EXPLANATORY MEMORANDUM TO

THE DATA (USE AND ACCESS) ACT 2025 (CONSEQUENTIAL AND OTHER AMENDMENTS) REGULATIONS 2025

2025 No. 1331

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 Ian Murray, 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 Charlie Houghton at the Department for Science, Innovation and Technology can be contacted by email at the following address: Charlie.Houghton@dsit.gov.uk with any queries regarding the instrument. Alternatively, the department can be contacted by telephone: 07827552639.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes amendments to legislation in consequence of changes made by the Data (Use and Access) Act 2025 ("DUA Act") to data protection legislation in relation to the use of personal data for research and related purposes and the creation of a new offence. The instrument also makes that new offence recordable and changes the legislation in which recordable offences are listed to add data protection offences (a change that is being implemented for clarity of the statute book).

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. Regulations 1, 2, 10, 11, 16 and 17 extend to the whole of the United Kingdom. Regulations 3, 4, 5, 13, 14 and 18 extend to England and Wales. Regulations 6, 7, 8 and 15 extend to Scotland and regulations 9 and 12 extend to Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) depends on the particular provision. Regulations 1, 2, 10, 11, 16 and 17 apply to the whole of the United Kingdom. Regulations 3, 4, 5 and 13 apply to

England and Wales. Regulations 6, 7, 8 and 15 apply to Scotland. Regulations 9 and 12 apply to Northern Ireland. Regulation 14 applies to England and regulation 18 applies to Wales.

5. Policy Context

What is being done and why?

5.1 The DUA Act consolidates provisions around safeguards for processing personal data for research, archiving, and statistical purposes ("RAS"). Before the DUA Act changes, these were located in Article 89 of the UK GDPR (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation) and section 19 of the Data Protection Act 2018 ("DPA 2018"). The UK GDPR sets rules on the processing of personal data and is supplemented by the DPA 2018. Section 86 ("Safeguards for processing for research etc purposes") of the DUA Act omits Article 89 and section 19 and consolidates them in new Articles 84A to 84C of the UK GDPR. Once section 86 commences and Article 89 is omitted, the current references to Article 89 elsewhere in the statute book will cease to function. This instrument will update these references.

5.2 Section 100 of the DUA Act introduces a new criminal offence to the DPA 2018. This new offence is set out in section 148C and concerns false statements made in response to interview notices issued by the Information Commissioner (a false statement is a statement which the individual knows to be false in a material respect, or a statement made recklessly which is false in a material respect). The Information Commissioner is the UK's independent regulator for data protection and information rights, with powers to impose enforcement notices and fines for breaches. The offence in new section 148C is comparable to an existing offence in section 144 of the DPA 2018, which concerns false statements made in response to an information notice. Four instruments that include provisions on the disclosure of information to credit reference agencies make reference to existing offences in the DPA 2018, requiring that, in order to access certain information, a credit reference agency has not been found guilty of certain offences. Those offences include the comparable offence in section 144 of the DPA 2018. This instrument will add the new offence in section 148C to the existing offences listed. The four sets of regulations concerned are the Companies (Disclosure of Address) Regulations 2009/214; the Overseas Companies Regulations 2009/1801; the Companies (Disclosure of Date of Birth Information) Regulations 2015/1694; and the Register of People with Significant Control Regulations 2016/339.

5.3 Without these amendments, there would be the risk of agencies that have committed data protection offences being able to access personal information that they should be barred from accessing.

5.4 This instrument will also add the new offence in section 148C to the list of offences in the National Police Records (Recordable Offences) Regulations 2000 ("Recordable Offences Regulations"), along with the other offences contained within the sections listed at 199(1) of DPA 2018: sections 119, 132, 144, 148, 170, 171, 173, 184 and paragraph 15 of Schedule 15. The offences will not be recordable where they are applied by the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016/696, which maintains the previous position (section 199 of the DPA 2018 was not applied by those regulations). At the time the DPA 2018 was enacted, the decision was taken to list the provisions under which new offences in that Act

were created in section 199, and for that section to provide that the Recordable Offences Regulations "have effect as if the offences under [those provisions] were listed" in its Schedule. This instrument lists the offences already in the DPA 2018 and the new offence in section 148C in the Schedule of recordable offences in the Recordable Offences Regulations (alongside other recordable offences from other Acts). This removes the need for section 199(1) of the DPA 2018 and that has therefore been repealed.

What was the previous policy, how is this different?

5.5 The statute book refers to Article 89 of the UK GDPR (and related provisions) in multiple instruments. When section 86 of the DUA Act comes into force, this article will no longer exist. This instrument ensures that the statute book is consistent with this change by updating the references so that they refer to the provisions that have replaced Article 89.

5.6 The list of offences in the Recordable Offences Regulations did not include offences in the DPA 2018 which were nonetheless intended to have effect as recordable offences, or the new offence introduced by section 148C of the DUA Act. This instrument updates this list. Further, the relevant legislation which includes provisions dealing with disclosure to credit reference agencies did not make reference to that new offence and this instrument amends that legislation so that it does.

6. Legislative and Legal Context

How has the law changed?

6.1 The DUA Act made various changes to the DPA 2018 and the UK GDPR, this instrument updates other legislation to reflect those changes. It also makes the new offence in section 148C recordable and lists existing recordable offences in the Recordable Offences Regulations instead of the DPA 2018.

Why was this approach taken to change the law?

6.2 One of the purposes of this instrument is to update legislative cross references on account of changes made by the DUA Act to data protection legislation. That could only be achieved by amending the relevant legislation directly. An insertion into the Schedule to the Recordable Offences Regulations was the most appropriate way to make the new offence at section 148C of the DPA 2018 recordable.

6.3 The repeal of section 199(1) and moving the accompanying offences into the Schedule to the Recordable Offences Regulations aid clarity of the statute book by including the specified offences in the Schedule, instead of keeping them listed in the DPA 2018 and treated as if they were in that Schedule.

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 set out in the DUA Act, which were the subject of extensive public consultation[1] via the Data Protection and Digital Information Bill. No further public consultation has taken place regarding the

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

provisions in this instrument, as it makes only consequential and minor related amendments.

7.2 The Northern Irish, the Scottish, and Welsh governments have been consulted and confirmed agreement on changes to legislation within their competence.

8. Applicable Guidance

8.1 This instrument does not require any 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 these provisions do not produce any impacts or amend requirements on private or public bodies or make any material changes to the costs associated with the DUA Act. An impact assessment[2] has been prepared for the DUA Act.

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 minor and technical consequential amendments to update other legislation in line with the DUA Act.

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 makes minor and technical consequential amendments in line to update other legislation in line with the DUA Act.

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.

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

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument repeals section 199(1) of the DPA 2018 using the power in section 21(4) of the Police and Criminal Evidence Act 1984 as extended by section 199(2) of the DPA 2018. The instrument inserts the offences contained within the sections listed at section 199(1) instead into the Schedule to the National Police Records (Recordable Offences) Regulations 2000. This is being done to enhance the clarity of the statute book by listing the offences in that Schedule rather than their being listed in the DPA 2018 and being treated as if they were listed in the Schedule.

11.2 The coming into force of these regulations is linked to the commencement of the DUA Act provision to which they relate. Those DUA Act provisions will be commenced by regulations which are expected to be made in early 2026 (but not before 21 days after this instrument is laid in Parliament).

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) 2025 (Consequential and Other Amendments) Regulations 2025 are compatible with 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").