

**EXPLANATORY MEMORANDUM TO THE
LIMITED LIABILITY PARTNERSHIPS (AMENDMENT)
REGULATIONS 2005**

2005 No. 1989

1 This Explanatory Memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. DESCRIPTION

2.1 The Limited Liability Partnerships Regulations 2001¹ (“the LLP Regulations”) apply the provisions of Part 7 of the Companies Act 1985 (“the 1985 Act”) on accounts and audit to limited liability partnerships (“LLPs”), subject to the modifications set out in Schedule 1 to the LLP Regulations. Part 7 has been amended in particular by the Directors’ Remuneration Report Regulations 2002² (“the 2002 Regulations”), the Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004³ (“the 2004 Regulations”) and the Companies Act 1985 (Operating and Financial Review and Directors’ Report etc) Regulations 2005⁴ (“the 2005 Regulations”). This Statutory Instrument makes consequential changes to the LLP Regulations resulting from those amendments.

2.2 The LLP Regulations also apply Parts I, II, III, IV, VI and VII of the Insolvency Act 1986 to LLPs. Some of those provisions have been amended by the Insolvency Act 2000 and the Enterprise Act 2002.

**3. MATTERS OF SPECIAL INTEREST TO THE JOINT COMMITTEE
ON STATUTORY INSTRUMENTS**

3.1 None.

4. LEGISLATIVE BACKGROUND

4.1 The Limited Liability Partnerships Act 2000 established the LLP as a new form of business vehicle. Regulation 3 of the LLP Regulations applied Part 7 of the 1985 Act on accounts and audit to LLPs, with the modifications set out in Schedule 1 to those Regulations. As a result, LLPs are subject to similar accounting requirements as those applying to companies.

¹ S.I. 2001/1090

² S.I. 2002/1986

³ S.I. 2004/2947

⁴ S.I. 2005/1011

4.2 Any subsequent amendments to the provisions of Part 7 which are applied to LLPs apply automatically without the need for specific amending regulations, unless the contrary intention appears. Further specific amendments to the LLP Regulations are necessary where the provisions of Part 7 that have been amended are not applicable to LLPs, or apply to them in a different way than for companies. This is the purpose of these Regulations.

4.3 In addition, the LLP Regulations apply the provisions of the Insolvency Act 1986 relating to the insolvency of companies to LLPS, with necessary modifications. This statutory instrument amends those Regulations to take account of changes to the Insolvency Act 1986 made by the Insolvency Act 2000 and the Enterprise Act 2002.

Recent Changes to Part 7 of the 1985 Act

4.4 The 2004 Regulations ensure the effective application in Great Britain of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards⁵ (the “IAS Regulation”), and implement Member State options in that Regulation.

4.5 The IAS Regulation requires companies governed by the law of a Member State, whose securities are admitted to trading on a regulated market in any Member State in the EU (“publicly traded companies”) to prepare their consolidated accounts on the basis of accounting standards issued by the International Accounting Standards Board that are adopted by the European Commission.

4.6 The IAS Regulation also permits Member States to extend use of IAS. The 2004 Regulations extend use of IAS to the individual accounts of publicly traded companies and to the individual and consolidated accounts of other companies on a permissive basis.

4.7 The 2004 Regulations also implement the following European legislation:

- Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions⁶ (the “Fair Value Directive”). The Fair Value Directive amends European accounting requirements to permit certain financial instruments to be recorded at fair value (essentially current market value), in line with international accounting practices.
- Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EE and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance

⁵ OJ L243 of 11.9.2002, P. 1

⁶ OJ L283 of 27.10.2001, P. 28

undertakings⁷ (the “Accounts Modernisation Directive”). The Accounts Modernisation Directive amends accounting requirements to enable companies to follow modern, more transparent accounting practices that are consistent with IAS.

4.8 These Regulations ensure that the amendments made to Part 7 by the 2004 Regulations apply appropriately to LLPs, or are disapplied where not appropriate (eg an amendment concerning dividend disclosure).

4.9 The 2002 Regulations require quoted companies to publish a Directors’ Remuneration Report for each financial year, including a detailed statement of the company’s future policy on directors’ remuneration and full details of each director’s pay package for the financial year in question. The 2005 Regulations implement provisions of the Accounts Modernisation Directive concerning the directors’ report, and introduce a requirement for quoted companies to prepare an Operating and Financial Review. These amending regulations also disapply these various reporting requirements for LLPs.

Insolvency provisions

4.10 The Insolvency Act 2000, which came into force in January 2003, introduced a moratorium for small companies intending to make a proposal for a voluntary arrangement with their creditors. This has the effect of preventing creditors from taking enforcement action while a rescue plan is being drawn up. Provisions of the Enterprise Act 2002, which came into effect in September 2003, introduced streamlined administration procedures for companies including two new entry routes into administration for the company, neither of which involve getting court orders.

Scrutiny

4.11 **IAS Regulation** – DTI Explanatory Memorandum 6365/01 was submitted on 16 March 2001. The Commons European Scrutiny Committee considered it not legally or politically important and cleared it (Report No. 1, Item 22162, Session 00/01). The Lords Select Committee on the EU did not report on it (Progress of Scrutiny 13.04.01, Session 00/01).

4.12 **Accounts Modernisation Directive** - DTI Explanatory Memorandum 9730/1/02 REV1 COM (2002) 25912 Final was submitted on 26 February 2002. The Commons European Scrutiny Committee considered it politically important and cleared it (Report No 37, Item 23522, Session 01/02). The Lords Select Committee on the EU cleared it on 09.07.02 (Progress of Scrutiny 22.07.02, Session 01/02).

4.13 DTI Explanatory Memorandum OTNYREM was submitted on 05 December 2002. The Commons European Scrutiny Committee considered it politically important and cleared it (Report No. 5, Item 24060, Session 02/03). The Lords Select Committee on the EU did not report on it (Progress of Scrutiny 21.12.02, Session 02/03).

⁷ OJ L178 of 17.7.2003, P. 16

4.14 **Fair Value Directive** - DTI Explanatory Memorandum 6511/00 COM (2000) 80 Final was submitted on 10 April 2000. The Commons European Scrutiny Committee considered it not legally or politically important and cleared it (Report No. 14, Item 21048, Session 99/00). Lords Select Committee on the EU did not report on it (Progress of Scrutiny 21.04.00, Session 99/00).

5. **EXTENT**

5.1 This instrument applies to Great Britain.

6. **EUROPEAN CONVENTION ON HUMAN RIGHTS**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **POLICY BACKGROUND**

7.1 LLPs were introduced as a business vehicle by the Limited Liability Partnerships Act 2000. They may be seen as a hybrid between limited liability companies and traditional partnerships, in that they offer the limited liability available to limited company shareholders combined with the tax regime and organisational flexibility available to partnerships. An LLP is registered at Companies House and must deliver statutory documents to the Registrar of Companies as and when they become due for the public record. This includes filing audited accounts (unless the LLP is exempt from audit).

7.2 The Government's general policy on LLPs is to treat them in the same way as companies of the same size and sector unless this is clearly inappropriate.

7.3 Therefore, recent changes in accounting and auditing requirements and options are applicable to LLPs. For example, there is no reason why LLPs should be denied the option to prepare their accounts using IAS. However, LLPs will continue not to have to prepare a directors' report, and will not have to prepare an OFR or Directors' Remuneration Report, as they would not normally have external shareholders.

7.4 With regard to insolvency provisions, most of the amendments that are being made to Schedule 3 of the LLP Regulations reflect changes that were made for companies by the Enterprise Act 2002. These were aimed at encouraging the rescue of viable businesses that get into financial difficulty. These are in line with the package of reforms to corporate insolvency activity that were introduced by Part 10 of the Enterprise Act 2002.

7.5 There is considerable interest in the move to IAS among larger companies and the specialist press, but little interest among smaller undertakings (who are less likely to want to use IAS) and the general media. There is a general view that IAS is the way forward; over 90% of those who responded to the original 2002 consultation on

whether use of IAS should be extended were in favour of some extension. The summary of responses is at www.dti.gov.uk/cld/iassummary.pdf.

7.6 There was less interest in the technical details of how the IAS Regulation should be implemented (consulted on in March 2004). The proposals were broadly supported overall, although there were differing views among respondents on certain issues. Slightly less than half of those who responded commented on whether the proposals should be applied to LLPs, but all who commented were supportive. Further details can be found in the summary of responses at www.dti.gov.uk/cld/AccountingModernisationResp1110.pdf.

7.7 In relation to the insolvency provisions, only two responses were provided to a limited consultation that was issued to insolvency accountants, lawyers and other interested parties thought to have an interest in this area. These responses were in the nature of technical amendments regarding the drafting of the proposed amendments.

8. **IMPACT**

8.1 A separate Regulatory Impact Assessment (RIA) has not been prepared for these Regulations. The RIA for S.I. 2004/2947 covers the impact of those Regulations on LLPs. The RIA for the Insolvency Act 2000 (c.39) and the Enterprise Act 2002 (c.40) covers the impact on companies generally of the amendments to the insolvency regime. The costs and benefits outlined there are equally applicable to LLPs.

8.2 The RIAs and the Transposition Notes were attached to the original Explanatory Memorandum for S.I. 2004/2947.

8.3 There is no impact on the public sector as this Statutory Instrument only applies to LLPs.

9. **CONTACT**

Valerie Carpenter at the Department of Trade & Industry (telephone 020 7215 0225 or email valerie.carpenter@dti.gsi.gov.uk) can answer any queries regarding the instrument.