



# Scottish Law Commission

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

NOT FOR PUBLICATION OR BROADCAST

BEFORE 0001 HOURS 18 NOVEMBER 2003

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## REPORT ON PARTNERSHIP LAW

The Law Commission and the Scottish Law Commission have today published a joint *Report on Partnership Law*. This recommends the first statutory changes to partnership law since the principal Acts governing partnerships were passed in 1890 and 1907.

Partnerships, both small and large, continue to play an important role in the economy. There are over 500,000 partnerships in the United Kingdom with a combined turnover of approximately £136 billion. The main advantages of partnership as a business vehicle are its flexibility and informality. Our suggested reforms strive to ensure that these advantages remain. One of the main disadvantages of partnership is its instability, in particular the rule that a firm ceases to exist on any change in its membership. We address this in our recommended reforms.

The main thrust of our reform is to encourage continuity of business and we do this by introducing the concept of separate legal personality for partnerships in England and Wales and clarifying that concept in Scotland. By making the partnership itself a legal entity, the partnership would not automatically dissolve on any change of partners and would be able to enter contracts and hold property. However, partners would continue to be personally responsible for the obligations of the partnership and would owe a duty of good faith towards the partnership and each of the other partners.

Our policy has been to "think small first". Larger partnerships are likely to know the kind of agreement they wish to enter into and will have access to advice to ensure that this is given effect to. Smaller partnerships may not. The draft Bill which accompanies our report gives guidance in the form of a default code that will apply unless the partners choose to vary it. The default code deals with matters that partners would expect to be covered by a partnership agreement, such as the sharing of profits and losses, how differences between partners are to be settled and the financial entitlement of a partner on leaving the partnership.

When the time comes to break up a partnership, the partners themselves will usually carry out the winding up of a solvent partnership. However, where differences arise, our recommendations enable interested parties to appoint a new official, a partnership liquidator, to wind up the partnership.

The recommendations also clarify the law in relation to limited partnerships which were introduced by the Limited Partnerships Act 1907. These differ from general partnerships in that there must be at least one partner who does not wish to take part in the management of the partnership but merely to invest in it. His capital is at risk to the extent of his investment. With one exception, we recommend that separate legal personality should apply to limited partnerships too. Due to concerns expressed about the potential tax treatment overseas of limited partnerships with separate legal personality, we have recommended that, in English law only, there should be a category of special limited partnership which would not have separate legal personality.

## NOTES TO EDITORS

1. The Report (Law Com No 283; Scot Law Com No 192) together with a Summary are available on the Commissions' websites at [www.lawcom.gov.uk](http://www.lawcom.gov.uk) and [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk). The report can also be purchased from TSO shops.
2. The report follows from a reference from the Department of Trade and Industry.
3. The relevant existing legislation can be found in the Partnership Act 1890 and the Limited Partnerships Act 1907.
4. The Scottish Law Commission and the Law Commission were set up in 1965 to promote the reform of the law. The Scottish Law Commissioners are the Honourable Lord Eassie (Chairman), Professor Gerard Maher QC, Professor Kenneth G C Reid, Professor Joseph M Thomson and Colin J Tyre QC. The Law Commissioners are the Honourable Mr Justice Toulson (Chairman), Professor Hugh Beale QC, Mr Stuart Bridge, Professor Martin Partington CBE and Judge Alan Wilkie QC.
5. Further information can be obtained by contacting Mrs Gillian B Swanson (Project Manager) Scottish Law Commission (see contact details below) or the Hon Mr Justice Toulson, Chairman, Law Commission (020 7453 1249).