
DRAFT STATUTORY INSTRUMENTS

2009 No.

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

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).”.

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—

- (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.”.