EXPLANATORY MEMORANDUM TO

THE PROTECTION OF FREEDOMS ACT 2012 (RELEVANT OFFICIAL RECORDS) (AMENDMENT) ORDER 2026

2026 No. 977

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before the Houses of Parliament by Command of His Majesty.

2. Declaration

2.1 Satvir Kaur MP, Minister for Safeguarding and VAWG, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Gisela Carr, Deputy Director for the Interpersonal Abuse Unit, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 The Interpersonal Abuse Unit at the Home Office can be contacted by email: VAWGEnquiries@homeoffice.gov.uk

Part One: Explanation and context of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes a minor amendment to existing legislation to clarify which official records are covered by two new schemes ("New Schemes") relating to certain historical prostitution and abortion offences.

4.2 The first scheme is a disregard and pardon scheme which applies to individuals convicted of, or cautioned for, an offence of persistently loitering or soliciting in a street or public place for the purposes of prostitution, where the conduct occurred when they were under 18. The second scheme is a pardon and data deletion scheme which applies to women previously convicted of, cautioned for, arrested for or investigated on suspicion of criminal offences related to abortion when acting in relation to their own pregnancies. The amendment will help ensure that the relevant organisations can identify and deal with records consistently when the schemes come into force. The New Schemes were introduced by the Crime and Policing Act 2026 and are not yet in force.

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.

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

5. Policy Context

What is being done and why?

5.1 This instrument makes a minor amendment to Article 2 of the Protection of Freedoms Act 2012 (Relevant Official Records) Order 2012 ("the 2012 Order"). Article 2 identifies the categories of records that are treated as "relevant official records" for the purposes of an existing scheme under the Protection of Freedoms Act 2012 ("POFA") which allows certain historical convictions and cautions relating to same-sex sexual activity to be disregarded. Examples of such "relevant officials records" include Police National Computer (PNC) records, local police records, court records, and so on.

5.2 Article 2 currently describes those records by reference to applications made under that existing scheme. This reflects the fact that an individual must apply before a decision can be made to disregard a conviction or caution for historical same-sex sexual activity.

5.3 The Crime and Policing Act 2026 introduced two New Schemes. The first provides an automatic pardon and disregard for individuals convicted of, or cautioned for, the offence of persistently loitering or soliciting in a street or public place for the purposes of prostitution, where the conduct occurred when they were under 18. The second provides an automatic pardon for women convicted of, or cautioned for, abortion offences (sections 58 and 59 of the Offences Against the Person Act 1861, and the Infant Life (Preservation) Act 1929) when acting in relation to their own pregnancies, and requires details of those convictions and cautions, as well as related arrests and investigations, to be deleted from relevant official records where reasonably practicable. The Government maintains a neutral stance on changes to the criminal law on abortion in England and Wales. Parliament voted to include this scheme in the Crime and Policing Act 2026 during passage of this legislation.

5.4 Unlike the existing historical same-sex sexual activity disregard scheme, neither of the New Schemes requires an application to be made. Instead, they operate automatically where the statutory conditions are met. Organisations (data controllers) responsible for maintaining relevant records will be responsible for identifying records affected by the schemes and taking the action required by the legislation.

5.5 This instrument amends Article 2 so that it is clear that the existing definition of "relevant official records" applies to the two New Schemes as well as the existing application-based scheme. The amendment does not change the categories of records that are covered. Rather, it removes the link between those records and the application process used in the existing scheme, making clear that the same categories of records apply in relation to all three schemes, including those that operate automatically.

5.6 The amendment will provide clarity for organisations responsible for maintaining those records, helping to ensure that they can identify the records from which information needs to be deleted, or, where deletion is not possible, annotated, when the New Schemes come into force.

What was the previous policy, how is this different?

5.7 This instrument does not introduce any new policy or create any new schemes. The two schemes described above were introduced through the Crime and Policing Act 2026. The purpose of this instrument is to provide clarity about how the existing framework for defining relevant official records applies to those New Schemes.

5.8 The amendment reflects the fact that the existing same-sex sexual activity disregard scheme operates through an application process, whereas the two New Schemes will operate automatically. Without this amendment, organisations responsible for maintaining records may be uncertain about whether the existing definitions under Article 2 of the 2012 Order apply in the same way to the New Schemes.

5.9 The amendment will therefore help ensure a consistent approach to identifying the records that need to be deleted, or, where deletion is not possible, annotated, under all three schemes. It is intended to provide clarity for the organisations responsible for maintaining those records before the two New Schemes are commenced. The timing of commencement of the New Schemes is still under consideration and will be announced well ahead of time to ensure organisations can respond in line with their responsibilities.

6. Legislative and Legal Context

How has the law changed?

6.1 Article 2 of the Protection of Freedoms Act 2012 (Relevant Official Records) Order 2012 ("the 2012 Order") prescribes the categories of records that constitute "relevant official records" for the purposes of section 95 of the Protection of Freedoms Act 2012 ("POFA"). These are the records from which information may need to be deleted, or, where deletion is not possible, annotated, under the existing disregard scheme for certain historical same-sex sexual activity convictions and cautions.

6.2 Article 2 currently defines those records by reference to applications made under section 92 of POFA. This reflects the fact that the existing disregard scheme operates through an application process, whereby an individual applies to the Secretary of State for a conviction or caution to be disregarded.

6.3 This instrument amends Article 2 so that it is clear that the existing definition of "relevant official records" applies not only to the section 92 application-based scheme, but also to the two New Schemes introduced by the Crime and Policing Act 2026. The amendment does not change the categories of records that are covered. Rather, it removes the link between those records and the application process used by the existing scheme, making clear that the same categories of records apply in relation to all three schemes.

6.4 The Crime and Policing Act 2026 introduced the two New Schemes. Section 116 (not yet in force) inserts new section 94A into POFA, establishing a disregard scheme for convictions and cautions for the offence of persistently loitering or soliciting in a street or public place for the purposes of prostitution, where the conduct occurred when the individual was under the age of 18. Unlike the existing section 92 scheme, this scheme operates automatically and does not require an application.

6.5 Section 242 of the Crime and Policing Act 2026 (not yet in force) inserts new section 165B into the Policing and Crime Act 2017. This provision provides an automatic pardon for women convicted of, or cautioned for, abortion offences when acting in relation to their own pregnancies, and requires details of those convictions and cautions, as well as related arrests and investigations, to be deleted from relevant official records where reasonably practicable. New section 165B(4) provides that the term "relevant official records" has the same meaning as in section 95 of POFA.

Why was this approach taken to change the law?

6.6 This amendment provides greater clarity for data controllers as to their duties under sections 116 and 242 of the Crime and Policing Act 2026 to make deletions from or annotations of official records. It makes clear that the existing definition of "relevant official records" in the 2012 Order applies to the two New Schemes, notwithstanding that those schemes operate without an application process.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation was taken for this measure, as it is a very minor amendment to wording in an existing statutory instrument, to provide clarification in relation to the two schemes introduced by the Crime and Policing Act 2026. The Home Office has, however, consulted extensively with relevant data controllers through a working group on the implementation of the duties in both schemes. The working group has met regularly for several months, and through this forum data controllers have agreed a process for making deletions from relevant official records.

8. Applicable Guidance

8.1 No guidance will be provided for this instrument. Guidance for relevant data controllers will be provided when Sections 116 and 242 of the Crime and Policing Act 2026 are commenced.

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 its impact alone will be negligible. An impact assessment is instead being carried out for the instrument that will commence sections 116 and 117 of the Crime and Policing Act 2026. This is expected to show minimal impact.

9.2 The Government will publish an impact assessment on the abortion provisions in the Crime and Policing Act 2026 shortly.

Impact on businesses, charities and voluntary bodies

9.3 There is no, impact on business, charities or voluntary bodies by this instrument.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because this instrument is making a minor change to wording of an existing instrument.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 No monitoring or review is required for this legislation.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

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").