



House of Commons  
Regulatory Reform Committee

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# Draft Legislative Reform (Limited Partnerships) Order 2009

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Sixth Report of 2008–09

*Report, together with formal minutes*

*Ordered by the House of Commons  
to be printed 23 June 2009*

## The Regulatory Reform Committee

The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) is appointed to consider and report to the House on draft Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006. Its full remit is set out in S.O. No. 141, which was approved on 4 July 2007.

### Current membership

Andrew Miller (*Labour, Ellesmere Port & Neston*) (Chairman)  
Gordon Banks (*Labour, Ochil and South Perthshire*)  
Lorely Burt (*Liberal Democrat, Solihull*)  
Mr Quentin Davies (*Labour, Grantham and Stamford*)  
Mr James Gray (*Conservative, North Wiltshire*)  
John Hemming (*Liberal Democrat, Birmingham, Yardley*)  
Mrs Sharon Hodgson (*Labour, Gateshead East & Washington West*)  
Mr Stewart Jackson (*Conservative, Peterborough*)  
Judy Mallaber (*Labour, Amber Valley*)  
Dr Doug Naysmith (*Labour/Co-operative, Bristol North West*)  
Mr Mark Prisk (*Conservative, Hertford and Stortford*)  
Mr Jamie Reed (*Labour, Copeland*)  
Mr Anthony Steen (*Conservative, Totnes*)  
Phil Wilson (*Labour, Sedgefield*)

### Criteria against which the Committee considers each draft legislative reform order

Paragraph (3) of Standing Order No.141 requires us to consider any draft legislative reform order against the following criteria:

... whether the draft legislative reform order —

- (a) appears to make an inappropriate use of delegated legislation;
- (b) serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
- (c) serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- (d) secures a policy objective which could not be satisfactorily secured by non-legislative means;
- (e) has an effect which is proportionate to the policy objective;
- (f) strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (g) does not remove any necessary protection;
- (h) does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (i) is not of constitutional significance;
- (j) makes the law more accessible or more easily understood (in the case of provisions restating enactments);
- (k) has been the subject of, and takes appropriate account of, adequate consultation;
- (l) gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant;
- (m) appears to be incompatible with any obligation resulting from membership of the European Union.

## **Publications**

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/regrefcom](http://www.parliament.uk/regrefcom). A list of Reports of the Committee in the present Session of Parliament is at the back of this volume.

## **Committee staff**

The current staff of the Committee are John Whatley (Clerk), Neil Caulfield (Inquiry Manager) and Liz Booth (Committee Assistant).

All correspondence should be addressed to the Clerk of the Regulatory Reform Committee, Delegated Legislation Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 2837; the Committee's email address is [regrefcom@parliament.uk](mailto:regrefcom@parliament.uk).



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## Summary

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The draft Legislative Reform (Limited Partnerships) Order 2009 and Explanatory Document were laid before Parliament by the then Department for Business, Enterprise and Regulatory Reform (now the Department for Business, Innovation and Skills) on 2 June 2009 under section 14(1) of the Legislative and Regulatory Reform Act 2006.

The draft Order seeks to introduce two changes to the Limited Partnership Act 1907, namely making a certificate of registration conclusive evidence that a limited partnership has been formed on the date shown; and requiring that all new limited partnerships provide clarity about their status by including the words 'Limited Partnership', 'LP' or equivalent at the end of the name.

We believe that all statutory preconditions and tests have been met.

We believe that responsibilities relating to the consultation procedures laid out in section 13 of the LRRRA have been properly fulfilled.

We conclude that the proposals seem sensible and would provide additional clarity and transparency and are thereby likely to lead to a small reduction in relevant legal costs. We therefore recommend that the draft Order should be approved.

We agree that the draft Order should be subject to the affirmative resolution procedure.



# 1 Introduction

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1. The draft Legislative Reform (Limited Partnerships) Order 2009 and Explanatory Document were laid before Parliament by the Department for Business, Enterprise and Regulatory Reform (BERR) (now the Department for Business, Innovation and Skills (BIS)) on 2 June 2009 under section 14(1) of the Legislative and Regulatory Reform Act 2006 (LRRRA). The Government believes that under the terms of section 1(2) of the LRRRA, adoption of the draft Order would remove or reduce burdens (arising from uncertainties about the application of the Limited Partnership Act 1907 (the 1907 Act) and that the draft Order passes the tests derived from section 3(2) (need for legislation, proportionality, balance, preservation of protections, rights and freedoms and absence of constitutional significance). The affirmative resolution procedure is recommended.

2. The draft Order seeks to introduce two changes to the 1907 Act, namely making a certificate of registration conclusive evidence that a limited partnership has been formed on the date shown; and requiring that all new limited partnerships provide clarity about their status by including the words ‘Limited Partnership’, ‘LP’ or equivalent at the end of the name. Both of these proposals formed part of a number of recommendations made by the Law Commissions in their report on Partnership Law in 2003.<sup>1</sup>

3. The current proposals are uncontroversial and form the remnants of wider changes mooted by the Law Commissions’ report. They were included in an earlier more wide-ranging draft legislative reform order (LRO) about which a consultation process was initiated in August 2008. Following that procedure, the conclusion was ‘that the attempt to reform the law comprehensively in one LRO had been over-ambitious.’<sup>2</sup> The intention now is to proceed with changes in a piecemeal fashion.<sup>3</sup>

## 2 Background

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4. The Partnership Act 1890 sets out the basic structure of partnership law. General partnerships governed by that Act have unlimited liability for the debts and obligations of the partnership. The Limited Partnerships Act 1907 introduced a second form of partnership whereby the liability of one or more of the partners was limited, so long as the partnership also included at least one general partner with unlimited liability. Both of these Acts have remained largely unchanged. The draft Order applies only to limited partnerships.

5. Limited partnerships are used for specialised purposes (for instance venture capital and private equity investment funds, although the proposals in the draft Order confer no special advantage on such enterprises) and are normally governed by formal agreements. The Explanatory Document (ED) says that limited partnerships are a useful vehicle for

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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, November 2003.

2 Explanatory Document, para 46, p9.

3 *Ibid*, para2, p1 and para 46, p9.

investors who do not wish to play an active part in managing the business.<sup>4</sup> There are currently around 15,600 limited partnerships in the UK.

6. In August 2008, BERR (now BIS) undertook a consultation exercise in connection with a proposed comprehensive legislative reform order which would have repealed the Limited Partnerships Act 1907 and inserted new provisions into the Partnership Act 1890. Responses to the consultation indicated broad support for modernising and clarifying some aspects of limited partnership law, but ‘diverging views’ about other proposals contained in that draft LRO, for example on re-registration (particularly from Scottish landowners), although certified registration itself was ‘specifically identified by many as an important and welcome improvement’.<sup>5</sup>

## 3 What the draft Order proposes

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### Conclusive registration

7. In their report,<sup>6</sup> the Law Commissions noted the uncertainty in the 1907 Act about the exact timing as to when a limited partnership is deemed to have been created. This situation potentially exposes the limited partners in proposed limited partnerships to the consequences of unlimited liability until such time as the exact moment of creation has been established. 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.<sup>7</sup> The Explanatory Document points out that discussions during an informal re-consultation in April 2009 confirmed that these were considered real risks which could lead to a reluctance by investors to commit. The current arrangements also add to the overall legal costs of the setting up procedure.<sup>8</sup>

8. The Law Commissions’ report therefore recommended that a limited partnership ‘should exist from registration as stated in the certificate of registration’.<sup>9</sup> It also recommended the ‘certificate should be conclusive evidence’.<sup>10</sup> As the Explanatory Document says, the Department ‘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’.<sup>11</sup> **We agree.**

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4 ED, para 14, p3.

5 ED, para 7, p2.

6 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, November 2003.

7 An amended section 5 would be a consequential change if the main proposals are agreed to. Whilst this change would protect the extent of liability for innocent partners, it would not necessarily do the same for any individual involved unduly in any irregularity detected some time after the commencement of any limited partnership.

8 ED, para 37, p7.

9 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, November 2003, recommendation 20.84.

10 *Ibid.* Recommendation 20.86.

11 ED, Annex C, para 5, p19.

9. Under the terms of the draft Order, for new limited partnerships the certificate of registration would provide conclusive evidence of the existence of a limited partnership and thereby ensure that those purporting to be limited partners benefited from limited liability from the date shown on the certificate. However, it would still be necessary for the substantive conditions in section 4(2) of the 1907 Act to be met. These require each limited partner to contribute an amount of capital to the partnership and allow for liability to be limited to that amount. Limited partners would still also have to comply with section 6 of the 1907 Act which prevents them from participating in the management of the business.

### Disclosure of status

10. Furthermore, unlike a company, a limited partnership is not as things stand required to disclose its status in its name, although some choose to do so. The Law Commissions described this situation as presenting a significant omission since the inclusion of the suffix 'Limited' allows those dealing with the partnership concerned immediately to be aware that liability may be limited. It recommended that such provision should be introduced. The draft Order therefore seeks to incorporate this proposal for firms coming into existence after the commencement date (assuming that the draft Order is approved).

### Changes to the '1907 Act'

11. In endeavouring to introduce the two changes, the draft Order proposes the replacement of section 8 of the 1907 Act, which currently deals with the manner and particulars of registration, with new and specific provisions with regard to duty to register, application for registration (this addition is stated in terms not used in the consultation version which had included proposed changes consequential on other reforms), name of limited partnership and certificate of registration. There are one or two minor consequential and incidental provisions, but the changes do not alter the basic nature of limited partnerships as created by the 1907 Act. Their purpose is to clarify and modernise the law, remove burdens from business and maintain appropriate protection. If the draft Order is approved, a review of the actual costs and benefits and whether the desired effects have been achieved will be undertaken after three years.

## 4 Impact assessment

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12. The Explanatory Document states that none of the suggested changes 'can be readily quantified, but the benefits are considered significant'.<sup>12</sup> It is argued that the current uncertainty around registration creates administrative inconvenience and imposes costs, principally legal costs, as potential investors seek to clarify their position and that the proposed changes would reduce these.<sup>13</sup> It is also the case that including the status in the names of limited partnerships should lead to some cost saving by those intending to do business with them and wishing to assess the extent of liability of those involved.

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<sup>12</sup> ED, para B22, p31.

<sup>13</sup> ED, Annex C, paras 5 and 6, p19.

## 5 Preconditions and tests

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13. Section 3(2) of the LRRRA lists certain preconditions which the draft Order is required to meet.

14. Moreover, House of Commons Standing Order No.141(3), which to some extent restates the preconditions, charges us with applying a number of tests to the draft Order, including its appropriateness for delegated legislation, whether it removes a burden, proportionality, whether it removes any protection, whether it is constitutionally significant and whether adequate consultation was undertaken.

15. That Standing Order also requires us to consider whether the draft Order meets tests applied to other types of delegated legislation by the Joint Committee on Statutory Instruments under Standing Order No. 151. These include whether it imposes a charge on the public purse, whether it seeks to avoid challenge in the courts, whether it purports to have retrospective effect, whether there are doubts about *vires*, whether it makes unusual use of powers or is defectively drafted.

16. It seems to us that the proposed changes themselves are sensible, relevant and introduce clarity and although they might appear relatively small **we agree that they serve the purpose of removing or reducing a burden as set out in section 1(2) of the LRRRA**. It is also apparent that the changes not only pass the essential tests, but would also clarify the law. **We therefore conclude that all the relevant preconditions and tests have been met.**

## 6 Consultation

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17. The statutory consultation exercise (albeit on a prospective wider-ranging draft Order) was initiated in August 2008. The then proposed draft Order set out to repeal the 1907 Act and replace it with 31 new sections written into the Partnership Act 1890; sought to make certain amendments to the Companies Act 2006 with regard to limited partnerships, which are now expected to be dealt with in due course, via delegated legislation related to that Act;<sup>14</sup> and included the provisions being assessed in this report.

18. There were 108 recipients of the consultation document. Thirty-three responses were received, as a result of which, although there was broad support for many of the key proposals, the original comprehensive draft Order was reduced in scale to the dimensions given in the current draft Order.

19. According to BERR (now BIS) the consultation made it clear that there was at least one significant, useful change for which there was a consensus.<sup>15</sup> However, because the overall reaction caused changes in the scope of the then proposed draft Order a second consultation, seeking views on what is now intended and involving the 33 respondents to the original exercise, was undertaken in April 2009. The reaction in this case remained

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<sup>14</sup> In parallel with the present draft Order, BIS hopes to make other minor changes to the 1907 Act as consequences on the Companies Act 2006 in the form of the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 which is currently being drafted.

<sup>15</sup> ED, para 46, p9.

broadly positive. Whilst they did not reject the current proposals, four respondents thought that the piecemeal approach to reform of limited partnership law would increase costs as a result of those concerned having to cope with a possible succession of changes rather than one. BERR (now BIS) said that although it was sympathetic to the point, it 'did not believe that [it] could bring forward a single comprehensive order with confidence that it would be generally supported for at least twelve months and possibly much longer'.<sup>16</sup> It is also the fact that since current draft Order applies only to new limited partnerships it has no cost implications for established businesses.

## Scotland, Wales and Northern Ireland

20. Business partnerships are a reserved matter under Scottish devolution arrangements and the Welsh Assembly has no jurisdiction over such issues.<sup>17</sup> In Northern Ireland partnership law is a transferred matter under the Northern Ireland Act 1998. However, to ensure nationwide consistency it was agreed that the Companies Act 2006 should also extend to Northern Ireland. In a similar vein, 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.<sup>18</sup> Furthermore, the draft Order contains no provision to amend or repeal any Northern Ireland legislation (and accordingly passes the test in section 10 of the LRRRA).

**21. We believe that responsibilities relating to the consultation procedures laid out in section 13 of the LRRRA have been properly fulfilled.**

## 7 Conclusion

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22. Whilst the changes to limited partnership law proposed in the draft Order are relatively small, we conclude that they seem sensible and would provide additional clarity and transparency and thereby likely to lead to a small reduction in relevant legal costs. Keeping these proposals on ice until further reforms to limited partnerships are ready will serve to continue the current uncertainty about registration, which would be overcome by it being written into law that a limited partnership comes into existence when the Registrar registers it. **We therefore recommend that the draft Order be approved.**

23. The Parliamentary Under Secretary of State at the then BERR (now BIS) has recommended that the affirmative resolution procedure should apply. **We agree that this is appropriate.**

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<sup>16</sup> ED, para 47, p9.

<sup>17</sup> ED, para 43, p8.

<sup>18</sup> ED, para 44, p9.

# Formal Minutes relating to the report

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**Tuesday 23 June 2009**

Members present:

Andrew Miller, in the Chair

Gordon Banks  
Lorely Burt

Dr Doug Naysmith  
Phil Wilson

Draft Report (Draft Legislative Reform (Limited Partnerships) Order 2009), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 23 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Sixth Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

[Adjourned till Tuesday 7 July at 9.30 am

## List of Reports from the Committee during the current Parliament

### Session 2008-09

First	Draft Legislative Reform (Insolvency) (Advertising Requirements) Order 2009	HC 181
Second	Draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009	HC 209
Third	Draft Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009	HC 210
Fourth	Draft Legislative Reform (Local Government) (Animal Health Functions) Order 2009	HC 399
Fifth	Draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009	HC 400

### Session 2007-08

First	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007	HC 135
Second	Draft Legislative Reform (Health and Safety Executive) Order 2008	HC 398
Third	Draft Legislative Reform (Consumer Credit) Order 2008	HC 939
Fourth	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2008	HC 940
Fifth	Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda	HC 474-I and II
Sixth	Draft Legislative Reform (Lloyd's) Order 2008	HC 1090