EXPLANATORY MEMORANDUM TO

THE DATA PROTECTION ACT 2018 (CODE OF PRACTICE ON ARTIFICIAL INTELLIGENCE AND AUTOMATED DECISION-MAKING) REGULATIONS 2026

2026 No. 425

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Science, Innovation and Technology and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Ian Murray MP, Minister of State for Digital Government and Data at the Department for Science, Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.

2.2 Owen Rowland, Deputy Director for Data Protection Policy, at Department for Science, Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Melody Kazemi at the Department for Science, Innovation and Technology can be contacted by email at the following address with any queries regarding the instrument: dataimp-mailbox@dsit.gov.uk. Alternatively, the department can be contacted by telephone: 07584 335851.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument requires the Information Commissioner's Office (ICO), as the independent data protection regulator, to produce a code of practice providing guidance as to good practice in relation to the use of personal data in artificial intelligence (AI) and automated decision-making (ADM) to assist organisations with their compliance with their data protection obligations. In this instrument personal data refers to any information relating to an identified or identifiable living individual as set out under sections 3(2) and 3(14)(c) of the Data Protection Act 2018. ADM refers to solely automated decisions regulated by articles 22A-22C of the UK GDPR and sections 50A-50C of the Data Protection Act 2018. Due to the fast-paced nature of AI development, this instrument does not provide a definition of AI to allow the ICO to be able to consider the latest developments in this technology when developing this code.

Where does the legislation extend to, and apply?

4.2 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.

4.3 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 This instrument fulfils a Government commitment provided during the passage of the Data (Use and Access) Act 2025 in the House of Lords to lay regulations requiring the ICO to produce a code of practice on personal data in AI and ADM.[1]

5.2 The ICO is the independent supervisory authority with responsibility for monitoring and enforcing the application of data protection and privacy and electronic communications legislation in the UK. The ICO is also empowered to take regulatory action under other legislation, including the Freedom of Information Act 2000 and the Network and Information Systems Regulations 2018.

5.3 ICO codes of practice provide non-binding guidance as to good practice to help organisations with their data protection compliance. In accordance with section 127 of the Data Protection Act 2018, the Commissioner must take the code into account when considering whether data protection obligations have been complied with.

5.4 While the ICO can produce guidance, without legislation, the ICO could only issue non-statutory guidance, which may lack the authority and clarity needed by organisations. Without a statutory requirement, the ICO could decide not to issue further guidance on the subject. This instrument ensures that the ICO produces a code of practice, which will help organisations understand and comply with data protection law, while supporting responsible innovation and growth across sectors.

5.5 As the independent data protection regulator, the ICO will determine the scope and contents of the code in line with this instrument. The ICO also has a statutory duty to conduct its own consultation before preparing the code as part of this process. The code of practice will be subject to parliamentary scrutiny before it can be issued by the ICO.

What was the previous policy, how is this different?

5.6 There is currently no requirement for the ICO to produce a statutory code of practice on AI and ADM.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 124A of the Data Protection Act 2018 (inserted by section 92 of the Data (Use and Access) Act 2025 permits the Secretary of State to require the Commissioner to prepare codes of practice on matters specified in regulations. Once these regulations are in place, the ICO will draft the code of practice following the requirements for consultation and consideration by a panel in section 124A(4) and section 124B of the Data Protection Act 2018.

[1] https://hansard.parliament.uk/lords/2025-01-28/debates/9BEB4E59-CAB1-4AD3-BF66-FE32173F971D/Data(UseAndAccess)Bill(HL)

6.2 This instrument creates a new duty for the ICO to produce the code. However, the code will not impose new legal obligations beyond those already set out in the underlying data protection legislation.

6.3 This instrument has been drafted at a high level to enable the ICO to exercise its discretion on matters appropriate to include in the code, and to be able to keep pace with the fast-evolving nature of such technologies, including referring to its other guidance and codes of practice where relevant and appropriate. When preparing the code, the Commissioner must include guidance as to good practice in relation to the processing of children's personal data in AI and ADM.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 Given that this instrument only requires the ICO to produce a code of practice and does not itself introduce changes to obligations around AI and ADM, it has a limited public impact. We therefore conducted a limited consultation with the ICO on a number of Parliamentarians engaged in the passage of the Data (Use and Access) Act 2025 on the issue of AI and ADM on the draft instrument. The consultees raised several points and questions during the consultation, which we responded to. Following this, they did not raise any objections to the contents of the instrument.

7.2 The ICO will also conduct its own public consultation before preparing the code which will inform its work.

8. Applicable Guidance

8.1 This instrument does not implement or require guidance.

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 it does not create any new obligations for businesses. The code of practice will provide authoritative, non-binding guidance and clarify existing law. It is not a policy change, and no substantive legislative changes are being introduced.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument does not create any new obligations for them. However, the code of practice could provide support to developers of AI and ADM technology, and businesses that both use, or intend to use, personal data in AI, or for ADM purposes, or those who find current ICO guidance and data protection legislation in this area difficult to understand and who have sought legal advice regarding their obligations.

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 the instrument only applies to the ICO. The ICO will be impacted as it will be required to draft a code of practice. The transfer of the ICO's functions to the Information Commission does not affect its duties on this code of practice. Once the ICO is abolished in line with section

118 of the Data (Use and Access) Act 2025 and its functions transferred, the duty to draft the code will automatically transfer to the new Information Commission.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that it is not required.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister of State for Digital Government and Data has made the following statement:

"A statutory review clause would be disproportionate as the impact of this instrument is limited to the ICO requiring a single code of practice on AI and ADM, and the instrument does not impact businesses directly. As the ICO's sponsoring department, the Department for Science, Innovation and Technology will engage with the ICO on the progress of developing this code of practice."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument fulfils a Government commitment provided during the passage of the Data (Use and Access) Act 2025 in the House of Lords to lay regulations requiring the ICO to produce a code of practice on personal data on AI and ADM.[2]

12. European Convention on Human Rights

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

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").

[2] Ibid.