

*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 3: Other special cases*

#### **Special public interest cases**

#### *Section 59: Intervention by Secretary of State in special public interest cases*

192. *Subsection (1)* provides that the Secretary of State may intervene on special public interest grounds if she has reasonable grounds for suspecting that: a special merger situation has been created or is in contemplation. *Subsection (2)* provides that the Secretary of State may issue a special intervention notice if she believes that the case raises public interest considerations as specified in section 58.
193. *Subsection (3)* provides that a special merger situation is one where the usual thresholds of share of supply or turnover have not been met and the conditions in *subsection (4)* are satisfied. Those conditions are that one of the enterprises is carried on in the UK, or by or under control of a body corporate incorporated in the UK and a person carrying on one of the enterprises is a relevant government contractor. *Subsections (5) and (6)* provide that for the purposes of determining whether a relevant merger situation has been created, sections 22-31 shall apply, subject to certain changes listed in *subsection (6)*. These changes clarify that certain references to the OFT shall, for the purposes of the Chapter, be read as the Secretary of State.
194. *Subsection (8)* defines a relevant government contractor as a contractor whose contract includes handling confidential information or documents. They are notified of this by the Secretary of State, or on behalf of the Secretary of State in cases where this notification is passed on from a prime to a subcontractor. This subsection also establishes that a relevant government contractor includes a former contractor whose notification has not been revoked.
195. *Subsection (9)* defines defence as having the same meaning as in section 2 of the Official Secrets Act 1989, and further defines government contractor as having the meaning given in the 1989 Act and including subcontractors.