

Information Commissioner's Office

# Call for evidence:

## Age Appropriate Design Code

Start date: 27 June 2018

End date: 19 September 2018

**ico.**

Information Commissioner's Office

# Introduction

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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](mailto: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](mailto: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

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BSI (the British Standards Institution) is making this submission as the National Standards Body for the United Kingdom. As the UK's National Standards Body, BSI operates in accordance with an MOU with the UK Government. Our robust standards development process requires open and full consultation with stakeholders to build consensus based outcomes. This gives standards the legitimacy and degree of market acceptance to be used for public policy purposes.

BSI's standards offer an alternative to regulation that can protect consumers and business at the same time as helping businesses to innovate. While regulation may be required to correct a market failure or to address an urgent consumer protection issue, standards offer a market led opportunity that may provide better and more flexible solutions.

BSI represents the UK view on standards in Europe (via the European Standards Organizations CEN and CENELEC) and internationally (via ISO and IEC). BSI has a globally recognized reputation for independence, integrity and innovation ensuring standards are useful, relevant and authoritative.

BSI is responsible for maintaining the integrity of the national standards-making system not only for the benefit of UK industry and society but also to ensure that standards developed by UK experts meet international expectations of open consultation, stakeholder involvement and market relevance. It is therefore within our remit to support the ICO in developing childhood and age-appropriate design standards within the commissioner's online 'Information Society Services' (ISS) framework.

British Standards and UK implementations of CEN/CENELEC or ISO/IEC standards are all documents defining best practice, established by consensus. Each standard is kept current through a process of maintenance and review whereby it is updated, revised or withdrawn as necessary.

BSI is independent of any one stakeholder interest; our standards development process requires the involvement of all relevant stakeholders (including consumers, businesses and government) along with an open public consultation process. This provides the credibility for standards to be used as an alternative to regulation, to support regulation or to demonstrate compliance with regulation. BSI believes that consensus standards development in both technology and behaviour will support the ICO implement their code in Age Appropriate Design.

BSI is only responding to the questions that are relevant to standards and standardization.

**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.

The key challenge will be to ensure that standards developed and introduced are adopted by international organizations – this is relevant for each of the areas the ICO is exploring.

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

Taking a lead in developing standards presents the below opportunities;

### **1. Achieving consensus**

Having a formal consensus based standards development mechanism will give ICO the opportunity to develop a widely accepted solution. BSI has the infrastructure and framework to enable this to take place. While the end result may not in the short term be an ISO standard, any work carried out based on BSI's infrastructure, process and framework will have more chance of being adopted internationally.

### **2. International leadership**

Utilizing globally established standard-making processes will enable the UK to clearly demonstrate leadership in this space. Additionally, should a decision be made to formally internationalise the standards, the UK would then be able to take a leading role in development.

BSI's Consumer Protection Network (CIPN) have been key drivers in influencing acceptance within ISO (the International Standards Organisation) of the development of an international standard on privacy by design. *ISO 23485 – Consumer protection: privacy by design for consumer goods and services*, sets out international guidelines for ensuring consumer privacy is embedded into the design of a product or service, and consumer centred privacy control and security of consumer products is maintained over a product lifetime. More information about this initiative can be found on the ISO website; <https://www.iso.org/news/ref2291.html>

### **3. Reaching a broad mix of stakeholders**

Consumers are a key stakeholder in the development of standards. BSI's open, consensus-based standards process ensures that their views are taken into account alongside those of industry and other stakeholders.

**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.

BSI supports the work of Baroness Beeban Kidron OBE, and 5Rights. The 5Rights framework was written to offer a single, principled approach that could be used to set a standard by which young people are treated in the digital world.

5Rights believe that:

- The digital environment must deliberately be designed to anticipate the presence of children.
- The rights that young people enjoy in the physical world should be enacted in their digital world.
- Young people must have a meaningful voice in how the digital world treats them.

5Rights sets out a minimum framework for design considerations for children and young people that may be useful for the commissioner's consideration in this space.

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

BSI has, for the last two years, been working with the Digital Policy Alliance (DPA) - a group of industry technology specialists and key digital stakeholders chaired by The Earl of Erroll - to devise a PAS that gives recommendations for a framework for the provision and use of online age check services.

A PAS uses a fast-track process to develop standards that can provide the base documents for full British, European or international (ISO/IEC) standards. PAS documents can be funded by industry, trade associations or government departments and are commonly developed with the intention of being global in scope and application.

*PAS 1296:2018 Online age checking – Provision and use of online age check services*, was written to assist those businesses that are mandated to comply with legal requirements to conduct age checks. This includes, for example, checking the age of those accessing online content for

streaming media, adult content or using online services (e.g. dating services, gaming or gambling websites).

As a result of an industry led approach, PAS 1296 gives clear guidance on a best practice solution to prevent online age restricted products and services from being accessed by inappropriate users. The PAS provides recommendations on the due diligence businesses can exercise to ensure that age check services deliver the solution that will meet a business's specific regulatory compliance needs.

**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 @bsigroup.com

Brief summary of what you think you could offer

BSI has over 115 years of experience in serving the interest of a wide range of stakeholders. Consumers are one of the key stakeholders in the development of standards. BSI's open, consensus-based standards-making processes ensures that consumer views are taken into account alongside those of industry, regulators and government stakeholders; this gives standards the legitimacy and degree of market acceptance to be used for public policy purposes.

For more information on BSI and our role as the UK's National Standards Body please visit our website <https://www.bsigroup.com/en-GB/about-bsi/uk-national-standards-body/>



## Section 2: About you

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**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: BSI is incorporated by Royal Charter and operates under a Memorandum of Understanding with UK government.	<input checked="" type="checkbox"/>