

BERR | Department for Business
Enterprise & Regulatory Reform

**THE LEGISLATIVE REFORM
(LIMITED PARTNERSHIPS)
ORDER 2009**

Explanatory Document

JUNE 2009

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Introduction

1. This explanatory document is laid before Parliament in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 (“the LRRRA”) together with the draft of the Legislative Reform (Limited Partnerships) Order 2009 (“the draft Order”) which we propose to make under section 1 of that Act. The purpose of the draft Order is to amend the Limited Partnerships Act 1907.

Duties of the Minister

2. With regard to the duties imposed on the Minister in relation to public consultations by section 13 of the LRRRA, the then Parliamentary Under Secretary of State for Trade and Consumer Affairs considered and approved the consultation document before publication. Following the consultation period the Economic and Business Minister (“the Minister”) considered that, in light of the responses, we would not be able to proceed immediately with the comprehensive reform as then proposed. Instead, the Minister considered that the reform should proceed in a number of steps. On the basis of appropriate further consultation, as required by section 13(2), the Minister decided that the first step is the current draft Order, and that the other elements of the reform that would take more time to resolve should be pursued separately as appropriate.

3. Accordingly the Minister is laying before Parliament the documents required by section 14(1) of the LRRRA as well as the additional information requested by the Parliamentary Committees which is all annexed to this Explanatory Document. The Minister is satisfied that the Order serves the purpose set out in section 1(2) of the LRRRA and meets the conditions imposed by section 3(2) – and in respect of restatement, the condition in section 3(4) – of the LRRRA.

Summary

4. The draft Order would make a significant improvement to the Limited Partnerships Act 1907, by making it clear that a limited partnership comes into existence when the Registrar registers it, and that the certificate the Registrar issues on registration is conclusive evidence of its formation. It would also require new limited partnerships to include in their name an indication of their status.

5. These improvements are part of a set of recommendations made by the Law Commissions in their 2003 report on Partnership Law¹. We consulted on a comprehensive LRO to implement these recommendations last year, and copies of the consultation document²

¹ *Partnership Law – Report on a reference under section 3(1)(e) of the Law Commissions Act 1985* – The Law Commission and the Scottish Law Commission (LAW COM No 283/SCOT LAW COM No 192), November 2003. www.lawcom.gov.uk/docs/lc283.pdf

² *Reform of limited partnership law: Legislative Reform Order to repeal and replace the Limited Partnerships Act 1907: A Consultation Document* – (URN 08/1153) – BERR, August 2008, www.berr.gov.uk/files/file47577.pdf

were provided to the Delegated Powers and Regulatory Reform Committee and to the Regulatory Reform Committee in August 2008.

6. The responses to the consultation make it clear that there is strong general support for clarification and modernisation of limited partnership law, but that on some aspects there are diverging views on the way this should be achieved. The responses made it apparent that we could not proceed with the comprehensive LRO as planned.

7. We identified the conclusiveness of registration as a change that no respondent had questioned, and that many had specifically identified as a particularly important and welcome improvement. The draft Order therefore delivers this, and also delivers the closely related, and equally uncontroversial, proposal to require suffixes in limited partnerships' names to clarify their status. Discussion with those who responded to the consultation confirmed that an order confined to these two points would be valuable.

8. In the same discussions, we asked consultees about the proposal that we should continue to deliver most or all of the planned reforms through a series of smaller, more manageable LROs. There has been widespread, though not unanimous, support for this, and we plan to consult a wider range of stakeholders about the best way to proceed.

Background

9. The Partnership Act 1890 sets out the basic structure of partnership law. The partners of partnerships governed by that Act – often known as general partnerships – have unlimited liability for the debts and obligations of the partnership. The Limited Partnerships Act 1907 introduced a second form of partnership, in which the liability of one or more of the partners was limited, provided the partnership also contained at least one general partner with unlimited liability. Both these acts have remained largely unchanged for over 100 years.

10. A new corporate vehicle, the limited liability partnership (LLP), was created by the Limited Liability Partnerships Act 2000. LLPs have flexibility in relation to their internal arrangements in much the same way as conventional partnerships, but they are bodies corporate with limited liability, and are accordingly subject to certain Companies Acts requirements, including those relating to accounts and audit.

11. The draft Order applies only to limited partnerships.

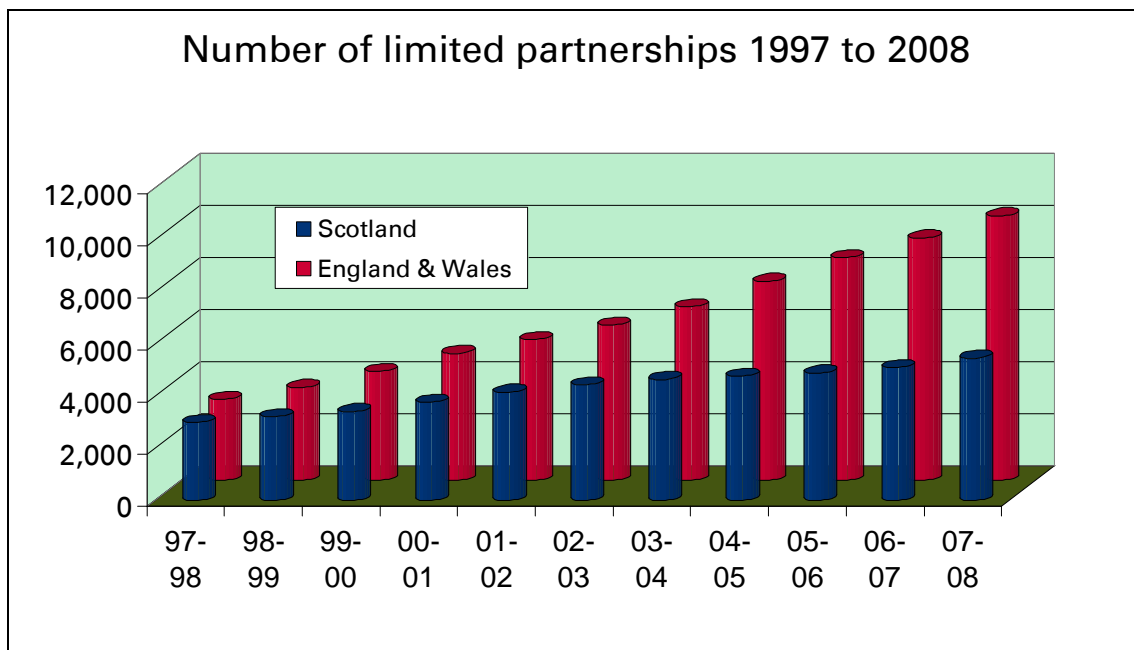
12. In English law a general or limited partnership – also called a “firm” (section 4(1), Partnership Act 1890) – is an aggregation of the individual partners rather than an entity separate from its partners. By contrast, in Scots law, “a firm is a legal person distinct from the partners of whom it is composed” (section 4(2), Partnership Act 1890).

13. The flexibility of partnerships as a business vehicle is reflected in their variety; they vary widely in size and nature from being informal associations of two persons to large partnerships with many members

and complex management structures. Limited partnerships are used for specialised purposes and are normally governed by formal agreements.

14. The limited partnership is a useful vehicle for investors who do not wish to take an active role in the management of the investment to combine to create an investment fund under the control of a general partner who alone has unlimited liability for the partnership's obligations whilst the limited partners are only liable to the extent of their contributions (unless they take part in the management of the business). Since 1987, when the Department of Trade and Industry and Inland Revenue agreed guidelines (since superseded) on the use of limited partnerships as venture capital funds, the UK limited partnership has become one of the most important vehicles for venture capital investment across Europe.

15. The Law Commissions recognised that business people use limited partnerships for specialised purposes and that most limited partnerships would have written partnership agreements governing the rights and obligations of the partners towards each other.



16. The latest published figure for UK limited partnerships is around 15,600³. That showed that there were 10,142 limited partnerships registered in England and Wales and 5,447 registered in Scotland. Around a further 40 limited partnerships were registered in Northern Ireland. Limited partnerships are the dominant investment vehicle used in the UK, Europe and the United States for venture capital and private equity investment funds. Limited partnerships are also widely used for other types of fund, including real estate and film finance.

³ *Statistical tables on companies register activities 2007-2008*, Companies House, www.companieshouse.gov.uk/about/pdf/companiesRegActivities2007_2008.pdf

Consultation

17. The consultation required by section 13(1) of the LRA was launched in August 2008. That consultation document gave an account of earlier consideration, including:

- the Department (then the Department of Trade and Industry) asking the Law Commission and the Scottish Law Commission in 1997 to carry out jointly a review of partnership law;
- the Law Commissions' consultation, and their report in 2003⁴
- the Department's further consultation in 2004⁵, and
- an announcement to Parliament on 20 July 2006⁶ that in the light of the responses it proposed to bring forward proposals to implement the recommendations in respect of limited partnerships, in view of the consensus among respondents that there would be strong economic benefits from them.

18. The 2008 consultation document contained a draft order that would have repealed entirely the 1907 Act and replaced it by writing 31 new sections into the Partnership Act 1890. It also contained a separate draft order using powers in the Companies Act 2006 to apply certain provisions of that Act, relating to names and registration, to limited partnerships.

19. The consultation document was sent to 108 people and organisations, as listed in annex A. This included all those who had responded to previous consultations on the subject by the Law Commissions and the Department.

Responses

20. We received 33 responses, as listed in Annex B. The Government's response⁷ was published on 25 March, as were all of the responses⁸, except for one that asked for confidentiality. Of the responses, 23 were from lawyers or organisations composed of or associated with lawyers. One of these responses represented the co-ordinated view of the British Private Equity and Venture Capital Association, the Association of Partnership Practitioners, the Institute of Chartered Accountants in England and Wales, and ten law firms.

21. Three of the fourteen law firms who responded individually were Scottish, and there were also responses from the Scottish Government Rural Directorate, the Scottish Rural Property and Business Association,

⁴ *Partnership Law – Report on a reference under section 3(1)(e) of the Law Commissions Act 1985* – The Law Commission and the Scottish Law Commission (LAW COM No 283/SCOT LAW COM No 192), November 2003. www.lawcom.gov.uk/docs/lc283.pdf

⁵ *Reform of partnership law: the economic impact* – DTI, April 2004, www.berr.gov.uk/files/file23033.pdf

⁶ Hansard, House of Commons, 20 July 2006, column 52WS, available at

<http://www.berr.gov.uk/files/file32331.doc>

⁷ <http://www.berr.gov.uk/files/file50705.pdf>

⁸ <http://www.berr.gov.uk/files/file50724.pdf> (note this is a very large document)

the Scottish Estates Business Group and the Committee of Scottish Clearing Banks.

22. The responses provided comment on most aspects of the proposals and presented a variety of views and arguments. They included in particular

- Strong opposition from Scottish landowning interests to a number of aspects of the proposals, particularly on re-registration
- Extensive comments from lawyers specialising in partnership law suggesting changes and improvements to the draft Order.

23. The comments suggesting changes and improvements covered many aspects of the draft Order and were not consistent with one another. Resolving these in a way that would command a consensus would have in itself at least seriously delayed the presentation of the comprehensive LRO. The reaction of the Scottish landowners to the proposal for re-registration made it impossible to proceed as envisaged.

Scottish problems with re-registration

24. The consultation draft LRO would have required all pre-existing limited partnerships to re-register within 24 months of commencement in order that in the medium term third parties dealing with a limited partnership would not have the burden of having to check whether it was governed by the 1907 Act or by the Partnership Act 1890 as amended. The mechanism would have been for the Registrar to write to all limited partnerships reminding them of the requirement, and if there had been no response after two reminders, then two years after commencement, the Registrar would take steps to remove the limited partnership from the register. Any limited partnership where the general partner accidentally failed to return the form would thus find itself turned into a general partnership, and the limited partners would have lost their limited status.

25. In Scottish limited partnerships formed for holding leases on farmland, the general partner is a tenant farmer, and the limited partner represents the landowner. In responding to the consultation, the organisations representing the landowners (the Scottish Rural Property Business Association and the Scottish Estates Business Group, supported by the Rural Directorate of the Scottish Government) argued that it was unreasonable that a landowner should be exposed to such a risk of unlimited liability for all debts of the farm business.

26. The Department accepts that this would have been unreasonable, and we will ensure that any future implementation of the reforms will not create such a risk. Given the significant number of Scottish limited partnerships used in this way, we shall keep their interests in mind as we proceed, and ensure that we consult the relevant stakeholders appropriately.

Re-consultation

27. In the light of the responses to the August 2008 consultation, it was apparent that we were not in a position to proceed with the comprehensive draft Legislative Reform Order.

28. There is however broad support for many of the key proposals and the Government wishes to proceed with them. The present draft Order is essentially justified by the support for its reforms expressed in the consultation in 2008 under section 13(1) of the LRRRA, but as the substantial reduction in scope changed the context of these measures, it appeared appropriate to consult informally with those who had responded to the formal consultation.

29. We sought to contact all 33 respondents. Annex D is the basic text used for writing to them, and as a basis for speaking to them. We had five meetings involving nine respondents, as follows:

- Mark Blackett-Ord (Chancery Bar Association) on 26 March
- BVCA on 27 March
- Roderick l'Anson Banks and Simon Jelf (Partnership Counsel) on 7 April
- The Scottish Rural Property Business Association, the Scottish Estates Business Group, and the Scottish Government on 21 April
- Tod's Murray and Brodies, also on 21 April

We also had subsequent correspondence, by email and phone, with a number of these respondents.

30. We discussed by telephone with three respondents: the Law Society, Berwin Leighton Paisner, and Gillespie Macandrew. A further four respondents responded by email: Elspeth Berry, Nabarro, Osborne Clark and the Association of Pension Lawyers.

31. We are very grateful to all of those who responded to our questions in such a short timescale. As well as informing our decision that it would be worth proceeding with a limited Order this year, they provided valuable inputs into the way in which this draft Order should be framed, and helpful comments towards our consideration of the way in which we should pursue the remaining reforms.

The draft Order

32. As noted above, the draft Order that is the subject of this explanatory note is a much shorter, more limited instrument than the proposal on which we consulted in 2008.

33. It makes two main changes: making a certificate of registration conclusive evidence that a limited partnership has been formed at the date shown on the certificate; and requiring all new limited partnerships to include "Limited Partnership" or "LP" or equivalent at the end of their names.

Conclusive registration

34. The Law Commissions' report identified the burdens placed on limited partnerships and potential partners by the uncertainty surrounding the timing of registration, and they recommended that the limited partnership "should exist from registration as stated in the certificate of registration" (recommendation 20.84). They also recommended that the certificate should be conclusive evidence (20.86).

35. The formal consultation document included this proposal. It did not include a specific question on it, but five responses (Lovells, Brodies, Wragge & Co, Osborne Clarke and the BVCA) specifically singled it out as welcome. No response commented on it adversely.

36. The current uncertainty around registration imposes costs particularly when new investors who are unfamiliar with UK limited partnerships are considering becoming a limited partner for the first time. They will want to be assured that the limitation of their liability will be effective. They will be concerned at the risk that they might be deemed to be a general partner either before the uncertain point at which the limited partnership is formed, or afterwards if it turns out that there has been some irregularity in the application. Section 5 of the 1907 Act could then have the effect of deeming them to be general partners, with unlimited liability.

37. Those to whom we spoke in the informal re-consultation in April 2009 confirmed that these were real risks that had an effect on the willingness of investors to commit. It is likely that some investments will not go ahead as a result of these risks, and certain that the overall legal costs of setting up investment funds as limited partnerships are increased.

38. We had considered providing that the certificate would be conclusive evidence not only of the existence of the limited partnership but also that all the requirements of the Act have been complied with. However, as part of the informal re-consultation, we discussed this question with a number of consultees, particularly Mark Blackett-Ord and Roderick l'Anson Banks, and concluded that it would be inappropriate for the certificate to go further. The essential requirement appears to be that the

innocent investor who agrees in good faith to become a limited partner should not be put at risk, and we believe this is what the draft achieves.

39. Under the draft Order, for new limited partnerships, the certificate will provide conclusive evidence of the existence of a limited partnership. In order to ensure that each person who purports to be a limited partner – and who is listed as such in the application for registration – benefits from limited liability, it will still be necessary to satisfy the substantive requirements of section 4(2) of the 1907 Act. That section requires each limited partner to contribute an amount of capital to the partnership, and provides for his or her liability to be limited to that amount. Limited partners will also still be required to comply with section 6, which prevents them from taking part in the management of the partnership business.

40. The requirements for the application for a limited partnership are restated here in clearer and more modern language. They are not the same as in the consultation version, as that had changes consequential on other reforms, for example the replacement of the principal place of business with the registered office.

Names to indicate LP status

41. Unlike a company, a limited partnership is not required to disclose its status in its name. Many choose to do so, but the lack of a requirement was described by the Law Commissions as a significant omission (paragraph 15.67), and they recommended introducing such a requirement (recommendation 20.100). Including an indicator will reduce the burden on third parties who at present may need to take steps to find out if a partnership is general or limited. The proposal was included in the formal consultation document. It did not include a specific question on it, but it was specifically welcomed by Elspeth Berry.

42. Eight other respondents⁹ had comments on the proposals on names, though mostly these were concerned with the effect on existing partnerships who might have to change their names on re-registration. In the light of this, and of our informal re-consultation, we have decided that the current draft Order should apply the names requirement only to new limited partnerships registered under the new provisions.

Extent of the legislation

43. Responsibility for the law on partnerships lies with the Secretary of State for Business, Enterprise and Regulatory Reform. The Partnership Act 1890 and the Limited Partnerships Act 1907 extend to the whole of the United Kingdom. The subject of partnerships is a reserved area under the Scottish devolution legislation; and there are no relevant functions devolved under the devolution legislation for Wales.

⁹ Brodies, Covington & Burling, Simon Jelf, Nabarro, the Association of Real Estate Funds, CMS Cameron McKenna, Berwin Leighton Paisner, and the BVCA

44. In Northern Ireland, partnership law, like company law, is a transferred matter under the Northern Ireland Act 1998, and as such comes under the jurisdiction of the Northern Ireland Assembly. However, to ensure that company legislation is enacted simultaneously throughout the United Kingdom it was agreed that the Companies Act 2006 should also extend to Northern Ireland. The Northern Ireland Minister for Enterprise, Trade and Investment wrote to the Secretary of State for Business, Enterprise and Regulatory Reform on 8 August 2008 agreeing that it was appropriate to reform limited partnership law on a UK-wide basis.

45. This LRO therefore extends to the whole of the United Kingdom.

Modular approach to reform of limited partnership law

46. The responses to the formal consultation suggested to us that the attempt to reform the law comprehensively in one LRO had been over-ambitious. We are bringing forward the current LRO now, because the consultation made it clear that there was at least one significant, useful change for which there was a consensus. And our informal re-consultation has convinced us that it would be best to proceed in a modular way, bringing in changes in manageable-sized LROs.

47. All of those with whom we spoke accepted that this was the most realistic way of proceeding. But the four respondents from who responded by email¹⁰ argued against the modular approach, claiming that it would increase costs for limited partnerships and their advisers as they needed to adapt more times to changes. We appreciate this concern and agree that change on a single date would be the ideal. On the other hand, we do not believe that we could bring forward a single comprehensive order with confidence that it would be generally supported for at least twelve months and possibly much longer.

48. We believe that the benefits of this first LRO are worth having. It need not complicate the law for existing limited partnerships, as it affects only new ones. And the new ones should benefit directly from the increased certainty.

49. We plan to consult further later this year on the best way of structuring work on limited partnerships so that we can implement all of the reforms for which there is broad support. In doing so, we shall seek to strike a balance between keeping each LRO small and manageable, so as to make it easier to achieve consensus, or of keeping the overall number of LROs to a minimum so as to reduce the costs of adaptation and learning for firms and their advisers.

50. At present, we envisage that one strand of work would be to make the more mechanical changes, particularly to the processes of dealing

¹⁰ Nabarro, Osborne Clarke, Elspeth Berry and the Association of Pension Lawyers

with Companies House; and that a second strand would tackle the changes that deal more with internal relations in limited partnerships, including for example the proposal to clarify what activities are permitted for limited partners without jeopardising their limited status, and the proposals relating to capital contributions. There would be at least one further strand at the end of the process to sweep up anything left over, and possibly to consolidate the changes into a single instrument.

Compliance with conditions in section 3

51. We believe that the draft Order complies with the conditions in section 3(2) and (4). Its main purpose is to provide clarity and certainty to prospective limited partnerships and to third parties. Annex C contains a detailed analysis of each change against the conditions.

52. The August 2008 consultation document contained an annex providing a similar analysis for its fuller set of proposals. The document specifically asked for views on that annex. Some 11 people addressed this question. None commented on the analyses for the proposals that are included in the current draft Order.

Recommendation for Parliamentary resolution procedure

53. The Minister believes that the affirmative resolution procedure should apply to this draft Order. The changes to limited partnership law will have a significant effect, and it is appropriate that Parliament should have the opportunity to debate them. On the other hand, they do not alter the basic nature of limited partnerships as created by the Limited Partnerships Act 1907, and their purpose is to clarify and modernise the law, removing burdens from business while maintaining appropriate protections. We do not believe that the changes are of such fundamental significance as to require the super-affirmative procedure.

Delegated powers

54. The draft Order does not delegate any powers to legislate. The Limited Partnerships Act 1907 contains in section 17 a broad power to make rules, which has been used to prescribe forms for returns to the registrar. Article 9 of the draft Order provides that the Order does not extend in any way the power under section 17.

Human Rights

55. We have considered whether the draft Order raises any human rights issues and have concluded that it does not, and that it is therefore compatible with the UK's obligations under the European Convention on Human Rights.

European Union

56. There is no European Union legislation bearing on the subject of the draft Order, and so it is compatible with the UK's obligations arising from membership of the European Union.

Annex A: List of Consultees

The August 2008 consultation document was sent to the 108 people and organisations in the following list. The document was also available on the BERR website, and it was drawn to the attention of the approximately 800 interested parties who have chosen to be on the circulation list of the Corporate Law and Governance Directorate of the Department for Business, Enterprise and Regulatory Reform.

SMEs

Federation of Small Businesses

Forum for Private Business

Small Business Bureau

Employees/Unions

Trades Union Congress

Other organisations

Association of British Insurers

The Association of Chartered Certified Accountants

The Association of District Judges

The Association of Partnership Practitioners

British Medical Association

British Property Federation

British Venture Capital Association

Centre for Research into Law Reform, University of Glasgow

The Chartered Institute of Patent Agents

Chancery Bar Association

City of Westminster and Holborn Law Society

Commercial Bar Association

The Committee of Scottish Clearing Banks

Confederation of British Industry

Faculty of Advocates

The General Council of the Bar

Institute of Chartered Accountants of Scotland

The Institute of Chartered Secretaries and Administrators

Institute of Credit Management

Institute of Directors

The International Underwriting Association of London
Medical Protection Society
Law Commission
Scottish Law Commission
Law Society of Scotland
Law Society of England and Wales
Law Society of Northern Ireland
Partnership Counsel – Simon Jelf, Roderick I’Anson Banks
Royal Institute of Chartered Surveyors
Scottish Landowners' Federation
The Society of Professional Accountants
Southern Society of Chartered Accountants

Government Departments and Offices

Cabinet Office
Companies House
DETINI
HM Courts Service
HMRC
Insolvency Service
Law Reform Advisory Committee for Northern Ireland
Scottish Executive
Serious Organised Crime Agency
Wales Office

Others

3i Group plc
Affilica
Allen & Overy LLP
Ashurst
August Equity
BC Partners
Berwin Leighton Paisner
SJ Berwin LLP
Bevan Ashford
M Blackett-Ord

Bridgepoint Capital
Burness
Charterhouse Capital Partners
Cinven Ltd
Clifford Chance LLP
Close Brothers Private Equity
Deloitte & Touche
Duke Street Capital
Erskine Chambers
Europa Capital Partners
Eversheds
Gillespie Macandrew
Hammonds
Herbert Smith LLP
Hermes
Igloo Regeneration
Indigo Capital Ltd
Isis Equity Partners LLP
Kendall Freeman
Killik & Co
KPMG LLP
Langholm Capital Partners LLP
Law Debenture
Legal & General Ventures Ltd
Linklaters
Macfarlanes
Maitland
Mayer, Brown, Rowe & Maw
MidOcean Partners
J & H Mitchell
MMS LLP
MVM Ltd
Nabarro Nathanson
Noble & Company Ltd

Northern Venture Managers
Osborne Clarke
Pinsent Masons
PricewaterhouseCoopers LLP
Donald Rennie WS
Richards Butler LLP
Rosenblatt
Slaughter & May
Star Capital Partners
Stephenson Harwood
William Sturges & Co
Terra Firma Capital Partners
Thorntons WS Solicitors
Tods Murray LLP
Travers Smith
York Place Company Services Ltd

Annex B: List of responses to consultation

We received 33 responses to the August 2008 consultation from the people and organisations in the following list. The responses are available on the BERR website¹¹.

Legal organisations

Chancery Bar Association (jointly with Mark Blackett-Ord)	21 Goodwyns Vale London N10 2HA
Law Society	113 Chancery Lane London, WC2A 1PL
Association of Partnership Practitioners (APP) (jointly with BVCA and others)	
Association of Pension Lawyers	c/o Hammonds 7 Devonshire Square London EC2M 4YH
Solicitors Regulation Authority	Ipsley Court, Berrington Close Redditch, Worcestershire, B98 0TD

Other organisations

British Private Equity and Venture Capital Association (BVCA) (jointly with APP, ICAEW and others)	c/o SJ Berwin LLP 10 Queen Street Place, London, EC4R 1BE
The Association of Chartered Certified Accountants	29 Lincoln's Inn Fields London WC2A 3EE
Institute of Credit Management	The Water Mill, Station Road South Luffenham, Oakham Leicestershire LE15 8NB
Association of Real Estate Funds	65 Kingsway London WC2B 6TD
British Property Federation	7th Floor, 1 Warwick Row London SW1E 5ER

¹¹ <http://www.berr.gov.uk/files/file50724.pdf>

Scottish Estates Business Group	27 Silvermills Court Henderson Place Lane Edinburgh EH3 5DG
Scottish Rural Property and Business Association	Stuart House, Eskmills, Musselburgh EH21 7PB
Committee of Scottish Clearing Bankers	38b Drumsheugh Gardens, Edinburgh EH3 7SW
Institute of Chartered Accountants in England & Wales (jointly with BVCA and others)	Chartered Accountants Hall PO Box 433, Moorgate Place London EC2P 2BJ
Social Enterprise Coalition	Southbank House, Black Prince Road London SE1 7SJ

Law Firms

Berwin Leighton Paisner	Adelaide House, London Bridge, London EC4R 9HA
Eversheds	1 Wood Street London EC2V 7WS
Gillespie Macandrew	5 Atholl Crescent, Edinburgh EH3 8EJ
Lovells	Atlantic House, Holborn Viaduct London EC1A 2FG
Covington & Burling LLP	265 Strand, London WC2R 1BH
Brodies LLP ¹²	15 Atholl Crescent, Edinburgh EH3 8HA
Wragge & co	55 Colmore Row Birmingham B3 2AS
Allen & Overy	One Bishops Square London E1 6AD
Norton Rose	3 More London Riverside London SE1 2AQ,

¹² Brodies requested that their response not be published

Nabarro LLP	Lacon House, 84 Theobald's Road London WC1X 8RW
Osborne Clarke	2 Temple Back East, Temple Quay Bristol BS1 6EG
CMS Cameron McKenna	Mitre House, 160 Aldersgate Street London EC1A 4DD
Addleshaw Goddard LLP	150 Aldersgate London EC1A 4EJ
Tods Murray LLP	Edinburgh Quay, 133 Fountainbridge Edinburgh EH3 9AG
Other lawyers	
Mark Blackett-Ord (jointly with the Chancery Bar association)	5 Stone Buildings, Lincoln's Inn London WC2A 3XT
Roderick I'Anson Banks	Partnership Counsel, 48 Bedford Row London WC1R 4LR
Simon Jelf	Partnership Counsel <i>as above</i>
Geoffrey Morse	University of Birmingham, Edgbaston Birmingham B15 2TT
Elsbeth Berry	Nottingham Law School, Nottingham NG1 4BU
Accountancy firm	
KPMG	1-2 Dorset Rise London EC4Y 8EN
Government body	
Scottish Government Rural Directorate	Pentland House, 47 Robb's Loan Edinburgh EH14 1TY

Annex C: Legal analysis against the requirements of section 3 of the Legislative and Regulatory Reform Act 2006

Introduction

1. This annex provides a formal assessment of the provisions of the proposed legislative reform order (LRO) against the requirements of the Legislative and Regulatory Reform Act 2006 ("LRRRA"). In this annex, "the 1907 Act" means the Limited Partnerships Act 1907, and "the 1890 Act" means the Partnership Act 1890.
2. The most significant change proposed is to clarify the timing of the creation of a limited partnership and the conclusiveness of the certificate of registration. And there is to be a new requirement that new limited partnerships should include an identifying suffix at the end of their names, either "limited partnership" or "lp" or one of the Welsh equivalents.

Timing of creation of a limited partnership

3. The Law Commissions identified that there is uncertainty under the 1907 Act about when a limited partnership is created, and that this uncertainty is of importance to limited partnerships as the proposed limited partners are exposed to unlimited liability until the limited partnership is created. Our consultation confirmed that this was still the case, and that there was also concern that section 5 of the 1907 Act could remove limited liability from those who believed they were limited partners if there later turned out to have been some irregularity in the application submitted to the Registrar.
4. These uncertainties result in burdens in the shape of both financial costs and administrative inconvenience (within the meaning of section 1(3) and (5) of the LRRRA) on partnerships that wish to become limited partnerships, and upon people who are not yet carrying on business and wish to do so using a new limited partnership. In particular, this burden arises because a partnership which starts carrying on business before it has limited liability status leaves all partners with unlimited liability for that period (even if some partners subsequently limit their liability). The Law Commissions' Report proposed that a limited partnership should exist from its date of registration. The Department agrees with this proposal and believes that the only sensible date for a limited partnership to come into being is the date it is registered, as evidenced by the certificate issued by the Registrar.

Removing or reducing a burden (section 1(2) of the LRRRA)

5. The replacement of section 8 of the 1907 Act (by articles 4&ff of the Order) and its replacement with sections 8, 8A, 8B and 8C reduces the administrative inconvenience and financial costs imposed by the uncertainty of the present law as to when limited liability arises. New

section 8C(4) will enable those wishing to carry on a business as a limited partnership to know exactly when that status arises.

6. The same changes will also reduce the administrative inconvenience and financial costs imposed by the uncertainty of whether the apparent creation of the partnership will be deemed invalid because of some error in the application. New section 8C(4) will remove this uncertainty by reassuring a prospective limited partner that they will not lose their limitation of liability because of some defect in the application.

Restatement of certain provisions (section 3(4) of the LRRRA)

7. Section 13 of the 1907 Act requires the registrar, on receipt of a statement under section 8 of that Act, to file that statement and send by post to the firm a certificate of registration. New section 8 requires the registrar to register the limited partnership. Although this requirement is not expressly stated in the 1907 Act it is implicit in the requirement to “file” the statement and so this provision is a clearer restatement of that aspect of section 13 of the 1907 Act (in accordance with section 3(3) and (4) of the LRRRA) specifically for initial formation. New section 8A sets out what is required in an application. This restates in clearer and more modern language the current requirements in section 8, satisfying the requirements of section 3(4). New section 8C also requires the registrar to provide a certificate that the limited partnership is registered, which restates the law but without specifying that the certificate must be sent “by post”.

Supplemental provisions (section 1(8) of the LRRRA)

8. New section 8C(3) contains a supplemental provision in requiring the certificate to include a limited partnership’s registration number. Although this was not an explicit requirement of the 1907 Act, the Registrar has been allocating numbers since the first partnerships were registered in January 1908. Putting the requirement on the face of the legislation makes this clearer and more accessible, and so meets the conditions of section 3(4).

9. Article 8 of the draft Order repeals part of section 5 of the 1907 Act. Section 5 will still provide that every limited partnership must be registered in accordance with the provisions of the Act. The Order will remove the second limb of section 5: this currently provides that if a defective application has somehow been put on the register, then it is deemed to be a general partnership, and the limited partners are deemed to be general partners, and so lose their limited status. As new section 8C(4) will make registration conclusive, the second limb is unnecessary, and would be potentially misleading.

Conclusive registration: Pre-conditions for making order

The policy objective intended to be secured could not be satisfactorily secured by non-legislative means (section 3(2)(a) of the LRRRA)

The reduction of these burdens cannot be achieved by non-legislative means as the burden is created by reason of the legislation presently in force being of uncertain effect.

The effect of the provision is proportionate to the policy objective (section 3(2)(b) of the LRRRA)

The benefits of certainty for limited partnerships and prospective partners are substantial, and so the Department believes that the changes proposed are proportionate to the policy aims.

The provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it (section 3(2)(c) of the LRRRA)

The Department considers that these provisions bring benefits and do not have adverse effects.

The provision does not remove any necessary protection (section 3(2)(d) of the 2006)

Neither participants in limited partnerships nor third parties will lose any necessary protection by reason of this provision.

The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise (section 3(2)(e))

No such right or freedom is affected by this provision.

The provision is not of constitutional significance (section 3(2)(f) of the LRRRA)

The provision is not of such significance and so this condition is met.

Name of limited partnership

10. There have been strict requirements in company law since it took its modern form in 1862 for the name of a limited company to include the suffix "limited".¹³ The purpose of requiring the name to include the fact that it is a limited company is to give notice to those persons dealing with the company that liability may be limited. Similarly, when limited liability partnerships (which should not to be confused with limited partnerships) were introduced by the Limited Liability Partnerships Act 2000 a requirement was included so that the status of the limited liability partnership had to be made clear by the name of the organisation.

11. The 1907 Act makes no provision requiring a limited partnership's name to disclose its status.¹⁴ The Law Commissions described this as a

¹³ Section 8(1) of the Companies Act 1862.

¹⁴ Early drafts of a limited partnerships bill did not include a requirement to include the words "limited firm" in the partnerships name (the first Limited Partnerships Bill was introduced in 1883 (Bill No. 18), successive Bills were introduced as follows: 1887 (Bill No 254), 1888 (Bill No. 354), 1892 (Bill No. 175), 1893-4 (Bill No. 217), 1906 (Bill No. 167 and 169)). The 1907 Bill, which was much shorter than its predecessors, and which

significant omission.¹⁵ If the name of a firm includes its status as a limited partnership it puts third parties dealing with the partnership on notice of its status. The Department agrees and proposes that the name of a limited partnership should be required to include a standard indication of its status as such.

Removing or reducing a burden (section 1(2) of the LRR)

12. Requiring a limited partnership to include, as part of its name, words indicating that it is a limited partnership would place a very minor burden on the firm (as it would limit its freedom to determine its own name). However, putting third parties on notice of the status of the firm (without specific enquiry) significantly reduces a burden on those third parties. The burden can be characterised in at least two ways. First, it removes the administrative inconvenience of having to make enquires of a firm to determine whether it is a normal partnership or a limited partnership (see section 1(3)(b) of the LRR); second, it also reduces a burden on third parties as it provides them with information about the status of the entity which may affect credit arrangements or interest rates and so enables them to judge financial risk. Requiring limited partnerships' names to indicate their status will therefore reduce a financial cost (within the meaning of section 1(3)(a) of the LRR).

13. *Section 8B* sets out the naming requirements for limited partnerships. This follows the recommendations of the Law Commissions.¹⁶ The proposed provision also caters for the Welsh names for limited partnerships and the Welsh abbreviations where the registered office is located in Wales.

Name to include suffix: Pre-conditions for making order

The policy objective intended to be secured could not be satisfactorily secured by non-legislative means (section 3(2)(a) of the LRR)

The reduction of these burdens cannot be achieved by non-legislative means as the burden is created partly by the legislation currently in force and partly by the absence of particular requirements which need to be in legislation in order to be enforceable.

The effect of the provision is proportionate the policy objective (section 3(2)(b) of the LRR)

The new obligations on limited partnerships are small and they are thought to be of significant benefit to the public and so they are proportionate.

eventually became the Act did require the use of "limited firm" (see clause 4(4) as introduced (Bill No. 91)). This requirement was removed during the passage of the Bill.

¹⁵ Law Commissions Report, Par 15.67.

¹⁶ Law Commissions Report, Par 15.67 to 15.70.

The provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it (section 3(2)(c) of the LRRRA)

The requirement to include a particular suffix to the limited partnership's name has been widely acknowledged to be in the public interest. Although this will technically create a burden for limited partnerships, such a burden would only arise from the benefits a limited partnership might achieve by not disclosing information about its status to third parties. The Department believes such benefits are not worthy of protection and so the provision does strike a fair balance.

The provision does not remove any necessary protection (section 3(2)(d) of the 2006)

No necessary protection is removed by reason of this provision.

The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise (section 3(2)(e))

No such right or freedom is affected by this provision.

The provision is not of constitutional significance (section 3(2)(f) of the LRRRA)

The provision is not of such significance and so this condition is met.

Annex D: Text used by BERR for informal re-consultation in April 2009

1. Thank you for your response to our consultation on the reform of limited partnership law last year. We have now published the Government response, and your and other responses to the consultation, and these are available on the BERR website at our partnership law page:
<http://www.berr.gov.uk/whatwedo/businesslaw/partnership/page25911.html>.
2. As you will see, we have concluded in the light of the responses that we cannot proceed with the draft LRO in its current form, but given the general support for modernisation and clarification of limited partnership law we are still keen to proceed.
3. We now believe that it will be best to tackle the reform in a modular way, with a series of smaller, more manageable LROs. As a first step, we hope to bring forward a first LRO that will ensure that the registration of a new limited partnership is conclusive evidence of its existence, and will require them to include "Limited Partnership", "LP" or Welsh equivalents at the end of their names. These changes were welcomed in many of the responses to the consultation, and opposed by none. As they apply only to new limited partnerships, they do not raise the question of re-registration, which caused problems in particular for some Scottish respondents.
4. Our next step will be to draw up a plan for continuing the programme. At present, we envisage that one strand of work will be to make the more mechanical changes, particularly to the processes of dealing with Companies House; and that a second strand will tackle the changes that deal more with internal relations in limited partnerships, including for example the proposal to clarify what activities are permitted for limited partners without jeopardising their limited status. There will be at least one further strand at the end of the process to sweep up anything left over, and possibly to consolidate the changes into a single instrument.
5. As we fill out this plan, and as we work on each LRO, we shall want to give you and other stakeholders the opportunity to comment on the proposals.
6. At present, I would be grateful for any thoughts on:
 - The overall approach of tackling this in a series of Legislative Reform Orders
 - The proposal that a first LRO should provide for conclusive registration, and require "LP" or equivalent in LP names.

Annex E: Impact Assessment

Summary: Intervention & Options

Department /Agency: BERR	Title: Impact Assessment of Limited Partnership LRO	
Stage: Final	Version: 1	Date: 22 May 2009
Related Publications: Reform of Limited Partnership Law: A consultation document – BERR, August 2008		

Available to view or download at:

www.berr.gov.uk/consultations/index.html

Contact for enquiries: Richard Grafen

Telephone: 020 7215 5323

What is the problem under consideration? Why is government intervention necessary?

The Limited Partnerships Act 1907 has been found to be unclear and uncertain in certain areas and to impose unnecessary burdens. This may lead investment partnerships to form in other jurisdictions, losing business for the UK.

The Act may only be clarified by regulatory changes that require Government intervention.

What are the policy objectives and the intended effects?

To reform limited partnership law to increase clarity and certainty about the timing and conclusiveness of registration, and so to remove unnecessary burdens. And to provide third parties with clarity about the status of a limited partnership by requiring them to include an indicator at the end of their name.

This will enhance the UK's attractiveness as a place for investment business.

What policy options have been considered? Please justify any preferred option.

The option to do nothing would maintain the status quo with consequent potential detriment to UK competitiveness.

The option for intervention is to clarify and modernise limited partnership law in line with the recommendations of the Law Commissions. This is the preferred option as it will bring benefits to those using the limited partnership form, as explained below.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Three years after coming into effect

Ministerial Sign-off For final Impact Assessments:

I have read the Impact Assessment and am satisfied that it represents a fair and reasonable view of the expected costs, benefits and impact of the policy; and that the benefits justify the costs.

Signed by the responsible Minister:

IAN PEARSON

.....Date: 22/5/09

Summary: Analysis & Evidence

Policy Option: 1

Description: Implement Law Commission's proposals

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' None
	One-off (Transition)	Yrs	
	0	10	
	Average Annual Cost (excluding one-off)		
	0		Total Cost (PV) 0
Other key non-monetised costs by 'main affected groups' New limited partnerships will no longer have the option of choosing a name that does not include an indicator of their status.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' None
	One-off	Yrs	
	£0	10	
	Average Annual Benefit (excluding one-off)		
	£ 0		Total Benefit (PV) £ 0
Other key non-monetised benefits by 'main affected groups' In summary: improved clarity and certainty for new limited partnerships and their prospective limited partners; reduced burden for third parties as limited partnerships' names make clear their status. More detail in Evidence Base			

Key Assumptions/Sensitivities/Risks

Price Base Year 2005	Time Period Years 10	Net Benefit Range (NPV) N/A	NET BENEFIT (NPV Best estimate) N/A
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What is the geographic coverage of the policy/option?			UK	
On what date will the policy be implemented?			1/10/09	
Which organisation(s) will enforce the policy?			N/A	
What is the total annual cost of enforcement for these organisations?			£	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£	
What is the value of changes in greenhouse gas emissions?			£	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
	0	0	0	0
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Decrease)
Increase of	£ 0	Decrease of	£ 0
Net Impact			£ N/A

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

Introduction

B1. The proposed LRO would amend the Limited Partnerships Act 1907 in order to make changes in the law in line with recommendations on limited partnership law reform proposed by the Law Commission and the Scottish Law Commission in their joint report of November 2003. The proposed changes are:

- To clarify that a limited partnership comes into existence on the date it is registered, and that the certificate issued by the registrar is conclusive evidence of its formation.
- To require all new limited partnerships to include at the end of their name “limited partnership” or “LP” or a Welsh equivalent.

B2. In August 2008, BERR consulted on a broader LRO that would have comprehensively replaced the Limited Partnerships Act 1907. Responses showed widespread support for clarifying and modernising limited partnership law, but raised many issues that made it impossible to proceed with the LRO as proposed. The current LRO would implement elements of the comprehensive reform that were welcomed in many responses and opposed in none. It will deliver significant benefits on its own, and we see it as the first step in a modular approach to completing the comprehensive reform in stages, subject to further consultation.

Issue and Objective

B3. The objective of reforming limited partnership law is to improve the legislative framework for limited partnerships in the UK so that it continues to be an appropriate and attractive vehicle, including for investment funds. The reforms aim to:

- modernise the law, ensuring that UK limited partnerships remain attractive in an increasingly competitive market;
- remove unnecessary legal complexity, giving clarity to all those using UK limited partnerships, particularly as vehicles for investment funds.
- ensure that those fund managers who currently structure their funds as UK limited partnerships continue to do so, in order that the UK continues to enjoy the economic benefits of being the location of choice for fund managers;
- encourage fund managers who currently use vehicles from other jurisdictions to consider using a UK vehicle when establishing future funds; and
- ensure that investors from all jurisdictions are confident about investing into UK limited partnerships.

B4. As at 31 March 2008 there were 10,142 limited partnerships registered in England and Wales and 5,447 registered in Scotland. Additionally there were around 40 limited partnerships registered in Northern Ireland. In the five years

from 2003 to 2008, the total number of limited partnerships registered in Great Britain rose by 50% from 10,369 to 15,554.

B5. According to the Law Commissions' report, in 2003 around 64% of all registered English limited partnerships were used as investment fund vehicles. If this proportion has been sustained, this implies that there are now around 6,500 used as investment fund vehicles.

B6. Evidence from the Association of Partnership Practitioners (APP) and the British Venture Capital Association (BVCA) shows that limited partnerships are the dominant investment vehicle used in the UK, Europe and the US for venture capital and private equity investment funds. They are also widely used for other types of fund, including real estate and film finance for example.

B7. The UK private and venture capital industry is by far the largest in Europe and second only in size in the world to the United States. The European Venture Capital Association has estimated that out of the total €112 billion of private equity funds raised in Europe in 2006, €75 billion, or 69% was raised by funds managed in the UK. The next highest countries were France with €10.6 billion (9.5%), and Sweden with €9.4 billion (8.4%).

B8. Several thousand people are directly employed in the private equity industry, which, with its supporting infrastructure of accountants, lawyers and financial advisers, makes a significant contribution to the UK economy. This advisory industry that has developed around UK private equity generates over an estimated £1 billion in fee income each year in the UK (based on transaction fees tending to account for around 5% of the deal value). Limited partnership law reform will impact mostly on where fund managers choose to establish their funds rather than where they choose to invest them.

B9. The UK is the preferred choice of jurisdiction for most fund managers investing in Europe. However, the UK's leading position cannot be taken for granted: both fund managers and investors are increasingly 'jurisdiction shopping' when deciding where to establish and invest in investment funds. The efficiency with which limited partnership fund vehicles may be formed and operated is an important consideration. Stakeholders consider it important to maintain the UK's position as the leader in Europe for venture capital investment; it is a very important market involving billions of pounds. Increasingly, off shore centres are emerging to challenge this position. The threat of relocation is a real one, albeit difficult to quantify. The repercussions of a wholesale move of the private equity industry and the fees it pays to advisers would be significant, even if their investments would still be largely made in the UK.

B10. The investor base includes groups backing businesses from seed and start-up through high growth to later stage mid-market and large buy-out transactions.

Consultation

B11. In September 2000 the Law Commissions issued a Joint Consultation Paper on partnership law¹ which set out proposals for the reform of the general law of partnership. In October 2001 the Commissions issued a further Joint Consultation Paper on limited partnership law². Responses were received from members of the legal profession, academics, accountants, organisations representing business, Government Departments, public bodies and individuals.

B12. The Department (then DTI) issued a consultation document in April 2004 (URN04/966) seeking information on the economic impact of partnership law reform³. The consultation document asked readers to consider whether the reforms would benefit business, and if so, how the benefits would arise, and to provide, where possible, estimates of cost savings or burdens. Thirty organisations, businesses and individuals responded to the consultation. A summary of responses has been published (URN06/635)⁴. Respondents to the consultation were divided on the economic benefits of the proposed reforms to the business community of partnership law but supported the proposals for limited partnership law reform.

B13. In August 2008, BERR issued a consultation document including an LRO that would have repealed the Limited Partnerships Act 1907 and inserted new provisions into the Partnership Act 1890. The responses showed that there was broad support for modernisation and clarification of limited partnership law, but they raised important issues about the approach of the LRO, to the extent that it was apparent that we could not proceed with that LRO as planned.

Options

B14. Each of these consultations has confirmed that there is a strong economic case for reforming limited partnership law along the lines recommended by the Law Commissions.

B15. The approach we are recommending – following an informal reconconsultation in April 2009 – is to make the current LRO, which makes useful uncontroversial reforms as the first stage in a modular approach to completing the overall reform in manageable sized instruments. The two alternatives to this approach that we have considered are

- ‘do nothing’, leaving the Limited Partnerships Act 1907 unchanged. This option would do nothing to improve the legal framework in which limited

1 *Partnership Law – a joint consultation paper* – Law Commission and Scottish Law Commission (Consultation paper no 159 / Discussion paper no 111), Summary available at: www.lawcom.gov.uk/docs/cp159sum.pdf

2 *Limited Partnerships Act 1907 – A Joint Consultation Paper* – Law Commission and Scottish Law Commission, September 2000 (Consultation Paper No 161 / Discussion Paper No 118), www.scotlawcom.gov.uk/downloads/dp118_limited_partnership.pdf

3 *Reform of partnership law: the economic impact* – DTI, April 2004, www.berr.gov.uk/files/file23033.pdf

4 *Summary of responses to the consultation on reform of partnership law: the economic impact* – DTI, July 2006, www.berr.gov.uk/files/file32328.pdf

partnerships operate nor help to maintain the UK as the preferred choice of jurisdiction for most fund managers investing in Europe.

- 'deferred comprehensive LRO', under which we would seek to deal with all the issues raised in response to the 2008 consultation, and consult again on another comprehensive LRO. It is not clear at this stage how long it would take to bottom out all the issues raised, but it is likely to take at least 12 months, meaning that at best the reform could be implemented in 2011. There would also inevitably be a risk that there would be something in the new draft LRO to which stakeholders would object, which might delay the comprehensive approach further.

Costs and Benefits of options

1. Do nothing option

B16. The current 100-year old law is working, and people are finding ways round the obscurities and uncertainties. If we do not change it, there will be no change for existing limited partnerships, no extra costs, and no benefits. It is possible that those who might wish to form a limited partnership in future will – because of the deficiencies in the law – instead use a limited company, or a limited liability partnership, or will use a limited partnership formed in another jurisdiction.

2. Deferred comprehensive LRO

Costs

B17. We have not been able to identify any additional continuing administrative costs to limited partnerships arising from these changes to the regulatory process. Limited partnerships already have to register and send information to the registrar under existing law.

B18. The previous LRO would have imposed a modest one-off cost for existing limited partnerships, as they would have been required to re-register under the new law. Given the responses, it is unlikely that we would want to make re-registration compulsory in a re-formulated LRO.

B19. As with the recommended option, new limited partnerships would be prevented from choosing a name that did not indicate their status as limited partnerships.

B20. If the effect of the new legislation is improved compliance with filing requirements, then this may involve a minor continuing increase in costs for Companies House. Such costs would be met from fees that the registrar would be able to set in respect of the provision of services to limited partnerships. The additional cost to each limited partnership would be minimal and the benefits of a full limited partnership service would significantly outweigh these costs.

B21. We believe that a comprehensive Order could be drafted in such a way that existing limited partnership agreements would not need to be amended and that costs would only arise if limited partnerships wished to benefit from new flexibilities and their agreements restricted them.

Benefits

B22. None of the proposed changes can readily be quantified, but the benefits are considered significant:

- modernisation of the legislation would help to maintain the strong position of the UK's private equity and venture capital industry with the rest of the world as perceived barriers would be removed and confidence in the legal framework is increased.
- the increased legal clarity would eliminate much of the legal complexity associated with the present law. This would make the limited partnership a more attractive and user-friendly vehicle. For instance, at present, a material amount of lawyers' time is spent in considering whether a limited partnership's registration could be considered "defective" which should not be necessary once the law provides that a certificate of registration will be conclusive evidence that registration requirements have been complied with. In addition, it should be easier and quicker for law firms to give opinions as to the due establishment of the partnership.
- increased legal clarity should lead to less money and time being spent on legal advice, and on reading and understanding the law.
- many inconveniences such as the uncertainty about activities limited partners are permitted to be engaged in, and the need to make a capital contribution at the outset, would be reduced or eliminated. This may encourage individuals to enter into a partnership who would otherwise not have done so with the result that the number of limited partnerships established in the UK may increase. Increased certainty in a stronger legal structure may also encourage more investors to enter the market.
- reducing the perceived barriers/costs of setting up limited partnerships should, if an increase in the number of such partnerships is realised, potentially raise the supply of available investment funds and may reduce the cost of capital to those seeking such funds.
- a deregistration procedure would provide certainty for both general and limited partners that a limited partnership has ceased to carry on business as such. The procedure for deregistration would be clear, so it is possible that general partners would save legal costs as it would be less necessary to seek detailed advice on the procedure for ceasing to carry on business as a limited partnership.

3. Recommended option

Costs

B23. The only very minor cost of the current draft LRO would be to prevent new limited partnerships from choosing a name that does not reveal its status as a limited partnership.

B24. As further modules were rolled out, the costs would be only the minor potential costs identified in option 2.

Benefits

B25. The current draft LRO would deliver some of the benefits identified above this year. In particular, there is real uncertainty about the date on which a

limited partnership comes into existence, and about the possible effect of shortcomings in the application for registration. Potential limited partners are very concerned that there is a risk that for some time they may be exposed to unlimited liability, and this is a barrier to their joining limited partnerships. The key benefit of option 2 is that from later this year, it will be clear that when the registrar issues a certificate it defines the start point of a limited partnership, and that the limited partnerships conclusively exists, notwithstanding any defects in the application process. This will make it easier for investors to join investment funds formed as UK limited partnerships, and will reduce costs of legal advice for the investors and for the funds.

B26. As further modules are rolled out, it should be possible to deliver all of the benefits listed under option 2 above.

Consideration of options

B27. In the long run, either of options 2 and 3 would give similar, significant benefits, with no significant costs. The important difference is in timing and risks. Our assessment of the responses to the 2008 consultation is that drafting a new comprehensive LRO that deals with all the issues raised (option 2) would mean that there would be no improvement in limited partnership law until at least 2011, and that there would be a significant risk of more extended delay.

B28. Option 2 on the other hand would deliver real benefits this year. And we believe that the modular approach should enable us to prioritise the changes that will bring the most significant further benefits as soon as possible. Against this, there is a risk that introducing many small changes would increase costs of learning and adaptation for limited partnerships and their advisors, and so we should need to consult stakeholders on the best balance.

Competition assessment

B28. The proposals being taken forward by this LRO relate only to limited partnerships; there is no effect on general partnerships or limited liability partnerships. At March 2008 there were around 15,600 limited partnerships in England and Wales, Scotland and Northern Ireland.

B29. We do not believe that modernising the law as proposed would have any significant effect on competition. As noted under benefits above, the proposals, which affect all limited partnerships, might lead to an increase in the numbers of limited partnerships and to an increase in investors. The proposals would be a step towards creating a level playing field with the rest of the world to ensure the continued strength of the private equity sector in the UK.

Consultation with small business: “The Small Firms Impact Test”

B30. In its response to the consultation on the economic impact of partnership law reform the Small Business Service supported the proposals. Small business would not be disproportionately affected.

Specific impact tests

B31. We have considered the three mandatory impact tests (gender, race, disability), and the recommended options are unlikely to have any discriminatory effects.

Identify any other costs

B32. No additional costs or savings for the Exchequer have been identified.

Monitoring

B33. We shall review the success of the order three years after it comes into effect.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

Annex F: Keeling Schedule

Consolidated text of Limited Partnerships Act 1907 after changes

An Act to establish Limited Partnerships.

1. Short title.

This Act may be cited for all purposes as the Limited Partnerships Act 1907.

2. [Repealed by Statute Law Revision Act 1927.]

3. Interpretation of terms.

In the construction of this Act the following words and expressions shall have the meanings respectively assigned to them in this section, unless there be something in the subject or context repugnant to such construction:—

“Firm,” “firm name,” and “business” have the same meanings as in the Partnership Act 1890:

“General partner” shall mean any partner who is not a limited partner as defined by this Act.

4. Definition and constitution of limited partnership.

(1) [Words repealed by Statute Law Revision Act 1927] limited partnerships may be formed in the manner and subject to the conditions by this Act provided.

(2) A limited partnership [words repealed by Regulatory Reform (Removal of 20 Member Limit in Partnerships etc.) Order 2002/3203] must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and who shall not be liable for the debts or obligations of the firm beyond the amount so contributed.

(3) A limited partner shall not during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution, and if he does so draw out or receive back any such part shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back.

(4) A body corporate may be a limited partner.

5. Registration of limited partnership required.

Every limited partnership must be registered as such in accordance with the provisions of this Act.

6. Modifications of general law in case of limited partnerships.

(1) A limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm: Provided that a limited partner may by himself or his agent at any time inspect the books of the firm and examine into the state and prospects of the partnership business, and may advise with the partners thereon.

If a limited partner takes part in the management of the partnership business he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general partner.

(2) A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be a ground for dissolution of the partnership by the court unless the lunatic's share cannot be otherwise ascertained and realised.

(3) In the event of the dissolution of a limited partnership its affairs shall be wound up by the general partners unless the court otherwise orders.

(4) [Repealed by Companies (Consolidation) Act 1908, Sch. 6 Pt. I.]

(5) Subject to any agreement expressed or implied between the partners—

(a) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners;

(b) A limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor;

(c) The other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt;

(d) A person may be introduced as a partner without the consent of the existing limited partners;

(e) A limited partner shall not be entitled to dissolve the partnership by notice.

7. Law as to private partnerships to apply where not excluded by this Act.

Subject to the provisions of this Act, the Partnership Act 1890, and the rules of equity and of

common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the last-mentioned Act, shall apply to limited partnerships.

8 Duty to register

The registrar shall register a limited partnership if an application is made to the registrar in accordance with section 8A.

8A Application for registration

(1) An application for registration must—

(a) specify the firm name, complying with section 8B, under which the limited partnership is to be registered,

(b) contain the details listed in subsection (2),

(c) be signed or otherwise authenticated by or on behalf of each partner, and

(d) be made to the registrar for the part of the United Kingdom in which the principal place of business of the limited partnership is to be situated.

(2) The required details are—

(a) the general nature of the partnership business,

(b) the name of each general partner,

(c) the name of each limited partner,

(d) the amount of the capital contribution of each limited partner (and whether the contribution is paid in cash or in another specified form),

- (e) the address of the proposed principal place of business of the limited partnership, and
- (f) the term (if any) for which the limited partnership is to be entered into (beginning with the date of registration).

8B Name of limited partnership

- (1) This section sets out conditions which must be satisfied by the firm name of a limited partnership as specified in the application for registration.
- (2) The name must end with—
 - (a) the words “limited partnership” (upper or lower case, or any combination), or
 - (b) the abbreviation “LP” (upper or lower case, or any combination, with or without punctuation).
- (3) But if the principal place of business of a limited partnership is to be in Wales, its firm name may end with—
 - (a) the words “partneriaeth cyfyngedig” (upper or lower case, or any combination), or
 - (b) the abbreviation “PC” (upper or lower case, or any combination, with or without punctuation).

8C Certificate of registration

- (1) On registering a limited partnership the registrar shall issue a certificate of registration.
- (2) The certificate must be—
 - (a) signed by the registrar, or
 - (b) authenticated with the registrar’s seal.
- (3) The certificate must state—
 - (a) the firm name of the limited partnership given in the application for registration,
 - (b) the limited partnership’s registration number,
 - (c) the date of registration, and
 - (d) that the limited partnership is registered as a limited partnership under this Act.
- (4) The certificate is conclusive evidence that a limited partnership came into existence on the date of registration.

9. Registration of changes in partnerships.

- (1) If during the continuance of a limited partnership any change is made or occurs in—
 - (a) the firm name,
 - (b) the general nature of the business,
 - (c) the principal place of business,
 - (d) the partners or the name of any partner,
 - (e) the term of character of the partnership,
 - (f) the sum contributed by any limited partner,
 - (g) the liability of any partner by reason of his becoming a limited instead of a general partner or a general instead of a limited partner,

a statement, signed by the firm, specifying the nature of the change, shall within seven days be sent by post or delivered to the registrar at the register office in that part of the United Kingdom in which the partnership is registered.

(2) If default is made in compliance with the requirements of this section each of the general

partners shall, on conviction under the Magistrates' Courts Act 1952, be liable to a fine not exceeding one pound for each day during which the default continues.

10. Advertisement in Gazette of statement of general partner becoming a limited partner and of assignment of share of limited partner.

(1) Notice of any arrangement or transaction under which any person will cease to be a general partner in any firm, and will become a limited partner in that firm, or under which the share of a limited partner in a firm will be assigned to any person, shall be forthwith advertised in the Gazette, and until notice of the arrangement or transaction is so advertised the arrangement or transaction shall, for the purposes of this Act, be deemed to be of no effect.

(2) For the purposes of this section, the expression “the Gazette” means—

In the case of a limited partnership registered in England, the London Gazette;

In the case of a limited partnership registered in Scotland, the Edinburgh Gazette;

In the case of a limited partnership registered in Ireland, the Belfast Gazette.

11. [Repealed by Finance Act 1973 (c. 51), Sch. 22 Pt. V.]

12. [Repealed by Perjury Act 1911 (c. 6), Sch. and by False Oaths (Scotland) Act 1933 (c. 20), Sch.]

13. Registrar to file statement and issue certificate of registration.

On receiving any statement made in pursuance of this Act the registrar shall cause the same to be filed, and he shall send by post to the firm from whom such statement shall have been received a certificate of the registration thereof.

14. Register and index to be kept.

At each of the register offices herein-after referred to the registrar shall keep, in proper books to be provided for the purpose, a register and an index of all the limited partnerships registered as aforesaid, and of all the statements registered in relation to such partnerships.

15. Registrar of joint stock companies to be registrar under Act.

The registrar of joint stock companies shall be the registrar of limited partnerships, and the several offices for the registration of joint stock companies in London, Edinburgh, and Belfast shall be the offices for the registration of limited partnerships carrying on business within those parts of the United Kingdom in which they are respectively situated.

16. Inspection of statements registered.

(1) Any person may inspect the statements filed by the registrar in the register offices aforesaid [**words** repealed by Companies Act 2006 c. 46 Sch.16 para.1] ; and any person may require a certificate of the registration of any limited partnership, or a copy of or extract from any registered statement, to be certified by the registrar, and

there shall be paid for such certificate of registration, certified copy, or extract such fees as the Board of Trade may appoint, not exceeding 10p for the certificate of registration, and not exceeding 2½p for each folio of seventy-two words, or in Scotland for each sheet of two hundred words.

(2) A certificate of registration, or a copy of or extract from any statement registered under this Act, if duly certified to be a true copy under the hand of the registrar or one of the assistant registrars (whom it shall not be necessary to prove to be the registrar or assistant registrar) shall, in all legal proceedings, civil or criminal, and in all cases whatsoever be received in evidence.

17. Power to Board of Trade to make rules.

The Board of Trade may make rules [words repealed by Companies Act 2006 c. 46 Sch.16 para.1] concerning any of the following matters—

- (a) [repealed by Companies Act 2006 c. 46 Sch.16 para.1],
- (b) The duties or additional duties to be performed by the registrar for the purposes of this Act;
- (c) The performance by assistant registrars and other officers of acts by this Act required to be done by the registrar;
- (d) The forms to be used for the purposes of this Act;
- (e) Generally the conduct and regulation of registration under this Act and any matters incidental thereto.

Pre-consolidated text of Limited Partnerships Act 1907

An Act to establish Limited Partnerships.

1. Short title.

This Act may be cited for all purposes as the Limited Partnerships Act 1907.

2. [Repealed by Statute Law Revision Act 1927.]

3. Interpretation of terms.

In the construction of this Act the following words and expressions shall have the meanings respectively assigned to them in this section, unless there be something in the subject or context repugnant to such construction:—

“Firm,” “firm name,” and “business” have the same meanings as in the Partnership Act 1890:

“General partner” shall mean any partner who is not a limited partner as defined by this Act.

4. Definition and constitution of limited partnership.

(1) [Words repealed by Statute Law Revision Act 1927] limited partnerships may be formed in the manner and subject to the conditions by this Act provided.

(2) A limited partnership [words repealed by Regulatory Reform (Removal of 20 Member Limit in Partnerships etc.) Order 2002/3203] must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and who shall not be liable for the debts or obligations of the firm beyond the amount so contributed.

(3) A limited partner shall not during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution, and if he does so draw out or receive back any such part shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back.

(4) A body corporate may be a limited partner.

5. Registration of limited partnership required.

Every limited partnership must be registered as such in accordance with the provisions of this Act, or in default thereof it shall be deemed to be a general partnership, and every limited partner shall be deemed to be a general partner.

6. Modifications of general law in case of limited partnerships.

(1) A limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm: Provided that a limited partner may by himself or his agent at any time inspect the books of the firm and examine into the state and prospects of the partnership business, and may advise with the partners thereon.

If a limited partner takes part in the management of the partnership business he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general partner.

(2) A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be a ground for dissolution of the partnership by the court unless the lunatic's share cannot be otherwise ascertained and realised.

(3) In the event of the dissolution of a limited partnership its affairs shall be wound up by the

general partners unless the court otherwise orders.

(4) [Repealed by Companies (Consolidation) Act 1908, Sch. 6 Pt. I.]

(5) Subject to any agreement expressed or implied between the partners—

(a) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners;

(b) A limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor;

(c) The other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt;

(d) A person may be introduced as a partner without the consent of the existing limited partners;

(e) A limited partner shall not be entitled to dissolve the partnership by notice.

7. Law as to private partnerships to apply where not excluded by this Act.

Subject to the provisions of this Act, the Partnership Act 1890, and the rules of equity and of

common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the last-mentioned Act, shall apply to limited partnerships.

8. Manner and particulars of registration.

The registration of a limited partnership shall be effected by sending by post or delivering to the registrar at the register office in that part of the United Kingdom in which the principal place of business of the limited partnership is situated or proposed to be situated a statement signed by the partners containing the following particulars:—

(a) The firm name;

(b) The general nature of the business;

(c) The principal place of business;

(d) The full name of each of the partners;

(e) The term, if any, for which the partnership is entered into, and the date of its

commencement;

(f) A statement that the partnership is limited, and the description of every limited partner

as such;

(g) The sum contributed by each limited partner, and whether paid in cash or how otherwise.

9.— Registration of changes in partnerships.

(1) If during the continuance of a limited partnership any change is made or occurs in—

(a) the firm name,

- (b) the general nature of the business,
- (c) the principal place of business,
- (d) the partners or the name of any partner,
- (e) the term of character of the partnership,
- (f) the sum contributed by any limited partner,
- (g) the liability of any partner by reason of his becoming a limited instead of a general partner or a general instead of a limited partner,

a statement, signed by the firm, specifying the nature of the change, shall within seven days be sent by post or delivered to the registrar at the register office in that part of the United Kingdom in which the partnership is registered.

(2) If default is made in compliance with the requirements of this section each of the general partners shall, on conviction under the Magistrates' Courts Act 1952, be liable to a fine not exceeding one pound for each day during which the default continues.

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- (c) The performance by assistant registrars and other officers of acts by this Act required to be done by the registrar;
- (d) The forms to be used for the purposes of this Act;
- (e) Generally the conduct and regulation of registration under this Act and any matters incidental thereto.

Department for Business, Enterprise and Regulatory Reform

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