

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

# ENTERPRISE ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Mergers**

#### **Summary and Background**

#### *Chapter 1: Duty to make references*

#### **Duty to make references: completed mergers**

#### *Section 28: Turnover test*

118. This section provides for how the turnover test, which will replace the current ‘assets test’ contained in sections 64 and 67 FTA 1973, is to be determined. The test will apply to turnover in the UK, and will be set initially at £70 million, but this figure will be alterable by statutory instrument.
119. The test will be determined by reference to the turnover of the enterprise being taken over (i.e. if the turnover of the target company exceeds £70 million, the merger qualifies for investigation). If it is the case that no enterprise will continue under the same ownership after the merger (for example, formation of a new joint venture), the turnover for the purposes of the test is to be calculated by aggregating that of all the enterprises involved, and taking away the highest. The section also provides that the OFT shall keep the figure under review, and from time to time advise the Secretary of State if it is still an appropriate level.
120. [Section 28\(2\)](#) provides the Secretary of State with a power to make an order with respect to how the turnover in the UK of an enterprise is to be calculated, which may, in particular, make provision for the amounts which are to be taken into account, the dates by reference to which it is to be determined and the connection of that turnover with the UK.