

**BERR**

Department for Business  
Enterprise & Regulatory Reform

**PROPOSALS FOR THE APPLICATION OF  
THE COMPANIES ACT 2006 TO LIMITED  
LIABILITY PARTNERSHIPS (LLPs)**

A consultation document

NOVEMBER 2007

# Proposals for the application of the Companies Act 2006 to Limited Liability Partnerships

A consultative document

DEPARTMENT FOR BUSINESS, ENTERPRISE  
AND REGULATORY REFORM

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## **EXECUTIVE SUMMARY AND QUESTIONS**

The Companies Act 2006 (the 2006 Act) makes changes to the framework of company law in the UK and restates a large number of the provisions of the Companies Act 1985 (the 1985 Act), together with the company law provisions of the Companies Act 1989 (the 1989 Act) and the Companies (Audit, Investigations and Community Enterprise) Act 2004 (CAICE Act 2004).

At the moment, detailed provisions contained in the Limited Liability Partnerships Act 2000 (LLP Act) and regulations made under it are based largely on the 1985 Act.

In light of the changes made to company law by the 2006 Act, we consulted in February 2007 on the general approach to applying the 2006 Act to Limited Liability Partnerships (LLPs). We also stated that after considering responses we would consult further on specific policy proposals. This consultation document outlines the policy proposals for applying the 2006 Act to LLPs. In line with the approach taken in the 2006 Act, the LLP regime in England, Wales and Scotland is to be extended to Northern Ireland.

We are seeking views on applying the material parts of the 2006 Act (and secondary legislation) with modification, in place of the relevant 1985 Act provisions. In addition, we are seeking responses to a number of questions on areas of the 2006 Act that could be applied to LLPs, within the powers available to make secondary legislation, but where by doing so we would either introduce a new approach for LLPs and/or their members, or make changes to the existing regime.

In applying the 2006 Act we want to ensure that LLPs remain an attractive corporate vehicle for businesses; that they maintain an identity distinct from companies; and that LLP Regulations are up to date, coherent and strike the right balance between

the interests of those who want to become LLPs and those who will do business with them. We plan to consult in 2008 on draft regulations.

## **How to respond**

The Department for Business, Enterprise and Regulatory Reform invites comments on the issues set out in this consultative document.

When responding please state whether you are responding as an individual or representing the views of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Responses to this consultation, including supporting evidence, must be received by **6 February 2008**. You are invited to send comments, preferably by email to:

[Consultationllpregulations2008@berr.gsi.gov.uk](mailto:Consultationllpregulations2008@berr.gsi.gov.uk)

If by letter, then to:

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## **CONSULTATION**

This consultation is being conducted under the terms of the Government's Code of Practice on Consultations.<sup>1</sup>

### **Confidentiality and Data Protection.**

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of this information we will take full account of your explanation. But we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

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<http://www.berr.gov.uk/consultations/index.html>.

### **Help with queries**

Questions about the policy issues raised in the document can be addressed to Tunde Idowu using the contact details given above.

If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Nick Cooper

Consultation Co-ordinator

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A copy of the Code of Practice on Consultation is at Annex C.

<http://bre.berr.gov.uk/regulation/consultation/code/criteria.asp>

## **Impact Assessment**

An Impact Assessment (see Annex B) has been developed on the legislative approach to amending the regulations to apply the 2006 Act to LLPs; on the policy proposals for application of the 2006 Act and on the areas where there is a policy choice on application to be made.

A Regulatory Impact Assessment (RIA) was developed on the impact of the 2006 Act, this is available at: <http://www.berr.gov.uk/files/file29937.pdf>.

The costs and benefits associated with the application of the 2006 Act to LLPs are in part based on the analysis of the cost and benefits estimated for companies with suitable adjustments made for the number of LLPs registered and their size.

You are invited to comment on the analysis, and/or provide further evidence to demonstrate potential costs or benefits of the proposals set out in the consultative document.

## **CONSULTATION QUESTIONS**

The consultation asks the following questions; these are repeated in the main text, and in order to fully understand them, we suggest that it is necessary to read the text.

- Q1 Do you have any views on the proposed approach of applying to LLPs provisions of the 2006 Act which correspond to 1985 Act provisions already applied to LLPs?**
- Q2 Do you have a view on the proposed outlined approach for amending regulations? Are there other options or issues the Government should consider in relation to the legislative approach?**
- Q3 Do you agree that the current system of incorporation for LLPs should be retained with only consequential amendments made for LLPs? If not please explain your reasons.**
- Q4 Do you agree with the Government's proposal to apply the changes on execution of deeds to LLPs? If not please explain your reasons.**
- Q5 Do you agree with the Government's proposal to align the requirements on LLP names with those of companies? If not, please explain your reasons.**
- Q6 Do you agree with the Government's proposal relating to members' residential addresses? If not, please explain your reasons.**
- Q7 Do you have any comments on the Government's proposal on the application of Part 15 to LLPs?**

- Q8 Do you have any comments on the timetable for the implementation of these provisions?**
- Q9 Do you have any comments on the Government's proposals on the application of Part 16 to LLPs?**
- Q10 Do you agree with the Government's proposal to apply the changes in respect of time limits for executing a disclaimer to LLPs? If not please explain your reasons.**
- Q11 Do you agree with the Government's proposal to apply the new provisions in the 2006 Act on restoration to the register to LLPs? If not please explain your reasons.**
- Q12 Do you agree with the Government's proposal to apply the relevant sections of Part 35 to LLPs (with modifications)? Are there any issues the Government should give specific consideration to when applying Part 35 to LLPs?**
- Q13 Do you agree with the Government's proposal to apply the Part 37 provision on service of documents to LLPs? If not please explain your reasons.**
- Q14 Do you agree with the Government's proposal that Part 42 should be applied to those acting as auditors of LLPs? If not, please explain your reasons?**

- Q15 Do you have views on the application of the ‘communication provisions’ of the 2006 Act to LLPs? Would this be beneficial; and if so, should LLPs be able to contract out of the statutory provisions?**
- Q16 If the Government was to extend Part 34 to overseas LLPs, what issues would need to be considered? Do you have views on how best to define an overseas LLP?**
- Q17 Do you agree with the Government’s proposal not to apply the duties in Part 10 of the 2006 Act to members of a LLP? If not, please explain your reasons.**
- Q18 Do you agree with the Government’s analysis that a statutory scheme allowing members to pursue a claim on behalf of the LLP against another is not required? If not, please give your reasons.**
- Q19 Do you agree that the provisions on narrative reporting for companies should not be extended to LLPs? If not, please explain your reasons.**

## **CHAPTER 1 – INTRODUCTION AND OVERVIEW**

### **GENERAL BACKGROUND**

- 1.1 The Partnership Act 1890 codified the law relating to partnerships and has remained unchanged in substance for over 100 years. The partners of 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, in which the liability of one or more of the partners is limited provided they do not become involved in management, whilst also retaining unlimited liability for general partners who run the business.
  
- 1.2 A third form of partnership, the limited liability partnership (LLP), was created by the LLP Act . LLPs have flexibility in relation to their internal arrangements in much the same way as conventional partnerships, but they are bodies corporate with limited liability, and are accordingly subject to certain Companies Acts requirements, including those relating to accounts and audit.
  
- 1.3 This consultation is concerned with LLPs only.
  
- 1.4 An LLP is a legal entity separate from its members and, while the LLP itself will be liable for the full extent of its debts, the liability of the members for the partnership's debts and obligations will be limited (except to the extent that the members agree otherwise). Any two or more persons can incorporate as an LLP.
  
- 1.5 An LLP is unlike a company in a number of ways. For example, it 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 not subject to rules about capital maintenance. It does not have directors – only members. It is however subject to similar accounting and disclosure provisions.

- 1.6 The LLP Act sets out the basic structure and formation provisions for LLPs in Great Britain (GB). The LLP Regulations 2001 (SI 2001/1090) made under the LLP Act came into force at the same time as the LLP Act itself on 6 April 2001. The LLP Regulations set out most of the detailed provisions for LLPs by applying large parts of the 1985 Act, the Insolvency Act 1986 and other statutes to LLPs. Some provisions are applied exactly as they are in the main Acts; others are modified to reflect the particular characteristics of an LLP. There is at present a separate legislative regime for LLPs in Northern Ireland. Under section 1286 of the 2006 Act the LLP Act is to be extended to Northern Ireland.
- 1.7 Since its creation about six years ago, the LLP structure has appealed to businesses of all sizes and sectors. Most of the large accountancy and legal firms are LLPs, but the regime is also used by a number of small firms. At 31 May 2007 there were approximately 25,219 active LLPs on Companies House Register.

## **COMPANIES ACT 2006**

- 1.8 The 2006 Act brings major benefits to business by modernising and simplifying company law. The Act introduces important reforms as well as restating a large part of existing companies legislation bringing company law together in one place. It codifies certain aspects of case law to make the law clearer. It also provides a modern framework for business that will facilitate enterprise, growth and sound investment, and promotes long-term company performance through shareholder engagement, thereby maintaining the UK's position as one of the most attractive places in the world to set up and run a business.
- 1.9 The detailed provisions of the LLP Act and regulations made under it are largely based on the 1985 Act. With the changes made to company law by the

2006 Act, we need to consider how those provisions should change to reflect the 2006 Act, thus enabling LLPs and their members to benefit where appropriate from changes made by that Act.

## **WHAT WE HAVE CONSULTED ON**

- 1.10 In February this year we consulted on the broad approach to applying the 2006 Act to LLPs. We received 34 responses specifically to the questions raised on LLPs. A list of those who responded can be found at Annex A. On 26 June, Margaret Hodge, then Minister for Industry and the Regions, reported in a statement to the House of Commons that the Government was considering the responses carefully with a view to further consultation on specific proposals.
- 1.11 As part of the February consultation on LLPs we asked for views on the proposal to apply to LLPs the amendments made to the 1985 Act by sections 21 to 24 of, and Part 3 of Schedule 2 to, the CAICE Act 2004. All respondents supported the proposal, making it clear they saw no reason why the more extensive investigation powers should not be applied to LLPs. As a result, the Limited Liability Partnerships (Amendment) Regulations 2007 (SI2007/2073) were made on 18 July and came into force on 1 October 2007.
- 1.12 The responses to the other proposals in the February 2007 consultation inform our current policy proposals for the application of the 2006 Act to LLPs outlined later in this document.

## **WHAT ARE WE CONSULTING ON?**

- 1.13 We are now consulting on:
- The possibility of simplifying the LLP Regulations, to make them easier to access and more coherent (Chapter 2),
  - The application of 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 (with modification for some) to LLPs (Chapter 3),

- New provisions of the 2006 Act which the Government proposes to apply to LLPs following the existing approach of applying provisions of the 1985 Act which concern LLPs' relations with third parties (Chapter 3),
- Provisions of the 2006 Act which are new, but which the Government does not propose to apply to LLPs as they relate to the internal management arrangements of companies (Chapter 5).

1.14 As with the 2006 Act, key to our approach on application of the 2006 Act to LLPs is to ensure regulations remain up to date and fit for purpose, to 'think small first' and to provide flexibility for the future.

1.15 We are consulting on what can be done within the powers available to make secondary legislation. The Government is limited to the powers contained in section 15 of the Limited Liability Partnerships Act 2000. This provides that regulations may make provision for LLPs by applying with appropriate modification any law relating to companies to LLPs.

## **TIMETABLE**

1.16 At present the detailed provisions governing LLPs contained in the LLP Act and regulations made under it are based largely on the 1985 Act. In February we consulted on the timing of implementing the 2006 Act for LLPs, proposing that most changes for LLPs should tie in with the main implementation of the 2006 Act for companies in October 2008 (accepting that parallel implementation would not be possible where Parts of the 2006 Act had already been implemented in earlier tranches). All respondents appreciated the rationale behind this approach although there were concerns as to whether the proposed date of October 2008 would give sufficient time to adjust to any changes.

1.17 On 7 November the Government announced that the implementation of some of the provisions of the 2006 Act which were due to be commenced in October 2008 will be put back until October 2009. In line with this announcement for companies we propose to implement most of the changes proposed for LLPs in October 2009. However, we still propose that Parts 15 (accounts and reports) and 16 (audit) should be applied to LLPs in October 2008 (see paragraphs 3.19 and 3.20 of this document). The corresponding provisions in the 2006 Act are to be commenced for companies in April 2008. We also propose to apply the Cross Borders Merger Directive to LLPs from October 2008 (see paragraph 4.10). Should there be support for applying the 2006 Act provisions on e-communications to LLPs, we also propose to do so from October 2008 (see paragraph 3.36).

## **CHAPTER 2 – PROPOSED LEGISLATIVE APPROACH TO APPLYING 2006 ACT TO LLPS**

### **General approach**

- 2.1 The detailed provisions of the LLP regulations are largely based on the 1985 Act. With the changes made to company law by the 2006 Act we need to consider how the provisions applied to LLPs should be changed to reflect the 2006 Act.
- 2.2 In the February consultation we asked for views on the approach we should take to changing the provisions in the LLP regulations to reflect the 2006 Act. We proposed two options:
- Apply the 2006 Act only as far as necessary to ensure that LLPs are not subject to more stringent provisions than companies and that Companies House is not required to run separate systems for companies and LLPs; preserving the 1985 Act beyond these changes; or
  - Take a broader approach and apply the changes made to company law under the 2006 Act as far as is possible to LLPs; under this approach we would need to update all the provisions currently applied to LLPs, and consider which of the provisions of the 2006 Act are appropriate to be extended to LLPs, particularly new provisions.
- 2.3 There was a range of opinion on this issue, with most respondents favouring positions between the two options. Most felt that it was a logical step to apply the provisions of the 2006 Act as far as possible to replace the provisions of the 1985 Act currently applied to LLPs. There was also some argument for considering further application of some of the new company law provisions to LLPs or on the other hand a complete review of LLP law. However, many were mindful of the differences between the company and LLP regimes and

expressed concern about maintaining these important differences, as well as being concerned about additional burdens and complexity.

2.4 In order to assess the potential impact of changes made by the 2006 Act, we have undertaken an analysis of the LLP Act and regulations, firstly, in relation to how the 1985 Act was applied to LLPs through the LLP regulations and then to compare this with the provisions of the 2006 Act. We have identified:

- Amendments to the LLP Act consequential upon the 2006 Act;
- Provisions of the 2006 Act, where there is either a corresponding provision in the 1985 Act 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 to LLPs, 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 in relation to LLPs.

2.5 We are proposing, subject to further views in response to this consultation, to apply to LLPs the provisions of the 2006 Act, as far as possible to replace those provisions currently applied to LLPs from the 1985 Act. In many cases there is a straightforward read across from the 1985 Act provisions to the 2006 Act. There are some provisions where consolidation and codification have resulted in minor changes and in order to apply these to LLPs some modification may be needed. These would not have a significant effect on the current regime.

**Q1 Do you have any views on the proposed approach of applying to LLPs provisions of the 2006 Act which correspond to 1985 Act provisions already applied to LLPs?**

**Approach to amending the regulations**

2.6 In addition to the substantive changes being applied, we need to consider what would be the best and most user friendly approach to drafting. By this we mean the structure rather than the content of the legislation.

2.7 The LLP Act sets out the basic structure and formation provisions for LLPs and provides the power to make regulations applying company law, with or without modification. The 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.

2.8 One of the key objectives of the 2006 Act was to ensure better regulation and to think small first. In line with this, it is logical and timely to review the approach taken in drafting the LLP regulations.

2.9 The Government proposes to take the following approach in drafting regulations to apply the 2006 Act to LLPs:

- Make consequential amendments to the LLP Act resulting from the 2006 Act, using the power for the purpose in the 2006 Act;
- Apply specified provisions of the 2006 Act to LLPs by setting out those provisions in full, as modified to take account of the particular characteristics of LLPs; and
- Use the powers in Part 15 of the 2006 Act, as applied to LLPs, to make 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. This follows the approach being taken for companies.

**Q2 Do you have a view on the proposed outlined approach for amending regulations? Are there other options or issues the Government should consider in relation to the legislative approach?**

### **Approach to Northern Ireland**

2.10 Northern Ireland (NI) currently has its own separate LLP regime, which is very similar to that in GB. In the February consultation we stated that in line with the approach taken in the 2006 Act (see section 1286 which extends the LLP Act to NI and repeals the Limited Liability Partnerships Act (Northern Ireland) 2002), the LLP regime in GB will be extended to NI LLPs within the same timescale.

2.11 We propose that in line with our proposal to consolidate the amending regulations for GB LLPs, amendments necessary to cover the NI regime will be consolidated in the same regulations.

### **Insolvency**

2.12 The LLP regulations apply certain provisions of the Insolvency Act 1986 to LLPs. Where there are changes to any references made to the insolvency provisions as a result of the 2006 Act appropriate consequential changes will be made.

## **CHAPTER 3 – PROPOSED AMENDMENTS TO THE LAW APPLYING TO LLPS**

- 3.1 In the February consultation document we asked for views on whether there were any specific provisions for companies under the 2006 Act where consideration should be given to extending the law on LLPs. Where views were expressed there emerged a small number of provisions where respondents had specific views either for or against application to LLPs.
- 3.2 Outlined in this Chapter and in Chapters 4 and 5 are the provisions raised in responses to the consultation. Also included are some new provisions, where the Government considers application to LLPs would be appropriate. In reaching a view on proposals in these areas, the Government has followed the general rationale underpinning the choice of company law provisions currently applied to LLPs. Broadly, these are provisions relating to the external aspects appropriate to bodies corporate with limited liability, i.e. those governing their interactions with third parties. On the whole company law is not applied to the internal arrangements of LLPs which are usually a matter for agreement between members. In contrast to companies, there is no contrast between ownership and management in LLPs.
- 3.3 The Government is also limited, when making regulations for LLPs, to the powers contained in section 15 of the Limited Liability Partnerships Act 2000. This provides that regulations may make provision for LLPs by applying with appropriate modifications any law relating to companies to LLPs. The law of companies is therefore the starting point, to be adapted to meet the particular circumstances of LLPs.

### **INCORPORATION**

- 3.4 In order for an LLP to be incorporated, there are three primary conditions which must be satisfied namely:

(a) two or more persons associated for carrying on a lawful business with a view to profit subscribe their names to an 'incorporation document';

(b) there is delivered to the Registrar the incorporation document or a copy of it authenticated in a manner approved by the Registrar; and

(c) there is also delivered to the Registrar a statement, in a form approved by him, and made either by a solicitor engaged in the formation of the LLP or by one of the subscribers to the incorporation document, that the requirement described in paragraph (a) has been complied with.

3.5 The incorporation document of the LLP is the equivalent of the 1985 Act memorandum of association for a company. The incorporation document must:

- i. Be in a form approved by the Registrar;
- ii. State the name of the LLP;
- iii. State whether the registered office of the LLP is to be situated in England and Wales, in Wales or in Scotland;
- iv. State the address of that registered office;
- v. State the name and address (subject to the making of a confidentiality order) of each of the persons who are to be members of the LLP on incorporation; and
- vi. Either specify which of those persons are to be designated members, or state that every person who from time to time is a member of the LLP is a designated member.

3.6 Government policy on the structure and incorporation of LLPs remains unchanged. Therefore, we propose that there should be no change to the incorporation of LLPs, other than to apply the changes in relating to members'

residential addresses as proposed in paragraph 3.13 and to make consequential amendments to the relevant provisions of the LLP Act.

**Q3 Do you agree that the current system of incorporation for LLPs should be retained with only consequential amendments made for LLPs? If not please explain your reasons.**

## **EXECUTION OF DEEDS**

3.7 Section 46 of the 2006 Act on the execution of deeds restates section 36AA, which was inserted into the 1985 Act by the Regulatory Reform (Execution of Deeds and Documents) Order 2005 (SI 2005/1906). Sections 36 and 36A of the 1985 Act are applied to LLPs. However, when section 36AA was added to the 1985 Act there was an oversight and it was not applied consequentially to LLPs. The Government proposes to take this opportunity to rectify this to ensure clarity and equality with company law as currently applied to companies.

**Q4 Do you agree with the Government's proposal to apply the changes on execution of deeds to LLPs? If not please explain your reasons.**

## **LLP NAMES**

3.8 Part 1 of the Schedule to the LLP Act 2000 relates to the names of LLPs. Part 5 of the 2006 Act relates to companies' registered names; Part 41 of the 2006 Act applies to names used to carry on business in the UK by any person. A main element of these rules is a requirement for prior approval for names that either suggest a connection with HM Government or a specified public body or include a specified sensitive word or expression. There are also controls over the use of the statutory indicators of legal status, such as LLP, Ltd, and plc, and over names that are seriously misleading. There are additional rules that apply only to companies' registered names; these are primarily intended

to ensure that information on the public record relating to any company can be found easily.

3.9 Parts 5 and 41 of the 2006 Act both provide the power to make regulations for the detail of these rules. A link to the draft proposals for the Companies (Company and Business Names) (Miscellaneous Provisions) Regulations is at <http://www.dti.gov.uk/bbf/co-act-2006/draft/page40411.html>. The proposals that apply only to companies' registered names include the restrictions on characters permitted in the registered name and rules to prevent the registration by a company under a name that is the same as a name already on the Registrar's Index of Company Names.

3.10 The Registrar's Index of Company Names includes the names of entities other than UK-registered companies; in particular it includes the names of LLPs incorporated in the UK. This means that a company can register under a name that has already been registered by an LLP.

3.11 In order to ensure consistency and clarity, the Government proposes to amend Part 1 of the Schedule to the LLP Act to be consistent with Part 5 of the 2006 Act and to apply Part 5 to LLPs to the extent that it is not reflected in the amended Schedule. To take a different approach would create confusion for LLPs and for the public accessing company information. There could be potential anomalies where a name not accepted under the provisions for companies could be allowed under those for LLPs. There would also be an adverse impact on Companies House in relation to the difficulties of handling of two different regimes.

**Q5 Do you agree with the Government's proposal to align the requirements on LLP names with those of companies? If not, please explain your reasons.**

## MEMBERS' RESIDENTIAL ADDRESSES

- 3.12 The 2006 Act will introduce significant changes to the requirements as to whose residential addresses are held and made publicly available by both companies themselves and by Companies House.
- 3.13 As regards directors who are individuals, in future the Register of Directors which every company must keep and make available for public inspection will include a **service** address for each such director. Companies will also be required to keep a separate register with the usual residential addresses of these directors but they must not use or disclose this information except to communicate with the directors concerned and to notify the Registrar. Companies will be required to notify the Registrar of both the service address and the usual residential address for each of their directors who is an individual; only the service address will be made available for public inspection by the Registrar; individual directors' usual residential addresses will only be made available by the Registrar to enforcement bodies and, generally, credit reference agencies; regulations will specify the conditions for the release of usual residential addresses and also provide for certain directors' residential addresses not to be released to credit reference agencies. It is intended that this higher protection be available to those directors that enjoy the benefit of Confidentiality Orders when the new system is introduced, those at serious risk of violence or intimidation as a result of the activities of a company in which they hold an appointment, and those with links to the Security Services or the Police.
- 3.14 A link to the draft proposals for The Companies (Particulars of Usual Residential Address) Regulations 2008 is at: <http://www.dti.gov.uk/bbf/co-act-2006/draft/page40411.html>.

3.15 Information on the addresses of LLP members is open to abuse in the same way as those of directors. The Government therefore proposes to apply the provisions of the 2006 Act relating to directors' addresses to LLP members. In not applying the provisions in this way there would be inconsistency in the treatment of what is essentially the same type of information that appears on the register. And there may also be an anomaly where a director of a company is also a member of a LLP, the result being that information classed under one requirement as protected information would be available to the public under another.

**Q6 Do you agree with the Government's proposal relating to members' residential addresses? If not, please explain your reasons.**

## **ACCOUNTS**

3.16 In the February consultation we asked for views on the implementation of Part 15 of the 2006 Act for LLPs. We explained that we aimed to implement most changes for LLPs in parallel with the changes for companies. One area where this would not be possible was in respect of Part 15 on accounts where the provisions will come into effect on 6 April 2008 and apply to financial years beginning on or after that date. There are, however, three areas where we propose to implement for LLPs at the same time as for companies. This is the reduction of the deadline for filing accounts with the Registrar of Companies from 10 months to 9 months (section 442(2)(a) of the 2006 Act), calculation of filing time of accounts (section 443) and the proposed changes to the penalties for late filing of accounts. A Companies House consultation on the application of the proposed late filing penalties has recently closed; and further information on the consultation can be found at: <http://www.companieshouse.gov.uk/companiesAct/publications.shtml>

3.17 Most respondents to the February consultation supported the intended approach of a single implementation date for application of all the 2006 Act provisions to LLPs, appreciating that this was clearer for business, and

allowed notice and the opportunity for business to make any necessary changes (although there were some concerns over LLPs not being able to take advantage of some benefits at the same time as companies). Some also felt early implementation of the reduction in filing period and changes to late filing penalties would be confusing.

3.18 In view of the responses to the February consultation and to avoid Companies House operating different systems for companies and LLPs, the Government proposes to proceed as outlined in the February consultation and to implement the provisions on filing periods and late filing penalties in the 2006 Act for LLPs at the same time as for companies in April 2008. The new rules and penalties should apply to all late filings on or after 1 February 2009.

3.19 So far as the other provisions on accounts in Part 15 of the 2006 Act are concerned, we propose to take the same approach as in the current regulations of applying to LLPs the rules as they apply to a private company. Implementation of Parts 15 and 16 of the 2006 Act for companies is not affected by the changes in the implementation date for the remaining provisions of the 2006 Act. We therefore propose that as stated in the February consultation document, we will implement these changes and those proposed below for auditors (Part 16) in October 2008.

**Q7 Do you have any comments on the Government's proposals on the application of Part 15 to LLPs?**

**Q8 Do you have any comments on the timetable for the implementation of these provisions?**

## AUDITORS

3.20 In the February consultation we made a proposal to apply Part 16 of the 2006 Act on audit to LLPs, but to do so from October 2008 and not earlier (Part 16 is to be brought into force for companies in April 2008). Most respondents supported this proposal that the timetable for implementation should not mirror that of companies. We therefore propose to apply Part 16 to LLPs from October 2008.

3.21 We propose to take the same approach as in the current regulations of applying to LLPs the rules as they apply to a private company, with adaptations to take into account the different internal arrangements of an LLP. In terms of the major changes in Part 16 compared with the corresponding sections of the 1985 Act, this means applying the following provisions to LLPs:

- Signature by senior statutory auditor (sections 503 to 506),
- New offence in connection with audit report (sections 507 to 509), and
- Strengthened rules on statements by those ceasing to be auditor (sections 519 to 525 as they apply to unquoted companies).

3.22 On the other hand, the new power for members of a quoted company to raise audit concerns (sections 527 to 531) has no application to LLPs. And the new provisions on auditors' liability (sections 532 to 538) will not be applied, as the general rule making void any limitation (currently in section 310 of the Companies Act 1985) has never been applied to LLPs.

**Q9 Do you have any comments on the Government's proposals on the application of Part 16 to LLPs?**

## **DISSOLUTION AND RESTORATION TO THE REGISTER**

3.23 Section 1013 of the 2006 Act makes a change in relation to the time limits for executing a disclaimer in relation to property that passes to the Crown on dissolution of a company. As such time limits in section 656 of the 1985 Act are currently applied to LLPs, the Government proposes to apply the changes made by the 2006 Act to LLPs.

**Q10 Do you agree with the Government's proposal to apply the changes in respect of time limits for executing a disclaimer to LLPs? If not please explain your reasons.**

3.24 Chapter 3 of Part 31 of the 2006 Act concerns restoration to the register for a company which has been struck off. Most of the sections in the 1985 Act on striking off are applied to LLPs. Sections 1024 to 1028 provide a new system of administrative restoration to the register. Sections 1029 to 1032 provide a new single procedure for court restoration replacing the two procedures in sections 651 and 653 of the 1985 Act. The Government proposes to apply the provisions in the 2006 Act on restoration to the register to LLPs.

**Q11 Do you agree with the Government's proposal to apply the new provisions in the 2006 Act on restoration to the register to LLPs? If not please explain your reasons.**

## **THE REGISTRAR OF COMPANIES**

3.25 Part 35 of the 2006 Act largely replaces Part 24 of the 1985 Act setting out the basic functions of the Registrar of Companies (Companies House). The provisions of this Part implement a number of recommendations of the CLR.

It is important that the Register is a useful and accurate source of information for users and that the Registrar has the necessary powers to achieve this.

- 3.26 A link to the draft proposals for The Companies (Registrar of Companies) Regulations 2008 can be found at:

<http://www.dti.gov.uk/bbf/co-act-2006/draft/page40411.html>

- 3.27 Many of the sections in Part 35 have no equivalent in the 1985 Act. Of those that do, sections 704 to 711 and 713 to 715A have been applied to LLPs. A number of the new provisions in Part 35 already apply to LLPs and many of those that do not could be applied with the need for only minor modifications. Only a few would require substantive modification.

- 3.28 Many of the Registrar's functions apply to LLPs in the same way as they apply to companies. The Government proposes that where in practice the functions of the Registrar are common or similar to those for LLPs, those sections that are not automatically applied to LLPs should be applied with any necessary modification.

- Q12 Do you agree with the Government's proposal to apply the relevant sections of Part 35 to LLPs (with modifications)? Are there any issues the Government should give specific consideration to when applying Part 35 to LLPs?**

## **COMPANIES SUPPLEMENTARY PROVISIONS (SERVICE OF DOCUMENTS)**

- 3.29 Section 1139 of the 2006 Act relates to the service of documents on a company. It replaces section 725 of the 1985 Act and ensures there is a place at which a document may be served on companies registered under the Act. Section 725 of the 1985 Act is applied to LLPs. Sections 1140 to 1142 contain

new provisions on the service of documents on directors, secretaries, and others, define 'service address' and qualify requirements elsewhere to give an address. As section 725 of the 1985 Act applies to LLPs, the Government proposes to apply sections 1139 to 1142 of the 2006 Act to LLPs.

**Q13 Do you agree with the Government's proposal to apply the Part 37 provisions on service of documents to LLPs? If not please explain your reasons.**

### **STATUTORY AUDITORS**

3.30 Provisions in Part 2 of the 1989 Act concerning who may act as a company auditor are currently applied to auditors of LLPs.

3.31 The Government therefore proposes that Part 42 of the 2006 Act (which replaces Part 2 of the 1989 Act) should also apply to those who act as auditors of LLPs.

**Q14 Do you agree with the Government's proposal that Part 42 should be applied to those acting as auditors of LLPs? If not, please explain your reasons?**

### **E- COMMUNICATIONS**

3.32 The Companies Act 1985 (Electronic Communications) Order 2000 (E-Communications Order) facilitated the use of electronic and website communications in certain contexts, but only with the express agreement of each recipient e.g. shareholders. The default position for companies, where there was no agreement to electronic communications, was hard copy. The E-Communications Order also only applied to specific communications.

- 3.33 The 2006 Act 'communications provisions' are now provided for in Part 37, sections 1143 to 1148, including Schedules 4 and 5. The general principle behind the communications provisions is that companies, subject to each shareholder's agreement, should be able to default to electronic means of communications.
- 3.34 Section 238 of the 1985 Act on persons entitled to receive copies of accounts and reports is applied to LLPs with modification requiring a copy of the LLP's annual accounts, together with the auditors' report, to be sent to every member of the LLP and every holder of the LLP's debentures. The E-Communications Order amended section 238 and the amended provisions were also applied to LLPs. The result is that LLPs currently have the same default as companies to provide hard copies of reports, unless they have the prior agreement of members to use electronic means. It is believed that in practice members of an LLP probably reach an agreement on the method they use to communicate irrespective of the provisions in the 1985 Act.
- 3.35 In the same way as section 238 (as amended by the E-Communications Order) was applied to LLPs, section 1143 to 1148 of the 2006 Act could be applied to LLPs. The Government would be interested to hear views as to whether this would be beneficial and, if so, whether LLPs would want to be able to contract out of the new statutory provisions, i.e. make them subject to contrary agreement by the members so that, for example, the members could forfeit their rights to receive hard copies.
- 3.36 Should there be support for applying the provisions on e-communications to LLPs, the Government would propose to do this in October 2008 as the provisions came into effect for companies on 20 January 2007.

**Q15 Do you have views on the application of the ‘communication provisions’ of the 2006 Act to LLPs? Would this be beneficial; and if so, should LLPs be able to contract out of the statutory provisions?**

## CHAPTER 4 - OVERSEAS LLPS

- 4.1 Part 23 of the 1985 Act places certain requirements on companies incorporated outside the United Kingdom (UK) with a place of business or a branch in GB, in relation to registration and disclosure. Parallel provisions exist for Northern Ireland. Part 34 of the 2006 Act contains power to make similar provision by regulations, covering places of business (including a branch) in all parts of the UK.
- 4.2 The current framework for overseas companies that operate their business in the UK accommodates two separate regimes, one for places of business and another for branches that are registered here. In February the Government consulted on a proposal for a single regime applying only to overseas companies that open a branch in the UK. The concept of a single regime received widespread support but many consultees were concerned that overseas companies having a place of business in the UK that did not amount to a branch would, under this proposal, no longer be required to disclose information.
- 4.3 The Government will be publishing for comment draft regulations for overseas companies based on a single regime that covers both places of business and branches but meets the requirements for overseas company branches of the 11<sup>th</sup> EC Company Law Directive. This means that the obligations imposed on overseas companies will be the same whether a company establishes a branch within the meaning of the 11<sup>th</sup> Directive or a place of business.
- 4.4 Unlike overseas companies registered in the UK, the only requirements currently placed on overseas LLPs with branches in the UK are to state the country of their incorporation in every prospectus inviting subscriptions for their debentures and to exhibit the name and country of the LLP at every place they carry on business in GB and on all bills, letter headings and in all

notices and other official publications and communications. This is achieved by the application of section 693 of the 1985 Act (as modified by the LLP regulations). This also defines an overseas LLP as:

‘a body incorporated or otherwise established outside Great Britain whose name under its law of incorporation or establishment includes the words “limited liability partnership”.’

- 4.5 In the February consultation, we stated that the position of overseas LLPs would be considered as part of the broader consideration of how to apply the 2006 Act to LLPs. One respondent to the February consultation argued that it would be wrong to treat overseas LLPs as similar to overseas companies as most are not bodies corporate and may not receive full protection from personal liability under their own law. For example, partners in a German LLP are only sheltered from liability for other partners’ negligence; the non-negligent partner is not liable towards clients but they are liable towards the LLP’s suppliers.
- 4.6 There are arguably benefits to customers and creditors and users of the Companies House register of imposing disclosure requirements on overseas LLPs, and to overseas LLPs of being recognised as subject to a statutory regime. There would also be an inevitable cost to overseas LLPs of complying with additional requirements when operating a branch in the UK.
- 4.7 There are a range of issues and potential costs and benefits which merit careful consideration, and the Government propose to consider these further, in light of responses to this consultation before bringing forward any possible specific proposals to extend the application of Part 34 and regulations under it to LLPs.

4.8 One of the principal issues would be how to identify an overseas LLP. One option would be to extend the provisions to any overseas body that has a legal personality and limited liability but is not a company. The Government would be grateful for your views on extending Part 34 to overseas LLPs and on what modifications would be necessary.

**Q16 If the Government was to extend Part 34 to overseas LLPs, what issues would need to be considered? Do you have views on how best to define an overseas LLP?**

### **CROSS BORDER MERGERS DIRECTIVE**

4.9 In March 2007, the Government published a consultation document seeking views on the implementation of the Cross-Border Mergers Directive (2005/56/EC). This Directive establishes a framework to facilitate cross-border mergers between UK companies and companies elsewhere in the EEA. This consultation closed on 1 June 2007. A summary response has been published: <http://www.berr.gov.uk/files/file41185.pdf>

4.10 The Directive will be implemented for companies by 15 December 2007. In addition to legislation implementing the Directive, in its response the Government announced that it intends to bring forward legislation extending the scope of the implementation to LLPs to coincide with the implementation of the 2006 Act for LLPs in October 2008. We propose to apply the Directive to LLPs from October 2008.

## **CHAPTER 5 – OTHER ISSUES RAISED**

- 5.1 Some respondents identified a number of other provisions introduced for companies under the 2006 Act which they would favour extending to LLPs. The most significant of them were the 2006 Act provisions on directors' duties, derivative claims and narrative reporting. In the case of narrative reporting this is an existing provision of the 1985 Act which is not currently applied to LLPs.
- 5.2 In forming its response on these issues, the Government has considered all respondents' views, the constraints of the powers available to make regulations under the LLP Act 2000, and the policy of applying company law for the most part only to the external facing aspects of an LLP and not to the relationship between members.

### **MEMBERS' DUTIES**

- 5.3 A number of respondents to the February consultation argued that it would be wrong in principle to apply the provisions in the 2006 Act on directors' duties to members of LLPs. They pointed out that the LLP legislation already includes a code containing default rules applicable to members of LLPs in regulations 7 and 8 of the LLP Regulations 2001. A small number took a different view, that duties of designated members should in some way be aligned to the new statutory provisions on directors' duties.
- 5.4 Chapter 2 of Part 10 of the 2006 Act sets out the general duties of directors. The provisions were based on the recommendations of the Company Law Review that there should be a statutory statement of directors' duties, which should in general terms be a codification of the common law. Section 170(1) makes it clear that general duties are owed by a director to the company.
- 5.5 For LLPs the duties and responsibilities of a member are to be found in a combination of what is contained in the LLP Agreement, the mutual responsibilities inherent in the relationship existing between the members of

the LLP, and in the duties and responsibilities placed on members by the LLP Act and provisions of the 1985 Act applied to them. Designated members may have some additional responsibilities (largely administrative and regulatory duties) compared to other members of the LLP. However, that position does not equate to that of a director of a company.

5.6 A member's duties to the LLP arise essentially out of his role and activities in carrying out the business of the LLP. These include: duty to act honestly ( e.g. not to take profits from a competing business) and duty to exercise appropriate care and skill. The members of the LLP as a whole are also given certain statutory duties and responsibilities by the provisions of the 1985 Act applied to them e.g. in relation to the LLP accounts. Attempting to set out a statutory code on members' duties would be problematic, given that, unlike companies, it would be difficult to distinguish between duties owed by members to other members and duties owed to the LLP. It is also important to recognise that unlike directors' duties there is no case law on which to base codification of members' duties.

5.7 For these reasons, the duties on directors set out in the 2006 Act cannot sensibly be applied to members of a LLP. That does not mean it would not be possible to devise a codification of duties appropriate to the relationship between partners (the Law Commission Report into Partnership Law discussed this issue). However, it is the Government's view that this would be clearly outside the scope of the powers available to make secondary legislation.

**Q17 Do you agree with the Government's proposal not to apply the duties in Part 10 of the 2006 Act to members of a LLP? If not, please explain your reasons.**

## DERIVATIVE CLAIMS

5.8 One respondent to the February consultation suggested that consideration be given to applying the new provisions on derivative actions in Part 11 of the 2006 Act to LLPs. Part 11 allows a shareholder to bring a claim on behalf of the company against a director or any other person against whom the company has a legal claim that is not being pursued but ought to be. In England and Wales, however, there are already existing means for a member of an LLP which is not pursuing a right of action to apply to the court under paragraph 19.9 of the Civil Procedure Rules, in the same way as a member of any other non-company body corporate.

5.9 The current availability of court procedures appears to work satisfactorily. The Government considers that a case has not been made to suggest that application of Part 11 of the 2006 Act to LLPs is necessary and therefore proposes to take no action in this respect at this time.

**Q18 Do you agree with the Government's analysis that a statutory scheme allowing members to pursue a claim on behalf of the LLP against another is not required? If not, please give your reasons.**

## NARRATIVE REPORTING

5.10 One respondent to the consultation felt that the requirements on corporate reporting, i.e. in relation to narrative reporting in the directors' report, should be extended to LLPs. At present there is no requirement for LLPs to publish a directors' report.

5.11 The 2006 Act streamlines the narrative reporting requirements for companies. Under section 417 of the 2006 Act (which came into force on 1 October 2007 for financial years beginning on or after that date) all companies, apart from small companies, continue to be required to produce a business review as part of their directors' report, in accordance with the EU Accounts Modernisation Directive. Quoted companies, to the extent necessary for an

understanding of the development, performance or position of the business, have to include the main trends and factors likely to affect the company's business in the future and certain information on environmental, employee, social and community matters, and contractual and other arrangements. Medium-sized companies continue to be exempt from reporting non-financial key performance indicators.

5.12 The business review aims to encourage companies to communicate meaningful, strategic and forward-looking information to their shareholders. In the case of LLPs, there is no distinction between those running the business and the owners. This differentiation between companies and LLPs is very important. The 1985 Act already contained narrative reporting requirements for companies, which were extended in 2005, to implement the EU Accounts Modernisation Directive. These requirements did not apply to LLPs. There is no clear evidence that the current position is not working for LLPs and their members. Therefore the Government does not propose to apply the provisions on narrative reporting to LLPs.

**Q19 Do you agree that the provisions on narrative reporting for companies, should not be extended to LLPs? If not, please explain your reasons.**

## **CHAPTER 6 – WHAT HAPPENS NEXT?**

### **TIMING**

- 6.1 The deadline for comments on the policy proposals in this document is **6 February 2008**. Responses received after the deadline may not be taken into account.
- 6.2 The Government is committed to common commencement dates for regulations. In general, regulations will come into force on either 6 April or 1 October. We are proposing to apply the provisions on accounts and audit, cross-border mergers, and possibly e-communications from October 2008. We plan to publish draft regulations on these subjects as soon as practicable after 6 February 2008. For the main implementation of the 2006 Act for LLPs in October 2009 we aim to publish draft regulations for consultation in the middle part of 2008. This will give LLPs sufficient time to adjust to the changes before implementation in October 2009.

### **CONSULTATION AND COMMUNICATION**

- 6.3 We appreciate that some of those responding to the February consultation document expressed concern about the time required to adjust to any changes to the current LLP regime and the new legislative approach. LLPs will now have until October 2008 to prepare for changes in relation to accounts and audit and until October 2009 for the main implementation of the 2006 Act for LLPs. During this time we will be consulting fully and with as many interested parties as possible on the proposals in this document and the subsequent draft regulations.
- 6.4 We will be organising a meeting during the consultation to discuss the proposals. If you are interested in attending, please send your details as soon as possible to Tunde Idowu (see above for contact details).

We would also be interested in any other suggestions you may have on raising awareness of the changes being proposed for LLPs.

- 6.5 There is a dedicated LLP webpage on the Department's website under Better Business Framework <http://www.berr.gov.uk/bbf/llp/page39897.html> Information on the consultation and any events will be posted here.
- 6.6 Attached at Annex C is the Impact Assessment for the proposals in this consultation. You are invited to comment on the analysis, and/or provide further evidence to demonstrate potential costs or benefits of the proposals set out in the consultative document.

## **ANNEX A: LIST OF RESPONDENTS**

Association of Partnership Practitioners

Association of British Insurers (ABI)

Trade Union Congress

PwC

Deloitte

Registers of Scotland Executive Agency

KPMG

ICAEW

Quoted Companies Alliance

Barclays

Royal Bank of Scotland

Federation of Small Businesses

Clifford Chance

Ernst and Young

Bisnode Limited

Institute of Chartered Secretaries and Administrators

Institute of Directors

Prudential plc

Lloyd-TSB Registrars

Postcomm

Jordans

British Telecommunications

Institute of Credit Management

Vodafone Group plc

Institute of Chartered Accountants of Scotland

Grant Thornton

Financial Law Committee of the City of London Law Society

Association of Certified and Chartered Accountants

Bell and Buxton Solicitors

Law Society of England and Wales

Law Society of Scotland

DLA Piper

Berry Shacklock

Pensions Investment Research Consultancy

<b>Department for Business, Enterprise and Regulatory Reform (BERR)</b>	<b>Impact Assessment of the Proposals for the application of the Companies Act 2006 to Limited Liability Partnerships (LLPs)</b>
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<b>Stage consultation</b>	<b>Version 1</b>	<b>Related Publications:</b>
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Available to view or download at: [www.](http://www.berr.gov.uk/consultations/open-consultations/index.html)

[berr.gov.uk/consultations/open-consultations/index.html](http://www.berr.gov.uk/consultations/open-consultations/index.html)

**Contact name for enquiries: Tunde Idowu**

**Email address: [babatunde.idowu@berr.gsi.gov.uk](mailto:babatunde.idowu@berr.gsi.gov.uk)**

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

The Act and regulations under which 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 provisions 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.

**What are the policy objectives and the intended effects?**

To ensure that 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. To ensure that businesses in regulated and non-regulated professions continue operating as LLPs under UK law rather than seeking incorporation in other countries. Updating the content and structure of the LLP regulations 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.

Option A: Do nothing, which means not applying the relevant and material parts of the 2006 Act to LLPs.

Option B: Apply the relevant and material parts of the 2006 Act to LLPs with textual modification where necessary.

Option C: Achieving Option B by means of a standalone set of regulations (the preferred option). This would 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 2006 Act.

**Ministerial Sign-off:**

***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:

## SUMMARY: ANALYSIS & EVIDENCE

Policy Option :	
<p><b>ANNUAL COSTS</b></p> <p>One off <input style="width: 50px; text-align: center;" type="text" value="0"/> Yrs <input style="width: 50px; text-align: center;" type="text" value="1"/></p> <p>(Transition)</p> <p><b>Average Annual Cost</b> (excluding one-off)</p> <input style="width: 200px; height: 20px;" type="text" value="0"/>	<p style="text-align: center;">None</p> <p style="text-align: right;"><b>Total cost (PV)</b> <input style="width: 150px; text-align: center;" type="text" value="£1.7 - £3.3"/></p>
<p><b>Other key non-monetised costs</b></p>	
<p><b>ANNUAL BENEFITS</b></p> <p>One off <input style="width: 50px; text-align: center;" type="text" value="0"/> <input style="width: 50px; text-align: center;" type="text" value="1"/> Yrs</p> <p><b>Average Annual Benefit</b> (excluding one-off)</p> <input style="width: 200px; height: 20px;" type="text"/>	<p>LLP legislation would be far more accessible for LLPs and professional advisers; reduce the time it takes to cross-reference the regulations with other company law and lessen the complexity of the laws for LLPs. LLPs would have the opportunity to benefit from any cost savings arising from the application of the 2006 Act as for companies.</p> <p style="text-align: right;"><b>Total Benefit PV</b> <input style="width: 150px; text-align: center;" type="text" value="£31.6 - £62.4 million"/></p>
<p><b>Other key non-monetised BENEFITS</b></p> <p>We believe that LLPs will remain an attractive corporate vehicle for businesses and retain their distinctive characteristics from companies and other types of partnership. Businesses in regulated and non-regulated professions will continue operating as LLPs under UK law rather than seeking incorporation in other countries.</p>	

**KEY Assumption/Sensitivities Risks**

Assumes benefits constant over 10 years. Discount at 3.5%

Assumes the NPV net benefit range of £28.3 - £60.7 million. The NPV Best estimate is calculated as £44.5 million, which is the mean of the net benefit range.

PwC Admin Burden for LLPs was £8.7 million. We assume a 10% savings to be £0.9 million.

Price Base	Time Period	Net Benefit Range (NPV)	<b>NET BENEFIT</b>
Year 2005	Years 10	£28.3 m -£60.7 m	(NPV Best Estimate) £44.5 million

What is the geographic coverage of the policy/option?	UK								
On what date will the policy be implemented?	October 2009								
Which organisation(s) will enforce the policy?	<i>Companies House</i>								
What is the total annual cost of enforcement for these organisations?	zero								
Will implementation go beyond minimum EU requirements	No EU requirement								
What is the value of the proposed offsetting measure per year?	Not applicable								
What is the value of changes in green gas emissions?	Not applicable								
Will the proposal have a significant impact on competition?	Negligible								
Annual cost per organisation (excluding one-off)	<table border="1"> <tr> <td>Micro</td> <td>Small</td> <td>Med</td> <td>Large</td> </tr> <tr> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> </table>	Micro	Small	Med	Large	0	0	0	0
Micro	Small	Med	Large						
0	0	0	0						
Are any of these organisations exempt?	<table border="1"> <tr> <td>No</td> <td>No</td> <td>No</td> <td>No</td> </tr> </table>	No	No	No	No				
No	No	No	No						

**Impact on Admin Burdens Baseline (2005 prices)**

Increase of  Decrease of  **Net Impact**

## Evidence Base

### for Summary Sheets

#### **1. Introduction**

This impact assessment accompanies the consultation document on the proposals for the application of the 2006 Act to Limited Liability Partnerships. Consultees are invited to offer views on the treatment of costs and benefits, and the results will feed into the final assessments which will be published alongside the draft Regulations in Early 2008 and Summer 2008.

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 2006 Act Regulatory Impact Assessment (RIA) in January 2007. It is important to stress at the outset that there is relatively little in the way of a research base 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.

The figures for LLPs also differ because as with the application of the 1985 Act, not all of the 2006 Act provisions are being applied to LLPs. There are also some uncertainties over some key measures such as the impact of applying e-communications provisions to LLPs, where we have limited information on the current uptake by LLPs of e-communications. Where necessary, we have made suitable adjustments to the data analysis taking into account the differences between the numbers of LLPs and companies and their different sizes. The resulting figures are only indicative on the basis of the original 2006 Act RIA. On areas where it was difficult to quantify the cost and benefits, we have provided, to the extent possible, the qualitative costs and benefits for LLPs. We will do further work on assessing cost and benefits of the proposals in light of response to the consultation. We would welcome comments on the estimates contained in this draft assessment. Such comments will enable us to give better information in the final Impact Assessment.

In applying 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 the questions:

- What form should the LLP Regulations 2008 take?
- Which provisions of the 2006 Act should be applicable to LLPs?

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

- Option A: **Doing nothing**;
- Option B: **Amendments of existing regulations**;
- Option C: **A standalone set of regulations**; and
- The potential costs and benefits of the proposals.

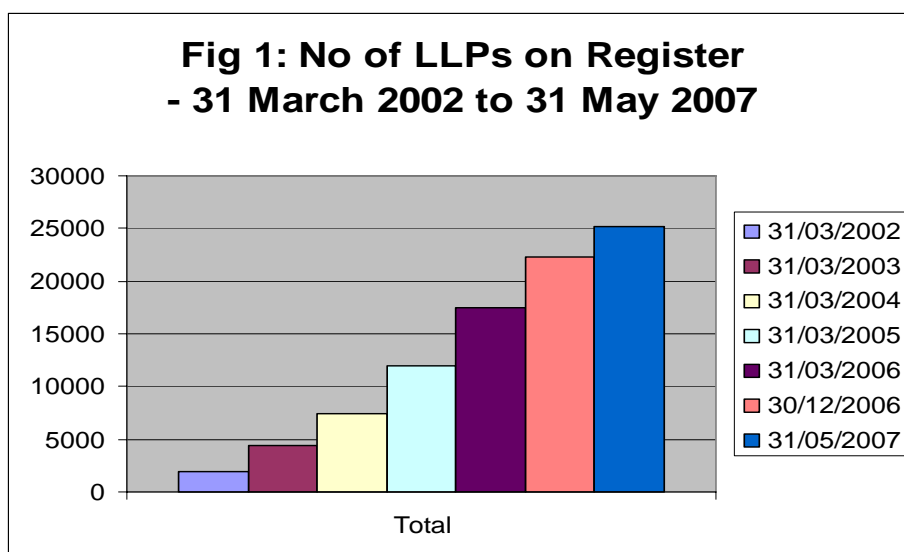
In the consultation document we consider whether the following new provisions or changes made to these provisions by the 2006 Act should or should not be applied to LLPs:

- Execution of Deeds
- LLP Names
- Members' Residential Addresses
- Accounts
- Auditors
- Dissolution and Restoration to the Register
- Registrar of Companies
- Companies Supplementary Provisions (Service of Documents)
- Statutory Auditors
- E-communications
- Overseas LLPs
- Members' Duties
- Derivative Claims
- Narrative Reporting

## Northern Ireland

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.

## 2. Population of LLPs in the UK



The figure above shows that the number of registered LLPs is growing, from 1,936 LLPs in 2002 to 17,449 in 2006. Between March 2006 and May this year, 10,321 LLPs registered as new businesses. As at 31 May 2007, there were approximately 25,219 LLPs on the register.

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>2</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 solicitors firms. The number of law firms registering as LLPs in 2005 was 349 and increased to 456 in 2006. The figures so far this year were 362 LLPs as at 31 August 2007.

### 3. Distribution of LLPs

It is important to point out that we draw on the existing classification of companies framework in breaking down the number of LLPs into categories of small and medium-sized.<sup>3</sup>

	<b>Size</b>	<b>Turnover</b>	<b>Number of employees</b>
Large LLPs	177	194	125
Medium-sized LLPs	303	303	229
Small LLPs	8597	8626	8768
Not known <sup>4</sup>	16,142	16,096	16,097
<b>Total<sup>5</sup></b>	<b>25,219</b>	<b>25,219</b>	<b>25,219</b>

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<sup>2</sup> Law Society Gazette – 30 August 2007.

<sup>3</sup> The definition of a small company is currently 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 definition of a medium-sized company is currently one that meets 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>4</sup> We assume that most of these are small LLPs.

<sup>5</sup> Sources: Companies in 2005-2006 by the Companies House and the FAME software. FAME is known as Financial Analysis Made Easy software.

#### 4. Options

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

##### Option A: Do Nothing

Do nothing would mean not applying the 2006 Act to LLPs and that LLPs would continue to operate under the provisions of the LLP Regulations 2001. These are largely based on the Companies Act 1985, which for companies will be in most parts repealed. By not amending the LLP regulations LLP law would be out of step with modern company law. It would also mean a twin-track approach under which the 2006 Act is applied to companies, but the 1985 Act continued for LLPs. This option would increase the complexity of business law, confusing business and their professional advisers and increase costs. In addition, it would deny LLPs the opportunities to take advantage of a range of deregulatory measures introduced by the 2006 Act.

The 2006 Act RIA prepared in January 2007 calculated that the total benefit of the company law reform measure for companies is in the region of £160 million to £340 million per annum. Estimating the actual benefits for LLPs is very difficult; however, implementing the 2006 Act could result in benefit of between £3.2 million to £6.9 million which will not be realised if this option is adopted. This is based upon pro rata figure of dividing the total number of LLPs by the total number of private companies and then multiplying it by the estimated benefit, i.e.  $(25,219/1,245,000) \times £160$  million and  $(25,219/1,245,000) \times £340$  million. Any comparison of numbers of LLPs against the numbers of companies requires two caveats: not all aspects of the 2006 Act will apply to LLPs and there are some uncertainties over some key measures such as e-communications. Also the size distribution of companies is probably different from that of LLPs. The figures above are therefore a maximum figure and only indicative on the basis of the original RIA. We will do further work on this issue and would welcome comments on this estimate. Such comments will enable us to give better information in the final Impact Assessment.

## Option B: Amendment

This is the obvious, but not the preferred option. Doing this would mean amending the current regulations by applying the relevant provisions in the 2006 Act to LLPs with a series of general and specific modifications without setting out the modified legislation in full. This is currently the form which the LLP Regulations 2001 take. They are already a complex set of regulations for LLPs and their advisers to interpret. By producing a further set of amending regulations the position for LLPs would become even more complex.

The underlying assumption of this option, as in option C below, is that LLPs would have the opportunity to benefit from any cost savings arising from the application of the 2006 Act as for companies. From the calculated figure above the expected benefit is in the region of between £3.2 million to £6.9 million.

The risk of option B over option C is that by only textually amending the current regulations the LLP regulations would be less user-friendly, and LLPs would run the risk of not benefiting from the comparable savings arising from reducing the complexity of the law.

It is important to stress that the 2006 Act was structured in order that the provisions that apply to small companies are much easier to understand. Where the law is hard to understand, there are significant costs, uncertainty and risks and compliance is reduced. SME representatives estimated that presenting the 2006 Act in an accessible and user-friendly fashion resulted in savings in the region of £30 million per annum for companies. It is expected that some of this simplification benefit of the 2006 Act would be realised under this option. However, with this option, LLPs and their advisers are likely to spend more time establishing what the relevant legal provisions are, by consulting both company law and LLP law. The “cost” of this option is the continued uncertainty and legal costs of applying company law to LLPs rather than having stand-alone regulation. We do not have any figures on what this might be. We would welcome comments on this.

It was estimated that introducing the 2006 Act would cost companies in the order of £10 million to £20 million. Based on this simple calculation, the direct costs associated with the application of the 2006 Act to LLPs would be in the region of £0.2 million to £0.4 million. This

estimate is based upon  $(25,219/1,245,000) \times \text{£}10$  million and  $(25,219/1,245,00) \times \text{£}20$  million.

### Option C: Standalone

The option proposed is a standalone set of regulations restating provisions of the 2006 Act as applied to LLPs, and two sets of accompanying accounts regulations, one set for small LLPs and one set for medium-sized and large LLPs. The assumption is that the LLP Regulations are structured in order that the provisions that apply to LLPs are much easier to understand. This would make the LLP legislation far more accessible for LLPs and professional advisers; reduce the time it takes to cross-reference the regulations with other company law and lessen the complexity of the law for LLPs. This option is consistent with the Government's policy of simplification and "think small first" agenda.

As with option B above, under this option, LLPs would benefit from some of the cost savings that companies will enjoy when the 2006 Act comes into effect. We estimate that for LLPs, this will be in the region of £3.2 million to £6.9 million per annum. The benefit of Option C over Option B is that it would lessen the complexity of LLP law and will bring additional benefits in the region of £0.6 million per annum for LLPs. The expected total benefit of this option is in the range of £3.8 million to £7.5 million per annum.

Under this option, there could be some limited familiarisation costs. These are not expected to be significant.

Table A below is a summary of the options with top-down calculations.

<b>Options</b>	<b>Cost (per annum)</b>	<b>Benefit (per annum)</b>
Option A: Do Nothing	£3.2 million - £6.9 million	Not applicable
Option B: Amendment	£0.2 million - £0.4 million	£3.2 million - £6.9 million
Option C: Standalone	£0.20 million to £0.4 million	£3.8 million - £7.5 million
<b>Total</b>	<b>£0.2 million to £0.4 million</b>	<b>£3.8 million to £7.5million</b>

## 5. Costs and Benefits

We are doing top-down and bottom-up calculations but for summary use top-down numbers. The top-down approach focuses on each of the options, and the bottom-up approach estimates the costs and benefit of those provisions that are expected to have the biggest impact on LLPs.

### Benefits

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. As earlier noted, the 2006 Act RIA estimated that the total direct benefits of the company law reform measures could be of the region of £160 million to £340 million per year for companies. Currently there are approximately 25,219 LLPs on Companies House Register. The analysis has been re-adjusted to reflect the different characteristics of LLPs in relation to companies and re-calibrated to reflect the number of the current LLPs. It indicates the total benefits of applying the 2006 Act to LLPs could be in the region of £3.8 million to £7.5 million per annum.

### Costs

#### *Direct Costs*

Against total benefits of between £3.8 million to £7.5 million per annum there are only a handful of areas where the Act introduces new or more burdensome regulatory requirements, of a sort that might in principle increase compliance costs. It has been shown above that introducing the 2006 Act would cost companies in the order of £10 million to £20 million. Based on this simple calculation, the direct costs associated with the application of the 2006 Act to LLPs would be in the region of £0.2 million to £0.4 million. This estimate is based upon  $(25,219/1,245,000) \times £10 \text{ million}$  and  $(25,219/1,245,000) \times £20 \text{ million}$ .

## 6. Provisions that we do not propose to apply to LLPs

There are a number of new provisions, raised by stakeholders in the February 2007 consultation as having potential for application to LLPs, but where for reasons explained in the consultation document the Government does not propose to do so:

- Application of directors' duties to members of a LLP;
- Introduction of corporate/narrative reporting by LLPs;
- Application of the provisions in Part 11 of the 2006 Act on derivative claims.

As our proposal is not to apply these provisions to LLPs we have not explored the cost and benefits that would accrue for LLPs. The impact of these provisions for companies can be found in the RIA to the 2006 Act (a link can be found at the beginning of this impact assessment).

## **7. Proposals to apply provisions of the Companies Act 2006 to LLPs**

### **Execution of documents**

There is no significant change to the Companies Act provisions on the execution of deeds. Application of section 46 of the 2006 Act to LLP would rectify an oversight. When the Regulatory Reform (Execution of Deeds and Documents) Order 2005 (SI 2005/1906) amended the 1985 Act, the amendment was not applied consequentially to LLPs. No additional costs and benefits for LLPs are expected.

### **Business Names**

The rate of registration of LLPs is significantly less than for that of companies. It is therefore difficult to draw a comparison on costs and benefits with those for companies. However, LLPs have suffered in the past from opportunistic registrations. The basis for applying the provisions to LLPs in the same way as for companies is therefore preventative and by way of protections. There will be no additional cost to LLPs and some benefit from the added protection from opportunists.

## **Residential Addresses**

Under the new rules for directors' addresses, every director (except corporate directors) will have to provide a service address for each directorship as well as his residential or home address. The service address and the country or state of usual residence will be publicly available both from the company and Companies House. The home address (or the information that it is the same as the service address) will not be publicly available. In addition, companies will have to keep and to protect a register of directors' residential addresses. They will only be able use a director's home address for communication with that director and to disclose it only as required to Companies House or under a Court Order. Companies House will only disclose home addresses to those public bodies specified in regulations (primarily, but not exclusively, enforcement bodies) and, generally, to credit reference agencies. There will be a higher protection available for all those who, when the new regime comes into force, hold Confidentiality Orders under the previous regime and also for those at serious risk of violence or intimidation by the activities of their companies or by their links with the security services or police. The higher protection will mean that home addresses are not made available to credit reference agencies. Application of the new arrangements for directors to all members of LLPs would require all LLPs to include a service address and the country or state of residence for each member in their register of members and also to keep and protect a separate register of their members' home addresses. LLPs would only be able to use a member's home address for communication with the member and to disclose it only as required to Companies House or under a Court Order. As there is no requirement for registers to be in hard copy, and as LLPs already have and maintain this information, there should be no additional costs. For companies, direct savings were calculated to be around £400,000 per annum (on the basis that currently 4,000 directors had sought orders preserving confidentiality for five years at a cost to them of perhaps £500).

It is expected that LLPs whose members have currently sought Confidentiality Orders would gain similar benefits as for companies, although the number of take-ups is likely to be slightly lower than that of companies.

## **Accounts and Reports**

The restatement of the accounts and reports provisions in a more coherent way will make it clearer to users which provisions affect which category of LLP, whether small, medium-sized or large. Some limited familiarisation costs are likely, but these are not expected to be significant. As for private companies, the reduction of filing times from the current ten months to nine months could in principle impose transitional costs for LLPs. However, consultation responses from small business organisations suggest that the new time limit will not adversely affect current work patterns. It is important to stress that the monetised benefits of simplification of the accounts provisions are embedded in the Option C above, which is estimated to bring additional benefits in the region of £0.6 million per annum for LLPs.

## **Auditors and Statutory Auditors**

At this stage, it is difficult to monetise the costs and benefits of this proposal for LLPs in general. It is expected that associated benefits and costs should be similar to those of companies (with adjustment for numbers of LLPs).

## **Dissolution and Restoration to the Register**

The changes on the dissolution and restoration to the register for LLPs are facilitative. They cover new provisions on administrative and court restoration to the register. Many of the changes to the operations of the Register are not expected to have significant costs and benefits for LLPs.

## **Registrar of Companies**

Many of the changes to the operations of the Registrar are facilitative. Some provisions of Part 35 are currently applicable to LLPs and some are not. The changes will impose some additional costs on Companies House, but there are no obvious costs associated with the

proposed change for LLPs. It is expected that where there is a cost and benefit to LLPs this will be marginal.

### **Electronic communications**

There will be a significant cost saving related to elimination of paper communications between companies and their shareholders. It is estimated by the 2006 Act RIA that large companies can incur costs in the range of £100,000 to £400,000 per mailing.

LLPs unlike large companies do not have shareholders, however some of the larger LLPs have members in the hundreds and thousands. LLPs also have more flexible internal arrangements, and may already be benefiting from the use of e-communications. It is therefore difficult to monetise the costs and benefits associated with applying this measure to LLPs in light of the uncertainty regarding the number of members associated to the LLPs currently on the register and the current level of e-communications between them. One could expect benefits and costs for LLPs to be comparable to (or less than) those of companies given the size of LLPs and the numbers of members and what happens in practice with communication between members.

### *Summary Table*

The following table is a bottom-up approach and sets out those provisions that will have the biggest impact in terms of costs or benefits.

<b>Provisions</b>	<b>Cost (per annum)</b>	<b>Benefit (per annum)</b>
Business Names	Small administrative costs	£50,000 - £500,000
Residential Address	Minimal costs	£400,000
Improving accessibility including simplification of the Accounts and Reports	Familiarisation costs	£0.6 million
E-communications	Small administrative costs	£50,000 - £200,000
Total	Indicative range of £0.1 million - £0.2 million	£1.1 million to £1.7 million

### *Implementation Costs*

There will be some changes to the law governing LLPs, and there will be some implementation cost. However, it is expected that these implementation costs would be minimal.

### *Familiarisation Costs*

In addition to the direct costs associated with the proposed application of the 2006 Act to LLPs, there will also be some familiarisation costs associated with any new legal requirement. These costs are not expected to be significant. Professional advisers will need to become familiar with the new law, but these professions have established 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.

## **8. Specific Impact Tests**

### **Competition Assessment**

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**

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 and existing regulation is simplified and presented in a coherent and accessible form. We estimate using FAME that around one third of LLPs in the UK are classified as small. The vast majority of these LLPs are also exempt from audit requirements. We estimate that there will be substantial benefits to all LLPs including small sized enterprises.

### **Legal Aid**

There will be no impact on Legal Aid.

### **Sustainable Development, Carbon Assessment, Other Environment**

We do not believe that there will be any impacts on these areas.

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

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**

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

## **Rural Proofing**

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

## **9. Enforcement, sanctions and monitoring**

The proposed reforms will provide greater clarity 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 that apply to them 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. Enforcement will, as now, rely on a variety of means depending on the nature of the breach (for example, Companies House will be responsible for enforcing penalties for late filing of accounts and similar offences).

## **Implementation and delivery plan**

The Regulations will be designed to be as facilitative as possible. After commencement individual LLPs will be able to take advantage of new optional provisions on a case-by-case basis in the manner best suited to their specific needs.

### **Objective and Success Criteria**

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 from stakeholders will be gathered as part of this consultation exercise and as part of the post-consultation process

we will look at such of the measures as 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*

It is important to recognise that there is generally speaking no “LLP police” for ensuring compliance with the requirements of company 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*

There will be some set-up and implementation costs for Companies House in respect of certain measures in the Act, such as facilitating electronic filing. 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*

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*

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*

Companies House will play a major role in implementing the LLP Regulations as they are commenced. 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.

## **10. Summary**

The Government believes that the provisions 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. Overall, improvements will translate to a total net benefit in the region of £3.4 million - £7.3 million.

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base? (Y/N)</i></b>	<b><i>Results annexed? (Y/N)</i></b>
Competition Assessment	Y	
Small Firms Impact Test	Y	
Legal Aid	Y	
Sustainable Development	N/A	
Carbon Assessment	N/A	
Other Environment	N/A	
Health	N/A	
Race Equality	Y	
Disability Equality	Y	
Gender Equality	Y	
Human Rights	Y	
Rural Proofing	Y	

## **ANNEX C: CONSULTATION CRITERIA**

The six consultation criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

