

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),

In Ofcom’s latest ‘Children and Parents: Media use and attitudes’ report (2017)¹, it stated that:

3 -4 year olds

- 1% have their own smartphone

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0020/108182/children-parents-media-use-attitudes-2017.pdf

- 21% have their own tablet
- 40% play games, for nearly 6 hours a week
- 53% go online for nearly 8 hrs a week

5 – 7 year olds

- 5% have their own smartphone
- 35% have their own tablet
- 66% play games, for nearly 7.5 hrs a week
- 79% go online, for around 9hrs a week
- 3% have social media profiles

8 – 11 year olds

- 39% have their own smartphone
- 52% have their own tablet
- 81% play games, for around 10h a week
- 94% go online, for nearly 13.5 hrs a week
- 23% have a social media profile

12 – 15 year olds

- 83% have their own smartphone
- 55% have their own tablet
- 77% play games for around 12 hrs a week
- 99% go online for nearly 21 hrs a week
- 74% have a social media profile

The above demonstrates clearly children and young people’s use of online technology. As such, the Children’s Commissioner for Wales considers the proposed age brackets to be very appropriate.

We would also like to heed the calls made by our counterpart in England, the Children’s Commissioner for England, in her response to this consultation, that you consider the possibility of including a 0 – 2 age bracket. This could help futureproof the code in light of evidence showing that children are beginning to participate in the digital world at younger and younger ages. By introducing this lower age category, it would ensure the Code covers all age groups contained with the international human rights treaty, United Nations Convention on the Rights of the Child (UNCRC).

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 UNCRC recognises that children are in a different situation than adults and will often have different needs, and that children face particular challenges because childhood involves stages of physical or emotional development. The 42 rights set out in the UNCRC are an additional safeguard of their safety and development, and support children’s capacity to take decisions and act

autonomously. The articles of the convention cover three main themes: participation, provision and protection. These three main themes are critical in the development of this Code.

Participation

We would encourage the ICO to listen to children and young people from across the country and to take their views meaningfully into account. Participation should not be understood as an end in itself, but as a process, which is safe, enabling and inclusive, and which supports dialogue between children and professionals. Children and young people should be active participants in informing and developing this Code.

Provision

Provision articles cover the basic rights of children and young people to survive and develop and encourages organisations to keep children's rights at the centre of how they work. Underpinning the Code with the UNCRC would enable the ICO to fulfil this obligation to children across the UK.

Protection

This is about keeping children safe, on and offline.

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 Children's Commissioner for Wales' work is guided by the UNCRC and we strive to ensure that it is fully implemented across Wales. In 2017, the Commissioner published a guide – *The Right Way* – with expert advice from the Wales Observatory on Human Rights of Children and Young People, based in Swansea and Bangor Universities. It provides a principled and practical framework for public services, and others, to commit to the UNCRC and improve how they plan and deliver their services as a result. This guide could provide a very suitable framework for the design standards, to ensure the UNCRC in its entirety is bedded in to all aspects of the Code, enabling meaningful actions which improve outcomes for children and young people across the UK. Although the guide was primarily directed at public services in Wales, the principles and content are applicable to any nation that is committed to protecting and furthering children's rights under the UNCRC.

The Right Way contains information on ways to embed children's human rights in organisations and services and the benefits of doing so. For example:

- Too often children do not know they have rights which means they cannot take advantage of the rights they possess. A children's rights approach means that children are given access to information and resources to enable them to take full advantage of their rights.
- Despite being experts on their own lives, children are often excluded from decisions that affect them. A children's rights approach means that children are provided meaningful opportunities to influence decisions about their lives.

- Children are often powerless to hold to account decision-makers, or those responsible for services. A children's rights approach means that authorities and individuals are accountable to children for decisions, and for outcomes that affect children's lives.

Also included in the guide are five principles of a children's rights approach:

- Embedding children's rights: children's rights should be at the core of planning and service delivery.
- Equality and non-discrimination: all about ensuring that every child has an equal opportunity to make the most of their lives and talents, and that no child has to endure poor life chances because of discrimination.
- Empowering children: human rights should empower children/ Children's rights should be seen as entitlements; they are not optional. Empowerment means enhancing children's capabilities as individuals so they are better able to take advantage of rights, and to engage with, influence and hold accountable those individuals and institutions that affect their lives. Children should be given information to increase their understanding about human rights; and access to resources to enable them to make use of rights in their everyday lives.
- Participation: listening to children and taking their views meaningfully into account. All children should be supported to freely express their opinion; they should be both heard and listened to. Their views should be taken seriously when decisions or actions are taken that affect their lives directly or indirectly.
- Accountability: children's human rights give rise to obligations which demand accountability. Authorities should be accountable to children for decisions and actions which affect their lives. Children should be provided with information and given access to procedures which enable them to question and challenge decision-makers. Accountability requires effective monitoring of children's rights standards as well as effective remedies where there is failure to meet these standards.

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.

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.

The Children's Commissioner for Wales wants the country to recognise its children and young people as active citizens, with an important contribution to make to their communities and the nation. 'The Right Way' guide published by the Commissioner in 2017 provides children and young people with the skills and opportunities to do just that, which, in turn, will help deliver real changes in children's everyday quality of life and equal chances to fulfil their potential.

If the framework included within the Children's Commissioner's guide was used in the creation of the new Design Code it will ensure children and young people are treated equally and not discriminated against (including transparency of paid-for activity, sharing and resale of data, ability to access advice from independent, specialist advocates on all data rights) empowered via accessible information (presentation and language of Terms & Conditions and Privacy Notices in an age appropriate format), are able to participate in the design, monitoring and evaluation of service delivery (informing the development of the Code itself), and are able to hold to account (the ability to understand and activate a child's right to erasure, rectification and restriction).

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: [REDACTED]

Email: [REDACTED]

Brief summary of what you think you could offer

Investing in children's human rights has real benefits for organisations, including enabling more children and young people to be better involved in service planning and delivery., This in turn can lead to better quality and more informed decision making, ensuring there's a real focus on the particular needs of children whose voices can otherwise be lost or silenced, creating an environment where services are accountable to all of their users.

As an organisation w have a solid record of working with and for children and young people across Wales from a range of backgrounds, engaging annually with thousands of children and young people, and are able to advise on what a children's rights approach means in practice to ensure the principles of the UNCRC lead to meaningful actions which improve outcomes for children and young people.

We would be very happy to provide advice as you develop the content 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.

Section 2: About you

Are you:

A body representing the views or interests of children? Please specify: Children's Commissioner for Wales	<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.**