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STATUTORY INSTRUMENTS

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**2009 No. 2396**

**COMPETITION**

**The Enterprise Act 2002 (Merger Fees) (Amendment) Order 2009**

*Made - - - - 2nd September 2009*  
*Laid before Parliament 4th September 2009*  
*Coming into force - - 1st October 2009*

The Secretary of State, in exercise of the powers conferred by section 121 of the Enterprise Act 2002 (1), makes the following Order:

**Citation, coming into force and transitional provision**

1.—(1) This Order may be cited as the Enterprise Act 2002 (Merger Fees) (Amendment) Order 2009 and shall come into force on 1<sup>st</sup> October 2009.

(2) This Order shall not apply to—

- (a) a decision in relation to a possible reference by the OFT under section 22 of the Enterprise Act 2002, or by the Secretary of State under section 45(2) or (3) of the Enterprise Act 2002, that it is or may be the case that a relevant merger situation has been created; or
- (b) the making by the OFT of a merger reference to the Commission under section 32(b) of the Water Industry Act 1991 (2);

where the decision or reference relates to two or more enterprises ceasing to be distinct enterprises before 1<sup>st</sup> October 2009.

**Amendments to the Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003**

2.—(1) The Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003 (3) is amended as follows.

- (2) In article 5(1)(a), for “£15,000” substitute “£30,000”.
- (3) In article 5(1)(b), for “£30,000” substitute “£60,000”.

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(1) 2002 c.40.

(2) 1991 c.56.

(3) S.I. 2003/1370 as amended by S.I. 2004/3204 and S.I. 2005/3558.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (4) In article 5(1)(c), for “£45,000” substitute “£90,000”.
- (5) In article 5(4)(a), for “£15,000” substitute “£30,000”.
- (6) In article 5(4)(b), for “£30,000” substitute “£60,000”.
- (7) In article 5(4)(c), for “£45,000” substitute “£90,000”.

2nd September 2009

*Kevin Brennan*  
Minister for Further Education, Skills,  
Apprenticeships and Consumer Affairs  
Department for Business, Innovation and Skills

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## EXPLANATORY NOTE

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

This Order amends the Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003 (S.I. 2003/1370). The Order increases the amount of fees payable in each of the three fee bands while making no change to the structure of the bands.

Article 1(2) contains a transitional provision which applies where, in the case of a completed merger, a decision is made relating to a possible reference by the OFT or the Secretary of State under sections 22 or 45(2) or (3) of the Enterprise Act 2002 or a reference is made by the OFT under section 32(b) of the Water Industry Act 1991. In the case of a completed merger falling within the transitional provision, fees will only be payable at the new higher rate where the decision or reference relates to two or more enterprises which cease to be distinct on or after 1<sup>st</sup> October 2009. Section 27 of the Enterprise Act 2002 governs when two enterprises cease to be distinct.

A Regulatory Impact Assessment considering the effects of increasing merger fees to the levels introduced by this Order was prepared in 2006 when the decision to introduce the increases was originally announced. The decision was taken to introduce the fee increases in two stages. The first stage of the increases was implemented by S.I. 2005/3558, while implementation of the second stage of the increases has been delayed until now. The original Regulatory Impact Assessment remains valid for this Order. A copy of the Regulatory Impact Assessment can be obtained from the Consumer and Competition Policy Directorate, Department for Business, Innovation and Skills, Bay 415, 1 Victoria Street, London SW1H 0ET, telephone 0207 215 5009.