

Limited Partnerships: Reform of Limited Partnership Law

Scottish Land & Estates (SLE) is a membership organisation representing the interests of owners and managers of land and business across rural Scotland and we welcome this opportunity to comment. We are fully supportive of the UK Government's desire to stamp out economic crime and illegal activity and are fully committed to transparency. Therefore, we welcome measures to tackle any abuse of limited partnerships, while recognising that the UK requires to remain competitive for legitimate business and full use should be made of existing enforcement powers. We agree with the UK Government's aim of striking the right balance between maintaining high corporate standards while maintaining the UK's attractiveness as a place to do business.

Farming limited partnerships are trading businesses where there is a real risk of exposure to liability if the limited partner loses his or her liability. The Limited Partner in these Limited Partnerships may have made considerable capital available to the Limited Partnership. There may also be disadvantage to the general partner.

We would emphasise that general partners of Limited Partnership Agricultural Tenancies are not accustomed to administrative requirements and in the case of farms with modest or low income, accounting requirements will be minimal and dealt with via a "normal" farm account in the individual's name, rather than via a partnership or company account with greater administrative requirements. Additional costs arising as a result of increased regulatory requirements would be unwelcome in a sector where profitability is low and indeed in many cases dependent on EU support mechanisms.

Our key concern is therefore that in reforming limited partnership law the full consequences of any reform are considered to avoid any unintended consequences, particularly in respect of the Scottish agricultural context and that any changes are not administratively burdensome. Additional administration/filing of information requirements are more likely to be palatable if they are clear and straightforward and not unduly onerous.

Question 1: Can you provide any additional evidence to help explain the trends in registrations of limited partnerships across the UK in recent years?

Limited Partnerships have been used for a considerable number of years in the rural sector in Scotland as a vehicle for a tenancy of an agricultural holding and there are still a significant number of existing Limited Partnerships which are tenants under current agricultural leases in Scotland.

Letting by the combination of a Limited Partnership and a 1991 Act lease, where the landlord or his representative is the limited partner and the farmer the general partner, became a popular way of letting land in permitting a Lease for a fixed period. The procedure gave the market what it required at that time, otherwise large areas would not have been let.

The operational flexibility and tax transparency (i.e. partners rather than the partnership itself are taxable on partnership activity) are their principal advantages as business entities. In addition, the separate legal personality of Scottish partnerships and limited partnerships can provide extra clarity when operating a business using a partnership. Some limited partnerships were formed because the limited partner only wished to let for a specific period and had a long-term use in mind that required vacant possession, such as a child leaving full time education or for future development.

There has been suggestion in the media that Scottish Limited Partnerships may be being used to facilitate crimes, such as money laundering and fraud and that there is an issue around the number of unregulated 'formation agents'. However, we believe government needs to provide more evidence of how the extent of alleged criminal activity correlates with the number of limited partnerships created. Limited partnership is one of several business structures available in the UK, all of which have the potential to be used for legitimate or illegitimate purposes. The consultation document does not fully explain in what way it is considered that Scottish limited partnerships are particularly susceptible to illegal use, or more so than other structures or limited partnerships registered elsewhere in the UK.

Question 2: Do you agree that presenters should be required to demonstrate they are registered with an AML supervisory body? Please explain your answer, and provide evidence on its potential impacts.

SLE believes transparency is important and solicitors and other professionals are governed by Law Society or other rules, Anti-Money Laundering regulations and other regulatory mechanisms, including Persons of Significant Control legislation. We are therefore in agreement with such registration requiring to be demonstrated and believe it should have minimal impact on those acting legitimately.

There is a robust case that only parties who are regulated by a professional body, who in turn must adhere to AML regulations, should be able to file a form LP5 to register a limited partnership. A declaration could feature on the form LP5 signed by such person confirming regulation. This would ideally assist in deterring any formation agent from registering a form LP5 if he or she has not complied with AML.

However, it is not necessarily feasible for agricultural tenants and landlords to belong to a recognised Anti-Money Laundering body and there does need to be a balance between professional needs and ensuring administrative costs for individuals are proportionate.

Question 3: How should this measure be applied to registrations from overseas?

SLE would suggest the measure should be applied equally to overseas jurisdictions that have comparable AML regimes. Practically there will need to be clear criteria regarding application.

Question 4: Would it be better to require a limited partnership's principal place of business (PPoB) to remain in the UK, or alternatively to allow the PPoB to be based anywhere but require a UK based service address? Please evidence your answer, including if possible, an assessment of the likely costs of compliance.

We would suggest the latter option offers greater flexibility and is more proportionate. This would allow a trading office of the Limited Partnership to be based overseas while allowing for ease of service of legal documents a UK based address to be used, effectively as the company's registered office. At a minimum this should be the address of a regulated person.

Question 5: If a new requirement of a UK-based service address were introduced, but existing operation of the PPOB retained, what if any, transparency requirements should be put in place relevant to the PPOB?

The UK Government introduced a requirement for Scottish Limited Partnerships to begin a form of annual reporting to the Registrar and it would be reasonable to extend the requirement to all Limited Partnerships registered in the UK.

Question 6: Should all limited partnerships be required to file an annual confirmation statement?

This already applies to Scottish Limited Partnerships and SLE is relaxed about such a requirement. However, evidentially the extent to which this will address issues of abuse is unclear.

Question 7: If you are in favour of an annual confirmation statement, what information should be included and who should file it? Please consider whether that should be for the whole partnership or the difference in requirements for general partners against limited partners – including corporate partners.

The Limited Partnership name and number is required, together with relevant statement.

Question 8: Is there a case for limited partnerships to have to prepare accounts and reports in line with the requirements for private companies, as is already the case for qualifying partnerships?

SLE does not believe there is a case for such a proposal, especially with a general partner having unlimited liability. Filing accounts with Companies House which maintains predominantly public registers is not appropriate for limited partnerships and should not be a requirement. HMRC will have access to partners' tax returns and can interrogate those to identify any potential money laundering, abuse or generally illicit practices. While for legal purposes Scottish Limited Partnerships are treated as separate legal persons, for tax purposes they are treated as 'transparent' (i.e. not taxed as an entity) in the same way as Limited Partnerships in the rest of the UK.

Question 9: Do you agree with the proposal to give the Registrar a power to strike off partnerships from the register of companies?

SLE is content for a strike off procedure to be introduced in respect of limited partnerships in specified circumstances, as is already the case in respect of limited companies. We would envisage this would include the failure to deliver confirmatory statements, for those that are registered without proper AML checks or those found to be engaged in criminal activity. It could be a useful tool to allow for a 'tidy up' of the register as well as having an enforcement impact. However, it is important that safeguards are in place to ensure accidental striking off can be promptly addressed and to ensure that there is appropriate liaison with the Tenant Farming Commissioner in Scotland in relation to Limited Partnership Agricultural Tenancy matters which fall within his remit.

Question 10: Are there any other factors or criteria that the Registrar could consider in order to conclude that the partnership is not carrying on a business or in operation?

SLE is not aware of any other factors or criteria that the Registrar should consider.

Question 11: What operational and legislative procedures could be put in place to mitigate concerns of strike off done in error?

The Registrar should be given the discretion to address unforeseen operational issues, for example where there was an identifiable administrative error. Potentially there may be circumstances where application could be made to court to restore a limited partnership.

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