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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

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

**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.

(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,
  - (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 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—

#### **“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—

- (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—

#### **“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(1) 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.

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(1) Section 453 of the Companies Act 2006 was applied to LLPs by regulation 22 of [S.I. 2008/1911](#).

(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.”.

### **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.

(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 of 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—

(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.”.