

EXPLANATORY MEMORANDUM TO
THE DIGITAL MARKETS, COMPETITION AND CONSUMERS ACT 2024
(WATER MERGERS) (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2024

2024 No. 840

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Justin Madders MP, Minister for Employment Rights, Competition and Markets at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 Alex Williams, Deputy Director for Competition Policy, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Rebecca Marighella at the Department for Business and Trade can be contacted at Rebecca.Marighella@businessandtrade.gov.uk with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes consequential amendments to the Water Mergers (Modification of Enactments) Regulations 2004 (S.I. 2004/3202) (the “2004 Regulations”). These are technical amendments that are necessary following the passage of the Digital Markets, Competition and Consumers Act 2024 (“the DMCCA”), to ensure that the 2004 Regulations do not cross-refer to text in the Enterprise Act 2002 which is no longer present, or which is no longer the same.

4.2 The Water Industry Act 1991 applies Part 3 of the Enterprise Act 2002 (which contains the main statutory scheme for the regulation of mergers) to mergers between water and sewerage enterprises in England and Wales, subject to modifications set out in the 2004 Regulations.

4.3 This instrument updates the modifications made by the 2004 Regulations consequential on amendments to Part 3 of the Enterprise Act 2002 made by Schedule 6 to the DMCCA. Schedule 6 to the DMCCA makes some minor amendments to Part 3 of the Enterprise Act 2002 in relation to mergers involving energy network enterprises.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

- 4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

- 5.1 Mergers between water enterprises (water and sewerage undertakers¹) are subject to a special merger control regime under the Water Industry Act 1991 (the 1991 Act). The 1991 Act adapts the standard merger regime in Part 3 of the Enterprise Act 2002 for these purposes, applying it with relevant modifications set out in the 2004 Regulations.
- 5.2 Schedule 6 to the DMCCA includes some minor amendments to Part 3 of the Enterprise Act 2002 to revise and clarify some of the amendments made when the new regime for energy network mergers was included in Part 3 by the Energy Act 2023
- 5.3 This instrument updates the modifications made by the 2004 Regulations to provisions in Part 3 of the Enterprise Act 2002 for the water mergers regime so that they continue to apply as they should. Without this, the modifications in the 2004 Regulations would, for example, cross-refer to text in Part 3 of the Enterprise Act 2002 which is no longer present, or which is no longer the same.

What was the previous policy, how is this different?

- 5.4 This instrument does not represent a change in policy. In fact, it is being introduced to ensure that provisions in Part 3 of the Enterprise Act 2002 continue to apply correctly to the water merger regime, despite the minor amendments introduced by Schedule 6 to the DMCCA relating to energy network mergers. The intention of the special water merger regime is to ensure that a merger between two or more water or sewerage enterprises in England and Wales will not prejudice the Water Services Regulation Authority's (Ofwat) ability to make comparisons for the purpose of carrying out its statutory functions (such as setting price controls on regulated water enterprises and other regulatory functions).

6. Legislative and Legal Context

How has the law changed?

- 6.1 Part 3 of the Enterprise Act 2002 contains the main statutory scheme for the regulation of mergers. The 1991 Act applies that scheme to mergers between water or sewerage enterprises in England and Wales, subject to modifications set out in the 2004 Regulations.
- 6.2 This instrument updates the modifications made by the 2004 Regulations to sections 72, 73A to 75 and 79 in Part 3 of the Enterprise Act 2002 in consequence of some minor amendments to those sections made by Schedule 6 to the DMCCA. Schedule 6 to the DMCCA makes technical revisions to, and clarifications of, provisions in Part 3 of the Enterprise Act 2002 relating to mergers between energy network enterprises.
- 6.3 Not all the amendments in Schedule 6 to the DMCCA require updates to the 2004 Regulations. Some of the amendments in that Schedule are to provisions in Part 3 of the Enterprise Act 2002 which have been omitted in their entirety by regulation 3 of

¹ A water enterprise is an enterprise carried on by a company appointed under section 6 of the Water Industry Act 1991 to be a water and/or sewerage undertaker.

the 2004 Regulations. For example, regulation 3(da) omits sections 68A to 68F and Schedule 5A of the Enterprise Act 2002. Other sections amended by Schedule 6 to the DMCCA have been substituted by different versions of those sections - see regulations 4 and 9 of the 2004 Regulations which substitute sections 22 and 33, respectively, of the Enterprise Act 2002.

- 6.4 In a small number of cases, the updates to the modifications in the 2004 Regulations involve revising or reversing amendments made to the 2004 Regulations by the Enterprise Act 2002 (Merger Fees and Determination of Turnover) (Amendment) and Energy Network Mergers (Consequential Amendments) Order 2023 (S.I. 2023/1185). That Order originally made amendments to the 2004 Regulations to update references to provisions in Part 3 of the Act, in consequence of the new regime for relevant mergers between energy network enterprises added to Part 3 of the Enterprise Act 2002 by the Energy Act 2023.
- 6.5 Schedule 6 to the DMCCA is brought into force under section 339(3) of the DMCCA at the end of the period of two months beginning with the day on which the DMCCA is passed (which was 24th May 2024). This is the first use of the power in section 336 of the DMCCA to make provision consequential on that Act.

Why was this approach taken to change the law?

- 6.6 Legislating is the only possible approach to making the proposed changes, as amendments introduced by the DMCCA to Part 3 of the Enterprise Act 2002 require technical and consequential amendments to be made to the 2004 Regulations. There are no plans to re-make the 2004 Regulations at this time.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 A consultation for this instrument was not undertaken. This is because the instrument makes amendments that are entirely technical and consequential on amendments made by Schedule 6 to the DMCCA.

8. Applicable Guidance

- 8.1 Guidance will not be required due to the technical nature of this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because the changes introduced are purely technical and consequential in nature and do not meet the Better Regulation Framework's definition of 'regulatory provisions'. The changes do not change what businesses are required or permitted to do, i.e. do not impose or amend requirements, restrictions, or conditions. Therefore, an Impact Assessment or de minimis assessment will not be required under the Better Regulation Framework. Further, even if the changes were in scope, the aggregate impacts would likely be minor due to technical nature of the changes and only a few businesses being affected by them.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the instrument predominantly concerns technical and consequential

amendments intended to ensure that the water mergers regime continues to operate as it currently does. This instrument makes changes to the language used in regulatory provisions, however the expected impacts in practice on businesses subject to water merger review have been deemed negligible.

- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector because whilst the instrument may change the language applied in regulatory provisions, any associated resource costs are expected to be insignificant given this instrument will only ensure the water mergers regime continues to operate as it currently does. Consequently, this instrument is not expected to deliver a change to net benefit for the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 There are no plans for monitoring or reviewing this instrument. The review provision already in the 2004 Regulations will require the regime for water mergers, as set out in those Regulations, to be reviewed as a whole.
- 10.2 No statutory review provision is required under the Small Business, Enterprise and Employment Act 2015 because this instrument is making minor and technical amendments to secondary legislation which already includes a statutory review provision (in regulation 37 of the 2004 Regulations).

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 None

12. European Convention on Human Rights

- 12.1 These Regulations are subject to the negative resolution procedure but as they modify primary legislation the Minister for Employment Rights, Competition and Markets has made the following statement regarding Human Rights:

“In my view the provisions of the Digital Markets, Competition and Consumers Act 2024 (Water Mergers) (Consequential Amendments) Regulations 2024 are compatible with the Convention rights.”

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018 or the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”). Although the instrument amends the Water Mergers (Modification of Enactments) Regulations 2004 which are assimilated law, the amendments are purely consequential on the introduction of the energy network mergers regime by the Energy Act 2023 and the amendments to that regime made by Schedule 6 to the DMCCA. They therefore make no substantive changes to the water mergers regime and do not relate to the withdrawal of the United Kingdom from the European Union.