

2004 No. 3204

COMPETITION

**The Enterprise Act 2002 (Merger Fees and Determination of
Turnover) (Amendment) Order 2004**

<i>Made</i> - - - -	<i>2nd December 2004</i>
<i>Laid before Parliament</i>	<i>7th December 2004</i>
<i>Coming into force</i> - -	<i>29th December 2004</i>

The Secretary of State, in exercise of the powers conferred upon her by sections 28, 121 and 124(2) of the Enterprise Act 2002(a), hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Enterprise Act 2002 (Merger Fees and Determination of Turnover) (Amendment) Order 2004 and shall come into force on 29th December 2004.

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(b) is amended as follows.

(2) In article 2 (interpretation)—

(a) in paragraph (c), the word “and” shall cease to have effect;

(b) in paragraph (d)—

(i) after the words “section 22 or 33 of the Act” there is inserted “or section 32 of the Water Industry Act 1991”; and

(ii) for the words “section 45 of the Act.” there is substituted “section 45 of the Act; and”;

(c) after paragraph (d) there is inserted—

“(e) “water enterprise” means an enterprise carried on by a water undertaker or sewerage undertaker.”.

(3) In article 3 (matters in respect of which fees are payable), after paragraph (c) there is inserted—

“(d) the making by the OFT of a merger reference to the Commission under section 32 of the Water Industry Act 1991.”.

(4) In article 5 (amount of fees)—

(a) in paragraph (1), for the words “article 3” there is substituted “article 3(a) to (c)”;

(a) 2002 c.40.

(b) S.I. 2003/1370 amended by S.I. 2004/1079.

- (b) in paragraph (2), for the words “this article” there is substituted “paragraph (1)”;
- (c) in paragraph (3), for the words “this article” there is substituted “paragraph (2)”;
- (d) after paragraph (3) there is inserted—

“(4) The amount of the fee payable under article 3(d) shall be—

- (a) where the value of the turnover in England and Wales of the water enterprise which has been taken over or (as the case may be) which it is proposed should be taken over, does not exceed £20 million, £5,000;
- (b) where the value of such turnover exceeds £20 million but does not exceed £70 million, £10,000;
- (c) where the value of such turnover exceeds £70 million, £15,000.

(5) For the purposes of paragraph (4) the value of the turnover in England and Wales of the water enterprise which has been taken over or (as the case may be) which it is proposed should be taken over, shall be determined by taking the total value of the turnover of the water enterprises ceasing to be distinct enterprises and deducting—

- (a) the turnover of any water enterprise continuing to be carried on under the same ownership and control; or
- (b) if there is no water enterprise continuing to be carried on under the same ownership and control, the turnover which, of all the turnovers concerned, is the turnover of the highest value.

(6) For the purposes of paragraph (5) the turnover in England and Wales of a water enterprise shall be determined in accordance with the Regulations made pursuant to section 33(4) of the Water Industry Act 1991.”.

(5) In article 6 (person by whom fees are payable)—

- (a) in paragraphs (2) and (5), for the words “or (c)” there is substituted “, (c) or (d)”;
- (b) in paragraph (3)(a), after the words “relevant merger situation” there is inserted “or the merger or prospective merger of two or more water enterprises”;
- (c) in paragraph (5), after the words “relevant merger situation” there is inserted “or the merger or prospective merger of two or more water enterprises”.

(6) In article 7 (exemption for acquisitions by small and medium sized enterprises), in paragraph (2) for the words “or (c)” there is substituted “,(c) or (d)”.

(7) In article 9 (time when fees are payable), in paragraph (2) after the words “3(b)” there is inserted “or (d)”.

(8) In article 11 (determination of turnover in the United Kingdom of an enterprise), in paragraph (1) for the words “article 5” there is substituted “article 5(3)”.

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

2nd December 2004

EXPLANATORY NOTE

(This note is not part of the Order)

The Order amends the Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003 (S.I. 2003/1370 as amended by S.I. 2004/1079) (“the Merger Fees Order”). The Merger Fees Order provides for merger fees to be payable in respect of mergers that are assessed under Part 3 of the Enterprise Act 2002 (c. 40) (“the Act”).

Section 70 of, and Schedule 6 to, the Act amend the special regime applying to mergers between water or sewerage undertakers in England and Wales, as set out in sections 32 to 35 of the Water Industry Act 1991 (c.56). The main change to the regime is the transfer of responsibility for making such water merger references from the Secretary of State to the Office of Fair Trading (“the OFT”) and the transfer of responsibility for final decisions on remedies from the Secretary of State to the Competition Commission. This Order amends the Merger Fees Order by inserting a new article 3(d) so that a fee is payable to the OFT in relation to the making by the OFT of a merger reference to the Competition Commission under section 32 of the Water Industry Act 1991. The fee payable is calculated by reference to the value of the turnover in England and Wales of the water enterprise being taken over.

Prior to the commencement of the provisions of the Act mentioned above, and the commencement of this Order, merger fees were payable in connection with merger references made by the Secretary of State under section 32 of the Water Industry Act 1991 by virtue of the Merger (Fees) Regulations 1990 (S.I. 1990/1660 as amended by S.I. 2001/1199). These Regulations will fall on the commencement of this Order when the repeal of its enabling power – section 152 of the Companies Act 1989 – is also commenced.

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

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