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/NO.
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

Match Group is a leading online dating company. We own a number of brands popular in the UK, including Tinder, Plenty of Fish, Match.com and OKCupid, each designed to help our users find romance. We are pleased to take the opportunity to respond to the proposals outlined in the Consulation Document.

Because we do not believe that our products could or should be included in any definition of services likely to be accessed by children, we have not commented on the standards set out by the Code. Rather, we are seeking greater clarity on how the Information Commissioner's Office will decide which services are likely to be used by children.

Whilst dating apps are often considered a sub-category of social media, there are important differences in nature of our platforms and more traditional social media services. The most important difference in this context is that no Match Group product is avalilable to anybody under the age of 18, unlike popular platforms like Facebook, Twitter and Instagram.

Although dating products available for under-18s do exist elsewhere in the market, we have taken the decision as a group to offer our products to adults only. Our apps and websites are not designed in any way to appeal to children - indeed, the opposite is true. By a combination of technology, checks by Match Group staff and community vigilance, we have made our products inaccessible for children.

The Consultation Document is clear that the services covered by this code will be "information society services likely to be accessed by children". We believe that the ICO's definition of an "information society service" is clear.

However, we urge the ICO to offer greater clarity on how the question of whether or not a service is "likely" to be accessed by children will be assessed. As it stands, it is unclear. The Consultation Document offers several criteria which may act as general indicators of whether or not a service is "likely" to be accessed by under-18s, but no single, clear standard.

As we understand it, companies are less likely to fall within scope if:

- the platform in question is unlikely to appeal to children
- the company possesses "market research" indicating that children are unlikely to access the platform
- the company can show that the "nature and context of the service" makes children unlikely to access it
- the company has taken "specific measures" to limit access to the platform by children
- the company is able to offer "specific documented evidence to demonstrate that children are not likely to access the service in practice"

We welcome the intention of these criteria: to ensure that platforms which are not used by children are exempt from standards not intended for them. But it is crucial that companies whose platforms are widely used in the UK - or which are investing in launching a new platform, service or website in the UK - can be clear on the standards to which they will be held to account. To do so, they will need to know:

- Which design features are deemed to be likely to appeal to children?

- What would market research need to demonstrate? Would research conducted by the company in question, as opposed to a third party, be admissible?
- Which contextual factors would make a service likely to be accessed by children?
- What sort of documented evidence would satisfy the ICO that a service is unlikely to be accessed by children? Would the evidence need to be qualitative or quantitative? How would the ICO ensure the veracity of the evidence?
- If a numerical indicator is used - for example, if a platform will be in-scope if it cannot prove that less than a certain percentage of its users are children - where will the threshold lie?
- Which specific measures are deemed to be sufficient to prevent access by children?

In defining likelihood, we urge the ICO to take a pragmatic view. Even services designed and intended for adults, with no design features to appeal to children, offering a service not relevant for children, with strong measures in place to limit access to the platform by children, can and are still accessed by under-18s. But we do not believe that the intention of Parliament was to include all information society services available in the UK within its scope, and it is clear that the ICO does not either.

The criteria which the ICO uses to assess likelihood in this context are crucial. A literalist interpretation could lead to a number of perverse outcomes. For example, should services designed for adults be deemed "likely" to be accessed by under 18s because a small number of children manage to gain access each year, then services specifically designed to prevent underage access will be required to implement standards to make the platform accessible for children.

e invest heavily in technologies both to prevent access by under-18s, and to identify the very, very small proportion of those who manage to briefly evade the screening tools. Our dating apps could be given as an example of a service not designed for children. But our industry lneeds greater clarity on the regulatory requirements by which we will be assessed.

It is common for regulators upholding standards based on codes to issue more detailed guidance on scope and compliance - including the ICO. We urge the ICO to publish guidance on scope and compliance as soon as possible, and to consider consulting on that guidance too.

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/NO.   If NO, then please provide your reasons for this view.
2. Age-appropriate application
YES/NO.   If NO, then please provide your reasons for this view.
3. Transparency
YES/NO   If NO, then please provide your reasons for this view.
4. Detrimental use of data
YES/NO.   If NO, then please provide your reasons for this view.
5. Policies and community standards
YES/NO.   If NO, then please provide your reasons for this view.
6. Default settings
YES/NO.   If NO, then please provide your reasons for this view.
7. Data minimisation
YES/NO.   If NO, then please provide your reasons for this view.
8. Data sharing
YES/NO.   If NO, then please provide your reasons for this view.

9. Geolocation
YES/NO.   If NO, then please provide your reasons for this view.
10. Parental controls
YES/NO.   If NO, then please provide your reasons for this view.
11. Profiling
YES/NO. If NO, then please provide your reasons for this view.
12. Nudge techniques
YES/NO.   If NO, then please provide your reasons for this view.
13. Connected toys and devices
YES/NO.   If NO, then please provide your reasons for this view.
14. Online tools
YES/NO. If NO, then please provide your reasons for this view.
15. Data protection impact assessments
YES/NO.   If NO, then please provide your reasons for this view.
16. Governance and accountability
YES/NO.   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**
YES/NO. If YES, then please provide details.

2. Age-appropriate application
YES/NO.   If YES, then please provide details.
3. Transparency
YES/NO.   If YES, then please provide details.
4. Detrimental use of data
YES/NO. If YES, then please provide details.
5. Policies and community standards
YES/NO.   If YES, then please provide details.
6. Default settings:
YES/NO.   If YES, then please provide details.
7. Data minimisation
YES/NO.   If YES, then please provide details.
8. Data sharing
YES/NO.   If YES, then please provide details.
9. Geolocation
YES/NO.   If YES, then please provide details.
10. Parental controls
YES/NO.   If YES, then please provide details.
11. Profiling
YES/NO.   If YES, then please provide details.
12. Nudge techniques
YES/NO.

If YES, then please provide details.
13. Connected toys and devices
YES/NO.   If YES, then please provide details.
14. Online tools
YES/NO.   If YES, then please provide details.
15. Data protection impact assessments
YES/NO.   If YES, then please provide details.
16. Governance and accountability
YES/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**
YES/NO. If YES, then please provide your reasons for this view.
2. Age-appropriate application
YES/NO.   If YES, then please provide your reasons for this view.
3. Transparency
YES/NO.   If YES, then please provide your reasons for this view.
4. Detrimental use of data
YES/NO. If YES, then please provide your reasons for this view.
5. Policies and community standards

YES/NO.

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

6. Default settings

YES/NO.

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

7. Data minimisation

YES/NO.

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

8. Data sharing

YES/NO.

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

9. Geolocation

YES/NO.

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

10. Parental controls

YES/NO.

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

11. Profiling

YES/NO.

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

12. Nudge techniques

YES/NO.

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

13. Connected toys and devices

YES/NO.

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

14. Online tools

YES/NO.

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

15. Data protection impact assessments

YES/NO.

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

16. Governance and accountability

YES/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**
YES/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/NO.   If YES, then please provide details of what you think the challenges are and how you think they could be overcome.
3. Transparency
YES/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
YES/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
YES/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
YES/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
YES/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
YES/NO.   If YES, then please provide details of what you think the challenges are and how you think they could be overcome.
9. Geolocation
YES/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
YES/NO.
If YES, then please provide details of what you think the challenges are and how you think they could be overcome.
11. Profiling
YES/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
YES/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
YES/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
YES/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
YES/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
YES/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**

YES/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

YES/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

YES/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

YES/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

YES/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

YES/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

YES/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
YES/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/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.
10. Parental controls
YES/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.
11. Profiling
YES/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
YES/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/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.
14. Online tools
YES/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.
15. Data protection impact assessments

YES/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.

16. Governance and accountability

YES/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**

YES/NO.

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

2. Age-appropriate application

YES/NO.

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

3. Transparency

YES/NO.

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

4. Detrimental use of data

YES/NO.

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

5. Policies and community standards

YES/NO.

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

6. Default settings

YES/NO.

If YES, then please provide details (including links).
7. Data minimisation
YES/NO.   If YES, then please provide details (including links).
8. Data sharing
YES/NO.   If YES, then please provide details (including links).
9. Geolocation
YES/NO.   If YES, then please provide details (including links).
10. Parental controls
YES/NO.   If YES, then please provide details (including links).
11. Profiling
YES/NO.   If YES, then please provide details (including links).
12. Nudge techniques
Yes   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
YES/NO.   If YES, then please provide details (including links).
15. Data protection impact assessments
YES/NO.   If YES, then please provide details (including links).
16. Governance and accountability
YES/NO. If YES, then please provide details (including links).

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

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

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

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

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

YES/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/NO.

 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/NO.

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

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?

YES/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/NO.

 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/NO.

 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/NO.

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

Section 2: About you

Are you:

A body representing the views or interests of children? Please specify:	☐
A body representing the views or interests of parents? Please specify:	☐
A child development expert? Please specify:	☐
An Academic? Please specify:	☐
An individual acting in another professional capacity? Please specify:	☐

A provider of an ISS likely to be accessed by children? Please specify:	☐
A trade association representing ISS providers? Please specify:	☐
An individual acting in a private capacity (e.g. someone providing their views as a member of the public of the public or a parent)?	☐
An ICO employee?	☐
Other? Please specify:	☐

Thank you for responding to this consultation.

We value your input.