

Ethics (and the lack thereof) and Data Processing by Government

AI requires both trust and trustworthiness. Government is legislating to put AI ethics under political control - with Prime Ministerial backing.¹ This does not seem wise, as it covers any data processed by Government - including medical records and other sensitive data.

Under the heading of “Ethics”, the Government² submission to the Select Committee on Artificial Intelligence says:³ (emphasis added)

“The Conservative Party 2017 Manifesto committed to setting up a new body to advise Government and regulators on the ethical use of data, which AI applications depend upon. The body will develop an effective ethical framework to help govern the use of data, and the impacts of decisions made from that data.

In 2016, Government published an ethical framework for the use of data science within government, which is currently being updated. This framework will ensure responsible application with accountability and fairness in the use of data technologies across government, with accountability and fairness, and could also be useful for other organisations.

That current “data science ethics framework”⁴ assumes a privacy impact assessment fits on a single page,⁵ and can be secretive, invasive, and nasty⁶ - it is not the highest of standards for anything. However, it is required to follow the Data Protection Act - for now.

A new statutory basis - outside of normal data protection rules

During Lords Committee stage, some new clauses were snuck into the Data Protection Bill. They were added late so they have not received the normal scrutiny that properly considered and laid legislation requires - these clauses are not subject to the usual data protection safeguards added via GDPR. None of the new rules apply to the proposed framework.

Clauses 175-178 of the Data Protection Bill⁷ allow the Secretary of State to create a “Framework for Data Processing by Government” (c175), which covers all data held by any public body, including the NHS (175(1)), and is both outside of the ICO’s jurisdiction (c178(5)) and under the control of Ministers (c175(4)), with courts bound by the framework (c176(7)), as are tribunals (c178(2)), and a special case only exists for international law (c177(4) - probably restricting the ECJ as much as possible)⁸, and updates are expected to apply retroactively (c178(3)).

¹ <https://twitter.com/MattHancock/status/940679785256226816>

² Led by DCMS/BEIS

³ Pg 3 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/artificial-intelligence-committee/artificial-intelligence/written/73250.pdf>

⁴ <https://medconfidential.org/tag/datascienceethicsframework/>

⁵ <https://medconfidential.org/2016/data-in-the-rest-of-government-the-cabinet-office-data-programme/>

⁶ <https://medconfidential.org/2017/the-home-office-secretive-invasive-and-nasty/>

⁷ <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0074/18074.pdf>

⁸ Brexit’s changes to jurisdiction of international law are ignored by the Bill.

DCMS is not known as a strong data processing Department, but it is their Secretary of State that is expected to have these powers. This is explained by the Minister's reply to Q191 to the House of Lords' Artificial Intelligence Select Committee which said:⁹

Q191 Matt Hancock MP: **We think it will be resourced by civil servants reporting directly to Ministers. The office for AI is part of government. It is not independent. It is the team that will manage this policy development and architecture.**

...

I would say that we are the two lead departments on it, BEIS for the application and the wider economy through industrial strategy, and us for the AI sector itself and the digital strategy. **We have a joint unit because it naturally falls into both departments**, and, as you can see, we have an exceptional ministerial-level relationship.

Matt Hancock MP: **That insight is at the core of the need for the centre for data ethics and innovation.** The centre was proposed in the Conservative Party manifesto, because we, too, spotted that gap. Whenever any great new technology comes along, it is important that we harness the opportunities while mitigating the risks.

... **We want to ensure that the adoption of AI is accompanied, and in some cases led, by a body similarly set up not just with technical experts who know what can be done but with ethicists who understand what should be done so that the gap between those two questions is not omitted. I am delighted that we have now been funded in the Budget in order to set it up.** It is incredibly important to ensure that society moves at the same pace as the technology, because this technology moves very fast.

The proposal, as the Minister suggested to the Committee, is to create a quango, "reporting directly to ministers", "part of Government", explicitly stating "it is not independent. It is the team that will manage this policy development and architecture", "at the core of the need for the centre for data ethics and innovation".

This is a "Framework", not a "Code of Practice. There are legislative requirements and standards for developing a Code of Practice - none of them apply to the "Framework".

Our evidence to the AI select committee said:¹⁰

"AI is not magic. AI bestows on its creators, users, and victims no capability that is not data processing. It may be novel data processing, it may be highly processing-intensive data processing, but it remains just data processing. We have laws for that."

The Government proposals above exempt public sector processing from normal data protection law, and exempt them from any and all oversight. We note the same Minister previously assured Parliament and the public that the safeguards of data protection meant that no safeguards were necessary against data copying in the Digital Economy Bill - those safeguards are now being entirely removed from from data protection, leaving citizens data usable at the whim of a Minister's policy intent and view of ethics.

⁹ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/artificial-intelligence-committee/artificial-intelligence/oral/75736.html>

¹⁰ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/artificial-intelligence-committee/artificial-intelligence/written/69500.html> (a supplement has been submitted)

Consequences

A Minister's job is to be political - it is therefore unclear why anyone should expect a unit headed by a Minister to make ethical decisions. It is all too easy to see elsewhere in the Data Protection Bill (e.g. Schedule 2 paragraph 4) how those two things are not only different, but may be incompatible. There are many things that are entirely lawful, but whether they are ethical is the subject of infinite debate.

When it comes to data processing, the position of the Home Office was made explicit under the previous Home Secretary: "*the Home Office looks to use information as far as possible across Government in dealing with immigration cases*",¹¹ and "*when the Home Office requests information and it is not right for that information to be given to the Home Office then other departments will not do so*". Political realities are somewhat different.

There is a legitimate place for data processing and AI in Government.¹² However, there has been no public debate on what that should look like, and this failure comes from the top of Government.¹³

Instead, Government has chosen to legislate in haste, for a framework which will potentially handle some data of the processing of the NCC1 form of DWP (the "rape form")¹⁴, or immigration choices (as a technology supplier suggested to the Home Affairs Select Committee¹⁵), or data processing around Universal Credit, or all the new systems required for Brexit.¹⁶ While GDS thinks it is already too late,¹⁷ the Digital in DCMS thinks it has a cunning plan. A small upstart believing the laws should not apply to it has gone badly many times before...¹⁸

Perverse uses of systems, those uses other than first intended, are a fundamental problem at the core of the hard problem that is "AI safety"; a problem that today's politicians simply ignore because the consequences happen beyond of the extent of their interest.

Clauses 175-178 should be removed and rethought, unless Government can justify why none of the rules should apply to Government processing, whether by AI or other means.

medConfidential

coordinator@medConfidential.org

¹¹ Q76-78, The work of the Home Secretary, Home Affairs Select Committee, Monday 14th July 2014. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/the-work-of-the-home-secretary/oral/11368.pdf>

¹² <http://www.infiniteideasmachine.com/2017/04/what-does-a-citizens-view-of-government-look-like/>

¹³ https://twitter.com/theresa_may/status/940628075565469697 and <https://twitter.com/MattHancock/status/940679785256226816>

¹⁴ <https://www.gov.uk/government/publications/support-for-a-child-conceived-without-your-consent>

¹⁵ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/home-office-delivery-of-brex-it-immigration/written/73030.html>

¹⁶ <http://www.bcs.org/content/conBlogPost/2587>

¹⁷ <http://www.computerweekly.com/blog/Computer-Weekly-Editors-Blog/So-you-want-new-IT-systems-for-Brexit-Leaked-GDS-report-shows-its-already-too-late>

¹⁸

<https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2017/07/royal-free-google-deepmind-trial-failed-to-comply-with-data-protection-law/>