Center for AI and
Digital Policy

17 November 2021

Rt Hon Nadine Dorries MP
Secretary of State for Digital, Culture, Media and Sport
Department for Digital, Culture, Media and Sport
100 Parliament Street
London SW1A 2BQ

Dear Madam Secretary

On behalf of the **Center for AI and Digital Policy** (CAIDP), we write in response to the DCMS consultation ***Data: a new direction***.[1] We appreciate the opportunity to comment on the proposal concerning the future of data protection in the UK. Public consultation is important to ensure democratic decision-making. We have reviewed the consultation document and we recognize the broad range of issues regarding data protection,[2] but as our focus is AI policy, our concerns relate primarily to proposed changes to Article 22.

At the outset, we acknowledge the extraordinary work of the outgoing Information Commissioner Elizabeth Denham. Commissioner Denham's efforts to uphold strong data protection standards on behalf of UK consumers and UK businesses during both Brexit and the pandemic is nothing short of heroic. Widely regarded among her peers, Denham has also led the Global Privacy Assembly, the international network of data protection officials, and established new practices to raise data protection standards around the world.[3] The UK's ability to maintain digital trade and commerce with the EU is largely a result of the efforts of Elizabeth Denham. As the BBC recently concluded, Commissioner Denham leaves "a substantial legacy" to the British people.[4] And we share her assessment that data protection does not stand in opposition to innovation, it is the foundation of innovation.[5]

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[1] Government of the UK, *Open consultation by the Government of the UK*, 10 September 2021, https://www.gov.uk/government/consultations/data-a-new-direction.

[2] Department for Digital, Culture, Media & Sport, *Data: A New Direction,* 10 September 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1022315/Data_Reform_Consultation_Document__Accessible_.pdf

[3] Opening remarks by Elizabeth Denham at the 43rd Global Privacy Assembly 2021, 18 October 2021, https://globalprivacyassembly.org/elizabeth-denhams-opening-remarks-at-the-gpa-21-open-session/.

[4] Amol Rejan, BBC, Information commissioner Elizabeth Denham: How to be a pro-active regulator, 13 October 2021, https://www.bbc.com/news/entertainment-arts-58903479.

[5] ICO response to DCMS consultation "Data: a new direction", 7 October 2021, https://ico.org.uk/media/about-the-ico/consultation-responses/4018588/dcms-consultation-response-20211006.pdf

The CAIDP is an independent, non-profit organization established to advise national governments and international organizations on AI and digital policy. Led by a multinational team of experts in technology, law, and policy, CAIDP has provided recommendations to governments and decision-makers around the globe, including the European Commission and the European Parliament, the US Congress, the G20 Nations, and the OECD.[6] In 2020 we published *Artificial Intelligence and Democratic Values*,[7] a comprehensive annual report of the AI policies and practices in 30 countries. As set forth in this report, we recommend that countries:

- establish national policies for AI that implement democratic values;
- ensure public participation in AI policymaking and also create robust mechanisms for independent oversight of AI systems;
- guarantee fairness, accountability, and transparency in all AI systems;
- commit to these principles in the development, procurement, and implementation of AI systems for public services; and
- halt the use of facial recognition for mass surveillance.

Our review of the relationship of national AI policies and practices also made clear that data protection is a foundational requirement to safeguard democratic values and foster innovation.[8] We also emphasized the importance of "algorithmic transparency" as the cornerstone of trustworthy and human-centric AI. Our metrics highlight these particular factors:

- Does the country have an independent (agency/mechanism) for AI oversight?
- Do the following goals appear in the national AI policy: "Fairness," "Accountability," "Transparency," "Rule of Law," "Fundamental Rights"?
- Has the country by law established a right to Algorithmic Transparency?

As noted at the outset, the primary work of CAIDP is to assess the AI policies and practices of national governments. In our 2020 review, we gave the UK a relatively high score of 8.5, placing the country in Tier II of the five tiers for evaluation.[9] The UK's strong commitment to data protection contributed to this excellent outcome.[10]

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[6] E.g. CAIDP Statement on proposed EU AI Act or CAIDP Statement to G20 Digital Economy Taskforce.

[7] CAIDP, Artificial Intelligence and Democratic Values, December 2020, https://www.caidp.org/aisci-2020/.

[8] *Ibid.,* p. 2. See also Marc Rotenberg, *Artificial Intelligence and Democratic Values: The Role of Data Protection* Global Privacy Assembly, 19 October 2021, https://www.caidp.org/app/download/8350351463/Rotenberg-GPA2021.pdf

[9] CAIDP, Artificial Intelligence and Democratic Values, December 2020, p. 300, https://www.caidp.org/aisci-2020/.

[10] *Ibid.,* p. 286.

The *Taskforce on Innovation, Growth and Regulatory Reform* proposes to remove Article 22 in the 2018 UK Act.[11] However, Article 22 is the cornerstone for oversight of AI techniques.[12] Without the ability to understand and assess the consequences of AI systems, the UK will lose human control of these systems, and will place the public at risk.

The DCMS proposal also appears to be at odds with the stated views and prior commitments of the UK government.

At the G7 Summit earlier this year, hosted by the UK, the G7 Leaders committed to work together for a "values-driven digital ecosystem for the common good that enhances prosperity in a way that is sustainable, inclusive, transparent and human-centric."[13] They called for a "human centric approach to artificial intelligence," building on the work of the Global Partnership for Artificial Intelligence (GPAI). The leaders also called out bias in AI systems, noting that "new forms of decision-making have surfaced examples where algorithms have entrenched or amplified historic biases, or even created new forms of bias or unfairness." The G7 leaders said they would "to take bold action to build more transparency in our technologies." The removal of Article 22 thus goes against the UK's international commitments and the positions of its allies.

Moreover, the Communique of the G7 Data Protection and Privacy Officials, again issued under the auspices of the UK 2021 G7 hosts, made clear the importance of algorithmic accountability. As the officials stated, "Human dignity must be central to AI design; AI must be transparent, comprehensible, and explainable; and the data protection principles of purpose limitation and data minimization must apply to AI."[14]

The DCMS proposal is also at odds with the views of the British public. There was, for example, the widely reported public protest of the use of algorithms to determine educational opportunities for students in England and Wales, which disadvantaged students from poorer backgrounds.[15] We note also that last week the all-party parliamentary group (APPG) on the

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[11] Taskforce on Innovation, Growth and Regulatory Reform, Consultation Document, pp. 37-41, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1022315/Data_Reform_Consultation_Document__Accessible_.pdf.

[12] This falls in line with the position of ICO regarding the proposal. See ICO response to DCMS consultation "Data: a new direction", 7 October 2021, p. 35-36, https://ico.org.uk/media/about-the-ico/consultation-responses/4018588/dcms-consultation-response-20211006.pdf.

[13] CAIDP Update, *G7 Leaders Endorse Human-Centric AI, Call Out Bias,* June 14, 2021, https://www.caidp.org/app/download/8326521963/CAIDP-Update-2.24.pdf

[14] G7 United Kingdom, *Data Free Flows with Trust: Roundtable of G7 Data Protection and Privacy Authorities, 7-8 September 2021,* https://www.caidp.org/app/download/8342900463/g7-attachment-202109.pdf

[15] Jon Porter, *UK ditches exam results generated by biased algorithm after student protests: Protesters chanted 'Fuck the algorithm' outside the country's Department for Education,* The Verge, 17 Aug 2020, https://www.theverge.com/2020/8/17/21372045/uk-a-level-results-algorithm-biased-coronavirus-covid-19-pandemic-university-applications

future of work said that the monitoring of workers through algorithms is damaging to employees' mental health and should be regulated through legislation.[16] An "accountability for algorithms act'" would ensure that companies evaluate the effect of performance-driven regimes such as queue monitoring in supermarkets or deliveries-per-hour guidelines for delivery drivers, said the APPG in their report the *New Frontier: Artificial Intelligence at Work.*[17]

The UK public clearly wants more accountability for AI-based decision-making, not less.

Based on our assessment of the relationship between AI policy and democratic values, the recent pronouncements of the G7, the uproar in the UK regarding the use of algorithms for educational placement as well as new concerns about monitoring workers, **CAIDP recommends that the DCMS withdraw the proposal to remove Article 22 or otherwise diminish the legal accountability for the use of AI techniques.** After all, human review is at the heart of the British political tradition.[18] The protections afforded in Article 22 are fundamental safeguards towards protecting fundamental rights and rule of law.[19]

Thank you for your consideration of our views. We look forward to your action on our recommendation.

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[16] Dan Milmo, *Algorithmic tracking is 'damaging mental health' of UK workers, Report by MPs and peers says monitoring worker performance using AI should be regulated by law,* The Guardian, 11 November 2021, https://www.theguardian.com/technology/2021/nov/11/algorithmic-monitoring-mental-health-uk-employees

[17] APPG, Report into The New Frontier: Artificial Intelligence at Work, 11 November 2021, https://www.futureworkappg.org.uk/our-work/report-into-the-new-frontier-artificial-intelligence-at-work

[18] As formulated by the Cabinet Office and Chloe Smith MP, Bill to strengthen democracy to be debated in House of Commons, 7 September 2021, https://www.gov.uk/government/news/bill-to-strengthen-democracy-to-be-debated-in-house-of-commons.

[19] Article 29 Data Protection Working Party, *Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679*, 3 October 2017, https://ec.europa.eu/newsroom/article29/items/612053/en.