

EXPLANATORY MEMORANDUM TO
THE EUROPEAN GROUPING OF TERRITORIAL COOPERATION REGULATIONS
2007

2007 No. 1949

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

This memorandum contains information for the House of Lords Select Committee on the Merits of Statutory Instruments.

2. **Description**

- 2.1 The European Grouping of Territorial Cooperation Regulations 2007 (the Regulations) will ensure the effective application of Regulation (EC) No. 1082/06 of the European Parliament and of the Council on a European Grouping of Territorial Cooperation (the EGTC Regulation).

- 2.2 The new Structural Funds Regulations for 2007-2013 included the EGTC Regulation. The aim of this new legal instrument is to facilitate cross-border, transnational and/or inter-regional co-operation between regional and local authorities. An EGTC formed under the EGTC Regulation would be invested with legal personality for the implementation of territorial co-operation programmes based on a convention agreed between the participating national, regional, local or other public authorities.

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

- 3.1 None

4. **Legislative Background**

- 4.1 The Regulations will ensure the effective application of the EGTC Regulation and exercise the Member State options according to UK policy.

- 4.2 A Transposition Note is attached as an annex to this Explanatory Memorandum.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

Policy

- 7.1 The Government's policy on the approach to ensuring effective application of the EGTC Regulation has been agreed by both the Ministerial Committees on Domestic Affairs and European Policy. The overarching policy towards the Regulation is that we support cooperation activities between member states but the regulation required to ensure effective application of the EGTC Regulation should be kept to a minimum.

- 7.2 This overarching policy approach has resulted in several policies for the implementation. They are that;

- the domestic legislation should be applicable UK wide;
- the domestic legislation should apply elements of existing company and insolvency law to regulate an EGTC whose registered office is in the UK (a UK EGTC) ;
- members of a UK EGTC will have to carry unlimited liability;
- the tasks of a UK EGTC will not be limited where there is no financial contribution from the Community;
- the Secretary of State will act as the competent authority within the meaning of the EGTC Regulation, but involve the relevant Devolved Administration, when the public body wishing to be a member of an EGTC or otherwise under consideration is in their territory, and other interested parties, for example the sponsor Department, in the decision making process;
- membership of the EGTC should be available to the broadest range of public bodies that the EC Regulation allows.

Consultation

- 7.3 Given the application of the EGTC Regulation to a limited number of bodies, a reduced six week technical consultation was held inviting comments from relevant stakeholders on the proposed approach to the domestic legislation. The consultation was brought to the attention of Local Government Associations, local authorities, public body sponsors and public bodies listed on the Cabinet Office Public Bodies 2006 document.
- 7.4 The Government received 13 written responses to the consultation. These were from potential members of an EGTC (such as various public bodies including local authorities and their associations), and organisations with a particular interest in the regulation of an EGTC, (such as the Insolvency Service).
- 7.5 On the whole respondents supported the Government's proposed approach. However, as a result of the responses the Government did change its view on the activities an EGTC can participate in when there is no financial contribution from

the European Community. We had proposed that these activities should be restricted, as allowed for in the EC Regulation. Taking into consideration the responses from the main stakeholders and the overarching policy the Government took the decision that this restriction did not need to be imposed. This change in approach was agreed through Ministerial Committee correspondence.

Guidance

- 7.6 Guidance is being developed by the Department of Business, Enterprise & Regulatory Reform (BERR) in consultation with the Department Communities and Local Government and the Devolved Administrations. It will cover what an EGTC is, how to seek approval to become a member of an EGTC and what steps need to be taken for a UK EGTC to acquire legal personality. This guidance will be available through the BERR website from 1 August when the EGTC Regulation comes into force.

8. Impact

- 8.1 An Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies.

9. Contact

Simon Jones at the Department of Business, Enterprise & Regulatory Reform, tel: 020 7215 2686 or e-mail: simon.a.jones@dti.gsi.gov.uk, can answer any queries regarding the instrument.

TRANSPOSITION NOTE FOR (EC) NO 1082/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON A EUROPEAN GROUPING OF TERRITORIAL COOPERATION

<i>Article</i>	<i>Objective</i>	<i>Implementation</i>	<i>Responsibility</i>
Article 4(4)	Requirement for Member States to designate the competent authorities to receive notifications of intention to participate in an EGTC.	Regulation 5(1) of the European Grouping of Territorial Cooperation Regulations 2007 (“the EGTC Regulations”) provides that the Secretary of State shall be the competent authority.	Secretary of State
Article 5(1)	EGTC statutes to be registered and/or published in accordance with the applicable law in the Member State where the EGTC has its registered office.	Regulation 4 of the EGTC Regulations requires the statutes of an EGTC with its registered office in the UK to be published in the London, Edinburgh or Belfast Gazette as appropriate.	Members of the EGTC
Article 6(1)	Control of an EGTC’s management of public funds to be organised by the competent authorities of the Member State where the EGTC has its registered office.	No specific provision needed. A decision on the appropriate competent authority for each EGTC will be made before approval is given for participation by the UK member and will depend on the nature of the funding.	Secretary of State

Article 6(2)	Where required under national legislation of the other Member States concerned, the authorities of the Member State where an EGTC has its registered office shall make arrangements for authorities in the other Member States concerned to carry out controls on their territory for those acts of the EGTC which are performed in those Member States.	No specific provision needed. The arrangements to be made will depend on the requirements of the other Member States concerned.	Secretary of State
Article 7(3)	Member States may limit the tasks that an EGTC may carry out without a Community financial contribution.	Member State option not exercised.	
Article 11(2)	The preparation of an EGTC's accounts, including, where required the accompanying annual report, and the auditing and publication of those accounts, shall be governed by the laws of the Member State where the EGTC has its registered office.	<p>Regulation 6 (budget) of the EGTC Regulations applies Part 7 of the Companies Act 1985 (accounts and audit) to an EGTC with its registered office in the UK as if it were a small company within the meaning of section 247 of that Act which was not ineligible under section 247A.</p> <p>This regulation also:</p> <ul style="list-style-type: none"> • requires such an EGTC to make its accounts available for inspection (it being exempted from the 1985 Act requirement to deliver accounts to the registrar) • makes provision for the appointment of an auditor. 	Members of the EGTC

<p>Article 12(1)</p>	<p>Insolvency of an EGTC shall be governed by the laws of the Member State where the EGTC has its registered office</p>	<p>Regulation 7 (insolvency and winding up) of the EGTC Regulations applies to an EGTC with its registered office in the UK Part 5 of the Insolvency Act 1986 (or Part 6 of the Insolvency (Northern Ireland) Order 1989 as the case may be) and the relevant Insolvency Rules.</p>	<p><u>For making the Rules</u></p> <p>England & Wales:</p> <p>The Lord Chancellor with the concurrence of the Secretary of State and, where the Rules involve court procedure, the Lord Chief Justice</p> <p>Scotland:</p> <p>The Secretary of State</p> <p>Northern Ireland:</p> <p>The Lord Chancellor with the concurrence of the Department for Trade and Investment of Northern Ireland</p>
<p>Article 12(2), seventh sub-paragraph</p>	<p>A Member State may prohibit the registration on its territory of an EGTC whose members have limited liability.</p>	<p>The UK has exercised this Member State option and the relevant provision is in regulation 8 of the EGTC Regulations.</p>	

Article 13	Activities by an EGTC which are contrary to a Member State's provisions on public policy etc may be prohibited by a competent authority of that Member State.	Regulation 5(2) of the EGTC Regulations designates the Secretary of State as the competent authority.	Secretary of State
Article 14(1)	Power of the competent court or authority of the Member State where an EGTC has its registered office to wind up an EGTC for failure to comply with requirements in Article 1(2) or 7.	Regulation 5(3) of the EGTC Regulations designates the High Court (or in Scotland, the Court of Session) as the competent court.	High Court of England and Wales High Court of Northern Ireland Court of Session in Scotland
Article 14(1)	Any competent authority with a legitimate interest may apply for the winding up of an EGTC under article 14(1)	No specific provision needed. The UK does not wish to limit those who can apply to the court, beyond the limitation in the EC Regulation which requires such persons to have a "legitimate interest". As to whether an applicant has a legitimate interest, this is a matter for the courts to decide upon.	High Court of England and Wales High Court of Northern Ireland Court of Session in Scotland
Article 16(2)	Member States may provide for the payment of fees in connection with the registration of an EGTC's convention and statutes	Member State option not exercised	