STATUTORY INSTRUMENTS

2015 No. 1936

COMPETITION
WATER INDUSTRY, ENGLAND AND WALES

The Water Mergers (Miscellaneous Amendments) Regulations 2015

Made - - - -	*24th November 2015*
Laid before Parliament	*26th November 2015*
Coming into force - -	*18th December 2015*

The Secretary of State makes these Regulations in exercise of the powers conferred by—

(a) section 219(1)(**1**) of, and paragraph 1 of Schedule 4ZA to, the Water Industry Act 1991(**2**); and

(b) sections 121(1), (2)(c) and (3)(d) and 124(2) of the Enterprise Act 2002(**3**).

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Water Mergers (Miscellaneous Amendments) Regulations 2015 and come into force on 18th December 2015.

Amendment of subordinate legislation

2.—(1) The Water Mergers (Modification of Enactments) Regulations 2004(**4**) are amended in accordance with Part 2.

(2) The Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003(**5**) is amended in accordance with Part 3.

(**1**) See the definition of "prescribed" in section 219(1).
(**2**) 1991 c.56. Schedule 4ZA was inserted by Schedule 6 to the Enterprise Act 2002 (c.40).
(**3**) 2002 c. 40. Section 121 was amended by paragraph 156 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c.24); there are other amendments but none are relevant.
(**4**) S.I. 2004/3202, amended by S.I. 2014/549; there are other amending instruments but none is relevant.
(**5**) S.I. 2003/1370; relevant amending instruments are S.I. 2004/1079, 2004/3204, 2005/3558 and 2014/534.

PART 2

Amendments to the Water Mergers (Modification of Enactments) Regulations 2004

Regulation 3

3. In paragraph (1) of regulation 3 (omitted provisions)—

(a) omit sub-paragraph (ba);

(b) in sub-paragraph (e), for "sections 73 to 75 (undertakings in lieu of references, etc);" substitute "section 73 (undertakings in lieu of references under section 22 or 33)(**6**);";

(c) in sub-paragraph (f), at the end insert "and"; and

(d) omit sub-paragraph (fa).

Regulation 4

4. In regulation 4 (sections 22 to 24: references in relation to completed mergers), in the text of section 22 of the 2002 Act as it has effect as substituted by that regulation, after subsection (2) insert—

"(3) No reference shall be made under section 32(b) of the 1991 Act if the period within which the CMA is required by section 34ZA of the 2002 Act to decide whether the duty to make a reference applies has expired without such a decision having been made.".

Regulation 5

5. In regulation 5 (section 25: extension of time-limits)—

(a) in paragraph (a), for "in subsections (1), (2) and (9)" substitute "in subsections (1), (2), (4), (9) and (10)";

(b) after paragraph (a), insert—

"(aa) in subsection (4), for "section 73" there were substituted "section 33D of the 1991 Act"; ";

(c) in paragraph (b), for "subsections (4) to (8), (10) and (11)" substitute "subsections (6) to (8)"; and

(d) for paragraph (c) substitute—

"(d) in subsection (10)(b), for "subsections (2), (4) and (6)" there were substituted "subsections (2) and (4)".".

Regulation 9

6. In regulation 9 (section 33: duty to make references in relation to anticipated mergers), in the text of section 33 of the 2002 Act as it has effect as substituted by that regulation—

(a) the existing text becomes subsection (1); and

(b) after that subsection insert—

"(2) No reference shall be made under section 32(a) of the 1991 Act if the period within which the CMA is required by section 34ZA of the 2002 Act to decide whether the duty to make a reference applies has expired without such a decision having been made.".

(**6**) Section 73 was amended by paragraph 113 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

New regulations 10ZA, 10ZB and 10ZC

7. After regulation 10, insert—

"**Section 34ZA: Time-limits for decisions about references**

10ZA. Section 34ZA (time-limits for decisions about references)(**7**) has effect as if—

(a) in subsection (1)—

(i) in the words before paragraph (a), for "section 22 or 33" there were substituted "section 32(a) or (b) of the 1991 Act"; and

(ii) in paragraph (a), for "(taking account of the power under section 22(2) or (as the case may be) 33(2) and the operation of section 22(3) or (as the case may be) 33(3))" there were substituted "(taking account of the operation of sections 33(1) and 33A(4) of the 1991 Act and the power under section 33A(1) or (as the case may be) (2) of the 1991 Act)";

(b) in subsection (2)—

(i) in the words before paragraph (a), for "section 22 or 33" there were substituted "section 32(a) or (b) of the 1991 Act"; and

(ii) in paragraph (a), for "section 73" there were substituted "section 33D of the 1991 Act";

(c) in subsection (3), in the definition of "the initial period"—

(i) paragraph (a) were omitted; and

(ii) in paragraph (b), "in any other case," were omitted and the remaining text ceased to be paragraph (b); and

(d) subsections (4) and (5) were omitted.

Section 34ZB: Extension of time-limits

10ZB. Section 34ZB (extension of time-limits)(**8**) has effect as if subsections (5) and (8) were omitted.

Section 34ZC: Sections 34ZA and 34ZB: supplementary

10ZC. Section 34ZC (sections 34ZA and 34ZB: supplementary)(**9**) has effect as if the references to subsection (5) of section 34ZB were omitted.".

Regulation 17

8. In regulation 17 (section 72: initial enforcement orders: completed or anticipated mergers)—

(a) for paragraph (a)(i) substitute—

"(i) in paragraph (a), for "section 22 or 33" there were substituted "section 32(a) or (b) of the 1991 Act"; and"; and

(b) in paragraph (d)—

(i) for sub-paragraph (i) substitute—

(**7**) Section 34ZA was inserted by paragraph 4 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.
(**8**) Section 34ZB was inserted by paragraph 4 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.
(**9**) Section 34ZC was inserted by paragraph 4 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.

"(i) in paragraph (a), for "section 22 or 33" there were substituted "section 32(a) or (b) of the 1991 Act"; and";

(ii) at the end of sub-paragraph (i), omit "and";

(iii) after sub-paragraph (i), insert—

"(ia) in paragraph (b), for "section 73" there were substituted "section 33D of the 1991 Act"; and"; and

(iv) for sub-paragraph (ii) substitute—

"(ii) in paragraph (d), for "section 22 or 33" there were substituted "section 32(a) or (b) of the 1991 Act"".

New regulations 17A, 17B and 17C

9. After regulation 17, insert—

"**Section 73A: Time-limits for consideration of undertakings**

17A. Section 73A (time-limits for consideration of undertakings)(**10**) has effect as if—

(a) in subsection (1)—

(i) in the words before paragraph (a), for "section 73(2)" there were substituted "section 33D(1) of the 1991 Act"; and

(ii) paragraph (b) and the "or" preceding it were omitted; and

(b) in subsection (2), for "section 73(2)" there were substituted "section 33D(1) of the 1991 Act".

Section 74: Effect of undertakings under section 73

17B. Section 74 (effect of undertakings under section 73)(**11**) has effect as if—

(a) in the heading, for "section 73" there were substituted "section 33D of the 1991 Act";

(b) in subsection (1)—

(i) in the words before paragraph (a), for "relevant authority shall not make a reference under section 22, 33 or 45" there were substituted "CMA shall not make a reference under section 32(a) or (b) of the 1991 Act"; and

(ii) in paragraph (a), for "section 73" there were substituted "section 33D of the 1991 Act"; and

(c) subsection (5) were omitted.

Section 75: Order making power where undertakings under section 73 not fulfilled etc

17C. Section 75 (order making power where undertakings under section 73 not fulfilled etc)(**12**) has effect as if—

(a) in the heading, for "section 73" there were substituted "section 33D of the 1991 Act";

(**10**) Section 73A was inserted by paragraph 7 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.
(**11**) Section 74 was amended by paragraph 114 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.
(**12**) Section 75 was amended by paragraph 115 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(b) in subsection (1)(a), for "section 73" there were substituted "section 33D of the 1991 Act";

(c) in subsection (2), for "section 73(2)" there were substituted "section 33D(2) of the 1991 Act"; and

(d) for subsection (3) there were substituted—

"(3) Subsections (4) and (5) of section 33D of the 1991 Act shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (1) of that section.".".

New regulation 24A

10. After regulation 24, insert—

"**Section 89: Subject-matter of undertakings**

24A. Section 89 (subject-matter of undertakings)(**13**) has effect as if for subsection (2) there were substituted—

"(2) In this Part "enforcement undertaking" means an undertaking under section 33D of the 1991 Act or an undertaking under section 80 or 82.".".

New regulation 25A

11. Before regulation 26, insert—

"**Section 103: Duty of expedition in relation to references**

25A. Section 103 (duty of expedition in relation to references) has effect as if in subsection (1), after "making and determining references under this Part" there were inserted "or under sections 32 to 35 of the 1991 Act".".

Regulation 26

12. In regulation 26 (section 104: certain duties of relevant authorities to consult), for paragraph (a) substitute—

"(a) in sub-paragraph (i) of paragraph (a), for "section 22 or 33 or accept undertakings under section 73" there were substituted "section 32(a) or (b) of the 1991 Act or accept undertakings under section 33D of that Act"; and".

Regulation 27

13. In regulation 27 (section 105: general information duties of the CMA), for paragraph (a) substitute—

"(a) for "section 22 or 33" there were substituted "section 32(a) or (b) of the 1991 Act"; and".

Regulation 28

14. For regulation 28 (section 106: advice and information about references under sections 22 and 33) substitute—

(**13**) Section 89 was amended by paragraph 32 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.