



Department of Trade and Industry

# REMOVING THE 20 PARTNER LIMIT

**A CONSULTATION DOCUMENT**

**4 April 2001**

**URN 01/752**

## CODE OF PRACTICE ON WRITTEN CONSULTATIONS

The following criteria apply to all UK national public consultations, and have been applied to this consultation paper.

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

If you wish to make any comments about the handling of this consultation, please contact:

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Further information about this code of practice can be found at:  
[www.cabinet-office.gov.uk/servicefirst/index/consultation.htm](http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm).

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## SUMMARY

1.1 On 27 March 2000, Small Business and E-Commerce Minister Patricia Hewitt announced proposals to cut red tape on business and modernise the law. One of those proposals was to scrap the limit on the number of partners allowed in a partnership.

1.2 Section 716(1) of the Companies Act 1985 prohibits the formation of partnerships with more than 20 partners. This has its origins in the middle of the 19th century. This prohibition is subject to certain exemptions, contained in 716(2), which allow solicitors, accountants (of a partnership, which is eligible for appointment as a company auditor), members of a recognised stock exchange, and anyone else prescribed by regulations to organise themselves as a firm with more than 20 partners.

1.3 A similar prohibition exists for limited partnerships. Section 4(2) of the Limited Partnerships Act 1907 states that a limited partnership shall not consist of more than twenty persons. Section 717<sup>1</sup> of the Companies Act 1985 then provides for exemptions to that prohibition - again for solicitors, accountants, members of a recognised stock exchange, and anyone else prescribed by regulations.

1.4 For both partnerships and limited partnerships, regulations have been made over the last thirty-odd years which have added other professionals, such as surveyors, architects, estate agents, insurance brokers and town planners, to the list of exemptions. Such changes have been demand-driven, but this piecemeal approach now merits a complete review in the light of changes in business practice and organisation, the publication of the Law Commissions' consultation paper on Partnership Law<sup>2</sup> and the Myners Review of Institutional Investment<sup>3</sup>. One of the proposals from the Law Commissions' was the abolition of the 20 partner limit for partnerships. This recommendation received widespread support from consultees.

1.5 Most recently the Myners Review of Institutional Investment recommends increasing significantly the limit on the maximum number of partners in a limited partnership.

1.6 This consultation thus puts forward proposals to repeal sections 716 and 717 of the Companies Act 1985, and the reference to twenty persons in section 4(2) of the Limited Partnerships Act 1907.

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<sup>1</sup> The full text of sections 716 and 717 Companies Act 1985 and section 4 Limited Partnerships Act 1907 can be found at **Annex B**.

<sup>2</sup> Paragraphs 5.51 to 5.61 of the Law Commissions' report, which deal with abolition of the 20 partner limit, can be found at **Annex C**.

<sup>3</sup> Final Report of the Myners Review of Institutional Investment. 6 March 2001.

1.7 Consultees are asked, in particular, to comment on the following areas:

- **Does the 20 partner limit on partnerships, limited partnerships, unregistered companies and associations place a burden on business being carried on through these entities?**
- **Can you provide evidence of how the limit creates a burden?**
- **What use is it envisaged might be made of enlarged partnerships and limited partnerships?**
- **Would costs or savings accrue from removing the 20 partner limit as proposed? If so, please give an indication of what these costs or savings might be. [NB: A Regulatory Impact Assessment is at Annex F]**
- **Do you have any concerns that removal of the limit may also remove necessary protections? If so, please can you specify what these might be.**
- **Do you think that the specialist uses made of limited partnerships raise different issues of necessary protection?**

## HOW TO REPLY

2.1 Comments should be sent by **4 July 2001** to:

**Bill Murphy**  
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**Department of Trade and Industry**  
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**william.murphy@dti.gov.uk**

2.2 **Your response to this consultation document may be made publicly available in whole or in part at the department's discretion. If you do not wish all or part of your response (including your identity) to be made public, you must state in the response which parts you wish us to keep confidential. Where confidentiality is not requested, responses may be made available to any enquirer, including enquiries outside the UK, or published by any means including on the internet.**

2.3 One option for giving effect to these proposals is by a Regulatory Reform Order under the Regulatory Reform Bill, which is before Parliament at the time of writing. Further detail is given at 4.3 and Annex A below. While the Bill provides for representations to be made in confidence, no respondent will be able to exclude their name from the list submitted to Parliament alongside the draft Order. You should also note that, if you request that your response should not be disclosed:

- The Minister will not disclose what you say but may disclose the content of your representation in such a way as to anonymise it.
- The scrutiny Committees (see paragraphs 6 to 11 of Annex A) will be able to request sight of your representation as originally submitted. 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 only be used rarely and on an exceptional basis.

### **Company Law Review (CLR)**

2.4 This consultation is separate from the longer-term fundamental review of core company law. That wider review, announced by the Department in March 1998, has the aim of simplifying and modernising company law to create a framework for modern competitive companies for the 21<sup>st</sup> century. Partnership law is one of the areas being examined within the CLR. However,

the Government has always made it clear that it would proceed with the reform of company law where the circumstances made a good case for change, ahead of the final outcome of the review, which is not due until 2001.

### **Additional copies**

2.5 This document is available electronically at [www.dti.gov.uk/cld.condocs.htm](http://www.dti.gov.uk/cld.condocs.htm). You may also photocopy it if you wish, or additional hard copies may be obtained by calling 020 7215 0232.

## THE NATURE OF THE BURDEN

3.1 Those partnerships which are not covered by any of the exemptions contained in, or in regulations made under, sections 716 and 717 of the Companies Act 1985 must restrict the organisation of their firm to 20 partners or less, either indefinitely or until such a time as any formal application for exemption made to the Secretary of State for Trade and Industry is accepted, and appropriate exempting regulations passed.

3.2 Clearly, 20 partners is an arbitrary limit which may have no relevance to the circumstances of the firm. It may prevent the expansion of the firm - through the direct recruitment of new partners who may bring new expertise and/or additional investment, or through merging with another business. In other cases it will add cumbersome and costly bureaucracy to the running of the firm since a way round the limit will be sought. The Law Commissions point to the use of parallel partnerships, a trustee or nominee partner holding for two or more beneficiaries, or a corporate partner with two or more shareholders<sup>4</sup>.

3.3 Alternatively a firm may seek an exemption by making a formal application to the Department. There will be costs involved in putting together an application. Moreover, it may be that some firms are dissuaded even from this since existing exemptions are specifically for regulated professions.

3.4 The consequence of a breach of the 20 partner limit is an illegal partnership. This seems a disproportionate penalty given that the nature of the "crime" may be minor. The consequences of an illegal partnership can be wide-reaching, and will take effect even if the partners were unaware of the illegality. An illegal partnership is incapable of existing, since its illegality will cause its dissolution, and any agreement between the partners will consequently be illegal. Since the 20 partner limit is contained in the Companies Act rather than the Partnership Act 1890 this is arguably a trap for the unwary.

3.5 There is also the secondary issue of the nature of existing exemptions. These usually set a limit on the number of non-regulated professionals in exempt firms. These limits are becoming old-fashioned in a modern commercial world, which relies on multi-disciplinary businesses, and they may act as a barrier to natural evolution.

3.6 Finally, the burden of the 20 partner limit looks increasingly inequitable and indefensible in the light of the implementation of the Limited Liability Partnerships Act 2000, which sets no limit on the potential number of members.

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<sup>4</sup> Paragraph 5.59, Annex C

## THE PROPOSAL

4.1 Our intention is to remove entirely the prohibitions contained in section 716 of the Companies Act 1985 and section 4(2) of the Limited Partnerships Act 1907. This would remove the limit of 20 partners for partnerships and limited partnerships.

### Unregistered companies, associations and OEICS

4.2 Section 716 is not, though, limited in its application to partnerships, but also refers to unregistered companies (ie companies not registered under the Companies Act) and associations, formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company or association<sup>5</sup>. Reference is also made to Open-Ended Investment Companies (OEICs) at 716(2)(e), and at 716(1) (where it is with respect to OEICs that reference is made to regulations made under the Financial Services and Markets Act 2000). While the reference to unregistered companies and associations ensures that they too are subject to the 20 member limit, the purpose of the reference to OEICs is to exclude them from the limit. We do not, anticipate, therefore, that repeal of the provision will cause difficulties for OEICs. We discuss below the implications for unregistered companies and associations of removing the 20 partner limit.

### Mechanism by which repeal may be achieved

4.3 Repeal may be achieved either by primary legislation through introduction of a Bill into Parliament as Parliamentary time permits, or, if appropriate, through a Regulatory Reform Order under legislation proposed in the Regulatory Reform Bill. **Annex A** sets out greater detail on Regulatory Reform proposals and the mechanism for their consideration. Essentially, however, proposals must be aimed at removing or reducing a burden without also removing any necessary protection.

4.4 This consultation is concerned with the law in Great Britain, and any repeal will apply only to England, Wales and Scotland. It will be for the Northern Ireland Assembly to decide what is appropriate for Northern Ireland.

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<sup>5</sup> Section 716(5) further exempts bodies approved for the purposes of the Marine and Aviation (War Risks) Act 1952 as re-insurers of war risks.

## NECESSARY PROTECTION

5.1 Paragraphs 5.52 to 5.56 of the Law Commissions' Report explain the origin and purpose of the 20 member limit as being a desire to prevent the abuses perpetrated by certain deed of settlement companies in the 18<sup>th</sup> and 19<sup>th</sup> centuries. Limitation on the number of partners first arose in the 1800s in the context of the difficulty of joining in action all of a large and fluctuating body of members in deed of settlement companies. As a result, the Joint Stock Companies Act 1844 provided a limit of 25 partners, which was subsequently reduced to 20 by the Joint Stock Companies Act 1856. This has been the position ever since.

5.2 The main type of association formed for the purpose of gain is the partnership. A partnership is defined by the Partnership Act 1890 as "the relation which subsists between persons carrying on a business in common with a view of profit". Every partner is an agent of the firm, and the acts of a partner bind the firm. Each partner is liable jointly and severally with the other partners for all debts and obligations of the firm.

5.3 But, as mentioned above, the 20 person limit applies not only to partnerships, but also to companies not registered under the Companies Act, and associations formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company or association. The nature of the "companies" and "associations" subject to the limit was considered in the case of Smith v Anderson ([1880] 15 Ch D 247). Lord Justice James had difficulty in understanding the distinction between a company and an association -

*"The word "association" in the sense in which it is now commonly used, is etymologically inaccurate, for "association" does not properly describe the thing formed, but properly and etymologically describes the act of associating together, from which act of associating there is formed a company or partnership."*

5.4 In spite of this difficulty, Lord Justice James went on to draw the conclusion that the companies and associations which the provision was intended to cover were combinations in which the partners can change without consent between the partners or novation as regards the creditors, ie special sorts of partnership.

5.5 As the Law Commissions point out<sup>6</sup>, the original rationale for the limitation to 20 partners no longer exists. Partnerships in England and Wales can sue in the firm name and, although the position is slightly less straightforward in Scotland, a large number of partners would still not cause

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<sup>6</sup> Paragraphs 5.52 to 5.57, Annex C

procedural difficulties for the plaintiff. Other arguments are sometimes suggested, though, to support the limitation on partners, and these too need considering here.

5.6 The Law Commissions' received a total of 76 responses to their consultation paper. Of these, 31 respondents addressed the issue of the 20 partner limit. All 31 respondents were in favour of the Law Commissions' proposal to remove the 20 partner limit.

5.7 Reference is often made to the special relationship existing between partners, and the potential for that relationship to be impaired once the size of the firm exceeds a level where one partner may comfortably know all the others. The unlimited liability of the partners puts one partner at risk of losing his or her personal assets as a result of the actions of a fellow partner. A greater number of individuals may also introduce a proportionally greater risk of fraud. Confidence in one's fellow partner is therefore considered a primary concern. How can one have confidence in partners whom one might never have met?

5.8 Despite that apparent risk, however, it is the case that many professional firms have been operating with hundreds of partners for many years. Further, as noted earlier, many partnerships without a specific exemption from the 20 partner limit often find ways around the limit.

5.9 Are there reasons, though, why it might be appropriate for statute to seek to prevent firms from expanding the number of partners as they wish? From the point of view of the partners themselves, there seems to be no good reason why statute should prevent them from forming large partnerships, if that is what they wish. While it might be possible to make a case for a limit on partners on behalf of the unwary partner (who may go into partnership without fully appreciating the risks of joint and several liability), we do not believe this would outweigh arguments in favour of freedom of choice and flexibility.

5.10 Nor do we see good arguments for a limit on behalf of clients, customers or creditors of the partnership. It is not, in our view, inevitable that size should be an adverse contributing factor either to a firm's relationships with its clients or customers, or to its quality of service. Clearly, too, whatever the size of the partnership each partner will have unlimited liability, and risk claims against his or her personal assets. As a further protection for creditors and members, unregistered companies and associations are capable of being wound up by the court under Part V of the Insolvency Act 1986, and insolvent partnerships under the Insolvent Partnerships Order 1994 on the grounds of being unable to pay their debts, or if the court is of the opinion that it is just and equitable that they be wound up.

5.11 There remains the question of whether some types of firm might merit different treatment from others. Exemptions to the 20 partner limit have been made in the past on the basis that those granted the exemption were subject to professional or statutory regulation which set out standards of conduct and sanctions for misconduct, as well as requirements for partners to hold personal qualifications (although some exemptions also allowed a proportion of partners to be non-professionals). **Table A** at **Annex D** shows the extent of the exemptions. How far does professional regulation remain a legitimate consideration?

5.12 None of the reasons in favour of lifting the prohibition are specific to the professions. Moreover, the concept of professional regulation is itself changing down in the face of pressure for multi-disciplinary and multi-jurisdictional partnerships. So, for example, one of the recent statutory instruments made under s716(2)(d) reduced the proportion of actuaries in a firm who had to be members of the specified bodies from two thirds to a simple majority. It is noticeable, too, that there has been an increasing number of requests for exemptions, with 11 statutory instruments made during the 1990s, and three in 2000 alone.

5.13 Furthermore, if it is considered that partnerships and other entities need to be regulated, then this is best achieved through tailor-made provisions - for example, the Financial Services and Markets Act regulation of collective investment schemes (widely defined in section 235 as “*any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income*”). Those deed of settlement companies that perpetrated the frauds that led to the passing of the 1844 Act would have fallen squarely within this definition.

5.14 In addition, while the word “professional” is widely and regularly used, there is no real definition of what constitutes a professional. For example, accountants are often described as professionals, yet there is no statutory definition of an accountant, and no requirement for registration with one of the professional accountancy bodies. Even if one suggests that a professional is someone who is a member of a professional body, the requirements for, and consequences of membership vary widely from one body to another - some may require a minimum level of qualification, and carry out regular monitoring and supervision of their members’ actions, while others simply require a subscription payment. Setting out what kind of regulation was required would need complex and bureaucratic structures for which we can see no justification.

5.15 It is perhaps worth noting, too, that the Limited Liability Partnerships Act 2000 sets no limit on the number of members, nor does it restrict access to

professionals. This is pertinent because the internal structure of a limited liability partnership is expected to be modelled on that of a partnership (it is for members to agree the terms of their relationship with one another), but the conclusion was that there was no justification in either setting a limit on size or on restricting membership.

5.16 Finally, although section 716 does not contain any express provision in relation to its territorial scope of operation, it is considered that the section only applies to entities formed under the law of Great Britain<sup>7</sup>. So foreign partnerships, companies and associations are fully entitled to carry out activities in Great Britain while remaining governed by the law under which they were formed. The consequence of this is that partnerships or similar entities formed overseas, but operating in Britain, are not subject to the regime imposed by section 716, and are free to have as many members as they wish. This puts firms in Great Britain in an unnecessarily disadvantageous position.

5.17 Removing the prohibition on number of partners would have the secondary effect of allowing partnerships to be comprised of any combination of professionals and non-professionals<sup>8</sup>. We see little difficulty with this - in light of the arguments against restricting exemptions to professionals alone, it would be peculiar to set limits on the constitution of the internal membership of a firm.

### **Limited Partnerships**

5.18 The Limited Partnerships Act 1907 states that a limited partnership “*must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and who shall not be liable for the debts and obligations of the firm beyond the amount so contributed.*” In return for limited liability, limited partners may take no part in the management of the firm, and have no power to bind it. Limited partnerships must be registered with the Registrar of Companies.

5.19 Eleven years after the limit on number of partners in a partnership had been reduced to 20, the Limited Partnerships Act 1907 came into force including the same prohibition for limited partnerships. **Table B** at **Annex E** sets out the exemptions made to the 20 partner limit for limited partnerships. There are not as many as for partnerships, but, again, these will have been driven by demand, rather than the result of a specific policy initiative.

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<sup>7</sup> See section 745, which expressly states that the Act does not apply to companies registered or incorporated outside Great Britain.

<sup>8</sup> Though there may be restrictions resulting from other regulatory requirements.

5.20 There are far fewer limited partnerships than partnerships. There are 7,138 registered in England and Wales, of which it is estimated only 3 to 4,000 are live, and approximately 3,400 live limited partnerships registered in Scotland. Limited partnerships tend to be used for different purposes from partnerships - for example, for private equity investment, for agricultural tenancies, and by Lloyd's underwriters.

5.21 The Law Commissions' report on partnership law deals solely with the Partnership Act 1890. However, their terms of reference also require that they review the Limited Partnerships Act 1907. Work on this is underway, and the Commissions intend to consider the legal, practical and policy issues which are specific to limited partnerships. While we do not seek to anticipate the outcome of the Commissions' work, it is appropriate to raise here the issue of the 20 partner limit on limited partnerships.

5.22 Many of the arguments in favour of lifting the limit on partners in a partnership are also relevant here. Nor does the fact that a sleeping partner may have limited liability lead us to believe that retaining the limit would be justified since, as mentioned earlier, limited liability partnerships are able to be of any size. Our initial view, therefore, is that there is no justification for retaining the 20 partner limit on limited partnerships.

5.23 We would, though, be particularly interested to know whether consultees think that the more specialist uses made of limited partnerships, such as collective investment schemes, introduce different issues of "necessary protection" which need consideration here. We note, in particular in this context, that the recently published Myners Report on Institutional Investment recommends that the government should significantly increase the maximum number of partners permitted in a limited partnership. The limited partnership form is quite widely used as a vehicle for channelling institutional funds into private equity. It is attractive, as the Myners Report notes, because it is tax transparent (that is income and capital gains flow through the partnership untaxed), particularly important for tax exempt pension funds, and because the structure is flexible.

## **RIGHTS AND FREEDOMS**

6.1 It is not anticipated that this proposal would prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise.

- **Do you agree that the proposal does not raise rights and freedoms issue?**

## **NEW BURDENS**

7.1 The order that is proposed would not impose any new burdens.

## **COSTS, SAVINGS AND OTHER BENEFITS**

8.1 There should be savings accruing to businesses through removal of the 20 partner limit. These are difficult to quantify at present, and we wish, through this consultation, to obtain further information on what they might be. A draft regulatory impact assessment can be found at Annex F.

### REGULATORY REFORM PROPOSALS AND ORDERS: PARLIAMENTARY CONSIDERATION

#### Introduction

1. These reform proposals in relation to the removal of the 20 partner limit will require changes to primary legislation in order to give effect to them. There are two options for the way forward:
  - **Firstly**, the Government could introduce a Bill into Parliament, as Parliamentary time permits. **On that basis**, the Government would welcome comments on its proposals;
  - **Secondly**, the Government could consult now, respecting the requirements of the draft Regulatory Reform Bill, as laid before Parliament in a Command Paper (Cm 4713) published in April 2000. The proposals in this draft Bill would build on and enlarge the powers in the Deregulation and Contracting Out Act 1994 to make Deregulation Orders, and would allow reform proposals such as these to be implemented by a Regulatory Reform Order, subject to preliminary consultation and an extended Parliamentary scrutiny of any subsequently proposed Order. Under the draft Bill, if preliminary consultation is undertaken before the Bill is passed that would otherwise satisfy the requirements of the Bill, it would be allowed to count as a consultation under the Bill as enacted. **If appropriate, and provided that Parliament enacts the Bill substantially in the form in which it was laid before Parliament in Cm 4713**, the Government might then bring forward a proposal for a Regulatory Reform Order. **On that basis**, the Government also invites comments on these reform proposals in relation to removal of the 20 partner limit as measures that might be carried forward by a Regulatory Reform Order under the Bill at present before Parliament.

#### Regulatory Reform Proposals

2. Detailed information on the draft Regulatory Reform Bill can be found at <http://www.cabinet-office.gov.uk/regulation/index/bill.htm>
3. The starting point for regulatory reform 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 they have dealt with those concerns.

4. To that end, when the Minister lays proposals before Parliament under the proposed Bill (this can only happen after the Bill receives Royal Assent), he or she must also lay a report setting out:
  - the burden imposed by the existing law;
  - whether any of those burdens are proposed to be removed or reduced;
  - how the proposals otherwise further the other objects of the Bill (re-enacting proportionate burdens, introducing new but proportionate burdens, removing inconsistencies and anomalies);
  - whether there is 'necessary protection' and how it is to be continued;
  - how any reasonable expectation of the exercise of rights or freedoms is affected (if at all) and how the exercise can be continued;
  - how new burdens (if any) are both proportionate and, taking the proposals as a whole, strike a fair balance between the public interest and the interests of the persons affected by the new burdens;
  - whether any parts of the proposed Order are being designated as 'subordinate provisions', allowing them to be changed by less elaborate Parliamentary procedures in the future;
  - what cost savings or increases are expected, and why;
  - what other benefits there will be from the proposals;
  - details of the consultation process;
  - any representations received as a result of that consultation; and
  - The changes made as a result.
5. Under the proposed Bill, on the day the Minister lays the proposals and report, the period for Parliamentary consideration begins. It would last for 60 days, excluding Parliamentary recesses. If you wanted a copy of the proposals and the Minister's report, you would be able to get them either from the Government department concerned or by following the relevant links from the Cabinet Office's website at <http://www.cabinet-office.gov.uk/regulation/bill/index.htm>.

## **Parliamentary Scrutiny**

6. Both Houses of Parliament could be expected to make special arrangements to scrutinise regulatory reform proposals and orders. This is likely to involve the appointment of Select Committees in each House, on the lines of those scrutinising Deregulation Orders which would be superseded by Regulatory Reform Orders under the proposed Bill.
7. Subject to the terms of any Standing Order under which they were appointed, any such Committee might well consider in each case whether proposals:
  - a) appeared to make an inappropriate use of delegated legislation;
  - b) removed or reduced a burden or the authorisation or requirement of a burden;
  - c) continued any necessary protection;
  - d) had been the subject of, and taken appropriate account of, adequate consultation;
  - e) imposed a charge on the public revenues or contained provisions requiring payments to be made to the Exchequer or any Government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribed the amount of any such charge or payment;
  - f) purported to have retrospective effect;
  - g) gave rise to doubts whether they were within the powers granted by the Bill;
  - h) required elucidation or appeared to be defectively drafted;
  - i) appeared to be incompatible with any obligation resulting from membership of the European Union.

This list reflects the existing terms of reference. It is likely that they would be expanded to cover:

- whether any of the proposals could prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise and, if so, how he is to be enabled to continue to exercise that right or freedom;
- whether the proposals would have the effect of creating a burden affecting any person in the carrying on of an activity and, if so, how the conditions on proportionality in section 1(1)(c) and 3(2) are satisfied in relation to the burdens being created;

- whether any provisions of the proposed order are being designated as subordinate provisions for the purposes of section 4 and, if so, why they are being so designated.

Each Committee might take oral or written evidence to help it decide these matters.

8. It could then be expected to report:

- whether the Minister should proceed to lay a draft order in the same terms as the proposal, or
- whether amendment is necessary, or
- whether the order-making power should not be used (for example, because of the significance or sensitivity of the proposal).

Copies of Committee Reports, as Parliamentary papers, could be obtained through HMSO. They would also be made available on the Parliament website at <http://www.parliament.uk>.

9. Under the draft Bill, after the 60 days for Parliamentary consideration, the Minister would be able to lay a draft order before both Houses, this time for the approval of Parliament.
10. Subject to the terms of any Standing Order appointing it, a Committee might be expected to examine any draft order to see how far its views have been taken into account. It might then report, within 15 sitting days, whether the draft order should be approved or not, and it would then be for the relevant House itself to take its final decision.
11. Any final draft order would have to be approved by both Houses of Parliament before becoming law.

### **How To Make Your Views Known**

12. Your first and main opportunity is to make your views known to the relevant department as part of the Government's consultation process, and you should send your views to the person named in the consultation document. If, when the Minister lays proposals before Parliament, you feel that your concerns have not been adequately reflected, you are welcome to put your views before any Committee appointed by either House.
13. In the first instance, this should be in writing. The Committees would normally decide on the basis of written submissions whether to take oral evidence.

14. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 7 above.
15. The Government will inform all those responding to this consultation exercise of the contact details of any Committees appointed to scrutinise Regulatory Reform Orders, before proceeding to lay any draft Order that may arise from this consultation, if it decides to seek to legislate by this route.

### **Confidentiality**

16. The Bill provides at clause 6 what should happen when someone responding to the consultation exercise on a proposed order requests that their response should not be disclosed.
17. Generally, representations can be made in confidence but the fact that someone has made representations will always be disclosed to Parliament. However the Minister should not disclose the content of that representation without the express consent of the respondent 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 the anonymity of the respondent and any third party involved. Where a respondent has given 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.
18. The Bill also allows the scrutiny Committees access on request to the representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of regulatory reform orders. The fact that responses may be released to the Committees in this way will be made clear in the consultation document accompanying any proposed order.

**Regulatory Impact Unit  
Cabinet Office**

March 2001

**COMPANIES ACT 1985**

**716. Prohibition of partnerships with more than 20 members**

(1) No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by its individual members, unless it is registered as a company under this Act, [is incorporated by virtue of regulations made under the Financial Services and Markets Act 2000] or is formed in pursuance of some other Act of Parliament, or of letters patent.

(2) However, this does not prohibit the formation—

- (a) for the purpose of carrying on practice as solicitors, of a partnership consisting of persons each of whom is a solicitor;
- (b) for the purpose of carrying on practice as accountants, of [a partnership which is eligible for appointment as a company auditor under section 25 of the Companies Act 1989];
- (c) for the purpose of carrying on business as members of a recognised stock exchange, of a partnership consisting of persons each of whom is a member of that stock exchange;
- [(d) for any purpose prescribed by regulations (which may include a purpose mentioned above), of a partnership of a description so prescribed];

.....

- [(e) of an investment company with variable capital within the meaning of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.]

[(3) In subsection (2)(a)“solicitor”—

- (a) in relation to England and Wales, means solicitor of the Supreme Court, and
- (b) in relation to Scotland, means a person enrolled or deemed enrolled as a solicitor in pursuance of the Solicitors (Scotland) Act 1980.

(4) In subsection (2)(c)“recognised stock exchange” means—

- (a) The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, and

- (b) any other stock exchange for the time being recognised for the purposes of this section by the Secretary of State by order made by statutory instrument.]

(5) Subsection (1) does not apply in relation to any body of persons for the time being approved for the purposes of the Marine and Aviation Insurance (War Risks) Act 1952 by the Secretary of State, being a body the objects of which are or include the carrying on of business by way of the re-insurance of risks which may be re-insured under any agreement for the purpose mentioned in section 1(1)(b) of that Act.

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#### NOTES

Sub-s(1): words in square brackets inserted by the Financial Services and Markets Act 2000, s263, as from a day to be appointed.

Sub-s (2): words in square brackets in para (b) substituted by the Companies Act 1989 (Eligibility for Appointment as Company Auditor)(Consequential Amendments) Regulations 1991, SI 1991/1997, reg 2, Schedule, para 53(1),(3), as from 1 October 1991 subject to transitional provisions in reg 4 of those Regulations; para (d) inserted, and words omitted (as added by FSA 1986, s 212, Sch 16, para 22) repealed, by CA 1989, ss 145, 212, Sch 19, para 15, Sch 24, as from 1 April 1990; para (e) added by the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996, SI 1996/2827, reg 75, Sch 8, Pt I, para 8, as from 6 January 1997.

Sub-ss (3),(4): substituted by CA 1989, s 145, Sch 19, para 15, as from 1 April 1990.

Regulations: the following regulations are made, or have effect, under this section—

the Partnerships (Unrestricted Size) No 4 Regulations 1970, SI 1970/1319, as amended by SI 1992/1438 (prescribing partnerships consisting of persons not less than three-quarters of the total number of whom are registered under the Architects (Registration) Act 1931, or are recognised by the Council of Engineering Institutions as a Chartered Engineer or by the Royal Institution of Chartered Surveyors as a Chartered Surveyor); the Partnerships (Unrestricted Size) No 5 Regulations 1982, SI 1982/530 (prescribing partnerships consisting of persons not less than three-quarters of the total number of whom are members of the Chartered Institute of Loss Adjusters); the Partnerships (Unrestricted Size) No 6 Regulations 1990, SI 1990/1581 (prescribing partnerships of registered insurance brokers or enrolled bodies corporate (as defined in the Insurance Brokers (Registration) Act 1977, s 29)); the Partnerships (Unrestricted Size) No 7 Regulations 1990, SI 1990/1969 (prescribing partnerships consisting of persons not less than three-quarters of the total number of whom are members of the Royal Town Planning Institute); the Partnerships (Unrestricted Size) No 8 Regulations 1991, SI 1991/2729, as amended by SI 2000/1119 (prescribing multi-national partnerships within the meaning of the Courts and Legal Services Act 1990, s 89(9), including partnerships which include one or more registered European lawyers and which provide professional services in accordance with rules made under s31 of the Solicitors Act 1974); the Partnerships (Unrestricted Size) No 9 Regulations 1992, SI 1992/1028 (prescribing partnerships carrying on business as a member firm of The International Stock Exchange of the UK and the Republic of Ireland Ltd which is a member firm of that body by virtue of succeeding to the business of another partnership which was also a member firm); the Partnerships (Unrestricted Size) No 10 Regulations 1992, SI 1992/1439 (prescribing partnerships consisting of members the majority of whom are recognised by The Engineering Council as chartered engineers); and the Partnerships (Unrestricted Size) No 11 Regulations 1994, SI 1994/644 (prescribing partnerships formed for the purpose of carrying on business as patent or registered trade mark agents where each partner is entered on the register of patent agents or registered trade mark agents kept pursuant to the Copyright, Designs and Patents Act 1988, s 275 or 282); the Partnerships (Unrestricted Size) No 12 Regulations 1997, SI 1997/1937 (prescribing partnerships consisting of persons the majority of whom are members of the Institute of Professional Representatives before the European Patent Office); the Partnerships (Unrestricted Size) No 13 Regulations 1999, SI 1999/2464 (prescribing partnerships consisting of persons the majority of whom are either registered medical practitioners in general medical practice or, if not so registered, have been awarded diplomas, certificates and other evidence of formal qualifications the mutual recognition of which is provided for in Council Directive 93/16/EEC); the Partnerships (Unrestricted Size) No 14 Regulations 2000, SI 2000/486 (prescribing partnerships consisting of persons the majority of whom are members of the Royal Institution of Chartered

Surveyors, or members of a corresponding professional association in another EEA State); the Partnerships (Unrestricted Size) No 15 Regulations 2000, SI 2000/2711 (prescribing partnerships consisting of persons the majority of whom are either Fellows of the Institute of Actuaries or of the Faculty of Actuaries, or full actuary members of one or more of the European associations listed in the Schedule to the Regulations).

### **717. Limited partnerships: limit on number of members**

(1) So much of the Limited Partnerships Act 1907 as provides that a limited partnership shall not consist of more than 20 persons does not apply—

- (a) to a partnership carrying on practice as solicitors and consisting of persons each of whom is a solicitor,
- (b) to a partnership carrying on practice as accountants [which is eligible for appointment as a company auditor under [section 25] of the Companies Act 1989],
- (c) to a partnership carrying on business as members of a recognised stock exchange and consisting of persons each of whom is a member of that exchange,
- [(d) to a partnership carrying on business of any description prescribed by regulations (which may include a business of any description mentioned above), of a partnership of a description so prescribed.]

.....

[(2) In subsection (1)(a)“solicitor”—

- (a) in relation to England and Wales, means solicitor of the Supreme Court, and
- (b) in relation to Scotland, means a person enrolled or deemed enrolled as a solicitor in pursuance of the Solicitors (Scotland) Act 1980.

(3) In subsection (1)(c)“recognised stock exchange” means—

- (a) The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, and
- (b) any other stock exchange for the time being recognised for the purposes of this section by the Secretary of State by order made by statutory instrument.]

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#### NOTES

Sub-s (1): words in first (outer) pair of square brackets in para (b) substituted by the Companies Act 1989 (Eligibility for Appointment as Company Auditor)(Consequential Amendments) Regulations 1991, SI 1991/1997, reg 2, Schedule, para 53(1),(4), as from 1 October 1991 subject to transitional provisions in reg 4 of those Regulations and words in second (inner) pair of square brackets substituted by the Companies Act 1989 Part II (Consequential Amendments) Regulations 1995, SI

1995/1163, reg 2, as from 23 May 1995; para (d) inserted, and words omitted (as added by FSA 1986, s 212, Sch 16, para 22) repealed, by CA 1989, ss 145, 212, Sch 19, para 16, Sch 24, as from 1 April 1990.

Sub-ss (2),(3): substituted by CA 1989, s 145, Sch 19, para 16, as from 1 April 1990.

Regulations: the following regulations are made, or have effect, under this section—

the Limited Partnerships (Unrestricted Size) No 1 Regulations 1971, SI 1971/782 (prescribing limited partnerships consisting of persons not less than three-quarters of the total of whom are members of the Royal Institution of Chartered Surveyors or the Incorporated Society of Valuers and Auctioneers); the Limited Partnerships (Unrestricted Size) No 2 Regulations 1990, SI 1990/1580 (prescribing limited partnerships of registered insurance brokers or enrolled bodies corporate); the Limited Partnerships (Unrestricted Size) No 3 Regulations 1992, SI 1992/1027 (prescribing partnerships which are member firms of The International Stock Exchange of the UK and the Republic of Ireland Ltd).

## **LIMITED PARTNERSHIPS ACT 1907**

**4.-(2)** A limited partnership shall not consist [...] of more than twenty persons, and must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and who shall not be liable for the debts and obligations of the firm beyond the amount so contributed.

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### NOTE

Subs(2) was amended by s51(2) and Sch 7 Banking Act 1979.

## EXTRACT FROM LAW COMMISSIONS' REPORT ON PARTNERSHIP LAW<sup>9</sup>

### Partnership size restrictions: the 20 partner limit

5.51 Except for certain professional firms, partnerships are illegal if they have more than twenty partners.<sup>55</sup> The partnership is automatically dissolved by illegality if it exceeds this number.<sup>56</sup>

5.52 The origin and purpose of the rule lie in the use of deed of settlement companies in the eighteenth and nineteenth centuries. A deed of settlement was made between the subscribers and a trustee binding the members to observe the deed and declaring that the shareholders for the time being constituted the unincorporated company. The subscribers agreed to have a prescribed joint stock divided into a specified number of shares, which were transferable. The management of the company was transferred to a body of directors who held the company's property as trustees. In effect this represented a corporation with continuity of life and transferable interests. In the eyes of the law, however, it was nothing more than a large partnership with, in English law, no legal personality of its own.

5.53 To be sued at common law all the shareholders in the unincorporated deed of settlement company had to be joined in the action. An action in a court of equity was subject to more lenient rules.<sup>57</sup> The notion of suing and, in particular, levying execution against such a fluctuating body of members was fanciful. This difficulty could be, and was, used for improper purposes. The free transferability of the interests in these unincorporated companies effectively meant that members could achieve limited, or indeed nil, liability.

<sup>55</sup> See CA 1985, ss 716 and 717 and the 1907 Act, s 4(2) for limited partnerships. Sections 716 and 717 exempt firms of solicitors, accountants and stockbrokers from this limit. Statutory instruments have lifted the size restrictions for both ordinary and limited partnerships composed of auctioneers, surveyors, valuers, estate agents, insurance brokers or members of the Stock Exchange, as well as medical partnerships. For ordinary partnerships there are also no size restrictions for firms of actuaries, patent agents, consulting engineers, building designers, chartered surveyors, loss adjusters, town planners, trade mark agents, or lawyers in a multinational practice. The exceptions define the necessary professional qualification of the partners for the firm to be exempted.

<sup>56</sup> 1890 Act, s 34.

<sup>57</sup> For a discussion of the origins of the modern company, see ICB Gower, *Principles of Modern Company Law* (6th ed 1997) pp 19 - 54.

<sup>58</sup> These today form the basis of the representative action: see *Commissioners of Sewers v Gellatly* [1876] 3 Ch D 610, 615 *per* Jessel MR.

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<sup>9</sup> The Law Commission and The Scottish Law Commission joint consultation paper on Partnership Law is available on the internet at [www.lawcom.gov.uk](http://www.lawcom.gov.uk) or [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk), or from The Stationery Office (Document reference ISSN 1357-9223).

5.54 Eminent legal opinion considered that such difficulties were sufficient to render the deed of settlement company illegal at common law. In *van Sandau v Moore*,<sup>59</sup> the Lord Chancellor, Lord Eldon, decried the position as follows:<sup>60</sup>

...ought the jurisdiction of the court, which can be administered usefully only between a limited number of persons, to be employed for a purpose which it cannot by possibility accomplish? Here is a bill with nearly three hundred defendants. How can such a cause ever be brought to a hearing?

and later:<sup>61</sup>

I must repeat here that I have frequently ventured an opinion ... that the impossibility of suing with effect was with me a very strong argument to prove, that such a constitution of a body could not be legal.

5.55 This fear was the basis for the size restrictions on partnerships that were introduced in the Joint Stock Companies Act 1844. This provided for registration of all new companies, associations or partnerships with more than twenty-five members, or with shares transferable without the consent of all the other members. This limit was reduced to the present-day twenty by the Joint Stock Companies Act 1856.

5.56 The rationale for this limit has been clearly understood when it has subsequently come before the courts. In *Harris v Amery*,<sup>62</sup> Mr Justice Willis summed up its purpose succinctly:

It should seem, by the 25 & 26 Vict. c.89, s.4,<sup>63</sup> that the Legislature, viewing the frauds which had been committed by large companies, and the great inconvenience which was found to arise by reason of the difficulty of enforcing claims and settling accounts ... have determine[d] that no ... partnership consisting of more than twenty persons, shall be formed ...<sup>64</sup>

5.57 From one point of view the twenty partner limit is an anachronism. Much of its rationale ended as long ago as 1873 when the fusion of equity and common law saw the possibility of representative actions: Partnerships in England and Wales can sue

<sup>59</sup> (1825) 1 Russ 441; 38 ER 171. The case was actually concerned with a statutory company and whether it was possible for a shareholder to sue the other shareholders for a dissolution. Lord Eldon gives a valuable historical account of the various problems of suing such businesses. His comments apply *fortiori* to unincorporated companies.

<sup>60</sup> At p 449.

<sup>61</sup> At p 472.

<sup>62</sup> (1865) 1 LR CP 148, 154.

<sup>63</sup> Now CA 1985, s 716.

<sup>64</sup> Also see *Smith v Anderson* (1880) 15 Ch D 247, 273, *per* James LJ.

<sup>65</sup> See the schedule to the Supreme Court of Judicature Act 1873. The representative action now forms CPR, r 19(6). The purpose of this procedural rule was clearly expressed by Vaughan Williams LJ in *Walker v Sur* [1914] 2 KB 930, 934: "I cannot doubt that the intention of Order 15, r 12 was to make easier the bringing of actions for the enforcement of rights against an unincorporated aggregate of people."

and be sued in the firm name.<sup>66</sup> The rules in Scotland are anomalous.<sup>67</sup> There may not appear to be any legal or policy reason which can now justify the retention of the size restrictions on partnerships. On the other hand, it may be said that partnerships, with the unlimited liability of partners, depend to a large degree on trust and confidence between partners and that it is unrealistic to expect partners in a very large partnership to be able to place the necessary trust or confidence in other partners whom they may never have met and may never meet.

5.58 Whatever view may be taken on that question, it is undoubtedly true that serious inroads have already been made into the purity of the rule by the increasing number of exceptions. These have been conceded on an *ad hoc* basis as demand warranted. They have been confined so far to professional firms, which may seem paradoxical as it is precisely in those firms that mutual trust and confidence may be most necessary. It is unlikely that allowing other businesses similar latitude would impair the utility of the partnership as a business structure or lead those in large business organisations to prefer partnerships, with unlimited liability, to companies with limited liability.<sup>68</sup>

5.59 To avoid the effects of the existing size restriction, partnerships can resort to a variety of expedients: parallel partnerships; a trustee or nominee partner holding for two or more beneficiaries;<sup>69</sup> and a corporate partner with two or more shareholders. If a ten partner firm wishes to merge with an eleven partner one, or form a group partnership, it cannot do so unless it adopts one of the above artificial devices.

5.60 The arguments in favour of size restriction are outdated. This view is shared by the DTI which is consulting on the abolition of the twenty partner limit.<sup>70</sup> Further, in the context of a number of significant professions, the restriction has already been removed.<sup>71</sup> Our proposal is therefore that the size restriction should be abolished.

5.61 We invite views on the following provisional proposal:

**The size restriction affecting partnerships should be abolished.**

<sup>66</sup> CPR, Sched 1, RSC, O 81, r 1; CPR, Sched 2, CCR Ord 5, r 9.

<sup>67</sup> In Scotland, a firm with a 'social' name (ie, one comprising the names of people) can sue and be sued in its own name – *Forsyth v Hare and Company* (1834) 13 S 42. A firm with a descriptive name must add the names of three partners (or two if there are only two) in the Court of Session – *Antermony Coal Company v Wingate* (1866) 4 M 1017 – but not in the Sheriff Court – Rule 5.7, Ordinary Cause Rules, 1993.

<sup>68</sup> Relaxing the rule will also remove one of the current barriers to multi-disciplinary partnerships.

<sup>69</sup> It is, however, highly questionable whether the device of a nominee partner will succeed in its intention to avoid the size limits.

<sup>70</sup> DTI press release P/2000/222 dated 27 March 2000.

<sup>71</sup> See n 55 above.

## ANNEX D

TABLE A

### EXEMPTIONS TO 20 PARTNER LIMIT FOR PARTNERSHIPS

Profession	How defined	Proportion of firm
Solicitors	In England and Wales: solicitor of the Supreme Court In Scotland: a person enrolled as a solicitor under Solicitors (Scotland) Act 1980	Partnership consisting of persons each of whom is a solicitor
Auditors	Partnership which is eligible for appointment as a company auditor under s25 Companies Act 1989	
Stock Exchange Member	<i>Members of:</i> The International Stock Exchange of the UK and the Republic of Ireland Ltd Any other stock exchange recognised by the Secretary of State in regulations for the purposes of s716	Each member
Surveyors Valuers Auctioneers Land and Estate Managers	<i>Members of:</i> Royal Institution of Chartered Surveyors or a corresponding professional association in another EEA State	The majority
Building Designers	<i>Those registered under:</i> Architects (Registration) Act 1931 <i>Those recognised by:</i> The Engineering Council Royal Institution of Chartered Surveyors	Not less than three-quarters of total number
Loss Adjusters	<i>Members of:</i> Chartered Institute of Loss Adjusters	Not less than three-quarters of total number
Insurance Brokers	Partnerships of registered insurance brokers or enrolled bodies corporate as defined in the Insurance Brokers (Registration) Act 1977, s29	
Town Planners	<i>Members of:</i> Royal Town Planning Institute	Not less than three-quarters of total number
Lawyers	Multi-national partnerships within the meaning of the Courts and Legal Services Act 1990, s89(9), including partnerships which include one or more registered European lawyers and which are providing professional services in accordance with rules made under s31 of the Solicitors Act 1974	
Stock Exchange Member	Partnerships carrying on business as a member firm of The International Stock Exchange of the UK and the Republic of Ireland Ltd which is a member firm of that body by virtue of succeeding to the business of another partnership which was also a member firm	
Chartered Engineers	The Engineering Council	The majority
Patent and Trade Mark Agents	Registered patent or trade mark agents under Copyright, Designs and Patents Act 1988, s275 or 282	Each partner

Actuaries	<i>Fellows of:</i> Institute of Actuaries and Faculty of Actuaries <i>Full Actuary Members of:</i> European associations listed in Schedule	The majority
European Patent Agents	<i>Member of:</i> Institute of Professional Representatives before the European Patent Office	The majority
GPs	Registered medical practitioners in general medical practice Or, if not registered, have been awarded diplomas, certificates and other evidence of formal qualifications the mutual recognition of which is provided for in Council Directive 93/16/EEC	The majority

## ANNEX E

TABLE B  
**EXEMPTIONS TO 20 PARTNER LIMIT FOR LIMITED PARTNERSHIPS**

<b>Profession</b>	<b>How defined</b>	<b>Proportion of firm</b>
Solicitors	In England and Wales: solicitor of the Supreme Court In Scotland: a person enrolled as a solicitor under Solicitors (Scotland) Act 1980	Partnership consisting of persons each of who is a solicitor
Auditors	Partnership which is eligible for appointment as a company auditor under s25 Companies Act 1989	
Stock Exchange Member	<i>Members of:</i> The International Stock Exchange of the UK and the Republic of Ireland Ltd Any other stock exchange recognised by the Secretary of State in regulations for the purposes of s716	Each member
Surveyors Valuers Auctioneers	<i>Members of:</i> Royal Institution of Chartered Surveyors Incorporated Society of Valuers and Auctioneers	Not less than three-quarters of total
Insurance Brokers	Limited partnerships of registered insurance brokers or enrolled bodies corporate	
Stock Exchange Member	Partnerships which are member firms of the International Stock Exchange of the UK and the Republic of Ireland Ltd	

## REGULATORY IMPACT ASSESSMENT

### **Amendment of section 716 Companies Act 1985 and section 4 Limited Partnerships Act 1907 - removal of the 20 partner limit**

#### ISSUE AND OBJECTIVE

1 Section 716(1) of the Companies Act 1985 prohibits the formation of partnerships, unregistered companies and associations with more than 20 partners. Section 4(2) of the Limited Partnerships Act 1907 prohibits the formation of limited partnerships with more than 20 partners.

2 The original reason for introducing a prohibition on numbers of partners was to restrict the extent to which partnerships were open to abuse, in light of experience in the eighteenth and nineteenth centuries with deed of settlement companies. The concern was that the larger the body of fluctuating members, the greater the difficulty in joining them all in a suit against the business (as was necessary then). The result would be that many partners would effectively achieve nil liability. The subsequent removal of the requirement to join all the partners in a suit means that the prohibition is no longer relevant.

3 In addition, there is evidence that the prohibition does not prevent firms from finding ways around the 20 partner limit through creative business structures. There is also power contained in statute for the Secretary of State to make regulations exempting partnerships which are “carrying on business of any description prescribed”. This has been used regularly, particularly over the last few years.

4 Nonetheless there will be those less able or less inclined to follow these routes, for whom the 20 partner limit may actively discourage expansion, or may discourage the use of partnerships instead companies, even where the partnership structure might otherwise be more advantageous.

5 The removal of the 20 partner limit presents opportunities for cost savings for partnerships. Currently a number of practices are used to circumvent the 20 partner limit where exemptions are not available. These include organising the business into a number of parallel partnerships each of less than 20 partners or the use of trustee, nominee or corporate partners. Such arrangements place administrative burdens on these partnerships, present

barriers to the natural growth of the business. The 20 partner limit may also restrict the ability of business to reward staff by making them partners.

6 Regardless of whether a business finds a way around the prohibition, or decides to restrict its membership to 20 partners, there will be cost implications. The objective, therefore, is to remove the 20 partner limit so as to lighten the regulatory burdens on unincorporated business and allow them greater freedom in organising their operations.

## **RISKS**

7 As this is a deregulatory measure, it is not being introduced to deal with risks. Nor is it anticipated that removal of the regulation will introduce an unreasonable level of risk - partnerships will be free to choose for themselves what level of commercial risk they are willing to incur, and we do not believe that there is a causal link between the number of partners and the level of creditor or client protection.

## **OPTIONS: BENEFITS AND COSTS**

8 We believe there are six options:

### 1 Do nothing

There are no perceived benefits to this option, and, for the reasons set out above, we believe that this option imposes a cost on business.

### 2 Increase the limit to a higher number of partners

### 3 Remove the prohibition for a specified class of partnerships or partners

Both option 2 and 3 would improve the position for partnerships meeting the requirements imposed. Their costs would be reduced as a result. It would not, though, benefit partnerships which fell outside the specified requirements. Any requirements imposed would be arbitrary, and it would be difficult to justify penalising one class of partnerships while favouring another.

### 4 Remove the prohibition for partnerships only

### 5 Remove the prohibition for limited partnerships only

Options 4 and 5 would deal with only one aspect of the existing prohibition - either that for partnerships or for limited partnerships. Clearly, each option would improve the position for those choosing the entity without the prohibition but would leave unchanged the position for the other entity. We can see no justification in removing the prohibition for one and not doing so for the other.

6 Remove the prohibition for partnership, limited partnerships, unregistered companies and associations

This is the favoured option, and would remove barriers to expansion in existing partnerships and limited partnerships.

9 The benefits and costs associated with these options cannot be quantified or valued until the consultation is complete, when an assessment of the financial and other benefits will be undertaken.

**COMPLIANCE ISSUES**

10 There are no compliance issues associated with removing the 20 partner limit.

**IMPACT ON SMALL BUSINESS**

11 As this is a deregulatory measure, we do not envisage any adverse impact on small business.

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