



Glenlead
Centre

Large Language Models

**Written Evidence to the House of Lords Digital and
Communications Committee**

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Introduction

This report addresses the questions concerning domestic regulation and international context in relation to the Government's pro-innovation approach to AI regulation. The submission suggests that the lack of clarity and legal force of the Government's proposed value-based principles, and the absence of plans for an overarching regulator, weakens the prospect of the Government's ambition for economic growth through safe and trustworthy AI. The submission recommends legislation be adopted placing the value-based principles on a legal footing and to institute an overarching AI regulator. The submission further discusses how the UK is becoming a rule-taker rather than rule-maker in the international context of AI regulation, and how this will have an effect especially on the UK's creative industries.

Domestic Regulation

How adequately does the AI White Paper (alongside other Government policy) deal with large language models? Is a tailored regulatory approach needed?

In its white paper *A pro-innovation approach to AI regulation* published in March 2023,¹ the UK Government has set out its approach to the regulation of artificial intelligence (AI).

The chief objective articulated in the white paper is to promote economic growth through AI-based innovation. To that end the Government sets out a regulatory framework based on five value-based principles: (1) safety, security, and robustness; (2) appropriate transparency and explainability; (3) fairness; (4) accountability and governance; and (5) contestability and redress. What important exceptions which will be elucidated in point 7, the principles are moulded on the emerging international consensus for ethical AI, notably the principles instituted by OECD and UNESCO.² As such, the UK is signalling an intention to contribute to the development and adoption of AI, including large language models and generative AI, that are both safe and trustworthy.

However, several issues weaken this ambition. First, the principles are vague, leaving it to the domestic regulators to adopt these to fit existing regulatory frameworks. As has been comprehensively noted elsewhere,³ in many instances there is not regulatory capacity or room, to adapt regulatory mandates to accommodate non-binding political objectives. Regulators'

¹ <https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach>.

² <https://oecd.ai/en/ai-principles>; <https://www.unesco.org/en/artificial-intelligence/recommendation-ethics>.

³ See for example Minderoo Centre for Technology and Democracy, *Written Evidence for the Office of Artificial Intelligence: AI Regulation: A Pro-Innovation Approach*, June 2023, <https://www.mctd.ac.uk/written-evidence-submitted-to-office-for-artificial-intelligence-on-ai-regulation/>; Andre Charlesworth, Kit Fotheringham, Colin Gavaghan, Albert Sanches-Graells, and Clare Torrible, *Response to the UK's March 2023 White Paper "A pro-innovation approach to AI regulation"*, Centre for Global Law and Innovation, University of Bristol Law School, 19 June 2023.

remits, resources, and budgets are often set out in statute and already stretched. Hence, there is little reason to believe that they will be able to address the Government's ambitions without clearer statutory instructions or resources. That said, it must be noted that some regulators are adapting to AI better than others,⁴ but that observation also serves to illustrate how leaving it to the individual regulators places the UK at risk of continuing down the path to a fractured and unruly regulatory landscape governing AI.⁵

As long as the value-based principles are not articulated with any clarity and legally required, there is little compelling reason – other than as a public relations exercise – for UK companies to adhere to these when developing and adopting large language models and generative AI. This means that the competitive field will still be tilted towards the already established large foreign companies. Investing in the development of large language models is so expensive that small UK companies are likely to lose out to foreign competition. Simply encouraging investment primarily through the relaxation of financial regulation is unlikely to suffice or give the desired effect. It is also not certain that promoting innovation of foundation models is the best course for economic growth, when efforts could be spent on encouraging the growth of the UK's already burgeoning AI expertise and industry using existing models. It is therefore highly uncertain that the Government's white paper will achieve its objective of innovation and economic growth.

Leaving it to the individual regulators is also likely to impose excessive costs on businesses as they will have to navigate

⁴ See for example the Financial Conduct Authority, <https://www.fca.org.uk/news/speeches/innovation-ai-future-financial-regulation>.

⁵ The Government white paper sets out an ambition for six centralised functions, and while important none of which would amount to fill the remit of acting in a regulatory capacity. The six centralised functions are: (1) monitoring and evaluating the overall regulatory framework's effectiveness and the implementation of the principles; (2) assessment and monitoring of risks across the economy arising from AI; (3) horizon scanning and gap analysis, including by convening industry, to inform a coherent response to emerging AI technology trends; (4) supporting testbeds and sandbox initiatives to help bring new technologies to market; (5) providing education and awareness to give clarity to business and ensure citizen participation in iteration of the framework; and (6) promoting interoperability with international regulatory frameworks.

multiple rules and frameworks. The unnecessary creation of red tape can be avoided by the centralisation of regulation in an overarching regulating body with the power to impose and enforce rules to be implemented and enforced by individual regulators.⁶

More worrying is the fact that ethics and regulation are conceptualised as impediments or afterthoughts rather than a foundational condition necessary for public trust. The value-based principles in the Government's white paper suggest an ambition to ensure that the British public can trust the way generative AI and large language models are incorporated into their daily life; yet the lack of clarity or force of the principles suggest that these expectations are malleable or expendable when pitted against economic growth objectives. While laudable that the Government presents a set of value-based principles to govern AI, it is worrying that the conceptualisation of the principles take a *de minimis* form compared to other frameworks. The OECD principles, for example, include a commitment to sustainable development and human-centred values, both which are absent in the white paper. The UNESCO principles include a commitment to no harm, privacy, and non-discrimination, again values that did not make it onto the Government's list. It is our contention that the UK public and economy can benefit from ethical AI if the regulatory framework makes these value-based principles mandatory, robust, clear, and auditable from the stage before generative AI and large language models are used in real life scenarios.

The Government's white paper states that there is no current ambition to regulate large language models or generative AI through legislation. Instead, a duty to have regard to the value-based principles outlined may be introduced at a later date. We do not believe this is the right approach and support the calls for proposals for legislation to be introduced as soon as possible, as made by numerous interested parties including the House of Commons Science, Innovation and Technology

⁶ For a discussion on the need for overarching regulatory capacity, see Matt Davies and Michael Birtwistle, *Regulating AI in the UK*, Ada Lovelace Institute, 18 July 2023, <https://www.adalovelaceinstitute.org/report/regulating-ai-in-the-uk/>.

Committee.⁷ We believe that legislation should take the form of a principled framework, setting out the legal scope and force of the value-based principles, and ensure overarching regulatory oversight. Failing to adopt legislation also makes the UK an outlier in the international context and relegates the UK to a position of being a rule-taker rather than a rule-maker. The likely result is that the governance of AI in the UK will follow rules that have been developed and instituted in foreign jurisdictions, which would be a dereliction of the British parliament's democratic duty. Instead, the British people should have a direct say in the rules that govern the technology they use.

⁷ House of Commons Science, Innovation and Technology Committee, The governance of artificial intelligence: interim report, Nineth Report of Session 2022-23, <https://publications.parliament.uk/pa/cm5803/cmselect/cmsctech/1769/report.html>.

Regulators' expertise and resources

Question 4: Do the UK's regulators have sufficient expertise and resources to respond to large language models? If not, what should be done to address this?

This is a broad question, and the answer is undoubtedly no. While more training, resources, and expertise are necessary across the regulatory landscape, this answer will focus on the central question of access to data and systems. Regulators cannot ensure that systems adhere to regulatory rules unless they have access to the data used – for training data, input data, and output data – and systems. This requires expertise but also a legal mandate. So far, there is a provision for access to data for researchers in data protection law and in the proposed Online Safety Bill. We recommend that any regulation of AI also include mandatory legal provisions guaranteeing access to data and systems for researchers and regulators.

International context

How does the UK's approach compare with that of other jurisdictions, notably the EU and US?

The UK's unwillingness to consider regulating AI through legislation sits at odds with several other jurisdictions, notably the European Union (EU). The EU's Artificial Intelligence Act (AI Act) is expected to come into force at the end of 2025, which would impose legal obligations on entities using generative AI and large language models according to an assessment of different levels of risks.⁸ Canada is taking a similar approach with its Artificial Intelligence and Data Act.⁹ In comparison, it is notable that the UK Government's white paper on AI regulation not only fails to consider legislation, but also only conceptualises regulation as vague ethical principles unmoored from any risk assessment.

The European Commission has also set forth a proposal for an AI Liability Directive to ensure the safety of AI products.¹⁰ The UK has a golden opportunity to take similar action with the ongoing review of its product safety regime in the wake of Brexit.¹¹

Like the UK, the United States (US) has not yet adopted AI legislation at the federal level. However, numerous AI bills and legislative initiatives have been mooted and there is an ongoing regulatory discussion. The lack of legislative will may very well reflect the general state of US politics rather than aversion to

⁸ Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative Acts, COM/2021/206 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0206>.

⁹ <https://ised-isde.canada.ca/site/innovation-better-canada/en/artificial-intelligence-and-data-act>.

¹⁰ Proposal for a Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive), COM/2022/696 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0496>.

¹¹ <https://www.gov.uk/government/consultations/smarter-regulation-uk-product-safety-review#:~:text=Consultation%20description&text=In%20summary%2C%20we%20want%20to,assessment%20process%20easier%20where%20possible>.

legislation for the governance of AI. The White House has launched its *Blueprint for an AI Bill of Rights*, setting out five principles for the governing of AI: (1) safe and effective systems; (2) algorithmic discrimination protection; (3) data privacy; (4) notification and explanation; and (5) human alternatives, consideration and fallback.¹² These principles appear broader than the value-based principles proposed by the UK Government, and notably address both the systemic dimension of AI and the need for human oversight, which are absent in the UK Government's white paper for the regulation of AI.

While the UK is set to be rule-takers as global standards emerge, the greatest impact from international regulatory developments may be felt in sector-specific areas. For example, the US has seen several lawsuits and industrial disputes concerning data scraping for training data for generative AI and potential violations of copyright and other intellectual property rights.¹³ The juridical and judicial rules that will emerge will likely have a direct effect on the UK economy, of which the creative industries represent 5.6%.¹⁴ While the UK's Intellectual Property Office is devising a draft code for AI and copyright, it is not clear what this will entail. In the meantime, emerging international standards for copyright and AI will likely have a massive impact on the UK creative industries. The current proposal for regulation set out by the government does not touch on these areas, thereby forsaking any leadership role the UK may play internationally in these fields.

¹² <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>.

¹³ https://www.theregister.com/2023/07/21/judge_ai_art/;
<https://fortune.com/2023/07/24/sag-aftra-writers-strike-explained-artificial-intelligence/>.

¹⁴ <https://lordslibrary.parliament.uk/arts-and-creative-industries-the-case-for-a-strategy/#:~:text=The%20creative%20industries%20sector%20contributed,the%20UK%20economy%20in%202021.>

Glenlead Centre

The Glenlead Centre researches and delivers policy solutions to legislators, regulators, policymakers, universities, public sector bodies, non-governmental organisations, and private enterprise. We lead projects focussed on building stakeholder capabilities and capacity to better inform decision-making on policies for a digital and AI-driven future.

Our mission is to conduct and leverage high-quality research and support human-centric policy development and solutions in the digital and AI for the benefit of the public good. Our work is designed to ensure that decision-making affecting our digital lives are informed, balanced, and adapted for the future. Our aim is to encourage responsible, ethical, and human-centric technologies that will contribute to epistemic justice and a more prosperous and sustainable future.