
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Limited Liability Partnerships Act 2000 c. 12. (“the 2000 Act”) provided for the creation of limited liability partnerships (“LLPs”) and for the making of regulations concerning them. These Regulations, which are made under sections 14(1) and (2), 15, 16 and 17(1) and (3) of that Act, regulate LLPs by applying to them, with appropriate modifications, the appropriate provisions of the existing law which relate to companies and partnerships.

The 2000 Act is of application to Great Britain. Section 19(3) of the 2000 Act provides that the Act shall be a pre-commencement enactment for the purposes of the Scotland Act 1998. Specifically, these Regulations:

- (a) Apply Scots law in relation to winding up and insolvency of LLPs;
- (b) Extend certain provisions of the Companies Act 1985, as appropriate, to LLPs registered in Scotland to ensure that such an LLP should be able to create floating charges over its assets.

The Regulations are structured in four parts accompanied by four schedules. They apply to LLPs, with appropriate modifications to reflect the structure of LLPs, a large number of the provisions contained within the Companies Act 1985 and the Insolvency Act 1986.

The Regulations amend the relevant primary legislation by way of general modifications which, provide that references to a company includes references to a limited liability partnership, and references to a director or officer include a reference to a member of an LLP. Throughout the Schedules to the Regulations there are references to designated members. This category of member is responsible for a number of administrative and filing duties of the LLP but is also representative of the LLP and its membership in circumstances such as the appointment, removal and remuneration of auditors.

Part I of the Regulations contains the citation, commencement, extent and interpretation provisions to be applied to the Regulations, and gives the date on which they come into force.

Part II of, and Schedule 1 to, the Regulations apply to LLPs certain provisions of the Companies Act 1985.

Part III of, and Schedules 2 and 3 to, the Regulations apply to LLPs the provisions of the First and Third Groups of Parts of the Insolvency Act 1986, with appropriate modifications. **Schedule 2 to the Regulations** lists those provisions contained in the First and Third Group of Parts of the Insolvency Act 1986. **Schedule 3** lists those sections which have been modified or omitted in their application to LLPs.

The insolvency provisions as applied to LLPs include provisions for voluntary arrangements, receivership, winding-up and liquidations. The most notable modification of the provisions which apply to companies is, an additional section, section 214A.

The new section 214A provides that withdrawals made by members during the two years prior to the commencement of winding-up will be subject to claw back if it is proved that at the time of the withdrawal the member knew or had reasonable grounds for believing that the LLP was, or would be made, insolvent.

Part IV of, and Schedule 4 to, the Regulations apply a number of general and consequential amendments to other enactments.

Part IV of the Regulations apply to LLPs the Insolvency (Scotland) Rules 1986.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish
Statutory Instrument: Limited Liability Partnerships (Scotland) Regulations 2001 No. 128

The Regulations apply to Scotland only.