# EXPLANATORY MEMORANDUM TO

# THE DATA (USE AND ACCESS) ACT 2025 (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISION) REGULATIONS 2026

## 2026 No. 386

## 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 Select Committee on Statutory Instruments.

## 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 the Department for Science, Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.

## 3. Contact

3.1 Albert Fenton at the Department for Science, Innovation and Technology can be contacted by email at the following address: Albert.Fenton@dsit.gov.uk with any queries regarding the instrument. Alternatively, the department can be contacted by telephone: 07841804671.

## Part One: Explanation, and context, of the Instrument

## 4. Overview of the Instrument

***What does the legislation do?***

4.1 This instrument makes consequential amendments to references to the 'Information Commissioner' and their office (ICO) in legislation to reflect the abolition of that office and the transfer of its functions to a new body corporate, the Information Commission, established by the Data (Use and Access) Act 2025 (DUA Act). It contains a transitional provision in respect of the person who is the first chair of the Information Commission pursuant to paragraph 2 of Schedule 14 of the DUA Act and makes three other minor and technical consequential amendments relating to other changes made by the DUA Act.

***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) depends on the particular provision. Because the Information Commissioner acts across the UK's jurisdictions, this instrument amends many different instruments across the statute book with different extents. An amendment will have the same extent as the provision it amends. For example, most provisions in the Data Protection Act 2018 extend UK wide so amendments to those provisions also extend UK-wide. Part 2 of Schedule 2 and part of 2 of Schedule 3 amend Acts of the

Scottish Parliament and instruments made under such Acts respectively. Those amendments extend to Scotland. Part 4 of Schedule 2 and part 3 of Schedule 3 contain amendments to Acts of the Northern Ireland Assembly and instruments made under Northern Ireland legislation respectively and extend to Northern Ireland. More information regarding the territorial extent of this instrument is provided in section 11.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) depends on the particular provision. Because the Information Commissioner acts across the UK's jurisdictions, this instrument amends many different instruments across the statute book with different applications. An amendment will have the same application as the provision it amends. For example, part 3 of Schedule 2 makes amendments to Acts and Measures relating to Wales. Those amendments apply to Wales only. The parts of Schedules referred to in paragraph 4.2 have the same application as their extent. More information regarding the territorial application of this instrument is provided in section 11.

## 5. Policy Context

***What is being done and why?***

5.1 The Information Commissioner 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 System Regulations 2018.

5.2 The DUA Act provides for reforms to the regulator's governance structure to ensure it is fit for purpose, suitable to its role and remit, and relevant to the rapidly evolving regulatory landscape. Specifically, the Act abolishes the Information Commissioner, which is a corporation sole, and establishes in its place a new body corporate, the Information Commission, led by a chair, chief executive and other non-executive and executive members with shared responsibility for decision making. The changes mean that all responsibilities, duties and powers vested in the Information Commissioner as a corporation sole will be transferred to the Information Commission.

5.3 This model is in line with best practice and widely considered more reliable for decision making. There will be no change in the regulator's role. All functions that rest with the Information Commissioner will be transferred to the new Information Commission.

5.4 This instrument amends references to the Information Commissioner and their office in primary and secondary legislation to refer instead to the new Information Commission, or, where appropriate, a specified member of the Commission (for example, the chair, in instances where it is necessary to allocate a specific duty to a natural person). These amendments are necessary to ensure that the statute book is consistent and provides legal clarity.

5.5 The instrument contains a transitional provision (Regulation 3) to preserve the pension arrangements in respect of the person who holds the office of the Information Commissioner and is the first chair of the Information Commission pursuant to paragraph 2 of Schedule 14 of the DUA Act.

5.6 The instrument also makes three other minor and technical amendments to the Data Protection Act 2018, in consequence of sections 67 (the definition of research and statistical purposes) and 91 (duties of the Information Commission in carrying out its functions) of the DUA Act.

***What was the previous policy, how is this different?***

5.7 Currently, the statute book refers to the name of the current regulator, the Information Commissioner, and their office. When sections 118 and 119 of the DUA Act come into force, the Information Commissioner will be abolished and the functions transferred to the Information Commission. This instrument will ensure that the statute book is consistent with this change by amending references to the name of the regulator across legislation.

## 6. Legislative and Legal Context

***How has the law changed?***

6.1 The DUA Act establishes a body corporate, the Information Commission, to replace the existing regulator, the Information Commissioner, which is currently structured as a corporation sole. Section 117 of the Act establishes the Information Commission as a body corporate and Schedule 14, which inserts new Schedule 12A into the Data Protection Act 2018, makes provision about the new body, including its membership and process for appointing the chair, chief executive and other members. The Act abolishes the Information Commissioner (section 118), makes provision for the transfer of functions from the Information Commissioner to the new body (section 119) and provides for the Secretary of State to make schemes for the transfer of staff, property and assets (section 120). This instrument will ensure that primary and secondary legislation are amended in line with these changes.

***Why was this approach taken to change the law?***

6.2 Whilst subsection 2 of section 119 of the DUA Act 2025 provides for references to the Information Commissioner in other enactments and documents to be treated as references to the Information Commission where appropriate, this instrument is considered necessary to ensure full legal clarity and avoid situations in which the application of that provision may be ambiguous, for example, references to the Information Commissioner as a natural person.

## 7. Consultation

***Summary of consultation outcome and methodology***

7.1 This instrument makes consequential amendments necessary to maintain coherence and consistency within the statute book, reflecting the reforms to the governance structure of the data protection regulator set out in the DUA Act which were the subject of extensive public consultation.[1] No further public consultation has taken place regarding the provisions in this instrument, as it makes only consequential amendments and does not change policy. Relevant government departments and the Northern Irish, Scottish and Welsh governments have been consulted on changes to legislation within their competence, and were content with the approach taken in the instrument.

## 8. Applicable Guidance

8.1 This instrument does not require any guidance. The Information Commission itself will issue regulatory and other guidance on the same basis as the Information Commissioner following the transfer of functions from the latter to the former body.

[1] https://www.gov.uk/government/consultations/data-a-new-direction/outcome/data-a-new-direction-government-response-to-consultation

## 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 these provisions do not produce any impacts on private or public bodies or make any material changes to the costs or requirements associated with the DUA Act. An assessment of the broader relevant impacts associated with the DUA Act reforms to the governance structure of the regulator can be found in the impact assessment prepared for the DUA Act.[2]

***Impact on businesses, charities and voluntary bodies***

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the instrument only makes consequential amendments to reflect the change of name of the UK's data protection regulator and other minor and technical consequential amendments.

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 this instrument only makes consequential amendments to reflect the change of name of the UK's data protection regulator and other minor and technical consequential amendments.

### 10. Monitoring and review

***What is the approach to monitoring and reviewing this legislation?***

10.1 The approach to monitoring this legislation is that the pieces of legislation being amended by this instrument will be reviewed in line with the approach already in place for these instruments.

10.2 The instrument does not include a statutory review clause. Given their limited impact, there is no plan to review these regulations.

## Part Three: Statements and Matters of Particular Interest to Parliament

### 11. Matters of special interest to Parliament

11.1 This instrument amends references to the Information Commissioner and their office including in primary legislation. It also makes minor and technical amendments to the Data Protection Act 2018, in consequence of sections 67 (the definition of research and statistical purposes) and 91 (duties of the Information Commission in carrying out its functions) of the DUA Act. Amendments to primary legislation are made relying on section 139(1) and (2)(c) of the DUA Act. The amendments to the references to the Information Commissioner will largely come into effect upon the commencement of section 119 of the DUA Act which transfers functions to the Information Commission. That section will be commenced by a separate instrument containing commencement and transitional provisions.

11.2 The instrument's territorial extent and application is complex on account of the number of amendments being made to references to "Information Commissioner" (over 800) across a wide range of instruments. An amendment will have the same extent and application as the instrument amended.

[2] https://assets.publishing.service.gov.uk/media/690dd03447ad122f854627a8/data_use_and_access_act_enactment_impact_assessment.pdf

## 12. European Convention on Human Rights

12.1 The Minister of State for Digital Government and Data, has made the following statement regarding Human Rights:
"In my view the provisions of the Data (Use and Access) Act 2025 (Consequential Amendments) Regulations 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").