Information Commissioner's Office

# Consultation:

# Age Appropriate Design code

Start date:15 April 2019

End date: 31 May 2019

# 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
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
The section on types of online services not covered by the code could be clarified further in relation to websites using third party cookies. While the website itself might not allow customers to buy products online or access a specific online service, it still might gather information about user engagement with the content and share this with third parties for commercial purposes.

# 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** |

No

    1) Our research found that companies' claims that certain features are in place to afford the 'best customer experience' can be confusing to children. Children often understand such messages to mean that this is in their best interest and to their benefit, agreeing to enable features which, otherwise, they might not enable. This needs to be rectified by the code of practice making sure that 'best customer experience' is not understood as 'the best interest of the child' by young users. In addition, companies also need to be made aware that these are different.

    2) The code also should specify more clearly that unintended harm is included, for example in relation to user-generated harmful content.

| |
|---|
| 2. **Age-appropriate application** |

No

 1) Reflecting the difficulty of establishing the real age of all users, the code needs to provide more guidance in relation to the age-verification process, for example setting out criteria/ standards for robust age-verification.

2) The code needs to specify more clearly that setting a minimum age requirement for a service and self-select age are not sufficient measures to comply with the code.

3) The disadvantages of grouping all non-adults under one category – even though the code discusses child development, in practice the age verification requirement might lead to grouping all children under one category with high protection features/ limited access. This will not allow children to learn the digital skills they would need later on and to get gradual exposure to an environment with lower protections, building competence and resilience. The code should aim to encourage age-appropriate design more clearly in a way that supports child development, rather than limiting it.

## 3. Transparency

No

It is important that transparency happens at all stages of the user journey:
1)      Before signing up to the service the user needs to know what might be included – for example, what data is gathered and how it is used, with whom the data is shared, and for how long it is kept (during service use and after the account is deleted);

2)      During use: clear how to change settings/options and what each means;

3)      When the service is no longer used: how is data going to be used/kept and for how long.

4)      Finally, our data shows that not only children find terms and conditions difficult to understand, but they are additionally confused by the different standards the services use. The code can state clearly that it encourages clarity and consistency within the sector.

## 4. Detrimental use of data

No

The code could expand the guidance on avoiding unexpected future detrimental use in several ways:

1) By encouraging companies to keep user data for shorter periods, especially data that has already been deleted or discarded by the user (e.g. deleted within app content, dormant or deleted accounts)

2) Encouraging minimum data distribution within and between companies to minimise the risk of security breaches

3) Limit the distribution of data to 3rd parties only with the requirement that the company which shares data needs to ensure that there will be no detrimental use of data by any of the 3rd party companies. Make it illegal of 3rd party companies to share user data further as it is virtually impossible for the user to know where their data is going and, therefore, to consent.

## 5. Policies and community standards

YES/NO.

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

## 6. Default settings

No

There are a couple of points where the code can be clarified:
1)    You should not 'make your users' personal data visible to indefinite numbers of other users'– this is unclear. Does it relate to 'public profiles' only?
2)    What can be seen as a 'compelling reason' for different default settings – perhaps some examples of what is not a compelling reason would be helpful.

## 7. Data minimisation

No

More guidance can be given in relation to:
1) Deletion of data: request companies to set automatic deletion of all data deleted data by the user. This should involve automatic retraction of data from 3rd parties in cases of deleted or dormant accounts.

2) Visualisation of the opt in and out options: both options should be available at the same time and with equal visualisation). General messages that this would affect the functioning of the service should not be acceptable as they are confusing to children. If such message is displayed, it needs to state clearly what part of the service will work and what won't.

3) No data to be gathered if not part of the service: needs to state more clearly that such data cannot be requested from the child user at any point (e.g. location data to be collected by apps which do not provide location-based service).

## 8. Data sharing

No

1)    Anonymised data: only anonymised data should be shared with third parties.
2)    Sharing data beyond third parties: third parties should not be able to share personal data (unless for child protection).

## 9. Geolocation

No

This could include a requirement that the company should not make users' location data visible to indefinite numbers of other users.

## 10. Parental controls

Yes

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

| | |
|---|---|
| **11. Profiling** | |
| Yes<br><br>If NO, then please provide your reasons for this view. | |
| **12. Nudge techniques** | |
| No<br><br> There is a wide range of nudge techniques and some can be disguised as good customer service/ communication (e.g. notifications and reminders). The code can be more elaborate and specific in its description of nudge techniques. | |
| **13. Connected toys and devices** | |
| Yes<br><br> If NO, then please provide your reasons for this view. | |
| **14. Online tools** | |
| No<br><br> Children often complain that they do not see any response from the companies. This section needs to include a requirement that companies: 1) prioritise requests submitted by a child and 2) contact the child to report the outcome | |
| **15. Data protection impact assessments** | |
| Yes<br><br> If NO, then please provide your reasons for this view. | |
| **16. Governance and accountability** | |
| Yes<br><br> 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.<br><br>If YES, then please provide details. | |
| **2. Age-appropriate application** | |
| YES/NO.<br><br> If YES, then please provide details. | |
| **3. Transparency** | |

Yes

Snapchat: access your Snapchat data (https://support.snapchat.com/en-US/article/access-my-data1); privacy explained (https://support.snapchat.com/en-US/article/snapchat-privacy-explained), when are snaps and chats deleted (https://support.snapchat.com/en-US/article/when-are-snaps-chats-deleted)

Facebook: access and download your data (https://www.facebook.com/help/1701730696756992/?helpref=hc_fnav)- the idea is good but not child firnedly

Twitter: What location information is attached to my Tweets? (https://help.twitter.com/en/safety-and-security/tweet-location-settings) Sharing your data with other companies (https://help.twitter.com/en/safety-and-security/data-through-partnerships)

Ask.fm: what happens to my data when I deactivate my account? (https://support.ask.fm/hc/en-us/articles/115008832048-What-happens-to-my-questions-when-I-deactivate-my-account-)

## 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.

Twitter: change personalisation and data gathering: https://help.twitter.com/en/personalization-data-settings

## 8. Data sharing

Yes

Spotify - a good example of clarity about data sharing: https://www.spotify.com/uk/legal/cookies-vendor-list/

## 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** |
| No |
| 2. **Age-appropriate application** |

Yes

 Children might be grouped in one category with high privacy protection, preventing their gradual development of digital skills and awareness of risks, making them face suddenly a very different environment when they reach adulthood. The new requirements might also prompt some companies to raise the minimum age restrictions to 18 years of age, leading to the exclusion of many children who would benefit a child-friendly version of the service.

## 3. Transparency

No

## 4. Detrimental use of data

No

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

## 5. Policies and community standards

No

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

## 6. Default settings

No

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

## 7. Data minimisation

No

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

## 8. Data sharing

No

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

## 9. Geolocation

No

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

## 10. Parental controls

Yes

 A lot of efforts would be needed to ensure that parental controls do not impede children's rights to independence and agency.  This might also put additonal pressure on parents and some of them might not have the digital skills required to handle these contrils, the time or awareness why their involvement might be important.

## 11. Profiling

| No |
| --- |
|  |

| **12. Nudge techniques** |
| --- |
| No |
|  |

| **13. Connected toys and devices** |
| --- |
| No |
| If YES, then please provide your reasons for this view. |

| **14. Online tools** |
| --- |
| No |
| If YES, then please provide your reasons for this view. |

| **15. Data protection impact assessments** |
| --- |
| No |
| If YES, then please provide your reasons for this view. |

| **16. Governance and accountability** |
| --- |
| 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

There is a potential danger of businesses interpreting that best interests of the child as similar to best customer experience. |

| 2. **Age-appropriate application** |
| --- |
| Yes

 Establishing what is an age-appropriate design can be difficult as differences within (as well as across) age groups can be substantial. Policy must pay special attention to those who may be of greater vulnerability, such as indigenous or ethnic minority children, migrants, children in poor or rural settings or those who have some form of disability.

Due to the nature of the existing research, it is difficult to provide robust evidence to support strictly identified age brackets and to cover the full age spectrum under 18 years. |

| |
|---|
| Finally, age verification itself is a very challenging process. |
| **3. Transparency** |
| Yes<br><br> Children are often misguided by the marketing language used by companies and trust them when they say that something in for children's own benefit, services might not work properly without enabling certain functionality, or that the company prioritises customer privacy. The language used might make a transparent message hard to understand for a child. |
| **4. Detrimental use of data** |
| No<br><br> 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** |
| No<br><br> If YES, then please provide details of what you think the challenges are and how you think they could be overcome. |
| **6. Default settings** |
| No<br><br> If YES, then please provide details of what you think the challenges are and how you think they could be overcome. |
| **7. Data minimisation** |
| No<br><br> If YES, then please provide details of what you think the challenges are and how you think they could be overcome. |
| **8. Data sharing** |
| No<br><br> If YES, then please provide details of what you think the challenges are and how you think they could be overcome. |
| **9. Geolocation** |
| No<br><br> 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<br><br> Children without parents or with paretns who have less skills or time to engage with them oul dbe at a disadvantage. |
| **11. Profiling** |
| Yes<br><br> It is hard to establish how profiling leads to bias, inequalities and exclusion and prevent this. |
| **12. Nudge techniques** |
| Yes<br><br> Nudge techniques can be disguised as good customer service/ communication (e.g. notifications and reminders) and it is hard to prove their harmful/ addictive nature. |
| **13. Connected toys and devices** |
| YES/NO.<br><br> 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.<br><br> 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.<br><br> 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.<br> 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** |

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** |
| --- |
| No<br><br> 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** |
| No<br><br> 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** |
| No<br><br> 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** |
| No<br><br> 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** |
| No<br><br> 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** |
| No<br><br> 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** |
|---|
| No<br><br> 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** |
| No<br><br> 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<br><br> 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** |
| No<br><br> 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** |
| No<br><br> 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** |
| No<br><br> 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** |
| No<br><br> 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** |

| 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** |
|---|
| 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** |
|---|
| No |
| If YES, then please provide details (including links). |

| 2. **Age-appropriate application** |
|---|
| No |
| If YES, then please provide details (including links). |

| 3. **Transparency** |
|---|
| No |
| If YES, then please provide details (including links). |

| 4. **Detrimental use of data** |
|---|
| No |
| If YES, then please provide details (including links). |

| 5. **Policies and community standards** |
|---|
| No |
| If YES, then please provide details (including links). |

| 6. **Default settings** |

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

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

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

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

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

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

Yes

 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

 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

 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

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

**Q15.** Is the **'Annex B: Lawful basis for processing'** section of the code clearly communicated?

Yes

 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

 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

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

# Section 2: About you

**Are you:**

| | |
|---|---|
| A body representing the views or interests of children?<br><br>Please specify: | ☐ |
| A body representing the views or interests of parents?<br><br>Please specify: | ☐ |
| A child development expert?<br><br>Please specify: | ☐ |
| An Academic?<br><br>Please specify:<br><br>Mariya Stoilova is a post-doctoral research officer at the London School of Economics and Political Science (LSE).<br><br>Professor Sonia Livingstone, OBE is a full professor in the Department of Media and Communications at the London School of Economics and Political Science (LSE). | ☐ |

| | |
|---|---|
| This research is based on the ICO-funded project Children's data and Privacy Online (http://www.lse.ac.uk/media-and-communications/research/research-projects/childprivacyonline)<br><br>Summary of early findings: https://blogs.lse.ac.uk/mediapolicyproject/2019/01/28/childrens-personal-privacy-online-its-neither-personal-nor-private/<br><br>About the research methodology: http://www.lse.ac.uk/media-and-communications/assets/documents/research/projects/childrens-privacy-online/Talking-to-children-about-data-and-privacy-online-methodology-final.pdf<br><br><br>Review of the existing evidence: http://www.lse.ac.uk/media-and-communications/assets/documents/research/projects/childrens-privacy-online/Evidence-review.pdf<br><br><br>Other relevant outputs from the project:<br><br>Livingstone, Sonia (2018) Children: a special case for privacy? Intermedia, 46 (2). pp.18-23. | |
| An individual acting in another professional capacity?<br><br>Please specify: | ☐ |
| A provider of an ISS likely to be accessed by children?<br><br>Please specify: | ☐ |

| | |
|---|---|
| A trade association representing ISS providers?<br><br>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?<br><br>Please specify: | ☐ |

**Thank you for responding to this consultation.**

**We value your input.**