



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 3

#### MERGERS

### CHAPTER 3

#### OTHER SPECIAL CASES

##### *Other*

#### **70 Water mergers**

- (1) For sections 32 to 35 of the Water Industry Act 1991 (c. 56) (special provision for water merger references) there shall be substituted—

##### **“32 Duty to refer merger of water or sewerage undertaking**

Subject to section 33 below, it shall be the duty of the OFT to make a merger reference to the Competition Commission if the OFT believes that it is or may be the case—

- (a) that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises; or
- (b) that such a merger has taken place otherwise than as a result of the carrying into effect of arrangements that have been the subject of a reference by virtue of paragraph (a) above.

##### **33 Exclusion of small mergers from duty to make reference**

- (1) The OFT shall not make a merger reference under section 32 above in respect of any actual or prospective merger of two or more water enterprises if it appears to the OFT—

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- (a) that the value of the turnover of the water enterprise being taken over does not exceed or, as the case may be, would not exceed £10 million; or
  - (b) that the only water enterprises already belonging to the person making the take over are enterprises each of which has a turnover the value of which does not exceed or, as the case may be, would not exceed £10 million.
- (2) For the purposes of subsection (1)(a) above, the value of the turnover of the water enterprise being taken over shall be determined by taking the total value of the turnover of the water enterprises ceasing to be distinct enterprises and deducting—
- (a) the turnover of any water enterprise continuing to be carried on under the same ownership and control; or
  - (b) if there is no water enterprise continuing to be carried on under the same ownership and control, the turnover which, of all the turnovers concerned, is the turnover of the highest value.
- (3) For the purposes of subsection (1)(b) above—
- (a) every water enterprise ceasing to be a distinct enterprise and whose turnover is to be deducted by virtue of subsection (2)(a) or (b) above shall be treated as a water enterprise belonging to the person making the take over; and
  - (b) water enterprises shall be treated as separate enterprises so far as they are carried on by different companies holding appointments under Chapter 1 of this Part.
- (4) For the purposes of this section the turnover of a water enterprise shall be determined in accordance with such provisions as may be specified in regulations made by the Secretary of State.
- (5) Regulations under subsection (4) above may, in particular, make provision as to—
- (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover; and
  - (b) the date or dates by reference to which an enterprise's turnover is to be determined.
- (6) Regulations under subsection (4) above may, in particular, make provision enabling the Secretary of State or the OFT to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of subsection (5) above).
- (7) The Secretary of State may by regulations amend subsection (1) above so as—
- (a) to alter the sum for the time being mentioned in paragraph (a) of that subsection or otherwise to modify the condition set out in that paragraph; or
  - (b) to alter the sum for the time being mentioned in paragraph (b) of that subsection or otherwise to modify the condition set out in that paragraph.
- (8) Regulations under subsection (7) above—

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- (a) shall not make any modifications in relation to mergers on or before the coming into force of the regulations; and
  - (b) may, in particular, include supplemental, consequential or transitional provision amending or repealing any provision of this section.
- (9) References in this section to enterprises being carried on under the same ownership and control shall be construed in accordance with Part 3 of the 2002 Act.

### **34 Application of provisions of Enterprise Act 2002**

The provisions of Schedule 4ZA to this Act shall have effect with respect to mergers of water enterprises.

### **35 Construction of merger provisions**

- (1) In this Chapter (including Schedule 4ZA)—
- “enterprise” has the same meaning as in Part 3 of the 2002 Act; and
  - “water enterprise” means an enterprise carried on by a water undertaker.
- (2) References in this Chapter (including Schedule 4ZA), in relation to any two or more enterprises, to the merger of those enterprises are references to those enterprises ceasing, within the meaning of Part 3 of the 2002 Act, to be distinct enterprises; and sections 27 and 29 of that Act and any provision made under section 34 of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this Chapter (including Schedule 4ZA) as they have effect for the purposes of that Part.
- (3) Nothing in sections 32 to 34 above (including Schedule 4ZA) shall prejudice any power of the OFT or the Secretary of State, in a case in which, or to any extent to which, the OFT is not required to make a reference under section 32 above, to make a reference under Part 3 of the 2002 Act in respect of any actual or prospective merger of two or more water enterprises.
- (4) Where two or more enterprises have merged or will merge as part of transactions or arrangements which also involve an actual or prospective merger of two or more water enterprises, Part 3 of the 2002 Act shall apply in relation to the actual or prospective merger of the enterprises concerned excluding the water enterprises; and references in that Part to the creation of a relevant merger situation shall be construed accordingly.
- (5) Subject to subsections (3) and (4), Part 3 of the 2002 Act shall not apply in a case in which the OFT is required to make a reference under section 32 above except as applied by virtue of Schedule 4ZA.”
- (2) Before Schedule 4A to the Act of 1991 there shall be inserted, as Schedule 4ZA, the Schedule set out in Schedule 6 to this Act.

**Changes to legislation:**

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