

EXPLANATORY MEMORANDUM TO
THE COMPANIES (CROSS-BORDER MERGERS) (AMENDMENT)
REGULATIONS 2015

2015 No. 180

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by command of Her Majesty.

2. Purpose of the instrument

This instrument amends the Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974) (the “2007 Regulations”) to ensure that a cross-border merger may not be declared null and void once the merger has taken effect. This clarifies the implementation of Article 17 of Directive 2005/56/EC (the “Cross-Border Mergers Directive”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative context

The Cross-Border Mergers Directive provided a framework of rules facilitating cross-border mergers between companies in the EU and required the removal of obstacles in national laws to such mergers. It applies to public and private companies with limited liability, and to mergers involving at least two companies from different Member States. The 2007 Regulations implemented the requirements of the Cross-Border Mergers Directive.

In particular, Article 17 of that Directive requires Member States to ensure that a cross-border merger which has taken effect may not be declared null and void. This was implemented in the 2007 Regulations by regulation 16(3) which provided that an order by the Court approving the completion of the cross-border merger was conclusive evidence that all necessary conditions and requirements for the merger to be approved had been fulfilled. Regulation 16(3) did not specifically state that a merger may not be declared null and void once a merger takes effect.

This instrument amends the 2007 Regulations, and in particular regulation 16(3), providing explicitly that a merger may not be declared null and void when it has taken effect.

5. Territorial Extent and Application

5.1 This instrument extends and applies to all of the United Kingdom.

5.2 The UK Government is responsible for company law in England and Wales and in Scotland. The Northern Ireland administration has agreed that, while company law remains a transferred matter within the legislative competence of the Northern Ireland Assembly, the Companies Act 2006 and associated legislation on companies and LLPs should apply to the whole of the United Kingdom.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs has made the following statement regarding Human Rights:

“In my view the provisions of the Companies (Cross-Border Mergers) (Amendment) Regulations 2015 are compatible with the Convention rights.”

7. Policy background

What is being done and why?

7.1 The Cross Border Mergers Directive requires that following completion of all the requirements of a cross border merger, the merger cannot be declared null and void. After carefully considering the UK implementation of the Directive we consider that the UK legislation did not explicitly provide for this. To provide certainty to third parties the amendments to the legislation clarify this point and make it explicit that this is the case.

8. Consultation outcome

8.1 This is a technical change that is being made to ensure that the UK has correctly implemented the Directive requirements. Therefore a consultation was not undertaken, as the change will not impact on companies.

9. Guidance

Guidance on cross border mergers is available on Companies House website.

10. Impact

This is a technical change to clarify that a cross border merger cannot be made null and void once the merger has taken place. This change will not add costs to companies.

11. Regulating small business

This instrument will apply to those companies, who enter into a cross border merger. In the last financial year Companies House received 63 applications for a Cross Border Merger.

12. Monitoring & review

The Cross Border Mergers Directive is currently being reviewed by the European Commission.

13. Contact

Maureen Beresford at the Department for Business, Innovation and Skills (tel: 020 7215 3342 or email: Maureen.beresford@bis.gsi.gov.uk) can answer questions about these Regulations.