EXPLANATORY MEMORANDUM TO

THE ENTERPRISE ACT 2002 (DEFINITION OF NEWSPAPER) ORDER 2025

2025 No. [XXXX]

AND

THE ENTERPRISE ACT 2002 (AMENDMENT OF SECTION 58 CONSIDERATIONS) ORDER 2025

2025 No. 737

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1 Stephanie Peacock MP, Minister for Sport, Media, Civil Society and Youth at the Department for Culture, Media and Sport, confirms that this Explanatory Memorandum meets the required standard.

2.2 Janis Makarewich-Hall, Deputy Director, Radio, Advertising and Press at the Department for Culture, Media and Sport, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Laura McCarthy and Will Banks at the Department for Culture, Media and Sport (email: press-policy@dcms.gov.uk) can be contacted with any queries regarding the statutory instruments.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Enterprise Act 2002 (Definition of Newspaper) Order 2025 ("the Definition of Newspaper Order") and the Enterprise Act (Amendment of Section 58 Considerations) Order 2025 ("the Section 58 Considerations Order") introduce changes to Part 3 of the Enterprise Act 2002 ("the Act") in relation to mergers involving newspapers and broadcasters. The changes affect the scope of the standard public interest and special public interest media merger regimes in Chapters 2 and 3 of Part 3 of the Act and the Foreign State Influence (FSI) regime in Chapter 3A of Part 3 of the Act.

4.2 Part 3 of the Act establishes the UK's merger control regime. Chapters 2 and 3 of Part 3 enable the Secretary of State to intervene in mergers involving newspaper and broadcasting enterprises if the Secretary of State believes media public interest

considerations specified in the Act may be relevant to the merger. The standard public interest regime in Chapter 2 of Part 3 applies to mergers which meet certain jurisdictional criteria as to turnover and market share. The special public interest regime in Chapter 3 of Part 3 allows the Secretary of State to intervene on public interest grounds in media mergers which do not meet the standard jurisdictional criteria. Once the Secretary of State intervenes, the CMA and Ofcom will conduct a Phase 1 investigation into the merger. The CMA reports on jurisdiction, and, competition issues, and Ofcom reports on the media public interest considerations. On consideration of the reports, the Secretary of State may clear the merger with or without conditions or refer the case to the CMA for a detailed Phase 2 investigation into whether the merger may be expected to operate against the public interest. At the end of Phase 2, the Secretary of State will decide whether the merger being investigated should be blocked or reversed, or cleared with or without remedies.

4.3 Chapter 3A of Part 3 establishes the FSI regime which prohibits foreign states from acquiring control or influence over the policy of UK newspapers and news magazines. Section 70A(1) of the Act places a duty on the Secretary of State to give the CMA a foreign state intervention notice (a FSIN) if the Secretary of State has reasonable grounds to suspect that a foreign state newspaper merger situation ("FSNMS") may have been created or will be created as a result of arrangements in progress or in contemplation. A FSNMS is created where a merger involving a newspaper enterprise results in a foreign power being able to control or to influence the policy of a UK newspaper enterprise. Once a FSIN has been issued, the CMA must investigate and report to the Secretary of State on whether a FSNMS has been created or will be created if arrangements to merge are carried into effect. If the CMA concludes that there has been a FSNMS or an FSNMS will be created from arrangements in progress or in contemplation the Secretary of State must make an order to block or unwind the merger.

4.4 The Definition of Newspaper Order 2025 amends the definition of newspaper in section 44(10) of the Act for the purposes of merger control regimes in Part 3. The new definition comprises print newspapers, news magazines, and online newspapers published on any periodic basis. In effect, the amendments expand and align the scope of the media mergers standard and special public interest regimes and the FSI regime so that all three regimes now apply to print newspapers, news magazines, and online newspapers published on any periodic basis. The effect is to enable the Secretary of State to intervene on relevant public interest grounds in mergers involving periodical print and online newspaper and news magazine enterprises under the media mergers standard and special public interest regimes. It is also to require the Secretary of State to intervene in a merger involving any of these types of newspaper enterprise under the FSI regime, if she has reasonable grounds to suspect that it is or may be the case that a FSNMS has been or will be created.

4.5 The Amendment of Section 58 Considerations Order extends the application of the newspaper public interest considerations in section 58(2A) and (2B) of the Act to apply to news programme mergers as well as newspaper mergers. The effect of this Order and the Definition of Newspaper Order combined is that the Secretary of State is now able to intervene in mergers involving enterprises carrying print and online newspapers, periodical news magazines or news programmes if she believes that any of the following public interest considerations are relevant to the merger: the need for accurate presentation of news, free expression of opinion, or the need for a sufficient plurality of views in newspapers in each UK market for newspapers. The Order also applies the public interest consideration in section 58(2C)(a) of the Act on the need

for there to be a sufficient plurality of persons with control of the media enterprises serving every different UK audience to mergers involving print and online newspapers and periodical news magazines.

4.6 The Definition of Newspaper Order comes into force on the day after the day on which it is made. The amendments to the definition of newspaper, so far as they apply to the media public interest regimes in Chapters 2 and 3 of Part 3, apply to mergers which have completed on or after the coming into force date and to merger arrangements which are in progress or in contemplation on or after that date. So far as they apply to the FSI regime in Chapter 3A of Part 3 of the Act, the amendments will take effect retrospectively, and apply to mergers which have completed on or after 15 May 2025, and to arrangements in progress or in contemplation on or after that date which might result in an FSNMS if carried into effect. The Amendment of Section 58 Considerations Order will come into force on 24 July 2025.

Where does the legislation extend to, and apply?

4.7 The extent of these instruments (that is, the jurisdiction(s) which the instruments form part of the law of) is England and Wales, Scotland and Northern Ireland.

4.8 The territorial application of these instruments (that is, where these instruments produce a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The Government is committed to a pluralistic media landscape, where citizens are able to access information from a range of sources in order to form opinions. The public's ability to access a wide range of news, views and information about the world in which we live is central to the health of our democracy. That is why the Enterprise Act 2002 contains powers that allow the Secretary of State to intervene in media mergers and acquisitions that may give rise to public interest concerns and to take appropriate action to remedy these concerns, if they are found to be justified.

5.2 However, the media landscape has changed significantly since the Enterprise Act became law more than two decades ago. In particular, news is increasingly accessed and consumed online. In their 2021 statutory review of the operation of media ownership rules, Ofcom recommended that the Secretary of State should broaden the scope of the public interest considerations beyond print newspaper and broadcasters to capture a broader range of "news creators", in order to reflect these changes in news consumption.

5.3 Our policy response to Ofcom's recommendation has been to proceed with measures which are narrower than Ofcom's recommendation but which balance the need to protect a plural and thriving media landscape against regulatory burden.

5.4 By bringing online news publications, periodical news magazines and news programmes into scope of the standard and special public interest media merger regimes and online news publications into scope of the FSI regime, we are updating the merger review regimes in Part 3 of the Act to reflect the increased breadth of news offerings and the ways in which the public consume news in the present day. Ofcom's 2024 News Consumption Report showed that 71% of UK adults consume news via online sources, and as the shift to online sources of news consumption increases, these changes will also help to future-proof the regimes by giving the Secretary of State powers to intervene in and review mergers involving a greater number of news

creators, where these mergers may be adverse to the public interest; and by requiring the Secretary to intervene and review a broader range of newspaper mergers which may result in foreign states acquiring control or influence over a newspaper enterprise's policy.

What was the previous policy, how is this different?

5.5 Previously, only print newspapers (published on daily, Sunday or local basis) and broadcasters were in scope of the media public interest regimes in Chapters 2 and 3 of Part 3 of the Act. The regimes were limited in this way because of the more circumscribed nature of the news market at the time the Enterprise Act 2002 became law - exclusively comprising print newspapers and traditional broadcasters. Both the Definition of Newspaper Order and the Amendment of Section 58 Considerations Order make these regimes reflective of the more polyvalent ways in which people access and consume news today. Specifically they enable mergers of print and online newspapers (which meet certain thresholds) and periodical news magazines to be scrutinised to protect the public interest. This ensures accurate news reporting and freedom of expression and a plurality of voices within the newspaper market as it evolves with the rise of online news.

5.6 The FSI regime already imposes a prohibition on foreign states acquiring control or influence over the policy of print newspaper enterprises and to periodical news magazines in response to Parliamentary scrutiny and pressure during the passage of the legislation in March 2024. The Definition of Newspaper Order, in effect, expands the prohibition so that foreign powers are also prohibited from acquiring control or influence over the policy of online newspaper enterprises. The Secretary of State must now intervene in mergers involving online newspaper enterprises where the Secretary of State has jurisdiction to do so and has reasonable grounds to suspect a foreign state has acquired or will acquire control or influence over the policy of an online newspaper as a result of the merger. The benefit of expanding the prohibition in this way is to prevent potential editorial interference or censorship from foreign states in online newspapers, which form a large part of the UK's news consumption, and which as part of our free press represent a cornerstone of our democracy.

6. Legislative and Legal Context

How has the law changed?

6.1 Along with thresholds in relation to turnover and share of supply, the definition of newspaper in section 44(10) of the Act determines whether a newspaper merger can be reviewed by the Secretary of State on one of the newspaper public interest grounds in section 58 of the Act. Prior to the changes brought in by these Orders, section 44(10) has defined "newspaper" for the purposes of the media merger regimes as a daily, local or Sunday newspaper circulating wholly or mainly in the UK or in a part of the UK.

6.2 On 24th May 2024, section 70F(1) was inserted into the Act by the Digital Markets Competition and Consumers Act 2024, and extended the "newspaper" definition for the purposes of the FSI regime to news publications circulating wholly or mainly in the UK or in a part of the UK on any periodic basis.

6.3 The Definition of Newspaper Order modifies and aligns the definition of newspaper for the purposes of all media merger regimes in Part 3 of the Act. The Order makes provision which substitutes section 44(10) to define "newspaper" as a publication which (a) consists of or includes news-related material which is subject to editorial

control; (b) is published on any periodic basis; and (c) is connected with the UK or a part of the UK. The Order also adds section 44(10A) into the Act which defines terms used in section 44(10). Of particular note, section 44(10A)(d) defines a 'publication' as a publication which is online or in hard copy and section 44(10A)(e) provides that references to a publication being published on any periodic basis includes, in relation to an online publication, a reference to it being updated on any periodic or other recurring basis. A publication is also not to be treated as consisting of or including news-related material, and so not a newspaper for the purposes of Part 3 of the Act, if the news-related material contained in the public is included only incidentally to the publication's main content or relates wholly to a particular pastime, hobby, trade, business, industry or profession. The Definition of Newspaper Order repeals section 70F(1) because that section is superseded - the new definition of newspaper in section 44(10)applies to both the media public interest and FSI regimes.

6.4 The Amendment of Section 58 Order amends public interest considerations (PICs) in section 58 of the Act which form the basis for interventions under Chapters 2 and 3 of Part 3 of the Act (the standard and special public interest regimes). The Order extends the application of the newspaper PICs in section 58(2A) and (2B) of the Act on the need for accurate presentation of news, free expression of opinion in newspapers and the need for there to be a sufficient plurality of views in each UK market for newspapers to "news media". "News media" is defined as newspapers or news programmes. The changes made by this Order read in combination with the amendments made by the Definition of Newspaper Order mean that the Secretary of State is able to intervene on one or more of the aforementioned public interest grounds in mergers involving a print or an online newspaper or news magazine enterprise or an enterprise which produces news programmes.

6.5 This Order also extends the application of the PIC in section 58(2C)(a) of the Act on the need for a sufficient plurality of persons with control of media enterprises to print and online newspaper mergers, in addition to broadcasting mergers, or mergers between broadcasters and newspaper enterprises. This amendment enables the Secretary of State to intervene in a merger to ensure sufficient plurality of ownership purely within print and online newspaper markets, as well as across relevant broadcasting and newspaper markets.

Why was this approach taken to change the law?

6.6 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Government ran a technical consultation to seek views on the proposed approach to taking forward Ofcom's recommendations. The public consultation ran from 6 November 2024 and 13 January 2025, and was available on GOV.UK. 14 responses were received from a mix of respondents including newspaper groups, industry bodies, and groups calling for media reform.

7.2 Respondents generally recognised the need to update the definition of newspaper to make it more reflective of the way in which news is consumed today, given the consistent decline in the circulation of print newspapers. Multiple respondents also agreed that the drafting of the definition of 'newspapers' meets our policy intention to exclude news aggregators and online intermediaries, although several respondents

queried this policy intention, advocating for the inclusion of online intermediaries in the regime.

7.3 There was a mixed response to the proposal to broaden the scope of the public interest consideration in section 58(2C)(a) EA 2002 (plurality of persons with control) to apply to mergers involving enterprises involved in newspapers or broadcasting. One respondent highlighted that this change would have a positive impact in ensuring that media owners who seek a greater level of influence have their plans subjected to proper scrutiny, while a couple of responses considered this an unnecessary step in addition to the existing 'plurality of views' test in relation to newspapers. They suggested the change would have a chilling effect on investment and on consolidation which is necessary for the survival of the sector.

7.4 Some respondents said that, taken together, they thought that the proposed changes would have the effect of stifling investment in the media sector. For example, one respondent pointed out that online news publishing is still an expanding and 'immature' business, and it would be a barrier to entry if media entrepreneurs knew that any change of ownership would trigger an 'expensive and time-consuming regulatory regime' which is designed for much better-established organisations.

7.5 Having given careful consideration to all consultation responses, the Government has chosen to move forward with the policy and drafting of the definitions as outlined in the original consultation. The Government considers that the proposed changes balance the need to protect the public interest in a digital age with a responsibility to support a competitive and sustainable media environment. Encouraging a range of investment in the sector is important and the Government is committed to maintaining a thriving and pluralistic landscape. However, this must be balanced with the public's ability to access high quality news that they can trust as this is central to the health of our democracy. We have committed to publishing updated guidance on the regime which we consider will support understanding and investment in the sector; and will keep the issue of online intermediaries under review.

8. Applicable Guidance

8.1 The current guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers, published in 2003, will be substantially updated to reflect the new regime. This will be published in due course.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A De Minimis impact assessment has been completed for these regulations. The combined equivalent annual net direct cost to business is £0.5m, which is below the De Minimis threshold. The non-monetised costs are considered either to be indirect or of a lower magnitude than the monetised benefits and therefore have no impact on the De Minimis Assessment classification.

Impact on businesses, charities and voluntary bodies

9.2 Monetised costs to business consist of familiarisation costs to business in scope and compliance costs incurred by merging parties in an acquisition, which can be broken down into four cost types (internal business administration; external legal advice; external economist advice; CMA investigation costs & forgone merger fees).

9.3 Monetised benefits per intervention under the media merger regime stem from consumer benefits of merger control and there are no monetized benefits of the FSI regime. Non-monetised benefits include the support of a pluralistic media landscape and reduced risk that mergers threaten free expression of opinion or accurate presentation of news.

9.4 Small and micro-sized businesses are not anticipated to incur any disproportionate burdens. While they are not exempt from this intervention, the turnover threshold provides an appropriate level of protection.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instruments do not include a statutory review clause. DCMS does not commit to a formal review as, under the Communications Act 2003, Ofcom has a statutory duty to review media ownership rules every three years.

10.2 However, the reforms captured in these regulations are expected to be held under constant monitoring to ensure the regime is responsive to a changing and complex media merger landscape.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The amendments to the definition of newspaper, so far as they apply to the FSI regime, will come into effect retrospectively from 15 May 2025 (the date of the publication of the consultation response). The power in section 70G(1)b and (4) allows the Secretary of State to make Regulations to amend the definition of newspaper for the purposes of Chapter 3A and to make provision having effect on or after 13 March 2024. There is no equivalent power for the media mergers public interest regime, to which the same amendments will apply prospectively.

12. European Convention on Human Rights

12.1 Stephanie Peacock MP, Minister for Sport, Media, Civil Society and Youth at the Department for Culture, Media and Sport, has made the following statement regarding Human Rights:

"In my view the provisions of the following instruments are compatible with the Convention rights:

The Enterprise Act 2002 (Definition of Newspaper) Order 2025

The Enterprise Act (Amendment of Section 58 Considerations) Order 2025"

13. European Convention on Human Rights

13.1 These instruments are not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").