

Order made by the Secretary of State, laid before Parliament under section 124(7) of the Enterprise Act 2002, for approval by resolution of each House of Parliament within twenty-eight days beginning with the day on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2020 No. 627

COMPETITION

The Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2020

Made	- - - -	at 11.55 a.m. on 22nd June 2020
Laid before Parliament		at 4.00 p.m. on 22nd June 2020
Coming into force	- -	23rd June 2020

The Secretary of State, in exercise of the powers conferred by sections 58(3) and 124(2) and 124(4) of the Enterprise Act 2002(1), makes the following Order.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2020 and shall come into force on the day after the day on which it is laid before Parliament.

(2) In this Order, “the Act” means the Enterprise Act 2002.

Amendment of section 58 of the Enterprise Act 2002

2. In section 58 of the Act (specified public interest considerations), after subsection (2D) insert—

“(2E) The need to maintain in the United Kingdom the capability to combat, and to mitigate the effects of, public health emergencies is specified in this section.”.

(1) 2002 c. 40. Section 58 was amended by section 375(1) of the Communications Act 2003 (c. 21), paragraphs 59 and 100 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c. 24), S.I. 2004/1079 and S.I. 2008/2645. Section 124(4) was amended by paragraph 24(3) of Schedule 16 to the Communications Act 2003, and section 31(3) of, and paragraphs 1 and 13(1) and 13(2) of Schedule 8 to, the Enterprise and Regulatory Reform Act 2013.

Amendment of Schedule 8 to the Enterprise Act 2002

3. In Schedule 8 to the Act(2) (provision that may be contained in certain enforcement orders), after paragraph 20B insert—

“Maintaining the capability to combat etc public health emergencies

20BA.—(1) This paragraph applies for the purposes of a relevant order under paragraph 5, 10 or 11 of Schedule 7 (enforcement orders in cases relating to maintaining the capability to combat etc public health emergencies) but not for any other purposes of this Part or Part 4 or any other enactment.

(2) The order may make such provision as the person making the order considers to be appropriate for the purpose of maintaining in the United Kingdom the capability to combat, or to mitigate the effects of, public health emergencies.

(3) Such provision may, in particular, include provision requiring a person to do, or not to do, particular things.

(4) This paragraph is without prejudice to the operation of the other paragraphs of this Schedule in relation to the order.

(5) In this paragraph “relevant order” means an order—

- (a) which is to be made following the giving of an intervention notice or special intervention notice which mentions the consideration specified in section 58(2E); and
- (b) to which the consideration is still relevant.”.

Amendment of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003

4.—(1) In the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003(3), Schedule 3 (other provisions of the Act applicable to the Order) is amended as follows.

(2) In paragraph 2(2)(ba), omit the final “and”.

(3) After paragraph 2(2)(ba) insert—

“(bb) in paragraph 20BA—

- (i) in sub-paragraph (1) for the words “Schedule 7” there were substituted “Schedule 2 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003” and for the words “this Part or Part 4” there were substituted “the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003”; and
- (ii) in sub-paragraph (5)(a) for the words “an intervention notice or special intervention notice” there were substituted “a European intervention notice”; and”.

Nadhim Zahawi
Parliamentary Under-Secretary of State
Department for Business, Energy and Industrial
Strategy

At 11.55 a.m. on 22nd June 2020

(2) Paragraph 20B was inserted by [S.I. 2008/2645](#). Paragraph 20C was inserted by section 49 of the Enterprise and Regulatory Reform Act 2013.

(3) [S.I. 2003/1592](#), amended by [S.I. 2003/3180](#); there are other amending instruments but none is relevant.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 58 of the Enterprise Act 2002 (the “Act”) specifies the public interest considerations in relation to which the Secretary of State may intervene in relevant merger situations (as defined in section 23 of the Act), special merger situations (as defined in section 59 of the Act), and European relevant merger situations (as defined in section 68(2) of the Act).

Article 2 of this Order inserts a new subsection (2E) into section 58 of the Act specifying as a public interest consideration the need to maintain in the United Kingdom the capability to combat, and to mitigate the effects of, public health emergencies.

Article 3 of this Order inserts a new paragraph 20BA into Schedule 8 to the Act. This gives the Secretary of State the power to include such provision as he considers appropriate for the purpose of maintaining in the United Kingdom the capability to combat, or to mitigate the effects of, public health emergencies in merger and special merger enforcement orders. Article 4 of this Order amends Schedule 3 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 to give the Secretary of State an equivalent power in relation to European merger enforcement orders.

A full impact assessment has not been produced for this instrument as no significant impact on business activities is foreseen.