



Data (Use and Access) Bill: Second Reading Briefing 12th February 2025

Automated Decision Making, Transparency & Delegated Powers

- The Data (Use and Access) Bill (the D(UA)) aims to update the UK's data laws to support the **safe deployment of new technology** while **maintaining high standards of protection**¹. The D(UA) Impact Assessment emphasises the importance of ensuring **public trust in the use of their data and new technologies**².
- The D(UA) is a welcome improvement on the previous Government's Data Protection and Digital Information (DPDI) Bill which, if implemented, would have watered down key data protection rights.
- However, Public Law Project (PLP)³ recommends further amendments to protect against unsafe deployment of new technology used to make significant decisions about individuals and to increase transparency (and therefore trust) in public body use of algorithmic tools.
- Further amendments are also required to implement the Attorney-General's aspirations to avoid 'excessive reliance' on delegated powers.

Clause 80: Automated Decision-Making (ADM)

As currently drafted, Clause 80 will weaken protections for a significant proportion of automated decisions (meaning that more decisions can be taken solely by automated means, without the protection afforded by human involvement). The safeguards it proposes are not enough to prevent unsafe, including discriminatory, ADM and risk weakening existing requirements around transparency.

Public bodies are increasingly using automated, algorithmic and artificial intelligence (AI) technology to make decisions that would traditionally have been made by humans: for example, decisions about education, health and social care, immigration, and welfare⁴.

This offers a new mode of decision-making which can be less costly and more consistent than human-made decisions. However, it also brings new forms of risk, as acknowledged in the D(UA) Impact Assessment⁵.

These risks include bias and discrimination, a reduction in accountability, reduced transparency and the risk of incorrect, unlawful and unfair decisions being made at speed and at scale.

The Current Law

Article 22 UK GDPR gives people the right not to be subject to significant decisions based 'solely on automated processing' without meaningful human input, unless certain exceptions apply.⁶ When ADM is allowed under one of the exceptions, further safeguards and transparency requirements are required under UK GDPR⁷ and the Data Protection Act (DPA) 2018⁸.

¹ P.2, Department for Science, Innovation and Technology (2024) 'Data (Use and Access) Bill: Impact Assessment' [here](#).

² page 4 and paras 247 – 261, *Ibid*.

³ Public Law Project is an independent national legal charity consisting of researchers, lawyers, trainers and public law policy experts. The aim of all of our work is to make sure that state decision-making is fair and lawful and that each person can hold the state to account.

⁴ See for example the tools on the PLP's Tracking Automated Government Register, available [here](#)

⁵ para 544, n. 1

⁶ The exceptions are explicit consent; necessity for performance of a contract; or when authorised by a law which suitably protects the data subject's rights, freedoms and legitimate interests (Art 22(2))

⁷ Articles 12 – 15 UK GDPR, Articles 22(3) UK GDPR (in relation to ADM permitted by express consent or contract).

⁸ s. 14 DPA 18 (in relation to ADM permitted by law)



D(UA)

The D(UA) amends Article 22 so that the protection against solely ADM **only applies** when decisions are made using ‘special category data.’⁹ It would remove this protection for ADM that uses personal data other than special category data. Where ADM is taken using any other type of personal data,¹⁰ for example someone’s postcode, sex or gender, the D(UA) sets out safeguards that must be complied with¹¹. These are similar to the existing safeguards that apply to ADM that is permitted under existing provisions and potentially weaker in some respects¹².

PLP Concerns

These changes will increase the risk that people will be harmed by unlawful, unfair and discriminatory decisions.

At Second Reading Baroness Jones referred to the need for ‘responsible and safe use of solely automated decision-making’ and described the changes in Clause 80 as being about clarification.¹³ At Committee Stage she stated that Clause 80 was an attempt to ‘make sure that there is meaningful human involvement and people’s futures are not being decided by an automated machine’¹⁴

In fact, **Clause 80 removes decisions that don’t use special category data from the existing limitations against solely automated decisions.**¹⁵ This goes far beyond mere clarification of the current position and instead represent **a significant weakening in the current protections against unsafe automated decision making.**

The inclusion of a ‘human in the loop’ for ADM, although not a panacea, has long been identified as a key safeguard against such risks¹⁶. DWP, for example, cites human involvement as the key safeguard for its use of automated decision-making to detect benefits fraud.¹⁷ The current proposals will allow more decisions (i.e. decisions that don’t use special category data) to be taken without this safeguard in place.

Please ask the Minister whether government accepts that its new Clause 22 will permit more significant decisions to be taken about people without human oversight. And, if so, for an explanation of why such a change is necessary.

The D(UA) Impact Assessment acknowledges the risk of discrimination this creates¹⁸ stating that the decision to retain the protection for special category data will mitigate this. It will not. **Automated decisions can still have significant, discriminatory and harmful effects on people’s lives without involving sensitive personal data.** This is because non-special category data can act as a proxy for other characteristics (such as nationality or postcodes) and not all protected characteristics are captured by special category data.

⁹ Special category data, or ‘sensitive data’, includes: personal data revealing racial or ethnic origin; political opinions; religious or philosophical beliefs; trade union membership; genetic data; biometric data (used for identification purposes); data concerning health; data concerning a person’s sex life; and data concerning a person’s sexual orientation.

¹⁰ personal data is any information relating to an identified or identifiable natural person (‘data subject’), Art 4(4) UKGDPR

¹¹ new Article 22C, paragraph 2

¹² Para 11, Schedule 6 D(UA) removes, and does not explicitly replace, the requirement under s. 14 DPA 18 to notify the data subject in writing that a decision has been taken based solely on automated processing

¹³ HL Debate (19 November 2024), vol 841 col 147: [https://hansard.parliament.uk/lords/2024-11-19/debates/68196F71-312C-4957-AF14-98B66C5DBEE4/Data\(UseAndAccess\)Bill\(HL\)](https://hansard.parliament.uk/lords/2024-11-19/debates/68196F71-312C-4957-AF14-98B66C5DBEE4/Data(UseAndAccess)Bill(HL))

¹⁴ HL Debate (16 December 2024), vol 842 col 44GC: [https://hansard.parliament.uk/lords/2024-12-16/debates/90BA207A-2205-4E76-9383-CBA8B39F0599/Data\(UseAndAccess\)Bill\(HL\)](https://hansard.parliament.uk/lords/2024-12-16/debates/90BA207A-2205-4E76-9383-CBA8B39F0599/Data(UseAndAccess)Bill(HL))

¹⁵ See new Article 22B (1)

¹⁶ Tatiana Kazim, ‘[Human oversight is crucial for automated decision-making. So why is it being reduced?](#)’ Prospect magazine (Dec 2021)

¹⁷ Department for Work and Pensions, ‘Annual Report and Accounts 2023-24’ (2024) HC 62, p.111.

¹⁸ para 531, D(UA) [Impact Assessment](#)



Example 1: *The A-level scandal consisted of an algorithm which harmfully downgraded A-level results of socio-economically disadvantaged students in 2020 without using sensitive data.*¹⁹

Example 2: *The SyRI case in the Netherlands when Dutch law enforcement were invited by the 'SyRI' algorithm to visit the homes of innocent migrants and accuse them of welfare fraud, their algorithm used data sets such as water bills.*²⁰

Both of these algorithms not only resulted in significant harm to individuals, but also eroded public trust in automated systems to the extent that their usage was ended. **The effect of a decision matters, whatever category of data it was based on.**

Please ask the Minister why government are removing the requirement for human oversight of high-risk automated decision-making systems which do not use sensitive data.

New Article 22D sets out the safeguards that should apply when ADM is permitted. At Second Reading, Baroness Jones indicated that this was intended to set out the existing safeguards 'much more clearly'.²¹ They do not introduce any new safeguards than already exists, and **the drafting does not address the key issues where clarification is required, and in some cases makes it less clear.** In particular, the provisions:

- Do not explicitly set out when and how individuals should be notified about a decision, and is less clear in this regard than the existing s. 14 DPA 2018, which the D(UA) repeals. The risk is that this will lead to decision makers simply publishing generic information in an obscure online privacy notice, rather than providing a personalised notice at the time that matters – when the decision is taken,
- Do not explicitly set out the need for individuals to be provided with a personalised explanation of how and why the decision was taken.

Please ask the Minister for an assurance that Article 22D is not intended to water down the safeguards it replaces.

In addition, Clause 80 would introduce a provision (inherited from the previous DPD Bill) for the Secretary of State to use regulations to define what constitutes 'meaningful human involvement' for the purposes of new Article 22A(1)(a) and whether a decision is, or is not, to be taken to have a 'similarly significant effect'²² for the data subject.

Both of these terms are critical in defining the scope of Article 22 protections. These terms have also been the subject of significant uncertainty and debate due to limited existing case law²³. What constitutes 'meaningful human involvement' raises important questions around the impact of automation bias, opacity, competence and authority of the human involved. What constitutes a 'similarly significant effect' engages important questions, for example, about how the law applies to decision processes with multiple stages.

The aspiration to improve the clarity of these terms is welcome. However, we are concerned that the definition of these significant terms can be varied by delegated legislation; these are not merely

¹⁹ Ofqual (August 2020) Guidance, available [here](#) – page 7.

²⁰ Netherlands Helsinki Committee (May 2021) 'Bring Human Rights Home: A Story from the Netherlands', available [here](#).

²¹ Ibid, n13

²² The right not to be subject to solely ADM under Article 22 UK GDPR applies in relation to decisions that have a legal or similarly significant effect (Art 22(1)). Legal effect is something that affects a person's legal status or their legal rights. A **similarly significant effect** is something that has an equivalent impact on an individual's circumstances, behaviour or choices. See [ICO Guidance](#).

²³ Section 3.4.1, Edwards, Williams & Binns (July 2021) Legal and regulatory frameworks governing the use of automated decision making and assisted decision making by public sector bodies. The Legal Education Foundation, available [here](#)



technical changes but represent significant policy decisions that go to the heart of the Bill and therefore require sufficient Parliamentary oversight.

Please ask the Minister how government will guarantee that powers to vary the central definitions of this Clause will not result in its safeguards being downgraded in the long run.

Transparency in public body use of algorithmic tools

The D(UA) Bill is also an opportunity to demonstrate leadership in AI regulation and improve public trust by increasing transparency about public sector use of ADM.

As Government has acknowledged, transparency in public sector use of algorithms is ‘essential to building greater confidence and trust both in the government and its use of technology’¹⁹.

PLP’s recent [report](#) provides a comparative analysis of the transparency requirements across five jurisdictions (Canada, the USA, Europe, France and Japan) and outlines recommendations for achieving meaningful transparency in the UK²⁰. The report found that this should include mandatory detailed disclosure of information about public sector use of ADM in a centralised public register.

The UK is well placed to implement this. Government has already developed an Algorithmic Transparency Recording Standard (ATRS)²¹; a standardised way for public sector organisations to publish information when they are using algorithmic tools.

However, PLP’s recent report demonstrates that where transparency requirements are not legally enforceable, they are associated with low compliance rates.²²

This has also been reflected within the UK, where departmental compliance with the ATRS has been low. Under the current government, compliance has improved with 33 tools now published on the ATRS hub. However, PLP’s Tracking Automated Government (TAG) register counts an additional 55 such tools.

The need for compliance with the ATRS to be put on a statutory footing was recognised by Labour during consideration of the DPDI when Baroness Jones jointly tabled an amendment to this effect²³.

Lord Bassam also highlighted during Committee stage that placing ATRS on a statutory footing is “forming part of the architecture needed to begin building a place of trust around the increased use of ADM and the introduction of AI into public services.” He outlined the importance of “tak[ing] the public with us on this journey... **Transparency, openness and accountability are key to securing trust in what will be something of a revolution in how public services are delivered and procured in the future.**”²⁴

At second reading of the Bill in the House of Lords, Baroness Jones stated that compliance with the ATRS will be ‘underpinned by digital spend controls, which means that when budget is requested for a relevant tool, the team in question must commit to publishing an ATRS record before receiving the funds’²⁴. This does not set out:

- What the enforcement mechanism would be if, following implementation of the tool, no ATRS record is in fact published,
- How compliance will be ensured for projects falling below the spend control thresholds.
- How compliance will be ensured for measures that are already in use. For example the DWP is currently operating a machine learning model to identify applications for advance payments that the model assesses as being of high risk of fraud²⁵ – however the DWP has not published information about this tool on the ATRS.

²⁴ HL Deb (16 December 2024), vol 842, col 49GC: [https://hansard.parliament.uk/lords/2024-12-16/debates/90BA207A-2205-4E76-9383-CBA8B39F0599/Data\(UseAndAccess\)Bill\(HL\)](https://hansard.parliament.uk/lords/2024-12-16/debates/90BA207A-2205-4E76-9383-CBA8B39F0599/Data(UseAndAccess)Bill(HL))

²⁵ Q16, Work and Pensions Committee, Oral Evidence: DWP’s Annual Report and Accounts (19 January 2025), HC 688 <https://committees.parliament.uk/oralevidence/15307/pdf/>



As set out in PLP's comparative research report, *Around the World in AI*, the example of a similar approach taken in Canada suggests that internal spend control measures are unlikely to be effective at securing consistent compliance with the ATRS²⁶. Under the Canadian model, federal institutions are required to publish Algorithmic Impact Assessments prior to implementing an automated decision making system. While this requirement is included in a mandatory policy-setting instrument with an accountability framework which is internal to Government, compliance has been relatively low. As at 7 February 2025, 25 AIA's had been published²⁷. In contrast, the independent Canadian Tracking Automated Government Register records 303 entries.²⁸

1. Please ask the Minister to introduce a statutory requirement for public bodies to comply with the ATRS.
2. Please ask the Minister how Government will ensure and enforce compliance with publication on the ATRS tools.

Clauses 70(4) and 71(5): Improper use of delegated powers

There has been concern in recent years that 'more and more extensive powers to make law have been delegated to Ministers while parliamentary control over the exercise of those powers has eroded...' to the extent that it 'compromises the UK's system of parliamentary democracy'²⁹.

The Attorney-General has recently highlighted that '*excessive reliance on delegated powers*' is '*upset[ing] the proper balance between Parliament and the executive*' striking at '*rule of law values...[and] also at the cardinal principles of accessibility and legal certainty*'³⁰. He has emphasised the need to reconsider '*the balance between primary and secondary legislation, which in recent years has weighed too heavily in favour of delegated powers*'.

The D(UA) is one of the first tests of whether this balance will be struck in practice.

It is positive that the D(UA) has implemented some of the Delegated Powers and Regulatory Reform Committee (DPRRC) recommendations to address some of the problematic use of delegated powers in the DPDI.

However, PLP is concerned that the D(UA) continues to include several widely drafted delegated powers that would permit the Secretary of State to make significant changes to the data protection regime without adequate Parliamentary scrutiny. This includes Clauses 70(4) and 71(5) which give broad powers to the Secretary of State to amend UK GDPR lawfulness of processing provisions and purpose limitation provisions respectively. These provisions have been criticised by the DPRRC as inappropriate³¹.

Please ask the Minister how this contributes to the Government's commitment to move away from 'excessive reliance on delegated powers.'

²⁶ n21, page 27

²⁷ Government of Canada, Open Government Portal (accessed 10 February 2025):

https://search.open.canada.ca/opendata/?collection=aia&page=1&sort=date_modified+desc

²⁸ Starling Centre, Tracking Automated Government Register Canada: <https://tagcanada.shinyapps.io/register/>

²⁹ Hansard Society, *Proposals for a New System for Delegated Legislation: A Working Paper*, February 2023; Secondary Legislation Scrutiny Committee, *Government by Diktat: a Call to Return Power to Parliament*, November 2021; DPRRC, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive*, November 2021

³⁰ *Attorney General's 2024 Bingham Lecture on the rule of law (October 2024)*: [here](#)

³¹ Paras 7 & 10, DPRRC, (November 2024) '9th Report of Session 2024–25', HL 49, available [here](#).