

AI & Data Protection Series

Automated decision making and profiling

September 2025

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Our speakers



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List of webinars and dates

- 27 May: Data privacy considerations in AI model training
- 12 June: AI and GDPR purpose limitation requirements
- 24 June: AI-related Data Protection Impact Assessments (DPIAs)
- 22 July: Data privacy considerations in APAC AI legal regime
- 9 September: AI and individuals' rights under the GDPR
- 23 September: Automated decision making and profiling**
- 7 October: Marrying GDPR and AI governance**
- 21 October: AI and biometric data/special category data**
- 4 November: AI and data security**
- 18 November: GDPR considerations in contracting for AI solutions**

Agenda

- Identifying ADM / profiling
- Recap of rules – scope of Article 22(1)
- Exploring exceptions
- Key obligations
- Impact of the DUAA 2025

What is ADM / profiling?

Automated decision-making

What is it?

The process of making a decision by technological means without human involvement

Article 22(1): “The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her”

Profiling

What is it?

Key components:

- Automated form of processing
- Carried out on personal data
- Objective is to evaluate personal aspects about a natural person

Article 4(4): *“any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements”*

ADM and profiling

ADM not profiling

Decision made automatically, based on objective criteria, without any evaluation or prediction of personal characteristics - just rule-based automation

ADM and profiling

Creating a profile then making an automated decision (approve / reject) based on that profile with no human intervention

Profiling not ADM

Analysing customer financial data to create a credit score, which is then reviewed by humans who decide whether to grant a loan. The profile informs the decision but does not make it

GDPR obligations

General automated processing / profiling:

Apply standard GDPR principles

ADM within Article 22(1):

Additional restrictions / obligations

Article 22(1) – Scope

Article 22(1)

Decisions based “solely” on automated processing

- “Solely” = no meaningful human involvement
- Cannot be fabricated, “rubber-stamped” or a token gesture
- Must be carried out before the decision is applied, by someone with the authority and competence to change it
- Should consider “all the relevant data” as part of the analysis

Article 22(1)

Legal or similarly significant effects

Examples:

- Impacting financial status (e.g. automatic loan rejections)
- Affecting employment opportunities (e.g. automated recruitment process with no human intervention)
- Denying access to services (e.g. insurance)

Exceptions

Exceptions

Ordinary personal data

- Necessary for the entry into or performance of a contract
- Required or authorised by domestic law applicable to controller
- Explicit consent

Exceptions

Special category personal data

- Explicit consent
- Substantial public interest

Key obligations

Key obligations

Transparency and information provision

Article 13 / 14

Article 15

- Existence of ADM, including profiling
- Meaningful information about the logic involved
- Significance and envisaged consequences for the data subject

Key obligations

ICO guidance: “Meaningful information about the logic involved”

Focus on describing:

- The type of information you collect or use in making the automated decision
- Why this information is relevant
- What the likely impact is going to be/how it's likely to affect them

Key obligations

ICO guidance: “Meaningful information about the logic involved”

Dunn v Bradstreet case

Algorithms?

Trade secrets?

Key obligations

Appropriate safeguards: minimum

Ability for data subjects to:

- Obtain human intervention
- Express their point of view
- Contest the decision

Key obligations

Appropriate safeguards: Article 14 DPA 2018

- Notify data subject of ADM when relying on exemption based on requirement or authorisation under domestic law
- 1 month period to submit request for controller to (i) reconsider or (ii) take a new decision not based on ADM
- Standard data subject rights request procedure applies

Key obligations

Appropriate safeguards: other examples

- Quality assurance checks
- Algorithmic auditing
- Independent third party auditing
- Contractual assurances for third party systems
- Anonymisation or pseudonymisation

Key obligations

Data Processing Impact Assessments (DPIAs)

- Article 35(3) GDPR
- ICO guidance
- EDPB guidance

Data (Use and Access) Act 2025

Data (Use and Access) Act 2025

Impact

- Shift from prohibition-based regime (with limited exceptions) to permission-based regime (with safeguards)
- Expansion on lawful bases available for ADM, with exception of special category data, which remains restricted
- Greater flexibility to use ADM, particularly for decisions that do not involve special category data
- Increased regulatory scrutiny expected, especially for AI-driven ADM tools

Data (Use and Access) Act 2025

Actions

- **Update policies:** Ensure ADM-related policies reflect the DUAA's requirements, including transparency and contestability
- **Document human review pathways:** Establish and document clear processes for human intervention and decision review
- **Monitor ICO guidance:** Look out for the ICO's public consultation on ADM profiling, which is due to launch Autumn 2025 with the final guidance expected in Spring 2026

Useful resources

CtrlTransfer



Digital Regulation Tracker



AI Literacy Programme



Next session > 7 October: Marrying GDPR and AI governance