

**THE SCOTTISH GOVERNMENT'S PARTIAL REGULATORY
IMPACT ASSESSMENT ON A PROPOSED BILL TO REVERSE
THE HOUSE OF LORDS' JUDGMENT IN *JOHNSTON v. NEI
INTERNATIONAL COMBUSTION LIMITED***

FEBRUARY 2008

**RESPONSE OF THE ASSOCIATION OF RUN-
OFF COMPANIES
(‘ARC’)**

APRIL 2008

Introduction

This document is the response of the Association of Run-Off Companies ('ARC') to the Scottish Government's partial regulatory impact assessment on a proposed bill to reverse the House of Lords' judgment in Johnston v. NEI International Combustion Limited.

Section 1 below sets out ARC's credentials as a trade association

Section 2 gives the ARC response to the Consultation.

The Appendix contains ARC's completed Respondent Information Form as set out in Annex B of the consultation document

Any questions concerning this response should be addressed, in the first instance, to Philip Grant, Chairman of ARC, at Philip.grant@arcrunoff.com or by telephone on 07831 659555.

Section 1 - ARC credentials – whom do we represent?

ARC¹ is the trade association for discontinued (run-off) non-life insurance and reinsurance business in the UK. The views expressed by ARC in this paper are intended to summarise the views of the run-off sector as a whole, although there may be specific concerns that are addressed in individual submissions by market participants.

Brief history of ARC

The Association of Run-off Companies was formed in 1998 to meet the wish of companies with discontinued business lines to exercise more influence over new market business processes and to be involved at all consultative stages in proposed developments where the focus was claims-related. Initially the Association had a small membership made up of the senior claims representatives from like-minded London Market companies, either in run-off or operating a run-off account. Subsequently the membership was extended to include companies providing services to the risk carriers, as a reflection of the level of third party claims administration that exists in the run-off sector.

Over the course of the last few years the Association has grown in both the size and diversity of its membership and in its profile and influence and is now regarded as an integral element of the infrastructure within London. It is recognised by the FSA, by other market bodies and by the insurance media, as the ‘voice’ of the run-off sector.

Size and structure of ARC membership

ARC has approximately 200 members, in three broad categories:

- i) Insurance companies wholly or partly in run-off (both solvent and insolvent)
- ii) Outsourced service providers, ranging from large full-spectrum service providers to small specialist niche service providers
- iii) ‘Interested parties’, such as firms of lawyers, accountants and actuaries, who wish to attend ARC events and be kept abreast of developments within the run-off sector, but who are not full members of ARC

Further information about ARC, including a list of its members, can be found on its website, at www.arcrunoff.com

¹ The Association of Run-Off Companies Limited is a company limited by guarantee incorporated in England

Section 2 – ARC’s response to the Consultation

- a) ARC has had the benefit of seeing the response of the ABI to the Consultation and strongly endorses and supports the points it makes and the conclusions it reaches.
- b) There are however some additional points that ARC wishes to make that relate to the position of insurers in solvent or insolvent run-off:
 - i) Unlike ‘live’ insurance companies, insurers in solvent run-off have no ability to recoup losses caused by additional claims costs by charging higher premiums; any unforeseen additional claims costs will have the effect of depleting shareholders’ funds and reducing the solvency of the company;
 - ii) If, as we suspect, the effect of this legislation, however narrowly it is drafted, will be to encourage more claims – either additional pleural plaques claims generated by ‘claims farmers’ or other types of claims from the ‘worried well’ with other asymptomatic conditions – the effect may be to weaken some insurers in run-off to the point that their solvency is threatened;
 - iii) Those insurers that are already insolvent have in most cases entered schemes of arrangement under Section 425 of the Companies Act, under the terms of which the Scheme Administrators will have calculated and made scheme payments to creditors based on a prudent assessment of total expected liabilities. Should significant numbers of new claims be made against those insolvent insurers, for the reasons given in (ii) above, it is possible that previous scheme payment levels may be discovered to have been too high. This would carry the possibility of scheme administrators having to attempt to claw back payments already made, although it is more likely that future payment levels would be impacted, meaning that deserving future claimants would face reduced payments;
 - iv) The fact that insurance companies in run-off, whether solvent or insolvent, are effectively closed funds, with finite resources, means that increased levels of payments made to those with symptomless conditions will inevitably reduce the amounts available to pay those who develop more serious conditions, especially mesothelioma. Given the potentially very long latency period of those conditions, there is a significant risk that the funds available to compensate such claimants will have already been exhausted by the costs of defending claims from and making payments to pleural plaques claimants.

APPENDIX

RESPONDENT INFORMATION FORM: CONSULTATION - A PARTIAL REGULATORY IMPACT ASSESSMENT ON PROPOSED PLEURAL PLAQUES DAMAGES LEGISLATION

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name: **The Association of Run-Off Companies**

Postal Address: **47 Bury Street, Stowmarket, Suffolk, IP14 1HD**

1. Are you responding: (please tick one box)

(a) as an individual go to Q2a/b and then Q4

(b) **on behalf of** a group/organisation go to Q3 and then Q4

INDIVIDUALS

2a. Do you agree to your response being made available to the public (in Scottish Government library)?

Yes (go to 2b below)

No, not at all We will treat your response as confidential

2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

3. The name and address of your organisation **will be** made available to the public (in the Scottish Executive library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

Yes

No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes

No