Sewel memorandum

LIMITED LIABILITY PARTNERSHIPS BILL

Description of Bill

The DTI proposes to create a new form of corporate business association to be known as a "limited liability partnership" (LLP). The Bill to give effect to this will apply to England, Wales and Scotland. A separate Northern Ireland Code would be needed to create LLPs in Northern Ireland. This would fall within the legislative competence of the Northern Ireland Assembly.

The main purpose of the Bill is the creation of a new form of business association. That would be a reserved matter under the terms of Head C, Section C1 of schedule 5 to the Scotland Act 1998. However, Section C2 (Insolvency) provides an exception from the reservation in relation to the process of winding up business associations.

An LLP will be a legal entity distinct from its members with the capacity of a legal person, including the capacity to enter into contracts. It is anticipated that business will normally be transacted with the firm as principal, not the members. The proposals would limit the members' exposure to the extent of their stake in the business. Members would remain personally liable for their own acts.

As well as providing for the formation of LLPs, the Bill sets out registration requirements. It also amends the relevant taxation legislation. In addition the Bill contains power to make regulations in the area of LLPs - there is a power to apply certain parts of the Companies Act 1985 and a duty to apply certain parts of the Insolvency Act 1986.

Devolved provisions

The Bill contains power to apply the Insolvency Act 1986 to LLPs. This will allow the Secretary of State for Trade and Industry to use powers contained in the Insolvency Act to make provisions on LLPs - for example, section 411 of the Insolvency Act provides that rules may be made for the purpose of giving effect to Parts I to VII of the Insolvency Act.

Where powers under the Insolvency Act are used to apply provisions on the process of winding up, it will be for a Scottish Minister to make provisions for Scottish LLPs, rather than the Secretary of State.