

## The Information Commissioner's response to the Government's AI White Paper

### 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.
3. The Information Commissioner's Office (ICO) sets out its strategic vision in the ICO25 plan,<sup>1</sup> which highlights promoting regulatory certainty, empowering responsible innovation and safeguarding the public as key priorities.

### Introduction

4. The ICO welcomes the opportunity to provide comments on the Government's AI White Paper, "A pro-innovation approach to AI regulation". Artificial intelligence (AI) is critical to the UK's prosperity, offering transformational potential to improve our lives and livelihoods. We support the White Paper's ambitions to empower responsible innovation and sustainable economic growth, which align with our own strategic ambitions set out in ICO25.

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<sup>1</sup> <https://ico.org.uk/about-the-ico/our-information/our-strategies-and-plans/ico25-plan/>

## The ICO's role in regulating AI

5. From improving healthcare to tailoring online entertainment, the uses of AI with greatest salience for public policy are often powered by personal data. Personal data may be processed to design, train, test or deploy an AI system. All these stages of AI development and deployment where processing of personal data takes place will fall under the ICO's purview, as the UK's data protection regulator.
6. Empowering responsible innovation is one of our ICO25 priorities and we believe data protection can help organisations build or use AI with confidence while avoiding risks to people's rights and freedoms. This includes risks that can lead to physical, material and non-material damage (see Recitals 83 and 85 of the UK GDPR). As such, the ICO as the data protection authority in the UK, plays a central role in the governance of AI.
7. AI is a strategic priority for the ICO. The ICO25<sup>2</sup> strategic plan highlights our current work in this area, including actions to tackle urgent and complex issues such as AI-driven discrimination.<sup>3</sup> This builds on our existing work on AI, including:
  - our landmark Guidance on AI and Data Protection,<sup>4</sup> which is regularly updated to address emerging risks and opportunities;
  - our accompanying AI and Data Protection risk toolkit,<sup>5</sup> which won a Global Privacy and Data Protection Award<sup>6</sup> in 2022;
  - our supplementary guidance on Explaining Decisions Made with AI,<sup>7</sup> co-badged with The Alan Turing Institute;
  - our support for AI innovators through our Regulatory Sandbox, Innovation Advice and Innovation Hub;<sup>8</sup>
  - our advice to regulators on how to use AI and personal data appropriately and lawfully,<sup>9</sup> following a recommendation by the House of Lords;<sup>10</sup>

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<sup>2</sup> [ICO25 strategic plan | ICO](#)

<sup>3</sup> The ICO has updated the fairness component of the existing Guidance on AI and Data Protection with the aim of assisting organisations to tackle such issues.

<sup>4</sup> <https://ico.org.uk/for-organisations/guide-to-data-protection/key-dp-themes/guidance-on-ai-and-data-protection>

<sup>5</sup> <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>

<sup>6</sup> <https://globalprivacyassembly.org/news-events/gpa-awards/>

<sup>7</sup> <https://ico.org.uk/for-organisations/guide-to-data-protection/key-dp-themes/explaining-decisions-made-with-artificial-intelligence/>

<sup>8</sup> <https://ico.org.uk/about-the-ico/what-we-do/ico-innovation-services>

<sup>9</sup> [how-to-use-ai-and-personal-data.pdf \(ico.org.uk\)](#)

<sup>10</sup> [AI in the UK: No Room for Complacency \(parliament.uk\)](#)

- our contribution to standard-setting initiatives as a member of the AI Committee of the British Standards Institution (BSI); and
  - our supervision of organisations using AI, including through both proactive audits<sup>11</sup> and investigations.<sup>12</sup>
8. We continue to track developments in AI to ensure that our policy positions reflect the latest technological opportunities and risks, with new advice to developers and users of generative AI published in recent weeks.<sup>13</sup> We conduct horizon-scanning to detect new data protection risks and opportunities,<sup>14</sup> and run a programme of post-doctoral AI fellowships that research issues such as AI and dark patterns, and model inference attacks.<sup>15</sup>
9. We have also actively engaged with Government's AI proposals in the context of the Data Protection and Digital Information Bill,<sup>16</sup> House of Lords consultation on AI governance,<sup>17</sup> provided input to the Department for Health and Social Care's call for evidence on equity in medical devices,<sup>18</sup> and the House of Lords Justice and Home Affairs Committee call for evidence on the use of new technologies in the application of the law.<sup>19</sup>

## The ICO's work with other regulators

10. The ICO recognises the important role that other UK regulators play in governing the use and development of AI in different sectors or contexts. 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.
11. As part of our work at the DRCF we have published two discussion papers on algorithmic harms and benefits,<sup>20</sup> and the landscape of AI auditing.<sup>21</sup>

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<sup>11</sup> [A Guide to ICO Audit Artificial Intelligence \(AI\) Audits](#)

<sup>12</sup> [Clearview AI Inc. | ICO](#)

<sup>13</sup> [Generative AI: eight questions that developers and users need to ask | ICO](#)

<sup>14</sup> For example, the Emerging Tech produced two reports on biometric technologies that highlight the risks of Emotion Recognition Technology: [Biometrics technologies | ICO](#)

<sup>15</sup> You can read more about the ICO's work on AI here: <https://ico.org.uk/about-the-ico/what-we-do/our-work-on-artificial-intelligence>

<sup>16</sup> [Data Protection and Digital Information \(No. 2\) Bill - Parliamentary Bills - UK Parliament](#)

<sup>17</sup> [UK Parliament consultation: Governance of artificial intelligence | ICO](#)

<sup>18</sup> [Department of Health and Social Care call for views: Equity in medical devices independent review | ICO](#)

<sup>19</sup> [House of Lords Justice and Home Affairs Committee call for evidence: the use of new technologies in the application of the law | ICO](#)

<sup>20</sup> <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>

<sup>21</sup> <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>

We have also continued to build on that work through our 2022-2023 work programme,<sup>22</sup> including the recent publication of the findings from workshops on transparency in the procurement of algorithmic systems.<sup>23</sup>

12. The ICO also works with international counterparts and stakeholders, both bilaterally such as our joint investigation with the Office of the Australian Information Commissioner into Clearview AI,<sup>24</sup> and through fora such as the Global Privacy Assembly (GPA),<sup>25</sup> the Global Partnership on AI (GPAI) and the G7 grouping. In addition, we provided input into the EU AI Act<sup>26</sup> and the Council of Europe's legal framework on AI.<sup>27</sup>

## The ICO's views on the AI White Paper

### ***The role of regulators***

13. The AI White Paper proposes the creation of a central function to oversee the AI regulatory landscape. We welcome the Government's intention to convene regulators to deliver activities such as joint regulatory guidance or a joint regulatory sandbox.
14. We note, however, that it is the regulators themselves that must produce guidance and advice, in alignment with the laws that they oversee independently of government. Businesses will require confidence that implementing any guidance or advice will minimise the risk of legal or enforcement action by regulators. This need is particularly acute for small to medium sized enterprises (SMEs) that may lack the in-house legal expertise of larger organisations. We would welcome clarification on the respective roles of government and regulators in issuing of guidance and advice as a result of the proposals in the AI White Paper.
15. We encourage the Government to work through regulators to deliver its ambitions where possible, and in particular, through the Digital Regulation Cooperation Forum (DRCF). As noted earlier, the DRCF already plays an active role in identifying and examining the implications of new AI applications across our sectors, promoting joined-up regulatory positions in relation to AI, developing integrated support to AI developers and more.

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<sup>22</sup> <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>

<sup>23</sup> <https://www.gov.uk/government/publications/transparency-in-the-procurement-of-algorithmic-systems-findings-from-our-workshops>

<sup>24</sup> [ICO fines facial recognition database company Clearview AI Inc more than £7.5m and orders UK data to be deleted | ICO](https://ico.org.uk/about-the-ico/news-and-press/2022/06/22/ico-fines-facial-recognition-database-company-clearview-ai-inc-more-than-7.5m-and-orders-uk-data-to-be-deleted/)

<sup>25</sup> <https://globalprivacyassembly.org/>

<sup>26</sup> <https://ico.org.uk/about-the-ico/consultations/eu-proposed-artificial-intelligence-act/>

<sup>27</sup> <https://ico.org.uk/about-the-ico/consultations/council-of-europe-ad-hoc-committee-on-artificial-intelligence-cahai-multi-stakeholder-consultation/>

We look forward to working with the Government as it implements the White Paper.

### ***Proposed statutory duty and suggested AI principles***

16. The AI White Paper proposes principles for the regulation of AI and the eventual introduction of a statutory duty for regulators to have due regard to these principles. These principles map closely to those found in the UK data protection framework.
17. We would welcome close collaboration with the Government to ensure that the AI White Paper principles are interpreted in a way that is compatible with the data protection principles, so as to avoid creating additional burden or complexity for businesses. We offer the following detailed comments on the principles to help bring about consistency:
  - **Fairness:** We believe that the AI White Paper's suggested 'fairness' principle, much like data protection's fairness principle,<sup>28</sup> should cover the stages of developing an AI system, as well as its use. We therefore suggest that the definition of the principle is amended to read "AI systems should be designed, deployed and used considering definitions of fairness which are appropriate to a system's *development*, use(s), etc."
  - **Contestability and redress:** The 'contestability and redress' principle, states that regulators will be expected to clarify existing routes to contestability and redress, and implement proportionate measures to ensure the contestability of the outcome of the use of AI where relevant. Typically, it is organisations using AI and that have oversight over their own systems that are expected to clarify routes to, and implement, contestability. We would welcome clarity around this sentence, and would like to understand whether the scope for regulators such as the ICO may be better described as making people more aware of their rights in the context of AI.
  - **Interactions with UK GDPR Article 22:** Separately, the paper notes that regulators are expected, where a decision involving the use of an AI system has a legal or similarly significant effect on an individual, to consider the suitability of requiring AI system operators to provide an appropriate justification for that decision to affected parties. We would like to highlight that where an AI system uses personal data, if UK GDPR Article 22 is engaged, it will be a *requirement* for AI system operators to be able to provide a justification, not a consideration. We suggest clarifying this to ensure this does not create confusion for industry.<sup>29</sup>

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<sup>28</sup> [How do we ensure fairness in AI? | ICO](#)

<sup>29</sup> Article 22 is currently being considered in the Data Protection and Digital Information (No. 2) Bill, and may therefore change as the bill progresses.

18. The AI White Paper acknowledges that there may be instances where the proposed principles could come into conflict. The expectation outlined in the paper is that regulators will use their expertise and judgement to prioritise and apply the principles, sharing information with government and other regulators about how they are assessing the relevance of each principle.
19. As the AI White Paper principles map closely to the data protection principles, it will be important for regulators to interpret these in a way that is compatible with their meaning under UK data protection law. Even though not all AI systems process personal data, a substantial portion, and particularly the ones implicit in the Government's framing of the AI White Paper principles, will. Maintaining compatibility between the principles will help minimise unnecessary complexity and burden for businesses.

### ***The format of proposed guidance***

20. The AI White Paper proposes that regulators work together to produce joint guidance for businesses to encourage clarity. Designed well, joint regulatory guidance could make it easier for businesses to comply with regulation and develop new ideas and innovative new products in their sector or context.
21. We recommend that the Government prioritises research into the type of guidance a wide range of AI developers would value before proceeding. For example, it is likely that sector- or use case-specific guidance will be of greater usefulness to AI developers than joined-up guidance on each non-statutory principle. The latter may be too high level, and therefore require a large degree of interpretation by AI developers, to provide practical guidance on a specific issue that a business faces. Research could surface the most helpful focus for future guidance.

### ***The design of the proposed sandbox***

22. The AI White Paper proposes the establishment of a joint regulatory sandbox, which could bring together cross-sectoral regulatory advice. This could be valuable for providing clarity to AI developers on how the law will apply to their use case, facilitating innovation and investment.
23. As with guidance, we recommend that the Government prioritise research into the type of service a wide range of AI developers would value before proceeding. Based on our experience in operating the ICO's Regulatory Sandbox, Innovation Advice and Innovation Hub,<sup>30</sup> we make the following recommendations on the design of this service:
  - **Scope of support:** We recommend that the scope of any sandbox is extended to include all digital innovation, not just in relation to AI. In practice, innovators' queries are unlikely to be strictly limited to AI and

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<sup>30</sup> <https://ico.org.uk/about-the-ico/what-we-do/ico-innovation-services>

extend to a much broader family of digital technologies that are overseen by the same regulators. We propose that the benefits and costs of a 'digital and AI sandbox' are evaluated alongside a narrower AI sandbox.

- **Depth of support:** We recommend designing the sandbox to provide timely advice that aligns with AI development lifecycles, with the aim of benefitting businesses that are seeking clarity on the law. A slower, more-intensive testing and trialling environment is likely to be able to support only a limited number of businesses and be of value primarily to businesses that need specific regulatory authorisation before launch, such as in financial services or for medical devices.
- **Prioritisation of support:** We recommend that support to innovators is prioritised in line with international best practice, with a focus on: (i) the degree of innovation relative to existing products or business models; (ii) the degree of regulatory barriers faced or support needed; and (iii) the potential for wider economic, social or environmental benefit.<sup>31</sup> This will ensure that resources are targeted to the innovations with the greatest impact.

24. We recommend that the Government works closely with the DRCF to develop its ideas further. With our DRCF partners we are already undertaking a project running to the end of August 2023 to research, design and pilot a multi-agency advice service that responds to the needs of digital innovators. Our research will explore both the format of a service and the types of issues that are of concern to digital innovators. We will also be able to gauge whether the service requested by potential users relates to topics where there may be an intersection between DRCF member regulators and other regulators.

### ***Cost implications of the proposals***

25. We support the intention to provide greater clarity to businesses on how AI regulation applies in their sector or to their use case. This will incur additional costs to cross-economy regulators such as the ICO, which will now need to produce products tailored to different sectoral contexts in coordination with other relevant AI regulators. We would welcome further discussions with government on the funding required to enable these proposals to succeed.

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<sup>31</sup> For example, see:

[https://www3.weforum.org/docs/WEF\\_Agile\\_Regulation\\_for\\_the\\_Fourth\\_Industrial\\_Revolution\\_2020.pdf](https://www3.weforum.org/docs/WEF_Agile_Regulation_for_the_Fourth_Industrial_Revolution_2020.pdf)

## Conclusion

26. 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.
27. 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 specific domains and mandates.