

**EXPLANATORY MEMORANDUM TO**  
**THE LIMITED LIABILITY PARTNERSHIPS (APPLICATION OF COMPANIES ACT 2006) REGULATIONS 2009**

**2009 No. 1804**

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise & Regulatory Reform and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 complete the application of the Companies Act 2006 (“the 2006 Act”) to limited liability partnerships (“LLPs”). The accounts and audit provisions of the 2006 Act have already been applied to LLPs with effect from 1<sup>st</sup> October 2008<sup>1</sup>. These Regulations apply as appropriate (with modification) the remaining provisions of the 2006 Act. They will come into force on 1<sup>st</sup> October 2009, to coincide with the final implementation of the 2006 Act for companies.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The general approach taken by the Regulations is that, where provisions of the 2006 Act which are being applied contain regulation-making powers, the regulations made under those powers are applied to LLPs, with appropriate modifications. In the case of certain regulation and order making powers, however, this is not possible because the powers have not yet been exercised for companies (e.g. the regulation-making powers in sections 54 to 56 of the 2006 Act, and the order-making power in section 1156). In such cases the Regulations apply the regulation or order making power, and the power will be brought into force on the day after the Regulations are made (see regulation 2(2)) so that it can be exercised simultaneously for LLPs with its exercise for companies.

3.2 The Regulations apply provisions of two sets of draft Regulations - the Overseas Companies Regulations 2009 and the Registrar of Companies and Applications for Striking Off Regulations 2009 - and are drafted on the basis of a further draft order - the Companies Act 2006 (Part 35) (Consequential Amendments, Transitional Provisions and Savings) Order 2009. These draft statutory instruments have also been laid before Parliament. Assuming that all

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<sup>1</sup> See the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 (S.I. 2008/1911); the Small Limited Liability Partnerships (Accounts) Regulations 2008 (S.I. 2008/1912) and the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (S.I. 2008/1913).

the draft instruments are approved by both Houses of Parliament, the LLP Regulations will be made after the other three.

3.3 Section 17 of the Limited Liability Partnerships Act 2000 (“the LLP Act” (and its Northern Ireland equivalent) currently provides that regulations made under section 15 of that Act applying provisions of company law to LLPs do not require an affirmative resolution if they consist entirely of the application of specified provisions of the Companies Act 1985 (section 17(4) and (5)(b) of the LLP Act). Accordingly, the affirmative resolution procedure applies to the Regulations which are the subject of this Memorandum as they apply provisions of the 2006 Act to LLPs. Paragraph 7(3) in Schedule 3 to the Regulations contains a consequential amendment to the LLP Act so that, for the future, regulations under that Act which apply specified provisions of the 2006 Act (which correspond to the specified provisions of the 1985 Act), would be subject to negative rather than affirmative resolution. The effect of this amendment is to reproduce the position under section 17 of the LLP Act so far as the Companies Act 1985 is concerned. The Department considers that this is justifiable as a consequential amendment as Parliament will have had the opportunity to debate the provisions of the 2006 Act that are applied to LLPs on the first occasion that they are so applied. It will ensure that future amendments to the application of those provisions can be updated by negative resolution instrument.

#### **4. Legislative Context**

4.1 The LLP Act and its Northern Ireland equivalent<sup>2</sup> provided for the creation of a new corporate vehicle, the limited liability partnership. An LLP gives the benefits of limited liability, as for a company, but allows its members the flexibility of organising their internal structure as a traditional partnership. The LLP is a legal entity separate from its members, but, unlike a company, does not have shares or shareholders and is not therefore subject to the same provisions concerning the relationship between a company, its shareholders and its directors.

4.2 The LLP Act sets out the basic structure and formation provisions for LLPs. The Limited Liability Partnerships Regulations 2001<sup>3</sup> (“the 2001 Regulations”) made under the LLP Act (which came into force at the same time as the LLP Act) set out most of the detailed provisions for LLPs by applying large parts of the Companies Act 1985, the Insolvency Act 1986 and other enactments to LLPs. Many of the provisions applied were modified to reflect the particular characteristics of an LLP. The same approach was taken in Northern Ireland by the Limited Liability Partnerships Regulations (Northern Ireland) 2004<sup>4</sup> (“the 2004 Regulations”).

4.3 In light of the changes made to company law by the 2006 Act, these Regulations apply as appropriate (with modification) the remaining (i.e. other than accounts and audit) provisions of the 2006 Act to LLPs. The Regulations extend to the United Kingdom (reflecting the extent of the 2006 Act). The LLP Act is extended to Northern Ireland by section 1286(1)(a) and (2)(a) of

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<sup>2</sup> The Limited Liability Partnerships Act (Northern Ireland) 2002 (c.12 (NI)).

<sup>3</sup> S.I. 2001/1090.

<sup>4</sup> SR (NI) 2004/307.

the 2006 Act which comes into force on 1st October 2009<sup>5</sup>. Schedule 2 to the Regulations contains transitional provisions for Northern Ireland LLPs, and Schedule 3 makes certain consequential amendments to the 2001 and 2004 Regulations as a result of the extension of the LLP Act to the whole of the UK.

4.4 The 2001 and 2004 Regulations apply large parts of the 1985 Act with modifications of varying degrees made by textual amendment in the Schedules to those regulations. This creates a complex set of regulations that have to be read in conjunction with the 1985 Act or the 1986 Order. One of the key objectives of the 2006 Act was to ensure better regulation and to ‘think small first’. In line with this, and the approach taken in the LLP regulations applying the accounts and audit provisions of the 2006 Act to LLPs, these Regulations set out the 2006 Act provisions applied to LLPs in full, as modified to take account of the particular characteristics of LLPs.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 Ian Pearson, Economic and Business Minister, has made the following statement regarding Human Rights:

In my view the provisions of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 are compatible with the Convention rights.

## **7. Policy background**

7.1 The 2006 Act seeks to ensure that British business operates within a legal and regulatory framework that promotes enterprise, growth, investment and employment. The Act has four key objectives:

- enhancing stakeholder engagement and a long term investment culture;
- ensuring better regulation and a “think small first” approach;
- making it easier to set up and run a company; and
- providing flexibility for the future.

7.2 By applying the 2006 Act to LLPs in the manner outlined above, the aim is for LLPs to be able to take advantage of the benefits to business of modernising and simplifying company law, thereby ensuring that LLPs remain an attractive corporate vehicle for businesses, whilst retaining their distinctive characteristics. As with the 2006 Act, key to this approach is to ensure that the regulations for LLPs remain up to date and fit for purpose. The new approach to legislating for LLPs results in a stand alone set of regulations that can be read without reference to the 2006 Act.

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<sup>5</sup> See Article 3(z) of the Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008 (S.I. 2008/2860 (C.126)).

7.3 In order to assess the potential impact of changes made by the 2006 Act, detailed policy and legal analysis was undertaken to compare the provisions in the 1985 Act applied to LLPs to those in the 2006 Act. This identified:

- amendments to the LLP Act consequential upon the 2006 Act;
- provisions of the 2006 Act where there is a corresponding provision of the 1985 Act (and Northern Ireland equivalent) which is currently applied to LLPs, or where a provision could be applied with no significant change to the current regime;
- provisions of the 2006 Act that in principle could be applied, but where doing so would change the current policy or introduce a new area of law;
- provisions of the 2006 Act that cannot be applied to LLPs, because of the fundamental difference between LLPs and companies, and/or because to do so would be outside the powers available to make secondary legislation.

7.4 In the light of that analysis the decision was taken to apply to LLPs the provisions of the 2006 Act, as far as possible to replace those provisions of the 1985 Act (and Northern Ireland equivalent) currently applied to LLPs.

7.5 The Regulations apply to LLPs (with appropriate modifications to take account of the particular characteristics of LLPs) provisions of the 2006 Act governing-

- the formalities of doing business
- names and trading disclosures
- registered offices
- the register of directors and protection from disclosure of residential addresses
- debentures (including their certification and transfer)
- annual returns
- the registration of charges
- arrangements and reconstructions (including application of the Companies (Cross-Border Mergers) Regulations 2007
- fraudulent trading
- protection of members against unfair prejudice
- dissolution and restoration to the register
- trading disclosures of overseas companies
- the registrar of companies.

7.6 The Regulations make some substantive changes to the law relating to LLPs. Part 5 of the Regulations applies, with modification, sections 162 to 165 of the 2006 Act on registers of directors. As from 1st October 2009 an LLP will have to keep a register of its members containing certain particulars, including a service address for each individual member and stating whether a member is a designated member. The LLP must give notice to the Registrar of Companies of the place at which the register is kept available for inspection and any changes in that place (unless it is kept at all times at the LLP's registered office). It must also be open for inspection by any member of the LLP without charge and by any other person for a fee.

7.7. With effect from 1st October 2009 an LLP will also have to keep a register of each member's usual residential address. However, where a confidentiality order under section 723B of the 1985 Act, as applied to LLPs, was in force prior to 1 October 2009, particulars of the usual residential address, if contained in the register of members, do not have to be available for inspection. The new provisions on protection from disclosure of addresses in sections 240 to 246 of the 2006 Act are also applied to LLPs by regulation 19.

7.8 Part 13 of the Regulations applies to LLPs the 2006 Act provisions on dissolution and restoration to the register. If an LLP carries on business without at least two members for more than 6 months, the remaining member is liable (jointly and severally with the LLP) for the debts contracted during the period. However, under the current law, an LLP with fewer than two members is not able to apply for voluntary strike-off of the LLP. Section 1003 on voluntary striking off has therefore been applied to LLPs, modified to enable a sole remaining member to dissolve the LLP.

## **8. Consultation outcome**

8.1 In February 2007, as part of the consultation on the implementation of the 2006 Act for companies, the Government consulted on the general approach to be adopted in applying the 2006 Act to LLPs<sup>6</sup>. Thirty-four respondents to the consultation specifically responded to the questions on LLPs. The majority supported the approach of applying provisions of the 2006 Act so as to replace the provisions of the 1985 Act currently applied to LLPs and the proposed timetable for doing this.

8.2 On 7 November 2007 the Government announced that the implementation of some of the provisions of the 2006 Act which were due to come into effect in October 2008 would be delayed until October 2009. On 10 November 2007 the Government published a consultation document inviting comments on the proposed application of the 2006 Act to LLPs. In line with the announcement for companies, it was proposed in the consultation that the implementation of most of the changes for LLPs would take place in October 2009, with the exception of applying the accounts and audit provisions (Parts 15 and 16) and Part 42 of the 2006 Act to LLPs, which would take place as proposed in the February 2007 consultation from 1st October 2008.

8.3 The consultation closed on 6 February 2008. Twenty five written responses were received. The majority of responses supported the proposals made in the consultation document in relation to the timing of the application of the 2006 Act, the legislative approach and the provisions of the 2006 Act to be applied to LLPs.

8.4 The Government response to the November 2007 consultation was published on 23 May 2008 alongside the draft Regulations applying the 2006 Act provisions on accounts and audit to LLPs, which were published for comment. Those regulations were laid before Parliament and debated before the summer recess 2008 and came into force on 1<sup>st</sup> October 2008 for financial years beginning on or after that date.

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<sup>6</sup> DTI/02/07/NP. URN 07/666.

8.5 The Regulations which are the subject of this Memorandum were published for comment on the BERR website from November 2008, that consultation closing on 28 January 2009.

8.6 There were six responses to the consultation on the draft Regulations. Support was expressed for the Government's approach to legislating for LLPs. In addition there were specific comments on the application of some of the provisions, as well as technical drafting comments. The Regulations have been revised in the light of those comments. The Government response to the consultation has been published on the BERR website.

8.7 In addition, a Working Group of key interested parties was set up to review the draft Regulations. The Group met twice during the consultation on these Regulations.

## **9. Guidance**

9.1 Companies House will be publishing detailed guidance. In addition, to accompany the regulations, FAQs will be published on the Department's website.

## **10. Impact**

10.1 An Impact Assessment on the legislative approach taken and the application of the remaining provisions (as appropriate) of the 2006 Act to LLPs is attached to this memorandum.

## **11. Regulating small business**

11.1 The legislation applies to small businesses which incorporate as limited liability partnerships.

11.2 To minimise the impact of the requirements on small LLPs employing up to 20 people, and in line with the better regulation and 'think small first' objectives of the 2006 Act, the Regulations recast the law in a more coherent and accessible form, benefiting LLPs and their intermediaries. By applying the 2006 Act, LLPs of all sizes will be able to take advantage of some of the benefits enjoyed by companies.

## **12. Monitoring & review**

12.1 This instrument and the application of the accounts and audit provisions of the 2006 Act to LLPs will be reviewed from 2011, as part of the Companies Act 2006 evaluation.

### **13. Contact**

13.1 **Alicia Law** at the Department for Business, Enterprise & Regulatory Reform, telephone: 020 7215 5387 or e-mail: [Alicia.Law@berr.gsi.gov.uk](mailto:Alicia.Law@berr.gsi.gov.uk) can answer any queries regarding the instrument.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Business, Enterprise and Regulatory Reform</b>	<b>Title:</b> <b>Final Impact Assessment on the application of the remaining (non-accounts and audit) provisions of the Companies Act 2006 to Limited Liability Partnerships</b>	
<b>Stage:</b> Final	<b>Version:</b> 2	<b>Date:</b> 14 May 2009
<b>Related Publications:</b> Consultation on application of 2006 Act to LLPs and Government response; Government response on to consultation on draft LLP regulations.		

**Available to view or download at:**

<http://www.berr.gov.uk/whatwedo/businesslaw/llp/page39897.html>

**Contact for enquiries:** [babatunde.idowu@berr.gsi.gov.uk](mailto:babatunde.idowu@berr.gsi.gov.uk)

**Telephone:** 0207 215 0412

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

The Act and regulations under which limited liability partnerships (LLPs) form and operate will be out of step with modern company law if the material and relevant parts of the Companies Act 2006 (2006 Act) are not applied to LLPs by new regulations. Without new regulations LLPs will be operating under Companies Act 1985 (1985 Act) provisions, as applied to LLPs, which have been repealed for companies and will not be able to take advantage of a range of deregulatory measures introduced by the 2006 Act.

For these draft regulations we are considering the application of the remaining provisions (as appropriate) of the 2006 Act following on from the application of the accounts and audit provisions of the 2006 Act, which came into effect on 1<sup>st</sup> October 2008 for financial years beginning on or after that date.

What are the policy objectives and the intended effects?

By applying the remaining provisions (as appropriate) of the 2006 Act to LLPs, we ensure:

1. LLPs are entitled to the same benefits and savings as companies; remain an attractive corporate vehicle for businesses and retain their distinctive characteristics from companies and other types of partnership, thereby ensuring that businesses in regulated and non-regulated professions continue operating as LLPs under UK law rather than seeking incorporation in other countries.
2. By updating the content and structure of the LLP regulations we will simplify them for the users of LLPs and their professional advisers, and reduce the need for them to consult a number of different legislative sources.

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

Apply the relevant and material parts of the 2006 Act to LLPs with textual modification in line with the stated policy of applying provisions of the 2006 Act that mirror those of the 1985 Act already applied to LLPs, including any minor changes which are advantageous to LLPs where necessary.

In addition, a standalone set of regulations that will make the LLP legislation more accessible for those directly affected and their professional advisers.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? This will be done as part of the wider evaluation of the impact of the Companies Act 2006.



**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

Mr Ian Pearson

.....Date: 15th May 2009

## Summary: Analysis & Evidence

<b>Policy Option: B</b>	<b>Description: Apply relevant remaining provisions of the 2006 Act (with modification) to LLPs</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' There will be some familiarisation costs associated with the changes in the LLP Regulations, but these are expected to be minimal.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 0</b>	10	
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£</b>		<b>Total Cost (PV)</b> <b>£ 0</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Some limited familiarisation costs and the cost of LLPs keeping a register of members (thought to be small).			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' LLP legislation would be far more accessible for LLPs and professional advisers; reduce time takes to cross-reference regulations with other companies legislation and lessen complexity of laws for LLPs. LLPs would have the opportunity to benefit from any cost savings arising from the application of the Companies Act 2006 as for companies.
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ 0</b>	10	
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 1m</b>		<b>Total Benefit (PV)</b> <b>£ 8.31m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Benefit of stand alone set of regulations thought to be significant but no available quantifiable evidence. We believe LLPs will remain an attractive corporate vehicle for businesses, retaining distinctive characteristics from companies / other types of partnership. Businesses in regulated & non-regulated professions will continue operating as LLPs under UK law rather than seeking incorporation in other countries.			

Key Assumptions/Sensitivities/Risks Assumes benefits constant over 10 years. Discount at 3.5%. PwC admin burden for LLPs was £8.7million. We assume a 10% saving to be £0.9million.

Price Base Year 2005	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ 8.31m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 8.31m</b>
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			01/10/2009		
Which organisation(s) will enforce the policy?			Companies House		
What is the total annual cost of enforcement for these organisations?			£ N/A		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	No	No

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0.9m
		<b>Net Impact</b>	<b>£ 0.9m</b>

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

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### **BACKGROUND**

#### **INTRODUCTION**

1. This final impact assessment accompanies the draft regulations applying the remaining provisions (as appropriate) of the Companies Act 2006 (2006 Act) to Limited Liability Partnerships (LLPs). This follows the impact assessment produced last year for the regulations applying the accounts and audit provisions of the 2006 Act to LLPs. Those regulations came into effect on 1 October 2008 for financial years beginning on or after that date.

2. In applying the remaining provisions of the 2006 Act we want to ensure that LLPs remain an attractive corporate vehicle for businesses and maintain an identity distinct from companies. To that extent, the analysis of options has been essentially concerned with what provisions of the Companies Act 2006 should be applicable to LLPs.

3. For the purpose of this Impact Assessment, the costs and benefits analysis covers the following areas:

- Not applying the remaining provisions of the 2006 Act to LLPs (Option A);
- Applying the remaining, relevant and material parts of the 2006 Act to LLPs with textual modification in line with the stated policy of applying provisions of the 2006 Act (Option B);
- The change in the approach to drafting the regulations;
- Applying provisions that go beyond the stated policy (Option C).

#### **COSTS AND BENEFITS ANALYSIS - METHODOLOGY**

4. The costs and benefits associated with the application of the 2006 Act to LLPs are in part based on the costs and benefits estimated for companies provided by the Companies Act 2006 Regulatory Impact Assessment (RIA) in January 2007 and where parallels can be drawn with the implementation of the provisions for companies the subsequent Impact Assessments (IAs) produced for the regulations implementing those provisions. These can be found at:

<http://www.berr.gov.uk/bbf/co-act-2006/made-or-before-parliament/page35232.html>

5. To be consistent with the Companies Act 2006 RIA the costs and benefits estimated in this IA will be based on 2005 prices.

6. It is important to note that there is relatively little in the way of hard financial information on the costs to business of compliance with existing company law requirements. The quantification of costs and benefits that is available from the original RIA relies heavily on responses from consultees/stakeholders. It is also important to note that this evidence base in the overall RIA is

still more substantive than that available for LLPs. It should also be noted that when relying on the assessment of costs and benefits in IAs for companies of those provisions of the 2006 Act yet to be commenced, the costs and benefits assessed from the application of those provisions to LLPs are based on draft assessments for companies that are yet to be finalised or where it has been difficult to assess the costs and benefits for companies.

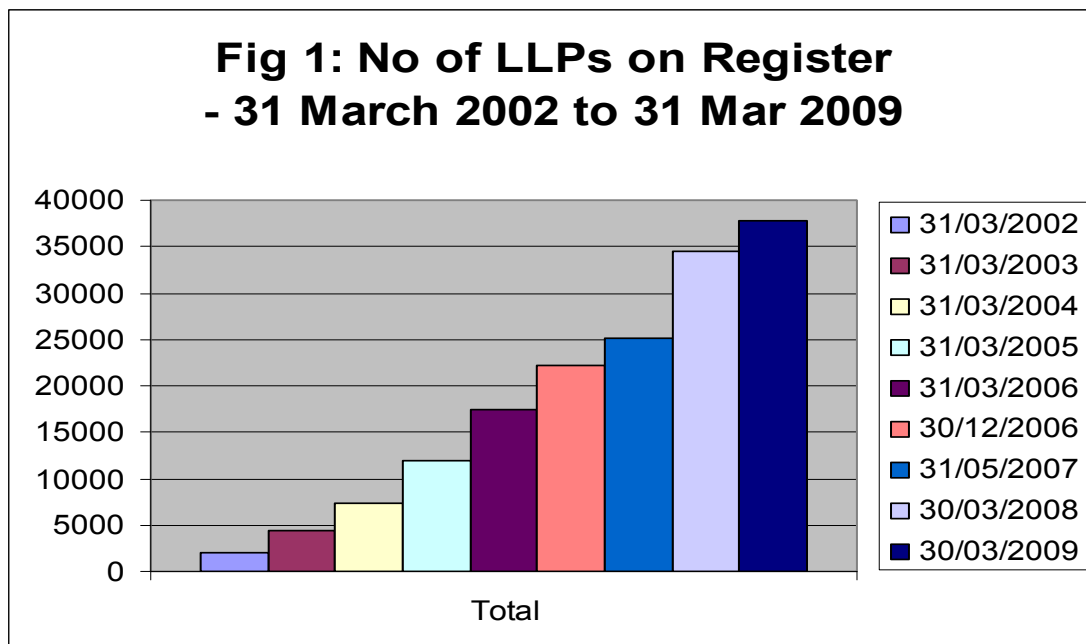
7. The costs and benefits to LLPs of applying the 2006 Act, as based on the original RIA for companies, will be reduced, because as with the application of the 1985 Act, not all of the 2006 Act provisions are being applied to LLPs. The IA for the application of the accounts and audit provisions to LLPs explained this and provided a top down assessment of the costs and benefits of applying all the relevant provisions (with modification) of the 2006 Act to LLPs. Total benefits per annum were estimated in the region of £3.8 million to £8.1 million. The embedded benefits of applying the accounts and audit provisions, based on a bottom up calculation, were estimated at £0.9 million. Costs per annum were estimated at £0.2 million to £0.5 million based on a pro-rata calculation on the implementation of the 2006 Act for companies. At the stage the IA was prepared for the application of the account and audit provisions of the 2006 Act to LLPs, the detailed analysis of what remaining provisions of the 2006 Act would be applied from 1 October 2009 had not been undertaken. Further work on applying the 2006 Act to LLPs has confirmed that some of the costs and benefits for companies will not apply for LLPs e.g. company law provisions on capital maintenance are not applied to LLPs, and that these estimates are therefore likely to overstate the position for LLPs if simply applied pro-rata. This IA therefore represents a bottom up assessment of applying the remaining provisions.

8. Where necessary, we have made suitable adjustments to the data analysis taking into account the differences between the numbers of LLPs and companies.

### **Northern Ireland**

9. In line with the approach taken in the 2006 Act, the LLP regime for Great Britain (GB) will be extended to LLPs in Northern Ireland (NI). We expect the benefits and costs of the Government's proposals on the application of the 2006 Act for NI LLPs to be comparable to those of GB LLPs.

## POPULATION OF LLPS IN THE UK



Sources: Companies in 2005 – 2006, Companies Register Activities 2006–7 and Companies House.

10. The figure above shows that the number of registered LLPs is growing, from 1,936 LLPs in 2002 to 29,756 in March 2008 and to 37,856 as at 31 March 2009<sup>7</sup>. Between March 2008 and March this year, 8,100 LLPs registered as new businesses.

11. As a corporate vehicle LLPs have appealed and continue to appeal to legal and accountancy firms. All the top 4 accounting firms are now LLPs. The numbers of law firms opting to convert from traditional partnerships to LLPs continues to rise. Half of the top UK law firms are now LLPs. According to the *Law Society Gazette*<sup>8</sup> since the LLP Act came into force in 2001, a total of 1,562 of the 8,926 law firms registered in England and Wales have opted to operate as LLPs. This represents 17.4% of all law firms. According to Accountancy Magazine (July 2008) twenty-six of the top 60 accounting firms are LLPs with a further seven saying they will be converting.<sup>9</sup>

12. The number of businesses choosing to incorporate as LLPs or opting to convert from traditional partnerships or limited companies to LLPs continues to rise and a search on EBSCO (a research interface) and News 90<sup>10</sup> has identified that LLPs are now trading in a number of sectors, as follows:

- a. Accountancy Firms
- b. Estate Agents
- c. Law Firms
- d. Property Developers

<sup>7</sup> FAME database – March 2009. Fame is known as Financial Analysis is Made Easily Software

<sup>8</sup> Law Society Gazette – 30 August 2007

<sup>9</sup> [http://www.accountancymagazine.com/Accy\\_Mag/Top\\_60\\_Surveys/Top60Survey2008.pdf](http://www.accountancymagazine.com/Accy_Mag/Top_60_Surveys/Top60Survey2008.pdf)

<sup>10</sup> <http://www.ebsco.com/home> & [http://www1.lexisnexis.co.uk/marketing/about\\_us\\_pages/about\\_us.htm](http://www1.lexisnexis.co.uk/marketing/about_us_pages/about_us.htm) (subscription only database)

- e. Architects
- f. Investment Companies
- g. Doctors Private Practice
- h. Dentists
- i. Veterinary Practice
- j. Self storage
- k. Food stores

## Distribution of LLPs

13. It is important to point out that we draw on the former classification of companies framework in breaking down the number of LLPs into categories of small and medium-sized.<sup>11</sup>

	Known values only	Using FAME estimates
Small LLPs	5995	17,118
Medium-sized LLPs	326	491
Large LLPs	203	265
Not known <sup>12</sup>	31,332	19,982
<b>Total</b>	<b>37,856</b>	<b>37,856</b>

## OPTIONS

14. The three options selected represent broad choices whilst permitting discussion on some of the detailed points.

### Option A: Do not apply the remaining provisions of the 2006 Act to LLPs

15. Do nothing would mean not applying the remaining provisions of the 2006 Act to LLPs and that LLPs would continue to operate under the provisions of the LLP Regulations 2001 (other than in respect of accounts and audit). These are largely based on the Companies Act 1985, which for companies will be in most part repealed. By not amending the LLP regulations LLP law would not only be out of step with modern company law but would be internally inconsistent in that the accounts and audit provisions of the 2006 Act have already been applied to LLPs. It would also mean a twin-track approach under which the 2006 Act is applied to companies, but the 1985 Act continued for LLPs (except so far as accounts and audit are concerned). This option would increase the complexity of business law, confusing business and their professional advisers and increase costs. Due to a lack of available evidence it has not been possible to estimate the size of this cost; however it is expected to be significant and increasing over time. In addition, it would deny LLPs the opportunity to take advantage of a range of deregulatory measures introduced by the 2006 Act.

<sup>11</sup> The former definition of a small company was one that meets two out of three criteria relating to turnover, balance sheet total and number of employees in their first financial year, or in the case of a subsequent year, in that year and the preceding year: turnover not more than £5.6 million, balance sheet total not more than £2.8 million, number of employees not more than 50. The former definition of a medium-sized company is one that met two out of three criteria relating to turnover, balance sheet total and number of employees: turnover not more than £22.8 million, balance sheet total not more than £11.4 million, number of employees not more than 250.

<sup>12</sup> We assume that most of these are small LLPs.

**Option B (the preferred option): Apply relevant remaining provisions of the 2006 Act (with modification) to LLPs**

16. Doing this would mean applying:

- provisions of the 2006 Act where there are corresponding provisions in the 1985 Act applied to LLPs and where the Government proposes to apply these again; and
- new provisions of the 2006 Act to LLPs following the existing approach of applying provisions which concern LLPs' relations with third parties.

17. The underlying assumption of this option is that LLPs would have the opportunity to benefit from any cost savings arising from the application of the 2006 Act as for companies and would also have the benefit of not having to operate under outdated law.

18. In addition, as the accounts and audit provisions of the 2006 Act have already been applied to LLPs through regulations that have now come into effect, it would be confusing to LLPs and their advisers not to apply the remaining provisions (as appropriate) in the same way.

19. Estimating the actual benefits for LLPs is very difficult, as not all provisions of the 2006 Act will be applied to LLPs. To provide a bottom up estimate of the costs and benefits of applying the remaining provisions of the 2006 Act to LLPs through these draft regulations we have looked at the costs and benefits in the RIA on the Companies Act and those in the IAs that accompany relevant secondary legislation implementing the 2006 Act for companies.

20. Below is a list of the remaining relevant provisions of the 2006 Act being applied to LLPs in these regulations. Not all of the remaining provisions of the 2006 Act will be applied as either it is not feasible to do so, because of the differences between companies and LLPs, or because the provisions relate to the internal arrangements of companies (see option C).

- Formalities of doing business
- LLP (Companies) Names
- Trading Disclosures
- LLP (Directors) Members Names
- LLP (Directors) Members Addresses
- Provisions on Debentures
- Annual Returns
- Charges
- Arrangements, Reconstructions and Cross-Border mergers
- Fraudulent Trading
- Protection of members against unfair prejudice
- Dissolution and restoration
- Overseas provisions - very limited application equivalent to 1985 Act provision already applied to LLPs
- The Registrar of Companies
- Offences

- Supplementary provisions
- Consequential Amendments and Transitional provisions

### Legislative approach of applying the 2006 Act to LLPs

21. In addition to the substantive changes being applied, we have taken this opportunity to consider what would be the best and most user friendly approach to drafting legislation for LLPs. By this we mean the structure rather than the content of the legislation. The Limited Liability Partnerships Act 2000 (LLP Act) sets out the basic structure and formation provisions for LLPs and provides the power to make regulations applying company law to LLPs, with or without modification. The 2001 LLP regulations apply large parts of the 1985 Act to LLPs with modifications of varying degrees. This creates a complex set of regulations, which do not stand alone, but have to be read in conjunction with the 1985 Act.

22. One of the key objectives of the 2006 Act was to ensure better regulation and to think small first. In line with this, it was logical and timely to review the approach taken in drafting the LLP regulations. We therefore proposed to apply specified provisions of the 2006 Act to LLPs by setting out those provisions in full, as modified. This would create a standalone set of regulations for LLPs. There was overwhelming support for this approach from those responding to the consultation on the application of the 2006 Act to LLPs.

23. In July 2008 regulations applying the accounts and audit provisions of the 2006 Act, set out in full, were made, together with two separate sets of regulations relating to the accounts of LLPs: one relating to the accounts of small LLPs, and one to the accounts of medium-sized and large LLPs.

24. In applying the remaining provisions of the 2006 Act to LLPs these regulations set out those provisions in full, as modified to take account of the particular characteristics of LLPs. In addition, they contain consequential amendments to the Limited Liability Partnerships Act 2000; revocations and transitional provisions (following those applied to companies).

25. We believe this is a significant improvement in the structure of legislation for LLPs and will benefit LLPs of all sizes and those who advise and represent them. It is however very difficult to assess the benefit to LLPs and their advisers of this new approach and the cost to them of continuing to follow the current approach by textually amending the provisions of the 2006 Act applied. With this final set of regulations completing the application of the 2006 Act to LLPs, in a more user friendly way, it is conceivable that the benefits of this new approach will increase and will continue to do so from October 2009, particularly as the number of LLPs continues to rise. LLPs are now trading in a number of sectors and are not all legal or accountancy firms where professional advice is not required or readily available.

### Benefits

26. The figures are only indicative on the basis of the original 2006 Act RIA and subsequent IAs produced for implementation of various provisions of the 2006 Act for companies.

27. Estimating the direct savings is very difficult. It is relatively easy to establish that a particular regulatory requirement is essentially redundant and should be amended or removed, but it is more difficult to establish what the monetised impact of this action will be.



## Costs

### *Implementation Costs*

28. There will be some changes to the law governing LLPs as a result of applying the remaining provisions as appropriate. One area where there may be a potential cost for some LLPs is the new requirement to keep a register of members. We believe this will be negligible, particularly as provisions applied to LLPs on the form of LLP records (section 1135 of the 2006 Act) provides that an LLP can keep records in hard copy or electronically and records can be arranged in what manner the LLP members see fit.

### *Familiarisation Costs*

29. In addition to the direct costs associated with the proposed application of the remaining provisions of the 2006 Act to LLPs, there will also be some familiarisation costs associated with any new legal provisions. These costs are not expected to be significant. Professional advisers will need to become familiar with the new law, but this should form part of their programmes of continuous professional development that will in due course cover the changes to company and LLP law. Although the cost of all professional training is ultimately passed on to clients, we do not expect to see an increase in fees charged to LLPs as a result of the proposed legislative changes.

### **Option C: Apply other provisions of the 2006 Act that are either new or where equivalent provisions of the 1985 Act were not applied**

30. This would mean applying provisions of the 2006 Act that are either new requirements for companies or where equivalent provisions of the 1985 Act were not applied to LLPs.

31. There are a number of provisions in the 2006 Act that we will not be applying to LLPs because it would not be appropriate to do so because of the fundamental difference between LLPs and companies, for example, those relating to public companies and a company's relations with its shareholders.

32. Following the consultation on the application of the 2006 Act to LLPs the Government responded to a number of issues raised on whether there should be application of some provisions of the 2006 Act that would be new for LLPs. These were the provisions on narrative reporting, derivative claims and directors' duties. In forming the decision not to apply these provisions to LLPs the Government considered the views of respondents and the differences between LLPs and companies i.e. that the position of members of an LLP does not equate to that of the directors of a company and that there is no legal distinction between the owners of an LLP and its management.

33. In addition to the above considerations, it is estimated that there would be little benefit of applying these provisions to LLPs, as LLP agreements set out what the duties and responsibilities of members are to be, and internal regulation of this nature should continue in this way to allow LLPs flexibility to regulate their own membership and management and the respective duties therein. Applying statutory requirements to these relationships would reduce flexibility and add unnecessary complexity and burden on LLPs. By doing so we believe this would increase costs for LLPs beyond those estimated for companies (on a pro-rata basis).

## SUMMARY OF COSTS AND BENEFITS

34. For the purposes of this IA we are doing bottom-up calculations. The table below summarises the likely costs and benefits, where these can be estimated.

<b>Options</b>	<b>Cost (per annum)</b>	<b>Benefit (per annum)</b>
Option A: Do Nothing	It is difficult to estimate the costs of LLPs operating under outdated law and more complex law and the cost of taking legal advice in these circumstances.	None
Option B (preferred option): Applying relevant provisions	Minimal, with perhaps a small cost to some LLPs of keeping a register of members for the first time.	£ 1 million Also the benefit of a step change in legislating for LLPs. Clearer more accessible law for LLPs and advisers. Reduce the need for LLPs to seek legal advice.
Option C: Applying other provisions of the 2006 Act	Associated with the introduction of new requirements on LLPs that go beyond current policy, adding complexity and burden.	None

## SPECIFIC IMPACT TESTS

### Competition Assessment

35. This proposal will have no significant adverse impact on markets. The application of the 2006 Act to LLPs will affect all LLPs. However, these costs and benefits do not appear to be sufficiently large to affect competition between LLPs of different sizes. The application of the 2006 Act to LLPs will not impose different costs on new and existing LLPs.

### Small Firms Impact Test

36. The reforms to LLP law have been guided by “Think Small First” principles and have been formulated with small enterprises in mind. Proposals have been designed so that wherever possible regulation is proportional to firm size, existing regulation simplified and presented in a coherent and accessible form. We estimate using FAME that one-third of those LLPs which could be classified were small and most of those unclassified were also likely to be small. We estimate that there will be benefits to all LLPs including small sized enterprises.

### Legal Aid

37. There will be no impact on Legal Aid

### Sustainable Development, Carbon Assessment, Other Environment

38. We believe there will be no impact on these areas.

## **Race Equality, Disability Equality and Gender Equality**

39. We do not believe that there will be an impact on the equality strands as the proposals impact on LLPs not on individuals. We have, however, looked at each of the equality impact initial tests individually and are confident that there is no impact.

## **Human Rights**

40. We do not believe that there will be an impact on Human Rights.

## **Rural Proofing**

41. We have looked at the initial test on rural proofing and are confident that there is no impact on rural communities.

## **ENFORCEMENT, SANCTIONS AND MONITORING**

42. The proposed reforms will provide greater clarity to questions as to who is liable for a particular breach in a particular set of circumstances. It is expected that the new regime will lead to greater understanding by participants of the requirements they are under and, potentially, to better levels of compliance. However, the reforms are not expected to lead to changes in enforcement patterns, and overall prosecution levels are unlikely to be significantly affected.

## **IMPLEMENTATION AND DELIVERY PLAN**

43. The Regulations have been designed to be as facilitative as possible.

## **Objective and Success Criteria**

44. The Government's objective in its method of implementing the measures in the 2006 Act for LLPs will be to ensure that LLPs are well sighted on the deregulatory opportunities made available by the Act, so that they can make informed choices on how they best wish to operate and can take advantage of them. An important success criterion will be the extent to which feedback from LLPs confirms that the amending regulations are simpler and more flexible in their effect. The focus on stakeholder feedback for the RIA on the 2006 Act in part reflects the difficulty of making concrete monetised assessments of the impact of company law measures. However, company law is essentially facilitative and the intention behind the measures is often to give companies flexibility and choice, rather than to ensure that they necessarily operate in any one particular way. Responses to the consultation from stakeholders have been considered and as part of the post-consultation process we have looked at the measures that can be monetised, to assess again the expected benefits and costs of the proposals. In line with the implementation of the 2006 Act, we will monitor and review the impact on LLPs.

## **Consultation and Compliance**

45. It is important to recognise that there is generally speaking no "LLP police" for ensuring compliance with the requirements of LLP law. The registrar (Companies House) and BERR prosecutors have limited remits associated with some of the non-permissive provisions in the Act (for example provisions associated with the register of members and the preparation and filing of accounts). Notwithstanding some specific measures, the 2006 Act on balance reduces rather than adds to the number of strict requirements in the company law regime, and no particular compliance difficulties are anticipated.

## **Resource Requirements**

46. There will be some set-up and implementation costs for Companies House in respect of certain measures in the Act. As a minimum there will be some one-off costs of training and familiarisation for staff, as well as systems costs in some areas. It is likely, as with companies, that these costs will be passed on to LLPs in the form of increased transactions costs. However,

such increases should be more than compensated for by the cost-savings to LLPs of the new arrangements.

### **Communications**

47. A simpler law, which “fits small business reality” better, will greatly increase business confidence in the overall regulatory environment and increase compliance. Companies House already provides extensive and well respected plain English guidance both in booklet form and increasingly through their website. In line with this there will be guidance available for LLPs.

### **Disproportionate Impact**

48. As stated in the competition assessment (Section 7 above) analysis indicates that the proposed Act will not adversely affect competition between new and existing LLPs, or between LLPs of different sizes.

### **Commencement and Implementation**

49. Companies House will play a major role in implementation of the LLP Regulations. They will have to make changes to their processes and systems to ensure they are ready to provide the best service to their customers when the provisions of the Regulations come into force.

### **SUMMARY**

50. The Government believes that the proposals set out in this IA will improve the performance of LLPs across the economy as a whole, and reduce direct compliance costs for business. Although the majority of provisions are evolutionary rather than revolutionary in nature, taken together they represent a huge step forward in ensuring that LLP law and company law are up to date, flexible and accessible for all who use it.

## 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	Yes	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	Yes	No
Rural Proofing	Yes	No