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The Information Commissioner’s response to DCMS’s AI Regulation Policy Paper ‘Establishing a pro-innovation approach to regulating AI’

## About the ICO

1. The Information Commissioner has responsibility in the UK for promoting and enforcing the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA 2018), the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Privacy and Electronic Communications Regulations 2003 (PECR), among others.
2. The Commissioner is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations and taking appropriate action where the law is broken.

## Introduction

1. The Information Commissioner’s Office (ICO) welcomes the opportunity to provide comments on behalf of the Commissioner, on the AI Regulation Policy Paper titled ‘Establishing a Pro-innovation Approach to Regulating AI’ and published by the Department for Digital, Culture, Media and Sport (DCMS).
2. We also note the reforms to AI regulation that will be introduced through the Data Protection and Digital Information Bill[[1]](#footnote-1) that was laid before Parliament on 18 July 2022. We support the Government’s policy intent to reframe Article 22 of UK GDPR as a right to specific safeguards, rather than as a general prohibition on solely automated decision-making, and to clarify the provisions around processing for bias mitigation in AI systems. We look forward to implementing the new regulatory regime.

***The role of the ICO***

1. Even though there are many AI applications that do not involve the processing of personal data – such as climate modelling, non-human genetic research – we believe that the uses of AI with greatest salience for public policy will be in fact, powered by personal data. This personal data may be processed to design, train, test or deploy an AI system. All these stages of AI development and deployment fall under the ICO’s purview, as the data protection regulator.
2. Given the centrality of personal data in AI development and deployment, it is not surprising that many of the policy challenges highlighted by the Government – such as transparency, accountability, security and accuracy – are already covered to a large degree by the data protection framework[[2]](#footnote-2). Public trust in AI will rely on people having confidence that their personal information is protected and that decisions about them are taken in ways that they would expect – and in line with UK data protection law.
3. AI is a strategic priority for the ICO. The recently launched ICO25[[3]](#footnote-3) strategic plan highlights our current work in this area, including actions to tackle urgent and complex issues such as AI-driven discrimination.[[4]](#footnote-4) This builds on our existing work on AI, including:

* our landmark Guidance on AI and Data Protection[[5]](#footnote-5);
* our accompanying AI and Data Protection risk toolkit[[6]](#footnote-6) (recently shortlisted in the Global Privacy Assembly’s Global Privacy and Data Protection Awards[[7]](#footnote-7));
* our supplementary guidance on Explaining Decisions Made with AI[[8]](#footnote-8) co-badged with the Alan Turing Institute;
* our support for AI innovators through our Regulatory Sandbox and Innovation Hub[[9]](#footnote-9);
* our contribution to standard-setting initiatives as a member of the AI Committee of the British Standard Institution (BSI); and
* our supervision of organisations using AI, including through both proactive audits and investigations.

We continue to track developments in AI to ensure that our positions reflect the latest technological opportunities and risks, and have recently established a series of post-doctoral fellowships that research issues such as AI and dark patterns, or model inference attacks.[[10]](#footnote-10)

1. The ICO recognises the role that other regulators play in governing the use of AI in different sectors or context. We have been at the heart of initiatives to foster greater regulatory coherence and certainty for organisations developing and using AI, both as a founding member of the Digital Regulation Cooperation Forum (DRCF) and as the chair of the Regulators and AI Working Group, which includes 27 UK regulatory authorities. As part of our work at the DRCF we have published two discussion papers on algorithmic harms and benefits,[[11]](#footnote-11) and the landscape of AI auditing,[[12]](#footnote-12) while continuing to build on that work through our 2022-2022 work programme.[[13]](#footnote-13)

## ICO’s view on DCMS’s proposed approach to AI regulation

***DCMS’s proposed pro-innovation AI framework***

1. The ICO supports the Government’s mission to ensure that the UK’s regulatory regime keeps pace with and responds to new challenges and opportunities presented by AI. We agree that a **pro-innovation** approach is needed, that seeks to unleash the significant social and economic benefits of AI without compromising on public protections.
2. We believe **technology-neutral** **legislation** has the advantage of being more future-proof than technology-specific frameworks. In the context of a technology that’s evolving as fast as AI, the risk of a technology-specific regime is it may become obsolete equally fast, creating regulatory gaps. In that context, we agree with the paper’s approach not to regulate the technology itself but the way it is being used and developed.
3. We agree with paper’s view that the regulatory approach to AI should be **context-specific**. This aligns with the regulatory approach found in data protection law. Context determines the risks that arise for data subjects, the extent to which these can be balanced against the interests of data controllers and the explanations that will be useful for data subjects[[14]](#footnote-14). It is also relevant for a variety of other data protection considerations such as impact assessments.
4. We similarly support a **risk-based** regulatory approach to AI, which aligns with that found in data protection law. In the evaluation of risk data protection considers both the severity and the likelihood of risk. We agree that priority should be given to high-risk applications and note the importance of horizon-scanning to identify future risks. The DRCF’s discussion paper of algorithmic harms and benefits seeks to identify those kinds of risks.
5. We support the objective of improving **regulatory coherence** for AI developers and users, which is a priority for the ICO as well. As already mentioned, the Regulators and AI Working Group we founded has been nurturing information sharing among members since 2019, while our joint projects with the CMA, FCA and Ofcom as part of DRCF’s Algorithmic Processing project are seeking to align AI policy thinking and provide more clarity and certainty to industry on AI regulation. We welcome DCMS’s acknowledgement of our work at the DRCF.
6. Similarly, we support the emphasis on **proportionality**. In the ICO25 Action Plan the Commissioner has committed to place proportionality at the centre of the ICO’s advice, guidance and enforcement. We recognise that many organisations are trying to do the right thing and that the reputational and real-world risks of any AI-derived harms act as incentives to drive good behaviour. We have prioritised a ‘light-touch’ approach to regulation, using agile tools such as guidance to give direction to well-intentioned actors, while reserving regulatory penalties for repeated offenders and bad actors. We support the development and use of codes of conduct and certification mechanisms as a means to enhance transparency and compliance with the UK GDPR.

## ***DCMS’ proposed cross-sectoral principles***

1. We agree with DCMS that the rich tapestry of UK regulation has not been developed with AI as it focus. That of course does not mean that it doesn’t apply to it but, like every new technology or service, existing frameworks need to be translated in an AI context.
2. We support the intent to develop an overarching set of principles that frame the regulation and governance of AI, with the intention of building greater regulatory coherence. We agree with the paper that the OECD principles on AI are a useful reference point. We agree with the paper’s suggestion that any cross-sectoral principles set out in the upcoming AI White Paper should be interpreted and implemented in practice by the UK’s existing regulators.
3. The policy paper suggests the proposed principles will be non-statutory, with the Government reserving the right to review their legal status. It will be crucial to ensure any new framework, statutory or not, does not create regulatory confusion among industry and the public. In practice, some of the proposed principles already have a statutory basis – with several constituting legal obligations under data protection law for all users and developers of AI that process personal data. For example, transparency and fairness are foundational data protection principles set out in Article 5 of UK GDPR, while Article 22 provides mechanisms for redress and contestability in the context of solely automated decision-making.
4. Detailed analysis is needed of the existing statutory provisions that operationalise the proposed cross-sectoral principles and any important gaps or overlaps between regulators. We would welcome the opportunity to discuss with the Government how such gaps or overlaps could be addressed, with the ambition of making it easier for organisations to understand their responsibilities and reducing the costs of regulation.
5. Irrespective of the balance of responsibilities across regulators, regulatory cooperation will continue to be essential. While the Government can play an important role, genuine cooperation will need to be led and implemented by regulators themselves, based on strong relationships, shared analysis and insight and joint working. The ICO is committed to promoting regulatory coherence through the DRCF and the Regulators and AI Working Group and to sharing our learnings and thinking on AI regulation with the broader UK regulatory community.
6. It will also be important to minimise friction where possible between the UK’s regulatory approach and that of other international actors (e.g. the EU’s AI Act), so UK firms developing AI can export their innovative products but also import the data and infrastructure that underpin their products freely. The ICO is already an active member of a variety of international fora, from the Global Privacy Assembly to the G7, where we promote the UK’s approach to data protection but also AI more specifically.

Conclusion

1. The ICO supports the Government’s vision to make the UK the best place in the world to found and grow an AI business and translate AI’s potential into growth and societal benefits. The current, thriving AI ecosystem in the UK is a testament to how innovation-friendly regulation already is.
2. We agree an approach to AI governance should be context-specific, risk-based, coherent, proportionate and adaptable. We support the development of a set of principles for the regulation of AI and stand ready to support the Government in achieving the delicate balance of improving coherence while accounting for the intricacies of specifics domains and mandates. We look forward to providing more feedback ahead of the Government’s upcoming White Paper on AI governance and regulation.

1. <https://bills.parliament.uk/bills/3322> [↑](#footnote-ref-1)
2. <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/#the_principles> [↑](#footnote-ref-2)
3. <https://ico.org.uk/media/about-the-ico/documents/4020926/ico25-plan-for-consultation-20221407-v1_0.pdf> [↑](#footnote-ref-3)
4. The ICO will soon update the fairness component of the existing Guidance on AI and Data Protection with the aim of assisting organisations tackle such issues. [↑](#footnote-ref-4)
5. <https://ico.org.uk/for-organisations/guide-to-data-protection/key-dp-themes/guidance-on-ai-and-data-protection> [↑](#footnote-ref-5)
6. <https://ico.org.uk/for-organisations/guide-to-data-protection/key-dp-themes/guidance-on-ai-and-data-protection/ai-and-data-protection-risk-toolkit> [↑](#footnote-ref-6)
7. <https://globalprivacyassembly.org/news-events/gpa-awards/> [↑](#footnote-ref-7)
8. <https://ico.org.uk/for-organisations/guide-to-data-protection/key-dp-themes/explaining-decisions-made-with-artificial-intelligence/> [↑](#footnote-ref-8)
9. <https://ico.org.uk/about-the-ico/what-we-do/ico-innovation-services> [↑](#footnote-ref-9)
10. You can read more about ICO’s work on AI here: <https://ico.org.uk/about-the-ico/what-we-do/our-work-on-artificial-intelligence> [↑](#footnote-ref-10)
11. <https://www.gov.uk/government/publications/findings-from-the-drcf-algorithmic-processing-workstream-spring-2022/the-benefits-and-harms-of-algorithms-a-shared-perspective-from-the-four-digital-regulators> [↑](#footnote-ref-11)
12. <https://www.gov.uk/government/publications/findings-from-the-drcf-algorithmic-processing-workstream-spring-2022/auditing-algorithms-the-existing-landscape-role-of-regulators-and-future-outlook> [↑](#footnote-ref-12)
13. <https://www.gov.uk/government/publications/digital-regulation-cooperation-forum-workplan-2022-to-2023/digital-regulation-cooperation-forum-plan-of-work-for-2022-to-2023> [↑](#footnote-ref-13)
14. <https://ico.org.uk/for-organisations/guide-to-data-protection/key-dp-themes/explaining-decisions-made-with-artificial-intelligence/part-1-the-basics-of-explaining-ai/what-are-the-contextual-factors/#contextual_factors_1> [↑](#footnote-ref-14)