
STATUTORY INSTRUMENTS

2004 No. 3233

The Enterprise Act 2002 (Commencement No. 7 and Transitional Provisions and Savings) Order 2004

Citation and interpretation

1.—(1) This Order may be cited as the Enterprise Act 2002 (Commencement No. 7 and Transitional Provisions and Savings) Order 2004.

(2) In this Order—

- (a) “the 2002 Act” means the Enterprise Act 2002;
- (b) “the 1991 Act” means the Water Industry Act 1991(1); and
- (c) “water purposes” means purposes relating to—
 - (i) the making by the Secretary of State of references under section 32 of the 1991 Act, or
 - (ii) any references so made.

Appointed day

2. 29th December 2004 is the appointed day for the coming into force of the provisions of the 2002 Act listed in the first column of the Schedule to this Order for the purposes set out in the second column.

Transitional provisions and savings – completed water mergers

3.—(1) Subject to paragraphs 15 to 18 of Schedule 24 to the 2002 Act, the old law shall continue to apply where a merger of two or more water enterprises has taken place before 29th December 2004.

(2) The power of the decision-making authority under section 27(5) or 29(1) (including those provisions as applied by any enactment) in relation to events or transactions is exercisable, in relation to a merger of two or more water enterprises which has taken place before 29th December 2004, where the merger forms part of successive events or a series of transactions which include at least one event or transaction to which the new law applies.

(3) Where the decision-making authority exercises its power as mentioned in paragraph (2) in relation to a merger of two or more water enterprises which has taken place before 29th December 2004, paragraph (1) shall accordingly cease to apply in relation to the merger.

(4) In this article “enactment” includes an enactment comprised in secondary legislation, and includes an enactment whenever passed or made.

Transitional provisions and savings – anticipated water mergers

4.—(1) Subject to paragraphs 15 to 18 of Schedule 24 to the 2002 Act, the old law shall continue to apply in relation to any relevant arrangements which were in progress before 29th December 2004

and are in progress on that day and (if events so require) the actual results of those arrangements where, before 29th December 2004 and in relation to the arrangements, a reference was made by the Secretary of State under section 32(a) of the 1991 Act.

(2) Subject to paragraphs 15 to 18 of Schedule 24 of the 2002 Act, the old law shall continue to apply in relation the enforcement, variation or release of any undertakings given before 29th December 2004 under section 88 of the 1973 Act⁽²⁾ in relation to any relevant arrangements which are not otherwise dealt with by paragraph (1).

(3) The new law shall apply in relation to relevant arrangements and (if events so require) the results of those arrangements if—

- (a) the arrangements were in progress before 29th December 2004 and are in progress on that day, and
 - (b) before that day and in relation to the arrangements, no reference was made by the Secretary of State under section 32(a) of the 1991 Act.
- (4) In this article—
- (a) “relevant arrangements” means arrangements which might result in the merger of two or more water enterprises; and
 - (b) references to relevant arrangements which are in progress on 29th December 2004 include references to the actual results of those arrangements if the arrangements were in progress immediately before that day and have, at the beginning of that day, resulted in the merger of two or more water enterprises.

Articles 3 and 4: interpretation and supplemental provision

5.—(1) In articles 3 and 4—

- (a) “the new law” means—
 - (i) sections 32 to 35 of, and Schedule 4ZA to, the 1991 Act (as substituted and inserted by section 70 of, and Schedule 6 to, the 2002 Act),
 - (ii) such provisions of Part 3 of the 2002 Act as apply by virtue of (and with the modifications prescribed under) Schedule 4ZA to the 1991 Act, and
 - (iii) any related provision of law,
 (including, in particular, any modification made under section 276(2) of the 2002 Act to any provision mentioned in paragraphs (i) to (iii));
- (b) “the old law” means—
 - (i) sections 32 to 35 of the 1991 Act (as in force immediately before 29th December 2004),
 - (ii) such provisions of sections 64 to 75K of the 1973 Act as apply by virtue of section 34 of the 1991 Act immediately before that date, and
 - (iii) any related provision of law,
 (including, in particular, any modification made under section 276(2) of the 2002 Act to any provision mentioned in paragraphs (i) to (iii)); and
- (c) references to the merger of two or more water enterprises shall be construed in accordance with section 35(1) and (2) of the 1991 Act, as in force immediately before 29th December 2004.

(2) In articles 3 and 4, references to the old law, in relation to the period on or after 20th June 2003, include references to the old law with the following modifications—

(2) 1973 c. 41.

- (a) section 35(4) of the 1991 Act has effect as if for the words from “the Secretary of State” to “the 1973 Act” there were substituted “the OFT or the Secretary of State, in a case in which, or to any extent to which, the Secretary of State is not required to make a reference under section 32 above, to make a reference under Part 3 of the 2002 Act”,
 - (b) paragraph 5 of Schedule 1 to the 1998 Act⁽³⁾ has effect as if in paragraph (d) for “OFT” there were substituted “Secretary of State”, and
 - (c) section 121 of the 2002 Act has effect as if the following were omitted—
 - (i) in subsection (1), the words from “and sections 32” to the end,
 - (ii) subsection (3)(d), and
 - (iii) in subsection (8), the words from “and sections 32” to the end.
- (3) Paragraph 13 of Schedule 24 to the 2002 Act shall not apply in connection with the coming into force of any provision of the 2002 Act by virtue of this Order.

Gerry Sutcliffe,
Parliamentary Under Secretary of State for
Employment Relations, Postal Services and
Consumers,
Department of Trade and Industry

7th December 2004