

Will the UK regulate AI?

27 July 2018

As part of its industrial strategy, the UK Government has set itself the ‘Grand Challenge’ of putting the UK at the forefront of the artificial intelligence and data revolution. AI and digital development were also discussed in the Government’s recent white paper on Brexit, and in both the House of Lords AI report and the Government’s response to it. But what does this mean for AI regulation?

In this briefing we look at the Government’s approach to regulating AI, set out in its response to the House of Lords AI report and its recent Brexit white paper. We also highlight some other AI issues discussed in the Government’s response to the Lords report.

Regulating AI

The UK, like the rest of the world, recognises the transformative potential of AI and is aiming to create a business and regulatory environment which ensures it remains at the forefront of this fast paced sector. As part of this, in April the Government launched an AI Sector Deal (linked to its much publicised Industrial Strategy) and the House of Lords Select Committee on Artificial Intelligence published a report “AI in the UK: ready, willing and able?”. The latter is a wide-ranging report looking at everything from funding, education and research to AI codes and regulation. The Government has recently published its response to the Lords report which

includes some discussion of the Government’s view on AI regulation.

View from the House of Lords

The Lords had stated in their report that “blanket AI-specific regulation, at this stage, would be inappropriate”. Instead, the Lords suggested that existing sector-specific regulators are best placed to consider the impact of potential AI regulation on their sectors. It welcomed that new data protection legislation (the GDPR and new Data Protection Act 2018) appeared to address many of the concerns expressed by the witnesses who gave evidence to the Lords for the report. It also suggested that the new Government Office for AI, together with the soon-to-be established Centre for Data Ethics and Innovation (CDEI), should identify any gaps in existing regulation, drawing on the expertise of existing sector regulators. (See box: [New AI Organisations](#)).

Government response

In its response to the Lords report, the Government confirmed that it agrees with the above recommendations regarding regulation. It had already committed earlier this year, in its Industrial Strategy, to work with business to develop an agile approach to regulation “that promotes innovation and the growth of new sectors while protecting citizens and the environment”. In its response it also confirmed that it will establish a Ministerial Working Group on Future Regulation to “horizon scan” and identify where regulation needs to adapt to support emerging technologies such as AI. The Group would be supported by the Government Office for AI and the CDEI. Existing sector regulators are also encouraged to adopt a regulatory approach which “engenders public

trust while enabling innovation” (such as the Regulatory Sandbox approach) - to assist with this the Government has pledged a £10 million investment in the Regulators Pioneer Fund and committed the support of the CDEI.

Brexit Whitepaper

Earlier this month the Government provided further information on its plans for AI (this time, in the context of the UK’s relationship with the EU). It confirmed in its Brexit white paper “The Future Relationship Between The United Kingdom And The European Union” that it is looking to explore “new models for regulatory cooperation between the UK and EU” regarding emerging technologies such as AI. It believes that trade should promote the development of such technologies, and notes that emerging technologies are vulnerable to non-tariff barriers. While it is not yet clear what the new models for regulatory cooperation may look like, the Government did cite the European AI Alliance as an example. The European Commission recently committed to set up the AI Alliance to develop draft ethics guidelines by the end of 2018. The Brexit white paper confirms that, after the UK withdraws from the EU, the CDEI “intends to participate in this Alliance, alongside its European partners” (assuming, presumably, that the EU agrees to this).

The Brexit white paper also confirms that the Government is looking for “new arrangements on services and digital, providing regulatory freedom where it matters most for the UK’s services-based economy, and so ensuring the UK is best placed to capitalise on the industries of the future in line with the modern Industrial Strategy.” This means leaving the digital single market and acknowledging that the UK and the EU will not have current levels of access to each other’s markets for new technologies such as AI. The hope is that this will enable the UK to make trade deals with “old friends and new allies”, although this approach has raised some concerns in the tech sector.

Comment

As the EU and Governments around the world try to respond to the changing technology landscape, the UK Government is seeking to put in place an infrastructure which taps into a range of expertise (for example, the various new AI organisations include representatives from industry and academia), and a strategy which is agile and flexible enough to adapt to this fast-developing area. From a regulatory stand-point, it seems that sector-specific regulators will be left to consider the impact of AI on their sectors. It is, however, slightly unclear how this will work with the new Ministerial Working Group on Future Regulation and the various (and potentially overlapping) AI bodies, and what impact any ‘new model for regulatory co-operation’ with the EU may have on UK regulation.

Government response to Lords report

The Lords report “AI in the UK: ready, willing and able?” covered much more than AI regulation, and the Government response to it runs through, in varying levels of detail, the Government’s view on all 74 of the Lords’ recommendations. These include their response to recommendations relating to the establishment of data trusts, use of open data, ethical use of AI and creation of a cross-sector AI code of conduct. Some highlights from the Government response are set out in the box **Government Response to House of Lords AI Paper** in Annex 1.

New AI Organisations

The Government is setting up three new AI organisations*:

The Centre for Data Ethics and Innovation (CDEI) will be a statutory body to advise Government on the measures needed to strengthen and improve the way data and AI are used. This includes promoting best practice and advising on how to address potential gaps in the UK's regulatory landscape. It will not, itself, regulate as current sector regulators are best placed to do so. Its role and remit is currently under consultation.

The AI Council will bring together leading figures from industry and academia to provide strategic leadership, promote the growth of the sector and ensure delivery of the AI Sector Deal commitments. The Council will be chaired by CognitionX co-founder Tabitha Goldstaub.

The Government Office for AI will be the secretariat for the AI Council (made up of civil servants) and will drive implementation and lead coordination on AI within government. It will help deliver the AI Sector Deal and develop the AI Grand Challenge. CEO of Google Deepmind, Denis Hassabis, has recently been appointed as the first advisor to the Office.

The Government plans for these new organisations to work closely with existing regulators such as the ICO, and research institutes such as the Alan Turing Institute.

(*As described in the CDEI consultation - see www.gov.uk/government/consultations/consultation-on-the-centre-for-data-ethics-and-innovation).

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Annex 1: Government Response to House of Lords AI Report

The Lords report covered much more than AI regulation and the Government response to it runs through, in varying levels of detail, the Government’s view on all 74 of the Lords’ recommendations. Some examples of the issues discussed are set out below.

| House of Lords Recommendation | Government Response |
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| <p>Data Trusts: The Government plans to adopt the Hall-Pesenti Review recommendation that Data Trusts be established to facilitate the ethical sharing of data between organisations. However, current proposals do not give a voice to those whose data would sit in the Trusts. The Lords therefore recommend that, as Data Trusts are developed under the guidance of the CDEI, provision should be made for the representation of people whose data is stored in the Trusts (for example, via regular consultation, personal data representatives or other means).</p> | <p>The Government confirmed it is currently exploring data sharing frameworks such as Data Trusts (mechanisms where parties have defined rights and responsibilities with respect to shared data) and that the Office for AI and CDEI, together with the AI Council, will work together to create Data Trusts. As part of this, it will consider how best to develop governance structures that would include representation of those individuals whose data is stored in the Trusts. The Government also thinks Data Trusts could help ensure access to public data is more equitable, by allowing SMEs to pool resources to rationalise access to data and work together to pre-process data (and compete with larger / more established firms).</p> |
| <p>Informing the public: The public should be aware of how and when AI is being used to make decisions about them and industry should take the lead in establishing voluntary mechanisms for informing them (learning lessons from the largely ineffective Adchoices scheme). The AI Council should consider how best to develop and introduce these mechanisms.</p> | <p>The Data Protection Act 2018 reflects the need to ensure there are stringent measures in place to regulate automated processing and includes safeguards such as the right to be informed of automated processing and the right to challenge an automated decision. The Government also states that “individuals should not be subject to a decision based solely on automated processing if that decision significantly and adversely impacts them... unless required by law.” While, at the moment, businesses decide about informing the public how and when data is used (subject to compliance with data protection laws), “should a regulatory requirement be introduced, it will be done so in consultation with relevant industry bodies, businesses, regulators and Government departments.”</p> |
| <p>Open data and data sharing: Access to data is essential to the present surge in AI technologies and there are many arguments for opening up data sources, especially in the public sector, in a fair and ethical way. This will help SMEs compete with large US technology companies who can buy data more easily. The Lords recommend that where possible, and with regard to its potential commercial value, publically held data be made available to AI</p> | <p>While Government departments already publish open data, work can be done to improve the quantity and quality of that data. This includes Government support to make key data sets available through portals and APIs. Part of this, as mentioned in the Government’s green paper “Modernising Consumer Markets”, includes launching a “Smart Data Review” to identify lessons learned from existing data portability initiatives and considering how the</p> |

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| <p>researchers and developers. The CDEI should also produce guidance on making data available (like Transport for London have done) and investigate the Open Banking model and other data portability initiatives with a view to establishing similar standardised frameworks for sharing data beyond finance.</p> <p>It is important public organisations are aware of the commercial potential of their data. The ICO (with the CDEI) should produce guidance to help them value such data. The ICO should also have powers to review the terms of significant data supply agreements being contemplated by public bodies.</p> | <p>approach of Open Banking can be implemented in other regulated markets. More generally, the Office for AI, CDEI and AI Council, in consultation with relevant Government departments will look at ways in which public data can be utilised by diverse (including SME) businesses in a fair way.</p> <p>Although the Lords recommended the ICO produce guidance around valuing public data and have powers to review the terms of significant data supply agreements contemplated by public bodies, the Government response does not address the ICO's role here. Rather it says the Government Office for AI, CDEI and AI Council will explore ways in which public data can be used.</p> |
| <p>Funding: The Lords welcomed changes in the Autumn Budget 2017 to the Enterprise Investment and Venture Capital Trust Schemes which should boost investment in AI companies, but recognises the challenges UK start-ups face in raising investment to scale-up. It therefore asked for part of a new £2.5 billion investment fund to be reserved as an AI growth fund for AI SMEs.</p> | <p>Reserving part of the investment fund was not expressly addressed in the Government's response, although it does discuss a number of funding commitments. These include repeating funding commitments made regarding technologies such as AI in the last Autumn Budget and the Industrial Strategy, (including up to £0.95 billion support for the sector) and working with pension regulators to clarify investment guidance for funds around investing in assets supporting innovative firms.</p> |
| <p>Transparency: The Lords report discusses the difficulty of transparency in certain AI systems and necessity of developing "intelligible AI systems" (and guidance on this) if AI is to become an integral and trusted tool in our society (whether technical transparency, explainability or both). It states there will be particular safety-critical scenarios where transparency is imperative and regulators in those domains must have the power to mandate the use of more transparent forms of AI.</p> | <p>The Government response is slightly more relaxed on the point. In its view, while transparency is important, an overemphasis on transparency could deter the use of AI. Using health as an example, the Government said it would "deny patients access to an important part of their care", and that the Department of Health's response to this would be to focus on techniques that mitigate the black box problem (such as explaining the weighting of the different inputs in an algorithm) and effective communication with patients (so they can give informed consent).</p> |
| <p>Data monopolies: The Lords urged the Government and Competition and Markets Authority (CMA) to review proactively the use and potential monopolisation of data by big overseas technology companies operating in the UK. While recognising the investment made by such companies, it was also concerned they could damage the UK's AI start-up sector.</p> | <p>The Government confirmed that the CMA is aware of this risk, and that the digital economy has been identified as a priority area in its 2018/19 Annual Plan. As part of this, it is building a new technology team to strengthen its ability to keep pace with the use of algorithms, AI and big data in business.</p> |

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| <p>Legal liability: The Lords highlighted the risks of AI systems malfunctioning, underperforming or otherwise making erroneous decisions which cause harm and suggested that the Law Commission consider the adequacy of existing legislation (in case new mechanisms for legal liability were required). At a minimum, they considered this work should establish clear principles for accountability and intelligibility.</p> | <p>While welcoming the recommendation, the response from Government only confirmed that the “Office for AI, CDEI and AI Council will take these concerns into consideration and, as appropriate, engage the Law Commission on the best course of action.”</p> |
| <p>Cyber: The Lords pointed to a gap in the Cabinet Office’s draft Cyber Security Science and Technology Strategy, which it felt focussed on the opportunities, rather than the risks of using AI in cyber security.</p> | <p>The Government welcomed the Lords’ recommendation to take into account both risks and opportunities and confirmed that the DCMS will consider this when further developing the strategy.</p> |
| <p>AI Code: The Lords recognised that many organisations are preparing their own ethical codes of conduct for the use of AI but saw a lack of wider awareness and co-ordination (which it saw as an area where the Government could help). It therefore recommended that the CDEI urgently draw up a cross-sector ethical code of conduct for use across both public and private sector organisations which are developing or adopting AI.</p> | <p>While the Government confirmed that the CDEI will identify measures needed to strengthen and improve the way AI is used, it will prioritise and scope the CDEI’s projects following completion of the consultation which opened on 29 June 2018. As a general point, the Government concluded its report by explaining that its answers to recommendations involving the CDEI were restricted by the fact it is consulting on the role of the CDEI, but that the Lords’ suggestions would “make an invaluable contribution to both the development of the centre and its initial work programme.” It also mentioned, in the recent Brexit white paper, that the EU has already established an AI initiative to develop ethics guidelines by the end of 2018, and that the CDEI hopes to contribute to this, even after the UK’s departure from the EU (and the digital single market).</p> |
| <p>Ethical use of AI: The Lords highlighted the ethical application of AI as an area that the UK could focus on in the global race to dominate the developing AI sector. To this end, it recommended that the Government convene a global summit in London by the end of 2019 to develop a common framework for the ethical development and deployment of AI systems.</p> | <p>While the Government response confirms it is “taking steps to ensure the UK is a global leader on [AI]” it points to the new AI bodies such as the CDEI (which, as mentioned above, will be involved in the EU’s AI initiative around ethics guidelines) and the Grand Challenge on AI, rather than a global summit, as ways in which the UK will show global leadership on AI.</p> |

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