EXPLANATORY MEMORANDUM TO

THE ENTERPRISE ACT 2002 (SPECIFICATION OF ADDITIONAL SECTION 58 CONSIDERATION) ORDER 2026

2026 No. 1075

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Digital, 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 The Right Honourable Lisa Nandy MP, Secretary of State for Digital, Culture, Media and Sport at the Department for Digital, Culture, Media and Sport confirms that this Explanatory Memorandum meets the required standard.

2.2 Holly Creek, Deputy Director for Markets and Consumers, at the Department for Digital, Culture, Media and Sport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jamie Wzietek at the Department for Digital, Culture, Media and Sport can be contacted by email at the following address with any queries regarding the instrument: telecoms@dsit.gov.uk. Alternatively, the department can be contacted by telephone: 07548211292.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2026 ("the Order") amends section 58 of the Enterprise Act 2002 (c. 40) ("the Act") to include a new public interest consideration specifying the need to maintain in the United Kingdom ("UK") the continuity of the supply of telecommunications services for the purposes of preventing disruption to the economy and society of the UK, including, in particular, disruption to public services; critical national infrastructure; and the supply to customers who are or may be vulnerable. This will enable the Secretary of State to intervene on the basis of this consideration in mergers and acquisitions that come within the scope of Part 3 of the Act ("qualifying mergers").

4.2 This Order is necessary to ensure that the Government has the powers available to intervene in qualifying mergers where there is a risk of disruption in critical telecommunications services and to guard against the serious consequences that widespread disruption of connectivity could have for public safety, critical infrastructure, essential services and the orderly functioning of society.

Where does the legislation extend to, and apply?

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

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 Telecommunications networks and services underpin the modern economy and society of the UK, enabling businesses in every sector of the economy to function and grow, and ensuring that individuals everywhere are connected and digitally included. The Government has committed to ensuring that everyone has access to high quality, secure and resilient digital connectivity.

5.2 These networks support critical national infrastructure and services that people and public bodies rely on every day, including calls to emergency services, ambulance and hospital communications, and medical alarms. A sudden disruption to connectivity services would have a serious impact on individuals and businesses across the country that depend on reliable telecommunications networks.

5.3 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 where they have reasonable grounds for suspecting that it is or may be the case that a relevant merger situation has been created, as defined in section 23 of the Act. The Secretary of State may issue a Public Interest Intervention Notice where they believe that one or more of the public interest considerations specified in section 58 of the Act may be relevant or where one is not specified in section 58 but in the opinion of the Secretary of State it ought to be specified.

5.4 The existing merger framework does not provide for the Secretary of State to take account, as a public interest consideration, circumstances in which disruption to connectivity could have wider consequences for the economy and society, including public services, critical national infrastructure and customers who are or may be vulnerable. The Order closes that gap by allowing the Secretary of State to consider these circumstances and consequences, by specifying a new public interest consideration in section 58 of the Act. This enables the Secretary of State to rely on this consideration where they believe that it is or may be the case that it is relevant to a consideration of a relevant merger situation.

5.5 This new public interest consideration is specified as a relevant consideration in the Public Interest Intervention Notice issued under section 42 of the Act by the Secretary of State on the acquisition of the business of TalkTalk Telecom Group Limited by BT Group Plc (issued on 5 October 2026).

What was the previous policy, how is this different?

5.6 While section 58 of the Act included public interest considerations prior to this Order coming into force that may be applicable to a merger case involving telecommunications providers, for example, "the need to maintain in the UK the capability to combat, and to mitigate the effects of, public health emergencies" (which was also specified as a public interest consideration in the Public Interest Intervention Notice noted in paragraph 5.5), it does not allow for a broader range of relevant impacts associated with connectivity disruption to be considered.

5.7 The new public interest consideration inserted by this Order will enable the Secretary of State to have regard to a broader range of considerations and impacts that may arise within the specific context of a qualifying merger where there are concerns about widespread and or significant disruption to telecommunications services. This would include considerations around: maintaining critical national infrastructure

connections; the impacts on society and the economy from widespread or significant prolonged connectivity disruption by affecting businesses, employment, government services; and the impact on vulnerable people, such as those that rely on telecare services, people with disabilities and health conditions, older people, and people dependent on communications services to access emergency assistance.

6. Legislative and Legal Context

How has the law changed?

6.1 The legislative framework for the assessment of UK mergers (including acquisitions) is contained in Part 3 of the Act. Section 23 of the Act defines the circumstances where a qualifying merger has been created. Section 58 of the Act specifies the relevant public interest considerations which can form the basis on which the Secretary of State may intervene in a qualifying merger. Prior to this Order, section 58 specified media plurality (an umbrella term covering a number of media-related considerations), the stability of the UK financial system, and the UK's capability to combat, and to mitigate the effects of, public health emergencies, as public interest considerations.

6.2 Pursuant to section 42 of the Act, the Secretary of State intervenes in a merger by giving an intervention notice (commonly known as a "public interest intervention notice") to the CMA. This requires the CMA to investigate the merger (commonly known as a "Phase 1 investigation") and to provide a report to the Secretary of State containing its advice on jurisdictional, and, if any arise, competition issues, as well as a summary of any representations it has received about the case in relation to the public interest considerations cited in the intervention notice.

6.3 Once they have received this Phase 1 report, the Secretary of State may, pursuant to section 45 of the Act, clear the merger, or refer the case to the CMA requiring it to carry out a more in-depth investigation (commonly known as a "Phase 2 investigation"), if they believe that the merger may be, or may if it comes to fruition become, a "relevant merger situation" and that it might operate against the public interest (including for competition reasons). Alternatively, pursuant to paragraph 3 of Schedule 7 to the Act, in lieu of making a Phase 2 reference the Secretary of State may accept whatever undertakings (commonly known as "undertakings-in-lieu") they consider appropriate from the parties to address the public interest issues identified.

6.4 If the CMA considers that the merger operates or may be expected to operate against the public interest, it makes recommendations as to the action the Secretary of State (or others) should take to remedy any adverse effects. The Secretary of State will make the final decision on the public interest test and take whatever remedial steps they consider necessary to address the competition and public interest issues.

6.5 Section 42 of the Act also allows the Secretary of State to intervene on the basis of a consideration which is not specified but which the Secretary of State believes ought to be specified. To the extent that the Secretary of State intervenes on the basis of a consideration that they believe ought to be specified, they are required by section 42 of the Act to seek to have that consideration specified in section 58 of the Act, as soon as practicable.

6.6 This Order amends section 58 of the Act by specifying a new public interest consideration, namely: "the need to maintain in the United Kingdom the continuity of the supply of telecommunications services for the purposes of preventing disruption to the economy and society of the UK, including in particular, disruption to public services; critical national infrastructure; and the supply to customers who are or may be vulnerable". Prior to this Order coming into force, this consideration was specified

in the Public Interest Intervention Notice issued under section 42 of the Act by the Secretary of State on the acquisition of the business of TalkTalk Telecom Group Limited by BT Group Plc (issued on 5 October 2026) as a public interest consideration that, in the Secretary of State's opinion, ought to be specified and may be relevant to that merger.

6.7 This Order also amends schedule 8 of the Act to allow the Secretary of State to make provision relating to the new public interest consideration in merger enforcement orders.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 This Order has not been subject to any formal consultation in light of the urgency with which it needs to be made and laid before Parliament.

8. Applicable Guidance

8.1 The process for public interest mergers is set out by the CMA in its guidance "Mergers - the CMA's jurisdiction on procedure: CMA 2". While there should not be any direct impact on businesses, private organisations or individuals (in terms of new obligations or actions as a result of the amendment), the department will be engaging with the sector on the changes, including to familiarise relevant businesses or organisations with the new public interest consideration.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this Order because it does not introduce a new regulatory regime, impose standing obligations on telecommunications providers, or create ongoing compliance requirements for businesses. The Order is limited in scope, and the principal effects will arise only in the exceptional circumstances where the Secretary of State believes that the new public interest consideration is relevant to a qualifying merger. In those circumstances, the Secretary of State may consider continuity of telecommunications services alongside competition impacts and other statutory considerations.

9.2 The instrument does not require businesses to undertake additional operational activities, make infrastructure investments or comply with new reporting requirements. As such, any direct costs to businesses are expected to be limited to familiarisation and, where relevant, participation in the existing public interest merger process. The Department therefore considers that any direct costs to businesses are likely to remain below the de minimis threshold. A De Minimis Assessment has been prepared and will be made available to the Joint Committee on Statutory Instruments, the Secondary Legislation Scrutiny Committee on request.

Impact on businesses, charities and voluntary bodies

9.3 The department considers that there is no significant impact on businesses, charities or voluntary bodies because the instrument does not impose new regulatory obligations, operational requirements or ongoing reporting burdens. The primary impact of the measure is to enable continuity of telecommunications services to be considered as a

public interest consideration within the existing merger framework. While the instrument may have impacts on competition and investment in individual cases, these effects are expected to arise infrequently because the public interest consideration is intended for use only in exceptional circumstances involving continuity risks.

9.4 The instrument is not expected to have a significant impact on small or micro businesses. The new public interest consideration would only become relevant in qualifying merger situations and is expected to be used in a limited number of exceptional cases involving significant continuity concerns.

9.5 The department considers that there is no significant impact on the public sector. While the measure may result in additional casework in future merger cases, it does not create a new public body, impose ongoing public sector obligations or require additional regulatory activity outside the existing statutory framework.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Order does not include a statutory review clause. The department does not commit to a formal review as, under the Communications Act 2003, Ofcom is required to undertake periodic reviews of the electronic communications market.

10.2 However, the department will continue to monitor the operation of the Order through any relevant cases where the new public interest consideration is considered or used.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The public interest consideration inserted by this Order is specified in the Public Interest Intervention Notice issued under section 42 of the Act by the Secretary of State on the acquisition of the business of TalkTalk Telecom Group Limited by BT Group Plc (issued on 5 October 2026).

12. European Convention on Human Rights

12.1 The Secretary of State for Digital, Culture, Media and Sport, the Right Honourable Lisa Nandy MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2026 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, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").