



HM Treasury

# **Proposal on using Legislative Reform Order to change partnership legislation for private equity investments:**

**summary of consultation responses**

March 2016





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# 1 Introduction

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**1.1** In July 2015 the government published a consultation, *Proposal on using Legislative Reform Order to change partnership legislation for private equity investments*, setting out its proposed amendments to the Limited Partnerships Act 1907. These proposals were intended to ensure that the limited partnership remains the market standard structure for European private equity and venture capital funds as well as many other types of private fund in an increasingly competitive global market. This followed the launch of the Investment Management Strategy at Budget 2013, a package of measures to improve the UK's competitiveness. This included a commitment to consult on technical changes to partnerships legislation as it applied to private funds with a view to removing unnecessary legal complexity and administrative burdens.

**1.2** The government received 22 responses to the consultation, with submissions from a variety of interested parties, ranging from investment managers and venture capital trade bodies, to law firms and private individuals.

**1.3** Chapter 2 summarises the responses received, and highlights where changes have been made to take respondents' contributions into account.

**1.4** The government welcomes the constructive and valuable contributions made by stakeholders throughout the consultation process.

## Next steps

**1.5** The government intends to put forward draft legislative amendments in a Legislative Reform Order to be laid before Parliament in due course. The government intends that the changes will be fully operational within a year.

**1.6** The government recognises that Companies House will need a period to build up its capacity and introduce systems in the given timetable. The government has taken this into account in deciding the timetable for the changes to come into effect.

## Key themes

**1.7** The government welcomes the widespread acknowledgement amongst respondents that reform to the Limited Partnerships Act will be beneficial to private funds and limited partnerships more generally.

**1.8** English and Scottish limited partnerships are the most commonly used structure for European private equity and venture capital funds, as well as various other types of private fund. According to a report on UK partnership law published by the Law Commission and the Scottish Law Commission in November 2003, approximately 64% of all English limited partnerships were used as investment fund vehicles.

**1.9** On balance, the government's proposals for the nature of reform to the Limited Partnerships Act were seen as appropriate and sufficient to deliver the government's aims for private equity investments.

**1.10** The government took into consideration the views that some of the proposals may be beneficial if applied to all limited partnerships, as opposed to solely private funds structured as limited partnerships. On balance, the government believes it is necessary to establish, in the immediate term, a scheme for private funds structured as a limited partnership. Any wider

ranging proposals would require further consideration, to include assessments of risks and impacts, therefore the government will consider appropriate next steps.

**1.11** Having listened to respondent concerns about some of the proposed changes, the government has made some changes to the details of some of the proposals. This particularly applies to the process for setting up a Private Fund Limited Partnership (PFLP), and the provisions for striking off partnerships from the limited partnership register.



## 2 Summary of responses

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**2.1** The consultation document presented thirteen consultation questions, identifying the key issues on which the government sought comment and evidence. This chapter summarises the views put forward in response to these questions.

### 1. Designation as a private fund limited partnership

**2.2** The consultation proposed that the changes should apply only to those limited partnerships which are private fund vehicles, and that there should be a process for the designation of those limited partnerships which are private fund vehicles at the point of registration.

**2.3** Respondents were unanimously supportive of reforming the Limited Partnerships Act<sup>12</sup>, and welcomed the administrative and procedural advantages that this new regime would introduce. The proposal was generally seen as a positive step to make the limited partnership structure a competitive option for asset managers setting up a private fund.

**2.4** A broad criticism a number of respondents raised against the designation as a Private Fund Limited Partnership (PFLP) was that some of the proposed changes would be beneficial to all limited partnerships, regardless of whether they qualified as private funds or not<sup>3</sup>. Some respondents were explicit in defining which areas should apply to all limited partnerships, and there was a suggestion from some stakeholders that not all of the measures proposed would be appropriate for all limited partnerships. Two respondents explicitly stated that they preferred this to be an opt-in regime rather than the changes be applied to all limited partnerships<sup>4</sup>.

**2.5** In addition, three main concerns were raised relating to the PFLP designation.

### Solicitor's certificate

**2.6** The government proposed that at the registration of a PFLP, the general partner should provide a certificate signed by a solicitor to the effect that the limited partnership meets the private fund conditions. This was to ensure that only limited partnerships which meet the requirements were able to register as a PFLP.

**2.7** Many respondents pointed out that there were complications created by the solicitor's certificate<sup>5</sup>. It was noted that this would impose considerable administrative burden and legal cost on the PFLP sponsors, and that this would be disproportionate to the benefit of having a solicitor's opinion. There would also be costs to law firms to develop processes for the issuance of a certificate.

**2.8** Figures provided by one stakeholder estimated that the costs associated with a law firm developing its approach to issuance of a solicitor's certificate to be in the range of £20,000 to £100,000+ per law firm. The costs associated with issuing the solicitor's certificate per the complexity of the particular client's structure and documentation. The government is satisfied that this is disproportionate to the savings which are anticipated to result from the

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<sup>1</sup> The figures indicate the fundraising would be in the region of £5,000 to £20,000+, with the actual cost depending on number of responses to particular questions. Where the denominator varies, this shows the different number of responses to a specific question.

<sup>2</sup> 22/22 respondents agreed that reform of the Limited Partnerships Act is desirable.

<sup>3</sup> 4/22 respondents were very opposed to the designation as a PFLP, with one respondent suggesting that the two tier system would be more complex and confusing than the existing legislation.

<sup>4</sup> 2/22 respondents were explicit that this should be an opt-in regime.

<sup>5</sup> 14/22 respondents were opposed to the requirement to have a solicitor's certificate.

amendments. HM Treasury analysis, supplemented by industry data, estimates savings between £14,800 and £27,600 per fund.

**2.9** The main objection was that a solicitor could not give an opinion on the legal status of a limited partnership without understanding the facts of the limited partnership's situation. These facts will be in the hands of the general partner, and as such the general partner may be in as good a position as their solicitor to confirm the position, without the need for the additional burden of obtaining a solicitor's certificate.

**2.10** Respondents also raised the precedent of Limited Liability Partnerships (LLP). In the case where an LLP is to be registered, the certification can be given by either a solicitor or a member of the LLP. In practice, the certification is given by a member of the partnership in almost all cases.

## **One year transitional period**

**2.11** One respondent welcomed the one year transitional period for existing limited partnerships as sufficient to allow partnerships to transfer into the new regime.

**2.12** However, a significant proportion of respondents<sup>6</sup> noted that there are complications in the lifecycle of a private fund which mean that it would be preferable for a limited partnership to be able to apply for PFLP status at any time. This is because when a limited partnership fund is first set up, it is not always possible to structure the fund as a collective investment scheme. For example, partnerships are often first set up with a general partner and single limited partner, with other limited partners added at a later date after the fundraising process.

**2.13** One suggested solution was that at the point of registration, a partnership that intended to become a PFLP would be able to register as one at the outset even if the structure did not fit the requirements initially.

**2.14** Another possibility suggested was to extend the one year transitional period and allow a limited partnership to opt in to the PFLP regime at any point from when it satisfies the conditions of a PFLP. The PFLP then would remain under the status of a PFLP for the rest of the life of the partnership.

## **Definition of a Collective Investment Scheme**

**2.15** Some respondents raised concerns about the definition of a Collective Investment Scheme that was used to decide which funds are covered by the PFLP regime<sup>7</sup>. The government recommended using the definition outlined in section 235 of the Financial Services and Markets Act (FSMA) 2000. It was noted that some collective investment schemes would be eligible for the PFLP structure were it not for the exceptions to the definition in orders made under section 235(5) FSMA 2000. Furthermore, respondents were concerned that the burden of ascertaining whether the limited partnership was caught by any of these exceptions would create a disproportionate legal cost, like the solicitor's certificate.

**2.16** In the consultation, the government carved out the "group exemption" to ensure that real estate funds would be able to use the PFLP regime. Respondents suggested that it didn't make sense to cherry pick which exemptions were included and excluded, and that a more appropriate way to deal with this problem would be to ignore section 235(5) in the definition, thereby allowing the limited partnerships which would meet the definition of Collective Investment Scheme but for one of the exceptions to fall under the PFLP structure.

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<sup>6</sup> 12/22 respondents did not think the 12 month limit on existing limited partnerships transferring into the PFLP scheme was appropriate.

<sup>7</sup> 6/22 respondents expressed concerns about the definition of a Collective Investment Scheme used.

## Government response

**2.17** The government notes that the PFLP designation was met with broad support, and on balance maintains that a separate designation is the best way forward for these reforms.

**2.18** The government shares the concern that some of the proposed changes may be suitable for all limited partnerships, as opposed to being changes specific to the private fund sector. It is important to note that the consultation was limited to technical changes to partnership legislation as it applies to funds, and did not extend to all limited partnerships. Due to the limits of the consultation, the government would not be able to apply the changes to all limited partnerships without consulting more widely on the impact for businesses.

**2.19** In response to the other points raised, the government will amend the original proposition for the process to register as a PFLP. The government will remove the requirement for a solicitor's certificate and instead require the general partner to confirm that the partnership fulfils the requirements to qualify as a PFLP at the point of registration. As the purpose of this LRO is to reduce the administrative and financial burden posed by limited partnership legislation, the government has decided that the burden posed by the solicitor's certificate was not proportionate to the protection it would provide. The change will alleviate the burden on the fund manager when setting up the partnership, and bring the registration system in line with other examples, such as registration as a Limited Liability Partnership.

**2.20** The one year transition period will also be removed, so that a limited partnership will always have the option of applying for PFLP status if it fulfils the required criteria. However, when a partnership becomes a PFLP, it will not be able to return to limited partnership status. This is because there is a risk that the PFLP will no longer fulfil the criteria required to be an ordinary limited partnership, in particular with respect to the declaration and contribution of capital. The government took into consideration the views of respondents that suggested we should consider allowing PFLPs to transfer back to general limited partnership status,<sup>8</sup> but did not think there was a strong enough case for this change. The removal of the one year limit on registering as a PFLP will avoid penalising partnerships which do not meet the one year deadline for transferring status, and will create flexibility for firms which either cannot structure as a PFLP at the outset, or change the nature of their business and would benefit from opting into the system at a later date.

**2.21** With respect to the definition of a collective investment scheme, the government has taken on board concerns about the burden and complexity involved in ascertaining whether a fund falls into one of the exceptions under FSMA 235(5). On balance, it is preferable to exclude those exceptions from the definition of "collective investment scheme" used for the purpose of qualifying as a PFLP. This will reduce the burden on businesses of having to work out whether they are caught by the exemptions, and will allow investment funds which might be covered by one of the exemptions to benefit from the provisions of the PFLP scheme without the risk that an exemption may apply where it was thought not to apply, or vice versa.

## 2. Amendments to the register

**2.22** The government proposed introducing a procedure for removing PFLPs from the limited partnership register, in order to allow the register to be kept up-to-date with only existing limited partnerships, as well as allowing names of dissolved limited partnerships to be reused. Respondents were supportive of this proposal in principle<sup>9</sup>, due to the advantages for users of

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<sup>8</sup> 2/22 respondents suggested partnerships should be able to revoke PFLP status.

<sup>9</sup> 18/18 respondents supported the introduction of a procedure for removing wound up limited partnerships from the register.

the register, such as making it easier to look up active partnerships. However, there were some concerns about how this proposal would be enacted.

**2.23** The main concern raised by many respondents<sup>10</sup> was that the proposed measure may lead to limited partners unknowingly losing their limited liability status. Under the proposed legislation, if a PFLP that had not been wound up were removed from the register, this would mean it would continue in existence as a general partnership, with unlimited liability for all the partners for debts and obligations of the firm. Some respondents suggested that if the limited partners' limited liability could not be protected, introducing this proposal could render the PFLP vehicle unattractive and unworkable for funds.

**2.24** There were several proposed solutions to the problem of retaining limited liability. Some respondents favoured the retention of limited liability even after the partnership has been removed from the register. Another suggested solution was to make it a condition of removal from the register that the partnership has been wound up, with a power to reinstate the registration and treat the partnership as never having been struck off, if the partnership were subsequently found not to have been dissolved.

**2.25** One respondent raised a concern that the proposed measures would not include a general power for the registrar or the court to remove inaccurate or invalidly entered material from the register, for example in situations where limited partnerships are used as instruments of fraud or fraudulently added to the register.

**2.26** Many stakeholders expressed the view that this measure would not result in its intended effect of cleaning up the register, unless it was applied to all limited partnerships. This is because there are many dissolved partnerships continuing on the register which could not be removed if this measure is only applied to PFLPs, rendering the measure ineffective.

## **Government response**

**2.27** The government has taken into consideration the wide range of views on the strike off procedure, and has decided that it is not appropriate to apply a strike off procedure for PFLPs at this time. Any such procedure would need to adequately address the concerns, expressed in the consultation's responses, around maintaining the limited liability of the limited partners. Also, in order for the strike off procedure to have a meaningful impact on the register, it would need to apply to all limited partnerships, both future and existing. The government is also aware that any extension to the scope would also need to be subject to public consultation. The government will therefore explore wider options and consider the possibility of consequent proposals in due course.

## **3. White list activities for limited partners**

**2.28** Respondents unanimously agreed that there is confusion about what constitutes "taking part in the management of the partnership business"<sup>11</sup>, and welcomed the introduction of a white list of permissible activities for limited partners to perform. It was mentioned that this is an area where investors regularly seek legal counsel. It was also noted that because there are white lists provided in similar limited partnership structures in other jurisdictions (e.g. State of Delaware, Cayman Islands, Guernsey, Jersey and Luxembourg), the comfort provided by a white list means that there are occasions where it is not appropriate to structure a private fund as a limited partnership when there are viable alternatives. Therefore, the introduction of this list

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<sup>10</sup> 12/18 respondents raised concerns about the limited liability of limited partners.

<sup>11</sup> 21/21 responses agreed that there is confusion about what constitutes "taking part in the management of the partnership business".

should reduce the burden of the existing legal uncertainty and make the limited partnership structure more competitive relative to alternative structures in other jurisdictions.

**2.29** A significant minority of responses expressed the concern that this list should not be exhaustive and that a statement to this effect would be helpful in clarifying the intention of the legislation in this respect.<sup>12</sup> This was always the intention of the draft legislation and the comments about clarifying this in the drafting have been taken into account.

**2.30** A significant minority of respondents<sup>13</sup> were concerned about the impact that the introduction of a white list for PFLPs would have on other limited partnerships on the register. Some of these respondents took the view that the white list should be applied to all limited partnerships so that all limited partnerships would reap the benefits of this clarification. Others suggested that if the white list was only applied to PFLPs, it should be made explicit in the legislation that this does not create any adverse presumptions for limited partners in other limited partnerships.

**2.31** Another area where a large proportion of respondents recommended clarification was with respect to the rights of the general partner in relation to the white list, specifically whether the white list represents rights of the limited partner or permitted activities subject to the contract with the general partner. It was pointed out that what activities a limited partner is allowed to take part in with respect to the partnership is negotiated and detailed in the limited partnership agreement, and varies from fund to fund. Some fund managers would not be willing to accept the list as it stands to form part of their partnership agreement. Respondents recommended that we make it clear that the purpose of the white list is not to prescribe the rights of a limited partner in a PFLP, but to provide certainty that limited partners may undertake activities set out in the white list without jeopardising their limited liability.

**2.32** With respect to the content of the white list, there were many suggestions for additions to the list from individual respondents. There was support from a significant minority of respondents<sup>14</sup> for clarification on the rights of limited partners in relation to feeder funds and “look-through” voting. There are often situations where a limited partnership is part of a larger fund structure including feeder vehicles. In this context, the limited partner may wish to direct how the feeder partnership exercises its rights as a limited partner in the underlying fund. Since the business of the feeder is to be a limited partner in the fund partnership, there is a risk that when limited partners direct feeder votes in relation to the fund partnership, they may be taking part in the management of the feeder fund and lose their right to claim limited liability.

**2.33** Some respondents<sup>15</sup> expressed concerns that the white list as drafted is more permissive than current industry practice. It was suggested that this could be dealt with by making the activities more specific in their description.

## **Government response**

**2.34** The government appreciates the clarity created by the white list about permissible activities, and welcomes the fact that this will create a less confusing framework for investors.

**2.35** Against this background, it is unsurprising that there have been many calls for additions to the white list. These included many specific circumstances which are not listed in white lists in other jurisdictions such as Guernsey and the Cayman Islands. The government decided that there is a strong case for clarification in relation to “look-through” voting for feeder funds. Feeder funds were within scope of the consultation, and it was the intention for a limited partnership

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<sup>12</sup> 8/21 responses expressed the view that the fact that this list is non-exhaustive should be expressed more clearly.

<sup>13</sup> 4/21 respondents expressed concerns about how the white list would impact other limited partnerships.

<sup>14</sup> 5/21 respondents raised the issue of feeder funds or supported the addition of an activity providing “look-through” voting.

<sup>15</sup> 2/21 respondents were concerned about overly permissive activities within the white list.

used as a feeder fund to have these rights. Therefore, an activity clarifying that a limited partners is able to exercise its rights in relation to an underlying fund within a feeder fund structure.

**2.36** The government did take into consideration all the proposed additions helpfully provided by respondents. However, there was not a strong enough case for the addition of any of the other proposed additions. The government points out that this list is not meant to be taken as exhaustive and there may be other activities, not covered by this list, which are not management activities. Further, the white list as drafted is comparable with the activities mentioned in white lists in other jurisdictions, as some respondents helpfully noted. Therefore, on balance the government decided not to add any other further activities to this list.<sup>16</sup>

**2.37** The government will ensure that the drafting reflects the fact that the list is not exhaustive, as was always the intention of the draft legislation. Furthermore, the government will ensure that the creation of a white list does not mean that the activities on the list are permissible for limited partners by right; this was not the intention of the draft legislation.

**2.38** With respect to the concerns about the impact on other limited partnerships, the government has decided to add clarification that the white list does not create any adverse presumptions for limited partners in other limited partnerships. This will ensure that there is no confusion over the implication of the white list for other limited partnerships. The government cannot apply the white list more widely because the white list was drafted for private funds, and a wider consultation would be required to ascertain which activities are applicable to all limited partnerships.

**2.39** In response to the concerns about overly permissive activities being included in the white list, the government has taken into account the views expressed. The government has decided that there is a strong case for amending the activity '(g) making or taking part in a decision about the winding up of the partnership'. See section 2.6 for more details.

## **4. Capital contributions**

**2.40** The consultation proposed removing the requirement for limited partners in private funds to make a capital contribution. It is typical for an investor into a fund formed as a limited partnership to have its total funding commitment split between a nominal capital contribution (to meet the existing legislative requirement) and a contractual undertaking to fund the balance of its commitment by way of interest free loans or advances.

**2.41** The consultation also proposed allowing limited partners to withdraw their capital from the partnership, and removing the liability of limited partners in private funds for capital contributions that have been withdrawn. At present, the Limited Partnerships Act 1907 does not allow limited partners to withdraw capital during the life of the partnership, and states that partners who do withdraw their capital during the life of the partnership will remain liable for the debts and obligations of the partnership up to the amount withdrawn.

**2.42** Finally the consultation also sought views on removing the requirement to register with the registrar the amount of capital contributed by limited partners.

**2.43** The majority of respondents agreed that capital contributions create an administrative burden and serve no practical purpose for private funds structured as limited partnerships<sup>17</sup>. It was pointed out that creditors are not protected by this regime, due to the fact that the capital contributions put into these partnerships consist of nominal amounts, with the majority of money contributed in the form of a loan. As creditors are aware that this is normal practice, they

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<sup>16</sup> 3/21 respondents suggested that the white list should include a provision for look-through rights in the case of umbrella funds.

<sup>17</sup> 17/19 respondents agreed that the requirement to contribute capital as a limited partner is no longer needed or relevant.

do not rely on declared capital for protection. Instead, creditors seek protection through the assets of the limited partnership and any contractual obligations of limited partners to make advances to the limited partnership.

**2.44** Many respondents raised concerns that while there should be no obligation to contribute capital to the partnership, it should still be optional for partners to contribute funding in this way if they choose to do so, and depending on the details of the partnership agreement. This would retain flexibility for limited partners, and ensure that the partnership structure is competitive globally, for example this way of providing funding may have tax or regulatory advantages in other jurisdictions.

**2.45** With respect to the question of withdrawing capital contributions, the majority of respondents wanted a limited partner in a PFLP to be allowed to withdraw its capital during the life of the limited partnership without remaining liable for the amount withdrawn<sup>18</sup>. Some respondents highlighted that any terms and conditions for the withdrawal of capital should ultimately be determined by the constitution of the partnership, and that this change should therefore not constitute a right for the limited partner which could usurp the terms of the partnership agreement.

**2.46** In relation to the requirement to register capital, a large proportion of respondents viewed this as redundant if the requirement for limited partners to make capital contributions are removed<sup>19</sup>. The requirement to register capital would result in the administrative burden of registering changes to capital despite the fact that the capital contribution is optional for limited partners and, even if made, affords limited protection to creditors.

**2.47** Respondents who supported keeping the requirement to make capital contributions also took the view that the amount of capital should continue to be registered for all PFLPs.<sup>20</sup> These respondents thought that the requirement was important to indicate commitment and the status of the partnership.

**2.48** There was some concern about the status of creditors with respect to withdrawal and declaration of capital in particular<sup>21</sup>. The concern is that while creditors do not typically rely on the current law as opposed to express contractual provisions for protection, it is possible that there are situations where creditors have taken comfort from the current legal position for an existing limited partnership. If such a partnership were to become a PFLP, the existing capital could be withdrawn and would no longer be declared transparently, and this could have a negative impact on creditors who are relying on the continuing liability of limited partners and the declaration of that capital. One respondent mentioned that there are currently private funds structured as limited partnerships which have large amounts of capital declared, where this risk is greater.

**2.49** One suggestion was that the capital which had been contributed to the partnership prior to the partnership registering as a PFLP should continue under the previous legal framework, that the capital is declared, cannot be withdrawn, and if it is withdrawn the partner remains liable for the full amount. Another proposed solution was that capital which was contributed to a limited partnership set up prior to the enactment of the LRO should continue under the previous legal framework, while capital contributed to limited partnerships set up following the enactment of the LRO should change in status along with the partnership if a limited partnership becomes a PFLP.

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<sup>18</sup> 17/19 respondents agreed that limited partners should be allowed to withdraw capital from the partnership.

<sup>19</sup> 15/17 respondents thought it appropriate to remove the requirement to register capital.

<sup>20</sup> 3/17 respondents thought registration of capital continues to have a purpose.

<sup>21</sup> 5/17 respondents expressed concern about the status of existing capital contributed to a limited partnership.

**2.50** One respondent proposed that in the event that a limited partner's capital is withdrawn on leaving the partnership, for a period of at least 6 months following payment, it should be repayable to the partnership, with interest at a prescribed rate, to the extent that such a contribution is necessary to discharge a debt or obligation of the partnership incurred prior to the withdrawal date.

## **Government response**

**2.51** The government has taken on board the views of the minority of respondents who thought that the requirement to make a capital contribution should continue. However, on balance the proposal was on the basis that this is a sign of the status of the partnership, and this does not reflect how the use of the limited partnership structure has changed over time, nor does it provide an adequate benefit in comparison to the benefits of reducing administrative burden on the partnership.

**2.52** The government has decided to carry through the proposal to remove the requirement to make a capital contribution. The option for limited partners to contribute capital will remain. Capital which is contributed to a PFLP will be withdrawable and there will be no requirement to declare capital contributions to the registrar.

**2.53** The consultation raised the wider question of how capital payments already made into an existing limited partnership should be treated if that limited partnership were to transfer to the PFLP regime. This is a particular concern given the decision to keep open the window to opt into the PFLP regime indefinitely.

**2.54** The government has decided to carve out a different treatment for limited partnerships established prior to the implementation of the LRO. If the limited partnership was established prior to the LRO coming into force, capital contributions made prior to the limited partnership transferring into the PFLP regime will be treated as under the former regime, i.e. will not be withdrawable, if withdrawn the partner will remain liable, and the capital contributions will continue to be declared. Capital which is contributed after the designation as a PFLP will be permitted to be withdrawn without liability, and without the declaration requirement.

**2.55** However, in the case of limited partnerships which are registered after the enactment of the LRO, if the partnership transfers to PFLP status, the treatment of capital contributions will also transfer so that all of the capital (whether contributed before or after designation as a PFLP) does not need to be declared and is withdrawable.

## **5. Winding up a limited partnership**

**2.56** Respondents were unanimous in agreeing that the requirement for a court order is overly burdensome and costly when the limited partners need to wind up the partnership<sup>22</sup>. It was pointed out that there are no problems which arise for limited partners if the partnership is wound up by a person other than the general partner.

**2.57** However, there were concerns raised in particular by some members of the legal community that winding up the partnership inevitably requires management decisions.<sup>23</sup> If the limited partners were to wind up the partnership themselves, they would lose their limited liability by carrying out these management decisions regardless of what was written in the white list. One respondent proposed the alternative that the limited partners be allowed to elect a third party individual to wind up the partnership on their behalf.

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<sup>22</sup> 17/17 agreed that the court order was burdensome.

<sup>23</sup> 2/17 respondents raised this concern.



**2.58** More generally, it was noted that winding up a partnership can take years in some cases and therefore it may not be suitable for limited partners to wind up the partnership in such situations. However, in general respondents were not opposed to limited partners deciding who should wind up the limited partnership's affairs.

### **Government response**

**2.59** The government agrees that the requirement for a court order is unnecessary and will remove this requirement in the case of a limited partnership where the general partner has been removed and the limited partners need to make provisions to wind up the partnership without the general partner.

**2.60** With respect to the argument that it is inappropriate for the limited partners themselves to wind up the partnership, the government understands the concern that this process may involve taking part in management. As industry has recommended, ensuring that limited partners will not find themselves in a position where they lose their limited liability is crucial within all the proposed changes.

**2.61** In view of the need to ensure limited liability remains, and in order to ensure that the legislation reflects current practice in other jurisdictions, the government proposes to change the proposed amendments to section 6 of the Limited Partnerships Act to enable limited partners to appoint a third party to wind up the partnership on their behalf (but not to do so on their own accounts), and to ensure that proposed activity (g) in the white list enables this without the loss of limited liability.

## **6. Registration of a limited partnership**

**2.62** The government consulted on the removal of three registration requirements for limited partnerships. These are the requirement to register the amount of capital put into the partnership, which is dealt with in section 2.5, and the requirement to register the general nature of the limited partnership's business and the term of the limited partnership.

**2.63** With respect to the requirement to register the general nature of the limited partnership's business and the term of the partnership, the majority of respondents were in favour of revoking these requirements<sup>24</sup>. It was noted that the designation of the partnership as a PFLP in itself served as a notice to the public of the general nature of the business.

### **Government response**

**2.64** The government will proceed with removing the requirement to register the general nature of and term of the partnership. This will reduce the administrative burden of registering the information.

## **7. Gazette notices**

**2.65** The government consulted for views on current Gazette notice requirements, and whether any changes were appropriate in the case of PFLPs. At present, if a general partner becomes a limited partner or a limited partner assigns its interest in a limited partnership to another person, it will only have effect on being advertised in the London, Edinburgh or Belfast Gazette.

**2.66** The majority of respondents were in favour of removing the Gazette requirement in some or all circumstances<sup>25</sup>. Respondents raised the administrative burden associated with advertising

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<sup>24</sup> 15/17 respondents were in favour of removing both requirements. 2/17 respondents were in favour of removing one of the two requirements.

<sup>25</sup> 11/18 supported removing the requirement to advertise a notice in the Gazette in some or all circumstances.

in the Gazette, and noted that this publication is rarely consulted, limiting any associated benefit with advertising the relevant changes in the publication. The purpose of the clause was originally to protect creditors, but as this is no longer a widely consulted publication for limited partnerships, and capital contributions are not currently relied upon by creditors, the publication requirement does not have any real benefit for creditors. The costs of advertising include the legal costs of drafting and sending, as well as the cost of publication. It was pointed out that these costs can often be significant relative to the costs involved in the transfer and assignments of limited partnership interests.

**2.67** A large minority of respondents favoured continuing to advertise if a general partner becomes a limited partner in the Gazette<sup>26</sup>. The view was raised that it is important that third parties know if they are dealing with a general partner who is liable for debts and obligations. Some respondents viewed it as sufficient notice if the change of a partner's status from general to limited partner is registered with the registrar.<sup>27</sup>

**2.68** Respondents were concerned that if the requirement to advertise the change in a general partner's status were kept, the provision should be amended so that the Gazette advertisement does not constitute the date at which the change comes into effect. This creates some confusion for international investors who are not acquainted with the details of the regime, and is seen as anachronistic.

**2.69** The enforceability of advertising the change in status of a partner was raised by one respondent, with the suggestion that a more appropriate sanction than a lack of effect until Gazette publication would be for the change not to have effect until the change is registered with the registrar. However, in response to this another respondent noted that this would create administrative uncertainties for the partnership, such as relying on the registrar to register the change promptly.

**2.70** Two respondents recommended that section 36 of the Partnership Act 1890 should also be disappplied. This section provides that until a person has notice of changes they are entitled to treat former partners as continuing to be partners if they so appear, and that a notice in the Gazette following a change in a partnership's constitution constitutes notice of the change. It was suggested that as the spirit of the provision is the same, the provisions in both Acts should be removed.

## **Government response**

**2.71** The government agrees that the requirement to advertise changes in the Gazette is burdensome for businesses and the limited benefit provided for third parties who may consult the Gazette is not sufficient to outweigh the burden to business.

**2.72** The government has decided to remove the requirement to advertise in the Gazette when a limited partner assigns its interest in a limited partnership to another person. The government will also disapply section 36 of the 1890 Act with respect to PFLPs, as suggested in response to the consultation.

**2.73** At the same time the government has taken on board the points made in relation to the case when a general partner becomes a limited partner. The requirement to advertise a notice in the case of a general partner becoming a limited partner will remain. However, the problematic delaying of the effect of the change until advertisement will be removed.

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<sup>26</sup> 6/18 respondents wanted to keep this requirement to advertise if the general partner becomes a limited partner.

<sup>27</sup> 2/18 thought registration at Companies House was sufficient notice.

**2.74** The government took into consideration the comments made about enforceability of this requirement. Therefore, it would be in the interests of the outgoing general partner to ensure that its new status was known in order to ensure that it was not pursued in relation to liabilities incurred after it became a limited partner.

## **8. Exemption from statutory duties**

**2.75** The consultation proposed that certain duties of partners under the current legislation should be removed for limited partners, as they are inconsistent with the position of a largely passive investor who may have investments in a number of funds, some of which may fund competing businesses.

**2.76** This proposal was widely supported by respondents<sup>28</sup> on grounds that these are requirements which are incompatible with the role which a passive investor plays. Some respondents drew attention to the fact that the current legal position is that sections 28, 29 and 30 may be dis-applied with the consent of the partners of a partnership.<sup>29</sup> The purpose of the measure is that the position be reversed, namely that these obligations apply only where expressly agreed by the partners, rather than that they apply by default unless the partners agree otherwise.

**2.77** Nevertheless, there was some disagreement about exactly which sections were relevant and should be removed. Some respondents were very supportive of the proposition, and raised that for the sake of completeness, section 29 should also be removed, arguing that the reasoning for removing these sections is the same for all three<sup>30</sup>.

**2.78** Section 29 requires a partner in a partnership to account to the partnership for any benefit derived by him from “any transaction concerning the partnership, or from any use by him of the partnership property name or business connexion”. The argument made was that a limited partner of a limited partnership is passive, and is prohibited from taking part in the management of the partnership business. Therefore, it is not appropriate that a limited partner should be subject to these obligations when it plays no active role in what the limited partnership does.

**2.79** Other respondents differed in opinion on this, viewing the distinction to be about conflicting interests created by investment in more than one similar investment opportunity. A minority of respondents<sup>31</sup> raised an argument that section 28, one of the proposed sections to remove, should not be removed, on the basis that this section concerns duties to render accounts and information directly relevant to the partnership. It was raised that this should not cause any conflict of interest to partners with respect to other investments, in the same way that section 29 would not cause these concerns.

### **Government response**

**2.80** The government considered concerns voiced on both sides about the proposed exemptions from statutory duties. On balance, we have decided to exempt limited partners in a PFLP from the duties under section 28 and section 30. The duties for section 29 will remain for partners in PFLPs due to the concerns raised by respondents about the dis-application of this section.

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<sup>28</sup> 18/18 responses supported some variation of the proposed reforms. 9/18 were happy with the proposed amendment; 5/18 proposed dis-applying section 29 as well; 4/18 were concerned that it is not necessary to dis-apply section 28.

<sup>29</sup> Partnership Act 1890 section 19.

<sup>30</sup> 5/18 respondents argued for the dis-application of section 29.

<sup>31</sup> 4/18 respondents were opposed to the removal of section 28 and explicitly opposed the removal of section 29, even though this was not included in the consultation document.

## **Interaction with authorised fund limited partnerships**

**2.81** The government consulted on the interaction between the proposed changes to the Limited Partnerships Act 1907 and the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013. The Contractual Scheme Regulations enable limited partnerships to be used as vehicles for funds authorised by the FCA. Regulation 16 of the Regulations made modifications to the Limited Partnerships Act 1907 as it applies to such authorised schemes. The amendments proposed in this LRO amend some of the provisions in the 1907 Act which are modified by the 2013 Regulations, but take a different approach in some respects.

**2.82** No concerns were raised about the interaction with authorised fund limited partnerships.

# A List of contributors to the consultation

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The Law Society

The Law Society of Scotland

Institutional Limited Partners Association

Private Equity Growth Capital Council

EMPEA

Slaughter and May

British Private Equity and Venture Capital Association

Eversheds

Association of Partnership Practitioners

James Mather, Serle Court

Invest Europe

Linklaters LLP

Addleshaw Goddard LLP

Allen & Overy LLP

Ashurst LLP

Berwin Leighton Paisner LLP

Burness Paull LLP

Charles Russell Speechlys LLP

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Dickson Minto W.S.  
Roderick l'Anson Banks



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[www.gov.uk](http://www.gov.uk)

If you require this information in an alternative  
format or have general enquiries about  
HM Treasury and its work, contact:

Correspondence Team  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Tel: 020 7270 5000

Email: [public.enquiries@hmtreasury.gsi.gov.uk](mailto:public.enquiries@hmtreasury.gsi.gov.uk)