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COMMENT

- 2 - Data sharing takes centre stage in government's plans

NEWS

- 1 - The new government's digital strategy

ANALYSIS

- 12 - Is the cookie finally crumbling?

MANAGEMENT

- 1 - Vendor management in AI
- 8 - Data protection apprenticeship scheme aims to fill skills gap
- 10 - The Data Protection Officer's guide to data ownership
- 11 - Events Diary
- 15 - The emerging role of privacy architects
- 18 - UK-US Data Bridge: Practical tips

NEWS IN BRIEF

- 7 - ICO may fine Advanced Computer Software Group Ltd over £6m
- 7 - New ministerial team for digital sector
- 7 - UK/EU/US issue a joint statement on AI
- 9 - Awareness of ICO low compared with other regulators
- 17 - TikTok accepts Ofcom £1.875m fine for providing inaccurate data on safety controls
- 17 - Open Rights Group complains to ICO about Meta's AI plans
- 17 - Jersey Data Protection Authority appoints Elizabeth Denham as its new Chair

The new government's strategy – a Labour of (digital) love?

A Digital Information and Smart Data Bill has been promised, but no comprehensive AI regulation. **Nicola Fulford** and **Robert Fett** of Hogan Lovells analyse the government's approach.

The UK election on 4 July 2024 brought the new Labour government a substantial working majority and an opportunity to deliver change to the UK's data industries as part of its commitment to "national renewal". But is its

commitment to digital slow and steady, or is it showing signs of passion and energy towards the sector? Will it deliver a digital revolution or simply some pragmatic

Continued on p.5

Vendor management in AI: Must-ask questions and crucial clauses

Organisations looking to buy in AI systems should review their vendor due diligence questionnaires and much more, say **Liza Vernygorova** and **Emma Erskine-Fox** of TLT.

We are currently witnessing a boom in the use of Artificial Intelligence (AI), and this is only likely to continue in the coming years. There is no doubt that AI brings huge potential benefits, but it is easy to get

distracted by all the issues that AI promises to solve and the temptation to jump in at the deep end is strong.

However, the use of AI comes with challenges, including vendor

Continued on p.5

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Data sharing takes centre stage in government's plans

The government is drafting the Digital Information and Smart Data Bill, as announced in the King's Speech on 17 July. The ambition of the Bill is to "harness the power of data for economic growth". This includes setting up Smart Data schemes and expanding digital verification services to new areas such as moving house and buying age-restricted goods. Many aspects are likely to remain from the previous DPDI Bill. Read an analysis of the government's plans for digital strategy on p.1.

This issue includes some great management advice for the busy DPO. While we do not yet know the details of the new law, the basics are likely to remain the same but with a twist. Whatever the new requirements may be, it is the DPO's job to communicate the organisation's data processing policy and procedures to the rest of the staff, a job that may sometimes seem like an uphill struggle. There are ways of making data protection sound like an enabler, however (p.15).

The GDPR allows data subjects some control over their personal data, but the question of data ownership is not necessarily clear cut if the data also falls under Intellectual Property law (p.10). There are also intellectual property and data protection implications of training generative AI (p.17).

AI issues already land on many DPOs' desks – for example, it is of vital importance to ensure that AI vendors comply with transparency and explainability obligations. Due diligence, and detailed contract negotiations are needed when deploying AI solutions (p.1).

You can also read about an apprenticeship scheme on Data Protection and Information Governance that has been in operation since March 2022. This programme is a great opportunity, for example for recent graduates, and provides organisations with a skilled workforce (p.8).

Laura Linkomies, Editor

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Labour... from p.1

tweaking to align the UK more closely with the EU's digital strategy?

The first indications of the new government's approach came through the King's speech, which although delivered by the King among much pageantry, is written by the government as an indication of its legislative agenda. This came on 17 July 2024, and along with more detailed briefing notes, included two proposed bills that relate to changes to the UK's data protection and cyber security regulatory regimes. Since then, we have also seen efforts to bolster The Department for Science, Innovation and Technology (DSIT) and to look for AI opportunities.

DPDI BY ANOTHER NAME?

Readers will have followed the trials and tribulations of the previous Conservative government's Data Protection and Digital Information (DPDI) Bill which, despite being on the legislative agenda twice, never made it into law in the parliamentary wash-up period before the election. The DPDI Bill was controversial amongst some practitioners who feared that it could jeopardise the UK's adequacy status with the European Union. It was criticised for changes relating to automated decision-making, pre-defined legitimate interests, and the UK's own standards when making adequacy findings about third countries. The DPDI Bill would also have

Based on the government's initial announcements, it seems likely that any changes to the UK's current data protection framework will be subtle, and also very closely aligned to the previous draft of the DPDI Bill. Given much was agreed, this is perhaps not surprising. The government are unlikely to compromise the UK's adequacy status for international data transfers with the EU, which will be reviewed in 2025, particularly as it has indicated it wants a "reset" of relations with the EU. At the same time, the DISD Bill may provide some helpful amendments.

The briefing notes for the King's Speech on the DISD Bill indicate that its aim will be to reform data sharing and data protection standards, help scientists and researchers make more life-enhancing discoveries and give the ICO new, stronger powers and a more modern structure.

Of particular note for the life sciences sector will be the ability of scientists to seek broader consent for scientific research as long as the future research is consistent with generally recognised ethical standards, and to make scientific research in commercial settings easier by defining references to "scientific research" in the UK GDPR as including "purposes of any research that can reasonably be described as scientific, whether publicly or privately funded and whether carried out as a commercial or non-commercial activity".

The DISD Bill is also expected to

former Prime Minister, Tony Blair's attempts to introduce national identification cards, but this has been ruled out by the current leadership of the Labour Party. However, it will be interesting to see, given the Labour government's intentions to reset relations with the EU, to what extent the DISD Bill (like the DPDI Bill) interacts with the e-IDAS Regime. This pre-Brexit piece of legislation still exists in the UK, but has been reformed under the EU Digital Identity Regulation which came into force in May 2024 to introduce the EU's Digital Identity Wallet.¹

The DISD Bill will also legislate for a National Underground Asset Register (a new digital map to help with maintenance and operation of underground pipes and cables), as well as smart data schemes to aid the secure sharing of customer data with authorised third-party providers. Both proposals were already contained in the DPDI Bill.

The government has proposed that the ICO will see reforms to both its powers and its structure, with the 'strengthening' of existing sanctions and the introduction of a CEO, board and chair. This is likely to be a reference to the alignment of PECR fines with those under GDPR, as already contained in the DPDI Bill, as well as legislating for the ability of the ICO to compel witnesses to attend an interview during an investigation – also contained in the DPDI Bill and originally proposed in a 2021 government consultation. The structural changes to the ICO are likely to be along similar lines as those proposed in the DPDI Bill, the details of which underwent scrutiny and amendment following comments from the current Information Commissioner to ensure continuing independence.

So while the announcements so far indicate that the DISD Bill will reflect much from the DPDI Bill, the big question remains as to whether the government will ditch some of the 'tinkering around the edges' of the UK regime. The DPDI Bill had seen provisions that were seen by some as window dressing which would have had minimal impact on business costs (and potentially increase the compliance burden for

The government has proposed that the ICO will see reforms to both its powers and its structure.

given ministers powers to weaken protections with little parliamentary scrutiny. The independence of the ICO had also been raised as a concern as the Commissioner would have needed to have regard to a statement of priorities published by the Secretary of State. So will the Digital Information and Smart Data (DISD) Bill proposed in the King's Speech be a third attempt at the same, or a new legislative approach?

be broader in scope than data protection, covering digital verification services, which through certified providers will help individuals when moving house, make pre-employment checks more efficient, and help individuals to confirm their age when buying restricted goods and services. This is likely to be largely along similar lines as Part 2 of the DPDI Bill. Readers with a long memory will recall the controversy surrounding

businesses also subject to EU GDPR), whilst doing little to improve the overall standard of protection for individuals. Examples included the switch from a Data Protection Officer to a Senior Responsible Individual, and a loosening of DPIA and ROPA requirements.

Other previously proposed changes may still come about. These include the alignment of PECR fines with those under UK GDPR, not least because the ICO has always focused heavily on enforcement of direct marketing rules and would welcome some additional fire power.

A PRAGMATIC APPROACH TO AI REGULATION?

Although it had been reported that an AI Bill was likely to be introduced, the King's Speech did not include such a specific proposal. There was, however,

and pro-innovation regulatory framework" approach such that the regulation of AI will be primarily through the guidance of sectoral regulators, at least in the short term.

AN ALIGNMENT WITH EU CYBER SECURITY LAWS?

Arguably one of the most significant proposals for digital regulatory reform came in the form of the government's proposal for a new Cyber Security and Resilience Bill. This is an unsurprising development for two reasons. Firstly, there has been an increasing number of cyber attacks on both public and private infrastructure, including those that recently impacted London hospitals and the Ministry of Defence. Secondly, the UK's current regime is based on the EU's NIS Directive, which will be replaced by the NIS-2 Directive from 18 October 2024. As a

in data, digital and AI from the government Digital Service (GDS), the Central Digital and Data Office (CDDO) and the Incubator for AI (i.AI) to unite efforts in the digital transformation of public services under one department.

The government is keen to show its business-friendly credentials and therefore we are likely to see a number of initiatives come out of DSIT. These already include the AI Opportunities Action Plan commissioned by the Secretary of State for Science, Innovation and Technology, Peter Kyle. Its terms of reference state that, following evidence from experts across industry, academia, government, regulators and civil society, it will consider how to support the adoption of AI in the United Kingdom. This will include building an AI sector that can scale and be competitive globally, enhance growth and productivity, support the delivery of the government's missions (economic growth, clean energy, the NHS, justice and education), improve citizen's interactions with the state, and strengthen the infrastructure requirements of AI adoption.

CONCLUSION

In conclusion, the data protection proposals so far announced by the government appear to be not dissimilar to those started by their Conservative predecessors. This slow and steady approach is perhaps unsurprising given that the DPDI Bill had already undergone significant scrutiny and amendments. Any passion and intensity from the government towards the digital sector is likely to be more focused on AI and cybersecurity, a necessity given the focus on growth, and threats from the increasingly challenging worldwide political landscape, and the economically competitive global AI industry.

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REFERENCE

- digital-strategy.ec.europa.eu/en/policies/eidas-regulation

The government also proposes introducing cost recovery mechanisms to provide resources to regulators, as well as give regulators the powers to proactively investigate potential vulnerabilities.

a general statement that the government will "seek to establish the appropriate legislation to place requirements on those working to develop the most powerful artificial intelligence models". The fact that this immediately followed the government's commitment to employment rights may be an indication that at least one focus of any new AI legislation will be to place safeguards on the use of AI for recruitment and employment decisions (which is an area of particular focus in the recently published EU AI Act). Given the relevance of AI-related innovation in the context of the wider UK government's objective to grow the economy, future UK AI regulation will likely seek to establish protections against perceived risks while supporting innovation.

Based on the limited mention of AI legislation in the King's Speech, it is unlikely that any proposal by the government will be as extensive as the EU's AI Act. Instead, the government is likely to iterate on the previous Conservative government's "proportionate

result of the UK leaving the EU, the NIS-2 Directive does not form part of UK law and so there would otherwise have been a regulatory gap in the UK's cyber resilience compared to that of the EU.

The obligations in the Cyber Security and Resilience Bill have the potential to reflect some of the changes introduced by NIS-2, strengthening existing incident reporting obligations, and crucially bringing more sectors within scope to regulate a wider set of digital services and supply chains. The government also proposes introducing cost recovery mechanisms to provide resources to regulators, as well as give regulators the powers to proactively investigate potential vulnerabilities.

FUELLING ECONOMIC GROWTH THROUGH DIGITAL EXPERTISE?

Another development is the government's announcement that the Department for Science, Innovation and Technology (DSIT) will expand in both scope and size to bring in experts

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