



MRS Response: AI Regulation White Paper Consultation

About the Market Research Society

1. The Market Research Society (MRS) is the UK professional body for market, opinion and social research, insight and analytics. MRS is the world's largest and oldest research association, representing 5,000 individual members and over 600 accredited Company Partners in over 50 countries and has a diverse membership of individual researchers within agencies, independent consultancies, client-side organisations, the public sector and the academic community.
2. MRS' expertise as the lead authority on market, opinion and social research is recognised around the globe. MRS provides the policy and standards expertise for the UK plus a number of global associations including EFAMRO the European Research Federation and EPHMRA the international healthcare research association. MRS also has close business ties with other research associations around the world via its participation in the Global Research Business Network (GRBN) plus formal agreements with associations in the US, Australia and Japan.
3. MRS promotes, develops, supports and regulates standards and innovation across market, opinion and social research and data analytics. MRS regulates research ethics and standards via its Code of Conduct. All individual MRS members and Company Partners agree to regulatory compliance of all their professional activities via the MRS Code of Conduct and its associated disciplinary and complaint mechanisms.
4. Market, opinion, and social research is the systematic gathering and interpretation of information about individuals or organisations using the statistical and analytical methods and techniques of the applied social sciences to gain insight or support decision making. It involves systematic study of different spheres of society, politics, and the economy. Research, insight and analytics stand at the heart of all well-informed commercial, social and political decisions. Insight into what makes a product, business initiative or government policy work is often the hidden – yet defining – factor between success and failure. It is our sector that provides the deeper intelligence needed for our world today.
5. More information about MRS can be found on the MRS website: <https://www.mrs.org.uk/>

Purpose of our Response:

6. MRS is responding to the Department for Science, Innovation and Technology 'A pro - innovation approach to AI regulation' Consultation. We welcome the approach by the UK Government to develop a pro-innovation framework and bring clarity and coherence to the AI regulatory landscape. However, we believe it is essential that the UK Government develops an approach which mobilises secondary regulators, such as MRS, in the development and deployment of applicable and relevant sector AI Codes and guidelines to implement the envisaged regulatory framework.

7. We recommend the UK Government creates a mechanism for trade associations, professional bodies, and self-regulatory Code holders to provide business insight about the application of AI within specific sectors to the UK Government and the statutory regulators responsible for AI regulation. A similar approach has been adopted for the drafting of the Data Protection & Digital Information (No.2) Bill, and we suggest such an approach could work equally as well for AI.
8. Furthermore, we recommend that the UK, Government encourages the relevant statutory regulators, such as the ICO, to actively work with the professional bodies and trade associations to develop joint Codes and guidance to fill in the regulatory gaps and to help to raise sector awareness and understanding.
9. We also consider that it is important to ensure that business can navigate both the UK and non-UK rules for AI. As AI is borderless, the fact that the UK has a light regulatory approach will not mitigate the impact of other countries/regions that may adopt more stringent regimes. Fragmented and divergent legislative requirements remain one of the greatest barriers to innovation. For UK businesses to leverage fully the opportunities of AI will require an understanding of all the regulatory requirements. We recommend that as part of the UK Government's pro-innovation approach it provides information about alignments and differences with non-UK rules and provides routes and pathways to enable UK business to navigate these requirements to maximise the opportunities for UK businesses, particularly SMEs.
10. We invite the Government to consider our recommendations and to work together with MRS and industry to establish a business integrated solution to address regulation of AI.

Do you agree that requiring organisations to make it clear when they are using AI would improve transparency?

1. The principle of transparency is an important mechanism in regulating Artificial intelligence, and it is useful to ensure public trust and confidence.
2. The principle of transparency is particularly useful in instances where organisations mobilise AI to make decisions that have legal or financial effect on an individual; this would provide data subjects with the knowledge that a decision has been made by an AI, and it would be pursuant to Article 22 of the GDPR rights, which provides data subjects the right '*not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her*'.
3. Transparency could involve declaring the level of AI being used in an information transaction. There are different levels of AI from the use of algorithms, Machine Learning to more complex AI approaches. Enabling greater understanding of the type of activity that is being undertaken should also help to ease some of the concerns of those who are subject to the use of AI.
4. Some products, services and uses are referred to as "AI" or "deep", even whilst very different processes are involved¹. The term AI refers to a family of tools such as machine learning, neural networks, and transformer models etc. Therefore, blanket-labelling uses/products as AI may be ineffective and misleading. Although, requiring organisations to determine/declare this may not be a straightforward process, at large there is still a lack of clarity and definition of AI and branches of AI.

¹ <https://firstdraftnews.org/long-form-article/there-are-lots-of-ways-to-label-ai-content-but-what-are-the-risks/>

- 5.** In being transparent about the use and level of AI, it is necessary to set appropriate thresholds and scope and be consistent with the risk-based approach set out in the White Paper. Thus, there needs to be some nuance depending on how core AI is to their business model; where an organisation sits on the AI supply chain; whether a product or service is being delivered B2C or B2B; and is proportionate to the level of risk. In effect, there should be some nuance depending on whether AI is an essential tool to a business model and where an organisation sits on the AI supply chain. Given the ubiquity and accessibility of AI tools, as well as their implementation in other software (e.g., Duet AI in Google Workspace or Copilot in Microsoft 365), it is possible to inadvertently capture more organisations in scope even though they could be mere end-users of a particular software application. This could undermine the transparency principle if every organisation declared its use of AI even for the smallest interaction. We need to avoid a repeat of the cookie experiences, where transparency has resulted in excessive communications and users disengaging with the process. Hence, we think there is a need to add proper context to such categorisation and to adopt an approach which can be widely used by business sectors and easily understood by the public. For example, is a business core model to produce or create AI models, or are they acting on behalf of clients, or are they purely consumers of the technology? Risk categorisation is also a well-established principle across business, and it should be applied to AI transparency as well.
- 6.** Additionally, regulators must carefully consider the competition and commercial interests of the involved companies before imposing transparency requirements that might unintentionally divulge sensitive commercial information. Striking a balance between transparency and protecting sensitive commercial data is of utmost importance in this context.
- 7.** With respect to adopting an approach which can be easily understood by businesses and the public, it is essential to clearly define 'Artificial Intelligence' or AI (as best as possible). Biometric data, for example is qualified as personal data resulting from specific technical processing relating to the physical, physiological, or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data². Machine learning is qualified as a branch of AI and computer science which focuses on the use of data and algorithms to imitate the way that humans learn, gradually improving its accuracy. Either of these disciplines could be, and have been, generally identified as AI. Both of these disciplines may be used for research purposes. In order for regulators such as MRS to determine what is in scope and out of scope and to be able to interpret the proposed legislation and apply it to our sector and profession, it is essential to have greater clarity on what AI is, which branches of AI are covered by the proposed legislation and crucially which activities are outside of the scope. This will still allow for future evolutions of AI technology and techniques.
- 8.** Labelling the use of AI may convey limited information in both a B2B and a B2C context. From a B2B perspective, there may be greater value in providing contractual assurances that the AI model is appropriately trained on licenced content or conforms to a certain safety standard. Adobe, for example, has gone as far as to offer of IP indemnity in using their AI tool³ Firefly, which makes sense given that Adobe has trained its AI tool on a limited database which includes Adobe Stock Images, openly licensed content, and public domain content where copyright has expired⁴. Efforts like this would provide additive value and increase trust in using AI tools or its output.

² <https://www.ncsc.gov.uk/collection/biometrics/understanding-biometrics>

³ <https://www.adobe.com/sensei/generative-ai/firefly/enterprise.html>

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9. We should not forget that individuals interpret information differently and reactions may be positively or negatively biased, notwithstanding the current concerns around AI. We do not know with any great certainty whether such declarations would generate overconfidence about the quality of the output or the organisation itself or have the opposite effect and elicit a negative response, and therefore undermine trust towards AI.

Q2. Are there other measures we could require of organisations to improve AI transparency?

10. We think it would help improve AI transparency by requiring organisations to publish their AI ethics policy, in an analogous manner to how organisations publish their privacy notice. These statements should ideally be consistent and aligned with sector Codes and guidelines, provided by professional bodies and trade associations, which can provide a simpler and blanket approach to ensuring ethical practices, such as transparency.
11. For an individual ethics policy, this information needs to be layered and thorough, similar to the approach adopted for privacy policies. This is because the type of information required can vary depending on who is receiving the information. A regulator may need sophisticated information on how an AI model works, including its expected behaviour, alternatively, a citizen may only be interested in why, for example, their application was rejected. We recommend layering this information into at least two levels: a global explanation and a local explanation. The global explanation would provide general information about the algorithm or model deployed. The local explanation would provide some information about the rationale or logic related to a specific output or decision made.
12. Transparency, however, needs to be balanced with other risks such as the need to protect AI systems and not make them more vulnerable to hacks⁵, attacks⁶, or model reconstruction⁷. Organisations would also want to avoid providing information that would make them more susceptible to lawsuits or regulatory action.
13. Whilst the standards of transparency have yet to be finalised, the government should create space for the development of industry self-regulation⁸. This would allow sector bodies to develop base guidelines on the use of AI and interpreting the cross-sectoral principles into something that is practical, robust, and implementable for their sector. There should be a concentrated effort to encourage the public sector to work with sector associations such as MRS, to create supporting self-regulatory standards and compliance mechanisms, which supplement legislative requirements, enabling practitioners who are members of their professional and trade bodies to utilise innovative technologies legally and ethically. Moreover, this approach would supplement and support the activities of the statutory regulators and ensure that a holistic approach across business can be created.
14. There would also be merit in setting up an AI assurance market as advocated by some, based on the techniques developed by the Centre for Data Ethics and Innovation

⁵ Fooling LIME and SHAP: Adversarial Attacks on Post hoc Explanation Methods. <https://arxiv.org/abs/1911.02508>

⁶ On the Privacy Risks of Model Explanations. <https://arxiv.org/abs/1907.00164>

⁷ Model Reconstruction from Model Explanations. <https://arxiv.org/pdf/1807.05185.pdf>

⁸ <https://www.thedrum.com/insight/2023/06/06/does-your-agency-have-ai-usage-policy-yet-here-s-what-you-need-know>

(CDEI) and techUK^{9 10}. AI assurance tools and services would provide trustworthy information about how a product is performing on the cross-sectoral principles, and where appropriate, help ensure compliance with the relevant standards.

15. Transparency by design could also be included as an activity under the Transparency principle. However, integrating transparency into the design and implementation processes of an AI system is not an easy task and therefore the UK Government could consider co-designing principles for transparency by involving regulators, industry, and academia. The proposed current approach, allowing regulators to set out more detailed definitions of AI according to their specific domains or sectors, opens the possibility of either duplication or gaps in the legislation. If this approach is adopted going forward, a mechanism is needed to ensure consistency between regulators and a process introduced to address any gaps.
16. Finally, in improving transparency, we should not undermine the role of investing in AI literacy. Individuals need to know how AI impacts them and influences the world around them. The World Economic Forum, for example, has recognised the need for universal literacy in AI¹¹. This will require investment from both the public and private sector to boost learning and skills capacity within both business and society. MRS, for example supports developing AI literacy across the profession via training programmes, publications and sector guidance¹².
17. If anything, we should not repeat prior mistakes with media literacy. Despite the Communications Act 2003 placing an obligation on Ofcom to promote media literacy, it was progressively reduced in scope and focussed on two policy priorities related to the growth of the internet. During that process, media literacy's role was effectively marginalised¹³, resulting in a fragmented landscape. The inclusion of media literacy in the Online Safety Bill has been helpful in emphasising its importance but unfortunately it does not address or correct the previous lost opportunity with two decades having elapsed since the Communication Act 2003.

Q3. Do you agree that current routes to contest or get redress for AI-related harms are adequate?

18. In some domains, such as privacy and consumer rights, routes to contest or get redress for AI-related harms may be more adequate than others. This needs to be contextualised with public understanding; not all citizens are 1) aware of those routes to contest; and 2) aware that AI is involved that harm. This relates again to the point of AI literacy and transparency in a reasoned manner. If individuals have doubts regarding the accuracy of a system, especially when it is being utilised for a purpose that could have a significant impact, they are unlikely to use it unless they have a means to challenge or dispute outcomes that they believe are incorrect. This becomes even more pressing in instances where AI tools are used for public services, from which individuals may have no opportunity but to be subject to such systems¹⁴. This may require further research to understand citizens' perspective on the issue.
19. Arguably, any organisation, public or private, that uses AI as part of their core business or process models should be required to publish a complaints process as part of the right to contest. This is an area where professional and trade associations could

⁹ <https://cdei.blog.gov.uk/2021/04/15/the-need-for-effective-ai-assurance/>

¹⁰ <https://www.gov.uk/guidance/cdei-portfolio-of-ai-assurance-techniques>

¹¹ <https://www.weforum.org/agenda/2022/03/without-universal-ai-literacy-ai-will-fail-us/>

¹² <https://www.mrs.org.uk/event/training-courses/the%20AI-the-human-and-their-collaboration-feb23>

¹³ <https://www.tandfonline.com/doi/full/10.1080/10286632.2016.1229314>

¹⁴ <https://www.politico.eu/article/dutch-scandal-serves-as-a-warning-for-europe-over-risks-of-using-algorithms/>

assist business sectors through the provision and use of existing self-regulatory frameworks (such as the MRS Company Partner Complaint Procedure).

20. Naturally the specific and appropriate form of contestability mechanism will differ depending on the situation. Calling and communicating with a person is more likely to provide greater reassurance than just providing an email address for submitting complaints. However, the potential number of requests and the time required to conduct a review could prevent this being a technical and financial reality. The use of self-regulating industries is imperative to supporting redress for AI-related harms. The MRS, for example, offers a service to its members and society at large, wherein members of the public can submit complaints to the MRS for investigation and redress. The MRS procedure enables redress with respect to misconduct in the research sector, and as industry engages with AI, our procedures will incorporate the use of AI, at different levels, but particularly relating to ethical challenges such as confidentiality and privacy.
21. Finally, we would also advocate for the establishment of a central UK AI information hub where businesses can find the latest in regulation and individuals can find the best path for recourse.

Q4. How could current routes to contest or seek redress for AI-related harms be improved, if at all?

22. We also recommend that the UK Government work with self-regulating sectors such as MRS, so that we can provide advice regarding how AI legislation should be implemented in manner which reflects the needs of our sector. Moreover, we can support regulation by incorporating AI related harms, particularly harms related to the data subjects GDPR rights, into our existing Code and complaints procedures.

Q5. Do you agree that, when implemented effectively, the revised cross-sectoral principles will cover the risks posed by AI technologies?

23. Yes, in principle but given that AI by its nature is multi-purpose, it is difficult to predict second order and even third order effects and whether these cross-sectoral principles will cover all the risks posed by AI technology. This is why it is extremely important that flexibility and adaptability is retained in the implementation of these cross-sectoral principles.
24. Furthermore, there are lingering questions about regulatory overlap and gaps. Although the White Paper paragraph 54 states:

"Government will monitor the overall effectiveness of the principles and the wider impact of the framework. This will include working with regulators to understand how the principles are being applied and whether the framework is adequately supporting innovation."

There is limited information about how the monitoring and evaluation mechanism will determine whether these principles are working in practice and what benchmarks it will use to assess that performance.

25. There is also a risk that due these principles not being implemented into statute; a change of political leadership or policy direction could mean that these principles are jettisoned or superseded. Such regulatory uncertainty could negatively affect innovation.

Q6. What, if anything, is missing from the revised principles?

Principles of privacy by design and accessibility

- 26.** We recommend incorporating a privacy by design and accessibility concepts within the revised principles.
- 27.** The UK Government should consider implementing a privacy by design principle separate from the principle of fairness which encourages the development of systems that have privacy safeguards and provides the appropriate transparency and control over the use of data.
- 28.** This would have two effects: 1) elevate the importance of privacy to a top-level principle, as opposed to a secondary principle under fairness; and 2) it resolves a potential situation where these principles sit awkwardly with UK GDPR principles, given that UK GDPR already incorporates fairness and transparency.
- 29.** The rationale behind the accessibility concept is that AI development should be socially beneficial and, on that basis, available for all uses so long as they are consistent with the cross-sectoral principles. The current cross-sectoral principles speak of fairness of outcome, but it does not consider the issue of fairness of accessibility. The worst outcome would be to create another form of digital divide creating a gap between those who can easily access and use AI technology and those that cannot.

Principle of human oversight

- 30.** The government should also consider including principles of human oversight (to fight bias and unfairness) and continuous evaluation of AI systems and policies as standalone principles.

Principle of sustainability

- 31.** Finally, we should not ignore the environmental cost of data centres and the energy used when AI models are being trained on vast amounts of data. Some estimate that the carbon footprint of training a single big language model is equal to around 300 tCO_{2e}¹⁵. Hence, it is worth including a sustainability principle to drive energy efficiencies over the lifecycle of datacentres.

Defining AI applications

- 32.** We note that the proposed cross-sectoral principles do not clearly outline nor distinguish between different AI applications. We argue that it is necessary to understand the key applications of AI to truly conceptualise the risks, and in turn develop effective mitigations. In our opinion this would better inform AI regulation.
- 33.** A framework based on these applications and the cross-sectoral principles could serve, in our opinion, a strong foundation which can be expanded on in the future.

Q7. Do you agree that introducing a statutory duty on regulators to have due regard to the principles would clarify and strengthen regulators' mandates to implement our principles while retaining a flexible approach to implementation?

¹⁵ <https://www.nature.com/articles/s42256-020-0219-9>

34. Yes, we think this would be helpful to mandate a duty on regulators to have due regard to the principles via statute. This would create greater consistency centrally across regulators and the regulatory landscape, which needs to be considered to provide useful guidance to businesses and consumers. However, the success of this is also contingent on the strength of the legal obligation.

Q8. Is there an alternative statutory intervention that would be more effective?

35. Alternative interventions could include agile regulation, including self- and co-regulatory approaches. Self-regulation is a faster and more effective practical mechanism to address and prevent AI related problems in many instances, of course within the boundaries set by statutory regulation. For examples, the MRS regulates standards and innovation across market, opinion and social research and data analytics. MRS regulates research ethics and standards via its Code of Conduct and all individual MRS members and Company Partners agree to regulatory compliance of all their professional activities via the MRS Code of Conduct and its associated disciplinary and complaint mechanisms. MRS has a long and strong track record in providing excellent regulation to industry, and these existing mechanisms should be mobilised by the UK Government.

36. The UK Government could also consider mobilising sector specific Codes of Conduct, such as the MRS Codes of Conduct, which are crucial in helping to protect and regulate research, insight, and data practice¹⁶. This could help with the proper application of the cross-sectoral principles and considers the specific needs of micro, small and medium-sized enterprises better. For example, a Code of Conduct could support clarifying supply chain liabilities in an AI chain. In a research project for example, where AI technologies are mobilised across the project journey, a Code of Conduct would support businesses identify practitioners/controllers/processors/users, and therefore determining responsibility for any potential AI failures. Codes of Conducts are essential tools for industry, and are far easier to understand, apply and develop as opposed to legislation.

Q9. Do you agree that the functions outlined in Box 3.1 would benefit our AI regulation framework if delivered centrally?

37. In broad terms we agree, these are clearly functions that are best delivered centrally to provide a coordinated and coherent approach. We agree with the statement that delivering some functions centrally provides the UK Government with an overarching view of how the framework is working, where it is effective and where it may require improvement (White Paper, paragraph 72). This is even more important when considering that there may be AI-related risks that do not clearly fall within the remits of the UK's existing regulators (White Paper, paragraph 64) and that there could be overlapping, duplicative or contradictory guidance on AI issued by different regulators.

Q10. What, if anything, is missing from the central functions?

38. We also think that it is imperative that business can navigate both the UK and non-UK rules for AI. As AI is borderless, the fact that the UK has a light regulatory approach will not mitigate the impact of other countries/regions that may adopt more stringent approaches. Fragmented and divergent legislative requirements remain one of the greatest barriers to innovation. For UK businesses to leverage the opportunities of AI will require understanding of all the regulatory requirements. We recommend that as part of the UK Government's pro-innovation approach, it provides information about alignments and differences with non-UK rules and provide routes and pathways

¹⁶ <https://www.mrs.org.uk/standards/code-of-conduct>

to enable UK business to navigate these requirements to maximise the opportunities for UK businesses, particularly SMEs.

39. In addition to the central functions already listed, we think that the following activities should be included:

- Co-ordination and cooperation with self-regulating sectors, such as MRS.
- Co-ordination and co-operation with international law enforcement on overseas threats, in particular disinformation and cybersecurity, and how to combat them.
- Development of transparency by design standards under the transparency principle
- Review of the regulatory landscape to determine whether the environment is supporting innovation or hindering it.
- Provide support for research in areas where the market is not willing to fund, as well as coordinating innovation challenge funds to ensure that projects align and further enhance these principles.
- Assessment of the quality and rigor of regulator impact assessments, post-implementation reviews and the evidence being used to inform UK government policy, like the role being conducted by the Regulatory Policy Committee.
- Establishing a review panel to look at the future of skills, including regulators, professional bodies and trade associations and accredited training bodies which undertake such work. This could build upon the work of the OECD's Artificial Intelligence and the Future of Skills (AIFS) project¹⁷.
- Guide industry to improve sustainability and efficiencies of data centres.

Q11. Do you know of any existing organisations who should deliver one or more of our proposed central functions?

40. We do not currently have recommendations on this matter. However, we note the existence of organisations/institutions which fit the profile to deliver on one or more of the proposed central functions. These include:

- The recently created AI taskforce¹⁸ which has been tasked with developing the safety and reliability of foundation models.
- The Advanced Research and Invention Agency (ARIA), given its remit to focus on projects with the potential to produce transformative change.
- The National Audit Office (NAO). The NAO has already published guidance on the principles of effective regulation¹⁹ and has previously conducted performance measurement by regulators²⁰.
- Information Commissioners Office which has produced guidance on Artificial Intelligence²¹
- There should be further consideration regarding the role and status of the Office of AI which currently sits within the Department of Science, Innovation and Technology. Given that some regulators report to different UK Government departments, there may be a case of elevating the Office of AI to become an executive agency or be established within the Cabinet Office.

Q12. Are there additional activities that would help businesses confidently innovate and use AI technologies?

Clarity on Intellectual Property

¹⁷ <https://www.oecd.org/education/ceeri/future-of-skills.htm>

¹⁸ <https://www.gov.uk/government/news/initial-100-million-for-expert-taskforce-to-help-uk-build-and-adopt-next-generation-of-safe-ai>

¹⁹ <https://www.nao.org.uk/insights/principles-of-effective-regulation/>

²⁰ <https://www.nao.org.uk/wp-content/uploads/2016/11/Performance-measurement-by-regulators.pdf>

²¹ <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/artificial-intelligence/>

41. Although, IP is not referenced in the cross-sectoral principles and central functions, there is still ongoing uncertainty around the restrictions on data use and access for training AI models and ownership, authorship and originality in the age of AI.

Liability

42. We recommend including provisions that clarify AI supply chain liabilities. In a research project for example, where AI technologies are mobilised across the project journey, which practitioners/controllers/processors/users will be responsible for any potential AI failures? Will it be the developers; users or service providers? It is essential to understand AI liability as this will be core to helping businesses confidently innovate and use AI technologies.

Development of a national standardised set of terminology and taxonomy

43. Terminology creates an important foundation for technical standards and creates shared and harmonised frames of reference between stakeholders, and across different sectors and jurisdictions. The EU-U.S. Terminology and Taxonomy for Artificial Intelligence, a key deliverable of the May EU-US Trade and technology Council, is a good example of the benefits of terminology and taxonomy in AI regulation.
44. Currently there is no explicit definition of AI under UK law. As a result, a lack of a clear definition may become an issue across future regulatory contexts especially when trying to define material scope, establish liability and or responsibility. However, this is not to say that we should define the term "artificial intelligence" in a legal sense as there are associated problems with this: AI is a term that references a family of tools, and it is difficult to define the term in a manner that meets threshold for a legal definition. Instead, there would be merit in defining types of models, use cases and capabilities²².

Q12.1. If so, should these activities be delivered by government, regulators, or a different organisation?

45. We believe that there is role for UK Government, regulators, secondary regulators such as MRS and other institutions such as the AI taskforce, ARIA, and trade associations. The activities should be seen as context specific and hence a certain actor may be better qualified to deliver on certain activities. We strongly recommend that in addition to the recommendations for co-operation between the statutory regulators, the UK Government creates a mechanism for trade associations and self-regulatory Code holders to provide business insight and application of AI within specific sectors. As part of this we are also recommending that the regulators such as the ICO are encouraged to develop joint guidance with sector bodies and Code holders to help to fill in the regulatory gaps and to help to raise sector awareness and understanding.

Q13. Are there additional activities that would help individuals and consumers confidently use AI technologies?

46. As mentioned earlier, there is a significant role for AI literacy and developing fundamental skills for young people entering the workforce such as prompt engineering and problem formulation – the ability to identify, analyse, and delineate problems.
47. Sector Codes also provide businesses and individuals with access to comprehensive and robust information about the use of AI in specific sectors, this enables greater understanding about the use of technology and its application in individual circumstances.

²² Shuett, J. (2019). A Legal Definition of AI. <https://arxiv.org/pdf/1909.01095v1.pdf>

48. The government should also proactively communicate about the benefits AI can bring along with the efforts to make it safe and responsible. If the general population fear AI, then this innovative technology may never reach its potential.

Q13.1. If so, should these activities be delivered by government, regulators or a different organisation?

49. To deliver AI literacy, this would similarly require a cross-sectoral approach, including accredited bodies, professional and trade associations and Department for Education, to work together in developing skills training and learning in AI for society.

50. It is particularly important to emphasise the ability of secondary regulators, trade associations and professional bodies in delivering vocational skills to employees of its member organisations. Professional bodies and trade associations have deep national networks and have relationships with micro, small and medium sized enterprises in their memberships.

Q14. How can we avoid overlapping, duplicative or contradictory guidance on AI issued by different regulators?

51. The Digital Regulation Cooperation Forum (DRCF) provides a structure for the CMA, ICO, Ofcom and FCA to coordinate and cooperate on some of the challenges posed by regulating online. It would make sense to either expand this forum or set up a similar model within the AI taskforce that consists of a working-level group of secondary regulators, trade associations and professional bodies, together with AI, legal, privacy and human rights experts. This work should be consultative and transparent so that the views of the DRCF and its member regulators are well-understood by all market participants and provide a sound basis for business decisions.

52. Furthermore, Statutory regulators could also consider joint guidance with sector bodies and Code holders to help to fill in the regulatory gaps and to help to raise sector awareness and understanding.

53. It would be beneficial if annual conferences on AI policy could be organised to create a platform for policymakers, regulators, industry, and academia to discuss and exchange views on AI governance.

Q15. Do you agree with our overall approach to monitoring and evaluation?

54. We welcome the fact that the UK Government is keen to engage with industry, regulators, and civil society to create a feedback loop to measure the effectiveness of the framework. It would be helpful if the UK Government committed to making public the outcomes and findings of its regular monitoring and evaluation.

Q16. What is the best way to measure the impact of our framework?

55. We would recommend using the Treasury's Magenta Book²³ as the basis for designing a consistent impact evaluation. This would bring the impact evaluation in line with other central government projects and to carry out ongoing evaluations. The nature of AI is rapid, and that means the UK Government has a large task in keeping up to

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879438/MT_Magenta_Book.pdf

date. As such, we recommend continuing the conversation between Government and business to ensure the legislation or proposals are fit for purpose.

Q17. Do you agree that our approach strikes the right balance between supporting AI innovation; addressing known, prioritised risks; and future-proofing the AI regulation framework?

56. As mentioned earlier, AI by its nature is multipurpose and it is difficult to predict second-order and even third-order effects. Therefore, it is extremely important that flexibility and adaptability is retained in the implementation of these cross-sectoral principles.

Q18. Do you agree that regulators are best placed to apply the principles and government is best placed to provide oversight and deliver central functions?

57. Yes, with the support of co-and-self regulators to administer and develop functional guidance for specific sectors.

QL1. What challenges might arise when regulators apply the principles across different AI applications and systems? How could we address these challenges through our proposed AI regulatory framework?

58. There may be challenges around the application of the principles because of the multi-purpose nature of AI. The White Paper also acknowledges that there may be regulatory gaps between regulatory remits (paragraph 27). There are also well-known tensions between data privacy and competition regulation. Additionally, regulators may prioritise certain objectives differently.

59. Furthermore, the UK is characterised as having a fragmented regulatory landscape²⁴ in certain sectors, hence it is important to be mindful of the potential regulatory cost on companies, especially those that are regulated by multiple regulators or operate in multiple sectors. The costs that could emerge are conflicting regulation, duplicative information requests or compliance requirements, which would be particularly burdensome and confusing for micro, small or medium-sized businesses.

60. We think that inconsistent regulatory application of the principles is best addressed through a central coordinating body that reviews the implementation of the principles. The courts also play an important part in reviewing the decision making of regulators.

QL2.1. Do you agree that the implementation of our principles through existing legal frameworks will fairly and effectively allocate legal responsibility for AI across the life cycle?

61. We consider that in most cases existing law provides good guidance on the issue of legal responsibility given that the UK has long established legal frameworks.

62. However, we do recognise that there will be cases where an appropriate redress may be needed and especially when there is difficulty for agreement to be reached. As previously mentioned, because of the multi-purpose nature of AI it is difficult to predict second-order and third-order effects especially over the long term especially as new techniques and use cases emerge. Therefore, it is difficult to answer this question with

²⁴ Regulating in a digital world. House of Lords. (2019).

<https://publications.parliament.uk/pa/ld201719/ldselect/ldcomuni/299/299.pdf>

²⁵ The Prudential Regulation Authority's approach to policy. Bank of England (2022).

<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/discussion-paper/2022/dp422.pdf?la=en&hash=5F3F2D67F893F3BFAF266F05CFD0BEB736D49F3F>

any great certainty. However, we support a cross-sectoral principles with sectoral specific rules. We continue to emphasise the importance to retain flexibility to respond to emerging threats and risk and hence agile regulations such as self- and co-regulation could help effectively deliver the implementation of these principles.

63.It is important though to retain an appropriate balance of liability to provide the necessary consumer protections and to encourage innovation. Strict liability may strengthen the position of end users, but it would create legal uncertainty from the position of the developer of the AI system especially as the output is determined by probabilistic means. Hence a developer may have no influence or prior awareness of the output, for example AI hallucinations. Joint liability also creates potential issues around moral hazard and free riding.

Unanswered Questions: L.2.2; L3; F1; F3; F3; S1; S2; S3; S4; Q19; Q20; Q22

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