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## STATUTORY INSTRUMENTS

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# 2009 No. 1804

## The Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009

### PART 1

#### GENERAL INTRODUCTORY PROVISIONS

##### Citation

1. These Regulations may be cited as the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009.

##### Commencement

2.—(1) The provisions of these Regulations come into force as follows.

(2) Regulations 8, 64, 77, 80 and 81 of, and paragraphs 6 and 7 of Schedule 3 to, these Regulations come into force on the day after the Regulations are made for the purpose of enabling the exercise of powers to make regulations or orders by statutory instrument.

(3) Otherwise, the Regulations come into force on 1st October 2009.

##### Interpretation

3.—(1) In these Regulations “LLP” means a limited liability partnership registered under the Limited Liability Partnerships Act 2000.

(2) In these Regulations, unless the context otherwise requires—

(a) any reference to a numbered Part, section or Schedule is to the Part, section or Schedule so numbered in the Companies Act 2006;

(b) references in provisions applied to LLPs—

(i) to provisions of the Companies Act 2006, or

(ii) to provisions of instruments made under that Act,

are to those provisions as applied to LLPs by these Regulations or by the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 <sup>M1</sup>;

(c) references in provisions applied to LLPs to provisions of the Insolvency Act 1986 <sup>M2</sup> or the Insolvency (Northern Ireland) Order 1989 <sup>M3</sup> are to those provisions as applied to LLPs by the Limited Liability Partnerships Regulations 2001 <sup>M4</sup> or the Limited Liability Partnerships Regulations (Northern Ireland) 2004 <sup>M5</sup>.

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### Marginal Citations

- M1** S.I. 2008/1911.  
**M2** 1986 c. 45.  
**M3** S.I. 1989/2405 (N.I.19).  
**M4** S.I. 2001/1090.  
**M5** S.R. (NI) 2004 No 307.

## PART 2

### FORMALITIES OF DOING BUSINESS

#### Formalities of doing business under the law of England and Wales or Northern Ireland

4. Sections 43 to 47 apply to LLPs, modified so that they read as follows—

##### “LLP contracts

**43.**—(1) Under the law of England and Wales or Northern Ireland a contract may be made—

- (a) by an LLP, by writing under its common seal, or
- (b) on behalf of an LLP, by a person acting under its authority, express or implied.

(2) This is without prejudice to section 6 of the Limited Liability Partnerships Act 2000 (c. 12) (members as agents).

(3) Any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of an LLP.

##### Execution of documents

**44.**—(1) Under the law of England and Wales or Northern Ireland a document is executed by an LLP—

- (a) by the affixing of its common seal, or
- (b) by signature in accordance with the following provisions.

(2) A document is validly executed by an LLP if it is signed on behalf of the LLP—

- (a) by two members, or
- (b) by a member of the LLP in the presence of a witness who attests the signature.

(3) A document signed in accordance with subsection (2) and expressed, in whatever words, to be executed by the LLP has the same effect as if executed under the common seal of the LLP.

(4) In favour of a purchaser a document is deemed to have been duly executed by an LLP if it purports to be signed in accordance with subsection (2). A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

(5) Where a document is to be signed by a person on behalf of more than one LLP, or on behalf of an LLP and a company, it is not duly signed by that person for the purposes of this section unless he signs it separately in each capacity.

(6) References in this section to a document being (or purporting to be) signed by a member are to be read, in a case where that member is a firm, as references to its being (or purporting to be) signed by an individual authorised by the firm to sign on its behalf.

(7) This section applies to a document that is (or purports to be) executed by an LLP in the name of or on behalf of another person whether or not that person is also an LLP.

### **Common seal**

**45.**—(1) An LLP may have a common seal, but need not have one.

(2) An LLP which has a common seal shall have its name engraved in legible characters on the seal.

(3) If an LLP fails to comply with subsection (2) an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

(4) A member of an LLP, or a person acting on behalf of an LLP, commits an offence if he uses, or authorises the use of, a seal purporting to be a seal of the LLP on which its name is not engraved as required by subsection (2).

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) This section does not form part of the law of Scotland.

### **Execution of deeds**

**46.**—(1) A document is validly executed by an LLP as a deed for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989 (c. 34) and for the purposes of the law of Northern Ireland if, and only if—

- (a) it is duly executed by the LLP, and
- (b) it is delivered as a deed.

(2) For the purposes of subsection (1)(b) a document is presumed to be delivered upon its being executed, unless a contrary intention is proved.

### **Execution of deeds or other documents by attorney**

**47.**—(1) Under the law of England and Wales or Northern Ireland an LLP may, by instrument executed as a deed, empower a person, either generally or in respect of specified matters, as its attorney to execute deeds or other documents on its behalf.

(2) A deed or other document so executed, whether in the United Kingdom or elsewhere, has effect as if executed by the LLP.”.

## **Formalities of doing business under the law of Scotland**

5. Section 48 applies to LLPs, modified so that it reads as follows—

### **“Execution of documents by LLPs: Scotland**

**48.**—(1) The following provisions form part of the law of Scotland only.

(2) Notwithstanding the provisions of any enactment, an LLP need not have a common seal.

(3) For the purposes of any enactment—

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- (a) providing for a document to be executed by an LLP by affixing its common seal, or
  - (b) referring (in whatever terms) to a document so executed,
- a document signed or subscribed by or on behalf of the LLP in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 (c. 7) has effect as if so executed.”.

### **Official seal for use abroad**

6. Section 49 applies to LLPs, modified so that it reads as follows—

#### **“Official seal for use abroad**

49.—(1) An LLP that has a common seal may have an official seal for use outside the United Kingdom.

(2) The official seal must be a facsimile of the LLP's common seal, with the addition on its face of the place or places where it is to be used.

(3) The official seal when duly affixed to a document has the same effect as the LLP's common seal. This subsection does not extend to Scotland.

(4) An LLP having an official seal for use outside the United Kingdom may—

- (a) by writing under its common seal, or
- (b) as respects Scotland, by writing subscribed in accordance with the Requirements of Writing (Scotland) Act 1995,

authorise any person appointed for the purpose to affix the official seal to any deed or other document to which the LLP is party.

(5) As between the LLP and a person dealing with such an agent, the agent's authority continues—

- (a) during the period mentioned in the instrument conferring the authority, or
- (b) if no period is mentioned, until notice of the revocation or termination of the agent's authority has been given to the person dealing with him.

(6) The person affixing the official seal must certify in writing on the deed or other document to which the seal is affixed the date on which, and place at which, it is affixed.”.

### **Other matters**

7. Sections 51 and 52 apply to LLPs, modified so that they read as follows—

#### **“Pre-incorporation contracts, deeds and obligations**

51.—(1) A contract that purports to be made by or on behalf of an LLP at a time when the LLP has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the LLP or as agent for it, and he is personally liable on the contract accordingly.

(2) Subsection (1) applies—

- (a) to the making of a deed under the law of England and Wales or Northern Ireland, and
  - (b) to the undertaking of an obligation under the law of Scotland,
- as it applies to the making of a contract.

### **Bills of exchange and promissory notes**

52. A bill of exchange or promissory note is deemed to have been made, accepted or endorsed on behalf of an LLP if made, accepted or endorsed in the name of, or by or on behalf or on account of, the LLP by a person acting under its authority.”.

## **PART 3**

### **AN LLP'S NAME**

#### **CHAPTER 1**

#### **GENERAL REQUIREMENTS**

### **Prohibited names and sensitive words and expressions**

8. Sections 53 to 56 apply to LLPs, modified so that they read as follows—

#### **“Prohibited names**

53. An LLP must not be registered under the Limited Liability Partnerships Act 2000 (c. 12) by a name if, in the opinion of the Secretary of State—

- (a) its use by the LLP would constitute an offence, or
- (b) it is offensive.

#### **Names suggesting connection with government or public authority**

54.—(1) The approval of the Secretary of State is required for an LLP to be registered under the Limited Liability Partnerships Act 2000 (c. 12) by a name that would be likely to give the impression that the LLP is connected with—

- (a) Her Majesty's Government, any part of the Scottish Administration or Her Majesty's Government in Northern Ireland,
- (b) a local authority, or
- (c) any public authority specified for the purposes of this section by regulations made by the Secretary of State.

(2) For the purposes of this section—

“local authority” means—

- (a) a local authority within the meaning of the Local Government Act 1972 (c. 70), the Common Council of the City of London or the Council of the Isles of Scilly,
- (b) a council constituted under section 2 of the Local Government etc (Scotland) Act 1994 (c. 39), or
- (c) a district council in Northern Ireland;

“public authority” includes any person or body having functions of a public nature.

(3) Regulations under this section are subject to affirmative resolution procedure.

#### **Other sensitive words or expressions**

55.—(1) The approval of the Secretary of State is required for an LLP to be registered under the Limited Liability Partnerships Act 2000 (c. 12) by a name that includes a word or

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expression for the time being specified in regulations made by the Secretary of State under this section.

(2) Regulations under this section are subject to approval after being made.

### **Duty to seek comments of government department or other specified body**

**56.**—(1) The Secretary of State may by regulations under—

- (a) section 54 (name suggesting connection with government or public authority), or
- (b) section 55 (other sensitive words or expressions),

require that, in connection with an application for the approval of the Secretary of State under that section, the applicant must seek the view of a specified Government department or other body.

(2) Where such a requirement applies, the applicant must request the specified department or other body (in writing) to indicate whether (and if so why) it has any objections to the proposed name.

(3) Where a request under this section is made in connection with an application for the registration of an LLP under the Limited Liability Partnerships Act 2000 (c. 12), the application must—

- (a) include a statement that a request under this section has been made, and
- (b) be accompanied by a copy of any response received.

(4) Where a request under this section is made in connection with a change in an LLP's name, the notice of the change sent to the registrar must—

- (a) include a statement by a designated member of the LLP that a request under this section has been made, and
- (b) be accompanied by a copy of any response received.

(5) In this section “specified” means specified in the regulations.”.

### **Permitted characters etc**

9. Section 57 applies to LLPs, modified so that it reads as follows—

#### **“Permitted characters etc**

**57.**—(1) The provisions of the Company and Business Names (Miscellaneous Provisions) Regulations 2009 (S.I. 2009/1085) relating to the characters, signs or symbols and punctuation that may be used in a registered name apply to LLPs.

(2) Those provisions are—

- (a) regulation 2 and Schedule 1, and
- (b) any other provisions of those Regulations having effect for the purpose of those provisions.

(3) In those provisions as they apply to LLPs—

- (a) for “company” substitute “LLP”, and
- (b) for “the Act” substitute “the Limited Liability Partnerships Act 2000”.

(4) An LLP may not be registered under the Limited Liability Partnerships Act 2000 (c. 12) by a name that consists of or includes anything that is not permitted in accordance with the provisions applied by this section.”.

## **Inappropriate use of indications of company type or legal form**

10. Section 65 applies to LLPs, modified so that it reads as follows—

### **“Inappropriate use of indications of company type or legal form**

**65.**—(1) The provisions of the Company and Business Names (Miscellaneous Provisions) Regulations 2009 (S.I. 2009/1085) relating to inappropriate use of indications of company type or legal form apply to LLPs.

(2) Those provisions are—

- (a) regulation 4 and Schedule 2, and
- (b) any other provisions of those Regulations having effect for the purpose of those provisions.

(3) As applied to LLPs regulation 4 is modified so as to read as follows—

**“4.**—(1) An LLP must not be registered under the Limited Liability Partnerships Act 2000 (c. 12) by a name that includes in any part of the name—

- (a) an expression or abbreviation specified in inverted commas in paragraph 3(a) to (o) or (r) to (v) in Schedule 2 (other than the abbreviation “LLP” or “PAC” (with or without full stops) at the end of its name), or
- (b) an expression or abbreviation specified as similar.

(2) An LLP must not be registered under the Limited Liability Partnerships Act 2000 by a name that includes immediately before the expression “LIMITED LIABILITY PARTNERSHIP” OR “PARTNERIAETH ATEBOLRWYDD CYFYNGEDIG” or the abbreviations “LLP” or “PAC” an abbreviation specified in inverted commas in paragraph 3(v) of that Schedule (or any abbreviation specified as similar)”.”.

## CHAPTER 2

### SIMILARITY TO OTHER NAMES

## **Similarity to other name on registrar's index**

11. Sections 66 to 68 apply to LLPs, modified so that they read as follows—

### **“Name not to be the same as another in the index**

**66.**—(1) An LLP must not be registered under the Limited Liability Partnerships Act 2000 (c. 12) by a name that is the same as another name appearing in the registrar's index of company names<sup>M6</sup>.

(2) The provisions of the Company and Business Names (Miscellaneous Provisions) Regulations 2009 (S.I. 2009/1085) supplementing this section apply to LLPs.

(3) Those provisions are—

- (a) regulation 7 and Schedule 3 (matters that are to be disregarded and words, expressions, signs and symbols that are to be regarded as the same),
- (b) regulation 8 (consent to registration of a name which is the same as another in the registrar's index of company names), and
- (c) any other provisions of those Regulations having effect for the purpose of those provisions.

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- (4) In regulation 8 as applied to LLPs—
- (a) for “a company” or “the company” substitute “an LLP” or “the LLP”,
  - (b) for “Company Y” substitute “LLP Y”, and
  - (c) in paragraph (1), for “the Act” substitute “the Limited Liability Partnerships Act 2000”.

#### **Power to direct change of name in case of similarity to existing name**

**67.** The Secretary of State may direct an LLP to change its name if it has been registered in a name that is the same as or, in the opinion of the Secretary of State, too like—

- (a) a name appearing at the time of the registration in the registrar's index of company names, or
- (b) a name that should have appeared in that index at that time.

#### **Direction to change names: supplementary provisions**

**68.—**(1) The following provisions have effect in relation to a direction under section 67 (power to direct change of name in case of similarity to existing name).

- (2) Any such direction—
- (a) must be given within twelve months of the LLP's registration by the name in question, and
  - (b) must specify the period within which the LLP is to change its name.
- (3) The Secretary of State may by a further direction extend that period. Any such direction must be given before the end of the period for the time being specified.
- (4) A direction under section 67 or this section must be in writing.
- (5) If an LLP fails to comply with the direction, an offence is committed by—
- (a) the LLP, and
  - (b) every designated member of the LLP who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.”.

#### **Marginal Citations**

- M6** For the definition of “the registrar's index of company names” see [section 1099](#) of the Companies Act 2006.

#### **Similarity to other name in which person has goodwill**

**12.** Sections 69 to 74 apply to LLPs, modified so that they read as follows—

##### **“Objection to LLP's registered name**

**69.—**(1) A person (“the applicant”) may object to an LLP's registered name on the ground—

- (a) that it is the same as a name associated with the applicant in which he has goodwill, or



- (b) that it is sufficiently similar to such a name that its use in the United Kingdom would be likely to mislead by suggesting a connection between the LLP and the applicant.
- (2) The objection must be made by application to a company names adjudicator (see section 70).
- (3) The LLP concerned shall be the primary respondent to the application. Any of its members may be joined as respondents.
- (4) If the ground specified in subsection (1)(a) or (b) is established, it is for the respondents to show—
  - (a) that the name was registered before the commencement of the activities on which the applicant relies to show goodwill; or
  - (b) that the LLP—
    - (i) is operating under the name, or
    - (ii) is proposing to do so and has incurred substantial start-up costs in preparation, or
    - (iii) was formerly operating under the name and is now dormant; or
  - (c) that the name was registered in the ordinary course of an LLP formation business and the LLP is available for sale to the applicant on the standard terms of that business; or
  - (d) that the name was adopted in good faith; or
  - (e) that the interests of the applicant are not adversely affected to any significant extent.

If none of those is shown, the objection shall be upheld.

- (5) If the facts mentioned in subsection (4)(a), (b) or (c) are established, the objection shall nevertheless be upheld if the applicant shows that the main purpose of the respondents (or any of them) in registering the name was to obtain money (or other consideration) from the applicant or prevent him from registering the name.
- (6) If the objection is not upheld under subsection (4) or (5), it shall be dismissed.
- (7) In this section “goodwill” includes reputation of any description.

### **Company names adjudicators**

- 70.**—(1) The Secretary of State shall appoint persons to be company names adjudicators.
- (2) The persons appointed must have such legal or other experience as, in the Secretary of State's opinion, makes them suitable for appointment.
- (3) An adjudicator—
  - (a) holds office in accordance with the terms of his appointment,
  - (b) is eligible for re-appointment when his term of office ends,
  - (c) may resign at any time by notice in writing given to the Secretary of State, and
  - (d) may be dismissed by the Secretary of State on the ground of incapacity or misconduct.
- (4) One of the adjudicators shall be appointed Chief Adjudicator. He shall perform such functions as the Secretary of State may assign to him.
- (5) The other adjudicators shall undertake such duties as the Chief Adjudicator may determine.

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- (6) The Secretary of State may—
  - (a) appoint staff for the adjudicators;
  - (b) pay remuneration and expenses to the adjudicators and their staff;
  - (c) defray other costs arising in relation to the performance by the adjudicators of their functions;
  - (d) compensate persons for ceasing to be adjudicators.

### **Procedural rules**

- 71.—(1) The Company Names Adjudicator Rules 2008 (S.I. 2008/1738) apply to LLPs.
- (2) As they apply to LLPs, omit—
  - (a) in rule 3(6) (persons joined as respondent), the reference to a director of the primary respondent;
  - (b) rule 13(2) (registered office treated as address for service).

### **Decision of adjudicator to be made available to public**

- 72.—(1) A company names adjudicator must, within 90 days of determining an application under section 69, make his decision and his reasons for it available to the public.
- (2) He may do so by means of a website or by such other means as appear to him to be appropriate.

### **Order requiring name to be changed**

- 73.—(1) If an application under section 69 is upheld, the adjudicator shall make an order—
  - (a) requiring the respondent LLP to change its name to one that is not an offending name, and
  - (b) requiring all the respondents—
    - (i) to take all such steps as are within their power to make, or facilitate the making, of that change, and
    - (ii) not to cause or permit any steps to be taken calculated to result in another LLP being registered with a name that is an offending name.
- (2) An “offending name” means a name that, by reason of its similarity to the name associated with the applicant in which he claims goodwill, would be likely—
  - (a) to be the subject of a direction under section 67 (power of Secretary of State to direct change of name), or
  - (b) to give rise to a further application under section 69.
- (3) The order must specify a date by which the respondent LLP's name is to be changed and may be enforced—
  - (a) in England and Wales or Northern Ireland, in the same way as an order of the High Court;
  - (b) in Scotland, in the same way as a decree of the Court of Session.
- (4) If the respondent LLP's name is not changed in accordance with the order by the specified date, the adjudicator may determine a new name for the LLP.
- (5) If the adjudicator determines a new name for the respondent LLP he must give notice of his determination—

- (a) to the applicant,
- (b) to the respondents, and
- (c) to the registrar.

(6) For the purposes of this section an LLP's name is changed when the change takes effect in accordance with paragraph 5(4) in Part 1 of the Schedule to the Limited Liability Partnerships Act 2000 (c. 12) (on the issue of the certificate of the change of name).

### **Appeal from adjudicator's decision**

**74.**—(1) An appeal lies to the court from any decision of a company names adjudicator to uphold or dismiss an application under section 69.

(2) Notice of appeal against a decision upholding an application must be given before the date specified in the adjudicator's order by which the respondent LLP's name is to be changed.

(3) If notice of appeal is given against a decision upholding an application, the effect of the adjudicator's order is suspended.

(4) If on appeal the court—

- (a) affirms the decision of the adjudicator to uphold the application, or
- (b) reverses the decision of the adjudicator to dismiss the application,

the court may (as the case may require) specify the date by which the adjudicator's order is to be complied with, remit the matter to the adjudicator or make any order or determination that the adjudicator might have made.

(5) If the court determines a new name for the LLP it must give notice of the determination—

- (a) to the parties to the appeal, and
- (b) to the registrar.”.

## CHAPTER 3

### OTHER POWERS OF THE SECRETARY OF STATE

#### **Provision of misleading information etc**

**13.** Sections 75 and 76 apply to LLPs, modified so that they read as follows—

#### **“Provision of misleading information etc**

**75.**—(1) If it appears to the Secretary of State—

- (a) that misleading information has been given for the purposes of an LLP's registration by a particular name, or
- (b) that an undertaking or assurance has been given for that purpose and has not been fulfilled,

the Secretary of State may direct the LLP to change its name.

(2) Any such direction—

- (a) must be given within five years of the LLP's registration by that name, and
- (b) must specify the period within which the LLP is to change its name.

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(3) The Secretary of State may by a further direction extend the period within which the LLP is to change its name. Any such direction must be given before the end of the period for the time being specified.

(4) A direction under this section must be in writing.

(5) If an LLP fails to comply with a direction under this section, an offence is committed by—

(a) the LLP, and

(b) every designated member of the LLP who is in default.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **Misleading indication of activities**

76.—(1) If in the opinion of the Secretary of State the name by which an LLP is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, the Secretary of State may direct the LLP to change its name.

(2) The direction must be in writing.

(3) The direction must be complied with within a period of six weeks from the date of the direction or such longer period as the Secretary of State may think fit to allow. This does not apply if an application is duly made to the court under the following provisions.

(4) The LLP may apply to the court to set the direction aside. The application must be made within the period of three weeks from the date of the direction.

(5) The court may set the direction aside or confirm it. If the direction is confirmed, the court shall specify the period within which the direction is to be complied with.

(6) If an LLP fails to comply with a direction under this section, an offence is committed by—

(a) the LLP, and

(b) every designated member of the LLP who is in default.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.”.

## CHAPTER 4

### TRADING DISCLOSURES

#### **Requirement to disclose LLP name etc**

14. Sections 82 and 83 apply to LLPs, modified so that they read as follows—

#### **“Requirement to disclose LLP name etc**

82.—(1) The Companies (Trading Disclosures) Regulations 2008 (S.I. 2008/495 <sup>M7</sup>) apply to LLPs.

(2) As they apply to LLPs—

(a) read references to a company as references to an LLP;

(b) read references to a director as references to a member of an LLP;

- (c) read references to an officer of a company as references to a designated member of an LLP;
- (d) in regulation 7 (further particulars to appear in business letters, order forms and websites), for paragraphs (2)(d) to (f) and (3) substitute—
  - “(d) in the case of an LLP whose name ends with the abbreviation “llp”, “LLP”, “pac” or “PAC”, the fact that it is an LLP or a partneriaeth atebolrwydd cyfyngedig”.”;
- (e) in regulation 8 (disclosure of names of members)—
  - (i) at the beginning of paragraph (1) insert “Subject to paragraph (3),” and
  - (ii) after paragraph (2) insert—
    - “(3) Paragraph (1) does not apply in relation to any document issued by an LLP with more than 20 members which maintains at its principal place of business a list of the names of all the members if the document states in legible characters the address of the principal place of business of the LLP and that the list of the members' names is open to inspection at that place.
    - (4) Where an LLP maintains a list of the members' names for the purposes of paragraph (3), any person may inspect the list during office hours.”;
- (f) omit regulation 10(3) (offences: shadow directors).

#### **Civil consequences of failure to make required disclosure**

**83.**—(1) This section applies to any legal proceedings brought by an LLP to which section 82 applies (requirement to disclose LLP name etc) to enforce a right arising out of a contract made in the course of a business in respect of which the LLP was, at the time the contract was made, in breach of the Companies (Trading Disclosures) Regulations 2008 (S.I. 2008/495).

(2) The proceedings shall be dismissed if the defendant (in Scotland, the defender) to the proceedings shows—

- (a) that he has a claim against the claimant (pursuer) arising out of the contract that he has been unable to pursue by reason of the latter's breach of the regulations, or
- (b) that he has suffered some financial loss in connection with the contract by reason of the claimant's (pursuer's) breach of the regulations,

unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.

(3) This section does not affect the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person.”.

#### **Marginal Citations**

**M7** [S.I. 2008/495](#) was amended by [S.I. 2009/218](#).

**15.** Section 85 applies to LLPs, modified so that it reads as follows—

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**“Minor variations in form of name to be left out of account**

**85.**—(1) For the purposes of this Chapter, in considering an LLP's name no account is to be taken of—

- (a) whether upper or lower case characters (or a combination of the two) are used,
- (b) whether diacritical marks or punctuation are present or absent,

provided there is no real likelihood of names differing only in those respects being taken to be different names.

(2) This does not affect the operation of provisions of the Company and Business Names (Miscellaneous Provisions) Regulations 2009 (S.I. 2009/1085) permitting only specified characters or punctuation.”.

## PART 4

### AN LLP'S REGISTERED OFFICE

#### General

**16.** Sections 86 and 87 apply to LLPs, modified so that they read as follows—

**“An LLP's registered office**

**86.**—(1) An LLP must at all times have a registered office situated in England and Wales (or in Wales), in Scotland or in Northern Ireland, to which all communications and notices may be addressed.

(2) On the incorporation of an LLP the situation of its registered office shall be that stated in the incorporation document.

**Change of address of registered office**

**87.**—(1) An LLP may change the address of its registered office by giving notice to the registrar.

(2) The change takes effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the LLP at the address previously registered.

(3) For the purposes of any duty of an LLP—

- (a) to keep available for inspection at its registered office any register, index or other document, or
- (b) to mention the address of its registered office in any document,

an LLP that has given notice to the registrar of a change in the address of its registered office may act on the change as from such date, not more than 14 days after the notice is given, as it may determine.

(4) Where an LLP unavoidably ceases to perform at its registered office any such duty as is mentioned in subsection (3)(a) in circumstances in which it was not practicable to give prior notice to the registrar of a change in the address of its registered office, but—

- (a) resumes performance of that duty at other premises as soon as practicable, and
- (b) gives notice accordingly to the registrar of a change in the situation of its registered office within 14 days of doing so,

it is not to be treated as having failed to comply with that duty.”.

## Welsh LLPs

17. Section 88 applies to LLPs, modified so that it reads as follows—

### “Welsh LLPs

88.—(1) In this Act a “Welsh LLP” means an LLP as to which it is stated in the register that its registered office is to be situated in Wales.

(2) An LLP—

- (a) whose registered office is in Wales, and
- (b) as to which it is stated in the register that its registered office is to be situated in England and Wales,

may determine that the register be amended so that it states that the LLP's registered office is to be situated in Wales.

(3) An LLP—

- (a) whose registered office is in Wales, and
- (b) as to which it is stated in the register that its registered office is to be situated in Wales,

may determine that the register be amended so that it states that the LLP's registered office is to be situated in England and Wales.

(4) Where an LLP makes a determination under this section it must give notice to the registrar, who shall—

- (a) amend the register accordingly, and
- (b) issue a new certificate of incorporation altered to meet the circumstances of the case.”.

## PART 5

### AN LLP'S MEMBERS

#### CHAPTER 1

#### REGISTER OF MEMBERS

## Requirements for register of members

18. Sections 162 to 165 apply to LLPs, modified so that they read as follows—

### “Register of members

162.—(1) Every LLP must keep a register of its members.

(2) The register must contain the required particulars (see sections 163 and 164) of each person who is a member of the LLP.

(3) The register must be kept available for inspection—

- (a) at the LLP's registered office, or

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- (b) at a place specified in Part 2 of the Companies (Company Records) Regulations 2008 (S.I. 2008/3006).
- (4) The LLP must give notice to the registrar—
  - (a) of the place at which the register is kept available for inspection, and
  - (b) of any change in that place,
 unless it has at all times been kept at the LLP's registered office.
- (5) The register must be open to the inspection—
  - (a) of any member of the LLP without charge, and
  - (b) of any other person on payment of the fee prescribed by regulation 2(a) of the Companies (Fees for Inspection of Company Records) Regulations 2008 (S.I. 2008/3007).
- (6) If default is made in complying with subsection (1), (2) or (3) or if default is made for 14 days in complying with subsection (4), or if an inspection required under subsection (5) is refused, an offence is committed by—
  - (a) the LLP, and
  - (b) every designated member of the LLP who is in default.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (8) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

#### **Particulars of members to be registered: individuals**

- 163.**—(1) An LLP's register of members must contain the following particulars in the case of an individual—
- (a) name and any former name;
  - (b) a service address;
  - (c) the country or state (or part of the United Kingdom) in which he is usually resident;
  - (d) date of birth;
  - (e) whether he is a designated member.
- (2) For the purposes of this section “name” means a person's Christian name (or other forename) and surname, except that in the case of—
- (a) a peer, or
  - (b) an individual usually known by a title,
- the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.
- (3) For the purposes of this section a “former name” means a name by which the individual was formerly known for business purposes. Where a person is or was formerly known by more than one such name, each of them must be stated.
- (4) It is not necessary for the register to contain particulars of a former name in the following cases—



- (a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known previous to the adoption of or succession to the title;
- (b) in the case of any person, where the former name—
  - (i) was changed or disused before the person attained the age of 16 years, or
  - (ii) has been changed or disused for 20 years or more.
- (5) A person's service address may be stated to be “The LLP's registered office”.

#### **Particulars of members to be registered: corporate members and firms**

**164.** An LLP's register of members must contain the following particulars in the case of a body corporate, or a firm that is a legal person under the law by which it is governed—

- (a) corporate or firm name;
- (b) registered or principal office;
- (c) in the case of an EEA company to which the First Company Law Directive (68/151/EEC) applies, particulars of—
  - (i) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and
  - (ii) the registration number in that register;
- (d) in any other case, particulars of—
  - (i) the legal form of the company or firm and the law by which it is governed, and
  - (ii) if applicable, the register in which it is entered (including details of the state) and its registration number in that register;
- (e) whether it is a designated member.

#### **Register of members' residential addresses**

**165.**—(1) Every LLP must keep a register of members' residential addresses.

(2) The register must state the usual residential address of each of the LLP's members.

(3) If a member's usual residential address is the same as his service address (as stated in the LLP's register of members), the register of members' residential addresses need only contain an entry to that effect. This does not apply if his service address is stated to be “The LLP's registered office”.

(4) If default is made in complying with this section, an offence is committed by—

- (a) the LLP, and
- (b) every designated member of the LLP who is in default.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

(6) This section applies only to members who are individuals, not where the member is a body corporate or a firm that is a legal person under the law by which it is governed.”.

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## CHAPTER 2

### MEMBERS' RESIDENTIAL ADDRESSES: PROTECTION FROM DISCLOSURE

#### Members' residential addresses: protection from disclosure

19. Sections 240 to 246 apply to LLPs, modified so that they read as follows—

##### “Protected information

**240.**—(1) This Chapter makes provision for protecting, in the case of an LLP member who is an individual—

- (a) information as to his usual residential address;
- (b) the information that his service address is his usual residential address.

(2) That information is referred to in this Chapter as “protected information”.

(3) Information does not cease to be protected information on the individual ceasing to be a member of the LLP. References in this Chapter to a member include, to that extent, a former member.

##### Protected information: restriction on use or disclosure by LLP

**241.**—(1) An LLP must not use or disclose protected information about any of its members, except—

- (a) for communicating with the member concerned,
- (b) in order to comply with any requirement of this Act or of the Limited Liability Partnerships Act 2000 (c. 12) as to particulars to be sent to the registrar, or
- (c) in accordance with section 244 (disclosure under court order).

(2) Subsection (1) does not prohibit any use or disclosure of protected information with the consent of the member concerned.

##### Protected information: restriction on use or disclosure by registrar

**242.**—(1) The registrar must omit protected information from the material on the register that is available for inspection where—

- (a) it is contained in a document delivered to him in which such information is required to be stated, and
- (b) in the case of a document having more than one part, it is contained in a part of the document in which such information is required to be stated.

(2) The registrar is not obliged—

- (a) to check other documents or (as the case may be) other parts of the document to ensure the absence of protected information, or
- (b) to omit from the material that is available for public inspection anything registered before 1st October 2009.

(3) The registrar must not use or disclose protected information except—

- (a) as permitted by section 243 (permitted use or disclosure by registrar), or
- (b) in accordance with section 244 (disclosure under court order).

### **Permitted use or disclosure by the registrar**

**243.**—(1) The registrar may use protected information for communicating with the member in question.

(2) The registrar may disclose protected information—

- (a) to a public authority specified for the purposes of this section, or
- (b) to a credit reference agency.

(3) The provisions of the Companies (Disclosure of Address) Regulations 2009 (S.I. 2009/214) relating to disclosure of protected information under this section apply to LLPs.

(4) The provisions are—

- (a) Part 2 (disclosure of protected information),
- (b) Part 4 (matters relating to applications), so far as relating to disclosure under this section, and
- (c) any other provisions of the Regulations having effect for the purposes of those provisions.

(5) As those provisions apply to LLPs—

- (a) references to provisions of the Companies Act 1985 (c. 6), the Insolvency Act 1986 (c. 45), the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I.6)) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.9)) are to those provisions as applied to LLPs by the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090) or the Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. (NI) 2004 No 307);
- (b) read references to a company or proposed company as references to an LLP or proposed LLP;
- (c) read references to a director as references to a member of an LLP;
- (d) read references to a subscriber to a memorandum of association as references to a proposed member of a proposed LLP;
- (e) in regulation 1(2), for the definition of “former name” substitute—  
““former name” means a name by which an individual was formerly known and which has been notified to the registrar under section 2 or 9 of the Limited Liability Partnerships Act 2000;”.

(6) In this section—

“credit reference agency” means a person carrying on a business comprising the furnishing of information relevant to the financial standing of individuals, being information collected by the agency for that purpose; and

“public authority” includes any person or body having functions of a public nature.

### **Disclosure under court order**

**244.**—(1) The court may make an order for the disclosure of protected information by the LLP or by the registrar if—

- (a) there is evidence that service of documents at a service address other than the member's usual residential address is not effective to bring them to the notice of the member, or
- (b) it is necessary or expedient for the information to be provided in connection with the enforcement of an order or decree of the court,

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and the court is otherwise satisfied that it is appropriate to make the order.

(2) An order for disclosure by the registrar is to be made only if the LLP—

- (a) does not have the member's usual residential address, or
- (b) has been dissolved.

(3) The order may be made on the application of a liquidator, creditor or member of the LLP, or any other person appearing to the court to have a sufficient interest.

(4) The order must specify the persons to whom, and purposes for which, disclosure is authorised.

### **Circumstances in which registrar may put address on the public record**

**245.**—(1) The registrar may put a member's usual residential address on the public record if—

- (a) communications sent by the registrar to the member and requiring a response within a specified period remain unanswered, or
- (b) there is evidence that service of documents at a service address provided in place of the member's usual residential address is not effective to bring them to the notice of the member.

(2) The registrar must give notice of the proposal—

- (a) to the member, and
- (b) to every LLP of which the registrar has been notified that the individual is a member.

(3) The notice must—

- (a) state the grounds on which it is proposed to put the member's usual residential address on the public record, and
- (b) specify a period within which representations may be made before that is done.

(4) It must be sent to the member at his usual residential address, unless it appears to the registrar that service at that address may be ineffective to bring it to the individual's notice, in which case it may be sent to any service address provided in place of that address.

(5) The registrar must take account of any representations received within the specified period.

(6) What is meant by putting the address on the public record is explained in section 246.

### **Putting the address on the public record**

**246.**—(1) The registrar, on deciding in accordance with section 245 that a member's usual residential address is to be put on the public record, shall proceed as if notice of a change of registered particulars had been given—

- (a) stating that address as the member's service address, and
- (b) stating that the member's usual residential address is the same as his service address.

(2) The registrar must give notice of having done so—

- (a) to the member, and
- (b) to the LLP.

(3) On receipt of the notice the LLP must—

- (a) enter the member's usual residential address in its register of members as his service address, and
  - (b) state in its register of members' residential addresses that his usual residential address is the same as his service address.
- (4) If the LLP has been notified by the member in question of a more recent address as his usual residential address, it must—
- (a) enter that address in its register of members as the member's service address, and
  - (b) give notice to the registrar as on a change of registered particulars.
- (5) If an LLP fails to comply with subsection (3) or (4), an offence is committed by—
- (a) the LLP, and
  - (b) every designated member of the LLP who is in default.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (7) A member whose usual residential address has been put on the public record by the registrar under this section may not register a service address other than his usual residential address for a period of five years from the date of the registrar's decision.”.

## PART 6

### DEBENTURES

#### General provisions

**20.** Sections 738 to 742 apply to LLPs, modified so that they read as follows—

#### “Meaning of “debenture”

**738.** In this Act “debenture” includes debenture stock, bonds and any other securities of an LLP, whether or not constituting a charge on the assets of the LLP.

#### Perpetual debentures

**739.**—(1) A condition contained in debentures, or in a deed for securing debentures, is not invalid by reason only that the debentures are made—

- (a) irredeemable, or
- (b) redeemable only—
  - (i) on the happening of a contingency (however remote), or
  - (ii) on the expiration of a period (however long),

any rule of equity to the contrary notwithstanding.

(2) Subsection (1) applies to debentures whenever issued and to deeds whenever executed.

#### Enforcement of contract to subscribe for debentures

**740.** A contract with an LLP to take up and pay for debentures of the LLP may be enforced by an order for specific performance.

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### **Registration of allotment of debentures**

**741.**—(1) An LLP must register an allotment of debentures as soon as practicable and in any event within two months after the date of the allotment.

(2) If an LLP fails to comply with this section, an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(4) For the duties of the LLP as to the issue of the debentures, or certificates of debenture stock, see Part 21 (certification and transfer of securities).

### **Debentures to bearer (Scotland)**

**742.** Notwithstanding anything in the statute of the Scots Parliament of 1696, chapter 25, debentures to bearer issued in Scotland are valid and binding according to their terms.”.

### **Register of debenture holders**

**21.** Sections 743 to 748 apply to LLPs, modified so that they read as follows—

#### **“Register of debenture holders**

**743.**—(1) Any register of debenture holders of an LLP that is kept by the LLP must be kept available for inspection—

- (a) at the LLP's registered office, or
- (b) at a place specified in Part 2 of the Companies (Company Records) Regulations 2008 (S.I. 2008/3006).

(2) An LLP must give notice to the registrar of the place where any such register is kept available for inspection and of any change in that place.

(3) No such notice is required if the register has, at all times since it came into existence, been kept available for inspection at the LLP's registered office.

(4) If an LLP makes default for 14 days in complying with subsection (2), an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(6) References in this section to a register of debenture holders include a duplicate—

- (a) of a register of debenture holders that is kept outside the United Kingdom, or
- (b) of any part of such a register.

#### **Register of debenture holders: right to inspect and require copy**

**744.**—(1) Every register of debenture holders of an LLP must, except when duly closed, be open to the inspection—

- (a) of the registered holder of any such debentures, or any member of the LLP, without charge, and
  - (b) of any other person on payment of the fee prescribed by regulation 2 of the Companies (Fees for Inspection and Copying of Company Records) (No. 2) Regulations 2007 (S.I. 2007/3535).
- (2) Any person may require a copy of the register, or any part of it, on payment of the fee prescribed by regulation 3 of the Companies (Fees for Inspection and Copying of Company Records) (No. 2) Regulations 2007 (S.I. 2007/3535).
- (3) A person seeking to exercise either of the rights conferred by this section must make a request to the LLP to that effect.
- (4) The request must contain the following information—
- (a) in the case of an individual, his name and address;
  - (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation;
  - (c) the purpose for which the information is to be used; and
  - (d) whether the information will be disclosed to any other person, and if so—
    - (i) where that person is an individual, his name and address,
    - (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and
    - (iii) the purpose for which the information is to be used by that person.
- (5) For the purposes of this section a register is “duly closed” if it is closed in accordance with provision contained—
- (a) in the debentures,
  - (b) in the case of debenture stock in the stock certificates, or
  - (c) in the trust deed or other document securing the debentures or debenture stock.
- The total period for which a register is closed in any year must not exceed 30 days.
- (6) References in this section to a register of debenture holders include a duplicate—
- (a) of a register of debenture holders that is kept outside the United Kingdom, or
  - (b) of any part of such a register.

**Register of debenture holders: response to request for inspection or copy**

- 745.**—(1) Where an LLP receives a request under section 744 (register of debenture holders: right to inspect and require copy), it must within five working days either—
- (a) comply with the request, or
  - (b) apply to the court.
- (2) If it applies to the court it must notify the person making the request.
- (3) If on an application under this section the court is satisfied that the inspection or copy is not sought for a proper purpose—
- (a) it shall direct the LLP not to comply with the request, and
  - (b) it may further order that the LLP's costs (in Scotland, expenses) on the application be paid in whole or in part by the person who made the request, even if he is not a party to the application.

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(4) If the court makes such a direction and it appears to the court that the LLP is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons), it may direct that the LLP is not to comply with any such request. The order must contain such provision as appears to the court appropriate to identify the requests to which it applies.

(5) If on an application under this section the court does not direct the LLP not to comply with the request, the LLP must comply with the request immediately upon the court giving its decision or, as the case may be, the proceedings being discontinued.

#### **Register of debenture holders: refusal of inspection or default in providing copy**

**746.**—(1) If an inspection required under section 744 (register of debenture holders: right to inspect and require copy) is refused or default is made in providing a copy required under that section, otherwise than in accordance with an order of the court, an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(3) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requesting it.

#### **Register of debenture holders: offences in connection with request for or disclosure of information**

**747.**—(1) It is an offence for a person knowingly or recklessly to make in a request under section 744 (register of debenture holders: right to inspect and require copy) a statement that is misleading, false or deceptive in a material particular.

(2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by that section—

- (a) to do anything that results in the information being disclosed to another person, or
- (b) to fail to do anything with the result that the information is disclosed to another person,

knowing, or having reason to suspect, that person may use the information for a purpose that is not a proper purpose.

(3) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
- (b) on summary conviction—
  - (i) in England and Wales or Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
  - (ii) in Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

#### **Time limit for claims arising from entry in register**

**748.**—(1) Liability incurred by an LLP—



- (a) from the making or deletion of an entry in the register of debenture holders, or
- (b) from a failure to make or delete any such entry,

is not enforceable more than ten years after the date on which the entry was made or deleted or, as the case may be, the failure first occurred.

(2) This is without prejudice to any lesser period of limitation (and, in Scotland, to any rule that the obligation giving rise to the liability prescribes before the expiry of that period).”.

### Supplementary provisions

22. Sections 749 and 750 apply to LLPs, modified so that they read as follows—

#### “Right of debenture holder to copy of deed

749.—(1) Any holder of debentures of an LLP is entitled, on request and on payment of the fee prescribed by regulation 4 of the Companies (Fees for Inspection and Copying of Company Records) (No. 2) Regulations 2007 (S.I. 2007/3535), to be provided with a copy of any trust deed for securing the debentures.

(2) If default is made in complying with this section, an offence is committed by every member of the LLP who is in default.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(4) In the case of any such default the court may direct that the copy required be sent to the person requiring it.

#### Liability of trustees of debentures

750.—(1) Any provision contained in—

- (a) a trust deed for securing an issue of debentures, or
- (b) any contract with the holders of debentures secured by a trust deed,

is void in so far as it would have the effect of exempting a trustee of the deed from, or indemnifying him against, liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Subsection (1) does not invalidate—

- (a) a release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release;
- (b) any provision enabling such a release to be given—
  - (i) on being agreed to by a majority of not less than 75% in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose, and
  - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.”.

23. Sections 752 to 754 apply to LLPs, modified so that they read as follows—

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### **“Power to re-issue redeemed debentures**

**752.**—(1) Where an LLP has redeemed debentures previously issued, then unless—

- (a) provision to the contrary (express or implied) is contained in any contract made by the LLP, or
- (b) the LLP has, by making a determination to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the LLP may re-issue the debentures, either by re-issuing the same debentures or by issuing new debentures in their place. This subsection is deemed always to have had effect.

(2) On a re-issue of redeemed debentures the person entitled to the debentures has (and is deemed always to have had) the same priorities as if the debentures had never been redeemed.

(3) The re-issue of a debenture or the issue of another debenture in its place under this section is treated as the issue of a new debenture for the purposes of stamp duty. It is not so treated for the purposes of any provision limiting the amount or number of debentures to be issued.

(4) A person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect of it, unless he had notice (or, but for his negligence, might have discovered) that the debenture was not duly stamped. In that case the LLP is liable to pay the proper stamp duty and penalty.

### **Deposit of debentures to secure advances**

**753.** Where an LLP has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures are not treated as redeemed by reason only of the LLP's account having ceased to be in debit while the debentures remained so deposited.

### **Priorities where debentures secured by floating charge**

**754.**—(1) This section applies where debentures of an LLP registered in England and Wales or Northern Ireland are secured by a charge that, as created, was a floating charge.

(2) If possession is taken, by or on behalf of the holders of the debentures, of any property comprised in or subject to the charge, and the LLP is not at that time in the course of being wound up, the LLP's preferential debts shall be paid out of assets coming to the hands of the persons taking possession in priority to any claims for principal or interest in respect of the debentures.

(3) “Preferential debts” means the categories of debts listed in Schedule 6 to the Insolvency Act 1986 (c. 45) or Schedule 4 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)). For the purposes of those Schedules “the relevant date” is the date of possession being taken as mentioned in subsection (2).

(4) Payments under this section shall be recouped, as far as may be, out of the assets of the LLP available for payment of general creditors.”.

## PART 7

### CERTIFICATION AND TRANSFER OF DEBENTURES

#### Issue of certificates etc on allotment

24. Section 769 applies to LLPs, modified so that it reads as follows—

##### “Duty of LLP as to issue of certificates etc on allotment

769.—(1) An LLP must, within two months after the allotment of any of its debentures or debenture stock, complete and have ready for delivery—

- (a) the debentures allotted, or
- (b) the certificates of the debenture stock allotted.

(2) Subsection (1) does not apply—

- (a) if the conditions of issue of the debentures or debenture stock provide otherwise, or
- (b) in the case of allotment to a financial institution (see section 778).

(3) If default is made in complying with subsection (1) an offence is committed by every member of the LLP who is in default.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.”.

#### Transfer of debentures

25. Sections 770 and 771 apply to LLPs, modified so that they read as follows—

##### “Registration of transfer

770.—(1) An LLP may not register a transfer of debentures of the LLP unless—

- (a) a proper instrument of transfer has been delivered to it, or
- (b) the transfer is an exempt transfer within the Stock Transfer Act 1982 (c. 41).

(2) Subsection (1) does not affect any power of the LLP to register as debenture holder a person to whom the right to any debentures of the LLP has been transmitted by operation of law.

##### Procedure on transfer being lodged

771.—(1) When a transfer of debentures of an LLP has been lodged with the LLP, the LLP must either—

- (a) register the transfer, or
- (b) give the transferee notice of refusal to register the transfer, together with its reasons for the refusal,

as soon as practicable and in any event within two months after the date on which the transfer is lodged with it.

(2) If the LLP refuses to register the transfer, it must provide the transferee with such further information about the reasons for the refusal as the transferee may reasonably request. This does not include copies of minutes of meetings of members.

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(3) If an LLP fails to comply with this section, an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(5) This section does not apply in relation to the transmission of debentures by operation of law.”.

## Other matters

26. Sections 774 and 775 apply to LLPs, modified so that they read as follows—

### “Evidence of grant of probate etc

774. The production to an LLP of any document that is by law sufficient evidence of the grant of—

- (a) probate of the will of a deceased person,
- (b) letters of administration of the estate of a deceased person, or
- (c) confirmation as executor of a deceased person,

shall be accepted by the LLP as sufficient evidence of the grant.

### Certification of instrument of transfer

775.—(1) The certification by an LLP of an instrument of transfer of any debentures of the LLP is to be taken as a representation by the LLP to any person acting on the faith of the certification that there have been produced to the LLP such documents as on their face show a prima facie title to the debentures in the transferor named in the instrument.

(2) The certification is not to be taken as a representation that the transferor has any title to the debentures.

(3) Where a person acts on the faith of a false certification by an LLP made negligently, the LLP is under the same liability to him as if the certification had been made fraudulently.

(4) For the purposes of this section—

- (a) an instrument of transfer is certificated if it bears the words “certificate lodged” (or words to the like effect);
- (b) the certification of an instrument of transfer is made by an LLP if—
  - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the LLP's behalf, and
  - (ii) the certification is signed by a person authorised to certificate transfers on the LLP's behalf or by a member or employee of the LLP or by an officer or employee of a body corporate so authorised;
- (c) a certification is treated as signed by a person if—
  - (i) it purports to be authenticated by his signature or initials (whether handwritten or not), and
  - (ii) it is not shown that the signature or initials was or were placed there neither by himself nor by a person authorised to use the signature or initials for the purpose of certificating transfers on the LLP's behalf.”.

## Issue of certificates etc on transfer

27. Section 776 applies to LLPs, modified so that it reads as follows—

### “Duty of LLP as to issue of certificates etc on transfer

776.—(1) An LLP must, within two months after the date on which a transfer of any of its debentures or debenture stock is lodged with the LLP, complete and have ready for delivery—

- (a) the debentures transferred, or
- (b) the certificates of the debenture stock transferred.

(2) For this purpose a “transfer” means—

- (a) a transfer duly stamped and otherwise valid, or
- (b) an exempt transfer within the Stock Transfer Act 1982 (c. 41),

but does not include a transfer that the LLP is for any reason entitled to refuse to register and does not register.

(3) Subsection (1) does not apply—

- (a) if the conditions of issue of the debentures or debenture stock provide otherwise, or
- (b) in the case of a transfer to a financial institution (see section 778).

(4) If default is made in complying with subsection (1) an offence is committed by every member of the LLP who is in default.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.”.

## Issue of certificates etc on allotment or transfer to financial institution

28. Section 778 applies to LLPs, modified so that it reads as follows—

### “Issue of certificates etc: allotment or transfer to financial institution

778.—(1) An LLP—

- (a) of which debentures are allotted to a financial institution,
- (b) of which debenture stock is allotted to a financial institution, or
- (c) with which a transfer for transferring debentures or debenture stock to a financial institution is lodged,

is not required in consequence of that allotment or transfer to comply with section 769(1) or 776(1) (duty of LLP as to issue of certificates etc).

(2) A “financial institution” means—

- (a) a recognised clearing house acting in relation to a recognised investment exchange, or
- (b) a nominee of—
  - (i) a recognised clearing house acting in that way, or
  - (ii) a recognised investment exchange,

designated for the purposes of this section in the rules of the recognised investment exchange in question.

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(3) Expressions used in subsection (2) have the same meaning as in Part 18 of the Financial Services and Markets Act 2000 (c. 8).”.

### Supplementary provisions

29. Section 782 is applied to LLPs, modified so that it reads as follows—

#### “Issue of certificates etc: court order to make good default

**782.**—(1) If an LLP on which a notice has been served requiring it to make good any default in complying with—

- (a) section 769(1) (duty of LLP as to issue of certificates etc on allotment), or
- (b) section 776(1) (duty of LLP as to issue of certificates etc on transfer),

fails to make good the default within ten days after service of the notice, the person entitled to have the certificates or the debentures delivered to him may apply to the court.

(2) The court may on such an application make an order directing the LLP and any member of it to make good the default within such time as may be specified in the order.

(3) The order may provide that all costs (in Scotland, expenses) of and incidental to the application are to be borne by the LLP or by a member of it responsible for the default.”.

## PART 8

### AN LLP'S ANNUAL RETURN

#### Contents and delivery of LLP's annual return

30. Sections 854, 855 and 855A<sup>M8</sup> apply to LLPs, modified so that they read as follows—

#### “Duty to deliver annual returns

**854.**—(1) Every LLP must deliver to the registrar successive annual returns each of which is made up to a date not later than the date that is from time to time the LLP's return date.

(2) The LLP's return date is—

- (a) the anniversary of the LLP's incorporation, or
- (b) if the LLP's last return delivered in accordance with this Part was made up to a different date, the anniversary of that date.

(3) Each return must—

- (a) contain the information required by or under the following provisions of this Part, and
- (b) be delivered to the registrar within 28 days after the date to which it is made up.

#### Contents of annual return: general

**855.**—(1) Every annual return must state the date to which it is made up and contain the following information—

- (a) the address of the LLP's registered office;
- (b) the required particulars of the members of the LLP (see section 855A);

(c) if any LLP records are kept at a place other than the LLP's registered office, the address of that place and the records that are kept there.

(2) In this Part, "return period", in relation to an annual return, means the period beginning immediately after the date to which the last return was made up (or, in the case of the first return, with the incorporation of the LLP) and ending with the date to which the return is made up.

### Required particulars of members

**855A.**—(1) For the purposes of section 855(1)(b) the required particulars of a member are—

- (a) where the member is an individual, the particulars required by section 163 to be entered in the register of members (subject to subsection (2) below); and
- (b) where the member is a body corporate or a firm that is a legal person under the law by which it is governed, the particulars required by section 164 to be entered in the register of members.

(2) The former name of a member who is an individual is a required particular in relation to an annual return only if the member was known by the name for business purposes during the return period.”.

### Marginal Citations

**M8** Section 855 was amended by regulations 2 to 4 of [S.I. 2008/3000](#). Section 855A was inserted by regulation 2(2) of [S.I. 2008/3000](#).

**31.** Section 858 <sup>M9</sup> applies to LLPs, modified so that it reads as follows—

### “Failure to deliver annual return

**858.**—(1) If an LLP fails to deliver an annual return before the end of the period of 28 days after a return date, an offence is committed by—

- (a) the LLP, and
- (b) subject to subsection (4), every designated member of the LLP.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

(3) The contravention continues until such time as an annual return made up to that return date is delivered by the LLP to the registrar.

(4) It is a defence for a designated member charged with an offence under subsection (1) (b) to prove that he took all reasonable steps to avoid the commission or continuation of the offence.

(5) In the case of continued contravention, an offence is also committed by every designated member of the LLP who did not commit an offence under subsection (1) in relation to the initial contravention but is in default in relation to the continued contravention. A person guilty of an offence under this subsection is liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the contravention continues and he is in default.”.

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#### Marginal Citations

**M9** Section 858 was amended by regulation 8(1) of [S.I. 2008/3000](#).

## PART 9

### LLP CHARGES

#### CHAPTER 1

#### LLPS REGISTERED IN ENGLAND AND WALES OR IN NORTHERN IRELAND

#### Requirement to register LLP charges

**32.** Sections 860 to 862 apply to LLPs, modified so that they read as follows—

##### “Charges created by an LLP

**860.**—(1) An LLP that creates a charge to which this section applies must deliver the required particulars of the charge, together with the instrument (if any) by which the charge is created or evidenced, to the registrar for registration before the end of the period allowed for registration.

(2) The required particulars are those prescribed by regulation 2 of the Companies (Particulars of Company Charges) Regulations 2008 (S.I. 2008/2996).

(3) Registration of a charge to which this section applies may instead be effected on the application of a person interested in it.

(4) Where registration is effected on the application of some person other than the LLP, that person is entitled to recover from the LLP the amount of any fees properly paid by him to the registrar on registration.

(5) If an LLP fails to comply with subsection (1), an offence is committed by—

- (a) the LLP, and
- (b) every member of it who is in default.

(6) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) Subsection (5) does not apply if registration of the charge has been effected on the application of some other person.

(8) This section applies to the following charges—

- (a) a charge on land or any interest in land, other than a charge for any rent or other periodical sum issuing out of land,
- (b) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale,
- (c) a charge for the purposes of securing any issue of debentures,
- (d) a charge on book debts of the LLP,
- (e) a floating charge on the LLP's property or undertaking,
- (f) a charge on a ship or aircraft, or any share in a ship,



- (g) a charge on goodwill or on any intellectual property.

#### **Charges which have to be registered: supplementary**

**861.**—(1) The holding of debentures entitling the holder to a charge on land is not, for the purposes of section 860(8)(a), an interest in the land.

(2) It is immaterial for the purposes of this Chapter where land subject to a charge is situated.

(3) The deposit by way of security of a negotiable instrument given to secure the payment of book debts is not, for the purposes of section 860(8)(d), a charge on those book debts.

(4) For the purposes of section 860(8)(g), “intellectual property” means—

- (a) any patent, trade mark, registered design, copyright or design right;
- (b) any licence under or in respect of any such right.

(5) In this Chapter—

“charge” includes mortgage, and

“LLP” means an LLP registered in England and Wales or in Northern Ireland.

#### **Charges existing on property acquired**

**862.**—(1) This section applies where an LLP acquires property which is subject to a charge of a kind which would, if it had been created by the LLP after the acquisition of the property, have been required to be registered under this Chapter.

(2) The LLP must deliver the required particulars of the charge, together with a certified copy of the instrument (if any) by which the charge is created or evidenced, to the registrar for registration.

(3) The required particulars are those prescribed by regulation 4 of the Companies (Particulars of Company Charges) Regulations 2008 (S.I. 2008/2996).

(4) Subsection (2) must be complied with before the end of the period allowed for registration.

(5) If default is made in complying with this section, an offence is committed by—

- (a) the LLP, and
- (b) every member of it who is in default.

(6) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

#### **Special rules about debentures**

**33.** Sections 863 to 865 apply to LLPs, modified so that they read as follows—

##### **“Charge in series of debentures**

**863.**—(1) Where a series of debentures containing, or giving by reference to another instrument, any charge to the benefit of which debenture holders of that series are entitled *pari passu* is created by an LLP, it is for the purposes of section 860(1) sufficient if the required particulars, together with the deed containing the charge (or, if there is no such deed, one of the debentures of the series), are delivered to the registrar before the end of the period allowed for registration.

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(2) The following are the required particulars—

- (a) the total amount secured by the whole series, and
- (b) the dates of the determinations of the LLP authorising the issue of the series and the date of the covering deed (if any) by which the series is created or defined, and
- (c) a general description of the property charged, and
- (d) the names of the trustees (if any) for the debenture holders.

(3) Particulars of the date and amount of each issue of debentures of a series of the kind mentioned in subsection (1) must be sent to the registrar for entry in the register of charges.

(4) Failure to comply with subsection (3) does not affect the validity of the debentures issued.

(5) Subsections (3) to (7) of section 860 apply for the purposes of this section as they apply for the purposes of that section, but as if references to the registration of a charge were references to the registration of a series of debentures.

#### **Additional registration requirement for commission etc in relation to debentures**

**864.**—(1) Where any commission, allowance or discount has been paid or made either directly or indirectly by an LLP to a person in consideration of his—

- (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures in an LLP, or
- (b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for such debentures,

the particulars required to be sent for registration under section 860 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made.

(2) The deposit of debentures as security for a debt of the LLP is not, for the purposes of this section, treated as the issue of debentures at a discount.

(3) Failure to comply with this section does not affect the validity of the debentures issued.

#### **Endorsement of certificate on debentures**

**865.**—(1) The LLP shall cause a copy of every certificate of registration given under section 869 to be endorsed on every debenture or certificate of debenture stock which is issued by the LLP, and the payment of which is secured by the charge so registered.

(2) But this does not require an LLP to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the LLP before the charge was created.

(3) If a person knowingly and wilfully authorises or permits the delivery of a debenture or certificate of debenture stock which under this section is required to have endorsed on it a copy of a certificate of registration, without the copy being so endorsed upon it, he commits an offence.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

#### **Charges in other jurisdictions**

**34.** Sections 866 and 867 apply to LLPs, modified so that they read as follows—

### **“Charges created in, or over property in, jurisdictions outside the United Kingdom**

**866.**—(1) Where a charge is created outside the United Kingdom comprising property situated outside the United Kingdom, the delivery to the registrar of a verified copy of the instrument by which the charge is created or evidenced has the same effect for the purposes of this Chapter as the delivery of the instrument itself.

(2) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the charge may be sent for registration under section 860 even if further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

### **Charges created in, or over property in, another United Kingdom jurisdiction**

**867.**—(1) Subsection (2) applies where—

- (a) a charge comprises property situated in a part of the United Kingdom other than the part in which the LLP is registered, and
- (b) registration in that other part is necessary to make the charge valid or effectual under the law of that part of the United Kingdom.

(2) The delivery to the registrar of a verified copy of the instrument by which the charge is created or evidenced, together with a certificate stating that the charge was presented for registration in that other part of the United Kingdom on the date on which it was so presented has, for the purposes of this Chapter, the same effect as the delivery of the instrument itself.”.

### **Orders charging land: Northern Ireland**

35. Section 868 applies to LLPs, modified so that it reads as follows—

#### **“Northern Ireland: registration of certain charges etc affecting land**

**868.**—(1) Where a charge imposed by an order under Article 46 of the 1981 Order or notice of such a charge is registered in the Land Registry against registered land or any estate in registered land of an LLP, the Registrar of Titles shall as soon as may be cause two copies of the order made under Article 46 of that Order or of any notice under Article 48 of that Order to be delivered to the registrar.

(2) Where a charge imposed by an order under Article 46 of the 1981 Order is registered in the Registry of Deeds against any unregistered land or estate in land of an LLP, the Registrar of Deeds shall as soon as may be cause two copies of the order to be delivered to the registrar.

(3) On delivery of copies under this section, the registrar shall—

- (a) register one of them in accordance with section 869, and
- (b) not later than 7 days from that date of delivery, cause the other copy together with a certificate of registration under section 869(5) to be sent to the LLP against which judgment was given.

(4) Where a charge to which subsection (1) or (2) applies is vacated, the Registrar of Titles or, as the case may be, the Registrar of Deeds shall cause a certified copy of the certificate of satisfaction lodged under Article 132(1) of the 1981 Order to be delivered to the registrar for entry of a memorandum of satisfaction in accordance with section 872.

(5) In this section—

“the 1981 Order” means the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I.6));

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“the Registrar of Deeds” means the registrar appointed under the Registration of Deeds Act (Northern Ireland) 1970 (c. 25);

“Registry of Deeds” has the same meaning as in the Registration of Deeds Acts;

“Registration of Deeds Acts” means the Registration of Deeds Act (Northern Ireland) 1970 and every statutory provision for the time being in force amending that Act or otherwise relating to the registry of deeds, or the registration of deeds, orders or other instruments or documents in such registry;

“the Land Registry” and “the Registrar of Titles” are to be construed in accordance with section 1 of the Land Registration Act (Northern Ireland) 1970 (c. 18);

“registered land” and “unregistered land” have the same meaning as in Part 3 of the Land Registration Act (Northern Ireland) 1970.”.

### The register of charges

**36.** Sections 869 to 873 apply to LLPs, modified so that they read as follows—

#### “Register of charges to be kept by registrar

**869.**—(1) The registrar shall keep, with respect to each LLP, a register of all the charges requiring registration under this Chapter.

(2) In the case of a charge to the benefit of which holders of a series of debentures are entitled, the registrar shall enter in the register the required particulars specified in section 863(2).

(3) In the case of a charge imposed by the Enforcement of Judgments Office under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981, the registrar shall enter in the register the date on which the charge became effective.

(4) In the case of any other charge, the registrar shall enter in the register the following particulars—

- (a) if it is a charge created by an LLP, the date of its creation and, if it is a charge which was existing on property acquired by the LLP, the date of the acquisition,
- (b) the amount secured by the charge,
- (c) short particulars of the property charged, and
- (d) the persons entitled to the charge.

(5) The registrar shall give a certificate of the registration of any charge registered in pursuance of this Chapter, stating the amount secured by the charge.

(6) The certificate—

- (a) shall be signed by the registrar or authenticated by the registrar's official seal <sup>M10</sup>, and
- (b) is conclusive evidence that the requirements of this Chapter as to registration have been satisfied.

(7) The register kept in pursuance of this section shall be open to inspection by any person.

#### The period allowed for registration

**870.**—(1) The period allowed for registration of a charge created by an LLP is—

- (a) 21 days beginning with the day after the day on which the charge is created, or

- (b) if the charge is created outside the United Kingdom, 21 days beginning with the day after the day on which the instrument by which the charge is created or evidenced (or a copy of it) could, in due course of post (and if despatched with due diligence) have been received in the United Kingdom.
- (2) The period allowed for registration of a charge to which property acquired by an LLP is subject is—
  - (a) 21 days beginning with the day after the day on which the acquisition is completed, or
  - (b) if the property is situated and the charge was created outside the United Kingdom, 21 days beginning with the day after the day on which the instrument by which the charge is created or evidenced (or a copy of it) could, in due course of post (and if despatched with due diligence) have been received in the United Kingdom.
- (3) The period allowed for registration of particulars of a series of debentures as a result of section 863 is—
  - (a) if there is a deed containing the charge mentioned in section 863(1), 21 days beginning with the day after the day on which that deed is executed, or
  - (b) if there is no such deed, 21 days beginning with the day after the day on which the first debenture of the series is executed.

#### **Registration of enforcement of security**

**871.**—(1) If a person obtains an order for the appointment of a receiver or manager of an LLP's property, or appoints such a receiver or manager under powers contained in an instrument, he shall within 7 days of the order or of the appointment under those powers, give notice of the fact to the registrar.

(2) Where a person appointed receiver or manager of an LLP's property under powers contained in an instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar notice to that effect.

(3) The registrar must enter a fact of which he is given notice under this section in the register of charges.

(4) A person who makes default in complying with the requirements of this section commits an offence.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### **Entries of satisfaction and release**

**872.**—(1) Subsection (2) applies if a statement is delivered to the registrar verifying with respect to a registered charge—

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or
- (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the LLP's property or undertaking.

(2) The registrar may enter on the register a memorandum of satisfaction in whole or in part, or of the fact part of the property or undertaking has been released from the charge or has ceased to form part of the LLP's property or undertaking (as the case may be).

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(3) Where the registrar enters a memorandum of satisfaction in whole, the registrar shall if required send the LLP a copy of it.

### **Rectification of register of charges**

**873.**—(1) Subsection (2) applies if the court is satisfied—

(a) that the failure to register a charge before the end of the period allowed for registration, or the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction—

(i) was accidental or due to inadvertence or to some other sufficient cause, or

(ii) is not of a nature to prejudice the position of creditors of the LLP, or

(b) that on other grounds it is just and equitable to grant relief.

(2) The court may, on the application of the LLP or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the period allowed for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.”.

#### **Marginal Citations**

**M10** See section 1062 of the Companies Act 2006 (the registrar's official seal).

### **Avoidance of certain charges**

**37.** Section 874 applies to LLPs, modified so that it reads as follows—

#### **“Consequence of failure to register charges created by an LLP**

**874.**—(1) If an LLP creates a charge to which section 860 applies, the charge is void (so far as any security on the LLP's property or undertaking is conferred by it) against—

(a) a liquidator of the LLP,

(b) an administrator of the LLP, and

(c) a creditor of the LLP,

unless that section is complied with.

(2) Subsection (1) is subject to the provisions of this Chapter.

(3) Subsection (1) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this section, the money secured by it immediately becomes payable.”.

### **LLPs' records and registers**

**38.** Sections 875 to 877 apply to LLPs, modified so that they read as follows—

#### **“LLPs to keep copies of instruments creating charges**

**875.**—(1) An LLP must keep available for inspection a copy of every instrument creating a charge requiring registration under this Chapter, including any document delivered to the LLP under section 868(3)(b) (Northern Ireland: orders imposing charges affecting land).

(2) In the case of a series of uniform debentures, a copy of one of the debentures of the series is sufficient.

### **LLP's register of charges**

**876.**—(1) Every LLP shall keep available for inspection a register of charges and enter in it—

- (a) all charges specifically affecting property of the LLP, and
- (b) all floating charges on the whole or part of the LLP's property or undertaking.

(2) The entry shall in each case give a short description of the property charged, the amount of the charge and, except in the cases of securities to bearer, the names of the persons entitled to it.

(3) If a member of the LLP knowingly and wilfully authorises or permits the omission of an entry required to be made in pursuance of this section, he commits an offence.

(4) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **Instruments creating charges and register of charges to be available for inspection**

**877.**—(1) This section applies to—

- (a) documents required to be kept available for inspection under section 875 (copies of instruments creating charges), and
- (b) an LLP's register of charges kept in pursuance of section 876.

(2) The documents and register must be kept available for inspection—

- (a) at the LLP's registered office, or
- (b) at a place specified in Part 2 of the Companies (Company Records) Regulations 2008 (S.I. 2008/3006).

(3) The LLP must give notice to the registrar—

- (a) of the place at which the documents and register are kept available for inspection, and
- (b) of any change in that place,

unless they have at all times been kept at the LLP's registered office.

(4) The documents and register shall be open to the inspection—

- (a) of any creditor or member of the LLP without charge, and
- (b) of any other person on payment of the fee prescribed by regulation 2(c) of the Companies (Fees for Inspection of Company Records) Regulations 2008 (S.I. 2008/3007).

(5) If default is made for 14 days in complying with subsection (3) or an inspection required under subsection (4) is refused, an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(7) If an inspection required under subsection (4) is refused the court may by order compel an immediate inspection.”.

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## CHAPTER 2

### LLPS REGISTERED IN SCOTLAND

#### Charges requiring registration

39. Sections 878 to 881 apply to LLPs, modified so that they read as follows—

#### “Charges created by an LLP

878.—(1) An LLP that creates a charge to which this section applies must deliver the required particulars of the charge, together with a copy certified as a correct copy of the instrument (if any) by which the charge is created or evidenced, to the registrar for registration before the end of the period allowed for registration.

(2) The required particulars are those prescribed by regulation 3 of the Companies (Particulars of Company Charges) Regulations 2008 (S.I. 2008/2996).

(3) Registration of a charge to which this section applies may instead be effected on the application of a person interested in it.

(4) Where registration is effected on the application of some person other than the LLP, that person is entitled to recover from the LLP the amount of any fees properly paid by him to the registrar on the registration.

(5) If an LLP fails to comply with subsection (1), an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

(6) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) Subsection (5) does not apply if registration of the charge has been effected on the application of some other person.

(8) This section applies to the following charges—

- (a) a charge on land or any interest in such land, other than a charge for any rent or other periodical sum payable in respect of the land,
- (b) a security over incorporeal moveable property of any of the following categories—
  - (i) goodwill,
  - (ii) a patent or a licence under a patent,
  - (iii) a trade mark,
  - (iv) a copyright or a licence under a copyright,
  - (v) a registered design or a licence in respect of such a design,
  - (vi) a design right or a licence under a design right, and
  - (vii) the book debts (whether book debts of the LLP or assigned to it),
- (c) a security over a ship or aircraft or any share in a ship,
- (d) a floating charge.



### **Charges which have to be registered: supplementary**

**879.**—(1) A charge on land, for the purposes of section 878(8)(a), includes a charge created by a heritable security within the meaning of section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35).

(2) The holding of debentures entitling the holder to a charge on land is not, for the purposes of section 878(8)(a), deemed to be an interest in land.

(3) It is immaterial for the purposes of this Chapter where land subject to a charge is situated.

(4) The deposit by way of security of a negotiable instrument given to secure the payment of book debts is not, for the purposes of section 878(8)(b)(vii), to be treated as a charge on those book debts.

(5) References in this Chapter to the date of the creation of a charge are—

- (a) in the case of a floating charge, the date on which the instrument creating the floating charge was executed by the LLP creating the charge, and
- (b) in any other case, the date on which the right of the person entitled to the benefit of the charge was constituted as a real right.

(6) In this Chapter “LLP” means an LLP registered in Scotland.

### **Duty to register charges existing on property acquired**

**880.**—(1) Subsection (2) applies where an LLP acquires any property which is subject to a charge of any kind as would, if it had been created by the LLP after the acquisition of the property, have been required to be registered under this Chapter.

(2) The LLP must deliver the required particulars of the charge, together with a copy (certified to be a correct copy) of the instrument (if any) by which the charge was created or is evidenced, to the registrar for registration before the end of the period allowed for registration.

(3) The required particulars are those prescribed by regulation 4 of the Companies (Particulars of Company Charges) Regulations 2008 (S.I. 2008/2996).

(4) If default is made in complying with this section, an offence is committed by—

- (a) the LLP, and
- (b) every member of it who is in default.

(5) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **Charge by way of ex facie absolute disposition, etc**

**881.**—(1) For the avoidance of doubt, it is hereby declared that, in the case of a charge created by way of an ex facie absolute disposition or assignation qualified by a back letter or other agreement, or by a standard security qualified by an agreement, compliance with section 878(1) does not of itself render the charge unavailable as security for indebtedness incurred after the date of compliance.

(2) Where the amount secured by a charge so created is purported to be increased by a further back letter or agreement, a further charge is held to have been created by the ex facie absolute disposition or assignation or (as the case may be) by the standard security, as qualified by the further back letter or agreement.

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- (3) In that case, the provisions of this Chapter apply to the further charge as if—
- (a) references in this Chapter (other than in this section) to a charge were references to the further charge, and
  - (b) references to the date of the creation of a charge were references to the date on which the further back letter or agreement was executed.”.

### Special rules about debentures

40. Sections 882 and 883 apply to LLPs, modified so that they read as follows—

#### “Charge in series of debentures

**882.**—(1) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu*, is created by an LLP, it is sufficient for purposes of section 878 if the required particulars, together with a copy of the deed containing the charge (or, if there is no such deed, of one of the debentures of the series) are delivered to the registrar before the end of the period allowed for registration.

(2) The following are the required particulars—

- (a) the total amount secured by the whole series,
- (b) the dates of the determinations of the LLP authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined,
- (c) a general description of the property charged,
- (d) the names of the trustees (if any) for the debenture-holders, and
- (e) in the case of a floating charge, a statement of any provisions of the charge and of any instrument relating to it which prohibit or restrict or regulate the power of the LLP to grant further securities ranking in priority to, or *pari passu* with, the floating charge, or which vary or otherwise regulate the order of ranking of the floating charge in relation to subsisting securities.

(3) Where more than one issue is made of debentures in the series, particulars of the date and amount of each issue of debentures of the series must be sent to the registrar for entry in the register of charges.

(4) Failure to comply with subsection (3) does not affect the validity of any of those debentures.

(5) Subsections (3) to (7) of section 878 apply for the purposes of this section as they apply for the purposes of that section but as if for the reference to the registration of the charge there was substituted a reference to the registration of the series of debentures.

#### Additional registration requirement for commission etc in relation to debentures

**883.**—(1) Where any commission, allowance or discount has been paid or made either directly or indirectly by an LLP to a person in consideration of his—

- (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures in an LLP, or
- (b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for such debentures,

the particulars required to be sent for registration under section 878 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made.

(2) The deposit of debentures as security for a debt of the LLP is not, for the purposes of this section, treated as the issue of debentures at a discount.

(3) Failure to comply with this section does not affect the validity of the debentures issued.”.

### **Charges on property outside the United Kingdom**

41. Section 884 applies to LLPs, modified so that it reads as follows—

#### **“Charges on property outside United Kingdom**

**884.** Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the copy of the instrument creating or purporting to create the charge may be sent for registration under section 878 even if further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.”.

### **The register of charges**

42. Sections 885 to 888 apply to LLPs, modified so that they read as follows—

#### **“Register of charges to be kept by registrar**

**885.**—(1) The registrar shall keep, with respect to each LLP, a register of all the charges requiring registration under this Chapter.

(2) In the case of a charge to the benefit of which holders of a series of debentures are entitled, the registrar shall enter in the register the required particulars specified in section 882(2).

(3) In the case of any other charge, the registrar shall enter in the register the following particulars—

- (a) if it is a charge created by an LLP, the date of its creation and, if it is a charge which was existing on property acquired by the LLP, the date of the acquisition,
- (b) the amount secured by the charge,
- (c) short particulars of the property charged,
- (d) the persons entitled to the charge, and
- (e) in the case of a floating charge, a statement of any of the provisions of the charge and of any instrument relating to it which prohibit or restrict or regulate the LLP's power to grant further securities ranking in priority to, or *pari passu* with, the floating charge, or which vary or otherwise regulate the order of ranking of the floating charge in relation to subsisting securities.

(4) The registrar shall give a certificate of the registration of any charge registered in pursuance of this Chapter, stating—

- (a) the name of the LLP and the person first-named in the charge among those entitled to the benefit of the charge (or, in the case of a series of debentures, the name of the holder of the first such debenture issued), and
- (b) the amount secured by the charge.

(5) The certificate—

- (a) shall be signed by the registrar or authenticated by the registrar's official seal, and

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- (b) is conclusive evidence that the requirements of this Chapter as to registration have been satisfied.
- (6) The register kept in pursuance of this section shall be open to inspection by any person.

### **The period allowed for registration**

- 886.**—(1) The period allowed for registration of a charge created by an LLP is—
- (a) 21 days beginning with the day after the day on which the charge is created, or
  - (b) if the charge is created outside the United Kingdom, 21 days beginning with the day after the day on which a copy of the instrument by which the charge is created or evidenced could, in due course of post (and if despatched with due diligence) have been received in the United Kingdom.
- (2) The period allowed for registration of a charge to which property acquired by an LLP is subject is—
- (a) 21 days beginning with the day after the day on which the transaction is settled, or
  - (b) if the property is situated and the charge was created outside the United Kingdom, 21 days beginning with the day after the day on which a copy of the instrument by which the charge is created or evidenced could, in due course of post (and if despatched with due diligence) have been received in the United Kingdom.
- (3) The period allowed for registration of particulars of a series of debentures as a result of section 882 is—
- (a) if there is a deed containing the charge mentioned in section 882(1), 21 days beginning with the day after the day on which that deed is executed, or
  - (b) if there is no such deed, 21 days beginning with the day after the day on which the first debenture of the series is executed.

### **Entries of satisfaction and relief**

- 887.**—(1) Subsection (2) applies if a statement is delivered to the registrar verifying with respect to any registered charge—
- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or
  - (b) that part of the property charged has been released from the charge or has ceased to form part of the LLP's property.
- (2) If the charge is a floating charge, the statement must be accompanied by either—
- (a) a statement by the creditor entitled to the benefit of the charge, or a person authorised by him for the purpose, verifying that the statement mentioned in subsection (1) is correct, or
  - (b) a direction obtained from the court, on the ground that the statement by the creditor mentioned in paragraph (a) could not be readily obtained, dispensing with the need for that statement.
- (3) The registrar may enter on the register a memorandum of satisfaction (in whole or in part) regarding the fact contained in the statement mentioned in subsection (1).
- (4) Where the registrar enters a memorandum of satisfaction in whole, he shall, if required, furnish the LLP with a copy of the memorandum.

(5) Nothing in this section requires the LLP to submit particulars with respect to the entry in the register of a memorandum of satisfaction where the LLP, having created a floating charge over all or any part of its property, disposes of part of the property subject to the floating charge.

### **Rectification of register of charges**

**888.**—(1) Subsection (2) applies if the court is satisfied—

(a) that the failure to register a charge before the end of the period allowed for registration, or the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction—

(i) was accidental or due to inadvertence or to some other sufficient cause, or

(ii) is not of a nature to prejudice the position of creditors of the LLP, or

(b) that on other grounds it is just and equitable to grant relief.

(2) The court may, on the application of the LLP or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the period allowed for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.”.

### **Avoidance of certain charges**

**43.** Section 889 applies to LLPs, modified so that it reads as follows—

#### **“Charges void unless registered**

**889.**—(1) If an LLP creates a charge to which section 878 applies, the charge is void (so far as any security on the LLP's property or any part of it is conferred by the charge) against—

(a) the liquidator of the LLP,

(b) an administrator of the LLP, and

(c) any creditor of the LLP,

unless that section is complied with.

(2) Subsection (1) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this section the money secured by it immediately becomes payable.”.

### **LLPs' records and registers**

**44.** Sections 890 to 892 apply to LLPs, modified so that they read as follows—

#### **“Copies of instruments creating charges to be kept by LLP**

**890.**—(1) Every LLP shall cause a copy of every instrument creating a charge requiring registration under this Chapter to be kept available for inspection.

(2) In the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

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### **LLP's register of charges**

**891.**—(1) Every LLP shall keep available for inspection a register of charges and enter in it all charges specifically affecting property of the LLP, and all floating charges on any property of the LLP.

(2) There shall be given in each case a short description of the property charged, the amount of the charge and, except in the case of securities to bearer, the names of the persons entitled to it.

(3) If a member of the LLP knowingly and wilfully authorises or permits the omission of an entry required to be made in pursuance of this section, he commits an offence.

(4) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **Instruments creating charges and register of charges to be available for inspection**

**892.**—(1) This section applies to—

- (a) documents required to be kept available for inspection under section 890 (copies of instruments creating charges), and
- (b) an LLP's register of charges kept in pursuance of section 891.

(2) The documents and register must be kept available for inspection—

- (a) at the LLP's registered office, or
- (b) at a place specified in Part 2 of the Companies (Company Records) Regulations 2008 (S.I. 2008/3006).

(3) The LLP must give notice to the registrar—

- (a) of the place at which the documents and register are kept available for inspection, and
- (b) of any change in that place,

unless they have at all times been kept at the LLP's registered office.

(4) The documents and register shall be open to the inspection—

- (a) of any creditor or member of the LLP without charge, and
- (b) of any other person on payment of the fee prescribed by regulation 2(d) of the Companies (Fees for Inspection of Company Records) Regulations (S.I. 2008/3007).

(5) If default is made for 14 days in complying with subsection (3) or an inspection required under subsection (4) is refused, an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(7) If an inspection required under subsection (4) is refused the court may by order compel an immediate inspection.”.

## PART 10

### ARRANGEMENTS, RECONSTRUCTIONS AND CROSS-BORDER MERGERS

#### Arrangements and reconstructions

45.—(1) Sections 895 to 900<sup>M11</sup> apply to LLPs, modified so that they read as follows—

##### “Application of this Part

**895.** The provisions of this Part apply where a compromise or arrangement is proposed between an LLP and—

- (a) its creditors, or any class of them, or
- (b) its members, or any class of them.

##### Court order for holding of meeting

**896.**—(1) The court may, on an application under this section, order a meeting of the creditors or class of creditors, or of the members of the LLP or class of members (as the case may be), to be summoned in such manner as the court directs.

(2) An application under this section may be made by—

- (a) the LLP,
- (b) any creditor or member of the LLP,
- (c) if the LLP is being wound up, the liquidator, or
- (d) if the LLP is in administration, the administrator.

##### Statement to be circulated or made available

**897.**—(1) Where a meeting is summoned under section 896—

- (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by a statement complying with this section, and
- (b) every notice summoning the meeting that is given by advertisement must either—
  - (i) include such a statement, or
  - (ii) state where and how creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) The statement must—

- (a) explain the effect of the compromise or arrangement, and
- (b) in particular, state—
  - (i) any material interests of the members of the LLP (whether as members or as creditors of the LLP or otherwise), and
  - (ii) the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.

(3) Where the compromise or arrangement affects the rights of debenture holders of the LLP, the statement must give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the LLP's members.

(4) Where a notice given by advertisement states that copies of an explanatory statement can be obtained by creditors or members entitled to attend the meeting, every such creditor or

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member is entitled, on making application in the manner indicated by the notice, to be provided by the LLP with a copy of the statement free of charge.

(5) If an LLP makes default in complying with any requirement of this section, an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

This is subject to subsection (7) below.

(6) For this purpose the following are treated as members of the LLP—

- (a) a liquidator or administrator of the LLP, and
- (b) a trustee of a deed for securing the issue of debentures of the LLP.

(7) A person is not guilty of an offence under this section if he shows that the default was due to the refusal of a member or trustee for debenture holders to supply the necessary particulars of his interests.

(8) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **Duty of members and trustees to provide information**

**898.**—(1) It is the duty of—

- (a) any member of the LLP, and
- (b) any trustee for its debenture holders,

to give notice to the LLP of such matters relating to himself as may be necessary for the purposes of section 897 (explanatory statement to be circulated or made available).

(2) Any person who makes default in complying with this section commits an offence.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Court sanction for compromise or arrangement**

**899.**—(1) If a majority in number representing 75% in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting summoned under section 896, agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement.

(2) An application under this section may be made by—

- (a) the LLP,
- (b) any creditor or member of the LLP,
- (c) if the LLP is being wound up, the liquidator, or
- (d) if the LLP is in administration, the administrator.

(3) A compromise or agreement sanctioned by the court is binding on—

- (a) all creditors or the class of creditors or on the members or class of members (as the case may be), and
- (b) the LLP or, in the case of an LLP in the course of being wound up, the liquidator and contributories of the LLP.



- (4) The court's order has no effect until a copy of it has been delivered to the registrar.

### **Powers of court to facilitate reconstruction or amalgamation**

**900.**—(1) This section applies where application is made to the court under section 899 to sanction a compromise or arrangement and it is shown that—

- (a) the compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of any LLP or LLPs, or the amalgamation of any two or more relevant bodies corporate (where one or more of them is an LLP), and
- (b) under the scheme the whole or any part of the undertaking or the property of any LLP concerned in the scheme (“a transferor LLP”) is to be transferred to another relevant body corporate (“the transferee body corporate”).

(2) The court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters—

- (a) the transfer to the transferee body corporate of the whole or any part of the undertaking and of the property or liabilities of any transferor LLP;
- (b) the allotting or appropriation by the transferee body corporate of any shares, debentures, policies or other like interests in that body corporate which under the compromise or arrangement are to be allotted or appropriated by that body corporate to or for any person;
- (c) the continuation by or against the transferee body corporate of any legal proceedings pending by or against any transferor LLP;
- (d) the dissolution, without winding up, of any transferor LLP;
- (e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(3) If an order under this section provides for the transfer of property or liabilities—

- (a) the property is by virtue of the order transferred to, and vests in, the transferee body corporate, and
- (b) the liabilities are, by virtue of the order, transferred to and become liabilities of that body corporate.

(4) The property (if the order so directs) vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.

(5) In this section—

- “relevant body corporate” means an LLP or a company;
- “property” includes property, rights and powers of every description; and
- “liabilities” includes duties.

(6) Every body corporate in relation to which an order is made under this section must cause a copy of the order to be delivered to the registrar within seven days after its making.

(7) If default is made in complying with subsection (6) an offence is committed by—

- (a) the LLP, and every member of the LLP who is in default, and
- (b) the company, and every officer of the company who is in default.

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(8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.”.

(2) Section 323 of the Companies Act 2006 (representation of corporations at meetings) applies to a meeting of creditors of the LLP under section 896 or 899 of that Act.

#### Marginal Citations

**M11** Sections 896 and 899 were amended by article 3(1) of, and paragraphs 249 and 250 of Schedule 1 to, S.I. 2008/948.

#### Cross-border mergers

**46.**—(1) Parts 1 to 3 and 5 of the Companies (Cross-Border Mergers) Regulations 2007<sup>M12</sup> apply to LLPs with the following modifications.

(2) The modifications are—

- (a) for references to a company substitute references to an LLP (or other EEA body corporate);
- (b) for references to a UK company, substitute references to a UK LLP;
- (c) for references to an EEA company substitute references to an EEA body corporate;
- (d) references to a transferor or transferee LLP include references to an EEA body corporate which is the transferor or transferee in a cross-border merger with a UK LLP;
- (e) for references to the directors or officers of a company substitute references to the members of an LLP;
- (f) for “share exchange ratio” substitute “ the rights to be given to transferor members ”;
- (g) in regulation 2 (meaning of “cross-border merger”)—
  - (i) for paragraph (2)(f) substitute—
    - “(f) the consideration for the transfer is—
      - (i) members of the transferor LLP becoming members of the transferee LLP, and
      - (ii) if so agreed, a cash payment receivable by members of the transferor LLP.”;
    - (ii) for paragraph (3)(a) to (c) substitute—
      - “(a) there is one transferor LLP, of which the only member is an existing transferee LLP.”;
    - (iii) for paragraph (4)(c) substitute—
      - “(c) the consideration for the transfer is—
        - (i) members of the transferor LLP becoming members of the transferee LLP, and
        - (ii) if so agreed, a cash payment receivable by members of the transferor LLP.”;
  - (h) in regulation 3(1) (interpretation)—
    - (i) for the definitions of “EEA company”, “member” and “members' report” substitute respectively—
      - ““EEA body corporate” means a body corporate governed by the law of an EEA State other than the United Kingdom.”

- ““member”, in relation to a UK LLP, has the same meaning as in section 4 of the Limited Liability Partnerships Act 2000 (c. 12);”
- ““members' report” means a report prepared and adopted in accordance with regulation 8 (members' report);”,
- (ii) omit the definitions of “the 1996 Act”, “the Appeal Tribunal”, “the CAC”, “director”, “dismissed” and “dismissal”, “employee”, “employee participation”, “employee representatives”, “share exchange ratio”, “standard rules of employee participation”, “treasury shares”, “UK employee” and “UK members of the special negotiating body”,
- (iii) for the definition of “UK company” substitute—
- ““UK LLP” means a limited liability partnership registered and incorporated under the Limited Liability Partnerships Act 2000 other than a limited liability partnership which is being wound up;”,
- (i) omit regulation 5 (unregistered companies);
- (j) in regulation 7 (draft terms of merger)—
- (i) omit paragraphs (2)(c), (g) and (j) and (4),
- (ii) for paragraph (2)(e) substitute—
- “(e) the date from which being a member of the transferee LLP will entitle the member to participate in profits, and any special conditions affecting that entitlement;”, and
- (iii) paragraph (2)(i) only applies where the transferee body corporate is a company;
- (k) in regulation 8 (members' report)—
- (i) in paragraph (2)(b)(ii), omit “or as members”, and
- (ii) omit paragraphs (5) and (6);
- (l) in regulation 9 (independent expert's report)—
- (i) in paragraph (1)(b) for “90% or more (but not all) of the relevant securities” substitute “90% or more (but not all) of the voting rights at meetings of members”,
- (ii) omit paragraph (9);
- (m) in regulation 10 (inspection of documents)—
- (i) in paragraph (1), omit “and its employee representatives (or if there are no such representatives, the employees)”, and
- (ii) in paragraph (2), omit “, or any class of members,”;
- (n) in regulation 11 (power of court to summon meeting of members or creditors), in paragraphs (1)(a) and (2)(b) omit “or a class of members”;
- (o) in regulation 12 (public notice of receipt of registered documents)—
- (i) omit paragraph (1)(c)(v),
- (ii) in paragraph (1)(c)(vi) omit “other”;
- (p) in regulation 13 (approval of members in meeting)—
- (i) in paragraph (1), for “75% in value, of each class of members of the UK merging company” substitute “75% of the voting rights of the members of the UK merging LLP”;
- (ii) omit paragraph (2),
- (iii) in paragraph (4)(c)(i)—

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- (aa) for “the paid up capital of the company which carried the right to vote at general meetings of the company (excluding any shares held as treasury shares)” substitute “ the voting rights at meetings of members of the LLP”, and
- (bb) omit “each class of members”;
- (q) in regulation 16 (court approval of cross-border merger), omit paragraph (1)(f);
- (r) omit regulation 19(2)(b) and the word “other” in regulation 19(2)(c);
- (s) omit regulation 20 (obligations of transferee company with respect to articles etc);
- (t) omit regulation 21(1)(a) and in regulation 21(1)(b) the word “other”.

#### Marginal Citations

**M12** [S.I. 2007/2974](#), as amended by [S.I. 2008/583](#).

## PART 11

### FRAUDULENT TRADING

#### Offence of fraudulent trading

47. Section 993 applies to LLPs, modified so that it reads as follows—

#### “Offence of fraudulent trading

**993.**—(1) If any business of an LLP is carried on with intent to defraud creditors of the LLP or creditors of any other person, or for any fraudulent purpose, every person who is knowingly a party to the carrying on of the business in that manner commits an offence.

(2) This applies whether or not the LLP has been, or is in the course of being, wound up.

(3) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine (or both);

(b) on summary conviction—

(i) in England and Wales or Scotland, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum (or both);

(ii) in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).”.

## PART 12

### PROTECTION OF MEMBERS AGAINST UNFAIR PREJUDICE

#### Main provisions

48. Sections 994 to 996 <sup>M13</sup> apply to LLPs, modified so that they read as follows—

#### **“Petition by LLP member**

**994.**—(1) A member of an LLP may apply to the court by petition for an order under this Part on the ground—

- (a) that the LLP's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
  - (b) that an actual or proposed act or omission of the LLP (including an act or omission on its behalf) is or would be so prejudicial.
- (2) For the purposes of subsection (1)(a), a removal of the LLP's auditor from office—
- (a) on grounds of divergence of opinions on accounting treatments or audit procedures, or
  - (b) on any other improper grounds,

shall be treated as being unfairly prejudicial to the interests of some part of the LLP's members.

(3) The members of an LLP may by unanimous agreement exclude the right contained in subsection (1) either indefinitely or for such period as is specified in the agreement. The agreement must be recorded in writing.

#### **Petition by Secretary of State**

**995.**—(1) This section applies to an LLP in respect of which—

- (a) the Secretary of State has received a report under section 437 of the Companies Act 1985 (c. 6) (inspector's report);
  - (b) the Secretary of State has exercised his powers under section 447 or 448 of that Act (powers to require documents and information or to enter and search premises);
  - (c) the Secretary of State or the Financial Services Authority has exercised his or its powers under Part 11 of the Financial Services and Markets Act 2000 (c. 8) (information gathering and investigations); or
  - (d) the Secretary of State has received a report from an investigator appointed by him or the Financial Services Authority under that Part.
- (2) If it appears to the Secretary of State that in the case of such an LLP—
- (a) the LLP's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members, or
  - (b) an actual or proposed act or omission of the LLP (including an act or omission on its behalf) is or would be so prejudicial,

he may apply to the court by petition for an order under this Part.

(3) The Secretary of State may do this in addition to, or instead of, presenting a petition for the winding up of the LLP.

#### **Powers of the court under this Part**

**996.**—(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

- (2) Without prejudice to the generality of subsection (1), the court's order may—
- (a) regulate the conduct of the LLP's affairs in the future;

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- (b) require the LLP—
  - (i) to refrain from doing or continuing an act complained of, or
  - (ii) to do an act that the petitioner has complained it has omitted to do;
- (c) authorise civil proceedings to be brought in the name and on behalf of the LLP by such person or persons and on such terms as the court may direct;
- (d) require the LLP or the members of the LLP not to make any, or any specified, alterations in the LLP agreement without the leave of the court;
- (e) provide for the purchase of the rights and interests of any members in the LLP by other members or by the LLP itself.”.

#### Marginal Citations

**M13** Section 994 was amended by regulation 42 of [S.I. 2007/3494](#).

#### Supplementary provision

**49.** Section 997 applies to LLPs as follows—

##### “Application of general rule-making powers

**997.** The power to make rules under section 411 of the Insolvency Act 1986 (c. 45) or Article 359 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)), so far as relating to a winding-up petition, applies for the purposes of a petition under this Part.”.

## PART 13

### DISSOLUTION AND RESTORATION TO THE REGISTER

#### CHAPTER 1

#### STRIKING OFF

#### Registrar's power to strike off defunct LLP

**50.** Sections 1000 to 1002 apply to LLPs, modified so that they read as follows—

##### “Power to strike off LLP not carrying on business or in operation

**1000.**—(1) If the registrar has reasonable cause to believe that an LLP is not carrying on business or in operation, the registrar may send to the LLP by post a letter inquiring whether the LLP is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer to it, the registrar must within 14 days after the expiration of that month send to the LLP by post a registered letter referring to the first letter, and stating—

- (a) that no answer to it has been received, and
- (b) that if an answer is not received to the second letter within one month from its date, a notice will be published in the Gazette with a view to striking the LLP's name off the register.

(3) If the registrar—

- (a) receives an answer to the effect that the LLP is not carrying on business or in operation, or
  - (b) does not within one month after sending the second letter receive any answer,
- the registrar may publish in the Gazette, and send to the LLP by post, a notice that at the expiration of three months from the date of the notice the name of the LLP mentioned in it will, unless cause is shown to the contrary, be struck off the register and the LLP will be dissolved.
- (4) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the LLP, strike its name off the register.
  - (5) The registrar must publish notice in the Gazette of the LLP's name having been struck off the register.
  - (6) On the publication of the notice in the Gazette the LLP is dissolved.
  - (7) However—
    - (a) the liability (if any) of every member of the LLP continues and may be enforced as if the LLP had not been dissolved, and
    - (b) nothing in this section affects the power of the court to wind up an LLP the name of which has been struck off the register.

#### **Duty to act in case of LLP being wound up**

**1001.**—(1) If, in a case where an LLP is being wound up—

- (a) the registrar has reasonable cause to believe—
  - (i) that no liquidator is acting, or
  - (ii) that the affairs of the LLP are fully wound up, and
- (b) the returns required to be made by the liquidator have not been made for a period of six consecutive months,

the registrar must publish in the Gazette and send to the LLP or the liquidator (if any) a notice that at the expiration of three months from the date of the notice the name of the LLP mentioned in it will, unless cause is shown to the contrary, be struck off the register and the LLP will be dissolved.

- (2) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the LLP, strike its name off the register.
- (3) The registrar must publish notice in the Gazette of the LLP's name having been struck off the register.
- (4) On the publication of the notice in the Gazette the LLP is dissolved.
- (5) However—
  - (a) the liability (if any) of every member of the LLP continues and may be enforced as if the LLP had not been dissolved, and
  - (b) nothing in this section affects the power of the court to wind up an LLP the name of which has been struck off the register.

#### **Supplementary provisions as to service of letter or notice**

**1002.**—(1) A letter or notice to be sent under section 1000 or 1001 to an LLP may be addressed to the LLP at its registered office or, if no office has been registered, to the care of some member of the LLP.

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(2) If there is no member of the LLP whose name and address are known to the registrar, the letter or notice may be sent to each of the persons who subscribed the incorporation document (if their addresses are known to the registrar).

(3) A notice to be sent to a liquidator under section 1001 may be addressed to him at his last known place of business.”.

### **Voluntary striking off**

**51.** Sections 1003 to 1011 apply to LLPs, modified so that they read as follows—

#### **“Striking off on application by LLP**

**1003.**—(1) The registrar of companies may strike the LLP's name off the register on application by—

- (a) a majority of the members of an LLP, or
- (b) if there are only two such members, by both of them, or
- (c) if there is only one remaining member of an LLP, by that member.

(2) The application must contain a declaration by the member or members making the application that neither section 1004 nor 1005 prevents the application from being made.

(3) The registrar may not strike an LLP off under this section until after the expiration of three months from the publication by the registrar in the Gazette of a notice—

- (a) stating that the registrar may exercise the power under this section in relation to the LLP, and
- (b) inviting any person to show cause why that should not be done.

(4) The registrar must publish notice in the Gazette of the LLP's name having been struck off.

(5) On the publication of the notice in the Gazette the LLP is dissolved.

(6) However—

- (a) the liability (if any) of every member of the LLP continues and may be enforced as if the LLP had not been dissolved, and
- (b) nothing in this section affects the power of the court to wind up an LLP the name of which has been struck off the register.

#### **Circumstances in which application not to be made: activities of LLP**

**1004.**—(1) An application under section 1003 (application for voluntary striking off) on behalf of an LLP must not be made if, at any time in the previous three months, the LLP has—

- (a) changed its name,
- (b) traded or otherwise carried on business,
- (c) made a disposal for value of property or rights that, immediately before ceasing to trade or otherwise carry on business, it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business, or
- (d) engaged in any other activity, except one which is—
  - (i) necessary or expedient for the purpose of making an application under that section, or deciding whether to do so,



- (ii) necessary or expedient for the purpose of concluding the affairs of the LLP,  
or
  - (iii) necessary or expedient for the purpose of complying with any statutory requirement.
- (2) For the purposes of this section, an LLP is not to be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.
- (3) It is an offence for a person to make an application in contravention of this section.
- (4) In proceedings for such an offence it is a defence for the accused to prove that he did not know, and could not reasonably have known, of the existence of the facts that led to the contravention.
- (5) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### **Circumstances in which application not to be made: proceedings pending**

**1005.**—(1) An application under section 1003 (application for voluntary striking off) on behalf of an LLP must not be made at a time when—

- (a) an application to the court under Part 26 has been made on behalf of the LLP for the sanctioning of a compromise or arrangement and the matter has not been finally concluded;
  - (b) a voluntary arrangement in relation to the LLP has been proposed under Part 1 of the Insolvency Act 1986 (c. 45) or Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) and the matter has not been finally concluded;
  - (c) the LLP is in administration under Part 2 of that Act or Part 3 of that Order;
  - (d) paragraph 44 of Schedule B1 to that Act or paragraph 45 of Schedule B1 to that Order applies (interim moratorium on proceedings where application to the court for an administration order has been made or notice of intention to appoint administrator has been filed);
  - (e) the LLP is being wound up under Part 4 of that Act or Part 5 of that Order, whether voluntarily or by the court, or a petition under that Part for winding up of the LLP by the court has been presented and not finally dealt with or withdrawn;
  - (f) there is a receiver or manager of the LLP's property;
  - (g) the LLP's estate is being administered by a judicial factor.
- (2) For the purposes of subsection (1)(a), the matter is finally concluded if—
- (a) the application has been withdrawn,
  - (b) the application has been finally dealt with without a compromise or arrangement being sanctioned by the court, or
  - (c) a compromise or arrangement has been sanctioned by the court and has, together with anything required to be done under any provision made in relation to the matter by order of the court, been fully carried out.
- (3) For the purposes of subsection (1)(b), the matter is finally concluded if—
- (a) no meeting is to be summoned under section 3 of the Insolvency Act 1986 (c. 45) or Article 16 of the Insolvency (Northern Ireland) Order 1989,

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- (b) the meeting summoned under that section or Article fails to approve the arrangement with no, or the same, modifications,
  - (c) an arrangement approved by a meeting summoned under that section, or in consequence of a direction under section 6(4)(b) of that Act or Article 19(4)(b) of that Order, has been fully implemented, or
  - (d) the court makes an order under section 6(5) of that Act or Article 19(5) of that Order revoking approval given at a previous meeting and, if the court gives any directions under section 6(6) of that Act or Article 19(6) of that Order, the LLP has done whatever it is required to do under those directions.
- (4) It is an offence for a person to make an application in contravention of this section.
- (5) In proceedings for such an offence it is a defence for the accused to prove that he did not know, and could not reasonably have known, of the existence of the facts that led to the contravention.
- (6) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### **Copy of application to be given to members, employees etc**

**1006.**—(1) A person who makes an application under section 1003 (application for voluntary striking off) on behalf of an LLP must secure that, within seven days from the day on which the application is made, a copy of it is given to every person who at any time on that day is—

- (a) a member of the LLP,
- (b) an employee of the LLP,
- (c) a creditor of the LLP, or
- (d) a manager or trustee of any pension fund established for the benefit of employees of the LLP.

(2) Subsection (1) does not require a copy of the application to be given to a member who is a party to the application.

(3) The duty imposed by this section ceases to apply if the application is withdrawn before the end of the period for giving the copy application.

(4) A person who fails to perform the duty imposed on him by this section commits an offence. If he does so with the intention of concealing the making of the application from the person concerned, he commits an aggravated offence.

(5) In proceedings for an offence under this section it is a defence for the accused to prove that he took all reasonable steps to perform the duty.

(6) A person guilty of an offence under this section (other than an aggravated offence) is liable—

- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) A person guilty of an aggravated offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both);
  - (b) on summary conviction—

- (i) in England and Wales or Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
- (ii) in Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

### **Copy of application to be given to new members, employees, etc**

**1007.**—(1) This section applies in relation to any time after the day on which an LLP makes an application under section 1003 (application for voluntary striking off) and before the day on which the application is finally dealt with or withdrawn.

(2) A person who is a member of the LLP at the end of a day on which a person (other than himself) becomes—

- (a) a member of the LLP,
- (b) an employee of the LLP,
- (c) a creditor of the LLP, or
- (d) a manager or trustee of any pension fund established for the benefit of employees of the LLP,

must secure that a copy of the application is given to that person within seven days from that day.

(3) The duty imposed by this section ceases to apply if the application is finally dealt with or withdrawn before the end of the period for giving the copy application.

(4) A person who fails to perform the duty imposed on him by this section commits an offence. If he does so with the intention of concealing the making of the application from the person concerned, he commits an aggravated offence.

(5) In proceedings for an offence under this section it is a defence for the accused to prove—

- (a) that at the time of the failure he was not aware of the fact that the LLP had made an application under section 1003, or
- (b) that he took all reasonable steps to perform the duty.

(6) A person guilty of an offence under this section (other than an aggravated offence) is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) A person guilty of an aggravated offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both);
- (b) on summary conviction—
  - (i) in England and Wales or Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
  - (ii) in Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

### **Copy of application: provisions as to service of documents**

**1008.**—(1) The following provisions have effect for the purposes of—  
section 1006 (copy of application to be given to members, employees, etc), and

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section 1007 (copy of application to be given to new members, employees, etc).

- (2) A document is treated as given to a person if it is—
- (a) delivered to him, or
  - (b) left at his proper address, or
  - (c) sent by post to him at that address.
- (3) For the purposes of subsection (2) and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) as it applies in relation to that subsection, the proper address of a person is—
- (a) in the case of a firm incorporated or formed in the United Kingdom, its registered or principal office;
  - (b) in the case of a firm incorporated or formed outside the United Kingdom—
    - (i) if it has a place of business in the United Kingdom, its principal office in the United Kingdom, or
    - (ii) if it does not have a place of business in the United Kingdom, its registered or principal office;
  - (c) in the case of an individual, his last known address.
- (4) In the case of a creditor of the LLP a document is treated as given to him if it is left or sent by post to him—
- (a) at the place of business of his with which the LLP has had dealings by virtue of which he is a creditor of the LLP, or
  - (b) if there is more than one such place of business, at each of them.

### **Circumstances in which application to be withdrawn**

**1009.**—(1) This section applies where, at any time on or after the day on which an LLP makes an application under section 1003 (application for voluntary striking off) and before the day on which the application is finally dealt with or withdrawn—

- (a) the LLP—
  - (i) changes its name,
  - (ii) trades or otherwise carries on business,
  - (iii) makes a disposal for value of any property or rights other than those which it was necessary or expedient for it to hold for the purpose of making, or proceeding with, an application under that section, or
  - (iv) engages in any activity, except one to which subsection (4) applies;
- (b) an application is made to the court under Part 26 on behalf of the LLP for the sanctioning of a compromise or arrangement;
- (c) a voluntary arrangement in relation to the LLP is proposed under Part 1 of the Insolvency Act 1986 (c. 45) or Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19));
- (d) an application to the court for an administration order in respect of the LLP is made under paragraph 12 of Schedule B1 to that Act or paragraph 13 of Schedule B1 to that Order;
- (e) an administrator is appointed in respect of the LLP under paragraph 14 or 22 of Schedule B1 to that Act or paragraph 15 or 23 of Schedule B1 to that Order, or a copy of notice of intention to appoint an administrator of the LLP under any of those provisions is filed with the court;

- (f) there arise any of the circumstances in which, under section 84(1) of that Act or Article 70 of that Order, the LLP may be voluntarily wound up;
  - (g) a petition is presented for the winding up of the LLP by the court under Part 4 of that Act or Part 5 of that Order;
  - (h) a receiver or manager of the LLP's property is appointed; or
  - (i) a judicial factor is appointed to administer the LLP's estate.
- (2) A person who, at the end of a day on which any of the events mentioned in subsection (1) occurs, is a member of the LLP must secure that the LLP's application is withdrawn forthwith.
- (3) For the purposes of subsection (1)(a), an LLP is not treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.
- (4) The excepted activities referred to in subsection (1)(a)(iv) are any activity necessary or expedient for the purposes of—
- (a) making, or proceeding with, an application under section 1003 (application for voluntary striking off),
  - (b) concluding affairs of the LLP that are outstanding because of what has been necessary or expedient for the purpose of making, or proceeding with, such an application, or
  - (c) complying with any statutory requirement.
- (5) A person who fails to perform the duty imposed on him by this section commits an offence.
- (6) In proceedings for an offence under this section it is a defence for the accused to prove—
- (a) that at the time of the failure he was not aware of the fact that the LLP had made an application under section 1003, or
  - (b) that he took all reasonable steps to perform the duty.
- (7) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **Withdrawal of application**

**1010.** An application under section 1003 is withdrawn by notice to the registrar.

### **Meaning of “creditor”**

**1011.** In this Chapter “creditor” includes a contingent or prospective creditor.”.

## CHAPTER 2

### PROPERTY OF DISSOLVED LLP

#### **Property of dissolved LLP vesting as bona vacantia**

**52.** Sections 1012 to 1014 apply to LLPs, modified so that they read as follows—

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### **“Property of dissolved LLP to be bona vacantia**

**1012.**—(1) When an LLP is dissolved, all property and rights whatsoever vested in or held on trust for the LLP immediately before its dissolution (including leasehold property, but not including property held by the LLP on trust for another person) are deemed to be *bona vacantia* and—

- (a) accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being (as the case may be), and
- (b) vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall.

(2) Subsection (1) has effect subject to the possible restoration of the LLP to the register under Chapter 3 (see section 1034).

### **Crown disclaimer of property vesting as bona vacantia**

**1013.**—(1) Where property vests in the Crown under section 1012, the Crown's title to it under that section may be disclaimed by a notice signed by the Crown representative, that is to say the Treasury Solicitor, or, in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer.

(2) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Crown either expressly or by taking possession.

(3) A notice of disclaimer must be executed within three years after—

- (a) the date on which the fact that the property may have vested in the Crown under section 1012 first comes to the notice of the Crown representative, or
- (b) if ownership of the property is not established at that date, the end of the period reasonably necessary for the Crown representative to establish the ownership of the property.

(4) If an application in writing is made to the Crown representative by a person interested in the property requiring him to decide whether he will or will not disclaim, any notice of disclaimer must be executed within twelve months after the making of the application or such further period as may be allowed by the court.

(5) A notice of disclaimer under this section is of no effect if it is shown to have been executed after the end of the period specified by subsection (3) or (4).

(6) A notice of disclaimer under this section must be delivered to the registrar and retained and registered by him.

(7) Copies of it must be published in the Gazette and sent to any persons who have given the Crown representative notice that they claim to be interested in the property.

(8) This section applies to property vested in the Duchy of Lancaster or the Duke of Cornwall under section 1012 as if for references to the Crown and the Crown representative there were respectively substituted references to the Duchy of Lancaster and to the Solicitor to that Duchy, or to the Duke of Cornwall and to the Solicitor to the Duchy of Cornwall, as the case may be.

### **Effect of Crown disclaimer**

**1014.**—(1) Where notice of disclaimer is executed under section 1013 as respects any property, that property is deemed not to have vested in the Crown under section 1012.

(2) The following sections contain provisions as to the effect of the Crown disclaimer—

sections 1015 to 1019 apply in relation to property in England and Wales or Northern Ireland;

sections 1020 to 1022 apply in relation to property in Scotland.”.

### **Effect of Crown disclaimer: England and Wales and Northern Ireland**

**53.** Sections 1015 to 1019 apply to LLPs, modified so that they read as follows—

#### **“General effect of disclaimer**

**1015.**—(1) The Crown's disclaimer operates so as to terminate, as from the date of the disclaimer, the rights, interests and liabilities of the LLP in or in respect of the property disclaimed.

(2) It does not, except so far as is necessary for the purpose of releasing the LLP from any liability, affect the rights or liabilities of any other person.

#### **Disclaimer of leaseholds**

**1016.**—(1) The disclaimer of any property of a leasehold character does not take effect unless a copy of the disclaimer has been served (so far as the Crown representative is aware of their addresses) on every person claiming under the LLP as underlessee or mortgagee, and either—

- (a) no application under section 1017 (power of court to make vesting order) is made with respect to that property before the end of the period of 14 days beginning with the day on which the last notice under this paragraph was served, or
- (b) where such an application has been made, the court directs that the disclaimer shall take effect.

(2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 1017, make such order as it thinks fit with respect to fixtures, tenant's improvements and other matters arising out of the lease.

(3) In this section the “Crown representative” means—

- (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
- (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;
- (c) in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer;
- (d) in relation to other property, the Treasury Solicitor.

#### **Power of court to make vesting order**

**1017.**—(1) The court may on application by a person who—

- (a) claims an interest in the disclaimed property, or
- (b) is under a liability in respect of the disclaimed property that is not discharged by the disclaimer,

make an order under this section in respect of the property.

(2) An order under this section is an order for the vesting of the disclaimed property in, or its delivery to—

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- (a) a person entitled to it (or a trustee for such a person), or
- (b) a person subject to such a liability as is mentioned in subsection (1)(b) (or a trustee for such a person).

(3) An order under subsection (2)(b) may only be made where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) An order under this section may be made on such terms as the court thinks fit.

(5) On a vesting order being made under this section, the property comprised in it vests in the person named in that behalf in the order without conveyance, assignment or transfer.

### **Protection of persons holding under a lease**

**1018.**—(1) The court must not make an order under section 1017 vesting property of a leasehold nature in a person claiming under the LLP as underlessee or mortgagee except on terms making that person—

- (a) subject to the same liabilities and obligations as those to which the LLP was subject under the lease, or
- (b) if the court thinks fit, subject to the same liabilities and obligations as if the lease had been assigned to him.

(2) Where the order relates to only part of the property comprised in the lease, subsection (1) applies as if the lease had comprised only the property comprised in the vesting order.

(3) A person claiming under the LLP as underlessee or mortgagee who declines to accept a vesting order on such terms is excluded from all interest in the property.

(4) If there is no person claiming under the LLP who is willing to accept an order on such terms, the court has power to vest the LLP's estate and interest in the property in any person who is liable (whether personally or in a representative character, and whether alone or jointly with the LLP) to perform the lessee's covenants in the lease.

(5) The court may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the LLP.

### **Land subject to rentcharge**

**1019.** Where in consequence of the disclaimer land that is subject to a rentcharge vests in any person, neither he nor his successors in title are subject to any personal liability in respect of sums becoming due under the rentcharge, except sums becoming due after he, or some person claiming under or through him, has taken possession or control of the land or has entered into occupation of it.”

### **Effect of Crown disclaimer: Scotland**

**54.** Sections 1020 to 1022 apply to LLPs, modified so that they read as follows—

#### **“General effect of disclaimer**

**1020.**—(1) The Crown's disclaimer operates to determine, as from the date of the disclaimer, the rights, interests and liabilities of the LLP, and the property of the LLP, in or in respect of the property disclaimed.

(2) It does not (except so far as is necessary for the purpose of releasing the LLP and its property from liability) affect the rights or liabilities of any other person.



### **Power of court to make vesting order**

**1021.**—(1) The court may—

- (a) on application by a person who either claims an interest in disclaimed property or is under a liability not discharged by this Act in respect of disclaimed property, and
- (b) on hearing such persons as it thinks fit,

make an order for the vesting of the property in or its delivery to any persons entitled to it, or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him.

(2) The order may be made on such terms as the court thinks fit.

(3) On a vesting order being made under this section, the property comprised in it vests accordingly in the person named in that behalf in the order, without conveyance or assignment for that purpose.

### **Protection of persons holding under a lease**

**1022.**—(1) Where the property disclaimed is held under a lease the court must not make a vesting order in favour of a person claiming under the LLP, whether—

- (a) as sub-lessee, or
- (b) as creditor in a duly registered or (as the case may be) recorded heritable security over a lease,

except on the following terms.

(2) The person must by the order be made subject—

- (a) to the same liabilities and obligations as those to which the LLP was subject under the lease in respect of the property, or
- (b) if the court thinks fit, only to the same liabilities and obligations as if the lease had been assigned to him.

In either event (if the case so requires) the liabilities and obligations must be as if the lease had comprised only the property comprised in the vesting order.

(3) A sub-lessee or creditor declining to accept a vesting order on such terms is excluded from all interest in and security over the property.

(4) If there is no person claiming under the LLP who is willing to accept an order on such terms, the court has power to vest the LLP's estate and interest in the property in any person liable (either personally or in a representative character, and either alone or jointly with the LLP) to perform the lessee's obligations under the lease.

(5) The court may vest that estate and interest in such a person freed and discharged from all interests, rights and obligations created by the LLP in the lease or in relation to the lease.

(6) For the purposes of this section a heritable security—

- (a) is duly recorded if it is recorded in the Register of Sasines, and
- (b) is duly registered if registered in accordance with the Land Registration (Scotland) Act 1979 (c. 33).”.

### **Supplementary provisions**

**55.** Section 1023 applies to LLPs, modified so that it reads as follows—

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### “Liability for rentcharge on LLP's land after dissolution

**1023.**—(1) This section applies where on the dissolution of an LLP land in England and Wales or Northern Ireland that is subject to a rentcharge vests by operation of law in the Crown or any other person (“the proprietor”).

(2) Neither the proprietor nor his successors in title are subject to any personal liability in respect of sums becoming due under the rentcharge, except sums becoming due after the proprietor, or some person claiming under or through him, has taken possession or control of the land or has entered into occupation of it.”.

## CHAPTER 3

### RESTORATION TO THE REGISTER

#### Administrative restoration to the register

**56.** Sections 1024 to 1028 apply to LLPs, modified so that they read as follows—

#### “Application for administrative restoration to the register

**1024.**—(1) An application may be made to the registrar to restore to the register an LLP that has been struck off the register under section 1000 or 1001 (power of registrar to strike off defunct LLP).

(2) An application under this section may be made whether or not the LLP has in consequence been dissolved.

(3) An application under this section may only be made by a former member of the LLP.

(4) An application under this section may not be made after the end of the period of six years from the date of the dissolution of the LLP. For this purpose an application is made when it is received by the registrar.

#### Requirements for administrative restoration

**1025.**—(1) On an application under section 1024 the registrar shall restore the LLP to the register if, and only if, the following conditions are met.

(2) The first condition is that the LLP was carrying on business or in operation at the time of its striking off.

(3) The second condition is that, if any property or right previously vested in or held on trust for the LLP has vested as *bona vacantia*, the Crown representative has signified to the registrar in writing consent to the LLP's restoration to the register.

(4) It is the applicant's responsibility to obtain that consent and to pay any costs (in Scotland, expenses) of the Crown representative—

- (a) in dealing with the property during the period of dissolution, or
- (b) in connection with the proceedings on the application,

that may be demanded as a condition of giving consent.

(5) The third condition is that the applicant has—

- (a) delivered to the registrar such documents relating to the LLP as are necessary to bring up to date the records kept by the registrar, and
- (b) paid any penalties under section 453 or corresponding earlier provisions (civil penalty for failure to deliver accounts) that were outstanding at the date of dissolution or striking off.

(6) The fourth condition is that the applicant has sent notice of the application under section 1024 to all those who were members of the LLP at the time of its striking off.

(7) In this section the “Crown representative” means—

- (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
- (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;
- (c) in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer;
- (d) in relation to other property, the Treasury Solicitor.

#### **Application to be accompanied by statement of compliance**

**1026.**—(1) An application under section 1024 (application for administrative restoration to the register) must be accompanied by a statement of compliance.

(2) The statement of compliance required is a statement—

- (a) that the person making the application has standing to apply (see subsection (3) of that section), and
- (b) that the requirements for administrative restoration (see section 1025) are met.

(3) The registrar may accept the statement of compliance as sufficient evidence of those matters.

#### **Registrar's decision on application for administrative restoration**

**1027.**—(1) The registrar must give notice to the applicant of the decision on an application under section 1024 (application for administrative restoration to the register).

(2) If the decision is that the LLP should be restored to the register, the restoration takes effect as from the date that notice is sent.

(3) In the case of such a decision, the registrar must—

- (a) enter on the register a note of the date as from which the LLP's restoration to the register takes effect, and
- (b) cause notice of the restoration to be published in the Gazette.

(4) The notice under subsection (3)(b) must state—

- (a) the name of the LLP or, if the LLP is restored to the register under a different name (see section 1033), that name and its former name,
- (b) the LLP's registered number, and
- (c) the date as from which the restoration of the LLP to the register takes effect.

#### **Effect of administrative restoration**

**1028.**—(1) The general effect of administrative restoration to the register is that the LLP is deemed to have continued in existence as if it had not been dissolved or struck off the register.

(2) The LLP is not liable to a penalty under section 453<sup>M14</sup> or any corresponding earlier provision (civil penalty for failure to deliver accounts) for a financial year in relation to which the period for filing accounts and reports ended—

- (a) after the date of dissolution or striking off, and

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(b) before the restoration of the LLP to the register.

(3) The court may give such directions and make such provision as seems just for placing the LLP and all other persons in the same position (as nearly as may be) as if the LLP had not been dissolved or struck off the register.

(4) An application to the court for such directions or provision may be made any time within three years after the date of restoration of the LLP to the register.”

#### Marginal Citations

**M14** Section 453 of the Companies Act 2006 was applied to LLPs by regulation 22 of S.I. 2008/1911.

### Restoration to the register by the court

57. Sections 1029 to 1032 apply to LLPs, modified so that they read as follows—

#### “Application to court for restoration to the register

**1029.**—(1) An application may be made to the court to restore to the register an LLP—

- (a) that has been dissolved under Chapter 9 of Part 4 of the Insolvency Act 1986 (c. 45) or Chapter 9 of Part 5 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) (dissolution of LLP after winding up),
- (b) that is deemed to have been dissolved under paragraph 84(6) of Schedule B1 to that Act or paragraph 85(6) of Schedule B1 to that Order (dissolution of LLP following administration), or
- (c) that has been struck off the register—
  - (i) under section 1000 or 1001 (power of registrar to strike off defunct LLP), or
  - (ii) under section 1003 (voluntary striking off),
 whether or not the LLP has in consequence been dissolved.

(2) An application under this section may be made by—

- (a) the Secretary of State,
- (b) any person having an interest in land in which the LLP had a superior or derivative interest,
- (c) any person having an interest in land or other property—
  - (i) that was subject to rights vested in the LLP, or
  - (ii) that was benefited by obligations owed by the LLP,
- (d) any person who but for the LLP's dissolution would have been in a contractual relationship with it,
- (e) any person with a potential legal claim against the LLP,
- (f) any manager or trustee of a pension fund established for the benefit of employees of the LLP,
- (g) any former member of the LLP (or the personal representatives of such a person),
- (h) any person who was a creditor of the LLP at the time of its striking off or dissolution,
- (i) any former liquidator of the LLP,

or by any other person appearing to the court to have an interest in the matter.

### **When application to the court may be made**

**1030.**—(1) An application to the court for restoration of an LLP to the register may be made at any time for the purpose of bringing proceedings against the LLP for damages for personal injury.

(2) No order shall be made on such an application if it appears to the court that the proceedings would fail by virtue of any enactment as to the time within which proceedings must be brought.

(3) In making that decision the court must have regard to its power under section 1032(3) (power to give consequential directions etc) to direct that the period between the dissolution (or striking off) of the LLP and the making of the order is not to count for the purposes of any such enactment.

(4) In any other case an application to the court for restoration of an LLP to the register may not be made after the end of the period of six years from the date of the dissolution of the LLP, subject as follows.

(5) In a case where—

- (a) the LLP has been struck off the register under section 1000 or 1001 (power of registrar to strike off defunct LLP),
- (b) an application to the registrar has been made under section 1024 (application for administrative restoration to the register) within the time allowed for making such an application, and
- (c) the registrar has refused the application,

an application to the court under this section may be made within 28 days of notice of the registrar's decision being issued by the registrar, even if the period of six years mentioned in subsection (4) above has expired.

(6) For the purposes of this section—

- (a) “personal injury” includes any disease and any impairment of a person's physical or mental condition; and
- (b) references to damages for personal injury include—
  - (i) any sum claimed by virtue of section 1(2)(c) of the Law Reform (Miscellaneous Provisions) Act 1934 (c. 41) or section 14(2)(c) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 (1937 c. 9 (N.I.)) (funeral expenses), and
  - (ii) damages under the Fatal Accidents Act 1976 (c. 30), the Damages (Scotland) Act 1976 (c. 13) or the Fatal Accidents (Northern Ireland) Order 1977 (S.I. 1977/1251 (N.I.18)).

### **Decision on application for restoration by the court**

**1031.**—(1) On an application under section 1029 the court may order the restoration of the LLP to the register—

- (a) if the LLP was struck off the register under section 1000 or 1001 (power of registrar to strike off defunct LLPs) and the LLP was, at the time of the striking off, carrying on business or in operation;
- (b) if the LLP was struck off the register under section 1003 (voluntary striking off) and any of the requirements of sections 1004 to 1009 was not complied with;
- (c) if in any other case the court considers it just to do so.

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(2) If the court orders restoration of the LLP to the register, the restoration takes effect on a copy of the court's order being delivered to the registrar.

(3) The registrar must cause to be published in the Gazette notice of the restoration of the LLP to the register.

(4) The notice must state—

- (a) the name of the LLP or, if the LLP is restored to the register under a different name (see section 1033), that name and its former name,
- (b) the LLP's registered number, and
- (c) the date on which the restoration took effect.

### Effect of court order for restoration to the register

**1032.**—(1) The general effect of an order by the court for restoration to the register is that the LLP is deemed to have continued in existence as if it had not been dissolved or struck off the register.

(2) The LLP is not liable to a penalty under section 453 or any corresponding earlier provision (civil penalty for failure to deliver accounts) for a financial year in relation to which the period for filing accounts and reports ended—

- (a) after the date of dissolution or striking off, and
- (b) before the restoration of the LLP to the register.

(3) The court may give such directions and make such provision as seems just for placing the LLP and all other persons in the same position (as nearly as may be) as if the LLP had not been dissolved or struck off the register.

(4) The court may also give directions as to—

- (a) the delivery to the registrar of such documents relating to the LLP as are necessary to bring up to date the records kept by the registrar,
- (b) the payment of the costs (in Scotland, expenses) of the registrar in connection with the proceedings for the restoration of the LLP to the register,
- (c) where any property or right previously vested in or held on trust for the LLP has vested as *bona vacantia*, the payment of the costs (in Scotland, expenses) of the Crown representative—
  - (i) in dealing with the property during the period of dissolution, or
  - (ii) in connection with the proceedings on the application.

(5) In this section the “Crown representative” means—

- (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
- (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;
- (c) in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer;
- (d) in relation to other property, the Treasury Solicitor.”

### Supplementary provisions

**58.** Sections 1033 and 1034 apply to LLPs, modified so that they read as follows—

### “LLP's name on restoration

**1033.**—(1) An LLP is restored to the register with the name it had before it was dissolved or struck off the register, subject to the following provisions.

(2) If at the date of restoration the LLP could not be registered under its former name without contravening section 66 (name not to be the same as another in the registrar's index of names), it must be restored to the register—

- (a) under another name specified—
  - (i) in the case of administrative restoration, in the application to the registrar, or
  - (ii) in the case of restoration under a court order, in the court's order, or
- (b) as if its registered number was also its name.

References to an LLP's being registered in a name, and to registration in that context, shall be read as including the LLP's being restored to the register.

(3) If an LLP is restored to the register under a name specified in the application to the registrar, the provisions of—

- paragraph 5 of the Schedule to the Limited Liability Partnerships Act 2000 (c. 12) (change of name: registration and issue of certificate of change of name), and
- paragraph 6 of that Schedule (change of name: effect),

apply as if the application to the registrar were notice of a change of name.

(4) If an LLP is restored to the register under a name specified in the court's order, the provisions of—

- paragraph 5 of the Schedule to the Limited Liability Partnerships Act 2000 (c. 12) (change of name: registration and issue of certificate of change of name), and
- paragraph 6 of that Schedule (change of name: effect),

apply as if the copy of the court order delivered to the registrar were notice of a change a name.

(5) If the LLP is restored to the register as if its registered number was also its name—

- (a) the LLP must change its name within 14 days after the date of the restoration,
- (b) the change may be made by determination of the members,
- (c) the LLP must give notice to the registrar of the change, and
- (d) paragraphs 5 and 6 of the Schedule to the Limited Liability Partnerships Act 2000 (c. 12) apply as regards the registration and effect of the change.

(6) If the LLP fails to comply with subsection (5)(a) or (c) an offence is committed by—

- (a) the LLP, and
- (b) every designated member of the LLP who is in default.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

### Effect of restoration to the register where property has vested as *bona vacantia*

**1034.**—(1) The person in whom any property or right is vested by section 1012 (property of dissolved LLP to be *bona vacantia*) may dispose of, or of an interest in, that property or right despite the fact that the LLP may be restored to the register under this Chapter.

(2) If the LLP is restored to the register—

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- (a) the restoration does not affect the disposition (but without prejudice to its effect in relation to any other property or right previously vested in or held on trust for the LLP), and
- (b) the Crown or, as the case may be, the Duke of Cornwall shall pay to the LLP an amount equal to—
  - (i) the amount of any consideration received for the property or right or, as the case may be, the interest in it, or
  - (ii) the value of any such consideration at the time of the disposition,
 or, if no consideration was received an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition.
- (3) There may be deducted from the amount payable under subsection (2)(b) the reasonable costs of the Crown representative in connection with the disposition (to the extent that they have not been paid as a condition of administrative restoration or pursuant to a court order for restoration).
- (4) Where a liability accrues under subsection (2) in respect of any property or right which before the restoration of the LLP to the register had accrued as *bona vacantia* to the Duchy of Lancaster, the Attorney General of that Duchy shall represent Her Majesty in any proceedings arising in connection with that liability.
- (5) Where a liability accrues under subsection (2) in respect of any property or right which before the restoration of the LLP to the register had accrued as *bona vacantia* to the Duchy of Cornwall, such persons as the Duke of Cornwall (or other possessor for the time being of the Duchy) may appoint shall represent the Duke (or other possessor) in any proceedings arising out of that liability.
- (6) In this section the “Crown representative” means—
  - (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
  - (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;
  - (c) in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer;
  - (d) in relation to other property, the Treasury Solicitor.”.

## PART 14

### OVERSEAS LLPS

#### Trading disclosures

**59.** Section 1051 applies to LLPs, modified so that it reads as follows—

**“Trading disclosures**

**1051.**—(1) The following provisions of Part 7 of the Overseas Companies Regulations 2009 (S.I. 2009/1801) (trading disclosures) apply to LLPs—

- (a) regulation 58(2);
- (b) regulation 59;
- (c) regulations 61 and 62;



- (d) regulation 66;
- (e) regulation 67(1) and (2).
- (2) As those provisions apply to LLPs—
  - (a) for references to an overseas company substitute references to an overseas LLP;
  - (b) for references to an officer of a company substitute references to a member of an LLP;
  - (c) for regulation 61(1) substitute—
    - “(1) Every overseas LLP must display the name of the LLP and the country in which it is incorporated or otherwise established at every location where it carries on business in the United Kingdom.”;
  - (d) for the introductory words to regulation 62 substitute—
    - “Every overseas LLP must state the LLP's name and the country in which it is incorporated on all—”.
- (3) For the purposes of paragraph (2)(a) above, “overseas LLP” means a body incorporated or otherwise established outside the United Kingdom whose name under its law of incorporation or establishment includes (or when translated into English includes) the words “limited liability partnership” or the abbreviation “llp” or “LLP”.

## PART 15

### THE REGISTRAR OF COMPANIES

#### Provisions of general application

**60.**—(1) The application to LLPs by the following regulations of certain provisions of Part 35 of the Companies Act 2006 is without prejudice to the application in relation to LLPs of the provisions of that Part that are of general application <sup>M15</sup>.

- (2) Those provisions are—
  - sections 1060(1) and (2) and 1061 to 1063 (the registrar),
  - sections 1068 to 1071 (delivery of documents to the registrar),
  - sections 1072 to 1076 (requirements for proper delivery),
  - sections 1080(1), (4) and (5) and 1092 (keeping and production of records),
  - section 1083 (preservation of original documents),
  - sections 1108 to 1110 (language requirements: transliteration),
  - sections 1111 and 1114 to 1119 (supplementary provisions).

#### Marginal Citations

**M15** Part 35 has been amended by [S.I. 2009/1802](#).

#### Certificates of incorporation

- 61.** Sections 1064 and 1065 apply to LLPs, modified so that they read as follows—

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### **“Public notice of issue of certificate of incorporation**

**1064.**—(1) The registrar must cause to be published—

- (a) in the Gazette, or
- (b) in accordance with section 1116 (alternative means of giving public notice),

notice of the issue by the registrar of any certificate of incorporation of an LLP.

(2) The notice must state the name and registered number of the LLP and the date of issue of the certificate.

(3) This section applies to a certificate issued under—

- (a) paragraph 5 of the Schedule to the Limited Liability Partnerships Act 2000 (c. 12) (change of name: registration and issue of certificate of change of name), or
- (b) section 88(4) of this Act (Welsh LLPs),

as well as to the certificate issued on an LLP's formation.

### **Right to certificate of incorporation**

**1065.** Any person may require the registrar to provide him with a copy of any certificate of incorporation of an LLP, signed by the registrar or authenticated by the registrar's seal.”.

## **Registered numbers**

**62.** Section 1066 applies to LLPs, modified so that it reads as follows—

### **“LLP's registered numbers**

**1066.**—(1) The registrar shall allocate to every LLP a number, which shall be known as the LLP's registered number.

(2) LLPs' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may determine.

(3) The registrar may on adopting a new form of registered number make such changes of existing registered numbers as appear necessary.

(4) A change of an LLP's registered number has effect from the date on which the LLP is notified by the registrar of the change.

(5) For a period of three years beginning with that date any requirement to disclose the LLP's registered number imposed by section 82 or section 1051 (trading disclosures) is satisfied by the use of either the old number or the new.”.

## **Public notice of receipt of certain documents**

**63.** Sections 1077 to 1079 apply to LLPs, modified so that they read as follows—

### **“Public notice of receipt of certain documents**

**1077.**—(1) The registrar must cause to be published—

- (a) in the Gazette, or
- (b) in accordance with section 1116 (alternative means of giving public notice),

notice of the receipt by the registrar of any document specified in section 1078.

(2) The notice must state the name and registered number of the LLP, the description of document and the date of receipt.

(3) The registrar is not required to cause notice of the receipt of a document to be published before the date of incorporation of the LLP to which the document relates.

### **The section 1077 documents**

**1078.** The following documents are specified for the purposes of section 1077—

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#### ***Constitutional documents***

1. The LLP's incorporation document.
2. Any notice delivered under section 8(4) of the Limited Liability Partnerships Act 2000 (c. 12).
3. Any notice of the change of the LLP's name.

#### ***Members***

1. Notification of any change in the membership of the LLP.
2. Notification of any change in the particulars of members required to be delivered to the registrar.

#### ***Accounts and returns***

1. All documents required to be delivered to the registrar under section 441 (annual accounts).
2. The LLP's annual return.

#### ***Registered office***

Notification of any change of the LLP's registered office.

#### ***Winding up***

1. Copy of any winding-up order in respect of the LLP.
  2. Notice of the appointment of liquidators.
  3. Order for the dissolution of an LLP on a winding up.
  4. Return by a liquidator of the final meeting of an LLP on a winding up.
-

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### Effect of failure to give public notice

**1079.**—(1) An LLP is not entitled to rely against other persons on the happening of any event to which this section applies unless—

- (a) the event has been officially notified at the material time, or
- (b) the LLP shows that the person concerned knew of the event at the material time.

(2) The events to which this section applies are—

- (a) (as regards service of any document on the LLP) a change of the LLP's registered office,
- (b) the making of a winding-up order in respect of the LLP, or
- (c) the appointment of a liquidator in a voluntary winding up of the LLP.

(3) If the material time falls—

- (a) on or before the 15th day after the date of official notification, or
- (b) where the 15th day was not a working day, on or before the next day that was,

the LLP is not entitled to rely on the happening of the event as against a person who shows that he was unavoidably prevented from knowing of the event at that time.

(4) “Official notification” means—

- (a) in relation to anything stated in a document specified in section 1078, notification of that document in accordance with section 1077;
- (b) in relation to the appointment of a liquidator in a voluntary winding up, notification of that event in accordance with section 109 of the Insolvency Act 1986 (c. 45) or Article 95 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)).”.

### The register

**64.** Sections 1081 and 1082 apply to LLPs, modified so that they read as follows—

#### “Annotation of the register

**1081.**—(1) The registrar must place a note in the register recording—

- (a) the date on which a document is delivered to the registrar;
- (b) if a document is corrected under section 1075, the nature and date of the correction;
- (c) if a document is replaced (whether or not material derived from it is removed), the fact that it has been replaced and the date of delivery of the replacement;
- (d) if material is removed—
  - (i) what was removed (giving a general description of its contents),
  - (ii) under what power, and
  - (iii) the date on which that was done.

(2) Regulation 3 of the Registrar of Companies and Applications for Striking Off Regulations 2009 (S.I. 2009/1803) applies to LLPs as regards—

- (a) other circumstances in which the registrar is required or authorised to annotate the register, and
- (b) the contents of any such annotation.

(3) No annotation is required in the case of a document that by virtue of section 1072(2) (documents not meeting requirements for proper delivery) is treated as not having been delivered.

(4) A note may be removed if it no longer serves any useful purpose.

(5) Any duty or power of the registrar with respect to annotation of the register is subject to the court's power under section 1097 (powers of court on ordering removal of material from the register) to direct—

(a) that a note be removed from the register, or

(b) that no note shall be made of the removal of material that is the subject of the court's order.

(6) Notes placed in the register in accordance with subsection (1), or in pursuance of the provision referred to in subsection (2), are part of the register for all purposes of the Companies Acts and the Limited Liability Partnerships Act 2000.

### **Allocation of unique identifiers**

**1082.**—(1) The Secretary of State may make provision for the use, in connection with the register, of reference numbers (“unique identifiers”) to identify each person who is a member of an LLP.

(2) The regulations may—

(a) provide that a unique identifier may be in such form, consisting of one or more sequences of letters or numbers, as the registrar may from time to time determine;

(b) make provision for the allocation of unique identifiers by the registrar;

(c) require there to be included, in any specified description of documents delivered to the registrar, as well as a statement of the person's name—

(i) a statement of the person's unique identifier, or

(ii) a statement that the person has not been allocated a unique identifier;

(d) enable the registrar to take steps where a person appears to have more than one unique identifier to discontinue the use of all but one of them.

(3) The regulations may contain provision for the application of the scheme in relation to persons appointed, and documents registered, before the commencement of this Act.

(4) The regulations may make different provision for different descriptions of person and different descriptions of document.

(5) Regulations under this section are subject to affirmative resolution procedure.”.

### **Records relating to dissolved LLPs**

65. Section 1084 applies to LLPs, modified so that it reads as follows—

#### **“Records relating to LLPs that have been dissolved**

**1084.**—(1) This section applies where an LLP is dissolved.

(2) At any time after two years from the date on which it appears to the registrar that the LLP has been dissolved, the registrar may direct that records relating to the LLP may be removed to the Public Record Office or, as the case may be, the Public Record Office of Northern Ireland.

(3) Records in respect of which such a direction is given shall be disposed of under the enactments relating to that Office and the rules made under them.

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(4) This section does not extend to Scotland.”.

### **Inspection etc of the register**

66. Sections 1085 to 1091 <sup>M16</sup> apply to LLPs, modified so that they read as follows—

#### **“Inspection of the register**

**1085.**—(1) Any person may inspect the register.

(2) The right of inspection extends to the originals of documents delivered to the registrar in hard copy form if, and only if, the record kept by the registrar of the contents of the document is illegible or unavailable. The period for which such originals are to be kept is limited by section 1083(1).

(3) This section has effect subject to section 1087 (material not available for public inspection).

#### **Right to copy of material not on the register**

**1086.**—(1) Any person may require a copy of any material on the register.

(2) The fee for any such copy of material derived from a document specified for the purposes of section 1077, whether in hard copy or electronic form, must not exceed the administrative cost of providing it.

(3) This section has effect subject to section 1087 (material not available for public inspection).

#### **Material not available for public inspection**

**1087.**—(1) The following material must not be made available by the registrar for public inspection—

- (a) the contents of any document sent to the registrar containing views expressed pursuant to section 56 (comments on proposal by LLP to use certain words or expressions in LLP name);
- (b) protected information within section 242(1) (members' residential addresses: restriction on disclosure by registrar);
- (c) representations received by the registrar in response to a notice under section 245(2) (notice of proposal to put member's usual residential address on the public record);
- (d) any application to the registrar under section 1024 (application for administrative restoration to the register) that has not yet been determined or was not successful;
- (e) any document received by the registrar in connection with the giving or withdrawal of consent under section 1075 (informal correction of documents);
- (f) any application or other document delivered to the registrar under section 1088 (application to make address unavailable for public inspection) and any address in respect of which such an application is successful;
- (g) any application or other document delivered to the registrar under section 1095 (application for rectification of register);
- (h) any court order under section 1096 (rectification of the register under court order) that the court has directed under section 1097 (powers of court on ordering

removal of material from the register) is not to be made available for public inspection;

- (i) the contents of—
  - (i) any instrument creating or evidencing a charge, or
  - (ii) any certified or verified copy of an instrument creating or evidencing a charge,delivered to the registrar under Part 25 (LLP charges);
- (j) any e-mail address, identification code or password deriving from a document delivered for the purpose of authorising or facilitating electronic filing procedures or providing information by telephone;
- (k) any other material excluded from public inspection by or under any other enactment.

(2) A restriction applying by reference to material deriving from a particular description of document does not affect the availability for public inspection of the same information contained in material derived from another description of document in relation to which no such restriction applies.

(3) Material to which this section applies need not be retained by the registrar for longer than appears to the registrar reasonably necessary for the purposes for which the material was delivered to the registrar.

#### **Application to registrar to make address unavailable for public inspection**

**1088.**—(1) The provisions of the Companies (Disclosure of Address) Regulations 2009 (S.I. 2009/214) relating to applications to make an address unavailable for inspection under this section apply to LLPs.

- (2) The provisions are—
  - (a) Part 3 (disclosure of protected information),
  - (b) Part 4 (matters relating to applications), so far as relating to applications to make an address unavailable for inspection under this section, and
  - (c) any other provisions of the Regulations having effect for the purposes of those provisions.
- (3) As those provisions apply to LLPs—
  - (a) references in the regulations to provisions of the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I.6)) are to those provisions as applied to LLPs by the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090) or the Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. (NI) 2004 No 307);
  - (b) read references to a company as references to an LLP;
  - (c) read references to a director as references to a member of an LLP;
  - (d) omit all references to secretaries or permanent representatives;
  - (e) in regulation 1(2) for the definition of “former name” substitute—  
““former name” means a name by which the individual was formerly known and which has been notified to the registrar under section 2 or 9 of the Limited Liability Partnerships Act 2000;”;
  - (f) in regulation 9, for paragraph (1) substitute—

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“(1) A section 1088 application may be made to the registrar by an individual whose usual residential address was placed on the register either—

- (a) under section 288 (register of members) or 363 (duty to deliver annual returns) of the 1985 Act;
- (b) under Article 296 or 371 of the 1986 Order;
- (c) under section 2 (incorporation document etc) or 9 (registration of membership changes) of the Limited Liability Partnerships Act 2000; or
- (d) as a service address under section 855 (contents of annual return) of the Act,

in respect of that usual residential address where it was placed on the register on or after 1st January 2003;”;

- (g) omit regulation 10.

#### **Form of application for inspection or copy**

**1089.** The registrar may specify the form and manner in which application is to be made for—

- (a) inspection under section 1085, or
- (b) a copy under section 1086.

#### **Form and manner in which copies to be provided**

**1090.** The registrar may determine the form and manner in which copies are to be provided.

#### **Certification of copies as accurate**

**1091.—**(1) Copies provided under section 1086 in hard copy form must be certified as true copies unless the applicant dispenses with such certification.

(2) Copies so provided in electronic form must not be certified as true copies unless the applicant expressly requests such certification.

(3) A copy provided under section 1086, certified by the registrar (whose official position it is unnecessary to prove) to be an accurate record of the contents of the original document, is in all legal proceedings admissible in evidence—

- (a) as of equal validity with the original document, and
- (b) as evidence (in Scotland, sufficient evidence) of any fact stated in the original document of which direct oral evidence would be admissible.

(4) Regulation 2 of the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429) (certification of electronic copies by registrar) applies where the copy is provided in electronic form.

(5) Copies provided by the registrar may, instead of being certified in writing to be an accurate record, be sealed with the registrar's official seal <sup>M17</sup>.”.

#### **Marginal Citations**

**M16** Section 1087(1) was amended by article 12 of S.I. 2009/1802.



**M17** See section 1062 of the Companies Act 2006 (the registrar's official seal).

## Correction or removal of material on the register

67. Sections 1093 to 1098 apply to LLPs, modified so that they read as follows—

### “Registrar's notice to resolve inconsistency on the register

**1093.**—(1) Where it appears to the registrar that the information contained in a document delivered to the registrar is inconsistent with other information on the register, the registrar may give notice to the LLP to which the document relates—

- (a) stating in what respects the information contained in it appears to be inconsistent with other information on the register, and
- (b) requiring the LLP to take steps to resolve the inconsistency.

(2) The notice must—

- (a) state the date on which it is issued, and
- (b) require the delivery to the registrar, within 14 days after that date, of such replacement or additional documents as may be required to resolve the inconsistency.

(3) If the necessary documents are not delivered within the period specified, an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

### Administrative removal of material from the register

**1094.**—(1) The registrar may remove from the register anything that there was power, but no duty, to include.

(2) This power is exercisable, in particular, so as to remove—

- (a) unnecessary material within the meaning of section 1074, and
- (b) material derived from a document that has been replaced under—
  - section 1076 (replacement of document not meeting requirements for proper delivery), or
  - section 1093 (notice to remedy inconsistency on the register).

(3) This section does not authorise the removal from the register of—

- (a) anything whose registration has had legal consequences in relation to the LLP as regards—
  - (i) its formation,
  - (ii) a change of name,
  - (iii) a change of registered office,
  - (iv) a change in the situation of a registered office,
  - (v) the registration of a charge, or

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- (vi) its dissolution;
- (b) an address that is a person's registered address for the purposes of section 1140 (service of documents on members and others).
- (4) On or before removing any material under this section (otherwise than at the request of the LLP) the registrar must give notice—
  - (a) to the person by whom the material was delivered (if the identity, and name and address of that person are known), or
  - (b) to the LLP to which the material relates (if notice cannot be given under paragraph (a) and the identity of that LLP is known).
- (5) The notice must—
  - (a) state what material the registrar proposes to remove, or has removed, and on what grounds, and
  - (b) state the date on which it is issued.

#### **Rectification of register on application to registrar**

**1095.**—(1) The provisions of the Registrar of Companies and Applications for Striking Off Regulations 2009 (S.I. 2009/1803) requiring the registrar, on application, to remove from the register material that—

- (a) derives from anything invalid or ineffective or that was done without authority, or
- (b) is factually inaccurate, or is derived from something that is factually inaccurate or forged,

apply to LLPs.

- (2) Those provisions are—
  - (a) regulations 4 and 5, and
  - (b) any other provisions of the regulations having effect for the purposes of those provisions.
- (2A) In those provisions as they apply to LLPs—
  - (a) for “company” substitute “LLP”, and for “relevant company form” substitute “relevant LLP form”;
  - (b) omit all references to overseas companies and overseas company forms;
  - (c) omit all references to secretaries;
  - (d) in regulation 4—
    - (i) for paragraph (3) substitute—
      - “(3) A “relevant LLP form” is—
        - (a) a standard form required for giving notice under section 87 of the Companies Act 2006 (change of address of registered office) or section 9 of the Limited Liability Partnerships Act 2000 (c. 12) (changes relating to members); or
        - (b) so much of a standard form required for delivering an application under section 2 of the Limited Liability Partnerships Act 2000 (incorporation document etc) as is required for the statement of those who are to be members of the LLP referred to in section 2(2) (e).”
    - (ii) omit paragraphs (4) and (6),

- (iii) in paragraph (7) omit “or (6)”, and
- (iv) in paragraph (8)(a), for “(2), (3), (4) or (5)” substitute “(2) or (3)”;
- (e) in regulation 5—
  - (i) in paragraph (1)(b), omit “or (6)”,
  - (ii) in paragraphs (2)(b) and (3)(b), for “director or secretary of the company” substitute “designated member of the LLP”,
  - (iii) omit paragraphs (4) to (7) and (16),
  - (iv) in paragraphs (8), (11), (12) and (14)(c), for “(2), (3), (4) or (5)” substitute “(2) or (3)”; and
  - (v) omit paragraph (8)(b) and (c).
- (3) An application must—
  - (a) specify what is to be removed from the register and indicate where on the register it is, and
  - (b) be accompanied by a statement that the material specified in the application complies with this section and the regulations.
- (4) If no objections are made to the application, the registrar may accept the statement as sufficient evidence that the material specified in the application should be removed from the register.
- (5) Where anything is removed from the register under this section the registration of which had legal consequences as mentioned in section 1094(3), any person appearing to the court to have a sufficient interest may apply to the court for such consequential orders as appear just with respect to the legal effect (if any) to be accorded to the material by virtue of its having appeared on the register.

### **Rectification of the register under court order**

- 1096.**—(1) The registrar shall remove from the register any material—
- (a) that derives from anything that the court has declared to be invalid or ineffective, or to have been done without the authority of the LLP, or
  - (b) that a court declares to be factually inaccurate, or to be derived from something that is factually inaccurate, or forged,
- and that the court directs should be removed from the register.
- (2) The court order must specify what is to be removed from the register and indicate where on the register it is.
  - (3) The court must not make an order for the removal from the register of anything the registration of which had legal consequences as mentioned in section 1094(3) unless satisfied—
    - (a) that the presence of the material on the register has caused, or may cause, damage to the LLP, and
    - (b) that the LLP's interest in removing the material outweighs any interest of other persons in the material continuing to appear on the register.
  - (4) Where in such a case the court does make an order for removal, it may make such consequential orders as appear just with respect to the legal effect (if any) to be accorded to the material by virtue of its having appeared on the register.
  - (5) A copy of the court's order must be sent to the registrar for registration.

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(6) This section does not apply where the court has other, specific, powers to deal with the matter, for example under—

- (a) the provisions of Part 15 relating to the revision of defective accounts, or
- (b) section 873 or 888 (rectification of the register of charges).

#### **Powers of court on ordering removal of material from the register**

**1097.**—(1) Where the court makes an order for the removal of anything from the register under section 1096 (rectification of the register), it may give directions under this section.

(2) It may direct that any note on the register that is related to the material that is the subject of the court's order shall be removed from the register.

(3) It may direct that its order shall not be available for public inspection as part of the register.

(4) It may direct—

- (a) that no note shall be made on the register as a result of its order, or
- (b) that any such note shall be restricted to such matters as may be specified by the court.

(5) The court shall not give any direction under this section unless it is satisfied—

- (a) that—
  - (i) the presence on the register of the note or, as the case may be, of an unrestricted note, or
  - (ii) the availability for public inspection of the court's order, may cause damage to the LLP, and
- (b) that the LLP's interest in non-disclosure outweighs any interest of other persons in disclosure.

#### **Public notice of removal of certain material from the register**

**1098.**—(1) The registrar must cause to be published—

- (a) in the Gazette, or
- (b) in accordance with section 1116 (alternative means of giving public notice),

notice of the removal from the register of any document specified in section 1078 or of any material derived from such a document.

(2) The notice must state the name and registered number of the LLP, the description of document and the date of receipt.”.

#### **Language requirements: translation**

**68.** Sections 1103 to 1107 apply to LLPs, modified so that they read as follows—

##### **“Documents to be drawn up and delivered in English**

**1103.**—(1) The general rule is that all documents required to be delivered to the registrar must be drawn up and delivered in English.

(2) This is subject to—

- section 1104 (documents relating to Welsh LLPs) and
- section 1105 (documents that may be drawn up and delivered in other languages).

### Documents relating to Welsh LLPs

**1104.**—(1) Documents relating to a Welsh LLP may be drawn up and delivered to the registrar in Welsh.

(2) On delivery to the registrar any such document must be accompanied by a certified translation into English, unless they are—

- (a) annual accounts and auditors' reports required to be delivered to the registrar under Part 15,
- (b) revised accounts, and any auditor's report on such revised accounts, required to be delivered to the registrar by the Companies (Revision of Defective Accounts and Reports) Regulations 2008 (S.I. 2008/373), or
- (c) in a form prescribed in Welsh (or partly in Welsh and partly in English) by virtue of section 26 of the Welsh Language Act 1993 (c. 38).

(3) Where a document is properly delivered to the registrar in Welsh without a certified translation into English, the registrar must obtain such a translation if the document is to be available for public inspection. The translation is treated as if delivered to the registrar in accordance with the same provision as the original.

(4) A Welsh LLP may deliver to the registrar a certified translation into Welsh of any document in English that relates to the LLP and is or has been delivered to the registrar.

(5) Section 1105 (which requires certified translations into English of documents delivered to the registrar in another language) does not apply to a document relating to a Welsh LLP that is drawn up and delivered in Welsh.

### Documents that may be drawn up and delivered in other languages

**1105.**—(1) Documents to which this section applies may be drawn up and delivered to the registrar in a language other than English, but when delivered to the registrar they must be accompanied by a certified translation into English.

(2) This section applies to—

- (a) documents required to be delivered under section 400(2)(e) or section 401(2)(f) (LLP included in accounts of larger group: required to deliver copy of group accounts);
- (b) instruments or copy instruments required to be delivered under Part 25 (LLP charges);
- (c) any order made by a competent court in the United Kingdom or elsewhere.

### Voluntary filing of translations

**1106.**—(1) An LLP may deliver to the registrar one or more certified translations of any document relating to the LLP that is or has been delivered to the registrar.

(2) The facility described in subsection (1) is available in relation to—

- (a) all the official languages of the European Union, and
- (b) all the documents specified by section 1078.

(3) The power of the registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the translation in a form and manner enabling it to be associated with the original.

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(4) This section does not apply where the original document was delivered to the registrar before this section came into force.

### **Certified translations**

**1107.**—(1) In this Part a “certified translation” means a translation certified to be a correct translation.

(2) In the case of any discrepancy between the original language version of a document and a certified translation—

- (a) the LLP may not rely on the translation as against a third party, but
- (b) a third party may rely on the translation unless the LLP shows that the third party had knowledge of the original.

(3) A “third party” means a person other than the LLP or the registrar.”.

### **Supplementary provisions**

**69.** Sections 1112 and 1113 apply to LLPs, modified so that they read as follows—

#### **“General false statement offence**

**1112.**—(1) It is an offence for a person knowingly or recklessly—

- (a) to deliver or cause to be delivered to the registrar, for any purpose of this Act or the Limited Liability Partnerships Act 2000 (c. 12), a document, or
- (b) to make to the registrar, for any such purpose, a statement,

that is misleading, false or deceptive in a material particular.

(2) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
- (b) on summary conviction—
  - (i) in England and Wales or Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
  - (ii) in Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

#### **Enforcement of LLP's filing obligations**

**1113.**—(1) This section applies where an LLP has made default in complying with any obligation under this Act or the Limited Liability Partnerships Act 2000 (c. 12)—

- (a) to deliver a document to the registrar, or
- (b) to give notice to the registrar of any matter.

(2) The registrar, or any member or creditor of the LLP, may give notice to the LLP requiring it to comply with the obligation.

(3) If the LLP fails to make good the default within 14 days after service of the notice, the registrar, or any member or creditor of the LLP, may apply to the court for an order directing the LLP, and any specified member of it, to make good the default within a specified time.

(4) The court's order may provide that all costs (in Scotland, expenses) of or incidental to the application are to be borne by the LLP or by any members of it responsible for the default.

(5) This section does not affect the operation of any enactment making it an offence, or imposing a civil penalty, for the default.”.

## PART 16

### OFFENCES

#### Liability of member in default

70. Sections 1121 and 1122 apply to LLPs for the purposes of these Regulations, modified so that they read as follows—

##### “Liability of member in default

1121.—(1) This section has effect for the purposes of any provision of the Companies Acts to the effect that, in the event of contravention of an enactment in relation to an LLP, an offence is committed by every member or, as the case may be, every designated member of the LLP who is in default.

(2) A member or designated member is “in default” for the purposes of the provision if he authorises or permits, participates in, or fails to take all reasonable steps to prevent, the contravention.

##### Liability of company or LLP as member in default

1122.—(1) Where a company or an LLP is a member or designated member of an LLP, it does not commit an offence as a member or designated member in default unless (in the case of a company) one of its officers is in default, or (in the case of a member LLP) one of its members is in default.

(2) Where any such offence is committed by a company or LLP the officer or member in question also commits the offence and is liable to be proceeded against and punished accordingly.

(3) In this section an officer or member is “in default” for the purposes of the provision if he authorises or permits, participates in, or fails to take all reasonable steps to prevent, the contravention.”.

#### Daily default fine

71. Section 1125 applies to LLPs for the purposes of these Regulations as follows—

##### “Meaning of “daily default fine”

1125.—(1) This section defines what is meant in the Companies Acts where it is provided that a person guilty of an offence is liable on summary conviction to a fine not exceeding a specified amount “and, for continued contravention, a daily default fine” not exceeding a specified amount.

(2) This means that the person is liable on a second or subsequent summary conviction of the offence to a fine not exceeding the latter amount for each day on which the contravention is continued (instead of being liable to a fine not exceeding the former amount).”.

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## Consents for certain prosecutions

72. Section 1126 applies to LLPs, modified so that it reads as follows—

### “Consents required for certain prosecutions

**1126.**—(1) This section applies to proceedings for an offence under section 448, 449, 450, 451 or 453A of the Companies Act 1985, as applied to LLPs.

(2) No such proceedings are to be brought in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

(3) No such proceedings are to be brought in Northern Ireland except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.”

## General provisions

73. Sections 1127 to 1133 apply to LLPs for the purposes of these Regulations, modified so that they read as follows—

### “Summary proceedings: venue

**1127.**—(1) Summary proceedings for any offence under the Companies Acts may be taken—

- (a) against a body corporate, at any place at which the body has a place of business, and
- (b) against any other person, at any place at which he is for the time being.

(2) This is without prejudice to any jurisdiction exercisable apart from this section.

### Summary proceedings: time limit for proceedings

**1128.**—(1) An information relating to an offence under the Companies Acts that is triable by a magistrates' court in England and Wales may be so tried if it is laid—

- (a) at any time within three years after the commission of the offence, and
- (b) within twelve months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.

(2) Summary proceedings in Scotland for an offence under the Companies Acts—

- (a) must not be commenced after the expiration of three years from the commission of the offence;
- (b) subject to that, may be commenced at any time—
  - (i) within twelve months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge, or
  - (ii) where such evidence was reported to him by the Secretary of State, within twelve months after the date on which it came to the knowledge of the latter.

Section 136(3) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date when proceedings deemed to be commenced) applies for the purposes of this subsection as for the purposes of that section.



(3) A magistrates' court in Northern Ireland has jurisdiction to hear and determine a complaint charging the commission of a summary offence under the Companies Acts provided that the complaint is made—

- (a) within three years from the time when the offence was committed, and
- (b) within twelve months from the date on which evidence sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.

(4) For the purposes of this section a certificate of the Director of Public Prosecutions, the Lord Advocate, the Director of Public Prosecutions for Northern Ireland or the Secretary of State (as the case may be) as to the date on which such evidence as is referred to above came to his notice is conclusive evidence.

### **Legal professional privilege**

**1129.** In proceedings against a person for an offence under the Companies Acts, nothing in those Acts is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege (in Scotland, confidentiality of communications).

### **Proceedings against unincorporated bodies**

**1130.**—(1) Proceedings for an offence under the Companies Acts alleged to have been committed by an unincorporated body must be brought in the name of the body (and not in that of any of its members).

(2) For the purposes of such proceedings—

- (a) any rules of court relating to the service of documents have effect as if the body were a body corporate, and
- (b) the following provisions apply as they apply in relation to a body corporate—
  - (i) in England and Wales, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43),
  - (ii) in Scotland, sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46),
  - (iii) in Northern Ireland, section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Article 166 of and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)).

(3) A fine imposed on an unincorporated body on its conviction of an offence under the Companies Acts must be paid out of the funds of the body.

### **Imprisonment on summary conviction in England and Wales: transitory provision**

**1131.**—(1) This section applies to any provision of the Companies Acts that provides that a person guilty of an offence is liable on summary conviction in England and Wales to imprisonment for a term not exceeding twelve months.

(2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), for “twelve months” substitute “six months”.

### **Production and inspection of documents where offence suspected**

**1132.**—(1) An application under this section may be made—

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- (a) in England and Wales, to a judge of the High Court by the Director of Public Prosecutions, the Secretary of State or a chief officer of police;
  - (b) in Scotland, to one of the Lords Commissioners of Justiciary by the Lord Advocate;
  - (c) in Northern Ireland, to the High Court by the Director of Public Prosecutions for Northern Ireland, the Department of Enterprise, Trade and Investment or a chief superintendent of the Police Service of Northern Ireland.
- (2) If on an application under this section there is shown to be reasonable cause to believe—
- (a) that any person has, while a member of an LLP, committed an offence in connection with the management of the LLP's affairs, and
  - (b) that evidence of the commission of the offence is to be found in any documents in the possession or control of the LLP,
- an order under this section may be made.
- (3) The order may—
- (a) authorise any person named in it to inspect the documents in question, or any of them, for the purpose of investigating and obtaining evidence of the offence, or
  - (b) require such member of the LLP as may be named in the order, to produce the documents (or any of them) to a person named in the order at a place so named.
- (4) This section applies also in relation to documents in the possession or control of a person carrying on the business of banking, so far as they relate to the LLP's affairs, as it applies to documents in the possession or control of the LLP, except that no such order as is referred to in subsection (3)(b) may be made by virtue of this subsection.
- (5) The decision under this section of a judge of the High Court, any of the Lords Commissioners of Justiciary or the High Court is not appealable.
- (6) In this section “document” includes information recorded in any form.

### **Transitional provision**

**1133.** The provisions of this Part except section 1132 do not apply to offences committed before 1st October 2009.”.

## **PART 17**

### **SUPPLEMENTARY PROVISIONS AND INTERPRETATION**

#### **LLP records**

**74.** Sections 1134 to 1138 apply to LLPs, modified so that they read as follows—

#### **“Meaning of “LLP records”**

**1134.** In this Part “LLP records” means—

- (a) any register, index, accounting records, agreement, memorandum, minutes or other document required by this Act to be kept by an LLP, and
- (b) any register kept by an LLP of its debenture holders.

### Form of LLP records

**1135.**—(1) LLP records—

- (a) may be kept in hard copy or electronic form, and
- (b) may be arranged in such manner as the members of the LLP think fit,

provided the information in question is adequately recorded for future reference.

(2) Where the records are kept in electronic form, they must be capable of being reproduced in hard copy form.

(3) If an LLP fails to comply with this section, an offence is committed by every member of the LLP who is in default.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### Where certain LLP records to be kept available for inspection

**1136.**—(1) The provisions of the Companies (Company Records) Regulations 2008 (S.I. 2008/3006) relating to places other than the registered office at which records required to be kept available for inspection under a relevant provision may be so kept in compliance with that provision apply to LLPs.

(2) The “relevant provisions” are—

- section 162 (register of members);
- section 743 (register of debenture holders);
- section 877 (instruments creating charges and register of charges: England and Wales);
- section 892 (instruments creating charges and register of charges: Scotland).

(3) The provisions applied by subsection (1) are—

- (a) regulation 3, and
- (b) any other provision of the regulations having effect for the purposes of that provision.

(4) In the application of those provisions to LLPs for “company” substitute “LLP”.

### Inspection of records and provision of copies

**1137.**—(1) The provisions of the Companies (Company Records) Regulations 2008 (S.I. 2008/3006) as to the obligations of an LLP that is required by any provision of this Act or of the Limited Liability Partnerships Act 2000 (c. 12)—

- (a) to keep available for inspection any LLP records, or
- (b) to provide copies of any LLP records,

apply to LLPs.

(2) Those provisions are—

- (a) Part 3 (inspection of records),
- (b) Part 4 (provision of copies of records), and
- (c) any other provision of the regulations having effect for the purposes of those provisions.

(3) As those provisions apply to LLPs—

- (a) for “a company” or “the company” substitute “an LLP” or “the LLP”;

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- (b) for “company record” substitute “LLP record”;
  - (c) in regulation 4 (inspection: private company)—
    - (i) for the reference in paragraph (1) to a private company substitute a reference to an LLP,
    - (ii) for sub-paragraph (b) substitute—
      - “(b) that person gives the LLP at least 10 working days' notice of the specified day.”;
  - (d) omit paragraphs (2) and (3); and
  - (e) omit regulation 5 (inspection: public company).
- (4) An LLP that fails to comply with the regulations is treated as having refused inspection or, as the case may be, having failed to provide a copy.
- (5) Nothing in any provision of this Act or in the regulations shall be read as preventing an LLP—
- (a) from affording more extensive facilities than are required by the regulations, or
  - (b) where a fee may be charged, from charging a lesser fee than that prescribed or none at all.

#### **Duty to take precautions against falsification**

**1138.**—(1) Where LLP records are kept otherwise than in bound books, adequate precautions must be taken—

- (a) to guard against falsification, and
- (b) to facilitate the discovery of falsification.

(2) If an LLP fails to comply with this section, an offence is committed by every member of the LLP who is in default.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.”.

#### **Service addresses**

**75.** Sections 1139 to 1142 apply to LLPs, modified so that they read as follows—

##### **“Service of documents on LLP**

**1139.**—(1) A document may be served on an LLP by leaving it at, or sending it by post to, the LLP's registered office.

(2) Where an LLP registered in Scotland or Northern Ireland carries on business in England and Wales, the process of any court in England and Wales may be served on the LLP by leaving it at, or sending it by post to, the LLP's principal place of business in England and Wales, addressed to the manager or a designated member in England and Wales of the LLP. Where process is served on an LLP under this subsection, the person issuing out the process must send a copy of it by post to the LLP's registered office.

##### **Service of documents on members and others**

**1140.**—(1) A document may be served on—

- (a) a member of an LLP, or

(b) a person appointed in relation to an LLP as a judicial factor (in Scotland), by leaving it at, or sending it by post to, the member's or factor's registered address.

(2) This section applies whatever the purpose of the document in question.

(3) For the purposes of this section a person's "registered address" means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.

(4) If notice of a change of that address is given to the registrar, a person may validly serve a document at the address previously registered until the end of the period of 14 days beginning with the date on which notice of the change is registered.

(5) Service may not be effected by virtue of this section at an address if notice has been registered of the cessation of the membership or (as the case may be) termination of the appointment in relation to which the address was registered and the address is not a registered address of the person concerned in relation to any other appointment.

(6) Nothing in this section shall be read as affecting any enactment or rule of law under which permission is required for service out of the jurisdiction.

### **Service addresses**

**1141.**—(1) In this Act a "service address", in relation to a person, means an address at which documents may be effectively served on that person.

(2) The service address must be a place where—

- (a) the service of documents can be effected by physical delivery; and
- (b) the delivery of documents is capable of being recorded by the obtaining of an acknowledgment of delivery.

### **Requirement to give service address**

**1142.** Any obligation under this Act to give a person's address is, unless otherwise expressly provided, to give a service address for that person."

### **Notice of appointment of judicial factor**

**76.** Sections 1154 and 1155 apply to LLPs, modified so that they read as follows—

#### **"Duty to notify registrar of appointment of judicial factor**

**1154.**—(1) Notice must be given to the registrar of the appointment in relation to an LLP of a judicial factor (in Scotland).

(2) The notice must be given by the judicial factor.

(3) The notice must specify an address at which service of documents (including legal process) may be effected on the judicial factor. Notice of a change in the address for service may be given to the registrar by the judicial factor.

(4) Where notice has been given under this section of the appointment of a judicial factor, notice must also be given to the registrar by the judicial factor of the termination of the appointment.

#### **Offence of failure to give notice**

**1155.**—(1) If a judicial factor fails to give notice of his appointment in accordance with section 1154 within the period of 14 days after the appointment he commits an offence.

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(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.”.

## Courts and legal proceedings

77. Sections 1156 and 1157 apply to LLPs for the purposes of these Regulations, modified so that they read as follows—

### “Meaning of “the court”

**1156.**—(1) Except as otherwise provided, in this Act “the court” means—

- (a) in England and Wales, the High Court or (subject to subsection (3)) a county court;
- (b) in Scotland, the Court of Session or the sheriff court;
- (c) in Northern Ireland, the High Court.

(2) The provisions of the Companies Acts conferring jurisdiction on “the court” as defined above have effect subject to any enactment or rule of law relating to the allocation of jurisdiction or distribution of business between courts in any part of the United Kingdom.

(3) The Lord Chancellor may, with the concurrence of the Lord Chief Justice, by order—

- (a) exclude a county court from having jurisdiction under this Act, and
- (b) for the purposes of that jurisdiction attach that court's district, or any part of it, to another county court.

(4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to exercise his functions under subsection (3).

### Power of court to grant relief in certain cases

**1157.**—(1) If in proceedings for negligence, default, breach of duty or breach of trust against—

- (a) a member of an LLP, or
- (b) a person employed by an LLP as auditor,

it appears to the court hearing the case that the member or person is or may be liable but that he acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused, the court may relieve him, either wholly or in part, from his liability on such terms as it thinks fit.

(2) If any such member or person has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of duty or breach of trust—

- (a) he may apply to the court for relief, and
- (b) the court has the same power to relieve him as it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant (in Scotland, the defender) ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case from the jury and forthwith direct judgment to be entered for the defendant (in Scotland, grant decree of absolvitor) on such terms as to costs (in Scotland, expenses) or otherwise as the judge may think proper.”.

## Requirements of this Act

78. Section 1172 applies to LLPs for the purposes of these Regulations, modified so that it reads as follows—

### “References to requirements of this Act

1172. References in the provisions of this Act applied to LLPs to the requirements of this Act include the requirements of regulations and orders made under it.”

## Minor definitions

79. Section 1173 applies to LLPs for the purposes of these Regulations, modified so that it reads as follows—

### “Minor definitions: general

1173.—(1) In this Act—

“body corporate” and “corporation” include a body incorporated outside the United Kingdom, but do not include—

- (a) a corporation sole, or
- (b) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;

“the Companies Acts” is to be construed in accordance with section 2;

“firm” means any entity, whether or not a legal person, that is not an individual and includes a body corporate, a corporation sole and a partnership or other unincorporated association;

“the Gazette” means—

- (a) as respects LLPs registered in England and Wales, the London Gazette,
- (b) as respects LLPs registered in Scotland, the Edinburgh Gazette, and
- (c) as respects LLPs registered in Northern Ireland, the Belfast Gazette;

“LLP” means a limited liability partnership registered under the Limited Liability Partnerships Act 2000 (c. 12);

“LLP agreement” means any agreement, express or implied, between the members of the LLP or between the LLP and the members of the LLP which determines the mutual rights and duties of the members, and their rights and duties in relation to the LLP;

“officer”, in relation to a body corporate, includes a director, manager or secretary;

“working day”, in relation to an LLP, means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom where the LLP is registered.

(2) In this Act, unless the context otherwise requires, “enactment” includes—

- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30),
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation within the meaning of the Interpretation Act 1978.”

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## Regulations and orders

**80.** Sections 1288 to 1290 apply to LLPs for the purposes of these Regulations, modified so that they read as follows—

### “Regulations and orders: statutory instrument

**1288.** Except as otherwise provided, regulations and orders under this Act shall be made by statutory instrument.

### Regulations: negative resolution procedure

**1289.** Where regulations under this Act are subject to “negative resolution procedure” the statutory instrument containing the regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### Regulations: affirmative resolution procedure

**1290.** Where regulations under this Act are subject to “affirmative resolution procedure” the regulations must not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.”.

**81.** Section 1292 applies to LLPs for the purposes of these Regulations, modified so that it reads as follows—

### “Regulations and orders: supplementary

**1292.**—(1) Regulations or orders under this Act may—

- (a) make different provision for different cases or circumstances,
- (b) include supplementary, incidental and consequential provision, and
- (c) make transitional provision and savings.

(2) Any provision that may be made by regulations under this Act may be made by order; and any provision that may be made by order under this Act may be made by regulations.

(3) Any provision that may be made by regulations or order under this Act for which no Parliamentary procedure is prescribed may be made by regulations subject to negative or affirmative resolution procedure.

(4) Any provision that may be made by regulations under this Act subject to negative resolution procedure may be made by regulations subject to affirmative resolution procedure.”.

## Continuity of the law

**82.** Section 1297 applies to LLPs, modified so that it reads as follows—

### “Continuity of the law

**1297.**—(1) This section applies where any provision of this Act applied to LLPs re-enacts (with or without modification) an enactment repealed by this Act which was applied to LLPs.

- (2) The repeal and re-enactment does not affect the continuity of the law.



(3) Anything done (including subordinate legislation made and applied to LLPs), or having effect as if done, under or for the purposes of the repealed provision as applied to LLPs that could have been done under or for the purposes of the corresponding provision of this Act as applied to LLPs, if in force or effective immediately before the commencement of that corresponding provision, has effect thereafter as if done under or for the purposes of that corresponding provision.

(4) Any reference (express or implied) in this Act or any other enactment, instrument or document to a provision of this Act as applied to LLPs shall be construed (so far as the context permits) as including, as respects times, circumstances or purposes in relation to which the corresponding repealed provision had effect, a reference to that corresponding provision.

(5) Any reference (express or implied) in any enactment, instrument or document to a repealed provision which was applied to LLPs shall be construed (so far as the context permits), as respects times, circumstances and purposes in relation to which the corresponding provision of this Act applied to LLPs has effect, as being or (according to the context) including a reference to the corresponding provision of this Act.

(6) This section has effect subject to any specific transitional provision or saving contained in this Act as applied to LLPs.

(7) References in this section to this Act as applied to LLPs include subordinate legislation made under this Act as so applied.

(8) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).”.

## PART 18

### TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

#### **Transitional provisions: application of provisions of Companies Act 2006**

**83.** Schedule 1 to these Regulations contains transitional and savings provisions in connection with the application to LLPs of provisions of the Companies Act 2006.

#### **Transitional provisions: Northern Ireland LLPs**

**84.** Schedule 2 to these Regulations contains transitional provisions and savings in connection with—

- (a) the extension to Northern Ireland of the enactments in force in Great Britain relating to limited liability partnerships <sup>M18</sup>, and
- (b) the consequent repeal of the Limited Liability Partnerships Act (Northern Ireland) 2002 <sup>M19</sup>.

#### **Marginal Citations**

**M18** See section 1286 of the Companies Act 2006.

**M19** 2002 c. 12 (N.I.).

#### **Consequential amendments and revocations**

**85.** Schedule 3 to these Regulations contains consequential amendments and revocations.

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**Status:** Point in time view as at 01/10/2009.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

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Department for Business, Innovation and Skills      Minister for Business and Regulatory Reform,  
*Ian Lucas*

**Status:**

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