

# **Proposals for a Legislative Reform Order to amend Lloyd's Act 1982**

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March 2008



HM TREASURY





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Legislative Reform Order  
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# CONTENTS

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	<b>Page</b>
Executive Summary	<b>3</b>
Chapter 1            The proposals	<b>5</b>
Chapter 2            Legal analysis	<b>15</b>
Chapter 3            How to respond	<b>27</b>
Annex A              Draft Legislative Reform Order	<b>31</b>
Annex B              Partial Impact Assessment	<b>37</b>
Annex C              Legislative Reform Orders - Parliamentary Consideration	<b>49</b>
Annex D              List of consultees	<b>55</b>
Annex E              Response form	<b>57</b>



# EXECUTIVE SUMMARY

In support of the market reforms Lloyd's is already pursuing to improve its competitiveness, the Government confirmed last year that it would be setting out proposals to modernise the governance arrangements at Lloyd's, by way of a Legislative Reform Order (LRO) amending Lloyd's Act 1982. This paper sets out the Government's proposals.

As befits an LRO, the proposals have a very practical focus: they aim to remove restrictions or administrative burdens and unnecessary bureaucracy. They do not make any amendment to the fundamental constitutional aspects of Lloyd's current governance arrangements, such as rules on members' voting rights.

In summary, the Government proposes to:

1. relax the rule requiring the Chairman and Deputy Chairmen to be working members, so that these posts may be filled by any member of the Council, provided always that one of the Chairman and Deputy Chairman is a working member;
2. remove restrictions on elections to the Council affecting working members, to permit more flexibility and greater alignment with the Combined Code;
3. remove the requirement for the Governor of the Bank of England to approve appointments of nominated members of Council, as this duplicates the Financial Services Authority's approval process;
4. remove the provisions relating to the Committee of Lloyd's;
5. modernise and streamline the Council's delegation powers, while preserving the Council's existing reserved powers;
6. ease restrictions on the composition of Disciplinary Committees;
7. remove the restriction that requires managing agents generally to accept business only from a Lloyd's broker, while retaining the class of "Lloyd's broker" for brokers that want to bear the title of "Lloyd's broker"; and
8. remove the divestment provisions (which prohibit prescribed associations between Lloyd's brokers and managing agents), in favour of a new mechanism, consistent with the Financial Services Authority's regulatory requirements, which will allow the Society to monitor potential conflicts of interest between managing agents and associated brokers, and provide transparency on such associations to members.

The proposals all meet the constraints and pre-conditions of the Legislative and Regulatory Reform Act (LRRRA 2006). Chapter 2 provides the legal analysis for this. At Annex A, there is a draft of the proposed Legislative Reform Order. Annex B provides an initial Impact Assessment of the proposals, which should be read in conjunction with the consultation document.

As stipulated under the LRRRA 2006, the Government is now consulting widely on these reforms (Annex D lists the consultees to whom the paper has been sent). The Government invites responses to this consultation and Chapter 3 explains how to contact us.

The consultation runs for 12 weeks. Please ensure your response reaches us by 30 May 2008.



# THE PROPOSALS

## INTRODUCTION

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**1.1** This consultation paper sets out the Government's proposals for a Legislative Reform Order, under the Legislative and Regulatory Reform Act 2006, to amend Lloyd's Act 1982. The proposals are intended to modernise the governance arrangements at Lloyd's and remove unnecessary restrictions on how Lloyd's organises its affairs. The aim is to complement the market-related reforms that Lloyd's is already pursuing, which the Government supports, and which are geared to maintaining the competitiveness of Lloyd's in the global marketplace.

**1.2** The proposed reforms take account of a number of changes in the Lloyd's market since 1982, and also

- changes in the regulatory environment, in particular the establishment of the Financial Services Authority (FSA) as the statutory regulator with responsibility for the prudential regulation of Lloyd's, Lloyd's brokers and underwriting agents; and
- changes in governance standards, especially improvements in governance standards encouraged through non-statutory Codes, such as the UK Combined Code on Corporate Governance.

In line with the general purposes of the Legislative and Regulatory Reform Act however, the proposals are focussed on removing or reducing burdens resulting from the provisions of Lloyd's Act 1982. They therefore do not address what might be considered fundamental constitutional aspects of the current governance arrangements (such as voting rights).

**1.3** The Legislative and Regulatory Reform Act sets a number of pre-conditions the proposals must meet. The Act may be found at

[http://www.legislation.gov.uk/acts/acts2006/pdf/ukpga\\_20060051\\_en.pdf](http://www.legislation.gov.uk/acts/acts2006/pdf/ukpga_20060051_en.pdf)

Chapter 2 describes the constraints and pre-conditions of the Act and provides the detailed legal analysis for each of the proposals. Chapter 3 covers the process for responding to the consultation.

## LLOYD'S ACT 1982

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**1.4** The current governance arrangements for Lloyd's are set out in Lloyd's Act 1982. The Act is published on Lloyd's website at

[http://www.lloyds.com/Lloyds\\_Market/Tools\\_and\\_reference/Lloyds\\_Acts\\_and\\_Byelaws/Lloyds\\_Acts.htm](http://www.lloyds.com/Lloyds_Market/Tools_and_reference/Lloyds_Acts_and_Byelaws/Lloyds_Acts.htm)

The Act provides the statutory framework for governance at Lloyd's: in particular, it provides for a governing Council, with powers to regulate and direct the business of insurance at Lloyd's. It also sets certain parameters for the operation of the Lloyd's market.

**1.5** There are a number of ways in which the provisions of the 1982 Act are now over-restrictive and outdated, or present barriers to business development. The

Government's proposals seek to address these issues. There are eight proposals, which can be grouped around two broad headings:–

- reforms to the Council and other governance reforms; and
- market-related reforms.

The proposals, and their potential impacts, are set out below.

## Reforms to the Council and other governance reforms

**Proposal 1:** Relax the rule requiring the Chairman and Deputy Chairmen of Lloyd's to be elected from the working members of the Council (Section 4, Lloyd's Act 82)

**1.6** Under the current rules, the Council comprises three constituencies: elected working members; elected external members; and nominated members (broadly equivalent to companies' independent non-executive directors) who are appointed by the Council. Section 4 of Lloyd's Act 1982, however, requires the Chairman and Deputy Chairmen of Lloyd's to be elected only from among the working members of Council.

**1.7** The original justification for this restriction seems to have been the view that experience of working in the Lloyd's market was essential for effective leadership at Lloyd's. In the 1980s, it was also considered appropriate to look to the working membership for leadership. In today's business environment, however, it is recognised that organisations often benefit from outside expertise and perspectives, so the restrictions imposed on Lloyd's ability to elect an external candidate as Chairman or Deputy Chairman is an obstacle to the efficiency of the Society. And there are practical considerations: as the population of working members has shrunk<sup>1</sup>, the number of individuals eligible to be elected as Chairman or Deputy Chairmen has become more limited. Also, the requirement that an outside candidate must be a working member is a potential disincentive to otherwise qualified outsiders, and increases the complexity of the recruitment process for Lloyd's. This imposes burdens on Lloyd's in the form of administrative inconvenience and financial costs.

**1.8** The Government believes that it is very important for Lloyd's to continue to be able to attract the "right person for the job" for these roles. To allow Lloyd's greater freedom to recruit for Chairman and Deputy Chairmen, therefore, the **Government proposes to amend section 4 of Lloyd's Act 1982, so that the Council can elect any of its members as Chairman and Deputy Chairmen.**

**1.9** However, to ensure that there is an appropriate degree of support from the constituencies represented on Council for the Chairman or Deputy Chairman – especially for someone who is a nominated member – the **Government proposes that in future Council should elect its Chairman and Deputy Chairmen by special resolution.** (Section 4 of Lloyd's Act 1982 simply requires an annual election: by requiring annual election by the special resolution procedure, the candidate concerned will have to obtain support from a majority of the working members of Council, and separately, from a majority of the external and nominated members of Council.)

**1.10** The Government also believes it is important to ensure there remains a balance of different perspectives among the Chairman and Deputy Chairmen. So alongside the relaxation of the rule at section 4, the Government proposes that, **if the Chairman is not**

<sup>1</sup> Now 948, of whom 545 are non-underwriting working members.

a working member of the Council, at least one Deputy Chairman of Lloyd's must be a working member of Council.

**Proposal 2:** Remove restrictions on elections to create greater flexibility and to permit greater alignment with the Combined Code on Corporate Governance (Section 3(5)(ii)-(iii), Lloyd's Act 1982)

**1.11** The current rules concerning elections to the Council contain a number of restrictions on elections of working members. In particular, a working member of Council (other than the Chairman or Deputy Chairmen) cannot normally serve consecutive terms on Council, since the Act requires a minimum of a year's break between terms for working members. The Act says nothing about the permitted terms for external members or for nominated members. This question is left to regulation by Lloyd's.

**1.12** The restrictions for working members seem to have been designed in the expectation that there would be a regular turnover of working members on Council. However, the rules now seem over-restrictive as they prevent continuity of service, even where the relevant voting constituencies would like to see such continuity and where it would be beneficial for the business for the member to stay for a further term on Council. This causes Lloyd's considerable administrative inconvenience, and acts as an obstacle to efficiency.

**1.13** The Government is therefore minded to **remove these restrictions and replace them with a single rule limiting the aggregate number of years a Chairman may be elected to serve in that office to nine, whether served consecutively or not.** (The other rules on elections (section 3(5)(a)-(e) and section 3(5)(i) would remain as now.)

**1.14** The aim of such a reform would be to give Lloyd's greater freedom to make provision by byelaw aligning the rules on the terms that may be served by members of the Council with the Combined Code on Corporate Governance. By allowing for greater continuity in office, the proposed rules would permit Lloyd's, if wished, to keep working members for longer on Council and permit more flexibility over the length of time a Chairman or Deputy Chairman can serve in office. **The Government would be interested in respondents' views on (a) whether any statutory limit on the years a Chairman can serve is necessary; and (b) if such a limit is necessary, how long it should be.**

**Proposal 3:** Remove the requirement for approval from the Governor of the Bank of England for appointment of nominated members of Council (Section 3(2)(c), Lloyd's Act 1982)

**1.15** Currently, the Act requires that appointments of nominated members of Council must be confirmed by the Governor of the Bank of England. This is a historical provision that reflects the regulatory environment of the City before the advent of the Financial Services Authority (FSA).

**1.16** Given that the FSA, as part of its regulatory oversight of Lloyd's, must approve all Council members, including the nominated members (under section 59 of the Financial Services and Markets Act 2000) this rule represents an unnecessary duplication of effort, causing Lloyd's and the Bank of England administrative inconvenience. **The Government therefore proposes to remove this burden.** The Bank of England supports this proposal.

**Proposal 4:** Remove the provisions establishing the Committee (Section 5, Lloyd's Act 1982)

**1.17** Proposal 4 concerns the Committee, which is established under section 5 of the 1982 Act, and which comprises the working members of Council.

**1.18** When the Act was passed, the expectation was that the Committee would be the primary executive body of the Society that managed all the detailed decision-making relating to the market. However the Committee is now little used. Instead, since 1993, Lloyd's has developed alternative governance structures to meet market needs that have drawn on expertise from a variety of sources within the market as well as independent expertise. These bodies, which were set up under other powers under the Act<sup>2</sup>, include the Franchise Board (which first met in 2003), and prior to that, the Lloyd's Market Board (LMB) and the Lloyd's Regulatory Board (LRB).

**1.19** The requirement to provide administrative support for the Committee (including arranging elections for the Committee Chairman and Deputy Chairman) has therefore become a burden for Lloyd's, causing administrative inconvenience. The fact that the Committee is little used also means its removal will not disadvantage working or other members. **The Government therefore proposes to repeal section 5 and remove other references to the Committee from the 1982 Act.** This would not prevent Lloyd's in future creating a new committee comprised solely of working members for particular purposes, should this be felt to be desirable. The LRO will make provision for those cases where a decision of the Committee is still required (for example to enable the release of funds at Lloyd's to Names).

**Proposal 5:** Reform the delegation rules (Section 6(5)-(6), Lloyd's Act 1982)

**1.20** The Act currently contains detailed rules concerning delegation to the Committee and the Committee Chairman/Deputy Chairmen (reflecting the assumption that the Committee would be used for detailed decision-making relating to the market, subordinate to the Council). Because the rules only permit delegation to the Chairman/Deputy Chairmen of the Council or the Committee, or to the Committee itself, the rules are also restrictive and inflexible. The extent of Lloyd's powers of delegation under these provisions, and their interaction with Lloyd's powers to act through agents is not entirely clear, causing Lloyd's administrative inconvenience.

**1.21** The removal of the Committee (by repeal of section 5) makes it necessary to reconsider the delegation provisions, and in so doing, the Government believes there is an opportunity to make the powers of delegation less restrictive, reflecting the modern powers of delegation given to the directors of a company. This should reduce a burden on Lloyd's by making the delegation rules clearer and easier to understand.

**1.22** The proposed reform will not disturb the existing position in relation to the powers of the Council: so the rules would **re-state the provision currently at section 6(5) of the Act that the Council may not delegate any powers that are currently only exercisable by special resolution.** This means the Council would still deal with matters such as appointments of nominated members of Council and, crucially, the making, amending or revocation of byelaws.

<sup>2</sup> Section 6(7) permits Lloyd's, aside from the formal delegation powers, to set up bodies or committees etc through which the Council can act whose members involve individuals who are not members of the Society. The LMB, LRB were sub-committees of the Council set up under section 6(7), as is the Franchise Board.

**1.23** Apart from the reserved powers, the proposed rules would permit the Council to delegate matters by special resolution on such terms as it considers appropriate, to whatever committees, sub-committees, other bodies or other persons as it sees fit. If wished, the Council would be able to authorise further sub-delegation of the powers being delegated under the terms of a delegation.

**1.24** These delegation rules would be modelled on the proposed Articles of Association for public limited companies, on which DBERR have been consulting. (See extract from Draft Articles of Association for public limited companies, at <http://www.berr.gov.uk/bbf/co-act-2006/draft/page40411.html>)

**The Council's existing powers to act through agents would be retained** so that existing arrangements that have been created using these powers are not disturbed.

**1.25** The Government believes the resulting rules will be simpler and easier to operate and understand. This should also help to encourage greater clarity about the relationship between the bodies the Council creates to perform specific roles or tasks, and the lines of accountability between those bodies and the Council.

**Proposal 6:** Relax rules on membership of Disciplinary Committees (Section 7(1)(a)(i), Lloyd's Act 1982)

**1.26** Section 7 of Lloyd's Act 1982 provides the rules for the establishment and function of Lloyd's Disciplinary Committees, for the proper regulation of the market.

**1.27** Section 7(1) currently requires that the majority of members of any Disciplinary Committee established by the Council are members of the Society. This rule was intended to ensure the Disciplinary Committees had an appropriate level of knowledge of the market and involved an element of "peer review" from representative members of the market. However, several factors suggest that this rule is now out-of-date and imposes an unreasonable burden on Lloyd's. First, as part of a wider trend, greater stress is being placed on the need for such committees to have independent input and at least one member who is legally qualified. The current rule does not reflect this. Second, as the composition of the membership has changed, the rule does not serve as well as it did in the past to capture a representative sample of those involved in working in the market. (For example, directors of corporate members are subject to Lloyd's disciplinary procedures but will not generally themselves be members.) Third, as a practical matter, it is clear Lloyd's has experienced difficulties in finding sufficient individuals who have the time and necessary qualifications to serve on the Disciplinary Committees. This shows that the existing provisions cause Lloyd's significant administrative inconvenience.

**1.28** The Government therefore proposes to **remove the requirement that the majority of the members of the Disciplinary Committees must be members of the Society**. At the same time, to ensure that the Disciplinary Committees contain at least one individual who can be expected to have familiarity with the market, the Government proposes that the **Disciplinary Committees must include at least one individual from one of the following classes of persons:-**

- working members of the Society;
- directors of corporate members;

- officers and employees of underwriting agents<sup>3</sup> or Lloyd's brokers who have been approved by the FSA under section 59 of the Financial Services and Markets Act 2000;
- anyone who fell into one of the above categories before their retirement.

This reform will give Lloyd's much greater freedom to make suitable appointments to its Disciplinary Committees, according to the circumstances of a particular case. It will not prevent individual external members serving on Disciplinary Committees, where they have appropriate knowledge or experience and are available to serve.

## Market-related reforms

**1.29** In addition to these reforms, the Government also proposes two market-related reforms.

**Proposal 7:** Remove the restriction (Section 8(3), Lloyd's Act 1982) that requires managing agents generally to accept or place business only from or through a Lloyd's broker.

**1.30** Under section 8(3) of the 1982 Act, managing agents are, with limited exceptions, only permitted to do business through a Lloyd's broker. Lloyd's operates an admission process for Lloyd's brokers and Lloyd's brokers have various rights – including the fact that employees of Lloyd's brokers are eligible to be working members, and thus participate in the governance of the Society.

**1.31** With changes at Lloyd's and increasing globalisation of the wholesale insurance market, there are now several reasons for change.

**1.32** First, competitive pressures are reshaping the traditional relationship between brokers and managing agents, as Lloyd's underwriters seek new routes to reach clients round the world. Although there are ways in which business can come to the market otherwise than through a Lloyd's broker (for example, through the "coverholder" regime), the statutory restriction at section 8(3) places a limit on how far further routes can be opened up, especially for dealing direct with clients, and this creates a potential obstacle to efficiency and the future development of the market.

**1.33** Second, the regulatory regime for brokers has changed considerably since 1982. In particular, the introduction of a new regulatory regime for insurance intermediation in the EU<sup>4</sup> has much reduced Lloyd's regulatory role for brokers, since the FSA is now responsible for regulation of all intermediaries. However, the restriction in section 8(3) means Lloyd's must still process applications by every broker who wishes to have access to the Lloyd's market. This imposes administrative burdens on the Society and administrative and financial burdens on brokers who wish to have access to the Lloyd's market.

**1.34** Third, as Lloyd's faces competition from centres like the US, Bermuda and Dublin, it is increasingly important to ensure use of the Lloyd's platform does not involve additional costs for policyholders. The requirement to use a Lloyd's intermediary under section 8(3) may obscure where there is extra cost in the placement

<sup>3</sup> Note: this term would be interpreted to include officers and employees of members' agents, as well as managing agents.

<sup>4</sup> Following the implementation of the Insurance Mediation Directive.

chain – and conversely, where costs reflect real value added<sup>5</sup>. A more open regime would help reduce unnecessary financial costs on policyholders, whilst ensuring added value is properly recognised.

**1.35** For these reasons, the Government believes the rule at section 8(3) is now outdated and an unnecessary burden on Lloyd’s which represents a potential barrier to further business development. Removal of section 8(3) and the limits on access would provide a more open competitive environment and potentially encourage the acquisition of new business at Lloyd’s. This would allow further improvements in efficiency and productivity, and benefit Lloyd’s and its members, as well as policyholders.

**1.36** At the same time, it is clear there is widespread recognition in the Lloyd’s market of the importance of high quality intermediation at Lloyd’s and the benefits to Lloyd’s from strong relationships with brokers. (This includes the relations with Lloyd’s as a Society, where broker input remains important for governance purposes.) Also, it seems likely many Lloyd’s brokers will continue to want to hold themselves out as Lloyd’s brokers and to retain their eligibility to participate in Lloyd’s governance arrangements.

**1.37** The Government therefore proposes that

- **the rule at section 8(3) should be repealed**, but that
- **the class of “Lloyd’s broker” should be retained**.

**1.38** The first change would allow managing agents to deal with any intermediary (whether a “Lloyd’s broker” under the new definition, or another intermediary) or deal directly with insureds. The Government would also propose to amend Schedule 2 of Lloyd’s Act 1982 to **confirm expressly that Lloyd’s is able to make byelaws governing the conditions on which underwriting agents may deal with insureds and with intermediaries other than Lloyd’s brokers** (where an intermediary is involved). The aim of this would be to allow Lloyd’s to set rules for managing agents to ensure the quality of intermediation was safeguarded.

**1.39** The second change would allow brokers to apply to the Council for permission to use the title of “Lloyd’s broker”. This title would carry with it all the existing rights and obligations that currently attach to the title of Lloyd’s broker, save that being a “Lloyd’s broker” would no longer entail a right to exclusive access to the Lloyd’s market. The Government proposes to amend Schedule 2 to **give the Council an express power to regulate by byelaw the terms on which permission to use the title “Lloyd’s broker” may be granted or withdrawn**.

**1.40** Overall, therefore, this reform would allow for the development of more options for access to the market. It would facilitate the modernisation of distribution channels in line with Lloyd’s published strategy<sup>6</sup>. It would bring competitive benefits that in turn would reinforce the strengths of the market. The reform would also allow brokers,

<sup>5</sup> Internal research conducted by Lloyd’s in 2006 estimated that in relation to property/casualty reinsurance business placed in the Lloyd’s market, as compared to the US and Bermuda, there is approximately up to 5% additional cost due to the need to use a London broker. While some additional costs are incurred in underwriting business in the Lloyd’s market, some of these costs are due to the need for brokers to have the ability to interface with Lloyd’s and the London market’s systems and processes, and as such, would not be removed by the repeal of section 8(3). However, work is also underway separately to streamline these processes and make London and Lloyd’s more accessible to all brokers. Much of this work is driven by the Market Reform Group which recently reported to the Insurance Summit organised by HM Treasury in November 2007.

<sup>6</sup> see the Chairman’s Strategy Group report, which was endorsed by the members at an EGM in 2002

including all existing Lloyd's brokers, to continue – where wished – to hold themselves out as Lloyd's brokers.

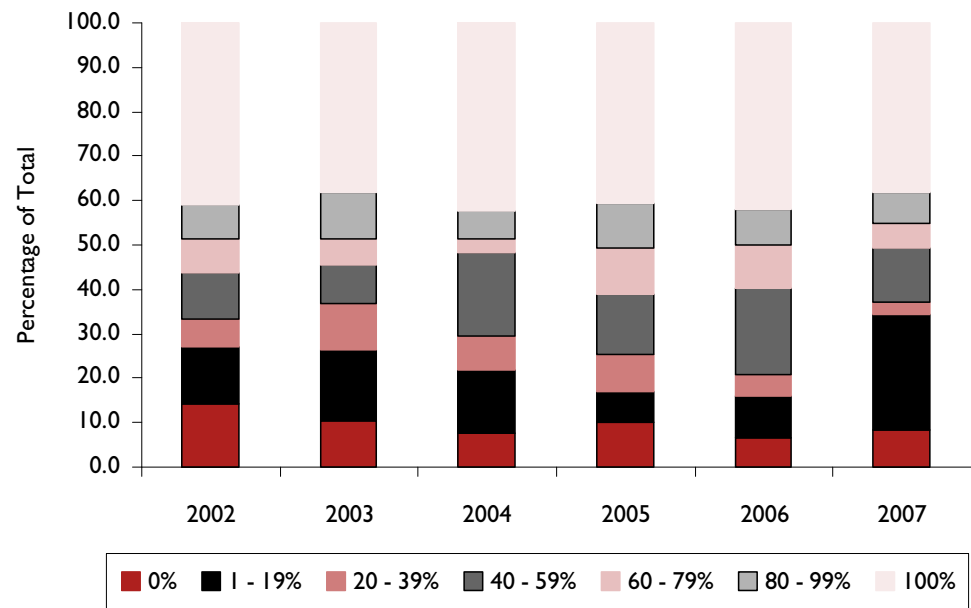
**Proposal 8:** Repeal the “divestment” rules (Sections 10-12, Lloyd's Act 1982).

**1.41** The divestment provisions are closely linked with section 8(3). They provide detailed rules prohibiting associations between Lloyd's brokers and managing agents, with the aim of preventing problems of conflicts of interests that potentially could affect policyholders, members and ultimately, the Lloyd's market.

**1.42** The current provisions are extremely complex and unwieldy. They impose administrative inconvenience and financial costs on managing agents, Lloyd's brokers, and on the Society itself, which has to review all applicants to become Lloyd's brokers to see if they satisfy the restrictions, and monitor managing agents' and brokers' subsequent compliance with these provisions. At the same time, as the provisions do not prohibit all associations, they do not achieve complete separation between brokers and managing agents.

**1.43** In addition, in contrast to the situation in 1982, Lloyd's and underwriting agents are now subject to statutory regulation by the FSA. The FSA imposes a number of obligations on firms through its Principles for Business. These Principles include a requirement for firms to manage conflicts of interest fairly. The FSA has confirmed that this includes conflicts of interest that affect members. These Principles are made under the FSA's rule-making authority under Part X of the Financial Services and Markets Act (FSMA) 2000 and apply both to businesses (including managing agents and brokers – whether Lloyd's brokers or not) and to persons who exercise controlled functions within the meaning of s59 FSMA.

**1.44** These two factors suggest that the divestment provisions are no longer necessary and constitute a burden for Lloyd's and for market players that should be removed. However, the Government believes that the unique structure of the Lloyd's market (particularly the involvement of third party capital providers) means additional conflict management provisions would need to be implemented if the divestment provisions were removed.

**Chart I.1: Membership of Lloyd's syndicates (%)**

Although the proportion of third party capital on Lloyd's syndicates has reduced since 1982, only around 40% of syndicates have fully aligned membership. (An aligned member is a corporate member of a syndicate that is directly or indirectly owned by the same firm that owns the managing agent of the syndicate.)

Source: Lloyd's

**1.45** Consequently the Government believes that while the divestment rules are no longer appropriate, it is important for there to be a mechanism that complements the FSA's rules and enables the Society to monitor potential conflicts between managing agents and brokers and thereby help guard against systemic risks that might arise, for example, as the result of poor syndicate performance resulting from connected party business. Such a system should also ensure transparency for members.

**1.46** The Government therefore proposes that **the divestment provisions should be repealed but at the same time, a disclosure mechanism should be introduced applying to managing agents, which would allow the Society actively to monitor associations between managing agents and brokers, and also make those associations transparent to members.** This mechanism would include obligations imposed by byelaw, and Lloyd's would therefore provide an undertaking to the FSA to bring in such a byelaw within a set deadline after the LRO is made. This byelaw would be subject to consultation by Lloyd's in accordance with FSA rules and then in turn reviewed by the FSA.

**1.47** As a minimum, the system should provide for both pre- and post- transaction transparency: in particular it should

- require managing agents to set out in each syndicate business plan submitted to the Franchise Board the parameters under which it would conduct business with any associated broker;

- require managing agents to identify any associations they have with brokers and to report regularly to the Society and to the members of their syndicates the proportion of business done with associated brokers.

The system should also ensure that any relevant changes in a syndicate business plan (e.g. if a new association with brokers was formed during the year) would be brought to the attention of the Society and syndicate members.

**1.48** The Government believes such a system would fit well with existing monitoring regimes run by the Society: it would provide a proportionate system to allow Lloyd's to monitor possible conflicts of interest and complement the FSA's existing role in this area.

# 2

## LEGAL ANALYSIS

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**2.1** This Chapter explains the purposes for which a Legislative Reform Order can be made, and the pre-conditions that must be satisfied. Paragraphs 2.13 ff set out the analysis for the proposals made in this consultation, to assist you in forming your views on the proposals.

### LEGISLATIVE REFORM ORDER MAKING POWERS

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#### Section 1

**2.2** Under section 1 of the LRRRA, a Minister can make an LRO for the purpose of 'removing or reducing any burden, or overall burdens, resulting directly or indirectly for any person from any legislation'.

**2.3** Section 1(3) of the LRRRA defines a 'burden' as:

- a financial cost;
- an administrative inconvenience;
- an obstacle to efficiency, productivity or profitability; or
- a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

#### Section 2

**2.4** Under section 2 of the LRRRA, a Minister can make an LRO for the purpose of securing that regulatory activities are exercised in a way that is transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.

**2.5** 'Regulatory functions' is defined in section 32 as:

- a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or
- a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity.

#### Section 20 Orders

**2.6** Section 20 of the LRRRA enables a Minister to exercise the order-making powers under sections 1 and 2 together with the power to make an order under section 2(2) of the European Communities Act 1972 in a single instrument. This enables a single order to implement Community law under section 2(2) of the 1972 Act and, for example, to remove or reduce burdens resulting from pre-existing statutory provisions.

## Preconditions

**2.7** Each proposal for an LRO must satisfy the preconditions set out in section 3 of the LRRRA. The questions raised in the consultation are designed to help provide the information that the Minister will need in order to satisfy the Parliamentary Scrutiny Committees that, among other things, the proposal satisfies these preconditions.

**2.8** Part of the purpose of the consultation therefore is to elicit views on whether and how each aspect of the proposed changes in this consultation document meets the following preconditions:

- **Non-Legislative Solutions** – An LRO may not be made if there are non-legislative solutions which will satisfactorily remedy the difficulty which the LRO is intended to address. An example of a non-legislative solution might be issuing guidance about a particular legislative regime.
- **Proportionality** – The effect of a provision made by an LRO must be proportionate to its policy objective. A policy objective might be achieved in a number of different ways, one of which may be more onerous than others and may be considered to be a disproportionate means of securing the desired outcome. Before making an LRO the Minister must consider that this is not the case and that there is an appropriate relationship between the policy aim and the means chosen to achieve it.
- **Fair Balance** – Before making an LRO, the Minister must be of the opinion that a fair balance is being struck between the public interest and the interests of any person adversely affected by the LRO. It is possible to make an LRO which will have an adverse effect on the interests of one or more persons only if the Minister is satisfied that there will be beneficial effects which are in the public interest.
- **Necessary protection** – A Minister may not make an LRO if he considers that the proposals would remove any necessary protection. The notion of necessary protection can extend to economic protection, health and safety protection, and the protection of civil liberties, the environment and national heritage.
- **Rights and freedoms** – An LRO cannot be made unless the Minister is satisfied that it will not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise. This condition recognises that there are certain rights that it would not be fair to take away from people using an LRO.
- **Constitutional Significance** – A Minister may not make an LRO if he considers that the provision made by the LRO is of constitutional significance.

**2.9** It should be noted that even where the preconditions of section 3 of the LRRRA are met, an LRO cannot:

- Deliver 'highly controversial' proposals;
- Remove burdens which fall solely on Ministers or Government departments, except where the burden affects the Minister or Government department in the exercise of regulatory functions;

- Confer or transfer any function of legislating on anyone other than a Minister; persons or bodies that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;
- Impose, abolish or vary taxation;
- Create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits;
- Provide authorisation for forcible entry, search or seizure, or compel the giving of evidence;
- Amend or repeal any provision of Part 1 of the LRRRA;
- Amend or repeal any provision of the Human Rights Act 1998;
- Remove burdens arising solely from common law.

## Devolution

**2.10** The LRRRA imposes certain restriction regarding LROs and the devolution agreements:

- **Scotland** – A Minister cannot make an LRO under Part 1 of the LRRRA which would be within the legislative competence of the Scottish Parliament. This does not affect the powers to make consequential, supplementary, incidental or transitional provisions.
- **Northern Ireland** – A Minister cannot make an LRO under Part 1 of the LRRRA that amends or repeals any Northern Ireland legislation, unless it is to make consequential, supplementary, incidental or transitional provisions.
- **Wales** – The agreement of the Welsh Ministers is required for any provision in an LRO which confers a function upon the Welsh Ministers, modifies or removes a function of the Welsh Ministers, or restates a provision conferring a function upon the Welsh Ministers. The agreement of the National Assembly for Wales is required for any provision in an LRO, which is within the legislative competence of the Assembly.

## Consultation

**2.11** The LRRRA requires Departments to consult widely on all LRO proposals. **Information on how to respond is found at Chapter 3.**

**2.12** The Annexes to this document are part of the consultation:-

- **Annex A** provides the draft Legislative Reform Order;
- **Annex B** provides a partial Impact Assessment for the proposals;
- **Annex C** explains the Parliamentary process for LROs to be made under the LRRRA; and
- **Annex D** sets out the list of consultees, including the devolved administrations, to which this document has been sent.

## LEGAL ANALYSIS OF THE LLOYD'S LRO PROPOSALS

**2.13** The remainder of this Chapter sets out our view of how the proposals for amending Lloyd's Act 1982 meet the pre-conditions of the LRRRA. **We do not consider that any of the proposals has constitutional significance.** For each of the proposals, we therefore address the question of non-legislative solutions; proportionality; fair balance; necessary protection; and rights and freedoms.

Proposal 1: Relax the rule requiring the Chairman and Deputy Chairmen of Lloyd's to be elected from the working members of the Council (Section 4, Lloyd's Act 82)

### Non-legislative solutions

**2.14** The policy objective is to extend the class of people eligible to be appointed as Chairman or Deputy Chairmen of the Society of Lloyd's. Section 4 of Lloyd's Act 1982 requires both the Chairman and the Deputy Chairman to be elected "from among the working members of the Council". This requirement can only be removed by legislative amendment of this section. There is no non-legislative solution.

### Proportionality

**2.15** The effect of the removal of this requirement will be to enable the Council to elect either a Chairman or a Deputy Chairman who is not a member of the Society. The Society will gain by being able to search within a wider field to find a candidate with the necessary expertise to hold one of these positions, and where appropriate, bring candidates with external experience and contacts into the Society.

**2.16** Working members of the Council will remain eligible for election to these positions. The election of a Chairman or Deputy Chairman will require a special resolution of the Council. This means that the election of all candidates (including a candidate who is not a working member) will have to be approved by both a majority of the working members of the Council, and a majority of the non-working members of the Council (that is, the external members and nominated members of Council). In addition, there will be a requirement that, where the Chairman who is elected is not a working member of the Society, at least one of the Deputy Chairmen must be elected from among the working members of the Society.

### Fair Balance

**2.17** We consider that this proposal strikes a fair balance between the interests of the Society and the interests of the working members of the Society, by ensuring that a person who is not a member of the Society cannot be elected as either Chairman or Deputy without the consent of a majority of the working members on the Council, and requiring one of the Deputy Chairmen and Chairman to be elected from among the working members of the Council.

### Necessary Protections

**2.18** The proposal to open up election as Chairman or Deputy Chairman of the Society of Lloyd's to people who are not working members of the Society has been balanced by the introduction of measures to safeguard the position of working

members, as described above. Accordingly we do not consider that the proposal removes any necessary protections.

## Rights and freedoms

**2.19** As the changes we propose are purely beneficial we do not believe that they would prevent anyone from exercising an existing right or freedom. We would welcome your views as to whether we are correct in thinking that our proposals do not remove any rights or freedoms that anyone could reasonably expect to continue to enjoy.

Proposal 2. Remove restrictions on elections to create greater flexibility and to permit greater alignment with standards of the Combined Code on Corporate Governance (Section 3(5)(ii)-(iii), Lloyd's Act 1982)

## Non-legislative solutions

**2.20** The policy objective here is to reduce the current restrictions on working members, and on the Chairman and Deputy Chairmen serving consecutive terms in office, enabling Lloyd's to determine by byelaw the maximum number of terms a member of Council may serve, regardless of their constituency. Section 3(5)(ii) of Lloyd's Act 1982 provides that a working member may not serve two consecutive terms as a member of the Council. No working member of the Council can be re-elected as a working member of the Council earlier than one year from the end of his previous term in that role. The only exception to this rule is provided for in section 3(5)(iii), and applies in relation to the Chairman and Deputy Chairman, who are permitted to serve two consecutive terms, but no more than two terms. Further, only one of the three officers may serve a second consecutive term at one time. As these rules are set out in statute, there is no non-legislative means of securing the policy objective.

## Proportionality

**2.21** The effect of the proposal will be to remove the statutory requirement that working members of Council stand down from the Council for a year before becoming eligible to stand for election for a second term. There will be no statutory restriction on the number of consecutive terms which working members can serve. They will be in the same position as external and nominated members of the Council, and it will be for the Society of Lloyd's to determine what terms of office may be served by members of Council in each constituency by byelaw.

**2.22** Under our proposals, the Chairman and Deputy Chairmen will be able to stand for election for more than two terms as a member of the Council. However, it will not be possible for the Chairman to serve more than nine years in that office.

**2.23** We consider that the effect of these proposals is proportionate to the policy objective. The rules on the terms of office which may be served by working members of the Council, and by the Chairman and Deputy Chairmen, will be relaxed, but it will still be necessary for council members to be re-elected to the Council by their constituencies, and for the Chairman and Deputy Chairmen to be elected to their respective offices by a special resolution of the Council.

## Fair balance

**2.24** We do not consider that this proposal will have any adverse effect on stakeholders or the general public.

## Necessary protections

**2.25** We do not consider this proposal removes any necessary protections. As noted above, working members of the Council will still need to be elected to the Council by the working members of the Society. If a majority of the working members of the Society believe that a particular member should not stand for a further term, they will be able to prevent this. Equivalent safeguards exist in relation to the Chairman and Deputy Chairmen, who must be elected each year by a special resolution of the Council if they are to retain their positions.

## Rights and freedoms

**2.26** As the changes we propose are purely beneficial we do not believe that they would prevent anyone from exercising an existing right or freedom. We would welcome your views as to whether we are correct in thinking that our proposals do not remove any rights or freedoms that anyone could reasonably expect to continue to enjoy.

Proposal 3. Remove the requirement for approval from the Governor of the Bank of England for appointment of nominated members of Council (Section 3(2)(c), Lloyd's Act 1982)

## Non-legislative solutions

**2.27** The policy objective of this proposal is to remove the need for appointment of a nominated member of the Council to be confirmed by the Governor of the Bank of England as well as being approved by the Financial Services Authority. The need for such appointments to be approved by the Governor for the time being of the Bank of England is set out in section 3(2)(c) of Lloyd's Act 1982. There is no non-legislative means of amending the Act.

## Proportionality

**2.28** The effect of this provision will be that nominated members need only be approved by the Financial Services Authority, under section 59 of the Financial Services and Markets Act 2000, before they can be appointed to the Council. This will not reduce the level of scrutiny received by the nominated members before their appointment, but will remove the need for the Governor to duplicate the checks carried out by the Financial Services Authority. The Governor of the Bank of England has indicated that he is content for this requirement to be removed.

## Fair balance

**2.29** We do not consider that this proposal will have any adverse effect on stakeholders or the general public.

## Necessary protections

**2.30** We do not consider that this proposal will remove any necessary protections.

## Rights and freedoms

**2.31** As the changes we propose are purely beneficial we do not believe that they would prevent anyone from exercising an existing right or freedom. We would welcome your views as to whether we are correct in thinking that our proposals do not remove any rights or freedoms that anyone could reasonably expect to continue to enjoy.

Proposal 4 and Proposal 5. Remove the provisions establishing the Committee (Section 5) and reform the delegation rules (Section 6 (5)-(6), Lloyd's Act 1982)

**2.32** Proposals 4 and 5 are analysed together.

## Non-legislative solutions

**2.33** The removal of the Committee of Lloyd's and the substitution of the existing powers of delegation for the Council, which are closely related to the Committee (as certain powers may only, under the existing provisions, be delegated to the Committee or to its Chairman or Deputy Chairman) both require amendments to be made to Lloyd's Act 1982. There is no non-legislative means of achieving this.

## Proportionality

**2.34** The effect of proposal 4 will be that the Society is no longer required to have a Committee, comprising the working members of the Council. When the 1982 Act was passed, it was anticipated that the Committee would be the principle executive body for the Council, responsible for running the market. In practice the Society has developed differently, since Lloyd's has chosen to develop other bodies, with more flexible compositions, to meet its needs. The Committee therefore does not have sufficient business to justify its continued existence.

**2.35** The removal of the Committee will not affect the position of the working members on the Council. All decisions requiring a special resolution will need to have the support of a majority of the working members, as well as a majority of the other members of Council. In addition, our proposal will not prevent the Council subsequently creating a non-statutory committee formed only of the working members of the Council if that is felt to be beneficial. It will only remove the obligation to have, and to provide administrative support for, such a committee.

**2.36** Proposal 5 is in part a consequential amendment required by the proposed removal of the Committee. The existing powers of delegation enable the Council to delegate some of its powers and functions to the Committee and to its officers, but not otherwise. Once the provisions relating to the Committee have been removed, the Council's powers of delegation would be extremely limited. We therefore propose to replace them with delegation powers modelled on the powers of directors of a public limited company (as set out in the draft Companies (Model Articles) Regulations 2007 published by the Department for Business, Enterprise and Regulatory Reform). Any delegation under these provisions must be made by special resolution, and the Council will not be able to delegate any function or power the exercise of which requires a special resolution. The Council will have the power to authorise further delegation of a function which has been delegated on conditions laid down by the Council by special resolution. We believe that these proposals are proportionate to the policy objectives.

## Fair balance

**2.37** We do not consider that this proposal will have any adverse effect on stakeholders or the general public.

## Necessary protections

**2.38** We do not consider that this proposal will remove any necessary protections.

## Rights and freedoms

**2.39** As the changes we propose are purely beneficial we do not believe that they would prevent anyone from exercising an existing right or freedom. We would welcome your views as to whether we are correct in thinking that our proposals do not remove any rights or freedoms that anyone could reasonably expect to continue to enjoy.

Proposal 6. Relax rules on membership of disciplinary committees (Section 7(1)(a)(i), Lloyd's Act 1982)

## Non-legislative solutions

**2.40** Proposal 6 will remove the requirement under section 7(1)(a)(i) that the majority of the members of any disciplinary committee shall be members of the Society. The requirement cannot be removed without amending Lloyd's Act 1982, and there is no non-legislative means of achieving this.

## Proportionality

**2.41** The effect of this provision will be to enable disciplinary committees to be drawn up without the need to have a majority of members of the Society. It will be possible for the majority to be independent of the Society, and for greater use to be made of people who have considerable experience of the Lloyd's market, but who have relinquished their membership of the Society on retirement. There will be a requirement that such committees have at least one member who falls within one of the categories listed in section 7(1)(c) as inserted by article 8(3) of the draft Order. This will ensure there is at least one person on the committee who can be expected to have sufficient expertise to be able to advise other members of the committee on market practice. (The rule will not prevent external members serving on the committee as they can now.) We consider that the effect of this provision will be proportionate to the policy objective of increasing the pool of people available to serve on disciplinary committees of the Society.

## Fair balance

**2.42** We do not consider that this proposal will have any adverse effect on stakeholders or the general public.

## Necessary protections

**2.43** We do not consider that this proposal will remove any necessary protections.

## Rights and freedoms

**2.44** As the changes we propose are purely beneficial we do not believe that they would prevent anyone from exercising an existing right or freedom. We would welcome your views as to whether we are correct in thinking that our proposals do not remove any rights or freedoms that anyone could reasonably expect to continue to enjoy.

Proposal 7. Remove the restriction (Section 8(3), Lloyd's Act 1982) that requires managing agents generally to accept business only from a Lloyd's broker.

## Non-legislative solutions

**2.45** The policy objective of this proposal is to give managing agents freedom to deal with intermediaries other than Lloyd's brokers, or to deal directly with insureds under the conditions permitted by the Council of Lloyd's. Section 8(3) of Lloyd's Act 1982 prevents underwriting members at Lloyd's accepting or placing business from or through anyone other than a Lloyd's broker, or "such other person as the Council may from time to time by byelaw permit". Though the Council has some power to extend the categories of intermediaries who are given access to the Lloyd's market under these provisions (by, for example, recognising a larger class of intermediaries as Lloyd's brokers, or granting limited permission to underwriters to use other intermediaries), that power is not unlimited. It is not possible to give the Council greater freedom in determining who has access to the Lloyd's market without repealing the restrictions in section 8(3) of the Act. There is no non-legislative means of doing this.

## Proportionality

**2.46** These provisions will remove the statutory restriction limiting the intermediaries with whom managing agents can deal. This will enable the Council of Lloyd's to open up the Lloyd's market to other intermediaries, and to allow managing agents to deal directly with insureds. Lloyd's brokers will not have an exclusive right of access to the Lloyd's markets. However, it is some time since Lloyd's brokers have been the only people with whom managing agents can do business. The Council has, in its underwriting byelaw, given permission to members to deal with other regulated intermediaries in relation to particular classes of business, where the conditions laid down in the byelaw are satisfied. Removing the restriction in section 8(3) of the Act will allow the Council to go further in extending access to the market. However the Council will retain the power to impose any restrictions it considers necessary to ensure that managing agents only do business with intermediaries who have the necessary qualifications. At the same time, we are retaining the class of "Lloyd's broker". Intermediaries within this category will be able to use the title to demonstrate their specialist knowledge of the Lloyd's market. Individuals working as Lloyd's brokers will continue to be able to become working members of the Society, taking part in its governance, and playing a valuable role in the further development of the market. We consider that the effect of the provision is proportionate to the policy objective.

## Fair balance

**2.47** We do not consider that this proposal will have any adverse effect on stakeholders or the general public.

## Necessary protections

**2.48** We do not consider that this proposal will remove any necessary protections for members of the Lloyd's market, Names or policyholders generally. When Lloyd's Act 1982 was passed, insurance brokers were subject to limited regulation under the Insurance Brokers (Registration) Act 1977. It was felt essential for the Society to impose additional regulation on Lloyd's brokers, to ensure that high standards were maintained. The position has since changed significantly. All insurance intermediaries, including Lloyd's brokers, are now subject to regulation by the Financial Services Authority, which is responsible for regulating brokers covered by the Insurance Mediation Directive. All those carrying out activities relating to the sale and administration of insurance products must be authorised by the FSA, and must comply with the relevant FSA rules (such as the Conduct of Business rules). The extent of the Society's supervision of Lloyd's brokers has been significantly reduced in the light of the new regulatory framework applying to all intermediaries, and the statutory restriction is no longer necessary to ensure that managing agents only deal through properly regulated brokers. Lloyd's will, however, still have the power to impose restrictions on managing agents regulating the conditions under which they may do business with intermediaries, and what intermediaries they may deal with; and the terms under which they may approach insureds directly.

## Rights and freedoms

**2.49** Our proposal will not affect Lloyd's brokers' own access to the Lloyd's market. The class of Lloyd's broker is being retained, as are the rights of those working as Lloyd's brokers to become working members of the Society, and to take part in its governance. They will be faced with increased competition from other insurance intermediaries, and from managing agents wishing to deal directly with insureds. This competition already exists to some degree, as Lloyd's has permitted managing agents to do business through intermediaries other than Lloyd's brokers in certain circumstances. We do not therefore consider that our proposals will prevent Lloyd's brokers, or any other member of the Lloyd's community, from exercising an existing right or freedom. We would welcome your views as to whether we are correct in thinking that our proposals do not remove any rights or freedoms that anyone could reasonably expect to continue to enjoy.

Proposal 8. Repeal the "divestment" rules (Sections 10-12, Lloyd's Act 1982).

## Non-legislative solutions

**2.50** The policy objective of this proposal is to remove the overly restrictive provisions in sections 10 to 12 of Lloyd's Act 1982 to allow Lloyd's to institute new controls, which are more compatible with the current regulatory approach to managing conflicts of interest. There is no non-legislative way of achieving this policy objective as it is necessary to repeal the sections in question.

## Proportionality

**2.51** Sections 10 to 12 of Lloyd's Act 1982 seek to prohibit any form of association between Lloyd's brokers and managing agents, in order to prevent any form of conflict of interest arising between brokers and managing agents. The complexity of the existing

provisions adds significantly to the costs imposed on those seeking to become Lloyd's brokers or managing agents.

**2.52** Although the sections aim to provide an exhaustive list of potential associations between brokers and agents to be prohibited, it is possible for corporate structures to be designed which do not fall within the precise terms of the sections. This means the rules are only effective in preventing the particular associations defined in the 1982 Act. Further it is not practicable to attempt to prohibit associations between managing agents and all insurance intermediaries. The sections therefore cannot provide any safeguard in relation to conflicts of interest which may arise from such associations once the restriction in section 8(3) is removed in line with proposal 7.

**2.53** However, both managing agents and intermediaries dealing with them are already subject to regulation by the FSA, including its rules on the management of conflicts of interest. All businesses are required to manage conflicts of interest fairly under principle 8 of the FSA's Principles for Business<sup>7</sup>. Managing agents are required to establish and maintain adequate systems and controls to manage the risks to which their syndicate's insurance business is exposed, including in particular transactions which may give rise to a conflict of interest.

**2.54** In addition, it is proposed that the existing regulatory framework will be supplemented by requirements for managing agents to disclose any associations they may have with intermediaries, and the amount of business done through associated intermediaries to ensure that the Society is able to monitor such associations and ensure that Names are fully informed of them. We consider that the effect of these proposals is proportionate to the policy objective.

## Fair balance

**2.55** We do not consider that this proposal will have any adverse effect on stakeholders or the general public.

## Necessary protections

**2.56** For the reasons set out above, we do not consider that this proposal will remove any necessary protection.

## Rights and freedoms

**2.57** As the changes we propose are purely beneficial we do not believe that they would prevent anyone from exercising an existing right or freedom. We would welcome your views as to whether we are correct in thinking that our proposals do not remove any rights or freedoms that anyone could reasonably expect to continue to enjoy.

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<sup>7</sup> See section PRIN 2.1 of the FSA Handbook, which can be found at <http://fsahandbook.info/FSA/html/handbook/PRIN/2/1>.



# 3

## HOW TO RESPOND

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**3.1** The LRRRA requires wide consultation of all proposals for LROs. Responding to this consultation document is your first and main opportunity to make your views known. Comments are invited from all interested parties, and not just from those to whom the document has been sent (see Annex D).

**3.2** Any comments, or technical queries, should be sent by 30 May 2008 to

Richard Duncan  
Financial Stability and Risk team  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ

Email: [Richard.Duncan@hm-treasury.x.gsi.gov.uk](mailto:Richard.Duncan@hm-treasury.x.gsi.gov.uk)  
Telephone (Treasury switchboard): 020 7270 5000

**3.3** Further copies of this document may be obtained from

Correspondence and Enquiry Unit  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ

Email: [public.enquiries@hm-treasury.gov.uk](mailto:public.enquiries@hm-treasury.gov.uk)  
Tel: 020 7270 4558  
Fax: 020 7270 4861

An electronic version (in pdf or html) can be downloaded from the Treasury website at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)

## DISCLOSURE OF RESPONSES

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**3.4** Normal practice will be for details of representations received in response to this consultation document to be disclosed, and for respondents to be identified. While the LRRRA provides for non-disclosure of representations, the Minister will include the names of all respondents in the list submitted to Parliament alongside the draft LRO. The Minister is also obliged to disclose any representations that are requested by, or made to, the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances.

**3.5** You should note that:

- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too.

Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.

- In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party.

**3.6** Please identify any information which you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality.

### **Confidentiality and Freedom of Information**

**3.7** It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances.

### **CODE OF PRACTICE ON CONSULTATIONS**

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**3.8** This consultation document is based on the format recommended by the BRE for such proposals. The criteria applicable to all UK public consultations under the BRE Code of Practice on Consultation are set out overleaf. Further details on the Code can be obtained from <http://bre.berr.gov.uk/regulation/consultation/code/criteria.asp>

**3.9** Queries or complaints should be addressed to

Angela Carden  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ

E-Mail: [angela.carden@hm-treasury.x.gsi.gov.uk](mailto:angela.carden@hm-treasury.x.gsi.gov.uk)

**Consultation criteria**

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





# DRAFT LEGISLATIVE REFORM ORDER

*Draft Order laid before Parliament under section 14(1) of the Legislative and Regulatory Reform Act 2006, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2008 No. 0000**

### **REGULATORY REFORM**

#### **The Legislative Reform (Lloyd's) Order 2008**

<i>Made</i>	- - - -	2008
<i>Coming into force</i>	- -	2008

The Treasury, in exercise of the powers conferred by section 1 of the Legislative and Regulatory Reform Act 2006(a), makes the following Order.

For the purposes of section 3(1) of the Legislative and Regulatory Reform Act 2006, the Treasury—

- (a) considers that the conditions under section 3(2), where relevant, are satisfied;
- (b) has consulted in accordance with section 13(1) of that Act;
- (c) has laid a draft order and an explanatory document before Parliament in accordance with section 14(1) of that Act.

Pursuant to section 15 of that Act, the affirmative resolution procedure (within the meaning of Part 1 of that Act) applies in relation to the making of the Order.

In accordance with section 17(2) of that Act, the draft has been approved by resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

#### **Citation and commencement**

1. This Order may be cited as the Legislative Reform (Lloyd's) Order 2008 and shall come into force on the day after the day on which it is made.

#### **Interpretation**

2. In this Order “the Act” means Lloyd's Act 1982(b).

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(a) 2006 c. 51. Sections 1, 4, 11, 13, 24 and 26 of this Act have been amended by S.I.2007/1388.

(b) 1982 c. xiv.

## The Council

3.—(1) Section 3 of the Act (the Council) shall be amended as follows.

(2) In subsection (2)(c) omit the words “, whose appointments shall not take effect unless and until confirmed by the Governor for the time being of the Bank of England”.

(3) In subsection (5), paragraphs (ii) and (iii) shall cease to have effect.

## Chairman and Deputy Chairmen of Lloyd’s

4.—(1) In section 4 of the Act (Chairman and Deputy Chairmen of Lloyd’s) renumber the existing provision as subsection 4(1) of that section.

(2) In subsection (1)—

(a) insert after “annually elect” the words “by special resolution”, and

(b) omit the word “working”.

(3) After subsection (1) insert—

“(2) Subject to subsection (3) the person elected as the Chairman or Deputy Chairman of the Council may, but need not, be a member of the Society.

(3) Where the person elected as Chairman is not a working member of the Society, at least one of the Deputy Chairmen must be elected from among the working members of the Council.

(4) No-one who has served as Chairman for nine years (whether in consecutive periods or not) shall be eligible for re-election as Chairman.”

## The Committee

5.—(1) The Act shall be amended as follows.

(2) In section 2(1), omit the definition of “the Committee”.

(3) Section 5 shall cease to have effect.

(4) Section 6 shall be amended as follows—

(a) in the side-note to section 6, omit the words “and of the Committee”.

(b) in subsection (5), paragraphs (c) to (e) shall cease to have effect.

(c) subsections (6), (8) and (9) shall cease to have effect.

(d) in subsection (7), omit the words “or of the Committee”.

(e) in subsection (11), omit the words “or Committee” wherever they occur.

(5) Section 7(3) shall cease to have effect.

(6) In section 13(1), omit the words “, the Committee”.

(7) In section 15(2) omit from the words “Provided that” to the end of the subsection.

(8) Schedule 2 shall be amended as follows—

(a) in the opening words of Schedule 2, omit “and of the Committee”;

(b) in paragraph (6) omit the words “and of the Committee” on each occasion they occur;

(c) in paragraph (7) omit sub-paragraph (b) and the preceding “and”;

(d) in paragraph (8) omit the words “and the Chairman and Deputy Chairmen of the Committee”;

(e) in paragraph (10)(a) omit the words “or of sub-committees of the Committee”;

(f) in paragraph 10(b) omit the words “or the Committee”;

(g) in paragraph (11) for the words “the Committee or any other” substitute “any”.

6.—(1) Any regulation made by the Committee in the exercise of powers delegated to it under section 6(6)(a)(i) (as in force immediately before the coming into force of this Order) shall be deemed to have been made by the Council in the exercise of its powers under the Act, and shall continue in full force and effect unless and until revoked by the Council.

- (2) Anything required or authorised to be done by the Committee established by section 5 of the Act under the provisions of any enactment, subordinate legislation, instrument, trust deed, or other document may after this Order comes into force be done by the Council established by section 3 of the Act.

### **Powers of the Council**

7.—(1) Section 6 of the Act (Powers of the Council and the Committee) shall be amended as follows.

(2) In subsection (5) insert after paragraph (b)—

“(c) Committees, subcommittees or other bodies of persons (whose members need not be members of the Society), or

(d) any person (whether or not a member of the Society).”

(3) After subsection (5) insert—

“(5A) A delegation under subsection (5) may be made—

(a) by such means;

(b) to such an extent; and

(c) on such conditions or subject to such restrictions,

as the Council considers appropriate.

(5B) A delegation made under subsection (5) may authorise further delegation of the power or function delegated by the person or body to whom it is delegated.”

(4) In subsection (7)—

(a) for the words “subsections (5) and (6)” substitute “subsection (5)”;

(b) insert after “employees” the words “or officers”.

(5) In subsection (10)—

(a) for the words “under this section” substitute “under subsection (5)”;

(b) for “is revocable” substitute “may be amended or revoked”.

### **The Disciplinary Committee and the Appeal Tribunal**

8.—(1) Section 7 of the Act (The Disciplinary Committee and the Appeal Tribunal) shall be amended as follows.

(2) In paragraph (1)(a)(i), for the words “, provided that the majority of the members of any such Disciplinary Committee shall be members of the Society (who need not be members of the Council)” substitute “provided that the members of any such Disciplinary Committee shall include at least one person who falls within subsection (1A).”

(3) Insert after subsection (1)—

“(1A) a person falls within this subsection if he is—

(a) a working member of the Society;

(b) a director of a corporate member of the Society;

(c) an officer or employee of an underwriting agent or Lloyd’s broker who has been approved by the Financial Services Authority under section 59 of the Financial Services and Markets Act 2000(a);

(d) a person who has gone into retirement, but who immediately before retirement fell within paragraph (b) or (c) above.”

### **Insurance Business and Lloyd’s brokers**

9.—(1) The Act shall be amended as follows.

(2) In section 2(1), for the definition of “Lloyd’s broker” substitute—

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(a) 2000 c.8.

““Lloyd’s broker” means a partnership or body corporate permitted by the Council to describe itself as a Lloyd’s broker”.

(3) Section 8(3) shall cease to have effect.

(4) In section 8(4), for the words “(1) to (3)” substitute “(1) or (2)”.

(5) In Schedule 2 —

(a) after paragraph (12) insert

“(12A) For regulating the grant and renewal of permission to a partnership or body corporate to describe itself as a Lloyd’s broker and regulating the manner and circumstances in which such permission may be withdrawn;”

(b) after paragraph (19) insert—

“(19A) For regulating the conditions under which underwriting agents may accept and place business from or through intermediaries other than Lloyd’s brokers;

(19B) For regulating the manner and circumstances in which underwriting agents may transact insurance business otherwise than through an intermediary;”

## Divestment

10.—(1) Sections 10, 11 and 12 shall cease to have effect

(2) In section 2(2), the words “(except sections 10, 11 and 12)” shall be omitted.

[Name]

[Name]

[date 2008]

Two of the Lords Commissioners of Her Majesty’s Treasury

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order removes a number of burdens imposed on the Society of Lloyd’s, its members and those working in the Lloyd’s market under Lloyd’s Act 1982 (“the Act”).

Article 3 of the Order removes the prohibition in section 3(5)(ii) on working members of the Council being elected for a consecutive term, and the prohibition in section 3(5)(iii) on the Chairman and Deputy Chairmen being elected for more than two consecutive terms. It also removes the requirement under section 3(2)(c) for the nominated members of the Council to be approved by the Governor of the Bank of England.

Article 4 of the Order removes the requirement in section 4 of the Act that the Chairman and Deputy Chairmen may only be elected from among the working members of the Council. It amends that section to require elections to those offices to be made by special resolution of the Council, and to ensure that at least one of those offices will be held by a working member of the Council.

Article 5 of the Order repeals section 5 of the Act, which requires there to be a Committee of Lloyd’s, and removes all references to the Committee from the Act. Article 6 ensures that any regulations made by the Committee which remain in force are not affected by the abolition of that body, and ensures that decisions required to be taken by the Committee may instead be taken by the Council.

Article 7 amends the delegation powers in section 6(5) of the Act, which currently enable the Council to delegate certain powers and functions to the Committee and its officers by adding more general provision. A special resolution will continue to be required for any delegation under the new provisions, and the Council will not be able to delegate any power or function for which a special resolution is required.

Article 8 replaces the requirement in section 7(1)(a)(i) of the Act that a majority of the members of any disciplinary committee must be members of the Society with a requirement that disciplinary committees must contain at least one person falling within one of the classes listed in the new section 7(1)(c).

Article 9 repeals section 8(3) of the Act. That subsection prevents underwriting members from accepting or placing business from or through anyone other than a Lloyd’s broker or a person approved by the Council. Article

9 also amends Schedule 2 to give the Council express power to regulate the conditions under which underwriting agents may accept or place business from or through insurance intermediaries who are not Lloyd's brokers, and under which they may deal directly with the assured, and the grant, renewal and withdrawal of permission for a partnership or body corporate to use the title "Lloyd's broker".

Article 10 repeals sections 10 – 12 of the Act. This removes the prohibition on associations between managing agents and Lloyd's brokers.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at [ ].



# B

## PARTIAL IMPACT ASSESSMENT

Summary: Intervention & Options		
Department /Agency: HM Treasury	Title: Impact Assessment of the Legislative Reform (Lloyd's) Order 2008	
Stage: Consultation stage	Version: I	Date: 7 March 2008
Related Publications: Proposals for a Legislative Reform Order to amend Lloyd's Act 1982		

**Available to view or download at:**

<http://www.hm-treasury.gov.uk>

**Contact for enquiries: Richard Duncan Telephone: (Treasury switchboard): 020 7270 5000**

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

The governance arrangements at Lloyd's, which are currently set out in Lloyd's Act 1982, are now outdated in a number of respects and contain restrictions that create barriers to further development of the Lloyd's market. Reform of the rules is necessary to remove these obstacles to improving the effectiveness and efficiency of the governance and market frameworks at Lloyd's.

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

The Government's aim is to support the market reforms being pursued by Lloyd's by amending the Act to remove or reduce burdens resulting from the existing governance arrangements. The reforms will improve the coherence and transparency of Lloyd's governance and administrative arrangements, which will help Lloyd's to maintain and improve its competitive position.

**What policy options have been considered? Please justify any preferred option.**

There are two main options:

1. Do nothing: (this would require Lloyd's either to continue working within the constraints of the current rules or to introduce its own private Bill, which would potentially be a very time consuming and complex process); or
2. Use an LRO to modernise the rules, reduce administrative burdens and remove unnecessary restrictions on how Lloyd's organises its affairs.

Since there is a public interest in preserving the competitiveness of the UK's financial market, the Government believes it is appropriate to pursue a targeted set of reforms through an LRO. (See further discussion of this below.)


**When will the policy be reviewed to establish the actual costs and benefits, and the achievement of the desired effects?**

The policy will be reviewed 3 years from the date of implementation of the LRO.

**Ministerial Sign-off** For consultation stage Impact Assessments:

*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:



Date: 7 March 2008

## Summary: Analysis & Evidence

<b>Policy Option: LRO proposals</b>	<b>Description: See the evidence base for further analysis of the costs and benefits of each of the proposals.</b>
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COSTS	ANNUAL COSTS	Description and scale of <b>key monetised costs</b> by 'main affected groups' The proposals are deregulatory, and the package does not give rise to ongoing, additional overall costs. There will be costs associated with the new mechanism for monitoring conflicts of interest, but these will be minimal and more than offset by other savings and gains from the package.		
	<b>One-off</b> (Transition) <b>Yrs</b>			
	£ <i>De minimis</i>	<b>Average Annual Cost</b> (excluding one-off)	Total Cost (PV)      £ <i>De minimis</i>	
	£ <i>De minimis</i>			
Other <b>key non-monetised costs</b> by 'main affected groups'				
BENEFITS	ANNUAL BENEFITS	Description and scale of <b>key monetised benefits</b> by 'main affected groups' The main administrative savings arise from proposal 8. The biggest potential efficiency saving results from proposal 7.		
	<b>One-off</b> <b>Yrs</b>			
	£ <i>De minimis</i>	<b>Average Annual Benefit</b> (excluding one-off)	Total Benefit (PV)      £ 200,000 from administrative savings and £860 million for proposal 7	
	£ 23,000 from administrative savings and £100 million for proposal 7			
Other <b>key non-monetised benefits</b> by 'main affected groups' The main non-monetised benefits are the efficiency gains in the governance arrangements for Lloyd's and the gains from creation of a more open competitive framework regarding business access to Lloyd's and removal of the outdated divestment provisions. These non-monetised benefits stem from proposals 1, 2, 5, 6 and 8 and will have a significant positive impact, although they cannot be quantified.				

**Key assumptions/sensitivities, risks**

The estimates for administrative savings are based on information provided by Lloyds. The main uncertainties relating to these stem from the extent to which these costs will decrease following the reform proposals. The estimates for the market effects of proposal 7 are more uncertain and are based on broad assumptions relating to the extent the additional costs incurred in underwriting business in the Lloyd's market will decrease. A more accurate estimate of proposal 7 would only be obtained after the implementation of the reforms.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range</b> (NPV) £ 40,000 – 500,000 (admin) £ 0 – 1.7 bn (proposal 7)	<b>NET BENEFIT</b> (NPV Best estimate) £ 200,000 (admin) £ 860 million (proposal 7)
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<b>What is the geographic coverage of the policy?</b>	The proposals will be implemented in the UK.
<b>On what date will the policy be implemented?</b>	When the LRO comes into force.
<b>Which organisation(s) will enforce the policy?</b>	Lloyd’s and the Financial Services Authority.
<b>What is the total annual cost of enforcement for these organisations</b>	There will be enforcement costs (for Lloyd’s and the FSA) from the ongoing monitoring regarding conflicts of interest, but these will be minimal.
<b>Does enforcement comply with the Hampton principles?</b>	Yes.
<b>Will implementation go beyond minimum EU requirements?</b>	No.
<b>What is the value of the proposed offsetting measure per year?</b>	None.
<b>What is the value of changes in greenhouse gas emissions?</b>	None.
<b>Will the proposal have a significant impact on competition?</b>	There is no adverse effect on competition (see B.27). The proposals affecting brokers will help increase competition.

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Costings not calculated on this format				
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
No impact on Government admin burdens baseline		
Increase of £	Decrease £	<b>Net Impact £</b>

**Key:** Annual costs and benefits: Constant Prices (Net) Present Value

## EVIDENCE BASE

### Policy background: rationale for government intervention

**B.1** This consultation proposes six reforms to the governance arrangements and two market-related reforms at Lloyd's to modernise and streamline existing arrangements, and remove restrictions and unnecessary burdens. As regards the Council/other governance arrangements, the reforms will:

- provide more flexibility in arrangements for electing the Chairman and Deputy Chairmen of Lloyd's, and in the rules governing elections to Council;
- remove outdated rules and structures and provide more transparent and streamlined rules for delegation by the Council of non-reserved powers; and
- remove administrative burdens regarding approval processes and the selection of individuals to serve on Disciplinary Committees.

These reforms will allow Lloyd's, where appropriate, to align its governance practices to the Combined Code on Corporate Governance.

**B.2** As regards business burdens, the reforms will provide a more open framework regarding intermediation to Lloyd's, and remove outdated restrictions on associations between brokers and managing agents. This will enable Lloyd's to keep step with developments in the global markets for wholesale insurance, while ensuring that potential risks from the removal of restrictions on associations between brokers and managing agents are properly managed.

**B.3** It is clear that in a number of respects the current rules now create real constraints or pressure points, making it more difficult for Lloyd's to administer and govern the market in the optimal way. Being able to do so is important in enabling Lloyd's to maintain a competitive position in an increasingly global marketplace. (For example, the rules make it harder to attract the right people to lead the market; create unnecessary bureaucracy and duplication of effort; and constrain Lloyd's ability to respond to market changes.) This means the "do nothing" option is not attractive.

**B.4** It would be possible for Lloyd's to seek amendments to the Act by sponsoring a private Bill. However, this would be potentially a very time consuming and complex process since in contrast to an LRO, a Bill is more open-ended.

**B.5** The Government believes that modernisation of the London insurance market generally and improvements in efficiency are key challenges in preserving the competitive position of the UK financial markets. For this reason, it is appropriate to use an LRO to deliver a package of practical reforms in a timely way to help the Lloyd's market. The Government believes this approach will also command widespread support from stakeholders, particularly since several of the proposals build on solutions recommended by the Chairman's Strategy Group, which was approved by Lloyd's EGM in 2002.

### Costs and benefits

**B.6** The Government's proposals are based on a broad understanding of the costs and benefits – including savings from reductions or removal of burdens – that should, in principle, flow from the changes described in the discussion paper. Many of the actual

benefits and corresponding costs, however, cannot be known until the proposals themselves come to be implemented. The process of implementation will give rise to some one-off transitional costs for Lloyd's, but these will be minimal (for this reason they are not further itemised in the Impact Assessment). In most cases, the reforms will remove costs, but there will be new monitoring costs for Lloyd's in respect of the proposed byelaw governing conflicts of interest, and also for the FSA in monitoring compliance. These will also be minimal.

## Summary of key data

**B.7** Monetised estimates of impacts can be calculated for proposal 5 (reform of the delegation provisions); proposal 7 (repeal of section 8(3)); and proposal 8 (repeal of the divestment provisions). In summary these are

- Proposal 5 - an **annual saving of £3,000 (central estimate)**. This figure is based on the cost of obtaining opinions from Leading Counsel on the interpretation of the current delegation provisions (at an estimated cost of around £5,000-£10,000 each), annualised according to the number of such consultations sought by Lloyd's since 1982. This produces a range of £2,500 - £5,000 per annum.) As the reform of the delegation rules will make them clearer and easier to understand, this cost should substantially decrease and may be eliminated altogether. (Proposal 5 would also lead to efficiency gains as discussed below, but these effects are not possible to quantify and are therefore non-monetised.)
- Proposal 7 – an **annual saving of £100mn (central estimate)**. This figure is derived from Lloyd's survey data relating to property/casualty reinsurance business placed at Lloyd's, which indicated that as compared with the US and Bermuda, there is approximately 5% additional cost due to the need to use a London broker. In 2006, Lloyds wrote £16.4bn gross written premium. Assuming that 25%-50% of the non-UK business is placed with at least two brokers, then around £3bn-£6bn of business is written in this way. 5% of £3bn-£6bn amounts to £150m-£300m. While some additional costs are incurred in underwriting business in the Lloyd's market, in order to conduct business in the Lloyd's market a non-Lloyd's broker must have the ability to interface with Lloyd's and the London market's systems and processes. So the full 5% additional costs will not be entirely removed as a result of the repeal of section 8(3). However, Lloyds has estimated that there could be a net saving of perhaps £100m - £200m from the repeal of section 8(3). This estimate is very sensitive to assumptions, and a more accurate estimate could only be provided approximately 2-3 years after the reform had passed. Because of the uncertainty involved, the full range of savings is estimated between zero and £200 million, with a central estimate of £100m.
- Proposal 8 – an **annual saving of £20,000 (central estimate)**. This figure covers costs to Lloyd's legal department of checking compliance with the existing rules (estimated at c£1,000 annually<sup>8</sup>) plus an annualised average cost for seeking further legal advice in relation to applications of zero to £100,000 (assuming up to ten checks at an estimated cost of £5,000-£10,000 each). The figure also covers the cost to Lloyd's of £3,000-£6,000 that arises

<sup>8</sup> Costs for wages in relation to this estimate are derived from the 2007 ONS annual survey of hours and earnings where the mean gross weekly pay for full-time solicitors is given as £1002.4

from obtaining opinions from Leading Counsel on the interpretation of the divestment provisions, annualised according to the average number of such consultations sought by Lloyd's since 1982. The introduction of the disclosure mechanism once the divestment provisions are repealed will introduce new compliance costs, which will partially offset the savings from repealing these rules. The benefit to Lloyd's is conservatively estimated as a 50% saving on total current spending – that is a decrease in total administrative costs of between £2,000 and £54,000, with a central estimate of £20,000. The market may also benefit from reduced compliance costs on the removal of the divestment provisions, but there is no clear estimate of this. (In addition to the administrative benefits from proposal 8, there will be efficiency gains for managing agents and brokers, from the fact that associations are no longer prohibited. These benefits are not possible to quantify, however, and are therefore treated as non-monetised.)

**B.8** Proposals 3 and 4 will create administrative savings for the Bank of England and Lloyd's respectively, but these are estimated to be de minimis in monetary terms and are therefore not quantified. Proposals 1, 2 and 6 will give rise to important efficiency gains, but these benefits are treated as non-monetised.

*Further evidence in relation to reforms to the Council and other governance arrangements*

**Proposal 1:** Relax the rule requiring the Chairman and Deputy Chairmen of Lloyd's to be elected from the working members of the Council (Section 4, Lloyd's Act 82)

**B.9** Relaxing the rules on appointments to Chairmen/Deputy Chairmen will enable Lloyd's to recruit widely for the best possible candidate for these positions. This will help ensure Lloyd's continues to benefit from strong and effective strategic direction.

**B.10** In addition, the reform will potentially save time and expense over consideration of whether the technical requirements are or are not met for any particular candidate.

**Proposal 2:** Remove restrictions on elections to create greater flexibility and to permit greater alignment with standards of the Combined Code on Corporate Governance (Section 3(5)(ii)-(iii), Lloyd's Act 1982)

**B.11** The new rules for elections to Council will give the membership greater freedom to vote for the most appropriate people to fill Council posts. In particular, removal of the requirement that working members cannot serve consecutive terms will avoid unwanted discontinuity in office. While being difficult to quantify, the ability to elect the people most suitable for the role will have a positive impact on the business.

**Proposal 3:** Remove the requirement for prior approval from the Governor of the Bank of England for appointment of nominated members of Council (Section 3(2)(c), Lloyd's Act 1982)

**B.12** Removing the requirement for the Bank to approve Lloyd's nominated members will save the Bank operating a procedure that duplicates a process carried out by the FSA and therefore represents an unnecessary call on the Bank's resources. It will also

simplify the process for appointing nominated members of Council as far as Lloyd's (the Nominations, Appointments and Compensation Committee) is concerned. As now, the NACC will take prime responsibility for ensuring the quality of nominated members<sup>9</sup>, through the recommendations for appointments made to Council.

**Proposal 4:** Remove the provisions establishing the Committee (Section 5, Lloyd's Act 1982)

**B.13** Abolition of the Committee will remove the administrative inconvenience that arises from having to maintain the Committee and provide it with administrative support. (The Committee's business – though limited – requires some formalities – such as the annual election of the Committee Chairman/Deputy Chairmen).

**Proposal 5:** Reform the delegation rules (Section 6(5)-(6), Lloyd's Act 1982)

**B.14** Reform of the delegation rules is in part a consequence of abolishing the Committee. Going forward, the new rules will benefit Lloyd's by providing more transparent and flexible delegation rules. This will have several benefits. At a general level, it will provide greater clarity and more transparency regarding accountability in decision-making at Lloyd's. At a practical level, it will mean Lloyd's can choose the most appropriate route for setting up subordinate bodies and structures for day-to-day management of the market. (At the moment, as explained at 1.21, it is the agency powers that are used). The fact that the delegation rules will be clearer also means that the technical uncertainties about the scope of the current powers, which have prompted litigation (at a cost to Lloyd's of £10,000s) can be avoided.

**Proposal 6:** Relax rules on membership of disciplinary committees (Section 7(1)(a)(i), Lloyd's Act 1982)

**B.15** As well as updating the procedures to bring them into line with modern standards, relaxing the membership rules for Disciplinary Committees will have a positive practical benefit.

**B.16** The current rules require a majority of members of any Disciplinary Committee to be members of the Society and this means individual members – not corporate members. However, since 1982 when there were 20,000 individual members, there are now only around 2,000 actively underwriting individual members of the Society. (This includes those individuals now writing with limited liability.) This is a much smaller pool of people from which to draw individuals who are qualified<sup>10</sup> and, importantly, who are willing to serve on the committees. Recent experience in recruiting people to the panels from whom Disciplinary Committee members are drawn has shown that identifying suitable individuals is very difficult. Removing the requirement that a majority of the members of a Disciplinary Committee must be members of the Society will therefore remove the current administrative problems of ensuring the right quorum on Disciplinary Committees.

<sup>9</sup> Lloyd's publishes details of its Council members, including nominated members, in its Annual Accounts.

<sup>10</sup> This includes not only market expertise, but also having the necessary lack of conflicts of interest in a particular case

*Further evidence in relation to market-related reforms*

**Proposal 7:** Remove the restriction (Section 8(3), Lloyd's Act 1982) that requires managing agents generally to accept business only from a Lloyd's broker.

**B.17** The removal of the restriction at Section 8(3) will allow for greater competition, which should help reduce costs, to the benefit of policyholders and the market as a whole. The potential efficiency savings are estimated at zero to £200mn annually, with a central estimate of £100mn (see above).

**B.18** The proposed retention of a class of Lloyd's broker means that Lloyd's will continue to maintain a unit responsible for granting permission to use the title of Lloyd's broker – but one that in future is smaller and more focused. How that develops over time will depend on developments in the market and the demand from brokers to maintain a relationship with Lloyd's as a Lloyd's broker.

**B.19** For the brokers, there will be increased competition: however, as noted, increasing competition is already a factor for brokers and many firms have already diversified so that the Lloyd's activity is one among several markets where intermediation is carried out. In addition, for specialists there will continue to be the option to specialise as a Lloyd's broker and so preserve the firm's core business. Finally, it is worth noting that removal of the divestment provisions will open up new opportunities for brokers, and allow brokers to consider strategic associations with managing agencies, based on their own individual business strategy.

**Proposal 8:** Repeal the "divestment" rules (Sections 10-12, Lloyd's Act 1982).

**B.20** Removing the divestment provisions will reduce compliance and business costs associated with maintaining the existing barrier between brokers and managing agents. These arise from the requirement on Lloyd's to administer the rules, and brokers and managing agents to ensure also they are operating within the prescribed boundaries.

**B.21** The new disclosure mechanism, which it is proposed Lloyd's should introduce to help manage conflicts of interest alongside the FSA's regulatory regime, will also involve administrative costs. However, it is estimated that there will be a net saving of c50% for Lloyd's on the existing costs that arise from administering the current rules. A more accurate estimate can only be identified after the implementation of the reforms.

**B.22** Managing agents and brokers will also save costs as a result of the reforms. In addition, for managing agents, the proposed system for providing pre-transaction transparency on relationships with associated brokers should build on existing requirements and therefore only involve incremental additional compliance work. Similarly, the process of providing post-transaction reporting to members and the public should be achieved with no additional extra cost, since the aim is to utilise existing mechanisms to ensure transparency of information to members and to the public.

**B.23** As far as the FSA is concerned, the new monitoring mechanism will involve additional costs: however, these are likely to be negligible.

## Issues of equity and fairness

**B.24** The Government considers that these proposals will not bring disproportionate benefits or have a disproportionate effect on any particular groups.

## Small firms impact test

**B.25** The Government considers that the proposals will not have any significant impact on small firms.

## Human rights

**B.26** The Government considers that the proposals are compatible with the Convention rights protected under the Human Rights Act 1998.

## Competition assessment

**B.27** Application of the competition filter test shows that the proposed reforms will not have a material adverse effect on competition. Instead, the removal of the restriction at section 8(3) will allow for greater competition, the effects of which are estimated in the section “summary of key data” above.

## Enforcement, sanctions and monitoring

**B.28** As these changes constitute amendments to the statute governing Lloyd’s, Lloyd’s will be responsible under the Act (as amended by the LRO) for ensuring their appropriate implementation. The FSA will continue, in accordance with its principles for businesses, to review in a risk-based manner the arrangements that firms have in place to identify, manage fairly and where appropriate, mitigate actual or potential conflicts of interest.

**B.29** In line with standard practice, the Government will review the implementation of the proposed rules after three years.

## Specific Impact Tests: Checklist

The table below confirms which specific impact tests have been considered for this consultation.

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	Yes	No
Rural Proofing	No	No



# LEGISLATIVE REFORM ORDERS - PARLIAMENTARY CONSIDERATION

## INTRODUCTION

**C.1** These reform proposals in relation to Lloyd's Act 1982 will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by making a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRRA). LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on these reform proposals as measures that might be carried forward by a LRO.

## POSSIBLE PARLIAMENTARY PROCEDURE

**C.2** The Minister can recommend one of three alternative procedures for Parliamentary scrutiny dependent on the size and importance of the LRO. The negative resolution procedure is the least onerous and therefore may be suitable for LROs delivering small regulatory reform. The super-affirmative procedure is the most onerous involving the most in-depth Parliamentary scrutiny. Although the Minister can make the recommendation, Parliamentary Scrutiny Committees have the final say about which procedure will apply.

### Negative Resolution Procedure

This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if neither House of Parliament has resolved during that period that the LRO should not be made.

### Affirmative Resolution Procedure

This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if it is approved by a resolution of each House of Parliament.

### Super-Affirmative Resolution Procedure

This is a two-stage procedure during which there is opportunity for the draft LRO to be revised by the Minister.

This allows Parliament 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft LRO, or either House may make a resolution with regard to the draft LRO.

If, after the expiry of the 60 day period, the Minister wishes to make the LRO with no changes, he must lay a statement. After 15 days, the Minister may then make an LRO in the terms of the draft, but only if it is approved by a resolution of each House of Parliament.

If the Minister wishes to make material changes to the draft LRO he must lay the revised draft LRO and a statement giving details of any representations made during the scrutiny period and of the revised proposal before Parliament. After 25 days, the Minister may only make the LRO if it is approved by a resolution of each House of Parliament.

**C.3** Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the LRO. If one of the Parliamentary

Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.

**C.4** HM Treasury believes that affirmative resolution procedure should apply to this LRO. Though the Order we wish to make is not complex, and is limited in its effects to the Society of Lloyd's and those working in the Lloyd's market, this is the first time on which an order under the Legislative and Regulatory Reform Act 2006 is being used to amend a local Act. Accordingly we consider that it is appropriate for each House of Parliament to affirm the Order.

## Legislative Reform Proposals

**C.5** This consultation document on amending Lloyd's Act 1982 has been produced because the starting point for LRO proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

**C.6** Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document, which must:

1. Explain under which power or powers in the LRRRA the provisions contained in the order are being made;
2. Introduce and give reasons for the provisions in the Order;
3. Explain why the Minister considers that:
  - There is no non-legislative solution which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
  - The effect of the provisions are proportionate to the policy objective;
  - The provisions made in the order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
  - The provisions do not remove any necessary protection;
  - The provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
  - The provisions in the proposal are not constitutionally significant; and
  - Where the proposals will restate an enactment, it makes the law more accessible or more easily understood.
4. Include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;
5. Identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and

6. Give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

**C.7** On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative and affirmative resolution procedure and 60 days under super-affirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them either from HM Treasury or by visiting the BRE's website at:

<http://bre.berr.gov.uk/regulation/reform/orders/consultations/index.asp>

## Parliamentary scrutiny

**C.8** Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

**C.9** Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:

- appear to make an inappropriate use of delegated legislation;
- serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
- serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- secure a policy objective which could not be satisfactorily secured by non-legislative means;
- have an effect which is proportionate to the policy objective;
- strike a fair balance between the public interest and the interests of any person adversely affected by it;
- do not remove any necessary protection;
- do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- are not of constitutional significance;
- make the law more accessible or more easily understood (in the case of provisions restating enactments);
- have been the subject of, and takes appropriate account of, adequate consultation;
- give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant, such as defective drafting or failure of the department to provide information where it was required for elucidation;

- appear to be incompatible with any obligation resulting from membership of the European Union;

**C.10** The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

**C.11** Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

**C.12** Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at

- Regulatory Reform Committee in the Commons; and
- Delegated Powers and Regulatory Reform Committee in the Lords.

**C.13** Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made or to veto the LRO.

**C.14** Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.

**C.15** Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the LRO. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the LRO is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft LRO he must lay the revised LRO and as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

## How to make your views known

**C.16** Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document, in this case Richard Duncan. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

**C.17** In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

**C.18** Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph C.6 above.

**C.19** The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and Regulatory Reform Committee  
House of Lords  
London SW1A 0PW  
Tel: 0207 219 3103  
Fax: 0207 219 2571  
mailto: dpr@parliament.uk

Regulatory Reform Committee  
House of Commons  
7 Millbank  
London SW1P 3JA  
Tel: 020 7219 2830/2833/2837  
Fax: 020 7219 2509  
mailto: regrefcom@parliament.uk

### **Non-disclosure of responses**

**C.20** Section 14(3) of the LRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

**C.21** The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

### **Information about third parties**

**C.22** If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.

**C.23** The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.



# D

## LIST OF CONSULTEES

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### **Lloyd's of London**

Lloyd's of London and its members

### **Lloyd's market participants**

Lloyd's managing agents

Lloyd's brokers

Lloyd's members' agents

### **Industry/trade associations**

Association of Lloyd's Members

Association of British Insurers

Association of Investment Companies

Association of Private Clients Investment Managers and Stockbrokers

British Bankers Association

Chartered Insurance Institute

City of London Law Society

Confederation of British Industry

Federation of Small Business

Financial Markets Law Committee

High Premium Group

Institute of Insurance Brokers

Insurance Institute of London

International Underwriting Association of London

International Union of Aviation Insurers

Investment Management Association

Law Society of England and Wales

Law Society of Scotland

Law Society of Northern Ireland

Lloyd's Market Association

Lloyd's Market Insurance Brokers' Committee

London Investment Bankers Association

London Stock Exchange

### **Other Government Departments/public sector**

Bank of England  
Cabinet Office  
Department of Business, Enterprise and Regulatory Reform  
HMRC  
Financial Services Authority  
Welsh Assembly Government  
Scottish Executive  
Small Business Service

### **Individuals**

Christopher Stockwell (NACDE)  
Leon Metcalfe (Cotesworth Action Group)  
D W Mann  
Julian West



## RESPONSE FORM

### Respondent Details

Name:

Address:

Postcode:

Tel:

Fax:

Email:

**Please return by 30 May 2008 to:**

Richard Duncan

Financial Stability and Risk team

HM Treasury

1 Horse Guards Road

London SW1A 2HQ

Fax: 0207 – 451 – 7524

E-Mail: richard.duncan@hm-treasury.x.gsi.gov.uk

1. Do you think the proposals will remove or reduce burdens as explained in Chapter 1 above?

Comments:

2. Do you have views regarding the expected benefits of the proposals as identified in Chapter 1 of this Consultation Document and addressed in the partial Impact Assessment attached as Annex B?

Comments:

3. If there is any empirical evidence that you are aware of that supports the need for these reforms, please provide details here.

Comments:

4. Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals are intended to address?

Comments:

5. Are the proposals put forward in this consultation document proportionate to the policy objective?

Comments:

6. Do the proposals put forward in this consultation document, taken as a whole, strike a fair balance between the public interest and any person adversely affected by it?

Comments:

7. Do the proposals put forward in this consultation document remove any necessary protection?

Comments:

8. Do the proposals put forward in this consultation document prevent any person from continuing to exercise any right or freedom which he/she might reasonably expect to continue to exercise, as explained in Chapter 2 above? If so, please provide details.

Comments:

9. Do you consider the provisions of the proposal to be constitutionally significant?

Comments:

10. Do the proposals put forward in the consultation document make the law more accessible and easily understood?

Comments:

11. Do you agree that the proposed Parliamentary resolution procedure (as outlined in Annex C above) should apply to the scrutiny of this proposal?

Comments:

12. Do you have any other comments in relations to the proposals?

Comments:



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