
DRAFT STATUTORY INSTRUMENTS

2003 No.

**The Enterprise Act 2002 (Protection
of Legitimate Interests) Order 2003**

Decision and enforcement by Secretary of State

12.—(1) Paragraph (2) applies where the Secretary of State has received a report of the Commission under article 8 in relation to a European relevant merger situation.

(2) The Secretary of State shall, in connection with a reference under article 5(2) or (3), decide the questions which the Commission is required to decide by virtue of article 6(1) to (3).

(3) The Secretary of State shall publish her decision under paragraph (2) within a period of 30 days beginning with the receipt of the report of the Commission under article 8.

(4) In making her decisions under paragraph (2), the Secretary of State shall disregard any public interest consideration not specified in the reference under article 5 and any public interest consideration disregarded by the Commission for the purposes of its report.

(5) In making her decisions under paragraph (2), the Secretary of State shall accept the decisions of the report of the Commission under article 8 as to whether a European relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation.

(6) Paragraph (7) applies where the Secretary of State has decided under paragraph (2) that—

- (a) a European relevant merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation;
- (b) at least one public interest consideration which is mentioned in the European intervention notice concerned is relevant to a consideration of the European relevant merger situation concerned; and
- (c) taking account only of the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest;

and has so decided, and published her decision, within the period required by paragraph (3).

(7) The Secretary of State may take such action under paragraph 9 or 11 of Schedule 2 as she considers reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the European relevant merger situation concerned.

(8) In making a decision under paragraph (7), the Secretary of State shall, in particular, have regard to the report of the Commission under article 8.

(9) In determining for the purpose of paragraph (3) the period of 30 days no account shall be taken of—

- (a) Saturday, Sunday, Good Friday and Christmas Day; and
- (b) any day which is a bank holiday in England and Wales.