

Information Commissioner's Office

Call for evidence:

Age Appropriate Design Code

Start date: 27 June 2018

End date: 19 September 2018



Introduction

The Information Commissioner (the Commissioner) is calling for evidence and views on the Age Appropriate Design Code (the Code).

The Code is a requirement of the Data Protection Act 2018 (the Act). The Act supports and supplements the implementation of the EU General Data Protection Regulation (the GDPR).

The Code will provide guidance on the design standards that the Commissioner will expect providers of online 'Information Society Services' (ISS), which process personal data and are likely to be accessed by children, to meet. Once it has been published, the Commissioner will be required to take account of any provisions of the Code she considers to be relevant when exercising her regulatory functions. The courts and tribunals will also be required to take account of any provisions they consider to be relevant in proceedings brought before them. The Code may be submitted as evidence in court proceedings.

Further guidance on how the GDPR applies to children's personal data can be found in our guidance [Children and the GDPR](#). It will be useful to read this before responding to the call for evidence, to understand what is already required by the GDPR and what the ICO currently recommends as best practice. In drafting the Code the ICO may consider suggestions that reinforce the specific requirements of the GDPR, or its overarching requirement that children merit special protection, but will disregard any suggestions that fall below this standard.

The Commissioner will be responsible for drafting the Code. The Act provides that the Commissioner must consult with relevant stakeholders when preparing the Code, and submit it to the Secretary of State for Parliamentary approval within 18 months of 25 May 2018. She will publish the Code once it has been approved by Parliament.

This call for evidence is the first stage of the consultation process. The Commissioner seeks evidence and views on the development stages of childhood and age-appropriate design standards for ISS. The Commissioner is particularly interested in evidence based submissions provided by: bodies representing the views of children or parents; child development experts; providers of online services likely to be accessed by children, and trade associations representing such providers. She appreciates that different stakeholders will have different and particular areas of expertise. The Commissioner welcomes responses that are limited to specific areas of interest or expertise and only address questions within these areas, as well as those that address every question asked. She is not seeking submissions from individual children or parents

in this call for evidence as she intends to engage with these stakeholder groups via other dedicated and specifically tailored means.

The Commissioner will use the evidence gathered to inform further work in developing the content of the Code.

The scope of the Code

The Act affords the Commissioner discretion to set such standards of age appropriate design as she considers to be desirable, having regard to the best interests of children, and to provide such guidance as she considers appropriate.

In exercising this discretion the Act requires the Commissioner to have regard to the fact that children have different needs at different ages, and to the United Kingdom's obligations under the United Nations Convention on the Rights of the Child.

During Parliamentary debate the Government committed to supporting the Commissioner in her development of the Code by providing her with a list of 'minimum standards to be taken into account when designing it.' The Commissioner will have regard to this list both in this call for evidence, and when exercising her discretion to develop such standards as she considers to be desirable

In developing the Code the Commissioner will also take into account that the scope and purpose of the Act, and her role in this respect, is limited to making provision for the processing of personal data.

Responses to this call for evidence must be submitted by 19 September 2018. You can submit your response in one of the following ways:

Online

Download this document and email to:

childrenandtheGDPR@ICO.org.uk

Print off this document and post to:

Age Appropriate Design Code call for evidence
Engagement Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you would like further information on the call for evidence please telephone 0303 123 1113 and ask to speak to the Engagement Department about the Age Appropriate Design Code or email childrenandtheGDPR@ICO.org.uk

Privacy statement

For this call for evidence we will publish responses received from organisations but will remove any personal data before publication. We will not publish responses from individuals. For more information about what we do with personal data please see our [privacy notice](#).

Section 1: Your views and evidence

Please provide us with your views and evidence in the following areas:

Development needs of children at different ages

The Act requires the Commissioner to take account of the development needs of children at different ages when drafting the Code.

The Commissioner proposes to use their age ranges set out in the report [Digital Childhood – addressing childhood development milestones in the Digital Environment](#) as a starting point in this respect. This report draws upon a number of sources including findings of the United Kingdom Council for Child Internet Safety (UKCCIS) Evidence Group in its [literature review of Children’s online activities risks and safety](#).

The proposed age ranges are as follows:

3-5
6-9
10-12
13-15
16-17

Q1. In terms of setting design standards for the processing of children’s personal data by providers of ISS (online services), how appropriate you consider the above age brackets would be (delete as appropriate):

Not at all appropriate
Not really appropriate
Quite appropriate
Very appropriate

Q1A. Please provide any views or evidence on how appropriate you consider the above age brackets would be in setting design standards for the processing of children’s personal data by providers of ISS (online services),

Q2. Please provide any views or evidence you have on children’s development needs, in an online context in each or any of the above age brackets.

The United Nations Convention on the Rights of the Child

The Data Protection Act 2018 requires the Commissioner to take account of the UK's obligations under the UN Convention on the Rights of the Child when drafting the Code.

Q3. Please provide any views or evidence you have on how the Convention might apply in the context of setting design standards for the processing of children's personal data by providers of ISS (online services)

Aspects of design

The Government has provided the Commissioner with a list of areas which it proposes she should take into account when drafting the Code.

These are as follows:

- default privacy settings,
- data minimisation standards,
- the presentation and language of terms and conditions and privacy notices,
- uses of geolocation technology,
- automated and semi-automated profiling,
- transparency of paid-for activity such as product placement and marketing,
- the sharing and resale of data,
- the strategies used to encourage extended user engagement,
- user reporting and resolution processes and systems,
- the ability to understand and activate a child's right to erasure, rectification and restriction,
- the ability to access advice from independent, specialist advocates on all data rights, and
- any other aspect of design that the commissioner considers relevant.

Q4. Please provide any views or evidence you think the Commissioner should take into account when explaining the meaning and coverage of these terms in the code.

- For strategies used to encourage extended user engagement, ICO should define explicitly and in detail where such strategies cause harm and

breach rights. The Norwegian Consumer Council's Deceived by Design report¹ outlines "dark patterns" used by ISS providers, exploring factors including framing of wording, forced action and timing, ease of changing privacy settings, and psychological rewarding and punishment.

- The ICO should build on this and other work to development a comprehensive definition of manipulative design patterns, and have the power to issue penalties where it is found an ISS provider is deploying such patterns and refuses to comply with measures to change change them.
- The ICO should also explore a formal design standard for responsible design with the British Standards Institute and international standards bodies such as ISO. These standards should be associated with trust/kitemarking where possible, confirmed by auditing of ISS providers.

Q5. Please provide any views or evidence you have on the following:

Q5A. about the opportunities and challenges you think might arise in setting design standards for the processing of children's personal data by providers of ISS (online services), in each or any of the above areas.

Q5B. about how the ICO, working with relevant stakeholders, might use the opportunities presented and positively address any challenges you have identified.

- Many online services are used equally by adults and children. In instances where ISS providers will have to modify their services to comply with the age-appropriate design code, they will either need to roll-out changes across their whole service or implement age verification measures if choosing to offer a modified service for children.
- The ICO should set out what constitutes appropriate age verification, drawing on good practice from areas such as the gambling industry² and learning from the experiences with the British Board of Film Classification (BBFC) as their work on age-verification for online pornography³ progresses.
- The ICO should also conduct regular biannual reviews to ensure this guidance remains up-to-date, and work with ISS providers to monitor attempts to circumvent age-verification measures.
- The Data Protection Bill states that failure to comply with the code "does not of itself make that person liable to legal proceedings in a court or tribunal". This lack of accountability for failure to comply represents a challenge in enforcing the code.
- We believe compliance should be encouraged through a number of mechanisms. Public information notices and alerts should be published for non-compliance and financial penalties should be issuable in instances

¹<https://fil.forbrukerradet.no/wp-content/uploads/2018/06/2018-06-27-deceived-by-design-final.pdf>

²<https://www.oii.ox.ac.uk/archive/downloads/publications/Effective-Age-Verification-Techniques.pdf>

³ <https://www.bbfc.co.uk/about-bbfc/age-verification>

where ISS providers refuse to engage with the ICO after repeated warnings as a last resort.

- The code represents an opportunity for ISS providers to demonstrate the trustworthiness of their products and raise standards across their industry as a whole.
- To facilitate this, the ICO should work with UK and international standards bodies to translate the age-appropriate design code into a formal design standard, exploring ways for businesses to demonstrate their compliance through trustmarking and ongoing auditing.
- Our *Regulating for Responsible Technology: Making the case for an Independent Internet Regulator*⁴ research outlines the current landscape for internet regulation in the UK and identifies challenges facing the UK's digital regulation system.
- A follow up paper outlining new models for responding to the challenges identified will be published in October 2018. The paper calls for a new "Digital Advocacy" model to protect the interests of citizens who have been the victim of online harms. The ICO should explore adopting this model for user reporting and resolution of disputes on ISS.
- This model combines the approaches of consumer advocacy bodies and ombudsman services to perform the following functions:
- Provide a first-tier advice service offering guidance and pointing users towards mediation schemes where appropriate
- Offer mediation and alternative dispute resolution (ADR) between individuals and ISS providers on which harm has occurred
- Hold powers to seek collective redress in instances where a breach of the code affects significant number of young people in the same instance
- Feed knowledge back into the regulatory system, delivering front-line data around online harms to regulatory and government policy and sharing insights with ISS providers to improve practices.
- We believe this Digital Advocacy model could be applied to the policing of the age-appropriate design code, and represents an excellent opportunity to protect the interests of children in instances where their rights have been breached.

Q5C. about what design standards might be appropriate (ie where the bar should be set) in each or any of the above areas and for each or any of the proposed age brackets.

- A child's geolocation should not be tracked by default. For applications benefitting children that make use of this technology, such as navigation services, services to locate lost devices or sharing locations, geolocation should only be active during the use of the service and following consent with every use.
- All monitoring and processing of children's data should only occur where it is "use critical" - where an application of service cannot adequately function without the gathering of such data.

⁴<https://doteveryone.org.uk/regulating-for-responsible-technology/>

- “Privacy by default” should extend to all data capture and use. In doing so this ensures all users are required to proactively give consent, eliminating the risk that they are not aware data is being gathered. Our People, Power and Technology research into the public’s understanding of digital technologies shows awareness of data gathering practices is low: Only 52% are aware free to use apps make money by selling user data, whilst only 24% say they are likely to find out how an ISS provider is using their data⁵.
- Whilst our research was conducted with adults, the absence of a correlation between age and levels of understanding suggests there is no reason to believe understanding of these issues is likely to be higher for children.
- This research has also found 51% of adults do not understand terms and conditions, even after trying to read them, whilst the average *adult* literacy level in the UK is level 2 on the OECD’s adult literacy framework⁶. The language used in ISS Terms & Conditions should therefore be pitched at no higher than this level for all age groups, and the simplification of terms and conditions should be a priority for the ICO.
- Consent should also be context dependent and take place in real-time, with ISS providers required to gain consent every time it is needed, not only at the point of sign-up.

Q5D. examples of ISS design you consider to be good practice.

Q5E. about any additional areas, not included in the list above that you think should be the subject of a design standard.

Q6. If you would be interested in contributing to future solutions focussed work in developing the content of the code please provide the following information. The Commissioner is particularly interested in hearing from bodies representing the views of children or parents, child development experts and trade associations representing providers of online services likely to be accessed by children, in this respect.

Name

Email

Brief summary of what you think you could offer

Further views and evidence

⁵ <http://understanding.doteveryone.org.uk/>

⁶https://www.oecd.org/skills/piaac/Skills_Matter_Further_Results_from_the_Survey_of_Adult_Skills.pdf

Q7. Please provide any other views or evidence you have that you consider to be relevant to this call for evidence.

Section 2: About you

Are you:

A body representing the views or interests of children? Please specify:	
A body representing the views or interests of parents? Please specify:	
A child development expert? Please specify:	
A provider of ISS likely to be accessed by children? Please specify:	
A trade association representing ISS providers? Please specify:	
An ICO employee?	
Other? Please specify: Not-for-Profit Think Tank	

**Thank you for responding to this call for evidence.
We value your input.**