

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):

### **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),

**The Young Scot 5Rights Youth Leadership Group is pleased to see that children and young people will be better defined and designed for with regards to their age and development needs in the Age Appropriate Design Code. The Youth Leaders would however like to highlight that, despite being at the same age, no two young people are the same and their development needs or experiences could still differ greatly. The Youth Leadership Group encourages flexibility in the Code to allow case by case considerations of the individual young person, as grouping young people solely by age can risk overlooking the diversity of other**

**factors that can have an impact on a young person’s maturity and ability to handle different situations. Alternatively, young people could be grouped by the actual developmental milestones reached instead of age.**

**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.

<b>3</b>	<b>Aged 3-4: pre-school/nursery years</b>	<b>Aged 3-8: young people in this age range might have significant needs for support and guidance from adults</b>
<b>4</b>		
<b>5</b>		
<b>6</b>		
<b>7</b>	<b>Aged 8-10: later primary school years</b>	<b>Aged 9-12: young people might feel left out, being in an ‘in-between’ age – no longer a young child but not yet into adolescence. Young people in this age range might want to be treated as grown-ups, but physically not yet at that stage</b>
<b>8</b>		
<b>9</b>		
<b>10</b>		
<b>11</b>	<b>Aged 11-12: start of secondary school – transitional years for young people</b>	
<b>12</b>		
<b>13</b>	<b>Aged 13-15: the start of teenage years. Young people in this age range might be given increasing independence by their parents or carer</b>	
<b>14</b>		
<b>15</b>		
<b>16</b>	<b>Aged 16-17: senior years of school. Young people’s focus are likely to be on their future plans, employability and own persona – their place in society and how others might perceive them. Young people in this age range are also given more rights as citizens – for example, the right to vote (in Scotland).</b>	
<b>17</b>		

### **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)

**To apply the UNCRC in the context of setting the design standards, the Youth Leaders suggest the considerations of the 5Rights Framework and all of its principles. The Youth Leaders have also highlighted the following articles from the UNCRC, and how they might apply:**

- **Article 3 (best interests of children).** All decisions made in the design of products and services, should be made in the best interest of children of each age groups or development needs
- **Article 5 (parental guidance and a child's evolving capacities).** More options should be given to older young people (for example, aged 16-17) to control and make decisions about their own data, so as to recognise and respect a young person's evolving capacities
- **Article 12 (respect for the views of the child).** Young people should be meaningfully involved in setting standards and policies in the digital world, and be given the platform to influence such policies. This goes beyond young people's freedom to express - their opinions must be respected and actively consulted by those who design digital services, and by those who regulate them.
- **Article 16 (right to privacy) and Article 8 (protection and preservation of identity).** Respecting the privacy of a young person and protecting their identity must be the core principle of the design standards. There should be specific guidelines regarding the use of trackers or cookies with young users. Through the Code, young people should also be given choices on how much data they want to share, and no data has to be given in order for young people to gain access to services
- **Article 17 (access to information from the media).** Sensitive materials should be hidden automatically for younger children. Older young people should be given a choice to opt in or out of what they can see, and warnings about sensitive materials should always be given. Terms and conditions and privacy policy documents should be written and presented in such ways that the user can easily access and understand. Young people should also be given the confidence that the

**information they consume from a service is reliable and valid. The Youth Leaders feel that ISS providers should be held accountable if they are found to be allowing misinformation to spread on their platform.**

- **Article 27 (adequate standard of living). Providing excellent standards that meet the physical and mental needs of young people should be the overall aim of the Code, and by extension that of the design of digital services. While the current state and provisions of many digital services can come under scrutiny in how lacking they might be in terms of supporting young people's rights, the Code should also embrace the positive role of technology in meeting certain needs of young people, and aim to maximise access to such opportunities**
- **Article 31 (leisure, play and culture). The design standards should recognise the importance of play for young people even in the digital context. Online activities for young people don't always need to be educational, and learning outcomes don't always come solely from educational sources. The internet provides ample and diverse opportunities for young people to develop wide ranging skills including social skills, and this should be encouraged**
- **Article 42 (knowledge of rights). The Code should include standards for how a provider of ISS inform and educate their consumers about their rights, in a comprehensive way that is relevant to the user's abilities and maturity. This has to be a continual process under the responsibility of the ISS provider, so that young people are aware of how and if their rights are supported**

**Other issues that can interfere with young people's rights in the digital world via a third party user should also be taken into considerations by the Code. For example, the issues around 'sharenting', where parents might share pictures or information of their children without their explicit consent, or where a young person's data has been shared by a third person, or tagged into a post that contain or allude to information about the young person that might or might not necessarily be true.**

**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.

- **Default privacy settings:**
  - **Default privacy settings should encompass everything that is happening, or might happen, to a young person's data. In considering these settings, the Code should consider the motivation behind the chosen default – whether they have been chosen by the provider to benefit themselves, or the user. They cover all settings that come pre-set or automatic with a service or product.**
- **Data minimisation standards:**
  - **Data minimisations standards should mean that providers will always aim to ask for, and hold on to, as little data about the consumer as possible. Only a minimal amount of data should be obtained in order for the basic features of the service to function.**
- **The presentation and language of terms and conditions and privacy notices:**

- **The presentation and language of terms and conditions should cover the choice of words, phrasing, length, format, and how the information is communicated to consumer, whether written or through interactions. At the minimum, terms and conditions should follow the same guidelines as those given around dyslexia - for instance, the colour of the text versus the colour of the background, the size of the font, the shape of font used, line spacing, the use of lower case instead of upper case, etc. The Code should also include standards on the meaningful choices that young people are given to opt-in or opt-out of sharing their data.**
- **Sharing and resale of data:**
  - **This aspect should cover the potential involvement of any third party, and make their information transparent to young people. The Code should include standards that cover how young people can track where their data has been shared or sold to. The Youth Leaders also understand the concept that data is money to the industry, and feel that it should also be made clear and transparent to young people the value of their data.**
- **Uses of geolocation technology:**
  - **Geolocation technology covers all location services, including online maps, and any information that accompanies their location, such as time, duration, and traffic information. It also covers any other details that might allude to the young person's exact location. The Youth Leaders feel that such technology should be opted out by default, and that under no circumstances should the location information of a young person be saved and recorded.**
- **Automated & semi-automated profiling:**
  - **The Youth Leaders feel that automated and semi-automated profiling often make wrong assumptions about people, and feel uncomfortable in the way they put people in 'boxes'. Such feelings from young people should be taken into considerations by the Code, as well as the**

**methods by which data is scraped in the first place, such as the use of cookies.**

- **Strategies used to encourage extended user engagement:**
  - **This aspect covers the persuasive design of technology, and how transparent the purpose of these strategies are to young people.**
- **Transparency of paid-for activity:**
  - **The Youth Leaders feel that the code should include specific standards around advertisement and sponsorship, and how clearly these are labelled as such to young people. It should also cover the purchases in apps, and how any additional costs are presented or communicated to young people.**
- **User reporting and resolution processes and systems:**
  - **This aspect relates to young people's right to safety and support, and the Code should cover the quality of support that is offered to young people by ISS providers, and how it corresponds to young people's specific needs and wishes. The Youth Leaders, for example, feel that young people prefer human support to automated responses, and that this aspect should also cover how much control young people should have in protecting themselves – for example, the inability to un-tag oneself on Instagram.**
- **The ability to access advice from independent, specialist advocates on all data rights:**
  - **With relevance to young people's right to safety and support, this aspect should cover not only the ease of access to advice and support, but also the quality and reliability of the source of such support. The Youth Leaders feel that ISS providers should enable easy access for young people to independent advisors. The Code should therefore also cover how transparent the nature of any affiliation or relationship between the ISS provider and the independent body they link to.**
- **The ability to understand and activate a child's right to erasure, rectification and restriction:**

- **The Code should cover how clear and transparent the ISS provider is about young people’s right to remove, rectify, and to restrict – as per the GDPR and the 5Rights Framework. This should include the way in which the provider communicates such information to a young person – its presentation, its format, and how it corresponds to the young person’s specific level of abilities and understanding.**

**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 Youth Leaders feel that the Code will be able to help raise awareness about young people’s rights and how they should be supported in the digital environment. This will include young people’s understanding of their own rights, and can empower young people in advocating for themselves. The Code will also give all users a greater confidence in the services provided to them, and how their needs and rights would have been taken into account by design. We anticipate the Code to change our society by bringing offline social norms and responsibilities into the online, and create a cultural shift from an accepted sense of unconsciousness and powerlessness in terms of usage and control of technology, to informed, conscious use and real power in young people’s hands to manage their own digital self.**

**The challenges that the Youth Leaders see for the Code, are largely to do with how the Code will be inclusive to all young people and their diversities, and how it can cater for all the different needs within each age category. The Youth Leaders also see challenges in how the industry might interpret the standards. The meaning of the Code must be explicit, so that lines cannot be blurred. With the accelerating pace of technology, it is also vital that the Code is future-proof.**

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

**In ensuring the rights of young people are fully realised in the digital world and by all ISS, the ICO should work closely with the Children and Young People's Commissioners across the UK. The Youth Leaders also feel that the most important and relevant stakeholder that the ICO can work with in designing the Code, is children and young people themselves, and would encourage the Code to be co-designed with young people – involving meaningful involvement of young people in all decision-making processes, from as early on as possible in the process.**

**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.

**Data privacy:**

- Aged 3 – 12: options to track or collect data should be opted out by default, without options to give consent to collect data
- Aged 13-15: options should still be opted out by default, but with some options to give and customise consent to collect data
- Aged 16-17: options should still be opted out by default, with all options available to give and customise consent to collect data

**Data minimisation standards:**

- Aged 3-12: no data should be collected or stored
- Aged 13-17: data should only be stored with explicit consent

**Presentation and language of terms and conditions:**

- Aged 3-12: Terms and conditions consented by a parent/carer on behalf of child. Terms contained within should be strict and provide maximum protection to the child, and should be specific to this age group who might not have the capacity to give informed consent. Language used should still be simple and accessible even though it will be read primarily by parent/carer acting on behalf of their child
- Aged 13-17: Language and presentation of terms and conditions should be accessible and appropriate to the reading age of this group. The Youth Leaders recommend the 5Rights Youth Commission's recommendation (3.1)<sup>1</sup> in considering its presentation

**Use of geolocation technology**

- Aged 3-9: There should not be any collection of or access to young people's geolocation data in this age group
- Aged 10-17: The use of geolocation technology should be opted-out by default, but young people in this age group can be given choices to activate its use. However, while access to

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<sup>1</sup> Recommendation 3.1, p.30, 'Our Digital Rights', Young Scot 5Rights Youth Commission May 2017.

geolocation data can be consented by the young person in this age group, no such data about a young person should be recorded or stored under any circumstances

### **Automated and semi-automated profiling**

- Aged 3- 12: No access should be allowed from services to perform automated or semi-automated profiling on young people in this age group
- Aged 13-17: Automated or semi-automated profiling can only be performed on young people in this age group with their explicit and informed consent

### **Transparency of paid-for activity**

- All paid for activities should be clearly labelled as such, and made transparent to both the young person using the service and their parent/carer

### **Sharing and resale of data**

- Aged 3-15: No sharing or resale of data should be allowed for young people in this age group
- Aged 16-17: Sharing and resale of data should be opted-out by default, with options for young people to express explicit and informed consent to sharing only if it will benefit the young person's experience with the service

### **Strategies used to encourage extended user engagement**

- Aged 3-15: No such strategies should be used in this age group
- Aged 16-17: Services should be transparent in their use and intention of such strategies, and provide accessible ways for young people to opt-up of these strategies

### **User reporting and resolution process and systems**

- Aged 3-9: ISS should make it accessible not only for young people to reporting and support processes, but also for the parent, carer, or adult acting on behalf of the young person in this age group
- Aged 10-17: Processes should be made accessible and easy to follow for young people, with support given by human rather than algorithms or automated responses

### **Ability to understand and activate a child's right to erasure, rectification and restriction**

- Clear information about a young person's right to erasure, rectification and restriction, as well as guidance on how to activate this right, should be provided by the ISS to young people in an age appropriate and accessible way.

### **The ability to understand and access advice from independent, specialist advocates on all data rights:**

- Aged 3-15: ISS should facilitate access to age appropriate advice, that increases in complexity in accordance to the young person's age, abilities and needs
- Aged 16-17: detailed advice should be made available and accessible to young people in this age group at any given time.

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

**The 'What's Your Story' website by the Scottish Book Trust<sup>2</sup> provides a great example of a privacy policy<sup>3</sup> that is age appropriate and easily understandable to young people. The website also clearly explains the rights that young people have<sup>4</sup>, how their service supports these rights, and how young people can activate and exercise their rights.**

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

**The Youth Leaders would like to stress the importance of genuine co-production with young people, both in the creation of the Code and in the design of digital services. They would like to encourage this approach by policymakers and industry alike.**

**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 **Young Scot 5Rights Youth Leadership Group (and Young Scot)**

Email **5Rights@young.scot**

Brief summary of what you think you could offer

**Young Scot is the national youth information and citizenship charity for Scotland. We work with young people aged 11-26, and provide them with information, ideas and access to opportunities. Through our co-design services, we give young people the power to create real change to policy, practice and services, by involving them systematically in decision making processes in collaboration with organisations. Since April 2015, Young Scot has been the lead strategic partner for 5Rights in Scotland, and has been raising awareness of young people's rights in the digital world in Scotland. At the core of our work around 5Rights, is supporting young people to lead on this process, and empowering them to be champions of their own rights. This is done through the Young Scot 5Rights Youth Commission and the Young Scot 5Rights Youth**

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<sup>2</sup> What's Your Story <<https://www.thestoryis.co.uk/>>

<sup>3</sup> What's Your Story – Privacy Policy <<https://www.thestoryis.co.uk/privacy-policy/>>

<sup>4</sup> What's Your Story – Your Rights <<https://www.thestoryis.co.uk/your-rights/>>

**Leadership Group, both of which have been launched in partnership with the Scottish Government and the 5Rights Foundation. The Youth Commission was commissioned in February 2016 to co-design the recommendations for how young people's rights can be realised in the digital world – a 15-month investigation that culminated in twenty recommendations in their report, 'Our Digital Rights'<sup>5</sup> in May 2017. The Young Scot 5Rights Youth Leadership Group, launched in February 2018, are now currently investigating how some of these recommendations can be implemented in Scotland. The success of both of these projects have shown that young people are experts of their own experiences, and that their voices and lived experiences are vital and powerful in creating a digital world that empowers and respects young people. With the experiences of the young people from the Youth Leadership Group, as well as Young Scot's expertise in co-designing with young people, we will be able to connect the Commissioner with the young people of Scotland via the Youth Leadership Group, and support the Commissioner in co-creating with young people an Age Appropriate Design Code that befits the needs, priorities, and hopes of young people for their digital world.**

#### **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.

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<sup>5</sup> Young Scot 5Rights Youth Commission, 'Our Digital Rights', May 2017.



## Section 2: About you

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**Are you:**

<p>A body representing the views or interests of children? Please specify:</p> <p><b>Young Scot is the national youth information and citizenship charity in Scotland. The response given in this document was prepared by the Young Scot 5Rights Youth Leadership Group. Launched in February 2018 by Young Scot, the Scottish Government, and 5Rights, the Young Scot 5Rights Youth Leadership Group is a diverse group of 30 young people from across Scotland, aged 11 to 19, who champion their rights in the digital world. Their work builds on the recommendations co-designed by the Young Scot 5Rights Youth Commission in their report, 'Our Digital Rights', from May 2017, and focuses on investigating how these recommendations can be implemented and how young people's rights can be realised in the digital world in practice. Specifically, the Youth Leaders are currently exploring how young people can support each other around their digital rights, the role that businesses can play in realising young people's rights, what cyber resilience means to young people, and how innovative technology can help young people exercise their rights in the digital world. As part of 2018 the Year of Young People in Scotland, the Youth Leaders will also be hosting a 5Rights Summit for young people to celebrate and raise awareness of their 5Rights.</b></p>	<input checked="" type="checkbox"/>
<p>A body representing the views or interests of parents? Please specify:</p>	<input type="checkbox"/>
<p>A child development expert? Please specify:</p>	<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.**