



**SUMMARY OF RESPONSES
TO THE CONSULTATION ON
REFORM OF PARTNERSHIP LAW:
THE ECONOMIC IMPACT**

Summary

JULY 2006

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1. The consultation

1.1 Following consultation the Law Commission and the Scottish Law Commission, in November 2003, published a joint report and draft Bill recommending reforms to the Partnership Act 1890 and the Limited Partnerships Act 1907¹.

1.2 The Law Commissions recommended specific reforms on the continuity of business following changes of partners, including the major innovation of conferring legal personality on partnerships, partly as a means of securing continuity. Reform of solvent dissolution and the winding up of dissolved partnerships was also proposed. Other reforms included:

- clarification of what partnership agreements govern and what mechanism for agreement and/or amendment they may contain;
- the provision of default provisions which would apply unless the partners agreed otherwise (designed with small partnerships in mind);
- reform of the rules on litigation and enforcement of claims against a partnership; and
- reforms in respect of limited partnerships.

1.3 The draft Bill also includes a number of other amendments designed to update the law of partnership to make it more accessible for a wide range of users.

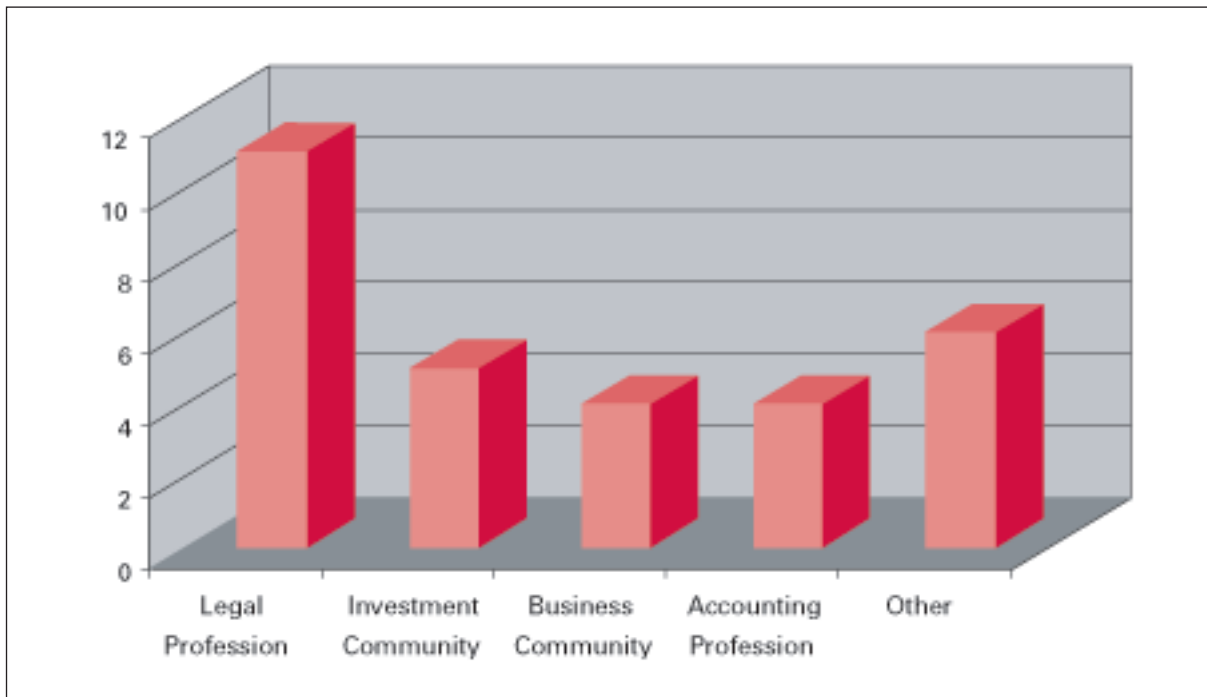
1.4 On 30 April 2004 the DTI issued a consultation document seeking information on the economic impact of the Law Commissions' proposals to reform partnership law². The consultation document asked readers to consider whether the reforms would benefit business, if so, how the benefits would arise and to provide, where possible, estimates of cost savings or burdens.

1.5 The DTI consulted widely on this matter, bringing the consultation to the notice of business by mailing details to some 2,600 interested parties. The consultation document was made available for download on the internet and 150 hard copies were distributed by the DTI Publications Orderline as a result of telephone requests.

¹ Partnership Law, Law Commission Report No 283/Scottish Law Commission Report No 192.

² Reform of Partnership Law: The Economic Impact, 30 April 2004, URN 04/966.

1.6 Thirty organisations, businesses and individuals responded to the consultation. We are grateful to them for their comments. The chart below shows a breakdown of the responses by business sector.



Legal profession	11 responses
Investment Community	5 responses
Business Community	4 responses
Accounting Profession	4 responses
Others	6 responses

1.7 A list of respondents (other than those who asked for the responses to remain confidential) can be found at Annex A. Copies of the responses that are not confidential can be requested from Rena Marshall of the Corporate Law and Governance Directorate on 020 7215 2560. Copies of this summary document and the consultation document can be downloaded free of charge from <http://www.dti.gov.uk/bbf/corp-governance/partnership/page25911.html> Copies of the consultation document can also be obtained free of charge from the DTI Publications Orderline on 0845 0150 010 quoting URN 04/966.

2. Results of the consultation

2.1 In total there were 30 responses to the consultation. Two respondents had no comments to make on the economic impact of the proposals, giving 28 substantive responses. A summary of the responses is given in the following paragraphs.

General overview of responses

2.2 Views were evenly split on whether, overall, the reforms of partnership law were of economic benefit to the business community. Thirteen respondents indicated that the reforms would be of benefit and 12 respondents argued that the reforms would not benefit business. Eight respondents submitted comments solely on limited partnership law putting forward arguments that reform of the 1907 Act would be of benefit to business. Six respondents who considered reform of general partnerships would not be of economic benefit did argue that specific reforms of limited partnership would be of economic benefit.

2.3 Respondents who put forward arguments that reform of partnership law would be of economic benefit commented that:

- They supported full implementation of the reforms.
- Many of the proposals were already incorporated into partnership agreements and reflect practice.
- The present law of partnerships is quite difficult and does not always conform to the expectations of business. The proposed reforms will improve this position by providing a code of rules that will apply in default of agreement to the contrary.

2.4 Respondents who argued that the reforms would not be of economic benefit commented that:

- There were a number of potential costs involved but few perceived benefits.
- The existing law was substantially satisfactory and radical change was unnecessary.
- The reforms would create legal uncertainty which would need to be resolved by the Courts.

- More sophisticated partnerships have detailed partnership agreements and generally the existing law works satisfactorily.
- The proposals are unlikely to significantly affect large partnerships.

However, there are concerns that the proposals would result in significant costs to small firms and represent a move away from the informal, flexible approach to partnerships.

General Comments on the economic impact of the proposals

2.5 Those who responded to the consultation with information on the benefits and disadvantages of the proposed reforms of partnership law made the following comments:

Benefits

- A simplified system for the appointment of liquidators would result in disputes between partners being resolved more easily.
- The administrative costs of the proposals are proportionate to the benefits to be gained in the long term by both partners and investors.

Disadvantages

- It will cost approximately £1,000 – £2,000 per partner to draft or re-draft partnership agreements.
- Cost will fall largely on small firms.
- English partnerships with legal personality operating overseas will become subject to foreign tax.
- Business is likely to move off-shore if general partnerships do not have the ability to opt out of legal personality as such vehicles are available in other jurisdictions.
- There will be an increase in litigation.
- There will be a greater need than at present for prospective partners to take legal advice.

Detailed comments on the economic impact of the proposals

2.6 The consultation document asked consultees to consider how the proposed reforms might affect business.

2.7 The detail of the responses is dealt with under the following categories: legal personality and continuity; agency, liability, litigation and enforcement; partnership property; the rights of and withdrawal of partners; winding up of solvent partnerships; and limited partnerships.

a. Legal personality and continuity

2.8 Those respondents who commented provided the following information on the benefits and disadvantages of providing partnerships with continuity and legal personality:

Benefits

- Will bring the law on partnerships into line with public perception.
- The need for complicated partnership agreements will be reduced with no need to prepare or re-execute partnership agreements every time there is a change in partners.
- No need for partnerships to have service companies to employ staff.
- The proposed reforms will greatly improve the position of partnerships by providing a code of rules that will apply in default of agreement to the contrary. Large firms will benefit the most from these reforms.

Disadvantages

- Most substantial partnerships already have partnership agreements.
- Legal personality will make English partnerships subject to foreign tax when they operate overseas.
- Reforms do not allow for an opt-out of legal personality. British companies which conduct joint ventures through partnerships and partnerships with international business will be adversely affected, leading advisors to recommend foreign entities for such ventures.
- Inadvertent creation of partnerships with overseas branches could result in their being treated as corporations for tax purposes.

- Illegal partnerships will be able to continue in existence until such time as an order for their dissolution is obtained.
- Small firms may not realise that they have continuity and may not want their partnerships to benefit from such continuity.

b. Agency, liability, litigation and enforcement

2.9 Those respondents who commented provided the following information on the benefits and disadvantages of reforms to the agency and liability of partners and litigation and the enforcement of judgements:

Benefits

- With the reforms in normal circumstances it would be more equitable to sue the partnership as a whole rather than a single partner.
- Most lay people already regard a partnership as a separate entity and do not realise that the cause of the action lies against those individuals who were partners at the time the cause of the action accrued. The reforms would therefore align practice with public perception.
- The proposals will not lead to a need to change existing arrangements, such as employment or third party contracts and associated costs are therefore unlikely to be significant.

Disadvantages

- Liabilities of former partners will be imposed on the continuing partnership.
- There would be no practical change as it is already common practice to sue a partnership in its own name.
- The reforms bring uncertainty and illogicality, with the potential to increase the costs of litigation.
- In instances where a claim is made against an individual partner there is an argument for allowing subrogation to allow the individual to claim back from the partnership as a whole.
- Prospective partners will need to take legal advice regarding the establishment of their partnership.

2 Results of the consultation

- There will be difficulties for third parties in trying to identify the members of a partnership.
- The proposal that no partner can be held personally liable unless there has been a judgement or order against the firm will lead to difficulties and possible increases in legal costs.
- Pursuing a partnership as a named entity could create problems if there is a conflict of interest between partners, particularly in the case of general medical and dental practices where clinical negligence claims turn on allegations of breach of duty that concern individual consultations.
- The proposals would increase the costs of litigation by promoting satellite litigation against partners.

c. Partnership property

2.10 Those respondents who commented provided the following information on the benefits and disadvantages of the reforms that will enable partnerships to own property:

Benefits

- The ability for a partnership to enter into contracts and to own assets should, over time, reduce costs significantly.
- The ability of a partnership to hold property may save significant annual or recurring costs. In particular the transfer of leasehold property from the old partners to the new partners under the present regime involves the legal costs of the assignment and usually costs and fees chargeable to landlords.
- Reforms will not increase costs.
- Should provide a degree of clarity on whether the assets of the partnership (as opposed to the assets of the individual partners) can be used to settle liabilities.

Disadvantages

- There will be costs of £500 or more to amend leases if landlords agree to such amendments.

- Landlords may ask for personal guarantees.
- The Land Registry and other agencies may need to carry out investigations in order to ascertain the authority of the person purporting to deal with the title.

d. The rights of and withdrawal of partners

2.11 Those respondents who commented provided the following information on the benefits and disadvantages of the reforms to the rights of partners and the mechanisms of withdrawal from partnerships:

Benefits

- This is likely to provide cost savings to partnerships by bringing clarity to cases that may otherwise be in dispute.

Disadvantages

- The proposals will remove the right of the retiring partner to have the assets realised, compelling them into the uncertainty and cost of seeking valuations, resulting in an increase in uneconomic litigation.
- The 8 week notice of resignation period is too short. Respondents have suggested periods ranging from 3 months to a year.
- The proposed statutory structure of valuation and buyout is rigid and will prove expensive.

e. Winding up of solvent partnerships

2.12 Those respondents who commented provided the following information on the benefits and disadvantages of the reforms on the winding up of solvent partnerships:

Benefits

- It will be advantageous to have a simplified system for appointing liquidators.
- A simplified system will reduce costs.

2 Results of the consultation

- The proposals are extremely detailed and there are costs and time benefits to be gained.
- Will bring finality by the involvement of an efficient and independent third party.

Disadvantages

- It is a serious flaw in the proposals to make partners personally liable for the acts of liquidators.
- Doubtful that it will bring cost savings.
- Unnecessary. Courts already provide a means of appointing a receiver.
- Involvement of a third party will bring extra expense.
- Costs in the region of £5,000 in preparing statements in the winding up.

f. Limited partnerships

2.13 Those respondents who commented on the reforms to limited partnerships provided the following information:

Benefits

- Advantageous for limited partnerships to be able to elect for aggregate or entity status (ie partnerships as currently formed under the 1907 Act or with legal personality).
- Proposed changes likely to deliver significant benefits and increased legal certainty to fund sponsors and investors. The overall impact of the reforms will be far greater than the sum of the parts.
- The clarity of uncertainty which exists for limited partnerships, particularly relating to the extent of the limited partners' involvement in the business, should increase the attractiveness of the vehicle for investment funds.

Disadvantages

- Essential that limited partnerships should remain tax transparent which is not the case with legal personality in some overseas jurisdictions.

Annex A

Table of Respondents

(other than those who requested that their responses remain confidential)

The Association of Chartered Certified Accountants
The Association of Partnership Practitioners
Roderick I'Anson Banks
Mark Blackett-Ord
The Chartered Institute of Patent Agents
City of London Solicitors Company's Company Law Sub-Committee
City of Westminster & Holborn Law Society
Clifford Chance LLP
Faculty of Advocates
John A Franks
The General Council of the Bar
General Practitioners Council, BMA
Herbert Smith
The Institute of Chartered Secretaries and Administrators
Institute of Credit Management
The Institute of Trade Mark Attorneys
The International Underwriting Association of London
Simon Jelf
Killik & Co
The Law Society's Company Law Committee
Prof McCarthy & Dr Vermeulen
The Medical Protection Society
Keith Slade
Small Business Bureau
Small Business Service
The Society of Professional Accountants
Southern Society of Chartered Accountants
York Place Company Services Ltd

