

*These notes refer to the Enterprise Act 2002 (c.40)
which received Royal Assent on 7 November 2002*

ENTERPRISE ACT 2002

EXPLANATORY NOTES

SUMMARY

15. The Act implements a pledge in the Government's 2001 election manifesto to give more independence to the competition authorities, to reform the bankruptcy laws and to tackle trading practices that harm consumers. The White Paper '*Productivity in the UK: Enterprise and the Productivity Challenge*' (available at <http://www.hmt.gov.uk/mediastore/otherfiles/26.pdf>), published in June 2001, set out the Government's intention to focus on enterprise and productivity as the cornerstone of its economic reforms in this Parliament. The specific measures in this Act were foreshadowed by three White Papers: '*Productivity and Enterprise: A World Class Competition Regime*' (Cm 5233) and '*Productivity and Enterprise: Insolvency – A Second Chance*' (Cm 5234) published in July 2001, and '*Modern Markets: Confident Consumers*' (Cm 4410), published in July 1999.

16. The main provisions of the Act are:

Competition reform

- A new merger regime, with decisions taken in most cases by independent competition authorities against a competition-based test rather than the current public interest test.
- Replacement of the monopoly regime established by the Fair Trading Act 1973 (FTA 1973) with a new regime for investigating markets. Most decisions will be taken by independent competition authorities against a competition-based test rather than the current public interest test.
- The introduction of criminal sanctions for individuals who engage in hard-core cartels.
- The OFT will be given a new power to apply for the court to disqualify directors involved in breaches of competition law.
- Persons harmed by a breach of competition law will be able to bring claims for damages before a specialist competition body (the Competition Appeal Tribunal (CAT)).
- Amendment to the Competition Act 1998 (CA 1998) to provide third parties with a direct right of appeal to the CAT against decisions of the OFT or the sectoral regulators with concurrent powers.
- Repeal of the arrangements for the exclusion of designated professional rules from the prohibitions under CA 1998.

Consumer reform

- Reform of Part III of FTA 1973 to extend the protection to consumers under the Stop Now Orders regime to those areas not covered by the Injunctions Directive.

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- Repeal of most of Part II of FTA 1973, but with savings for two existing Orders made under this Part.
- Establishing a new regime for the OFT to approve business-to-consumer Codes of Practice.
- Requiring the OFT to respond in a set timescale to ‘super-complaints’ from designated consumer bodies.
- Requiring the OFT to provide information and advice which may include publication of educational materials.

Insolvency reform

Corporate insolvency

- Streamlining the administration procedure.
- Restricting the ability of lenders to appoint an administrative receiver to the holders of pre-existing floating charges and certain capital market and other transactions.

Crown Preference

- Removing the Crown’s preferential rights in all insolvencies and making provision to ensure unsecured creditors are major beneficiaries.

Insolvency of individuals

- Providing for the automatic discharge of nearly all bankrupts after a maximum of 12 months.
- Reducing the number of restrictions that are automatically imposed on undischarged bankrupts.
- Providing for a court-based regime – Bankruptcy Restrictions Orders – to be attached to those bankrupts whose conduct, before and during bankruptcy, the court has found to be culpable.

Financial regime

- Enabling reform of the Insolvency Service financial regime, in particular, facilitating the return to creditors of more of the income from monies held in the Insolvency Services Investment Account.