

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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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),

It’s positive that the age brackets start at a young age, to reflect the reality that many very young children spend time online but also to take into account the increased risk older children and young people (who are less likely to be supervised) may face. It’s also useful to divide children and young people into smaller groups by age to ensure that standards are relevant to their needs.

We were pleased to learn that children and young people have been heavily involved in the process to make these changes so far and recommend that this continues so that the

design standards that are produced are age-appropriate from the point of view of the children and young people who will be using them.

We also agree with the proposal that the content in a site's terms and conditions should have a maximum reading age that matches the minimum age people can access the site - e.g. 13 for Facebook - so that information is clear and easy to understand for the young people using it.

**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.

The proposal to set privacy settings at the highest level for under 18s as default is positive as it would help keep children and young people safe online and prevent them from accidentally sharing information about themselves.

In terms of the right of erasure, children’s rights and potential discomfort around how their parents may use their image or information online should be considered. The Government’s Internet Safety Strategy indicated that children under 13 would need their parents to make a request for information about them to be removed and deleted. While it makes sense for parents to take on responsibilities for young children, it’s vital that these children’s voices are also represented in the process, particularly as the information they wish to have removed may have been put up by their parents - e.g. photos uploaded without children’s permission. It’s therefore also important to educate children and adults about the importance of asking permission before uploading images of people to try and ensure children and young people aren’t put in a position where they wish to remove information uploaded about them by others, including their parents.

Members of our Advocate youth panel shared their views about the importance of internet privacy in relation to privacy and the sharing of images of children by their parents.

*“Raising awareness about risks is important for both parents and children to understand how to stay safe online.”* (████████ Advocate, 15)

*“Asking about sharing photos of anyone needs to be something that all groups in society tackle, as I think that if children aren’t being taught to ask, they’re less likely to do it as they get older.”* (████████ Advocate, 16)

*“Parents need to show their children how to make their social media accounts private, as this would prevent a lot of issues arising. [Parents] should ask children when sharing photos of them online because children are entitled to privacy.”* (████████ Advocate, 16)

**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.

**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.

**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**

**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

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**Are you:**

A body representing the views or interests of children? Please specify: Girlguiding	<input checked="" 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:	<input type="checkbox"/>

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