EXPLANATORY MEMORANDUM TO

THE ENTERPRISE AND REGULATORY REFORM ACT 2013 (COMPETITION) (CONSEQUENTIAL, TRANSITIONAL AND SAVING PROVISIONS) ORDER 2014

2014 No. [XXXX]

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order makes consequential amendments to a number of enactments 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 *or* the Select 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 a number of enactments in connection with the commencement of those provisions.

4.5 A further order under section 99 of the Act making similar consequential amendments to secondary legislation will be made and laid shortly with a view to it coming into force at the same time as this Order on 1st April 2014

5. Territorial Extent and Application

5.1 This Order applies to all of the United Kingdom. The amendments and repeals in the Order have the same extent as the enactment amended or repealed.

5.2 This Order includes amendments to legislation of Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

Jenny Willott, the Parliamentary Under-Secretary of State for Employment Relations and Consumer Affairs has made the following statement regarding Human Rights:

"In my view the provisions of the Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 no. [xxxx] are compatible with the Convention rights."

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 enactments. It also makes amendments consequential on the amendments to competition law made under Part 4 of the Act.

7.3 Part 1 of Schedule 1 includes amendments to the Enterprise Act 2002 (EA02) that were not included in the Act. These are mainly amendments to Part 8 of the EA02 dealing with the CMA's role in connection with the enforcement of consumer legislation.

7.4 Part 2 of Schedule 1 contains amendments to a wide range of other legislation. Many of the amendments are simply replacing references to the OFT and the Commission with references to the CMA. Part 2 of the Schedule also specifies amendments to the sector specific legislation (e.g. gas, water, rail) under which regulators such as the Office of Rail Regulation, the Gas and Electricity Markets Authority, are given competition functions

concurrently with the OFT under Part 4 of the Enterprise Act 2002. These amendments will ensure that the legislation works correctly and that changes made to Part 4 of the Enterprise Act 2002 apply to the regulators when exercising their powers under that Part.

7.3 Schedule 1 also makes minor consequential amendments to the sectoral legislation in connection with the transfer to the CMA of the Commission's role in receiving references of regulatory matters. In particular it ensures that the investigatory powers under the EA02 available in connection with a reference function correctly in the light of the changes made by the Act to those powers.

7.4 These amendments supplement the amendments already made to the sector specific legislation by Schedule 6 (regulatory appeals etc: minor and consequential amendments) and Schedule 14 (Regulators: use of powers under the 1998 Act) to the Act.

7.5 Part 3 of the Schedule makes similar amendments to Scottish, Welsh and Northern Irish legislation.

7.6 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.

Consolidation

7.6 The Order makes amendments to a large number of different enactments and cannot consolidate them. Informal consolidated versions of some of the enactments as amended may be available at http://www.legislation.gov.uk

8. Consultation outcome

8.1 No formal consultation was undertaken on these consequential amendments as they make technical and relatively minor amendments or repeals 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 There is no impact on business, charities or voluntary bodies or on the public sector directly as a consequence of this Order as such.

10.2 The impact assessment completed for Parts 3 and 4 of the Enterprise and Regulatory Reform Bill, introduced to Parliament on 23rd May 2012, contains 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 and 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 businesses.

12. Monitoring & review

12.1 No monitoring is required – the Order makes consequential amendments only.

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.