
STATUTORY INSTRUMENTS

2003 No. 1397

The Enterprise Act 2002 (Commencement No. 3, Transitional and Transitory Provisions and Savings) Order 2003

Citation and interpretation

1.—(1) This Order may be cited as the Enterprise Act 2002 (Commencement No.3, Transitional and Transitory Provisions and Savings) Order 2003.

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

(3) In this Order (save where the context otherwise requires) references to sections and Schedules are references to sections of and Schedules to the Act.

Provisions of the Act commenced by this Order

2.—(1) 20th June 2003 is the appointed day for the coming into force of the provisions of the Act listed in the first column of the Schedule to this Order for the purposes set out in the second column.

(2) 20th June 2003 is “the appointed day” for the purposes of paragraphs 13 to 18 of Schedule 24 to the Act.

Exception for mergers of water or sewerage undertakers; transitory provisions etc. relating to such mergers

3.—(1) Where the Schedule to this Order states that any amendment, repeal or revocation comes into force for all purposes subject to this paragraph, it does not come into force for purposes relating to—

- (a) the making by the Secretary of State of references under section 32 of the Water Industry Act 1991⁽¹⁾ (duty to refer merger of water or sewerage undertakings), or
- (b) any references so made.

(2) The modifications in paragraphs (3) to (5) apply until the coming into force of section 70 and Schedule 6 (which are to replace sections 32 to 35 of the Water Industry Act 1991).

(3) Section 35(4) of the Water Industry Act 1991 shall have 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”.

(4) Paragraph 5 of Schedule 1 to the Competition Act 1998⁽²⁾ shall have effect as if in paragraph (d) for “OFT” there were substituted “Secretary of State”.

(5) Section 121 shall have effect as if the following were omitted—

- (a) in subsection (1) the words from “and sections 32” to the end;
- (b) subsection (3)(d); and
- (c) in subsection (8) the words from “and sections 32” to the end.

(1) 1991 c. 56.
(2) 1998 c. 41.

(6) Paragraph 13 of Schedule 24 shall not apply in any case in which the Secretary of State is required to make a reference under section 32 of the Water Industry Act 1991.

Transitional provisions relating to merger references

4.—(1) Subject to paragraphs 15 to 18 of Schedule 24, the old law shall in particular continue to apply in relation to the enforcement, variation or release of any undertakings accepted before the appointed day under section 75G or 88 of the 1973 Act in relation to any relevant arrangements which are not otherwise dealt with by paragraph 13 of Schedule 24.

(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 which has occurred before the appointed day 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 which has occurred before the appointed day, paragraph 13(1) of Schedule 24 shall accordingly cease to apply in relation to the merger.

(4) In this article—

“appointed day”, “relevant arrangements”, “new law” and “old law” have the same meaning as in paragraph 13 of Schedule 24;

“enactment” has the meaning given by section 129(1); and

“merger” means a ceasing of two or more enterprises to be distinct enterprises (within the meaning of Part 5 of the 1973 Act).

Savings related to section 47 of the Competition Act 1998

5. The commencement of section 17 shall not have effect in relation to any decision made before the 20th June 2003 and any application to the OFT or appeal to the Competition Appeal Tribunal in relation to such a decision may be made or proceeded with notwithstanding the commencement of section 17.

Savings in relation to orders and undertakings to which the Fair Trading Act 1973 applies by virtue of Schedule 11 to the Fair Trading Act 1973

6. The commencement of the amendments, repeals and revocations in Schedules 25 and 26 relating to the 1973 Act⁽³⁾ shall not have effect in relation to—

(a) any orders which by virtue of paragraph 1 of Schedule 11 to that Act have effect as if made under that Act, or

(b) undertakings to which paragraph 9 of Schedule 11 to that Act applies.

Savings relating to proceedings under Part III of the Fair Trading Act 1973

7. Where any proceedings have been commenced under Part III of the 1973 Act before the 20th June 2003 then those proceedings shall not be affected by the repeal of Part III but may be continued until they are finally determined (including any appeals that may be brought) and the Court may make any order that it could have made on the application had Part III not been repealed.

(3) 1973 c. 41.

Savings relating to existing references and investigations to the Competition Commission under various regulatory statutes

8. The commencement of the provisions of Schedules 11, 25 and 26 shall not have effect in relation to any reference that is made (or, in the case of the Financial Services and Markets Act 2000(4), any investigation that is commenced) before the 20th June 2003 under any of the following provisions—

- (a) section 11 of the Competition Act 1980(5);
- (b) section 13 of the Telecommunications Act 1984(6);
- (c) section 43 of the Airports Act 1986(7);
- (d) section 24 or 41E of the Gas Act 1986(8);
- (e) section 12 or 56C of the Electricity Act 1989(9);
- (f) Schedule 4 to the Broadcasting Act 1990(10);
- (g) section 12 or 14 of the Water Industry Act 1991(11);
- (h) Article 15 of the Electricity (Northern Ireland) Order 1992(12);
- (i) section 13 of, or Schedule 4A to, the Railways Act 1993(13);
- (j) Article 34 of the Airports (Northern Ireland) Order 1994(14);
- (k) Article 15 of the Gas (Northern Ireland) Order 1996(15);
- (l) section 15 of the Postal Services Act 2000(16);
- (m) section 162 or 306 of the Financial Services and Markets Act 2000; and
- (n) section 12 of the Transport Act 2000(17).

Savings related to the last annual report of the Director General of Fair Trading

9. The commencement of the repeal of section 125 of the 1973 Act and section 5 of the Consumer Credit Act 1974(18) shall not have effect in relation to the making, laying and publishing of the annual report referred to in paragraph 5 of Schedule 24.

Savings related to repeals

10. The commencement by this Order of the repeal of an enactment previously repealed subject to savings does not affect the continued operation of those savings.

Savings related to the application of section 6 of the Fair Trading Act 1973

11. The commencement of the repeal of section 6 of the 1973 Act shall not have effect in relation to the references to that section in the Telecommunications (Licence Modification) (Mobile

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- (4) 2000 c. 8.
 - (5) 1980 c. 21.
 - (6) 1984 c. 12.
 - (7) 1986 c. 31.
 - (8) 1986 c. 44.
 - (9) 1989 c. 29.
 - (10) 1990 c. 42.
 - (11) 1991 c. 56.
 - (12) S.I.1992/231 (N.I. 1).
 - (13) 1993 c. 43.
 - (14) S.I. 1994/426 (N.I. 1)
 - (15) S.I. 1996/275 (N.I. 2)
 - (16) 2000 c. 26.
 - (17) 2000 c. 38.
 - (18) 1974 c. 39.

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

Public Telecommunication Operators) Regulations 1999(19), the Telecommunications (Licence Modification) (British Telecommunications plc) Regulations 1999(20) or the Telecommunications (Licence Modification) (Kingston Communications (Hull) plc) Regulations 1999(21).

Savings related to action taken following certain monopoly and other references

12. The commencement of the provisions of Schedules 25 and 26 in relation to the Registered Designs Act 1949(22), the Agricultural Marketing Act 1958(23), the Patents Act 1977(24) and the Agricultural Marketing (Northern Ireland) Order 1982(25) shall not have effect to prevent the taking of any action, or to affect the enforcement of any requirement or licence terms resulting from any action taken, pursuant to these enactments following a report of the Commission made before the 20th June 2003.

Stephen Timms,
Minister of State for E-Commerce and
Competitiveness,
Department of Trade and Industry

28th May 2003

(19) S.I. 1999/2452.
(20) S.I. 1999/2453.
(21) S.I. 1999/2455.
(22) 1949 c. 88.
(23) 1958 c. 47.
(24) 1977 c. 37.
(25) S.I. 1982/1080 (N.I. 12).