

**EXPLANATORY MEMORANDUM TO
THE COMPANIES (AUTHORISED MINIMUM) REGULATIONS 2008**

2008 No.729

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

2. Description

- 2.1. These Regulations contain provisions relating to the requirement that public companies must have allotted share capital with a nominal value of £50,000 (known as the "authorised minimum" requirement). They are needed in the light of changes made to that requirement by the Companies Act 2006, which take effect from 6 April 2008. When they start trading, or when they convert from being a private company, public companies will be able to satisfy the authorised minimum requirement by means of euro, instead of sterling, shares, so the Regulations specify the euro equivalent of £50,000.
- 2.2. Once they have started trading or have converted from being a private company, the provisions of the 2006 Act coming into force in April also envisage public companies being able to satisfy the authorised minimum requirement by means of shares denominated in multiple currencies. Surviving provisions of the Companies Act 1985 and the Companies (Northern Ireland) Order 1986 effectively require a public company to re-register as a private company where a reduction of share capital or a cancellation of shares result in the company no longer satisfying the authorised minimum requirement. The Regulations therefore provide for a method of calculating whether a company still satisfies the authorised minimum requirement in these circumstances where it has shares denominated in multiple currencies.
- 2.3. The Regulations also deal with related matters concerning registration by the Registrar of Companies and legal proceedings.

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

None

4. Legislative Background

The Regulations relate to provisions of the Companies Act 1985, the Companies (Northern Ireland) Order 1986, and the Companies Act 2006, which refer to the "authorised minimum" share capital requirement for public companies.

5. Territorial Extent and Application

The instrument applies to all of the United Kingdom

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement about compatibility is required.

7. Policy Background

- 7.1 The Regulations are necessary because of the coming into force on 6 April 2008 of Chapter 2 of Part 20 of the Companies Act 2006. That Chapter deals with the authorised minimum share capital requirement for public companies when they start trading and for private companies on re-registration as public companies. It also allows Regulations to be made dealing with (among other things) the application of the authorised minimum in other circumstances where a public company has allotted share capital denominated in multiple currencies. Existing provisions of the Companies Act 1985 and the Companies (Northern Ireland) Order 1986 which define the authorised minimum and deal with the application by public companies for trading certificates are being repealed in April 2008. However, a number of provisions of the 1985 Act and the 1986 Order which refer to the authorised minimum will remain in force for a period (it is proposed to repeal them from 1 October 2009).
- 7.2 The Regulations pursue two objectives. The first is to prescribe a euro equivalent for the sterling amount of the authorised minimum, which is £50,000. As the law stands a company formed as a public company needs allotted share capital denominated in sterling with a nominal value of at least £50,000 in order to start trading. This requirement also needs to be satisfied by a private company wishing to re-register as a public company. As a result of changes made by the Companies Act 2006 with effect from April 2008, it will be possible in each case to satisfy the requirement by means of allotted share capital denominated in euros. It is for Regulations to prescribe the euro amount equivalent to £50,000, and the amount must be fixed by applying an appropriate spot rate of exchange and rounding to the nearest 100 euros. The Regulations prescribe this euro equivalent.
- 7.3 The second objective is to establish how the authorised minimum capital requirement is to be applied where a public company reduces its share capital with court approval, or cancels shares in particular circumstances, and has allotted share capital in multiple currencies. Chapter 2 of Part 20 of the Companies Act 2006 envisages public companies (after they initially start to trade or after conversion from being a private company) being able to satisfy the authorised minimum requirement by reference to share capital in a mixture of currencies. This is new. The provisions therefore include a power to provide for the application of the authorised minimum requirement in these circumstances. The power needs to be exercised in relation to two particular situations arising under provisions of the Companies Act 1985 and the Companies (Northern Ireland) Order 1986 which will remain in force for a period (it is proposed to repeal them with effect from 1 October 2009). First, the 1985 Act and the 1986 Order effectively require a public company to re-register as a private company if the effect of a capital reduction approved by the court is

to bring the nominal value of its allotted share capital below the authorised minimum. Secondly, the 1985 Act and the 1986 Order require a public company to cancel shares and diminish its share capital in certain circumstances, and require it to re-register as a private company if the effect will be to bring the nominal value of its allotted share capital below the authorised minimum. In each of these situations there needs to be a method of determining whether the nominal value has indeed fallen below the authorised minimum where, after the reduction or cancellation, the company has shares denominated in multiple currencies. The Regulations provide for this. The need does not arise under the 1985 Act or the 1986 Order as they currently stand because they do not provide for the authorised minimum to be satisfied other than by reference to sterling shares.

- 7.4 Hypothetical currency conversions will be necessary where a company has shares denominated in multiple currencies, and the Regulations set out the rates of exchange, which must be used. In most cases this will be a particular rate of exchange published by the Financial Times but, in the absence of a published rate or where the company can show that there is a publication error, the company in question will need to obtain a certificate from a bank stating the applicable rate of exchange. Where a bank certificate is being used, the Regulations contain additional provisions allowing the Registrar of Companies to make certain assumptions, and allowing the courts to determine the applicable rate of exchange, where the certificate is not made available by the company.
- 7.5 A consultation exercise was conducted between February and May 2007 on secondary legislation to be made under the Companies Act 2006. Draft regulations were published on the department's website in May 2007 for comment. Although these Regulations are not identical to those published in May (for example, they didn't deal with capital reductions or share cancellations under the 1985 Act) the substance of these Regulations is essentially the same as the substance of the equivalent provisions in the draft Regulations which were consulted on last year. These Regulations are produced as a consequence of that consultation exercise and subsequent contributions from stakeholders.

8. Impact

- 8.1 An Impact Assessment is attached to this Memorandum.
- 8.2 There are no significant costs or burdens on companies. Where an exchange rate is not available in the Financial Times or can be shown to be erroneous, companies must obtain a certified rate of exchange; they may incur a cost for that service.
- 8.3 Neither Court Services nor Companies House have indicated any significant additional costs or burdens as a consequence of these Regulations. We are not aware that any other public sector bodies will be impacted by the Regulations.

- 8.4 The Regulations provide that nobody is to be liable as a result of an error in the publication of a relevant exchange rate by the Financial Times or as a result of a failure to publish.

9. Contact

Phillip Nicholls at the Department for Business, Enterprise and Regulatory Reform 0207 215 3091 or e-mail: Phil.Nicholls@berr.gsi.gov.uk can answer queries regarding the instrument.

Department of Trade & Industry	Impact Assessment of The Companies (Authorised Minimum) Regulations 2008
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Stage final	Version Final	Related Publications: Implementation of Companies Act 2006 Consultative Document February 2007 http://www.dti.gov.uk/consultations/page37980.html
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Available to view or download at: [www](http://www.dti.gov.uk/consultations/page37980.html).

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

There are two issues.

1. the need to prescribe a euro equivalent for the sterling amount of the authorised minimum, which is £50,000; and,
2. how the authorised minimum capital requirement should be applied where a public company reduces its share capital or cancels shares and has allotted share capital in multiple currencies.

Intervention is necessary because primary legislation, coming into force in April, envisages public companies being able to satisfy the authorised minimum requirement

- i. (on formation or conversion from a private company) in shares denominated in euros, as an alternative to satisfying the requirement in sterling shares; and thereafter,
- ii. by means of share capital denominated in multiple currencies.

This requires rules about calculating the equivalent value of share capital, and there are powers to lay down such rules in Regulations.

What are the policy objectives of the Regulations and their intended effects?

The objectives are

- (i) to prescribe the euro equivalent in relation to the definition of "authorised minimum" in the Companies Act 2006 (i.e. the amount in euros equivalent to £50,000);
- (ii) to provide for the way in which the authorised minimum requirement applies to public companies with shares denominated in multiple currencies, where there is a court approved share capital reduction or a requirement to cancel, then reduce, share capital, pursuant to Companies Act 1985 or the Companies (Northern Ireland) Order 1986;
- (iii) to provide for the Registrar of Companies to assume, in certain circumstances, that the authorised minimum requirement is no longer satisfied

- by the company; and,
- (iv) to enable the court, in specified proceedings and certain circumstances, to determine the rate of exchange to be applied in establishing whether a public company satisfies the authorised minimum requirement.

The intended effects are to provide certainty for

- public companies seeking to satisfy the authorised minimum by reference to euro share capital when they start trading
- private companies seeking to re-register as public companies and satisfy the authorised minimum by reference to euro share capital
- Companies House when considering whether to issue a trading certificate or re-register a private company as a public company.
- public companies (with shares denominated in multiple currencies) and Companies House where a court-approved capital reduction or a compulsory cancellation of shares has taken place. If a public company no longer satisfies the authorised minimum requirement as a result of a court order approving a capital reduction, Companies House may not register the court order (unless otherwise directed by the court) unless the company re-registers as a private company. Where a public company is obliged to cancel shares and this stops it from satisfying the authorised minimum, the 1985 Act or the 1986 Order requires it to re-register as a private company.
- the courts in cases where it is relevant whether a public company satisfies the authorised minimum

What policy options have been considered? Please justify any preferred option.

None. Changes must be implemented, and, for certainty, implemented by the legislative route. See evidence base for details.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

3 – 5 years

Ministerial Sign-off:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:

Ministerial Sign-off:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister: Gareth Thomas

Date: 12th March 2008

SUMMARY: ANALYSIS & EVIDENCE

Policy Option :				
ANNUAL COSTS		Minimal – Costs may arise where a company has to utilise a bank to get a certified assessment of an exchange rate for a particular date. That information will usually be obtainable free of charge via the media. We do not anticipate any significant costs for companies.		
One off (Transition)	<input style="width: 100px;" type="text" value="nil"/>	Yrs	<input style="width: 40px;" type="text"/>	
Average Annual Cost (excluding one-off)		<input style="width: 200px;" type="text"/>		
Other key non-monetised costs				
ANNUAL BENEFITS		Total Benefit PV <input style="width: 150px;" type="text"/>		
One off	<input style="width: 100px;" type="text"/>	Yrs	<input style="width: 40px;" type="text"/>	
Average Annual Benefit (excluding one-off)		<input style="width: 200px;" type="text"/>		
Other key non-monetised BENEFITS				
KEY Assumption/Sensitivities Risks				
Price Base Year	Time Period Years	Net Benefit Range (NPV) £-£	NET BENEFIT (NPV Best Estimate) £	
What is the geographic coverage of the policy/option?			UK	
On what date will the policy be implemented?			6 April 2008	
Which organisation(s) will enforce the policy?			n/a	
What is the total annual cost of enforcement for these organisations?			nil	
Will implementation go beyond minimum EU requirements			no	
What is the value of the proposed offsetting measure per year?			n/a	
What is the value of changes in green gas emissions?			n/a	
Will the proposal have a significant impact on competition?			no	
Annual cost per organisation (excluding one-off)			Micro 0	Small 0
Are any of these organisations exempt?			Med 0	Large 0
Impact on Admin Burdens Baseline (2005 prices)				
Increase of	<input style="width: 80px;" type="text"/>	Decrease of	<input style="width: 80px;" type="text"/>	Net Impact <input style="width: 100px;" type="text"/>

Evidence Base for Summary Sheets

Background

The Companies (Authorised Minimum) Regulations 2008 address issues concerning the authorised minimum capital requirement for public companies; providing for a euro equivalent to the sterling amount of £50,000 in the 2006 Act and addressing issues surrounding the application of the authorised minimum requirement where a public company, with shares denominated in multiple currencies, reduces its share capital under particular provisions of the 1985 Act or the 1986 Order.

Chapter 2 of Part 20 of the Companies Act 2006 is also being commenced in April 2008 and deals with the authorised minimum capital requirement for public companies when they start trading and for private companies on re-registration as public companies. It also allows Regulations to be made dealing with (among other things) the application of the authorised minimum in other circumstances where a public company has allotted share capital denominated in multiple currencies.

In order for a company formed as a public company to carry on business, or for a private company to re-register as a public company, it must either have at least £50,000 of allotted share capital denominated in sterling or at least an equivalent amount of allotted share capital denominated in euros. It is for Regulations to prescribe the equivalent euro amount, and that equivalent amount is fixed by applying an appropriate spot rate of exchange, rounded to the nearest 100 euros.

Chapter 2 of Part 20 of the Companies Act 2006 envisages public companies (after they initially start to trade or after conversion from being a private company) being able to satisfy the authorised minimum requirement by reference to share capital in a mixture of currencies. It therefore includes (among other things) a power to provide for the application of the authorised minimum requirement in these circumstances. Two particular situations arising under provisions of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 (which remain in force) need to be covered.

First, the 1985 Act and the 1986 Order effectively require a public company to re-register as a private company if the effect of a court-approved capital reduction is to bring the nominal value of its allotted share capital below the authorised minimum. Secondly, the 1985 Act and the 1986 Order require a public company to cancel shares and diminish its share capital in certain circumstances, and requires it to re-register as a private company if the effect is to bring the nominal value of its share capital below the authorised minimum. In each of these situations there needs to be a method of determining whether the nominal value has indeed fallen below the authorised minimum where, after the reduction or cancellation, the company has shares denominated in multiple currencies.

Policy Options

Euro Equivalent

Section 765 Companies Act 2006 permits a public company applying for a trading certificate, or a private company seeking to re-register, to satisfy the requirement by reference to euro share capital (in which case the requirement must be satisfied entirely by reference to euro shares and the prescribed euro equivalent applies). As regards prescribing the euro equivalent for the purposes of the definition of “the authorised minimum” in section 763 is concerned, there is effectively no option but to prescribe one (the alternative being not to prescribe one which would give rise to uncertainty) and little choice about how to prescribe it.

Application of the authorised minimum where a public company reduces share capital or cancels shares

As regards the other aspect of the Regulations, (i.e. addressing the application of the authorised minimum where a public company, with shares in multiple currencies, reduces its share capital or cancels its shares), the options are negligible.

The underlying assumption of sections 761 to 767 Companies Act 2006 is to allow public companies (once they are trading) to satisfy the authorised minimum by reference to share capital in more than one currency. Our view is that the powers in section 766 exist to make this work by providing detail – e.g. by saying how (for example) one works out whether a public company reducing its share capital retains £50,000 value of allotted share capital when it no longer has sterling shares but has dollar and euro shares.

Specific Impact Tests - Checklist

Type of testing undertaken	Results in Evidence Base? (Y/N)	Results annexed? (Y/N)
Competition Assessment	<i>n/a</i>	
Small Firms Impact Test		
Legal Aid	<i>n/a</i>	
Sustainable Development	<i>n/a</i>	
Carbon Assessment	<i>n/a</i>	
Other Environment	<i>n/a</i>	
Health	<i>n/a</i>	
Race Equality	<i>N</i>	
Disability Equality	<i>N</i>	
Gender Equality	<i>N</i>	
Human Rights	<i>N</i>	
Rural Proofing	<i>n/a</i>	