

Information Commissioner's Office

Call for evidence:

Age Appropriate Design Code

Start date: 27 June 2018

End date: 19 September 2018

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Information Commissioner's Office

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):

Quite 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),

The Scottish Government (SG) uses slightly different age ranges to inform policy, it would also be appropriate to include the 0-3 age range. Studies show increased use amongst the 0-3 age range¹.

Should the age range be extended to include 18?

¹ <http://techandplay.org/researchers-academics>
<http://blogs.lse.ac.uk/parenting4digitalfuture/2016/12/28/what-are-the-effects-of-touchscreens-on-toddler-development/>

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.

Within all age groups, the developmental stage can differ and this can be particularly relevant for children with educational needs and disabilities.² The needs in each age group should be considered when designing a service.

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)

The Scottish Government welcomes the requirement for the Commissioner to take account of the obligations under the UNCRC when drafting the code. This is particularly relevant because the First Minister announced in the Programme for Government 2018-2019³ that the principles of the UNCRC will be incorporated into domestic law in Scotland.

The following articles of the UNCRC might apply when setting design standards:

- Article 3 – best interests of the child – any design standards which are developed should have the best interests of the child throughout.
- Article 2 – non discrimination
- Article 5 – parental guidance and a child’s evolving capabilities – this is particularly relevant when setting design standards for different age groups.
- Article 12 – respect for the views of the child

² <http://eprints.lse.ac.uk/66927/1/Policy%20Brief%2017-%20Families%20%20Screen%20Time.pdf>

³ <https://beta.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/pages/8/>

- Article 13 – freedom of expression – including to access all kinds of information – design standards should consider this - a child should not be excluded from using an ISS when they do not agree to share their data with the providers of the ISS.
- Article 15 – freedom of association – children use the online world as a social space and as such have the right to join groups and chat with friends. Design standards should ensure that it is safe for children to do so.
- Article 16 – right to privacy.
- Article 17 – access to information from the media
- Article 28 – right to education and Article 29 – goals of education – both articles are relevant for the child having access to advice on all data rights
- Article 31 – every child has the right to relax, play and take part in cultural and artistic activities
- Article 36 – protection from other forms of exploitation, for example, by the media – relevant for automated and semi-automated profiling, algorithms in decision making⁴

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

⁴ <https://publications.parliament.uk/pa/cm201719/cmselect/cmsctech/1544/154402.htm>

- 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.

Data privacy – ISS’s that are likely to be used by children should have user privacy set to the highest level. It should be obvious where to go to change settings in the future.

Data minimisation – the code should take account of collection of biometric and audio data but also be written in such a way that it can account for future technological advances.

Terms and conditions and privacy notices – these should be clear and concise and written in a way that the youngest user can understand. How can a child give informed consent if the T’s and Cs and privacy notices are not written in a clear and understandable way?

Children with additional needs such as dyslexia and autism and so on need to be considered when drafting T’s and C’s and privacy notices. Though the code is for children and young people, there should also be clear guidance and links for parents, carers, teachers who might be supporting younger children to complete and understand what they are signing up to.

Users **should not** be excluded from using a service if they don’t agree to share certain aspects of data. One of the recommendations made within the Young Scot Our Digital Rights report wants children and young people to be offered options to opt-in and customise consent.⁵

Accessing independent advice – children should not be expected to do this by themselves. It should be obvious where to access the information and how to get help but they shouldn’t be expected to do it alone.

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.

Opportunities

- Involving children in setting design standards is an opportunity to get it right so it means something to children and that their voice is being heard.

⁵ https://www.youngscot.net/wp-content/uploads/2017/05/Five_Rights_Report_2017_May.pdf

- Development of the standards can raise the profile of data use and educate people.

Challenges

- One of the challenges would be to ensure that the language used is simple and accessible to children of all ages.
- How to get ISS providers to make this a priority.

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

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.

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.

It is important to note that the terms of the Age Appropriate Design Code apply to public sector, third sector, charity and government ISS as well as commercial ones.

Professional standards organisations, chartered bodies, universities and colleges and others engaged in the training and management of Digital professionals should be required/encouraged to ensure that the Code is taught within the context of ethical professional practice. Individual digital professionals should be encouraged to see their role as incorporating a duty to ensure that the code is adhered to. The work being undertaken by the IEEE (an international technical professional organisation) on Ethically

Aligned Design Standards⁶ serves as a helpful illustration of one approach to embedding ethical design in the heart of ISS.

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 [REDACTED]

Email [REDACTED]

Brief summary of what you think you could offer

This call for evidence represents the views of a number of policy departments within the Scottish Government – Digital Participation, Child Protection (Internet Safety) and Digital Directorate, Office of the Chief Designer. We would all be interested in informing the development of the code.

Further views and evidence

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

The naming of the Code ought to be redesigned. It is currently not easy to quickly grasp what it applies to, and hence children and others may not find it easy to engage with/understand its relevance to them, which will be critical in ensuring it drives the outcomes it seeks.

Children should have the same rights online as they do offline.

⁶ https://standards.ieee.org/content/dam/ieee-standards/standards/web/documents/other/ead_v1.pdf

Section 2: About you

Are you:

A body representing the views or interests of children? Please specify:	<input type="checkbox"/>
A body representing the views or interests of parents? Please specify:	<input type="checkbox"/>
A child development expert? Please specify:	<input type="checkbox"/>
A provider of ISS likely to be accessed by children? Please specify:	<input type="checkbox"/>
A trade association representing ISS providers? Please specify:	<input type="checkbox"/>
An ICO employee?	<input type="checkbox"/>
Other? Please specify: Scottish Government – various policy departments	<input checked="" type="checkbox"/>

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