

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):

- 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),

While the ranges are appropriate for the developmental stages of children, based on work in the education space, the number of ranges and expectation on how these can be effectively addressed separately within a service gives cause for concern: for example is the view that from a practical perspective the design must conform to the lowest range appropriate for the user community with older ranges able to understand this as well.

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.

Particularly in early years the development needs are based on the individual and not the age range of the child; care and consideration is needed to ensure while the code may centre around the age ranges (for ease of understanding) organisations must be guided, and given the latitude, to evaluate risk-specific to their use community e.g. services targeting disabled persons in these age brackets, children and possibly lower-than-average education levels through social circumstance (eg deprivation)

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)

N/A

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.

Publication of a DPIA template, with clear guidance and thought process, specifically geared towards children's data would be extremely helpful to decipher, and consistently apply, the code once published.

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 primary opportunity is to ensure children are able to utilise modern digital services in a way that protects them while helping them evolve their understanding and prepare them for the utilisation of services as adults
- The challenges include that children's needs/understanding is not based on their age but a combination of their experiences and abilities and care is needed to not create rigid boxes not appropriate for the inherently different levels of understanding. A particular challenge exists in respect of requiring 'parental responsibility' input as there is no central, simple and reliable way to establish this responsibility relationship therefore the code needs to address how this is possible.

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

The national identity element should be progressed at pace and should include the parental responsibility element. This allows the establishment of that responsibility once and can then be leveraged again and again. Partial success can also be achieved through the leveraging the education system as our primary public sector interaction with children in these age ranges.

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.

It would be worth linking up with Government bodies contributing to the Internet Safety Strategy to ensure alignment for the older age groups

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

The Education Scotland GLOW system is a good example of delivering a complex digital service to a diverse education population while leveraging existing education relationships and processes

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

Standards around appropriate Protective Monitoring of children data activities on the assumption existing best practice for monitoring of equivalent adult data activities would be deemed overly intrusive.

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.

Clarity would be beneficial on the age of consent. The section 'What do I need to think about when choosing a basis for processing children's personal data' states there is no minimum age in England and Wales and it is age 12 in Scotland. It also suggests children over the age of 7 are able to enter into contracts in England and Wales but the age is 16 in Scotland. And then suggests under Article 8 GDPR that UK has set age of consent to 13. This is rather confusing given the possibility of interpreting the act of giving consent as entering into a contract.

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:	<input type="checkbox"/>

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