

Information Commissioner's Office

# Consultation:

## Age Appropriate Design code

Start date: 15 April 2019

End date: 31 May 2019

# Introduction

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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](mailto: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](mailto: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

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

No

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

The "At a glance" box states that the Code "provides practical guidance about how to ensure your online services appropriately safeguard children's personal data" and links it to compliance with the GDPR and PECR. However the body of the section goes much further, for example it states that the purpose of the Code is to give guidance on how to use data protection standards to "ensure [online services] are appropriate for use by, and meet the development needs of, children" which is a much more onerous requirement than safeguarding children's personal data. Given that it is provided that the Commissioner will measure compliance with data protection laws by reference to the standards, the extension of the concept of data protection to include the substance and suitability of services should be clarified.

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

YES/NO.

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

## 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?

<b>1. Best interests of the child</b>
YES/NO.  If NO, then please provide your reasons for this view.
<b>2. Age-appropriate application</b>
YES/NO.  If NO, then please provide your reasons for this view.
<b>3. Transparency</b>
YES/NO  If NO, then please provide your reasons for this view.
<b>4. Detrimental use of data</b>
YES/NO.  If NO, then please provide your reasons for this view.
<b>5. Policies and community standards</b>
YES/NO.  If NO, then please provide your reasons for this view.
<b>6. Default settings</b>
YES/NO.  If NO, then please provide your reasons for this view.
<b>7. Data minimisation</b>
YES/NO.  If NO, then please provide your reasons for this view.
<b>8. Data sharing</b>

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

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

The broad requirement to have the best interests of the child as a primary consideration in the design and development of online services likely to be accessed by a child and the associated incorporation in the guidance of provisions of the UNCRC is unprecedented and is likely to introduce legal uncertainty. The extension of an international convention into domestic law by way of rules under delegated powers is a material development and could be considered to go beyond the scope of the powers of the Information Commissioner under s.123 of the Data Protection Act 1998.

In addition, the application of the Convention by the Commissioner itself requires a consideration of rights and interests of children, parents and

persons across society. While the Convention is clear that the rights of the child are to be a primary consideration, there still needs to be an assessment of those rights as against the rights of adults, for example rights to freedom of expression and association under the European Convention on Human Rights and rights to freedom of arts and sciences and to conduct business under the EU Charter of Fundamental Rights. The rights of children under the Convention to freedom of expression, freedom of association and access to information should also have been considered, but there is little evidence that the Commissioner has fully assessed the balance of these rights of the child against the requirement to offer them protection from information and material injurious to their wellbeing. The impact of the expansive interpretation that the Code has applied to s. 123 of the DPA, the UNCRC, and the GDPR could cause fewer services to be available, to children or in the UK at all, because of the increased costs and risks to service providers, and the frictions to user experience that would have to be introduced, which would cause the rights of children to free expression and access to information to be undermined. This may also render the Code vulnerable to legal challenge.

The duties listed on page 20 as the actions necessary to meet the standard under this heading have little connection with most information society services. Many parents would surely not consider that it is the responsibility of web platforms or online retailers to protect and support the wellbeing and physical, psychological and emotional development of their children, for example. Compelling ISS providers to take an active interest in such matters is at odds with principles of the GDPR in respect of (inter alia) data minimisation and restrictions on profiling. The ICO's own research "Towards a better digital future - Informing the Age Appropriate Design Code" indicated that even among self-selecting participants, views on this topic were inconsistent. This broad standard, with far reaching effects, could be considered to be disproportionate and vulnerable to legal challenge.

In line with UNCRC it must still be the primary role and responsibility of parents to safeguard the interests of their children. The draft Code undermines this, and could lead to an expectation or understanding on the part of parents that the Internet is a safe environment for children and parental supervision will not be required. This would be a dangerous situation that would both diminish relationships between parents and children and leave children more vulnerable to being exposed to harmful content and bad actors online.

It is already known from the impact of the GDPR that ISS providers (especially smaller businesses) will exit markets when they consider that a regulatory regime increases their risk and cost so as to make provision of their services non-viable, and that this can also cause investment in technology start ups and development to decline. This would be a very

serious unintended and unwarranted consequence of the Code and would impact on the interests that all children have in a dynamic and prosperous economy and a vibrant online environment throughout childhood and in their eventual adulthood.

The comments in this section apply in general terms across all of the standards in the draft Code and are also relevant to Question 3.

## **2. Age-appropriate application**

YES/NO.

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

A requirement to assess what is appropriate for the interests, needs and evolving capacities of individual children seems likely to require collection of data and profiling of children in ways that could be inconsistent with the principle of data minimisation and restrictions on profiling in the GDPR.

The Code recommends providing "a child appropriate service to all users by default with the option of age verification mechanisms to opt out of the protections in this code". However the requirements for child appropriate services (including the increased risk involved in collecting and holding the personal data necessary to tailor services to each child) are likely to have serious unwarranted consequences. They will encourage ISS providers to make their services adult only which will disadvantage children by removing their access to content and services, and disadvantage adults by requiring collection of more of their personal data to carry out age verification and introducing frictions to their use of online services. There will also be serious adverse consequence for competition in online services as the risks and costs of tailoring services, running multiple bespoke offerings to different age groups and carrying out age verification (and sustaining the loss of traffic that will likely follow) will mean that smaller operators will be forced out of the market or deterred from starting up.

## **3. Transparency**

YES/NO.

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

## **4. Detrimental use of data**

Yes

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

The overlaying of a duty not to "use children's personal data in ways that have been shown to be detrimental their wellbeing" introduces legal uncertainty and could influence the interpretation of the GDPR more widely. In particular the invocation of Recital 2 and the reference to the "wellbeing of natural persons" as meaning that:

"you should not process children's personal data on ways that are obviously or have been shown to be derimental to their health or wellbeing. To do so would not be fair"

seems likely to suggest that this standard could be applied to processing of personal data more generally.

The reference to the recommendation of the UK Chief Medical Officers that technology companies "recognise a precautionary approach in developing structures and remove addictive capabilities" even while acknowledging the lack of evidence to support the proposition that current practices are harmful indicates that ISS providers will be disincentivised from using data in ways that are legal and have no proven ill effects. Combined with other standards in the Code that will require all personal data (not just that of children) to be protected to this level, this seems likely to cause a reduction in innovation and in the quality of services made available to both adults and children.

## **5. Policies and community standards**

Yes

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

The requirement to uphold published terms, policies and community standards means that the ICO will effectively be enforcing policies and standards that are intended to be non-binding. This will risk both a reduction in standards that ISS providers are prepared to commit to in their operating documentation, and compromising the necessary discretion that providers need to have in operating their services where there is a plurality of interests, both of the ISS provider itself and as between its users.

## **6. Default settings**

YES/NO.

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

## **7. Data minimisation**

Yes

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

As noted above the data minimisation principles in the Code and in the GDPR are, at best, in tension with the requirement to ensure that services meet the needs of a child that may access them at each stage of their development. In order to avoid infringing the requirements of data minimisation, and associated provisions of the GDPR that apply to the use of data once collected, it seems more likely that providers will seek to block access to their services by children by operating age verification, which will disadvantage adults, children and the UK's wider society and economy.

## **8. Data sharing**

Yes

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

The strict requirements on sharing the personal data of children will mean that, unless age verification is introduced to prevent children accessing a service at all, ISS providers will have to elect to either collect age data on all of their users to identify which personal data can be shared, or cease all sharing of personal data. Sharing of personal data is not prohibited by the GDPR, and in many instances it is beneficial to data subjects as using third party services enables ISS providers to offer better, more innovative and more secure services to their users.

## **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

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

Please see related responses above. The risk to ISS providers of being found to be in violation of the Code and the GDPR by reason of profiling suggests that they will be reluctant to undertake the tailoring to children and age verification required elsewhere in the Code (in case this is found not to be a "compelling reason" for profiling), which will result in more limited services, from fewer operators being available to adults and children.

The negative view taken of recommending content (the loaded term "feeding content" is used) is also in tension with the requirements elsewhere to tailor offerings to children to support their development and

wellbeing, and will further disincentivise providers from allowing children to access their services at all. At best it will mean only static content will be available to children.

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

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

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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:	<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:	<input 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.**