

The UK's AI Strategy: Where Are We Now?

The UK government published a 10-year strategy that outlines its pro-innovation national approach to AI late last year. We look at how this strategy is shaping the current AI regulatory landscape.

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Introduction

Last year, the UK Department of Digital, Culture, Media and Sport (DCMS) published its [10-year National AI Strategy](#) for the regulation and promotion of artificial intelligence (AI) in the UK (Report). DCMS seeks to build “the most pro-innovation regulatory environment in the world” and vows to make the UK the “best place to live and work with AI” over the next decade.

Since then, the UK government and regulators have taken various steps towards this aim, with the Report anticipating a large number of AI-centric publications and consultations. Some key examples (and their latest status) are summarised below, including a policy paper and white paper on a pro-innovation national position on governing and regulating AI, an Information Commissioner’s Office (ICO) consultation on the beta version of its AI and data protection risk toolkit, and a consultation on copyright and patents for AI through the UK Intellectual Property Office (IPO).

The Report follows the closing of the European Commission feedback period for a [proposal](#) for an EU AI-specific regulation, which will be the first EU legal framework focussed on AI when implemented, but will not apply to the UK after Brexit. For more information, see Latham’s briefing note [European Commission Outlines Proposed Regulation for Artificial Intelligence](#). The EU AI regulation is currently subject to intense negotiation between the European legislative bodies, as they seek to agree on the final text.



Overview of the National AI Strategy

The National AI Strategy is divided into three core aims:

- 1. Invest and plan for the long-term needs of the AI ecosystem**
- 2. Support the transition to an AI-enabled economy, ensuring AI benefits all sectors and regions of the UK**
- 3. Ensure the UK gets the national and international governance of AI technologies right, encouraging innovation and investment while protecting the public and the UK's fundamental values**

At a high level, the UK government's key planned actions include proposed new publications, research initiatives, collaborations with existing UK and international bodies, consultations, and a focus on strategic investment and upskilling.

UK's Approach to AI Regulation So Far

Publications and Consultations in the Pipeline

The Report suggests that the UK government is likely to take an iterative approach to the future regulation of AI, addressing issues in existing legislation and guidance in combination with introducing broader AI cross-sector measures where appropriate.

Key steps in the strategy are set out in the table below, with updates on the latest status where applicable.



Key steps	Summary	When
Publications		
White Paper	<p>The Office for Artificial Intelligence is producing a white paper that will set out the government's position on possible risks and harms that AI technologies may pose and offer relevant regulatory solutions. The white paper will also consider whether an approach based on sector-specific regulators would be best for the eventual regulation of AI, including looking at:</p> <ul style="list-style-type: none"> • Removing existing regulatory burdens where there is evidence that they are creating unnecessary barriers to innovation • Retaining the existing sector-based approach, while ensuring that individual regulators are empowered to work flexibly • Introducing additional cross-sector AI-specific principles or rules <p>In advance of the white paper, the government has published an interim policy paper — Establishing a pro-innovation approach to regulating AI — which sets out its emerging proposals for the regulation of AI and calls for views on a number of topics. The policy paper proposes a pro-innovation, risk-based approach to regulation, based on guidance and voluntary measures within the existing sector-based framework. The regulatory approach will be underpinned by a set of high-level principles such as safe usage of AI, technical security, accountability, fairness and explainability, and seeks to future-proof the regulatory framework by focusing on the uses and impacts of AI rather than defining the technology itself.</p>	<p>Original milestone: early 2022</p> <p>Awaiting publication of the white paper.</p> <p>The interim policy paper was published on 18 July 2022. The call for views will close on 26 September 2022.</p>
National Strategy for AI in Health and Social Care	<p>The National Health Service (NHS) AI Lab is creating a strategy that will consolidate the lab's system transformation to date and will set the direction for AI in health and social care up to 2030.</p>	<p>Original milestone: early 2022</p> <p>Awaiting publication of the strategy</p>
Guidance on AI Ethics and Safety (Updates)	<p>In 2019, the Office for Artificial Intelligence, together with The Alan Turing Institute, produced guidance on AI ethics and safety in the public sector that identified potential harms caused by AI systems. The government is now working with The Alan Turing Institute to update this guidance using the most current information about responsible AI innovation.</p>	<p>Late 2022 onwards</p>
Ministry of Defence AI Strategy	<p>The Ministry of Defence will soon publish its bespoke AI strategy, which will establish a new Defence AI Centre (championing AI development and use and enabling rapid development of AI projects).</p>	<p>Original milestone: early 2022</p> <p>Awaiting publication of the strategy</p>
Data Availability Policy Framework	<p>The framework will establish the government's role in enabling better data availability in the wider economy (whilst consulting on the interplay of AI technologies and the UK's data rights regime).</p>	<p>Original milestone: early 2022</p> <p>Awaiting publication of the framework</p>



Key steps	Summary	When
Consultations		
Copyright and Patents for AI Through the IPO	The government, with the help of the IPO, consulted on the extent to which copyright and patents should protect AI-generated inventions and creative works.	The consultation period <u>closed</u> on 7 January 2022. The government published its <u>response</u> to the consultation on 28 June 2022, broadly stating that no changes would be made to UK copyright or patent law in relation to either computer-generated work or AI-devised inventions, but that a new copyright and database exception will be implemented to allow for text and data mining.
UK Capability in Digital Twinning and Wider Cyber-physical Infrastructure	The government will consult on the potential value of and options for a UK capability in digital twinning and wider cyber-physical infrastructure that will help identify how common, interoperable digital tools and platforms can form a digital and physical shared infrastructure for innovators.	The consultation period <u>closed</u> on 11 May 2022. The government is currently considering the feedback received during the consultation period, ahead of publishing the consultation outcome.
Beta Version of the ICO's AI and Data Protection Risk Toolkit	The toolkit is designed to assist risk practitioners identify and mitigate risks to data protection that AI systems that process personal information create or exacerbate. Closed 1 December 2021.	The ICO launched its <u>AI and Data Protection Risk Toolkit v1.0</u> in May 2022, to provide practical guidance on assessing and mitigating AI-specific data protection risk.
Other initiatives		
National AI Research and Innovation Programme	Once launched, this programme will support the continuing development of new capabilities around trustworthiness, acceptability, adoptability, and transparency of AI technologies.	Late 2022 onwards
AI Standards Hub	Once launched, the hub will coordinate UK engagement in AI standardisation globally and explore the development of an AI standards engagement toolkit to engage in the global AI standardisation landscape. In parallel, the Centre for Data Ethics and Innovation (CDEI) has published a <u>roadmap to an effective AI assurance ecosystem</u> . The roadmap sets out the steps to develop tools for effective AI assurance, leveraging the AI technical standards to be created within the AI Standards Hub.	On 12 January 2022, the UK government <u>announced</u> the launch of a pilot of the AI Standards Hub, to be led by the Alan Turing Institute in conjunction with the British Standards Institution and the National Physical Laboratory. The announcement notes that more information will follow in due course.



An Iterative, Sector-Focused Approach to AI Regulation?

The Report indicates that the government favours a flexible and iterative approach to AI regulation. As such, the government will likely work with sector-specific regulators (such as the ICO and IPO) and update existing legislation and guidance to meet the challenges that increased use of AI introduces to society, while leaving open the possibility of AI-specific measures where appropriate (such as in the context of regulating AI ethics and liability). For example, the Report notes that as the use of AI increases, the UK will respond by “reviewing and adapting” the regulatory environment, which suggests piecemeal and ongoing amendments to legislative frameworks as technologies evolve.

The government is also working with The Alan Turing Institute and regulators to examine the adequacy of regulators’ existing AI capacities, especially in dealing with complexities arising from cross-sectoral AI systems. This effort aligns with the overall ethos of the Report, which notes the importance of being flexible and dynamic, not only between the public and private sectors but across industries. It also aligns with the iterative view taken by the House of Lords in the 2020 publication [AI in the UK: ready, willing and able?](#) The publication noted that “blanket AI-specific regulation, at this stage, would be inappropriate” and that “existing sector-specific regulators are best placed to consider the impact on their sector of any subsequent regulation which may be needed”. What is clear from the Report is that any new AI-focused regulation must be clearly distinguishable from existing legal regimes, due to the complexity and bespoke nature of many AI systems. The upcoming white paper is expected to provide further detail on the proposed regulatory approach.

Emphasis on Crossovers With Existing Frameworks

The Report acknowledges that AI does not exist in a vacuum and notes various crossovers with existing legal frameworks:

Data Protection: The Report acknowledges that data protection and AI are linked, sometimes inextricably; on average, 80% of the time spent on an AI project is cleaning, standardizing, and making the underlying data fit for purpose. The Report cites the [National Data Strategy](#) (NDS) as a solution because if properly followed, it will allow “good quality, representative data” to allow “robust and effective” AI systems to learn and develop. As part of the NDS, DCMS ran a consultation ([Data: a new direction](#)) on reforms to the UK data protection framework, and in July 2022 introduced the Data Protection and Digital Information Bill (the Bill). Amongst wide ranging reforms to UK data protection law, the Bill would replace the general prohibition on automated decision-making (subject to certain exceptions) with a more limited restriction, which could facilitate automated decision-making processes in the context of AI applications. For more information, see Latham’s two-part [blog post](#) on the Bill. The government’s reforms sit alongside the ICO’s [Explaining Decisions Made with AI](#) and [Guidance on AI and data protection](#), as well as its [AI and Data Protection Risk Toolkit v1.0](#) launched in May this year.

Intellectual Property (IP): The Report notes that effective IP systems and frameworks not only reward innovation but also incentivise investments by safeguarding creations. As part of the National AI Strategy, and following an earlier [AI and IP call for views](#) (for more information, see this Latham [blog post](#)), the government and the IPO ran a [consultation](#) on the extent to which copyright and patents should protect AI-generated inventions and creative works (as noted above). This consultation called for views on a number of strategic options, including the following in relation to AI patent protection: (i) maintaining the current patent regime, which does not allow for patent protection for AI-generated inventions, where AI is named as the inventor (as explained below); (ii) expanding the concept of the “inventor” to include humans who are responsible for the



AI system which devises the invention; (iii) allowing AI systems to be named as inventors outright; and (iv) the introduction of a new type of protection for AI-generated inventions, to sit alongside the current patent regime.

In its response to the consultation, the government followed option (i), i.e., it will not implement any change to UK law in order to allow for patent protection for AI-devised inventions. The government also intends to maintain the current UK regime in relation to computer-generated works. However, the government has proposed a significant amendment in relation to text and data mining (TDM), in the form of a new copyright and database exception to allow for TDM for any purpose. This exception will enable companies to employ TDM — which is a common technique for AI development and training — without the need for a licence from the owner of the underlying materials, making TDM quicker, easier, and more cost-effective. The government's stated ambition is to ensure the UK's copyright laws are among the most innovation-friendly in the world. While the proposed exception will make it easier to employ TDM in the UK, it remains to be seen whether rights owners will respond by bolstering access restrictions (e.g., pay walls) to their content, or even by deciding not to publish it at all.

In parallel, the UK courts have addressed the question of patent protection for AI-generated inventions in the past year. On 21 September 2021, the Court of Appeal upheld previous High Court and IPO decisions finding that an AI system cannot be an inventor of a patent under the current UK regime (primarily on the basis that a natural or legal person must be designated as the inventor, and the court held that an AI system cannot constitute either a natural or legal person for these purposes). The patent application at the heart of this decision, Stephen Thaler's DABUS application, has been denied on similar grounds in a number of other forums, including the European Patent Office, Germany, the US, and Australia, but granted in South Africa, and is under consideration in South Korea. How radically the UK regime will change following the latest consultation and subsequent developments remains to be seen.

Consumer Protection: The government is separately addressing the potential impacts of AI in consumer products and consumer protection. On 23 May 2022, the government published its independent research report on the impact of AI on product safety, commissioned by the Office for Product Safety and Standards from the Centre for Strategy and Evaluation Services (CSES). The report concludes that increasing AI in consumer products may lead both to significant opportunities for product safety, quality, and innovation, and to unique challenges to the regulatory framework for product safety and liability.

Innovation Versus Regulation

The Report acknowledges the public's "growing awareness" of the "potential risks and harms associated with AI technologies" but seeks to reassure the public of the benefits of AI and strongly suggests that the government will focus on maximizing the potential of AI through fostering innovation and development. Time will tell the extent to which the UK will ultimately seek to depart from the EU's approach in its proposed AI regulation, which is more focussed on preventing harms to EU residents from AI systems. At this stage, the UK is more focussed on the competitive advantage to be gained by seeking a business-friendly approach to AI regulation.



On the Horizon

The UK government is clearly keen to recognise the opportunities that AI offers, particularly in a post-Brexit world in which the UK has more flexibility to position itself as a pro-innovation regulatory environment and a favourable place to live and work with AI. The Report provides a roadmap of future regulatory developments, and context for companies seeking to understand the practical impacts of this rapidly developing and far-reaching landscape.

Latham & Watkins will continue to provide updates on the regulation of AI in the UK.



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