

**EXPLANATORY MEMORANDUM TO  
THE SMALL LIMITED LIABILITY PARTNERSHIPS (ACCOUNTS)  
REGULATIONS 2008**

**2008 No. 1912**

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. **Description**

2.1 The Small Limited Liability Partnerships (Accounts) Regulations 2008, which are to be made under sections 15 and 17 of the Limited Liability Partnerships Act 2000 (“the LLP Act”), set out the form and content of the accounts of small limited liability partnerships (“LLPs”). They apply to small LLPs, with modifications, provisions of the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008<sup>1</sup> made under Part 15 of the Companies Act 2006 (“the 2006 Act”).

2.2 The Regulations will replace provisions contained in the accounting Schedules to Part 7 of the Companies Act 1985 (“the 1985 Act”) and to Part 8 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032(N.I. 6)) (“the 1986 Order”) as applied to LLPs by the Limited Liability Partnerships Regulations 2001 (“the 2001 Regulations”)<sup>2</sup> and the Limited Liability Partnerships Regulations (Northern Ireland) 2004 (“the 2004 Regulations”)<sup>3</sup>.

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

None.

4. **Legislative Background**

4.1 The LLP Act and its Northern Ireland equivalent<sup>4</sup> provided for the creation of a new corporate vehicle, the LLP. 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. It is however subject to similar accounting and auditing provisions to those for companies.

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<sup>1</sup> S.I. 2008/409.

<sup>2</sup> S.I. 2001/1090.

<sup>3</sup> SR (NI) 2004/307.

<sup>4</sup> The Limited Liability Partnerships Act (Northern Ireland) 2002 ( c.12 (N.I.)).

4.2 The LLP Act, and its Northern Ireland equivalent, both set out the basic structure and formation provisions for LLPs. The 2001 Regulations made under the LLP Act ( which came into force at the same time as the LLP Act), and the 2004 Regulations, set out most of the detailed provisions for LLPs by applying large parts of the 1985 Act, the Insolvency Act 1986 and other enactments, and their Northern Ireland equivalents, to LLPs. Many of the provisions applied are modified to reflect the particular characteristics of an LLP. The same approach is taken in Northern Ireland.

4.3 In light of the changes made to company law by the 2006 Act, provisions of Parts 15 and 16 of the 2006 Act are applied to LLPs by the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008. Provisions specifying the form and content of company accounts previously contained in the accounting Schedules to the 1985 Act and 1986 Order are now set out in regulations made under Part 15 of the 2006 Act. These Regulations set out the requirements for the accounts of small LLPs for financial years beginning on or after 1<sup>st</sup> October 2008. The requirements for the accounts of large and medium-sized LLPs are contained in the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008.

4.4 The 2001 and 2004 Regulations apply large parts of the 1985 Act and 1986 Order 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’. Part 15 of the 2006 Act provides for detailed accounting and reporting requirements to be set out in regulations made by the Secretary of State rather than in Schedules to the Act. In line with this, the approach to drafting the LLP regulations was reviewed and consulted on. As a result, these Regulations apply provisions of the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008 made under Part 15 of the 2006 Act to LLPs and set out those provisions in full, as modified to take account of the particular characteristics of LLPs.

4.5 In line with the position for companies, the Regulations make a couple of substantive changes to the accounting rules for small LLPs set out in paragraph 7.5 below.

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

5.1 This instrument applies to all of the United Kingdom.

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

6.1 The Parliamentary Under Secretary of State for Trade and Consumer Affairs, Gareth Thomas, has made the following statement regarding Human Rights:

In my view the provisions of the Small Limited Liability Partnerships (Accounts) Regulations 2008 are compatible with the Convention rights.

## 7. Policy background

### *Policy*

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 major 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 and ‘to think small first’. The new approach to legislating for LLPs results in stand alone regulations.

7.3 In order to assess the potential impact for LLPs 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 (or 1986 Order) 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 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 or 1986 Order currently applied to LLPs.

7.5 These Regulations apply the provisions on the form and content of accounts of small companies to small LLPs. This result in two changes to the existing accounting requirements for small LLPs, reflecting the changes made for small companies. Firstly, small LLPs are given the option of including financial instruments in the accounts at a fair value in certain circumstances (paragraph 36(4) of Schedule 1 to the Regulations). Secondly, a number of technical amendments have been made to the provisions on consolidated accounts. These address the potential for differences in the context of UK

accounting standards being converged with International Financial Reporting Standards by increasing flexibility (Schedule 4, paragraphs 9, 13 and 17).

7.6 The Regulations are not politically or legally important.

### *Consultation*

7.7 In February 2007, as part of the consultation on the implementation of the 2006 Act for companies, the Government consulted (in Chapter 5) on the general approach to be adopted in applying the 2006 Act to LLPs<sup>5</sup>. 34 respondents to the consultation specifically responded to the questions on LLPs. The majority supported the approach so far as possible of applying provisions of the 2006 Act so as to replace the provisions of the 1985 Act (and the 1986 Order) currently applied to LLPs and the proposed timetable for doing this. This included the proposal to apply the accounts and audit provisions of the 2006 Act to LLPs from 1st October 2008.

7.8 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 on LLPs 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.

7.9 The consultation closed on the 6 February 2008. 25 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.

7.10 There was broad support on the proposal to apply Parts 15 and 16 of the 2006 Act on accounts and audit to LLPs by taking the same approach as in the 2001 and 2004 regulations of applying the rules as they apply to a private company, with appropriate adaptation to take into account the different internal arrangements of an LLP.

7.11 Draft regulations on accounts and audit which reflected the comments made in response to the consultation were published for comment on the BERR website during May 2008, including a draft of the Small Limited Liability Partnerships (Accounts) Regulations 2008. In addition, a Working Group of key interested parties was set up to review the draft regulations.

7.12 The Government response to the November 2007 consultation was published on 23<sup>rd</sup> May. Draft regulations on the remaining provisions, due to come into effect from 1<sup>st</sup> October 2009, will be published for comment.

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<sup>5</sup> DTI/02/07/NP. URN 07/666.

## *Guidance*

7.13 To accompany the regulations FAQs will be published on the Department's website. In addition, guidance booklets published by Companies House will be updated to reflect the changes from October 2008.

## **8. Impact**

8.1 An Impact Assessment on the legislative approach taken and the application of the accounts and audit provisions is attached to this memorandum at Annex A.

## **9. Contact**

**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.