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STATUTORY INSTRUMENTS

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**2004 No. 3233 (C.142)**

**COMPETITION**

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

*Made - - - - 7th December 2004*

The Secretary of State, in exercise of the powers conferred upon her by sections 276(2) and 279 of the Enterprise Act 2002<sup>(1)</sup>, hereby makes the following Order:

**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<sup>(2)</sup>; 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.

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(1) 2002 c. 40.  
(2) 1991 c. 56.

(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<sup>(3)</sup> 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));

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(3) 1973 c. 41.

- (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—
- (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<sup>(4)</sup> 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

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(4) 1998 c. 41.

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## SCHEDULE

## Article 2

<i>Provisions of the 2002 Act</i>	<i>Purpose</i>
Section 70 (water mergers)	For all purposes
Section 185 (the Commission)	For the purposes of the provisions of Schedule 11 brought into force by this Order
Section 278 (minor and consequential amendments and repeals)	For the purposes of the provisions of Schedules 25 and 26 brought into force by this Order
Schedule 6 (schedule to be inserted in the Water Industry Act 1991)	For all purposes
In Schedule 9 (certain amendments of sectoral enactments) —	
paragraph 7	For water purposes
paragraph 8(a)	For all purposes
In Schedule 11 (the Competition Commission) —	
paragraph 1	For the purpose of commencing the provisions of Schedule 11 brought into force by this Order
paragraphs 10(4) and 11	For water purposes
In Schedule 25 (minor and consequential amendments) —	For water purposes
paragraphs 1(1), 1(2), 8(1), 8(3), 18(1) to 18(5), 38(1), 38(2) and 38(50)(a) to (c)	
In Schedule 26 (repeals and revocations) the entries relating to the—	
Registered Designs Act 1949 <sup>(5)</sup> , section 11A(1)(b)	For water purposes
Fair Trading Act 1973 <sup>(6)</sup> , sections 63 to 76, 77, 78 to 81, 82, 83, 84, 86, 88 to 93A, 129, 132, 138, Schedules 8 and 9	For water purposes
Patents Act 1977 <sup>(7)</sup> , section 51(1)(b)	For water purposes
Companies Consolidation (Consequential Provisions) Act 1985 <sup>(8)</sup>	For water purposes
Companies Act 1989 <sup>(9)</sup> , sections 146 to 150, and Schedule 20	For water purposes
Companies Act 1989, section 152	For all purposes

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<sup>(5)</sup> 1949 c. 88

<sup>(6)</sup> 1973 c. 41.

<sup>(7)</sup> 1977 c. 37.

<sup>(8)</sup> 1985 c. 9.

<sup>(9)</sup> 1989 c. 40.

<i>Provisions of the 2002 Act</i>	<i>Purpose</i>
EEC Merger Control (Consequential Provisions) Regulations 1990 <sup>(10)</sup>	For water purposes
Deregulation and Contracting Out Act 1994 <sup>(11)</sup> , section 9 and paragraph 2(3) in Schedule 11	For water purposes
Deregulation (Fair Trading Act 1973) (Amendment) (Merger Reference Time Limits) Order 1996 <sup>(12)</sup>	For water purposes
Competition Act 1998 <sup>(13)</sup> , paragraph 15(7) in Schedule 7	For water purposes

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force on 29 December 2004 section 70 of and Schedule 6 to the Enterprise Act 2002, which amend the provisions of the Water Industry Act 1991 concerned with mergers of water enterprises. In addition, the Order commences various related repeals, and makes transitional provisions and savings.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

The following provisions of the Enterprise Act 2002 have been brought into force by commencement orders made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Sections 1 to 4	01.04.03	<a href="#">2003/766</a>
Sections 5 to 7	20.06.03	<a href="#">2003/1397</a>
Sections 8, 9 and 10	01.04.03	<a href="#">2003/766</a>
Section 11	20.06.03	<a href="#">2003/1397</a>
Section 12	01.04.03	<a href="#">2003/766</a>
Section 13(1) to (5)	01.04.03	<a href="#">2003/766</a>

<sup>(10)</sup> [S.I.1990/1563](#).

<sup>(11)</sup> [1994 c. 40](#).

<sup>(12)</sup> [S.I.1996/345](#).

<sup>(13)</sup> [1998 c. 41](#).

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 13(6) (partially)	18.03.03	<a href="#">2003/765</a>
Section 13(6) (remaining purposes)	01.04.03	<a href="#">2003/766</a>
Section 14(1) to 14(5)	01.04.03	<a href="#">2003/766</a>
Section 14(6) (partially)	01.04.03	<a href="#">2003/766</a>
Section 14(6) (remaining purposes)	20.06.03	<a href="#">2003/1397</a>
Section 15	01.04.03	<a href="#">2003/766</a>
Sections 16 to 20	20.06.03	<a href="#">2003/1397</a>
Section 21	01.04.03	<a href="#">2003/766</a>
Sections 22 to 69	20.06.03	<a href="#">2003/1397</a>
Sections 71 to 120	20.06.03	<a href="#">2003/1397</a>
Section 121	20.06.03	<a href="#">2003/1397</a>
Sections 122 to 130	20.06.03	<a href="#">2003/1397</a>
Part 4 of the Act (sections 131 to 184)	20.06.03	<a href="#">2003/1397</a>
Section 185 (partially)	01.04.03	<a href="#">2003/766</a>
Section 185 (partially)	20.06.03	<a href="#">2003/1397</a>
Section 186	01.04.03	<a href="#">2003/766</a>
Section 187	20.06.03	<a href="#">2003/1397</a>
Part 6 (Sections 188 to 202)	20.06.03	<a href="#">2003/1397</a>
Sections 203 to 206	20.06.03	<a href="#">2003/1397</a>
Section 207	01.04.03	<a href="#">2003/766</a>
Sections 208 and 209	20.06.03	<a href="#">2003/1397</a>
Part 8 (Sections 210 to 236)	20.06.03	<a href="#">2003/1397</a>
Part 9 (Sections 237 to 247)	20.06.03	<a href="#">2003/1397</a>
Section 248 (partially)	15.09.03	<a href="#">2003/2093</a>
Section 249	15.09.03	<a href="#">2003/2093</a>
Section 250(1) (partially)	18.03.03	<a href="#">2003/765</a>
Section 250 (remaining purposes)	15.09.03	<a href="#">2003/2093</a>
Section 251	15.09.03	<a href="#">2003/2093</a>
Section 252	15.09.03	<a href="#">2003/2093</a>
Section 253	15.09.03	<a href="#">2003/2093</a>
Section 254	15.09.03	<a href="#">2003/2093</a>
Section 255	15.09.03	<a href="#">2003/2093</a>

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 256 (partially)	01.04.04	<a href="#">2003/2093</a>
Section 257	01.04.04	<a href="#">2003/2093</a>
Section 258	01.04.04	<a href="#">2003/2093</a>
Section 259	01.04.04	<a href="#">2003/2093</a>
Section 260	01.04.04	<a href="#">2003/2093</a>
Section 261	01.04.04	<a href="#">2003/2093</a>
Section 262	15.09.03	<a href="#">2003/2093</a>
Section 263	01.04.04	<a href="#">2003/2093</a>
Section 264	01.04.04	<a href="#">2003/2093</a>
Section 265	01.04.04	<a href="#">2003/2093</a>
Section 266	01.04.04	<a href="#">2003/2093</a>
Section 267	01.04.04	<a href="#">2003/2093</a>
Section 268	01.04.04	<a href="#">2003/2093</a>
Section 269	01.04.04	<a href="#">2003/2093</a>
Section 270 (partially)	18.12.03	<a href="#">2003/3340</a>
Section 270 (remaining purposes)	01.04.04	<a href="#">2003/2093</a>
Section 271	18.12.03	<a href="#">2003/3340</a>
Section 272	01.04.04	<a href="#">2003/2093</a>
Section 273	18.03.03	<a href="#">2003/765</a>
Section 274	01.04.03	<a href="#">2003/766</a>
Section 275	18.03.03	<a href="#">2003/765</a>
Section 276(1)(partially)	18.03.03	<a href="#">2003/765</a>
Section 276(1)(partially)	01.04.03	<a href="#">2003/766</a>
Section 276(1) (remaining purposes)	20.06.03	<a href="#">2003/1397</a>
Section 276(2) to (4)	18.03.03	<a href="#">2003/765</a>
Section 277	18.03.03	<a href="#">2003/765</a>
Section 278 (partially)	01.04.03	<a href="#">2003/766</a>
Section 278 (partially)	20.06.03	<a href="#">2003/1397</a>
Section 278 (partially)	15.09.03	<a href="#">2003/2093</a>
Section 278 (partially)	01.04.04	<a href="#">2003/2093</a>
Schedules 1 and 2	01.04.03	<a href="#">2003/766</a>
Schedule 3, Parts 1 and 3	01.04.03	<a href="#">2003/766</a>
Schedule 3, Part 2	18.03.03	<a href="#">2003/765</a>

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Schedule 4 (partially)	01.04.03	<a href="#">2003/766</a>
Schedule 4 (remaining purposes)	20.06.03	<a href="#">2003/1397</a>
Schedule 5 (partially)	01.04.03	<a href="#">2003/766</a>
Schedule 5 (partially)	18.07.04	<a href="#">2004/1866</a>
Schedule 7	20.06.03	<a href="#">2003/1397</a>
Schedule 8	20.06.03	<a href="#">2003/1397</a>
Schedule 9 (partially)	20.06.03	<a href="#">2003/1397</a>
Schedule 10	20.06.03	<a href="#">2003/1397</a>
Schedule 11 (partially)	01.04.03	<a href="#">2003/766</a>
Schedule 11 (partially)	20.06.03	<a href="#">2003/1397</a>
Schedule 12	20.06.03	<a href="#">2003/1397</a>
Schedule 13	20.06.03	<a href="#">2003/1397</a>
Schedule 14	20.06.03	<a href="#">2003/1397</a>
Schedule 15	20.06.03	<a href="#">2003/1397</a>
Schedule 16	15.09.03	<a href="#">2003/2093</a>
Schedule 17 (partially)	15.09.03	<a href="#">2003/2093</a>
Schedule 18	15.09.03	<a href="#">2003/2093</a>
Schedule 19 (partially)	01.04.04	<a href="#">2003/2093</a>
Schedule 20	01.04.04	<a href="#">2003/2093</a>
Schedule 21	01.04.04	<a href="#">2003/2093</a>
Schedule 22	01.04.04	<a href="#">2003/2093</a>
Schedule 23	01.04.04	<a href="#">2003/2093</a>
Schedule 24 (partially)	18.03.03	<a href="#">2003/765</a>
Schedule 24 (partially)	01.04.03	<a href="#">2003/766</a>
Schedule 24 (remaining purposes)	20.06.03	<a href="#">2003/1397</a>
Schedule 25 (partially)	01.04.03	<a href="#">2003/766</a>
Schedule 25 (partially)	20.06.03	<a href="#">2003/1397</a>
Schedule 26 (partially)	01.04.03	<a href="#">2003/766</a>
Schedule 26 (partially)	20.06.03	<a href="#">2003/1397</a>
Schedule 26 (partially)	15.09.03	<a href="#">2003/2093</a>
Schedule 26 (partially)	01.04.04	<a href="#">2003/2093</a>