Rt Hon Michelle Donelan MP
Secretary of State for Science, Innovation and Technology
Department for Science, Innovation and Technology
1 Victoria Street
London
SW1H 0ET

Subject: The Algorithmic Transparency Recording Standard and the need for a statutory duty

Dear Secretary of State,

We are writing to you as a wide range of civil society organisations, academics, legal professionals, think tanks and unions to urge you to place the Algorithmic Transparency Recording Standard (ATRS) requirement on a statutory footing by amending the Data Protection and Digital Information Bill (DPDI Bill) currently before Parliament.

We welcome the recent commitment made in the Government's response to the AI Regulation White Paper to make the ATRS a requirement for all government departments. We believe that Government has a timely opportunity to deliver on this commitment through the DPDI Bill and ensure that public authorities using algorithmic tools in their decision-making are under a legal duty to be transparent about their use.

The importance of transparency

AI, algorithmic and automated tools are increasingly being used to make and support many of the highest impact decisions affecting individuals, families, and communities, across healthcare, welfare, education, policing, immigration, and many other sensitive areas of an individual's life.

The speed and volume of decision-making that new technologies will deliver is unprecedented. Their introduction creates the potential for decisions to be made more efficiently and at lower costs. However, if the use of these systems is opaque, they cannot be properly scrutinised and those operating them cannot be held accountable.

Transparency about how systems operate and how they affect decision-making is essential to building and maintaining public trust. Without this information, individuals will remain cut off from being able to properly understand how these technologies affect their lives and, crucially, from being able to seek redress if systems fail, make the wrong decisions, or operate unlawfully.

This perspective was reflected in the House of Lords Justice and Home Affairs Committee report on new technologies and the application of the law. The Committee found that without a central repository of information on which AI technologies are being used by government departments, it is:

> *"virtually impossible to find out where and how they are being used, or for Parliament, the media, academia, and importantly, those subject to their use, to scrutinise and challenge them"*.[1]

The Committee recommended that this be rectified by mandating "full participation in the Algorithmic Transparency [Recording] Standard collection".[2]

The need to place the ATRS on a statutory footing

The current ATRS guidance recognises the value and function of transparency: it "enables public scrutiny and greater accountability of public sector decision-making processes involving algorithms" and helps to "fulfil the public's democratic right to information".[3]

The guidance also says: "Increasing public awareness and understanding of the use of algorithms in the public sector is ... essential to building greater public confidence and trust both in the government and its use of technology."

However, the current non-statutory status of the ATRS means it has not yet been able to achieve these aims. Only a very small number of the algorithmic decision-making tools that are used by public authorities appear on the register.

- Since the inception of the ATRS, only 7 transparency reports have been released.
- Many of the key government departments using tools that fall within the scope of the ATRS, such as the Home Office and Department for Work and Pensions,[4] have never submitted a report.[5]
- The Cabinet Office's recent report on the use of a digital file-review tool is the first transparency report released since 2022.

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[1] House of Lords, Justice and Home Affairs Committee, 'Technology rules? The advent of new technologies in the justice system' (30 March 2022), page 3
https://publications.parliament.uk/pa/ld5802/ldselect/ldjusthom/180/180.pdf.

[2] House of Lords, Justice and Home Affairs Committee, 'Technology rules? The advent of new technologies in the justice system' (30 March 2022), page 46
https://publications.parliament.uk/pa/ld5802/ldselect/ldjusthom/180/180.pdf.

[3] Central Digital and Data Office and Department for Science, Innovation and Technology, Algorithmic Transparency Recording Standard - Guidance for Public Sector Bodies (5 January 2023)
https://www.gov.uk/government/publications/guidance-for-organisations-using-the-algorithmic-transparency-recording-standard/algorithmic-transparency-recording-standard-guidance-for-public-sector-bodies.

[4] See Public Law Project's Tracking Automated Government (TAG) Register for further information on the use of automation, algorithms, and AI by public authorities. Public Law Project, Tracking Automated Government 'TAG' Register (9 February 2023) http://trackautomatedgovernment.org.uk/.

[5] Central Digital and Data Office and Department for Science, Innovation and Technology, Collection of Algorithmic Transparency Reports (13 January 2023) https://www.gov.uk/government/collections/algorithmic-transparency-reports.

It is therefore clear that the non-statutory approach to date has been ineffective and that placing the ATRS requirement in legislation is necessary in order to ensure that government departments and other public authorities have a legal duty to adhere to the requirement to submit reports.

Such a duty is proportionate to the nature and impact of the risk posed by the widespread and fast-growing use of AI and algorithmic tools and will ensure that public authorities can be held accountable for failure to comply with the duty.

The Data Protection and Digital Information Bill is a key opportunity

The DPDI Bill is currently before Parliament. The Government has a timely opportunity to ensure that public authority use of AI and algorithms is transparent by laying an amendment to the Bill. An amendment to this effect has already been tabled.[6]

Openness around the use of this new technology and how it affects people's lives is vital for democratic accountability, for there to be public trust in government institutions, and to ensure that individuals can seek redress when systems fail or operate unlawfully.

This simple and effective step will ensure that the intentions behind the ATRS are achieved and will place the UK in a stronger position to realise its ambition to be a global leader in safe AI. We urge you to accept the tabled amendment to the DPDI Bill and properly deliver on the commitment to make the ATRS a requirement for government departments and public authorities.

We hope that you are able to give serious consideration to our call and we would welcome a response to this request.

Yours sincerely,

Shameem Ahmad, Public Law Project

Jonathan Tanner, Root Cause Global

Dr. Birgit Schippers, Lecturer in Law

Julian Tait, Open Data Manchester CIC

Joe Tomlinson, Professor of Public Law, University of York

Tom Brake, Unlock Democracy

Tim Davies, Practical Participation

Adam Cantwell-Corn, Connected By Data

Nicola Hamilton, Understanding Patient Data

Gavin Freeguard, Freelancer

Helen Mountfield KC

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[6] HL Bill 30, Running List 12 March 2024, After Clause 14, Use of the Algorithmic Transparency Recording Standard, page 20-21 https://bills.parliament.uk/publications/53585/documents/4561.

Dr. Oliver Butler, Assistant Professor of Law, University of Nottingham

Rachel Coldicutt OBE, Careful Trouble

John Moloney, PCS Union

Adam Harkens, Lecturer, University of Strathclyde

Dr. Patrick Roach, NASUWT

Danny Stone, Antisemitism Policy Trust

Sam Grant, Liberty

Sampson Low, UNISON

Daniel Kebede, National Education Union

Bhargav Srinivasa Desikan, Senior Research Fellow

Kester Brewin, Head of Communications at the Institute for the Future of Work

Derya Ozkul, Assistant Professor, University of Warwick

Susannah Copson, Big Brother Watch

Colette Collins-Walsh, 5Rights Foundation

The Lord Bishop of Oxford, Oxford Diocese, Church of England

Mariano delli Santi, Open Rights Group

Ewan Roberts, Asylum Link Merseyside

Habib Kadiri, StopWatch

Penny Duquenoy, Just Algorithms Action Group (JAAG)

Mary Towers, TUC

Kezia Tobin, the3million