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Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
T. 0303 123 1113
ico.org.uk

The Information Commissioner's response to the Department for Education's call for evidence on generative AI in education

About the ICO

1. The Information Commissioner has responsibility in the UK for promoting and enforcing the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA 2018), the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Privacy and Electronic Communications Regulations 2003 (PECR), among others.

2. The Commissioner is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations and taking appropriate action where the law is broken.

3. The Information Commissioner's Office (ICO) set out its strategic vision in the ICO25 plan,[1] which highlighted promoting regulatory certainty, empowering responsible innovation and safeguarding the public as key priorities.

The ICO's role in regulating AI

4. Personal information is often used to train, test or deploy an AI system and where it does, it will fall under the remit of the ICO as the UK's data protection regulator. We believe data protection can help organisations to safely build or use AI in a way that mitigates risks to people's rights and freedoms.

5. AI is a priority for the ICO. The ICO25 strategic plan highlights our current work in relation to AI, including actions to tackle urgent and complex issues

[1] https://ico.org.uk/about-the-ico/our-information/our-strategies-and-plans/ico25-plan/

such as AI-driven discrimination. This builds on our existing work on AI, including:

- our landmark Guidance on AI and Data Protection[2], which is regularly updated to address emerging risks and opportunities;
- our accompanying AI and Data Protection risk toolkit[3], which won a Global Privacy and Data Protection Award in 2022;
- our supplementary guidance on Explaining Decisions Made with AI[4], co-badged with The Alan Turing Institute;
- our support for AI innovators through our Regulatory Sandbox, Innovation Advice and Innovation Hub[5];
- our advice to regulators on how to use AI and personal data appropriately and lawfully, following a recommendation by the House of Lords.
- our contribution to standard-setting initiatives as a member of the AI Committee of the British Standard Institution (BSI); and
- our supervision of organisations using AI, including through both proactive audits and investigations.

Data protection and GenAI

6. Generative AI (GenAI) is a form of AI with the ability to produce text, images, videos, code and translations. Data protection law is principles-based and technology-neutral, and the ICO's existing guidance and support for organisations on AI applies equally to the narrower contexts of GenAI. As such, the ICO's focus is on driving compliance in the GenAI market using its existing powers. Our work programme includes:

    - Targeted communications to remind organisations of their responsibilities, such as our April 2023 blog "Generative AI: eight questions that developers and users need to ask",[6] which outlines key

[2] Guidance on AI and data protection | ICO
[3] AI and data protection risk toolkit | ICO
[4] Explaining decisions made with AI | ICO
[5] ICO Innovation Services | ICO
[6] Generative AI: eight questions that developers and users need to ask.

areas that developers and users of GenAI need to consider when processing personal data.

- Scrutinising how developers and deployers of GenAI have tackled privacy risks before introducing new products and services utilising GenAI and initiating investigations where necessary.

- Joining forces with international data protection and privacy authorities regarding GenAI, including a joint statement with G7 authorities on GenAI[7].

7. The ICO welcomes the opportunity to respond to the Department for Education's (DfE) call for evidence in generative AI in education.[8] We note that the adoption of this technology is scaling at pace and is already in use in some schools and universities.[9]

GenAI in the educational context

8. GenAI can support the work of educators and benefit students. However, the technology can pose risks to individuals' rights and freedoms, including their right to privacy. Educational institutions using GenAI should consider their data protection obligations from the outset, and in particular their obligations towards children.

9. GenAI developers and deployers may also fall in scope of the Children's code (or the Age Appropriate Design Code),[10] where their system and its outputs are likely to be accessed by children under 18. The ICO has recently published guidance to help organisations assess whether children are likely to access their services[11] and clarified the scope of the code in relation to education and EdTech providers.[12]

10. Educational institutions deploying GenAI are able to refer to existing ICO initiatives such as our Regulatory Sandbox and our Innovation Advice service. These services are able to provide tailored guidance to organisations

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[7] Roundtable of G7 Data Protection and Privacy Authorities Statement on Generative AI -Personal Information Protection Commission- (ppc.go.jp)
[8] Generative artificial intelligence in education: call for evidence - Department for Education - Citizen Space
[9] For example, Russell Group universities have issued guidance on principles on using generative AI in education.
[10] Children's code guidance and resources | ICO
[11] 'Likely to be accessed' by children – FAQs, list of factors and case studies. | ICO
[12] The Children's code and education technologies (edtech) | ICO

that is specific to the technologies and use cases concerned. The ICO is ready to provide advice and assistance to innovators across all industries, and is already answering queries from organisations on GenAI.

Conclusion

11. The ICO welcomes the Department for Education's consultation on the use of GenAI in education and agrees with its position[13] on the potential benefits and risks of this technology.

12. GenAI technologies deployed in schools must be designed, developed, procured and implemented in ways that comply with all applicable laws, including data protection, and uphold people's rights.

13. Education has a significant impact on people's lives. The introduction of technologies that influence, inform or change the educational experience requires additional vigilance so both students and teachers can benefit from them.

[13] DfE external document template (publishing.service.gov.uk)