5](#).

**3. How do I apply?** The Registrar will provide [Form 652a](#) on request. Forms are also

available from the sources listed on the back of this booklet.

The form must be signed and dated by:

- the sole director, if there is only one;
- by both, if there are two; or
- by the majority, if there are more than two.

You must give the name, address and telephone number of the person Companies House should contact about the application. You should then send the completed form, with the £10 fee, to the Registrar of Companies, Companies House, 37 Castle Terrace, Edinburgh EH1 2EB. Cheques must be payable to 'Companies House' and the company number written on the reverse.

#### 4. Who must I inform?

Within seven days after sending Form 652a to the Registrar, you must provide copies of the form to the following:

- members, (usually the shareholders)-;
- **creditors** (including all contingent and prospective creditors) such as banks, suppliers, former employees if they are owed money by the company, landlords, tenants (for example, where a bond is refundable), guarantors and personal injury claimants. Also, you must notify appropriate offices of the Inland Revenue, Department for Work and Pensions (DWP) and Customs & Excise if there are outstanding, contingent or prospective liabilities;
- **employees;**
- **managers or trustees of any employee pension fund;** and
- **any directors who have not signed the form.**

Anyone who becomes a member, creditor etc, after the application must also be sent a copy of the form within seven days of doing so.

All VAT-registered companies must notify the relevant VAT office (Finance Act 1985).

#### 5. How should I inform the various parties?

A copy of the Form 652a should be delivered to, left at, or posted to them at:

- the last known address (if an individual); or
- the principal/registered office (if a company or partnership).

**NOTE:** To notify creditors who have more than one place of business, you must send copies of the form to or leave copies at all the places of business where the company has had dealings in relation to the current debts (for example, the branch where you ordered goods or which invoiced you).

It is advisable to keep proof of delivery or posting.

## **6. How is the form registered?**

The Registrar will check the form and, if acceptable, put it on the company's public record. An acknowledgement will be sent to the address shown on the form. The company will also be notified at its [registered office address](#) to enable it to object if the application is bogus.

## **7. Can anyone object to dissolution?**

Any interested party may object.

## **8. How and why can they object?**

Objections must be in writing and sent to the Registrar of Companies with any supporting evidence, such as copies of invoices that may prove the company is trading. Reasons for objecting include:

- the company has broken any of the conditions of its application (for example, it has traded, changed its name or become subject to insolvency proceedings) during the three-month period before the application, or afterwards;
- the directors have not informed interested parties;
- any of the declarations on the form are false;
- some form of action is being taken, or is pending, to recover any money owed (such as a winding-up petition or action in a small claims court);
- other legal action is being taken against the company;
- the directors have wrongfully traded or committed a tax fraud or some other offence.

## **9. What if I change my mind and want to withdraw my application?**

Directors must withdraw the application using [Form 652c](#) if a company ceases to be eligible for striking-off. This may be because the company:

- trades or otherwise carries on business;
- changes its name;
- for value, disposes of any property or rights except those it needed in order to make or proceed with the application (for example a company may continue the application if it disposes of a telephone which it kept to deal with enquiries about its

- application);
- becomes subject to formal insolvency proceedings or makes a Section 425 application (a compromise or arrangement between a company and its creditors);
  - engages in any other activity, unless it was necessary or expedient in order to: make or proceed with a striking-off application; conclude those of its affairs that are outstanding because of what has been necessary or expedient to make or proceed with an application (such as paying the costs of running office premises while concluding its affairs and then finally disposing of the office); or comply with a statutory requirement.

Form 652c can be completed and signed by any director. The form must be sent to Companies House.

## 10. What happens when the Registrar accepts a Form 652a application?

The Registrar will advertise and invite objections to the proposed striking-off in the [Edinburgh Gazette](#). The company will be struck off the register not less than three months after the date of this notice if the Registrar sees no reason to do otherwise and the application has not been withdrawn. The company will be dissolved when the Registrar publishes a notice to that effect in the Gazette. (At the time of striking-off, a letter will be issued to the contact name on Form 652a confirming the proposed date of dissolution.)

### Offences and penalties

It is an offence:

- to apply when the company is ineligible for striking-off;
- to provide false or misleading information in, or in support of, an application;
- not to copy the application to all relevant parties within seven days;
- not to withdraw the application if the company becomes ineligible.

Most offences attract a fine of up to £5,000 on summary conviction (before a magistrates' court) or an unlimited fine on indictment (before a jury). If the directors deliberately conceal the application from interested parties, they are liable not only to a fine but also up to seven years imprisonment.

**Anyone convicted of these offences may also be disqualified from being a director for up to 15 years.**

## 11. Do I need to send a fee with Form 652a?

A fee of £10 is payable to cover the cost of providing the service. The fee will not be refunded if the application is rejected or withdrawn after its registration. A further fee will be payable for a new application. Any cheques must be made payable to 'Companies House' and the company number written on the reverse.

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## CHAPTER 2

### Defunct companies

#### 1. Can the Registrar strike off a company?

Yes, if it is neither in business nor in operation. The Registrar may take this view if, for example:

- documents have not been received from a company that should have sent them to the Registrar; or
- mail the Registrar has sent to a company's registered office is returned undelivered.

Before striking a company off the register, the Registrar must inquire whether it is still in business or operation. If he is satisfied that it is not, a notice will be published in the [Edinburgh Gazette](#) that the Registrar intends to strike the company off. A copy notice is placed on the company's public record. If the Registrar sees no reason to do otherwise, the company will be struck off not less than three months after the date of the notice. The company will be dissolved on publication of a further notice stating this in the Gazette. At the date of dissolution any assets held by a dissolved company will belong to the Crown: see [question 5](#).

#### 2. How can I avoid this action?

If the company is to remain on the register, it is important to reply promptly to any formal inquiry letter from the Registrar and to deliver any outstanding documents. Failure to deliver the necessary documents may also result in the directors being prosecuted.

#### 3. Can I object?

The Registrar will take into account representations from the company and other interested parties such as creditors.

#### 4. How does the Registrar's intention to strike off a company appear in the Edinburgh Gazette?

Notices are published in the Edinburgh Gazette, which is published twice weekly. Copies can be provided from the Stationery Office, 73 Lothian Road, Edinburgh EH3 9AW.

#### 5. What happens to the assets of a dissolved company?

From the date of dissolution any assets held by a dissolved company will be 'bona vacantia'. This means they belong to the Crown.

Enquiries about bona vacantia property should be addressed, as appropriate, to:

The Queen's and Lord Treasurer's

Remembrancer (Q & LTR)

Crown Office

25 Chambers Street

Edinburgh

EH1 1LA

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## CHAPTER 3

### Restoration to the register

The Registrar cannot restore a company to the register without a Court Order. When the Registrar receives an office copy of the Court Order for restoration, a company is regarded as having continued in existence as if it had not been struck off and dissolved.

#### 1. Who can apply to have a company restored to the register?

**For companies struck off following a Form 652a application:** any of the parties who must be notified of the application (see [chapter 1, question 4](#)) can apply to the Court within 20 years of dissolution for the name of the dissolved company to be restored to the register. The Court may order restoration under section 653 of the Companies Act 1985 if it is satisfied that:

- the person was not given a copy of the company's application;
- the company's application involved a breach of the conditions of the application; or
- for some other reason it is just to do so.

The Secretary of State may also apply to the Court for restoration if this is justified in the public interest.

**For companies struck off at the instigation of the Registrar:** the company, or a member or creditor of it, can apply to the Court for restoration within 20 years of the dissolution. When a company applies for its own restoration, a member of the company must also be an applicant to give any necessary undertakings to the Court.

**Where a company is dissolved:** the liquidator or any other interested party such as a creditor can apply to the Court for the dissolution to be declared void. In most cases an application must be made within two years of dissolution, but it can be made at any time if its purpose is to bring proceedings against a company for:

- damages for personal injuries including any sum under Section 1(2)(c) of the Law Reform (Miscellaneous Provisions) Act 1934 (funeral expenses); or
- damages under the Fatal Accidents Act 1976 or the Damages (Scotland) Act 1976.

## **2. Where do I apply for a Court Order for restoration?**

You apply to the court with jurisdiction to wind up the company. In all cases, this is the Court of Session. Alternatively, for a company whose paid-up capital does not exceed £120,000, you can apply to the Sheriff Court in the sheriffdom in which the company has its registered office.

## **3. How do I serve documents?**

The petition should be served on:

The Lord Advocate  
Crown Office  
25 Chambers Street  
Edinburgh  
EH1 1LA  
DX ED310

and:

The Registrar of Companies  
Companies House  
37 Castle Terrace  
Edinburgh,  
EH1 2EB  
DX: ED235 Edinburgh 1

The Registrar will accept delivery by post (recorded delivery is recommended) or by hand at Companies House Edinburgh during normal office hours.

An agent may represent the Registrar of Companies and/or the Lord Advocate at the hearing.

## **4. What evidence must I give?**

The Court will require evidence covering:

- service of the petition on the Registrar of Companies and the Lord Advocate.

The Court will usually require background information on the company. This can be provided in the petition (its form is prescribed in the rules of court) and may include:

- when the company was incorporated and the nature of its objects (a copy of the certificate of incorporation and the memorandum and articles of association should be attached);

- its membership and officers;
- its trading activity and, if applicable, when it stopped trading;
- an explanation of any failure to deliver accounts, annual returns or notices to the Registrar of Companies;
- details of the striking-off and dissolution;
- comments on the company's solvency;
- any other information that explains the reason for the application.

The Registrar will provide information to assist in an application to the Court. Before the Court hearing, the Registrar will normally ask for:

- delivery of any statutory documents to bring the company's public file up to date.
- the correction of any irregularities in the company's structure.

## 5. Are there costs or penalties?

Yes. The applicant(s) may be expected to meet the costs of the Registrar in relation to the restoration. The company may also be required to meet the Registrar's expenses and any [late filing penalty](#) payable for accounts delivered outside the period allowed by the Companies Act 1985.

## 6. What happens when the order for restoration is made?

On completion of the order, a certified copy interlocutor should be delivered to the Registrar of Companies. The company is considered restored upon delivery.

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## CHAPTER 4

### Further information

#### 1. Where do I get forms and guidance booklets?

This is one of a series of Companies House booklets which provide a simple guide to the Companies Act.

[Statutory forms](#) and [guidance booklets](#) are available, free of charge from Companies House. The quickest way to get them is through this website or by telephoning 0870 3333636.

If you prefer you can write to our stationery sections in [Cardiff](#) or [Edinburgh](#).

Forms can also be obtained from legal stationers, accountants, solicitors and company formation agents - addresses in business phone books.

#### 2. How do I send information to the Registrar?

You may deliver documents to the Registrar by hand (personally or by courier), including outside office hours, bank holidays and weekends to Cardiff, London and Edinburgh.

You may also send documents by post or by the Hays Document Exchange service (DX). If you send documents, please address them to:

<b>For companies incorporated in England &amp; Wales:</b>	<b>For companies incorporated in Scotland:</b>
The Registrar of Companies Companies House Crown Way Cardiff CF14 3UZ	The Registrar of Companies Companies House 37 Castle Terrace Edinburgh EH1 2EB
DX33050 Cardiff	DX ED235 Edinburgh 1

We will only acknowledge receipt of documents at Companies if you provide a stamped addressed envelope.

**Please note: Companies House does not accept accounts or any other statutory documents by fax.**

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