
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Limited Liability Partnerships Act 2000 provided for the creation of Limited Liability Partnerships (LLPs) and for the making of regulations concerning them. These Regulations regulate LLPs by applying to them, with appropriate modifications, the appropriate provisions of the existing law which relate to companies and partnerships.

The Regulations are structured in seven parts accompanied by six schedules. They apply to LLPs, with appropriate modifications to reflect the structure of LLPs, a large number of the provisions contained within the Companies Acts 1985 and 1989, the Insolvency Act 1986 and the Company Directors Disqualification Act 1986.

The Regulations amend the relevant primary legislation by way of general modifications which, provide that references to a company include references to a limited liability partnership, and references to a director or officer include a reference to a member of an LLP. Throughout the Schedules to the Regulations there are references to designated members. This category of member is responsible for a number of administrative and filing duties of the LLP but is also representative of the LLP and its membership in circumstances such as the appointment, removal and remuneration of auditors.

Part I of the Regulations contains the citation, commencement and interpretation provisions to be applied to the Regulations, and gives the date on which they come into force.

Part II of, and Schedule 1 to, the Regulations apply the provisions of Part VII of the Companies Act 1985 (accounts and audit) and its attendant Schedules to LLPs with appropriate modifications. Schedule 1 lists only those sections contained in Part VII of the Companies Act 1985, (including the Schedules related to those sections), which have been modified in their application to LLPs or not applied to LLPs. Therefore, if Schedule 1 does not refer to a particular section, which is contained in Part VII of the Companies Act 1985, or paragraph of a relevant Schedule, then that section or paragraph will apply to LLPs, subject only to the general amendments set out in regulation 3. The accounts and audit provisions, as applied by Part II of, and Schedule 1 to, the Regulations, impose accounting requirements on LLPs which are similar to those for companies. They require that LLPs file annual accounts with the registrar of companies, and place audit requirements on LLPs similar to those imposed on companies. They also define the form and content of the accounts, and allow derogations for small and medium sized LLPs.

Part III of and Schedule 2 to the Regulations apply to LLPs the remainder of the provisions of the Companies Act 1985 together with Part II of the Companies Act 1989 with appropriate modifications. Schedule 2 lists all those sections which apply to LLPs. If Schedule 2 does not refer to a particular section of the Companies Act 1985 then that section will not apply to LLPs. Part III of and Schedule 2 to the Regulations regulate an LLP by applying provisions, many of which are the same as or similar to those imposed on companies, but which reflect the different nature and structure of LLPs. They include provision for:

the execution of documents including bills of exchange and promissory notes and the execution of deeds abroad;

the registration of debenture holders including, a right for the holders of debentures issued by an LLP to inspect the register, the liability of trustees of debentures and perpetual debentures;

the officers and registered office including a requirement to register changes in the registered office of an LLP with the registrar of companies;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

company identification—the name of an LLP is to appear outside its place of business and on correspondence, in addition an LLP may have a common seal;

annual return—this part of the regulations provides that it is the duty of an LLP to deliver an annual return to the registrar of companies and sets out requirements as to the content of the annual return;

auditors—an LLP is, in general, required to appoint auditors, provision is made for the appointment of auditors by the Secretary of State where an LLP is in default, the auditors have various rights including the right to have access to an LLP's books, accounts and information as necessary, the right to attend meetings of the LLP, and certain rights in the event of being removed or not being re-appointed, provision is also made for the resignation of auditors and the making of a statement by a person ceasing to hold office as auditor;

registration of charges—sections 395 to 408, 410 to 423 of the Companies Act 1985, will apply to LLPs, with modifications, until section 92 of the Companies Act 1989 is commenced or some other amendment is made;

arrangements and reconstructions—an LLP will have the power to compromise with its creditors and members, the sections set out detailed provisions concerning the circulation of information on any compromise together with provisions for facilitating an LLP's reconstruction or amalgamation;

investigation of LLPs and their affairs—an investigation of an LLP may be made following its own application of that of its members, the sections set out detailed provisions concerning investigations, the production of documents and evidence, contempt of court, inspectors' reports and the use of inspectors' reports as evidence;

fraudulent trading is punished in the case of an LLP in the same way as a company;

unfair prejudice—Schedule 2 applies the Companies Act 1985 so that, in general, there is a remedy for the members of an LLP should they suffer unfair prejudice, the members of a limited liability partnership may, however, by unanimous agreement exclude the right contained in section 459 (1) for such period as may be agreed;

matters arising subsequent to winding up—the provisions deal with various matters including the power of the court to declare the dissolution of a company void, the striking out by the registrar of companies of a defunct company and crown disclaimer of property vesting as bona vacantia;

registrar of companies—Schedule 2 sets out the registrar's functions and offices in relation to LLPs;

miscellaneous and supplementary provisions—the provisions deal with various matters including the form of company registers etc., the use of computers for company records, the service of documents, the powers of a court to grant relief in certain cases, and the punishment of offences.

Part III of the Regulations also applies the provisions of the Company Directors Disqualification Act 1986 to limited liability partnerships with appropriate modifications. These provide that members of an LLP will be subject to the same penalties that currently apply to company directors under the CDDA 1986 and may be disqualified from being the member of an LLP or a director of a company under those provisions.

Part IV of, and Schedule 3 to, the Regulations apply to LLPs the First and Third Groups of Parts of the Insolvency Act 1986, with appropriate modifications. Schedule 3 lists only those sections contained in the First or Third Group of Parts which have been modified or omitted in their application to LLPs. If there is no reference in Schedule 3 to a particular section contained in the First or Third Group of Parts of the Insolvency Act 1986 then that section will apply to LLPs subject to the general modifications contained in Regulation 5. The insolvency provisions as applied to LLPs include provisions for voluntary arrangements, administration orders, receivership, winding-up and liquidations. The most notable modifications of the provisions which apply to companies are, an additional section, section 214A and the re-worded section 74.

The new Section 214A provides that withdrawals made by members during the two years prior to the commencement of winding-up will be subject to claw back if it is proved that at the time of the

withdrawal the member knew or had reasonable grounds for believing that the LLP was, or would be made, insolvent. The modified section 74 provides that in the event that an LLP is wound up, both past and present members of the LLP are liable to contribute to the assets of the LLP to the extent that they have agreed to do so with the other members, in the limited liability partnership agreement.

Part V of the Regulations apply the provisions contained in Parts XV and XXIV of the Financial Services and Markets Act 2000 to LLPs. These Parts provide for insolvency arrangements of LLPs which are authorised under FSMA 2000. In addition, these Parts give the Authority powers to ask the courts to wind up, or initiate other insolvency procedures against, authorised and certain other persons. It also enables the Authority to be heard by the court when such proceedings are commenced by third parties.

Part VI of the Regulations provides for default provisions governing the rights and duties of members, which modify those contained in section 24 of the Partnership Act 1890. They will apply when there is no existing limited liability partnership agreement, or where the agreement does not wholly deal with a particular issue.

Schedule 4 to the Regulations lists those provisions contained in the First and Third Group of Parts of the Insolvency Act 1986 which are not applied to Scotland. The provisions wholly or partly concern matters which are set out in Section C.2 of the Fifth Schedule of the Scotland Act 1998 as being exceptions to the reservation.

Part VII of, and Schedule 5 to, the Regulations apply a number of general and consequential amendments to other Acts of Parliament.

Part VII of, and Schedule 6 to, the Regulations apply to LLPs certain pieces of subordinate legislation made under the Companies Act 1985, the Insolvency Act 1986 and other primary legislation.