



Department for
Business, Energy
& Industrial Strategy

LIMITED PARTNERSHIPS: REFORM OF LIMITED PARTNERSHIP LAW

The Government response to the
consultation

December 2018



OGL

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Contents

The Government response to the consultation	1
General Information	5
Purpose of this response	5
Territorial extent	5
Introduction	6
Summary of responses	6
Responses to the consultation	7
Evidence	7
Reform of Registration Requirements	8
Principal Place of Business	9
Reporting and Transparency Requirements	11
Strike Off Provisions	14
Annex – list of respondents	16

General Information

Purpose of this response

The Government's consultation on Limited Partnership: The Reform of Limited Partnership law¹ is part of our focus on delivering a strong business environment in the UK – a key foundation of the Industrial Strategy. It sought views on how to limit the risk of misuse of limited partnerships (LPs), and ways in which the law might be modernised.

This document summarises the views and comments received during the consultation and sets out the Government's next steps.

Territorial extent

The territorial extent of the matters in this document is the whole of the UK.

The UK Government is responsible for the operation and regulation of business entities in England and Wales, and in Scotland. Previously, the Northern Ireland administration has agreed that, while the operation and regulation of business entities remains a transferred matter within the legislative competence of the Northern Ireland Assembly, amendments to the Companies Act 2006 and legislation regulating business entities should be made in the same terms for the whole of the United Kingdom.

¹ <https://www.gov.uk/government/consultations/limited-partnerships-reform-of-limited-partnership-law>

Introduction

1. In response to reports that UK limited partnerships (LPs) were being misused, the Department for Business, Energy and Industrial Strategy (BEIS) sought and received evidence in 2017. The evidence demonstrated that the LP, including in its Scottish form, continues to fulfil important functions in key sectors of our economy. It also highlighted that there are ways in which the legal framework governing LPs could be strengthened and updated. BEIS published a consultation on 30 April 2018 on reforms to LP law. The consultation document set out a range of proposals to achieve this, including stronger controls at the point of registration, requirements for additional information whilst the LP is operating, as well as providing the Registrar with powers to strike off LPs from the register under certain circumstances. This response sets out how the Government plans to implement changes to the legislation in light of the responses to the consultation and other views gained through the wider consultation process. The Government would like to thank all interested parties for taking the time to respond to the consultation and for the evidence they have provided.
2. Following publication of this response, the Government will develop legislation to give effect to its proposals. The Government intends to legislate when Parliamentary time allows.

Summary of responses

3. BEIS received 41 responses to the consultation from a wide range of stakeholders. 24 responses were from representative bodies and groups, 13 were from individual businesses (such as law firms and fund managers), two were from non-governmental organisations, and one response received from each of academia and a private individual.
4. Where this response refers to proportions of respondents, it is with reference to the total number who responded to each question (not the total who responded to any part of the discussion paper; some respondents answered only the portion of the questions of interest to them or gave general responses).
5. In addition to publishing the consultation document, the Department engaged businesses, representative bodies and non-governmental organisations through a series of meetings to discuss the proposals in detail and gather a wide range of views. Since the period for receiving views formally closed, we have continued to engage with interested parties and to take their views into consideration.
6. A full list of respondents to the consultation is included in the Annex.

Responses to the consultation

Evidence

Question 1: Can you provide any additional evidence to help explain the trends in registrations of limited partnerships (LPs) across the UK in recent years?

7. The purpose of this question was to obtain more detail on the history, uses and misuse of LPs, further to that received in response to the call for evidence. The question garnered 29 responses; the vast majority of which said that they could not offer evidence which definitively links LPs, in particular in their Scottish form, to criminal activity. They also suggested that the recent reduction in registrations of Scottish limited partnerships (SLPs) was linked to the introduction of the Persons of Significant Control (PSC) register for SLPs in 2017. None of the respondents could provide firm explanations for the recent rise in registrations of LPs in Northern Ireland.
8. The Government agrees that there is a continuing need to offer the LP as a business entity, including in its Scottish form. It intends therefore to take action that will limit the potential misuse of LPs but ensures that LPs remain attractive for legitimate business use, in particular as an investment vehicle.

Reform of Registration Requirements

Question 2: Do you agree that presenters should be required to demonstrate they are registered with an AML (anti-money laundering) supervisory body? Please explain your answer and provide evidence on its potential impacts.

Question 3: How should this measure be applied to registrations from overseas?

9. Most respondents agreed that presenters of applications for LPs should be required to demonstrate that they are registered with an AML supervisory body and several respondents added that the measure would impose only minimal burdens on presenters. A smaller number of respondents agreed with the proposal in principle but argued either that the measure would not have a significant impact or that it would not be possible to enforce the policy effectively. Individual responses included the following comments: the measure “must not compromise same day” registrations; it might not be feasible for agricultural tenants and landlords which are already SLPs to belong to a recognised AML supervised body; and a concern that it would be desirable for there to be “an exception to the measure where the presenter intended to become a general partner in the LP”, because this would mean that the details of the general partner would be registered, thus ensuring transparency. No respondent said that it disagreed entirely with the proposal.
10. The majority of respondents suggested that applications from overseas should be made by using either a UK-based presenter and thus subject to UK money laundering regulations or a presenter that is supervised by an overseas AML supervisory body with equivalent supervision requirements. A number of respondents observed that this measure would have resourcing implications for Companies House which might make it difficult to enforce, and that it would make registrations from overseas more difficult.
11. The Government intends to make it mandatory for presenters of new applications for registration of LPs to demonstrate that they are registered with an AML supervisory body, and to provide evidence of this on the application form. The Government will seek to ensure that applications from overseas will be subject to equivalent standards and is considering options for achieving this. This could include limiting applications from overseas to those jurisdictions within the EEA. Any list of overseas jurisdictions with equivalent standards would be reviewed on an ongoing basis. This approach will end direct registrations of LPs. Where respondents commented on this, they suggested that this would increase the administrative and financial burdens on presenters but that the impacts of this in general would be minimal given the low number of direct registrations that are currently made overall.
12. The Government accepts that there may be an increase in administration and fees for registrations as a result of this measure but expects those increases to be minimal. The Government considers this to be a proportionate measure to increase transparency and accountability of presenters who are required to conduct money laundering checks on their customers (customer due diligence) and this may prevent applications for registrations of LPs which are being established with the intention of conducting illicit activity.

Principal Place of Business

Question 4: Would it be better to require a limited partnership's principal place of business (PPOB) to remain in the UK, or alternatively to allow the PPOB to be based anywhere but require a UK-based service address? Please evidence your answer, including if possible, an assessment of the likely costs of compliance.

Question 5: If a new requirement of a UK-based service address were introduced, but existing operation of the PPOB retained, what if any, transparency requirements should be put in place relevant to the PPOB?

13. 26 respondents, which were mostly from the funds management industry, said that making it mandatory for the PPOB (the primary location where business is carried out) to remain in the UK jurisdiction where it was registered² would have a detrimental impact on the venture capital industry and make LPs unattractive to investors. This is because UK and international venture capital and private equity fund managers often establish a LP in the UK and then move its principal place of business elsewhere. This allows them to create a fund structure that can more easily attract a broader range of global investors, which helps UK and global fund managers to carry out more activity from within the UK. The majority of respondents in this group preferred the proposal to make it mandatory for LPs to have a UK-based Service Address³ – which would in effect operate in the same way as a registered office - which they considered to be a more flexible measure, and which would also be more administratively simple. Some respondents were concerned to point out that if a LP's PPOB was forced to be within the European Economic Area it would be caught by the requirements of the Alternative Investment Fund Managers Directive (AIFMD).
14. Seven respondents – who were mostly from outside the funds management industry - either actively supported, or had no issue with, making it mandatory for the PPOB to remain in the UK. Three argued that mandating either option would not provide an effective mechanism for ensuring that LPs maintain a connection with the UK, and that either option would be exploited.
15. The Government understands that the introduction of a mandatory PPOB in the UK would not be problematic for some LPs – for example those which intend to conduct business solely from the UK, such as existing agricultural tenancies. However, the Government accepts that the ability to move a LP's PPOB outside of the UK is an attractive feature of the LP model for some investors, in particular those which are part of global structures. The Government also accepts that making it mandatory for the PPOB to remain in the UK limits the flexibility of the model and may discourage some legitimate investors from using it.
16. The Government believes it is vital for LPs registered in the UK under this country's legal framework to maintain some demonstrable link to the UK. The Government intends to request information about a LP's connection to the UK (a) on application for registration, and (b) on an ongoing basis. On an application for registration a LP must provide a proposed PPOB in the UK. LPs are diverse in terms of the ways they are established and used and so the Government intends therefore to offer LPs a choice in

² This would mean that the PPOB would have to remain in the jurisdiction of registration, e.g. a SLP's PPOB once registered, would have to remain in Scotland.

³ This would mean that the Service Address would have to remain in the jurisdiction of registration, e.g. a SLP's service address once registered, would have to remain in Scotland.

how to demonstrate their ongoing connection to remain eligible as a LP. A LP will need to either:

- retain their PPOB in the UK;
 - demonstrate that they are continuing some legitimate business activity at an address in the UK; or
 - demonstrate that they continue to engage the services of an agent that is registered with a UK AML supervisory body and which has agreed to provide its address as a service address for the LP.
17. The Government also considers it necessary for transparency that where a LP does not retain its PPOB in the UK, the LP must notify the Registrar of any change in its PPOB and will also be required to notify the Registrar if the way that it demonstrates its ongoing connection to the UK changes. The Government will also consider what evidence will be needed to demonstrate each of the three criteria above.
18. The Government will consider how this should apply to existing LPs, including the possibility of transitional arrangements.

Reporting and Transparency Requirements

Question 6: Should all limited partnerships be required to file an annual confirmation statement?

Question 7: If you are in favour of an annual confirmation statement, what information should be included and who should file it? Please consider whether that should be for the whole partnership or the difference in requirements for general partners against limited partners – including corporate partners.

Question 8: Is there a case for limited partnerships to have to prepare accounts and reports in line with the requirements for private companies, as is already the case for qualifying partnerships?

19. The vast majority of respondents either directly supported or did not disagree with the proposal that all LPs should be required to file an annual confirmation statement. A number of these considered it would be beneficial for there to be alignment in this regard with SLPs, which have been subject to the confirmation statement requirement since 2017 by virtue of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017. In respect of who should file the confirmation statement, where a preference was given, it was felt that the information should be submitted either by the general partner or, according to a small number of respondents, by the fund manager.
20. Most respondents felt that the provision of information should be brought in to line with that which is provided for limited companies, with some exceptions. There was very limited support for the proposal to submit accounts and reports in line with the requirements for private companies. Those who were in favour of this measure suggested that this information would provide an insight into potential criminal activity, and that LPs should not be subject to reporting requirements that are less onerous than those for companies.
21. In contrast to these views, a large number of respondents considered that the administrative burden of providing accounting information would be too high and went beyond what would be necessary for meeting the Government's objective of increasing transparency, and some were concerned that this measure might introduce too much complexity. LPs are not taxable entities, and a number of respondents considered that it would be inappropriate for individual partners to have to publish details of their own accounts, and for that information to be made public. While some of these respondents agreed that this information might be useful for tracing illicit activity, it was pointed out that this information is already available to the Government via the returns which UK-registered partners are obliged to submit to HMRC, and so the measure would be duplicative.
22. In addition, some respondents pointed out that accounting information might not always be available, and that this depended on whether the partnership was at an active stage in its lifecycle. It was also suggested that the submission of accounts would increase the cost of compliance associated with managing the partnership and that this might have an adverse impact on the competitiveness of UK LPs.

23. Based on the evidence submitted the Government does not consider the case has been made for all LPs to prepare accounts and reports in line with limited companies. However, where there are any gaps in the requirements for partnerships to file basic accounts with the UK government, the Government will close those gaps in a way that is not burdensome or duplicative. Furthermore, there is evidence from a number of respondents to suggest that it would not be controversial to provide some of the other information that is required on a company's registration documents.
24. The Government is convinced that there is merit in all LPs being required to file a confirmation statement at least every 12 months. The Government intends to introduce this requirement for confirmation statements from LPs in England and Wales, and Northern Ireland; this requirement is already mandatory for SLPs.
25. Additionally, the Government considers that the information currently required of LPs on applications for registration should be expanded and be confirmed by the confirmation statement. Currently, new registrations for LPs in England, Wales and Northern Ireland require:
 - The name of the firm
 - The general nature of the business
 - Address of the proposed principal place of business of the LP
 - The term, if any, for which the LP is to be entered into
 - The names and signatures of each general partner
 - The names, amounts contributed and signatures of each limited partner
 - The name of the presenter and the presenter's reference
26. In addition to this information, SLPs must also provide information about persons with significant control (PSC).
27. The Government intends to add to this list the following information: contact information for all limited and general partners, the date of birth and nationality of all limited and general partners that are natural persons, and also a SIC (standard industrial classification) code, identifying the nature of the LP's business.
28. LPs are required to register changes to the LP. The new requirements above, as well as those in the previous section that demonstrate an ongoing connection to the UK will be required to be registered.
29. The purpose of the confirmation statement is for the LP to confirm all details on the register are correct. The Government intends to introduce a transitional period and mechanism to enable all existing UK LPs to submit the additional information and capture information where changes have occurred that have not been registered.
30. The Government will undertake further work to explore whether to require beneficial ownership information from corporate partners that do not already hold a PSC register. This will take into account the value to law enforcement of this information; their relevance to the UK's compliance with international standards; the existing reporting

requirements of these entities; and the potential burden of introducing these reporting requirements.

Strike Off Provisions

Question 9: Do you agree with the proposal to give the Registrar a power to strike off partnerships from the register of companies?

Question 10: Are there any other factors or criteria that the Registrar could consider in order to conclude that the partnership is not carrying on a business or in operation?

Question 11: What operational and legislative procedures could be put in place to mitigate concerns of strike off done in error?

31. Almost all respondents supported the proposal to give the Registrar a power to strike off LPs from the register of companies, but to varying degrees. All of these respondents agreed that it would be desirable to strike off LPs which had been dissolved, however there was significant concern from the majority of respondents about the impact of striking off a LP in error and the impact that would have on the limited liability of the limited partners.
32. Many respondents argued that it was critical for an appropriate regime to be put in place that would safeguard the status of limited partners in the event of strike off. This was because they were concerned that striking off a LP might mean that partnership would become a general partnership and in so doing that the limited partner would lose their limited liability. Some respondents suggested that the Government should mirror the process set out for striking off companies⁴, as set out in the consultation document, with an additional suggestion that the process should vary slightly so that the limited partners are informed, in addition to the general partners.
33. A small number of views were directly expressed in response to question 10. The majority of these agreed that failure to submit documentation such as a confirmation statement, or to respond to correspondence from the Registrar, may be sufficient evidence to give the Registrar reasonable belief that a LP may not be carrying on a business or in operation, which might then lead to strike off. One organisation also argued that failure to respond to correspondence from HMRC and matters relating to law enforcement should also be factors which the Registrar might consider. Other criteria that were suggested by different respondents included a breach of AML requirements, and failure to hold a UK bank account three months after registration.
34. Respondents also put forward various suggestions with respect to question 11, in addition to the need for a clear restoration process for strike off made in error. A small number of respondents suggested that it should not be possible to strike off a LP where the Registrar's concerns related to administrative failures by the general partner. In such cases it was suggested that there should be direct sanctions against the general partner(s) themselves, rather than striking the LP off the register. It was also suggested that, where there was a difference in opinion with respect to the status of a LP, that an application could be made to the courts for a determination. It was also suggested that there should be suitable warnings and a timetable set out when the strike off procedure was initiated, and clear rules set out for managing any residual assets from the LP following strike off. Stakeholders have also suggested that the register might make a distinction between dormant LPs (which some suggested might

⁴ Before a company can be struck off the Register, the Registrar is required to write two letters to the company. A notice is then placed in the Gazette stating their intention to strike the company off the register unless they are shown reason not to do within two months.

be restored) and dissolved LPs (which some suggested could be struck from the register).

35. For the register of companies to be transparent and reliable, the Government considers it essential that it should contain information that is up to date and accurate and therefore intends to grant the Registrar the power to strike off LPs that are dissolved or which the Registrar concludes are not carrying on business or in operation. The Registrar's new powers will be subject to following a robust notification procedure for strike off in respect of dissolved LPs and LPs which are no longer carrying on business, at least as strong as the procedure that is already in place for companies. The Government will continue discussing with stakeholders how to design a process that ensures, as far as is possible, that all general and limited partners are given due notice that an LP is being considered for strike off. The Government recognises that particular safeguards will be needed in applying this to historic LPs that were registered many years ago. The Government will also consider the circumstances when it would be appropriate to restore a LP, and an appropriate procedure for the restoration of a LP that has been struck off.

Annex – list of respondents

Aberdeen Standard Investments

Alison Thewliss MP (*on behalf of the SNP Westminster Group*)

All Party Parliamentary Group (APPG) on Responsible Tax

Alternative Investment Management Association (AIMA)

Association of Accounting Technicians (AAT)

Association of Real Estate Funds (AREF)

Bellingcat

British Private Equity & Venture Capital Association (BVCA)

British Property Federation (BPF)

Brodies

Bryan Cave Leighton Paisner (*on behalf of Addleshaw Goddard, Bryan Cave Leighton Paisner, Burness Paull, Charles Russell Speechlys, Clifford Chance, CMS Cameron McKenna Nabarro Olswang, Debevoise & Plimpton, Ernst and Young, Kirkland & Ellis International, Linklaters, Osborne Clarke, Simmons & Simmons, Skadden, Arps, Slate, Meagher & Flom, Travers Smith, Weil Gotshal and Manges (London)*)

Burness Paull

Burness Paull (*on behalf of the Association of Pensions Lawyers*)

Business Information Providers Association (BIPA)

CILEx Regulation Limited

Dentons (*on behalf of Dentons UK and Middle East LLP*)

Dickson Minto

Eversheds Sutherland

Faculty of Advocates

Freshfields Bruckhaus Deringer

Harper Macleod

Herbert Smith Freehills

Innes Mill

Institute of Chartered Accountants in England and Wales

Investment Property Forum

Law Society

Law Society of Scotland

Maurice Turnor Gardner (*on behalf of the Association of Partnership Practitioners*)

NCM Fund and Depository Services

NFU Scotland

Nottingham Law School, Nottingham Trent University

Partnership Counsel

Scottish Land & Estates

Scottish Tenant Farmers Association

Shepherd and Wedderburn (*on behalf of the Association on Pensions Lawyers*)

Standard Chartered Bank

Transparency International

Turcan Connell (*on behalf of the Agricultural Law Association*)

UK Finance

Vicena International

Private individual

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