EXPLANATORY MEMORANDUM TO

THE LIMITED LIABILITY PARTNERSHIPS (AMENDMENT) REGULATIONS 2007

2007 No

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Trade and Industry (DTI) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Limited Liability Partnerships (Amendment) Regulations 2007 ('the 2007 Regulations') apply new sections 447A, 448A and 453A-C of, and Schedules 15C and 15D to, the Companies Act 1985 ('the 1985 Act') relating to the company investigation regime to Limited Liability Partnerships (LLPs). They also apply the Companies Act 1985 (Power to Enter and Remain on Premises: Procedural) Regulations 2005 SI 2005/684 ('the 2005 Regulations') to LLPs.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Limited Liability Partnerships Act 2000 ('the LLP Act') established the LLP as a new form of business vehicle. Section 15 provides that regulations may make provision for LLPs by applying with appropriate modifications any law relating to companies to them. The Limited Liability Partnerships Regulations 2001 ('the LLP Regulations')[1] in Regulation 4 apply the provisions of the 1985 Act to LLPs specified in the first column of Part 1 of Schedule 2 with modifications if specified in the second column. Regulation 10 provides for the application of subordinate legislation specified in Schedule 6 to LLPs. As a result, LLPs are subject to similar investigation regime as that applying to companies.

4.2 The investigation provisions in Part 14 of the 1985 Act have been amended by sections 21 to 24 of, and Part 3 of Schedule 2 to, the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27), ('the CAICE Act').

4.3 Amendments affecting provisions of the 1985 Act already applied to LLPs apply to LLPs by virtue of section 20(2) of the Interpretation Act 1978. The 2007 Regulations apply certain new provisions inserted by the CAICE Act.

[1] . S.I. 2001/1090

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 The Minister of State for Industry and the Regions, Margaret Hodge, has made the following statement regarding Human Rights: In my view the provisions of the Limited Liability Partnerships (Amendment) Regulations 2007 are compatible with Convention rights.

7. Policy Background

Limited Liability Partnerships (LLPs)

7.1 The LLP Act created a new corporate vehicle, adding to the choice of legal organisations available for businesses in Great Britain. An LLP gives the benefits of limited liability as for a company, but allows its members the flexibility of organising their internal structure as a traditional partnership. The LLP is a legal entity separate from its members and, while the LLP itself will be liable for the full extent of its debts, the liability of the members will be limited (except to the extent that the members agree otherwise). Any two or more persons can incorporate as an LLP.

7.2 The LLP Act sets out the basic structure and formation provisions for LLPs. The LLP Regulations, made under the LLP Act, create the detailed provisions for LLPs by applying large parts of the 1985 Act and the Insolvency Act 1986 to LLPs. Some provisions are applied exactly as they are in the main Acts; other are amended to reflect the particular characteristics of an LLP.

7.3 Since its creation about six years ago, the LLP structure has appealed to firms of all sizes and sectors. Most of the large accountancy and legal firms are LLPs, but the form is also used by a number of small firms. Currently there are approximately 22,000 LLPs on the Companies House Register.

7.4 The Government's general policy on LLPs is to treat them in the same way as companies of the same size and sector unless this is clearly inappropriate.

Investigations

7.5 The Secretary of State has a range of powers under companies legislation to investigate the affairs of a company and related matters under Part 14 of the 1985 Act. The vast majority of company investigations area carried out under section 447 of the 1985 Act. Investigations under section 447 are carried out where, for example, there are grounds for suspicion of fraud, misfeasance, misconduct, conduct unfairly prejudicial to shareholders or failure to supply shareholders with information they may reasonably expect.

7.6 The CAICE Act amended Part 14 of the 1985 Act in order to strengthen the investigation regime, without changing the basis for inspections or making any change of substance to the grounds for an investigation. As the investigations

provisions in the 1985 Act have been applied to LLPs, it is appropriate also to apply these amendments.

7.7 The new sections in the 1985 Act introduced by the CAICE Act and now applied to LLPs by the 2007 Regulations are:-

- section 447A, concerning the limitations on the use of information provided in compliance with a section 447 requirement in criminal proceedings;
- section 448A, providing immunity to individuals volunteering information to Companies Investigation Branch from legal liability for breach of a contractual or other duty of confidence;
- sections 453A and 453B, allowing investigators to gain access to and remain on "relevant premises" if by doing so will materially assist the investigation;
- section 453C, introducing more effective sanctions against any person who refuses to co-operate with legitimate requests or intentionally obstructs an investigator; and
- schedules 15C and 15D, concerning the disclosure through statutory "gateways" of information gathered during the course of an investigation, criminal penalties attach to the unlawful disclosure of such information.

7.8 The 2007 Regulations also apply the 2005 Regulations to LLPs. The 2005 Regulations made under Section 453B prescribe the information which the written statement of rights and obligations of the visit must contain.

7.9 Strengthening the investigation regime for both LLPs and companies is part of a package designed to help ensure confidence in the UK corporate framework.

Consultation

7.10 The Government published a consultation document on February 2007[2] that included the proposal to apply the amendments made to the 1985 Act made by sections 21 to 24 and Part 3 of Schedule 2 to the CAICE Act to LLPs. Roughly 25% of respondents commented on the proposal; all supported it. They made clear that there was no reason why the investigation regime should be different for companies and LLPs.

Guidance

7.11 DTI published an explanatory note on the CAICE Act, including the investigation provisions, when the Act came into force. The note is available for the general public in the OPSI website: http://www.opsi.gov.uk/acts/en2004/2004en27.htm

7.12 Information about the investigations regime and how the Companies Investigation Branch (CIB) conducts investigations are published on the CIB pages of the Insolvency Service website via the link: http://www.insolvency.gov.uk/cib/index.htm. This will be amended to make it clear that the CAICE Act investigation provisions apply to LLPs.

[2] Companies Act 2006: Implementation of Companies Act 2006 – A consultative document – February 2007.

8. Impact Assessment

8.1 A separate Impact Assessment has not been prepared for these Regulations. The Regulatory Impact Assessment (RIA) for the CAICE Act covers the impact on companies of the amendments to the investigations regime. There is no additional or different impact on LLPs. The RIA was attached to the original Explanatory Memorandum for the CAICE Act. It is available from: http://www.dti.gov.uk/files/file23027.pdf.

8.2 There is no impact on the public sector as this Statutory Instrument only applies to LLPs.

9. Contact

9.1 Tunde Idowu at the Department of Trade & Industry (tel: 020 7215 0412) / email: babatunde.idowu@dti.gsi.gov.uk can answer any queries regarding the instrument.