EXPLANATORY MEMORANDUM TO

THE DATA PROTECTION (CHARGES AND INFORMATION) (AMENDMENT) REGULATIONS 2025

2025 No. 63

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.

2. Declaration

2.1 Sir Chris Bryant MP, Minister of State for Data Protection and Telecoms at the Department for Science, Innovation and Technology ("DSIT") confirms that this Explanatory Memorandum meets the required standard.

2.2 Owen Rowland, Deputy Director for Data Protection Policy, at DSIT confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Luciana Neagoe at DSIT Telephone: 07548211322 or email: dpfr.consultation@dsit.gov.uk can be contacted 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 amends the Data Protection (Charges and Information) Regulations 2018, S.I. 2018/480 ("the Funding Regulations") to increase the data protection charges payable by controllers to the Information Commissioner ("IC") across all tiers of the charge structure by 29.8%. There are no changes to other aspects of the Funding Regulations, such as the discount for direct debit payments and the exemptions from paying the data protection charges.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdictions in 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 The IC is the UK's independent regulator with responsibility for monitoring and enforcing the application of data protection legislation in the UK. The IC has an important, complex and wide-ranging mandate. In addition to being responsible for the regulation of personal data protection, the IC is empowered to take regulatory action under other legislation, including the Freedom of Information Act 2000 and the Network and Information System Regulations 2018. DSIT is the sponsoring government department for the IC.

5.2 The IC's statutory responsibilities in relation to data protection and privacy and electronic communications are funded through charges paid to the IC by controllers pursuant to the Funding Regulations, which account for the majority of the IC's funding overall. This is supplemented by grant-in-aid from the government to fund the IC's regulation of other laws outside of data protection.

5.3 A review of the charge regime conducted during 2023/24 in line with section 138(3) of the Data Protection Act 2018 found that the current charges were no longer sufficient to offset the costs incurred by the IC to deliver its statutory data protection responsibilities and the ongoing investment needed to maintain the IC as an effective, forward-looking regulator.[1]

5.4 As the charges have not increased since 2018, their real term value has reduced substantially due to inflationary pressures, while the IC's costs have increased year on year. Furthermore, the IC must continue to invest in organisational transformation and upskilling to keep pace with emerging regulatory issues, maintain a robust and supportive regulatory environment for organisations and help individuals assert their data rights.

5.5 This instrument makes provision to ensure that the IC has the financial resources necessary for the performance of his tasks and exercise of his powers under data protection law. The charge levels are being increased to take account of inflation. This instrument increases data protection charges as follows:

A. Tier 1 (Micro Organisations) charges are increased from £40 to **£52**. Tier 1 applies to controllers that have less than or equal to 10 members of staff or turnover of less than or equal to £632,000 per annum.

B. Tier 2 (Small and Medium Organisations) charges are increased from £60 to **£78**. Tier 2 applies to small and medium controllers, namely those that are not in Tier 1 and have less than or equal to 250 members of staff or turnover of less than or equal to £36 million per annum.

C. Tier 3 (Large Organisations) charges are increased from £2900 to **£3763**. Tier 3 applies to large controllers with more than 250 members of staff and turnover of more than £36 million per annum.

5.6 There will be no other amendments to the Funding Regulations. The current three-tier structure (including the criteria for determining charge levels), exemptions from paying the charges as well as the £5 discount applicable to payments by direct debit will be retained.

5.7 In amending the charges, the Secretary of State for Science, Innovation and Technology has a statutory duty to have regard to the desirability of securing that the

[1] https://www.gov.uk/government/consultations/data-protection-fee-regime-proposed-changes/data-protection-fee-regime-proposed-changes

charges payable to the IC are sufficient to offset the costs incurred by the regulator in discharging its functions under the UK GDPR, the Data Protection Act 2018 ("DPA 2018") and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

5.8 The charge increases are designed to achieve cost recovery, in line with HM Treasury's principles for Managing Public Money. The government considers these are necessary and justified increases to ensure the IC's longer-term financial sustainability and enable the IC to operate effectively and provide the best service and support to controllers, as well as empower individuals to assert their data rights.

What was the previous policy, how is this different?

5.9 This instrument increases the data protection charges payable by controllers to the IC by 29.8% as set out in paragraph 4.1 above. There are no other changes to the charge regime.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 137(1) of DPA 2018 empowers to the Secretary of State to make regulations requiring controllers to pay charges to the IC. DPA 2018 repealed an equivalent power in the Digital Economy Act 2017 pursuant to which the Funding Regulations were made. The Funding Regulations now have effect as if they were made under section 137 of DPA 2018.

6.2 The Funding Regulations established a charge regime which came into force on 25 May 2018. The Funding Regulations require controllers to pay an annual charge to the IC unless all the processing of personal data by the controller is exempt processing. A charge is due for each annual charge period. Three tiers of charge are prescribed, as described in paragraph 5.5 above. Charities and small occupational pension schemes are included in tier 1.

6.3 This instrument increases the charges as described in paragraph 5.5 above.

6.4 This instrument will come into force on 17 February 2025.

6.5 The increase does not apply for charge periods that are already underway when this instrument comes into force on 17 February, provided the controller has paid the charge for that period before then.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 A public consultation was undertaken, and the results have been reflected in the final design of this instrument's amendments to the Funding Regulations.

7.2 The consultation ran between 29 August and 3 October 2024 and sought views on proposals to increase, for the first time since 2018, the charges payable by controllers to the IC by 37.2%, to take account of inflationary increases to provide the IC with necessary funding to discharge its legal responsibilities. The consultation also invited views on whether other aspects of the regime, namely the criteria for determining charges payable, the discount for direct debit payment and the current exemptions

from the requirement to pay a charge, remained appropriate. The government received a total of 103 responses, including the IC's own response. There was some recognition that the IC should be sufficiently resourced to deliver their responsibilities and to provide the regulatory support that organisations need. There was also some acknowledgement that the charges had not been increased since 2018.

7.3 Some respondents noted the need for more clarity on how the increased charges will deliver value for money for charge paying organisations, and how resources will be allocated to improve the level of service provided by the IC and reduce the cost of complying with data protection regulation. There was also concern from some about increasing charges in the current economic climate, particularly for micro and small businesses and public sector bodies.

7.4 The government considered the feedback received alongside the need to provide the IC with financial stability to support organisations to comply with their data protection obligations and seize the opportunities provided by the safe and responsible use of data.[2]

7.5 After detailed analysis, the government decided to:

A. Introduce legislation to increase the data protection charges across all tiers by 29.8%, to take account of inflationary increases and in order to provide the IC with necessary funding to discharge their legal responsibilities;

B. Retain the existing three-tier structure, including the applicable criteria for determining charges payable;

C. Retain the £5 discount applicable to direct debit payments across all tiers; and

D. Retain the exemptions from the requirement to pay a charge.

8. Applicable Guidance

8.1 The IC will provide guidance on the new charges on its website.

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 increases to charges are not, in themselves, regulatory provisions.

Impact on businesses, charities and voluntary bodies

9.2 There is a financial impact on businesses, charities, voluntary bodies and the public sector that are in scope for paying data protection charges. However, charges will remain lower in real, inflation adjusted, terms in comparison to 2018.

9.3 The charge increase considers the increase in the retail prices index ("RPI") since the existing charge regime was introduced in 2018 but is below the compounded RPI rate of 38.5% inflation rate for the relevant period between Q2 2018 and Q3 2024. There will be a financial impact in the form of charge increases, but charges will remain lower in real, inflation adjusted, terms in comparison to 2018. The vast majority, around 99%, of controllers will be in Tiers 1 and 2 (micros and SMEs) and therefore will pay £52 and £78 respectively, £12-£18 more than the current charges of £40 and £60 respectively. The £5 discount for payment by direct debit will continue to apply

[2] https://www.gov.uk/government/consultations/data-protection-fee-regime-proposed-changes/outcome/data-protection-fee-regime-government-response

to these charges. Charges for organisations that fall within Tier 3 will also increase by 29.8%. Tier 3 organisations, including public sector bodies with more than 250 staff, will therefore pay £3,763, an increase of £863.

9.4 The net impact to the public sector is limited and is expected to be less than £1m. We estimate that the changes in charges will provide adequate funding to the IC. This should enable the regulator to deliver its responsibilities and provide the service and support controllers need and expect. This includes regulatory guidance to support controllers in meeting their legal obligations and complying with data protection legislation, as well as other outreach support in helping controllers to navigate the data protection regime.

9.5 The Equivalent Annual Net Direct Cost to Business ("EANDCB") is estimated as follows:

A. Central estimate: £23.4m

B. Higher bound estimate: £33.2m

C. Lower bound estimate: £13.8m

9.6 Estimates are based over a 10-year appraisal period using 2024 prices.

9.7 The EANDCB analysis is based on several assumptions regarding the number of charge-paying organisations. We assume these metrics to be static over time, which is unlikely to remain the case and therefore this analysis is purely indicative. These metrics will be closely monitored by the finance teams of IC and DSIT to ensure the viability of future forecasts and budgets. The following assumptions are assumed to remain consistent with the current distribution: the number of charge-paying businesses by tier, yearly new acquisitions rates (i.e. the number of new organisations registering to pay the charge each year), renewal rates and the proportion of organisations paying by direct debit are assumed to stay unchanged.

9.8 The higher and lower bound estimates are calculated under the assumption of a 10% higher/lower acquisition rates being sustained and are purely indicative. The lower and higher bounds reflect how a flat 10% increase or decrease in acquisition levels can result in a more than proportionate change in income and highlights how the growth of the charge base remains the main driver of overall income growth. All of the total charge income growth between 2018 and 2024 came from expanding the charge income base. It is important to note that these calculations do not account for any adjustments to charge renewals from existing businesses over the 10-year period. While these bounds are useful for modelling potential impacts, the assumption of perpetual acquisition growth may not align with practical or market-constraints. The level of charge increase has been set in accordance with a set of assumptions around renewals and new acquisitions rates, which have underpinned the analytical model used to determine the level of charge increase.

9.9 The legislation applies to activities that are undertaken by micros and small businesses. In order to ensure adequate funding of the IC, micro and small businesses are not exempt from the charges per se. However small businesses, including sole traders, may be covered by one of the exemptions from paying the charges, for example, if they only process personal data for the purpose of marketing their business. Exact figures on how many businesses might be exempt are difficult to measure but preliminary estimates suggest that it might be a minority of the total business population.

9.10 Annual net cost to small and micro business is estimated to be about £17m, in 2024 prices. This has been calculated using the same approach as the EANDCB for only those businesses with less than 50 employees.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The regulation itself does not include a statutory review clause. Section 138(3) of DPA 2018 requires the Secretary of State to review the Funding Regulations every 5 years. The next statutory review pursuant to this duty is due to take place from May 2028. The government will continue to monitor whether the charge levels provide adequate funding for the IC and if any changes are necessary both to the levels and the overall structure of the model. The government will also work with the IC to understand the level of compliance and how this can be improved.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Regulations under section 137(1) of DPA 2018 are usually subject to the affirmative resolution procedure (see section 138(5)). Section 138(4) provides an exception for regulations which only increase a charge for which provision is made by previous regulations to take account of an increase in RPI since those previous regulations were made. In such circumstances the negative resolution procedure applies.

11.2 DSIT considers that section 138(4) applies for this instrument and that it is therefore properly subject to the negative resolution procedure. This instrument only makes provision increasing the charges in the Funding Regulations. It does not make any other changes to the charge regime. The 29.8% increase is made with regard to the increase in RPI since the Funding Regulations were made in 2018 and is lower than the compounded RPI rate of 38.5 inflation rate from Q2 2018 to Q3 2024.

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”).