

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),

These age ranges represent clustering of typical developmental stages and linked cognitive abilities of children and young people. In so doing it avoids the mistake of lumping children or adolescents into one grouping that is not developmentally sensitive. This is critical for the issues in question here.

**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.

Children need of course to be safe, but also to be able to trust the appropriately. To trust they need to understand what they are doing and not be misled or offered inappropriate things or material. Breaking trust breaks bonds in society and crucially also impairs socially mediated learning that is critical for us all.

In the long run I believe losing such trust in the adult world and world of authorities will undermine democracy and impair the wellbeing of our youth who will no longer trust as they could and should be able to.

As I will do on several occasions I will quote here from the 5Rights foundation who I believe a pushing for sensible changes for children;

**The Code must offer a high bar of data privacy by default**

This would reverse current industry norms and would ensure a child's privacy was safeguarded as standard. The default high setting must allow a child to use the service in a meaningful way and service design must not include deliberate attempts to encourage a child to open up default settings that are not in his or her "best interests".

**Routine failure by an online service to adhere to its own published rules including; joining age, community rules, terms and conditions and privacy notices, should be considered a breach of the Code and therefore subject to the full extent of enforcement penalties under the GDPR.**

Until terms and conditions and privacy notices are upheld by online services, those services should not be entitled to rely on them.

## **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)

A child has the right to be safe, to be healthy and be looked after appropriately, and to their privacy, both short and longer term. If the world on line fails to do those things it is breaking the UNCRC. For example and I quote from the "5Rights" submission.. **The Code must offer a high bar of data privacy by default**

This would reverse current industry norms and would ensure a child's privacy was safeguarded as standard. The default high setting must allow a child to use the service in a meaningful way and service design must not include deliberate attempts to encourage a child to open up default settings that are not in his or her "best interests".

### **Geolocation must be off by default.**

Unless a geolocation is service critical (to be determined by the Information Commissioner), it should be off by default.

### **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.

Again I agree with and quote here from the 5Rights foundation:

### **Child Data Impact Assessments as standard for all existing services and products, and new services and products prior to launch.**

We recommend requiring online services to carry out Child Data Impact Assessment (CDIA) for all online services likely to be accessed by a child. The CDIA would address the specific needs and higher standards to which children are entitled, and place the requirement to carry out such assessments on a statutory footing.

### **The Code must introduce universal reporting standards (RRP), so that the criteria, systems and likely outcomes are familiar to**

**children.**

By which we means the steps a child takes, the information offered, and outcomes of reporting should be similar and therefore become familiar to a child as they grow up. We do not mean that a site cannot use its own brand or speak in their own branded voice.

**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 opportunities are to help counteract the negative outcomes we are now seeing such as the undermining of trust in democracy, the concerns about impact of on line experiences to mental and physical wellbeing and so forth.

The risks include stifling of innovation and commercial opportunity on line, however wellbeing and social good should trump but not ignore these considerations.

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

Again I quote here from the 5 Rights foundation: **The Code requires a commitment from government to enforcement.**

Unless there is a meaningful likelihood of enforcement, then the ISS are not incentivised to implement the Code in ways that are robust and effective. The ICO needs sufficient expertise and resources and, given the huge wealth of some ISS, the backing from HM Treasury to fund enforcement.

**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.

I think this is essential work, and cant be left to the providers, chance and 'markets', it requires active purposive steps and I very support the stance of the 5Rights foundation in their approach here.

## Section 2: About you

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### 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: I am a Consultant Child and Adolescent Psychiatrist with almost 30 years of experience working with children and young people, including academic and clinical work, and have been a national representative and advisor for both the RCPsych and previously for the Dept of Health, England.	<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.**