

EXPLANATORY MEMORANDUM TO
THE ENTERPRISE AND REGULATORY REFORM ACT 2013 (COMPETITION)
(CONSEQUENTIAL, TRANSITIONAL AND SAVING PROVISIONS) (No. 2) ORDER
2014

2014 No. 549

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order makes consequential amendments to secondary legislation in connection with the commencement of Parts 3 and 4 of the Enterprise and Regulatory Reform Act 2013.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 25 of and Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (“the Act”) provide for the creation of the Competition and Markets Authority (“CMA”). Section 26 of and Schedules 5 and 6 to the Act provide for the abolition of the Office of Fair Trading (“OFT”) and the Competition Commission (“the Commission”) and for the transfer of functions from the OFT and the Commission to the CMA.

4.2 Part 4 of the Act makes various changes to the competition functions which the CMA will assume. In particular, the Act amends Part 3 (mergers) and Part 4 (markets studies and market investigations) of the Enterprise Act 2002.

4.3 Section 25(1), (2) and (4) of the Act, and provisions of Schedule 4 to the Act, were brought into force on 1st October 2013 by the Enterprise and Regulatory Reform Act 2013 (Commencement No. 3, Transitional Provisions and Savings) Order 2013 (S.I. 2013/2227) in order to establish the CMA and to allow it to prepare to assume its functions. The remaining provisions of Part 3 and the provisions of Part 4 of the Act are to be commenced on 1st April. This Order makes consequential amendments to secondary legislation in connection with the commencement of those provisions.

4.4 An earlier order under section 99 of the Act making similar consequential amendments to primary legislation was laid on 3rd March with a view to it coming into force, subject to due Parliamentary process, at the same time as this Order on 1st April 2014

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The amendments are consequential to the transition to the Competition and Markets Authority-led competition regime introduced from 1st April 2014 by the Enterprise and Regulatory Reform Act 2013. Further information on the new arrangements can be found in the Department for Business, Innovation and Skill's policy paper on the legislation at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/87928/bis-13-654-enterprise-and-regulatory-reform-bill-policy-paper-jan-2013.pdf

7.2 Schedule 1 to the Order makes consequential amendments in connection with the transfer of functions to the CMA and the abolition of the OFT and Commission by substituting the CMA for the OFT and the Commission in a number of pieces of secondary legislation. It also makes amendments consequential on the amendments to competition law made under Part 4 of the Act.

7.3 Many of the amendments are simply replacing references to the OFT and the Commission with references to the CMA. However, Schedule 1 also makes consequential amendments to the Water Mergers (Modification of Enactments) Regulations 2004 (S.I. 2004/3202) ("the 2004 Regulations") in connection with the amendments made by the Act to the general regime for the regulation of mergers under Part 3 of the Enterprise Act 2002 ("the 2002 Act"). Whilst Part 3 of the 2002 Act contains the main statutory scheme for the regulation of mergers, sections 32 to 35 of, and Schedule 4ZA to, the Water Industry Act 1991 ("the 1991 Act") provide a separate scheme for the regulation of mergers between water or sewerage undertakers ("water mergers") in England and Wales. Schedule 4ZA provides that Part 3 of the 2002 Act and related provisions in that Act apply to water mergers subject to prescribed modifications. The 2004 Regulations provide for relevant modifications. The Order amends the 2004 Regulations so that the modifications they make to Part 3 of 2002 Act as it applies to water mergers take account of the amendments to the general merger regime made by the Act.

Schedule 1 also makes consequential amendments in connection with the transfer to the CMA of the Commission's role in hearing appeals in connection with regulatory matters in the postal services sector. In particular these amendments ensure that the investigatory powers under the 2002 Act available to the CMA in connection with an appeal function correctly in the light of the changes made by the Act to those powers.

7.4 Part 3 of the Schedule makes similar amendments to Welsh and Northern Irish legislation.

7.5 Article 3 and Schedule 2 make transitional and saving provision in connection with the transfer of functions from the OFT and the Commission to the CMA and the amendments to competition law made by Part 4 of the Act. Transitional provision and savings are also made, in relation to amendments made by the Act to the provisions of Part 3 of the 2002 Act applied by the 2004 Regulations in connection with water mergers, by the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014 (S.I. 2014/416 (C.17)). That Order also makes savings provisions which are relevant to the revocations made to the Enterprise Act 2002 (Merger Pre-notification) Regulations 2003 (S.I. 2003/1369) by Schedule 1 to the Order.

Consolidation

7.6 The Order makes amendments to a large number of different instruments and cannot consolidate them.

8. Consultation outcome

8.1 No formal consultation was undertaken on these consequential amendments as they make technical and relatively minor amendments or revocations that are consequential on provisions of the Act which were scrutinised by Parliament. We have however, consulted with other government departments and devolved administrations that have responsibility for the legislation being amended by the Order.

9. Guidance

9.1 No guidance is required in respect of this Order. However, the CMA has published guidance on the changes to competition law made by the Act at <https://www.gov.uk/government/publications?departments%5B%5D=competition-and-markets-authority>

10. Impact

10.1 The impact assessment completed for Parts 3 and 4 of the Enterprise and Regulatory Reform Bill, introduced to Parliament on 23rd May 2012, contained an assessment of the effect that the reforms to the competition regime will have on the costs of business and the public and voluntary sector. It can be found at the website: <https://www.gov.uk/government/publications/strengthening-competition-and-creating-a-single-market-authority>

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 The Order makes consequential amendments only. However, section 56 of the Act, requires the Secretary of State to conduct a review within five years of the operation of certain of the provisions of Part 4 of the Act (which contains amendments to the mergers and market studies and market investigations provisions of the 2002 Act) , which could encompass amendments by this Order.

12.2 The impact assessment for the Enterprise and Regulatory Reform Act 2013 competition provisions stated that there would be a review of the competition regime introduced by the Act in April 2018.

13. Contact

Stephen Childerstone at the Department for Business, Innovation and Skills; Telephone: 0207-215 0354; or email: stephen.childerstone@bis.gsi.gov.uk can answer any queries regarding the instrument.