Title:	Impact Assessment (IA)
The Companies (Reporting Requirements in Mergers and Divisions) Regulations 2011	**IA No:** BIS0278
Lead department or agency: BIS	**Date:** 21/02/2011
Other departments or agencies:	**Stage:** Final
	Source of intervention: EU
	Type of measure: Secondary legislation
	Contact for enquiries: Maureen Beresford, BIS, 020 7215 5323 rMaureen.Beresfo@bis.gsi.gov.uk

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The EU agreed Directive 2009/109/EC ("the amending directive") in order to reduce costs for public companies involved in mergers and divisions. In making the proposal, the European Commission explained that its objective was to contribute to enhancing the competitiveness of EU companies by reducing administrative burdens imposed under existing European Company Law Directives where that could be done without major negative impacts on other stakeholders. The amending directive makes changes to the Second, Third, and Sixth Company Law Directives and to the Cross-Border Mergers Directive. All of these have been implemented in UK company law, which will have to be amended to reflect the changes made by the amending directive.

What are the policy objectives and the intended effects?

The policy objective of the amending directive is to streamline the process of merger or division for public companies for example by allowing more use of new technology for publication and communication, and by expanding exemptions from various procedural requirements. The policy objective in the implementing regulations is to comply with EU law and to take advantage of any Member State options that maximise the potential deregulatory effect. In practice, there are unlikely to be any savings in the UK: UK companies use methods for reorganising and restructuring themselves that do not involve the merger and division processes regulated by the Third and Sixth Directives.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The do-nothing option would not be compatible with our Treaty obligations and has not been considered further but acts as a theoretical baseline. The two main options we have considered are (a) minimum change - to implement the directive with minimum change to the existing law, and (b) maximum deregulation - to take advantage of all Member State options in the way that provides most flexibility for any companies using the law. The preferred option is (b) maximum deregulation, as it avoids any risk of gold-plating in line with coalition commitments, and it could potentially reduce costs.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** Month/Year

What is the basis for this review? Not applicable. **If applicable, set sunset clause date:** Month/Year

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Edward Davey .... Date: 25 June 2011

Summary: Analysis and Evidence

Policy Option 1

Description:

Minimum change

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate: 0**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	0		0	**0**
High	0		0	**0**
Best Estimate	0		0	**0**

Description and scale of key monetised costs by 'main affected groups'

None

Other key non-monetised costs by 'main affected groups'

If any UK companies made use of the merger provisions, then the changes would add a requirement for directors to update the general meetings approving the proposed merger on any material changes since the publication of the proposal. This has not been quantified as companies are unlikely to use the provisions. If they did, there would be unlikely to be significant added costs, as directors should be in a position to report to a general meeting on material changes without significant work.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	0		0	**0**
High	0		0	**0**
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

The benefits to companies of publishing the draft terms of merger on their website (as a result of changes to the cross border mergers directive), as opposed to notifiying Companies House, are estimated to total less than £1,000 per annum. Details can be found on page 10. Discounting (at a rate of 3.5%) provides an estimated 10 yr discounted total benefit of £8,090.

Other key non-monetised benefits by 'main affected groups'

In principle if any UK companies made use of the merger or division provisions (under the 2nd, 3rd, and 6th dirctives) electronic methods of communicating information could be used in certain circumstances, removing the requirement for certain documents. This has not been quantified as companies are unlikely to use the provisions. If they did, there would be likely to be savings that would be minor in relation to the overall costs of the merger or division operation.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

The key assumption is that the merger and division provisions (under the 2nd 3rd and 6th directives) will be unused in the UK, as they have been since their introduction in 1988. This assumption does not apply to the cross boarder mergers directive, for which it is instead assumed that the option to publish the draft terms of merger on the company's website, as opposed to notifying companies house, will be adopted by each UK company undergoing a cross border merger. It is assumed that the number of cross border mergers will be consistent with the number in 2010 - 64, though some basic sensitivity anaysis is presented on page 10.

Direct impact on business (Equivalent Annual) £m):			**In scope of OIOO?**	**Measure qualifies as**
Costs: 0	**Benefits:** 0	**Net:** 0	No	NA

Enforcement, Implementation and Wider Impacts

<table>
<tr><td colspan="3">What is the geographic coverage of the policy/option?</td><td colspan="3">United Kingdom</td></tr>
<tr><td colspan="3">From what date will the policy be implemented?</td><td colspan="3">30/06/2011</td></tr>
<tr><td colspan="3">Which organisation(s) will enforce the policy?</td><td colspan="3">The courts</td></tr>
<tr><td colspan="3">What is the annual change in enforcement cost (£m)?</td><td colspan="3">0</td></tr>
<tr><td colspan="3">Does enforcement comply with Hampton principles?</td><td colspan="3">Yes</td></tr>
<tr><td colspan="3">Does implementation go beyond minimum EU requirements?</td><td colspan="3">No</td></tr>
<tr><td colspan="3">What is the CO_2 equivalent change in greenhouse gas emissions?
(Million tonnes CO_2 equivalent)</td><td colspan="2">Traded:
0</td><td>Non-traded:
0</td></tr>
<tr><td colspan="3">Does the proposal have an impact on competition?</td><td colspan="3">No</td></tr>
<tr><td colspan="3">What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?</td><td colspan="2">Costs:
n/a</td><td>Benefits:
n/a</td></tr>
<tr><td>Distribution of annual cost (%) by organisation size
(excl. Transition) (Constant Price)</td><td>Micro
n/a</td><td>< 20
n/a</td><td>Small
n/a</td><td>Medium
n/a</td><td>Large
n/a</td></tr>
<tr><td>Are any of these organisations exempt?</td><td>No</td><td>No</td><td>No</td><td>No</td><td>No</td></tr>
</table>

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	Impact	Page ref within IA
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	8
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	8
Small firms Small Firms Impact Test guidance	No	8
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[1] Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

Maximum deregulation

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate: 0**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0		0	**0**
High	0		0	**0**
Best Estimate	0		0	**0**

Description and scale of key monetised costs by 'main affected groups'

None

Other key non-monetised costs by 'main affected groups'

Same as option 1

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		0	**0**
High	0		0	**0**
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

None

Other key non-monetised benefits by 'main affected groups'

As for option 1, plus potential further savings in unlikely circumstances. If UK companies started to use the merger and divisions provisions, then in certain particular circumstances they would be relieved of requirements that they would have to comply with under option 1.

Key assumptions/sensitivities/risks **Discount rate (%)** n/a

Same as option 1.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: 0	**Benefits:** 0	**Net:** 0	No	IN/OUT

Enforcement, Implementation and Wider Impacts

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Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
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Sustainable development Sustainable Development Impact Test guidance	No	

[1] Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies; OJ L 295, 20.10.1978, p. 36–43 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31978L0855:EN:NOT
2	Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies; OJ L 378, 31.12.1982, p. 47–54 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31982L0891:EN:NOT
3	Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions; OJ L 259, 2.10.2009, p. 14–21 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0109:EN:NOT
4	Executive summary Impact Assessment accompanying Proposals for a Directive of the European Parliament and the Council simplifying the rules of the Third and the Sixth Company law Directives - {SEC(2008) 2486} http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008SC2486:EN:NOT
5	Impact Assessment accompanying Proposals for a Directive of the European Parliament and the Council simplifying the rules of the Third and the Sixth Company law Directives - {SEC(2008) 2487} http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008SC2487:EN:NOT
6	Companies Act 2006 http://www.legislation.gov.uk/ukpga/2006/46/contents

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs										
Annual recurring cost										
Total annual costs	0	0	0	0	0	0	0	0	0	0
Transition benefits										
Annual recurring benefits										
Total annual benefits	0	0	0	0	0	0	0	0	0	0

* For non-monetised benefits please see summary pages and main evidence base section

Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Rationale for intervention

The amending directive was agreed by the EU in order to reduce costs for public companies involved in mergers and divisions. In making the proposal, the European Commission explained that its objective was to contribute to enhancing the competitiveness of EU companies by reducing administrative burdens imposed under European Company Law Directives where that could be done without major negative impacts on other stakeholders. So, for example, in future companies will be able to communicate documents electronically rather than by making hard copies available. And Member States will have the option of relieving a company of the obligation to produce and circulate certain merger documents if all the company's shareholders' agree to dispense with them.

In practice the procedures regulated by the 3rd and 6th directives are not used in the UK, and so there is no prospect of a reduction in administrative burdens in the UK from their simplification. We have an obligation to implement the directive by 30 June 2011.

Options considered

The do-nothing option would not be compatible with our Treaty obligations and has not been considered further. The two main options we have considered are

- (a) minimum change - to implement the directive with minimum change to the existing law, and
- (b) maximum deregulation - to take advantage of Member State options in the way that provides most flexibility for any companies using the law.

These are assessed against a theoretical do nothing option to demonstrate the marginal impact in line with better regulation best practice.

Option 1: Minimum change

Under this option, we would do only what we are required to do by the amending directive. This would introduce one new requirement to the merger procedure, namely that the general meeting of each company that is being asked to approve merger proposals should be informed of any material changes that have taken place since the publication of the proposals.

It would also make it possible for a company involved in a merger or division to use communication through websites and email rather than by publish information in hard copy or making it available at the company's registered office. It would also expand the range of circumstances in which it was possible to dispense with certain requirements, either to produce documents or to hold meetings.

Overall, this could mean a minor reduction of costs in the event that a UK plc decided to use the merger or division procedure.

Option 2: Maximum deregulation

Under this option, we make all the changes involved in the minimum change option, and in addition take advantage of Member State options as explained in the following paragraphs

- The amendment of the Second Directive enables Member States to waive the requirement for an experts' report on non-cash considerations in formation of a new company if that new company was formed by a merger or a division. Under option 2, we take advantage of this option as it would relieve those allotting shares in a new company for non-cash considerations from the obligation to have an experts' report drawn up if the new company was being formed as part of a merger or division process.
- The amendment of the Second Directive also enables Member States to waive the requirement for an experts' report on allotment of new shares for non-cash consideration if an experts' report is already being drawn up as part of a merger or division in relation to the same operation. Under option 2, we take advantage of this option, as it would relieve those allotting shares for non-cash consideration in

an existing company as part of a merger or division process from the obligation to have an experts' report drawn up.

- The amending directive enables Member States to provide an exemption from certain requirements if all members of a company unanimously agree. These documents are: the directors' explanatory report, the supplementary accounting statement, and the report on material changes. Under option 2, we take advantage of these options, as it would relieve a company from the obligation to draw up these documents if all its shareholders agreed.

Option 2 would provide the same potential benefits as the minimum change option if a UK plc chose to use the merger or division procedure. And there is a chance that there would be a further small benefit if it happened to fall into the circumstances where one of these Member State options was relevant.

Costs and Benefits - Negligible Impact

The Third and Sixth EU Company Law Directives govern two types of procedure that are commonly used in some other Member States, but are rarely if ever used by UK plcs.

These are

- the "merger" in which two or more public companies are combined into a single company, with the predecessor companies ceasing to exist
- the "division" in which one public company is split into two or more companies and itself ceases to exist.

These procedures are seen in UK law as varieties of company arrangements and reconstructions, and in the Companies Act 2006, Part 27 sets out the mergers and divisions regime as supplements to the normal rules on arrangements and reconstructions in Part 26. All of these procedures are overseen by the court and concluded by a court order, a copy of which must be filed at Companies House. Over the last four years, Companies House has received around 40 such court orders a year. Most are identified as being under Part 26, and Companies House has not identified any court order made under Part 27.

Companies in the UK do not use the procedures affected by the amending directive, and have not used them since their introduction when we implemented the Third and Sixth Directives in 1988. There is therefore likely to be no impact from any changes to the procedures. We have no reason to expect UK companies to start using these procedures in the future, but if they were to, then the effect of implementing the amending directive, and of the choice of the maximum deregulation option, could reduce the costs in some instances.

The Cross-Border Mergers Directive will require less significant changes than the 3rd and 6th directives. The only change for UK companies is that the UK company in a cross-border merger will now be able to publish the draft terms of merger on its website rather than submitting a copy to Companies House.

Currently the directors of a UK merging company must deliver to the Registrar (Companies House):

- A copy of the draft terms of merger;
- A copy of any court order summoning a meeting of members or creditors made under regulation 11 of the Companies (Cross-Border Mergers) Regulations 2007; and
- A completed cross-border mergers form.

Companies will no longer have to submit, to the registrar, a copy of the draft terms of merger, instead they will be able to identify the website on which these are available if not submitted with the cross border form. Companies House will not be required to check the website given. This policy change will have negligible impact.

In the calendar year 2010 Companies House received 64 notifications of cross-border mergers. There is only a small benefit associated with moving from paper based notification of the draft terms of merger to Companies House and instead publishing these details on the company's

own website. Typically a representative will submit such details on behalf of the company, such as a lawyer or solicitor.

There were only 64 cross border mergers in the UK during 2010. To put this into context Companies House deals with a volume of around 8,000 company incorporations per week on average. If we consider that the greatest potential benefit to business is the removal of the need for legal services in submitting the draft terms of merger to companies house, then this benefit may be calculated as follows:

Assuming that the paper based submission of the draft terms of merger, takes half an hour of a legal professionals time currently, based upon the average gross hourly wage of a legal professional of £29.42 (Annual Survey of Hours and Earnings data - http://www.statistics.gov.uk/downloads/theme_labour/ashe-2010/2010-occ4.pdf), then each online notification will save £14.71, as the legal professional's services will no longer be required. This would be optional but if every notification of draft terms of merger was instead published on the companies website then this would save 64 x £14.71 = £940 (total annual undiscounted benefit) also assuming that the annual number of cross border mergers is constant.

The number of future UK cross border mergers is uncertain. If we carry out a crude sensitivity analysis and assume that the number of notifications of draft terms of merger replaced by online publication will either half or double, then we will arrive at range of annual benefits between £470 and £1880, undiscounted. This will be an upper bound estimate as the marginal impact will need to be offset against the cost of placing these documents online, however, the number will never be negative as it is optional to publish online. Therefore each business will act in accordance with the procedure that imposes the least cost and maximises their benefit. Despite the above estimate being an upper bound the total benefit remains negligible.

Discounting (at a rate of 3.5%) provides an estimated 10 yr discounted maximum potential benefit of £8,090.

Rounding reduces these cost savings, present in the summary sheet attached, to zero.

Details of current cross border mergers filing requirements can be found on the companies house website. http://www.companieshouse.gov.uk/about/gbhtml/gpo7.shtml#ch2

Transposition method

We propose to implement option 2 by a statutory instrument under the European Communities Act 1972. As it is necessary to make detailed amendments to legislation first made in the 1980s and now restated in the Companies Act 2006, it is not possible to transpose by copying out the directive, but there should be no material difference in effect.

Equality impact

We have considered the potential impact on those with characteristics protected by the Equalities Act 2010, and we have concluded that there will be no impact. The changes are unlikely to have any effect in the UK, and if they do have any effect – ie if UK companies start to use the merger or division mechanisms – this will apply only to public companies, and there is no reason to think that it will systematically disadvantage any groups of people.

Competition

As the procedures being amended are not used in the UK there will be no impact on competition. If they were to be used, they would be available to all public companies on the same terms. They would not limit the number or range of suppliers in any market directly or indirectly. Nor would they affect their ability to compete or their incentives to compete.

Small firms

The Third and Sixth Directives, and the UK provisions implementing them, apply only to plcs. To the theoretical extent that the changes described here affect any companies, they are unlikely to affect small businesses, which – if they incorporate – are likely to form private companies rather than plcs.

Assumptions

Our baseline assumption is that this aspect of UK company law will continue to be unused, so that the costs and benefits will be zero. Against the possibility that some UK companies may start to use these procedures, we have chosen the maximum deregulation option. As there is no evidence available that any UK plc has ever used these procedures, we cannot collect empirical evidence of existing costs, and there seems little justification for expending resource on modelling quantified costs.

Costs and benefits of any future use of the procedures would arise on a case by case basis, and there is no empirical data on what the costs and benefits might be. Any estimates would be purely speculative. To produce such estimates would add little if anything to the argument.

Summary

We have an obligation to implement the EU Directive amending the Third and Sixth Company Law Directives. At present, no UK companies make use of the merger or division procedures set out in those earlier directives. Against the possibility that they may in the future, we are choosing the maximum deregulation option so that the administrative burden involved in using the procedures will be minimised.

The Directive will be implemented when the Companies (Reporting Requirements in Mergers and Divisions) Regulations 2011 take effect.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)]; [No review planned - see "Reasons for not planning a review" below]
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] N/A
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] N/A
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] N/A
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] N/A
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] N/A
Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here] We are not planning for a review, as we do not expect these provisions in this instrument to be used. We do however monitor whether they are used, and if there are is any significant usage, we shall take steps to review the way in which this instrument has operated.

Add annexes here.