

Information Commissioner's Office

Consultation:

Age Appropriate Design code

Start date: 15 April 2019

End date: 31 May 2019

ico.

Information Commissioner's Office

Introduction

The Information Commissioner is seeking feedback on her draft code of practice [Age appropriate design](#) - a code of practice for online services likely to be accessed by children (the code).

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.

The code is now out for public consultation and will remain open until 31 May 2019. The Information Commissioner welcomes feedback on the specific questions set out below.

Please send us your comments by 31 May 2019.

Download this document and email to:

ageappropriatedesign@ico.org.uk

Print off this document and post to:

Age Appropriate Design code consultation
Policy Engagement Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you would like further information on the consultation please telephone 0303 123 1113 and ask to speak to the Policy Engagement Department about the Age Appropriate Design code or email ageappropriatedesign@ico.org.uk

Privacy statement

For this consultation, we will publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public or a parent). All responses from organisations and individuals responding in a professional capacity (e.g. academics, child development experts, sole traders, child minders, education professionals) will be published. We will remove email addresses and telephone numbers from these responses but apart from this, we will publish them in full.

For more information about what we do with personal data, please see our [privacy notice](#).

Section 1: Your views

Q1. Is the '**About this code**' section of the code clearly communicated?

Yes

If NO, then please provide your reasons for this view.

Q2. Is the '**Services covered by this code**' section of the code clearly communicated?

No

As currently drafted, we have concerns over the broad and vague scope of the code. It states that it will be applicable to "all providers of information society services" that are "likely" to be accessed by children, but it is not clear if the ICO intend this to capture any service which could be accessed by a child. On the latter interpretation, any information society service could be in scope even if their services are not targeted at children. It is also not clear whether connectivity services such as those offered by ISPs are in scope. To provide businesses with certainty, the ICO should further clarify the type of companies and services in scope, and ensure it is aimed at companies whose services can be reasonably shown to be used by children. The consultation includes a suggestion that a company undertake some market research to identify the user base of the service, and establish whether children are "likely" to use the service. But this suggestion is not accompanied by guidance from the ICO as to what evidence would

need to be demonstrated to take that company / service out of scope.

Standards of age-appropriate design

Please provide your views on the sections of the code covering each of the 16 draft standards

1. Best interests of the child: The best interests of the child should be a primary consideration when you design and develop online services likely to be accessed by a child.

2. Age-appropriate application: Consider the age range of your audience and the needs of children of different ages. Apply the standards in this code to all users, unless you have robust age-verification mechanisms to distinguish adults from children.

3. Transparency: The privacy information you provide to users, and other published terms, policies and community standards, must be concise, prominent and in clear language suited to the age of the child. Provide additional specific 'bite-sized' explanations about how you use personal data at the point that use is activated.

4. Detrimental use of data: Do not use children's personal data in ways that have been shown to be detrimental to their wellbeing, or that go against industry codes of practice, other regulatory provisions or Government advice.

5. Policies and community standards: Uphold your own published terms, policies and community standards (including but not limited to privacy policies, age restriction, behaviour rules and content policies).

6. Default settings: Settings must be 'high privacy' by default (unless you can demonstrate a compelling reason for a different default setting, taking account of the best interests of the child).

7. Data minimisation: Collect and retain only the minimum amount of personal data necessary to provide the elements of your service in which a child is actively and knowingly engaged. Give children separate choices over which elements they wish to activate.

8. Data sharing: Do not disclose children's data unless you can demonstrate a compelling reason to do so, taking account of the best interests of the child.

9. Geolocation: Switch geolocation options off by default (unless you can demonstrate a compelling reason for geolocation, taking account of the best interests of the child), and provide an obvious sign for children when location tracking is active. Options which make a child's location visible to others must default back to off at the end of each session.

10. Parental controls: If you provide parental controls give the child age appropriate information about this. If your online service allows a parent or carer to monitor their child's online activity or track their location, provide an obvious sign to the child when they are being monitored.

11. Profiling: Switch options based on profiling off by default (unless you can demonstrate a compelling reason for profiling, taking account of the best interests of the child). Only allow profiling if you have appropriate measures in place to protect the child from any harmful effects (in particular, being fed content that is detrimental to their health or wellbeing).

12. Nudge techniques: Do not use nudge techniques to lead or encourage children to provide unnecessary personal data, weaken or turn off privacy protections, or extend use.

13. Connected toys and devices: If you provide a connected toy or device ensure you include effective tools to enable compliance with this code

14. Online tools: Provide prominent and accessible tools to help children exercise their data protection rights and report concerns.

15. Data protection impact assessments: Undertake a DPIA specifically to assess and mitigate risks to children who are likely to access your service, taking into account differing ages, capacities and development needs. Ensure that your DPIA builds in compliance with this code.

16. Governance and accountability: Ensure you have policies and procedures in place which demonstrate how you comply with data protection obligations, including data protection training for all staff involved in the design and development of online services likely to be accessed by children. Ensure that your policies, procedures and terms of service demonstrate compliance with the provisions of this code

Q3. Have we communicated our expectations for this standard clearly?

1. Best interests of the child
Yes If NO, then please provide your reasons for this view.
2. Age-appropriate application
No The definition of children in the code to include ages 16-18 is excessive in light of the expectations of this audience, but more significantly is inconsistent with the parental consent age adopted by the UK under GDPR. This risks creating two regimes for companies to comply with - one for GDPR, and another for the ICO code.
3. Transparency
Yes If NO, then please provide your reasons for this view.
4. Detrimental use of data
Yes If NO, then please provide your reasons for this view.
5. Policies and community standards
Yes

If NO, then please provide your reasons for this view.
6. Default settings
Yes
If NO, then please provide your reasons for this view.
7. Data minimisation
Yes
If NO, then please provide your reasons for this view.
8. Data sharing
Yes
If NO, then please provide your reasons for this view.
9. Geolocation
No
The obligations of ongoing alerts may be disproportionate to the processing so greater detail is required
10. Parental controls
No
It is not clear from the draft language whether parental controls for connectivity services would be in scope, for example ISPs broadband parental controls. These controls are in place specifically to protect children from accessing inappropriate content for their age-group, and we do not think it is necessary for additional regulations to apply to this service. We would ask that the ICO clarify that ISP broadband parental controls are out of scope.
11. Profiling
Yes
If NO, then please provide your reasons for this view.
12. Nudge techniques
Yes
If NO, then please provide your reasons for this view.
13. Connected toys and devices
Yes
If NO, then please provide your reasons for this view.
14. Online tools
Yes
If NO, then please provide your reasons for this view.
15. Data protection impact assessments
Yes

If NO, then please provide your reasons for this view.

16. Governance and accountability

Yes

If NO, then please provide your reasons for this view.

Q4. Do you have any examples that you think could be used to illustrate the approach we are advocating for this standard?

1. Best interests of the child

No

If YES, then please provide details.

2. Age-appropriate application

No

If YES, then please provide details.

3. Transparency

No

If YES, then please provide details.

4. Detrimental use of data

No

If YES, then please provide details.

5. Policies and community standards

No

If YES, then please provide details.

6. Default settings:

No

If YES, then please provide details.

7. Data minimisation

No

If YES, then please provide details.

8. Data sharing

No

If YES, then please provide details.
9. Geolocation
No
If YES, then please provide details.
10. Parental controls
No
If YES, then please provide details.
11. Profiling
No
If YES, then please provide details.
12. Nudge techniques
No
If YES, then please provide details.
13. Connected toys and devices
No
If YES, then please provide details.
14. Online tools
No
If YES, then please provide details.
15. Data protection impact assessments
No
If YES, then please provide details.
16. Governance and accountability
No
If YES, then please provide details.

Q5. Do you think this standard gives rise to any unwarranted or unintended consequences?

1. Best interests of the child
No

If YES, then please provide your reasons for this view.

2. Age-appropriate application

No

3. Transparency

No

If YES, then please provide your reasons for this view.

4. Detrimental use of data

No

If YES, then please provide your reasons for this view.

5. Policies and community standards

No

If YES, then please provide your reasons for this view.

6. Default settings

No

If YES, then please provide your reasons for this view.

7. Data minimisation

No

If YES, then please provide your reasons for this view.

8. Data sharing

No

If YES, then please provide your reasons for this view.

9. Geolocation

No

If YES, then please provide your reasons for this view.

10. Parental controls

No

If YES, then please provide your reasons for this view.

11. Profiling

No

If YES, then please provide your reasons for this view.

12. Nudge techniques

No

If YES, then please provide your reasons for this view.

13. Connected toys and devices

No

If YES, then please provide your reasons for this view.

14. Online tools

No

If YES, then please provide your reasons for this view.

15. Data protection impact assessments

No

If YES, then please provide your reasons for this view.

16. Governance and accountability

No

If YES, then please provide your reasons for this view.

Q6. Do you envisage any feasibility challenges to online services delivering this standard?

1. Best interests of the child

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

2. Age-appropriate application

Yes

Including additional obligations for 16-17 year old individuals may lead to the individuals not being transparent with their age. As consent is required for this age group the code should only apply for children up to 16 which would align with parental responsibility.

3. Transparency

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

4. Detrimental use of data

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

5. Policies and community standards

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

6. Default settings

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

7. Data minimisation

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

8. Data sharing

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

9. Geolocation

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

10. Parental controls

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

11. Profiling

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

12. Nudge techniques

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

13. Connected toys and devices

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

14. Online tools

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

15. Data protection impact assessments

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

16. Governance and accountability

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

Q7. Do you think this standard requires a transition period of any longer than 3 months after the code come into force?

1. Best interests of the child

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

2. Age-appropriate application

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

3. Transparency

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

4. Detrimental use of data

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and

why.

5. Policies and community standards

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

6. Default settings

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

7. Data minimisation

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

8. Data sharing

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

9. Geolocation

Yes

The scale and significance of the requirements proposed in the draft code are not reflected in the extremely short implementation period (3 months) proposed. Changes to technology would require more than 3 months to ensure sufficient testing, and we propose a minimum of 6 months as a suitable timeframe for this. A 12 month implementation period is preferable. We note that the ICO's existing approach to compliance is for 'evolution not revolution', and hope that the ICO reconsider the proposal for 3 months implementation.

10. Parental controls

Yes

See answer to Q9.

11. Profiling

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

12. Nudge techniques

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

13. Connected toys and devices

Yes

See answer to Q9.

14. Online tools

Yes

See answer to Q9.

15. Data protection impact assessments

Yes

To ensure that the DPIA process is appropriately updated and understood within a business environment, 6-12 months would be more realistic.

16. Governance and accountability

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

Q8. Do you know of any online resources that you think could be usefully linked to from this section of the code?

1. Best interests of the child

No

If YES, then please provide details (including links).

2. Age-appropriate application
No
If YES, then please provide details (including links).
3. Transparency
No
If YES, then please provide details (including links).
4. Detrimental use of data
No
If YES, then please provide details (including links).
5. Policies and community standards
No
If YES, then please provide details (including links).
6. Default settings
No
If YES, then please provide details (including links).
7. Data minimisation
No
If YES, then please provide details (including links).
8. Data sharing
No
If YES, then please provide details (including links).
9. Geolocation
No
If YES, then please provide details (including links).
10. Parental controls
No
If YES, then please provide details (including links).
11. Profiling
No
If YES, then please provide details (including links).
12. Nudge techniques
No
If YES, then please provide details (including links).
13. Connected toys and devices
No

If YES, then please provide details (including links).

14. Online tools

No

If YES, then please provide details (including links).

15. Data protection impact assessments

No

If YES, then please provide details (including links).

16. Governance and accountability

No

If YES, then please provide details (including links).

Q9. Is the '**Enforcement of this code**' section clearly communicated?

Yes

If NO, then please provide your reasons for this view.

Q10. Is the '**Glossary**' section of the code clearly communicated?

Yes

If NO, then please provide your reasons for this view.

Q11. Are there any key terms missing from the '**Glossary**' section?

No

If YES, then please provide your reasons for this view.

Q12. Is the '**Annex A: Age and developmental stages**' section of the code clearly communicated?

Yes

If NO, then please provide your reasons for this view.

Q13. Is there any information you think needs to be changed in the '**Annex A: Age and developmental stages**' section of the code?

Yes

To align with previous comments

Q14. Do you know of any online resources that you think could be usefully linked to from **the 'Annex A: Age and developmental stages'** section of the code?

No

If YES, then please provide details (including links).

Q15. Is the '**Annex B: Lawful basis for processing**' section of the code clearly communicated?

Yes

If NO, then please provide your reasons for this view.

Q16. Is this '**Annex C: Data Protection Impact Assessments**' section of the code clearly communicated?

Yes

If NO, then please provide your reasons for this view.

Q17. Do you think any issues raised by the code would benefit from further (post publication) work, research or innovation?

Yes

It would be interesting to hear from children, particularly those over the age of 13, whether this code is appropriate and fit for purpose

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"/>
An Academic? Please specify:	<input type="checkbox"/>
An individual acting in another professional capacity? Please specify:	<input type="checkbox"/>
A provider of an ISS likely to be accessed by children? Please specify: Virgin Media	<input checked="" type="checkbox"/>
A trade association representing ISS providers? Please specify:	<input type="checkbox"/>
An individual acting in a private capacity (e.g. someone providing their views as a member of the public or a parent)?	<input type="checkbox"/>
An ICO employee?	<input type="checkbox"/>
Other? Please specify:	<input type="checkbox"/>

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Thank you for responding to this consultation.

We value your input.