

LAW SOCIETY SUBMISSION



Legal Services Regulation Act 2015

Draft Regulations for Limited Liability Partnerships

Legal Services Regulatory Authority

14 December 2018

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

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1. Introduction

- 1.1 The purpose of this submission from the Law Society of Ireland (“the Society”) is to reply to the Legal Services Regulatory Authority (“the Authority”) on the draft Legal Services Regulation Act 2015 (Operation and Management of Limited Liability Partnerships) Regulations 2018 (“the draft Regulations”) under section 130 of the Legal Services Regulation Act 2015 (“the Act”).
- 1.2 As the Society is the professional body for solicitors in Ireland, the Society’s views in this submission will be limited to matters relating to solicitors only. As such, all references to “limited liability partnerships”, unless otherwise stated, should be read as a reference to limited liability partnerships that comprise one or more solicitors.
- 1.3 The Society notes that the introduction of limited liability partnerships is a priority for the Authority and the Society understands the Authority intends to commence these structures in January 2019. The Society welcomes the early implementation of limited liability partnerships as a positive development in order to ensure that Irish legal practitioners can compete on the same basis as their overseas counterparts.
- 1.4 The Society would suggest that the draft Regulations are, for the greater part, nearly ready for commencement. There are however, a number of matters that the Society has observed which the Authority should take into consideration before commencing the draft Regulations.

2. Executive Summary

- 2.1 This submission sets out the Society's views in relation to the draft Regulations and offers suggestions to the Authority which are designed to assist in making a better Statutory Instrument.
- 2.2 The Society recommends that the draft Regulations do not need to provide for definitions already contained in the Act. It is also suggested that any reference to the application of primary legislation be deleted as this will apply in any event.
- 2.3 The Society makes other suggestions that are designed to ensure the draft regulations are clear and less ambiguous.
- 2.4 In order to ensure limited liability partnerships may change their composition of partners easily, the Society has suggested that the Authority could invoke its powers under the Act in order to make this a simplified process.
- 2.5 The Society also recommends that the fees structure be commensurate with the actual costs of administration so that those costs are borne by the users rather than all legal practitioners.
- 2.6 Should the Authority wish to seek clarification on any of the matters in this submission, the Society would be happy to elaborate on any points made therein.

3. Matters arising from the draft Regulations

Use of definitions in the draft Regulations

- 3.1 The Society notes that draft regulation 2(1) reproduces a number of definitions which are already set out in the Act. The Society recommends against doing so as being unnecessary because the statutory definitions will apply to the Statutory Instrument. This accords with the Office of the Parliamentary Counsel Drafting Guidance.

Recommendation 1 – Definitions

It is the recommendation of the Society that the draft Regulations only define those matters not contained in the definitions under the Act.

Solicitor’s practising certificate

- 3.2 Draft regulation 2(1) defines “Solicitor’s practising certificate”. Draft regulation 3(3)(d) does not however use the term where one might expect to find it. Instead “current practising certificate” is employed.

Recommendation 2 – Use of Solicitor’s practising certificate

It is the recommendation of the Society that draft regulation 3(3)(d) be amended using the correct term for Solicitor’s practising certificate as set out in the definitions under the draft Regulations.

Application of primary legislation

- 3.3 Draft regulation 2(3) provides that the Interpretation Act 2005 will apply to the interpretation of the draft Regulations. The Society would suggest that it is inappropriate for regulations to do so as primary legislation will apply in any event.

Recommendation 3 – Application of primary legislation

It is the recommendation of the Society that draft regulation 2(3) remove any reference to the application of the Interpretation Act 2005 as this Act will apply in any event.

Authorisation from the Authority

- 3.4 Draft regulation 3(4) provides that an authorisation given by the Authority shall have effect from the relevant date. However, it is noted that the definition of “*relevant date*” is the date upon which the limited liability partnership’s authorisation came into effect. This circular wording deprives the draft regulation of any usefulness and should be amended for the purposes of clarity. It is presumed that the Authority intended that the relevant date be the date of the making of the authorisation.

Recommendation 4 – Authorisation from the Authority

It is the recommendation of the Society that draft regulation 3(4) is amended to provide for the date of authorisation issued from the Authority.

Mandatory terms

- 3.5 It is noted that draft regulations 4 (1) and (2) which deal with matters relating to the operation of a limited liability partnership have differing wording. Draft regulation 4(1) states “*A legal partnership that is authorised as an LLP shall operate in accordance with those provisions of the Act...*” whereas draft regulation 4(2) states “*A partnership of solicitors that is authorised as an LLP must operate in accordance with the applicable provisions of the Act...*”.
- 3.6 It is suggested that the provisions of section 4(1) and (2) are written in uniform wording for the purposes of consistency. The usual language for mandatory provisions in a statutory instrument is “*shall*” rather than “*must*”.

Recommendation 5 – Mandatory terms

It is the recommendation of the Society that draft regulation 4(1) and (2) are written in similar language for mandatory provisions.

Information to be provided to clients and creditors

- 3.7 Draft regulation 5 requires a limited liability partnership to provide certain information to clients and creditors, as required under section 125(7) of the Act. However, it is noted that draft regulation 5 has, in certain respects, departed from the exact wording of the Act which seems undesirable and could conceivably result in uncertainty.

- 3.8 Draft regulation 5 requires a limited liability partnership to provide the required information “...as soon as practicable after the relevant date...”. However, it is noted that section 125(7) of the Act requires the limited liability partnership to provide this information “...as soon as practicable after the receipt of the authorisation...”. The relevant date and the date of receipt of the authorisation may not necessarily be the same date.

Recommendation 6 – Information to be provided to clients and creditors

It is the recommendation of the Society that draft regulation 5 be amended to reflect the wording of section 125(7) of the Act to state “...as soon as practicable after the receipt of the authorisation...”.

- 3.9 Draft regulation 5(a) requires a limited liability partnership to provide information to its clients and creditors “that it has been authorised to operate as an LLP”. However, the Society notes section 125(7) of the Act requires the limited liability partnership to “...notify its clients and creditors of the fact that it is operating as a limited liability partnership..”. The Society suggests that draft regulation 5(a) is amended to accord with the provisions of the Act for clarity.

Recommendation 7 – Notifying clients and creditors of operating as a limited liability partnership

It is the recommendation of the Society that draft regulation 5(a) be amended to accord with the provisions of section 125(7) of the Act for clarity and provides that a limited liability partnership to “...notify its clients and creditors of the fact that it is operating as a limited liability partnership..”.

4. Further suggestions

Changes in the composition of a limited liability partnership

- 4.1 Partnership deeds for most medium and large professional firms routinely contain provisions to qualify or dis-apply the default dissolution provisions of sections 32 to 44 of the Partnership Act 1890. It follows that any such qualification or dis-application would also apply to a limited liability partnership. It is suggested that the draft Regulations would provide a simple mechanism for a limited liability partnership to register admissions or departures of individual partners, without having to unregister and re-register the limited liability partnership.
- 4.2 The Society recommends that the Authority invoke its powers under sections 126(1),(3),(4) and (5) and section 130(1) to make provision in the draft Regulations expanding draft regulation 6 to include a mechanism to register any changes in the composition of a limited liability partnership after an authorisation has been received and to prescribe forms for these purposes.

Recommendation 8 – Changes in the composition of a limited liability partnership

It is the recommendation of the Society that the draft regulation 6 be expanded to provide a simple mechanism for limited liability partnerships to register admissions or departures of individual partners, without having to unregister and re-register the limited liability partnership.

Fees for registration

- 4.3 The draft Regulations make reference to the fees payable on making an application for authorisation to the Authority. It is appropriate that the costs of administering limited liability partnerships are paid for by the users, rather than being subsidised by all legal practitioners. The Society submits that the fees payable for an application for authorisation should be commensurate with the actual costs of administration.

Recommendation 9 – Fees for registration

It is the recommendation of the Society that the fees for the registration of a limited liability partnership are paid for by the users and are commensurate with the actual costs of administration.