

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

In the subsection 'Who is this code for?', it is stated that the code is for providers of information society services (ISS). In doing so, it appears to be suggesting that the code applies to all ISS, regardless of whether access is by an adult or a child. Although a level of clarification is made later in the paragraph, the reader does need to see the separate section on 'services covered by this code' to determine whether the code is applicable in their circumstances and context.

The section uses 'relevant', a term from section 123(1) of the Data Protection Act 2018. However, the term lacks definition at this point in the code, and it not until the next section of the code that the term is interpreted.

A reader would benefit from being able to decide in this section on whether or not the code applies to a particular ISS.

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

No

The ICO appears to have substantially broadened the scope of the application of the code through its interpretation of Section 123(1) of the Data Protection Act 2018.

Section 123 of the DPA 2018 states that the code shall apply to "relevant information society services which are likely to be accessed by children." The ICO has interpreted the term 'relevant' as meaning any ISS that process children's personal data:

'Relevant' ISS are those which involve the processing of personal data to which the GDPR applies.

Such an interpretation is without consideration of particular ISS or categories of ISS that pose risks to children. The section quotes from Recital 38 of the GDPR, but does not pay particular regard to the risks that may arise from a child's use of an ISS: Recital 38 suggests the types of risks that need to be addressed, i.e. 'the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child.' The ICO's interpretation in the code is therefore neither risk-based nor proportionate.

The breadth of the scope of the draft code means that news sites will be captured by the code; this is explicitly stated in the subsection 'What do you mean by an 'information society service'?'. In extending the code to news sites, the publisher will face increased costs of age verification, diverting budgets that should be spent on journalism, enhancing readability and accessibility, and continuing publication. The broad scope will likely result in restricted access and reduced news coverage, a move that would be highly detrimental to society.

A consequence therefore of the code as drafted is that it will inhibit news publisher rights and the rights of individuals for freedom of expression and information, under Article 10 of the European Convention of Human Rights.

In the previous section, 'About this code', the code seeks to ensure that the rights of the child are supported. However, in seeking to broaden the application of the code to all sites, then the code appears to infringing the UNCRC Article 13.1 right:

"The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice."

If the child's choice is to seek information from a news site, or to engage with a news site, then that is that child's right, reiterated in Article 17:

"States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18."

Requiring compliance with the code for a news site would most likely be contrary to Article 17. Article 17(e) does require consideration of the protection of the child, and this is factored in

by news sites when deciding what to publish, in line with applicable editorial codes of practice.

The ICO should give further consideration to the intended meaning of 'relevant' and pay greater attention to Recital 38 of the GDPR, quoted in the section, to focus on the risks to the child when using ISS in a more proportionate manner and pay greater attention to the rights of society and children in respect of freedom of expression and information.

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

**Q5.** Do you think this standard gives rise to any unwarranted or unintended consequences?

<b>1. Best interests of the child</b>
YES/NO.
If YES, then please provide your reasons for this view.
<b>2. Age-appropriate application</b>
YES/NO.

If YES, then please provide your reasons for this view.
<b>3. Transparency</b>
YES/NO.
If YES, then please provide your reasons for this view.
<b>4. Detrimental use of data</b>
YES/NO.
If YES, then please provide your reasons for this view.
<b>5. Policies and community standards</b>
YES/NO.
If YES, then please provide your reasons for this view.
<b>6. Default settings</b>
YES/NO.
If YES, then please provide your reasons for this view.
<b>7. Data minimisation</b>
YES/NO.
If YES, then please provide your reasons for this view.
<b>8. Data sharing</b>
YES/NO.
If YES, then please provide your reasons for this view.
<b>9. Geolocation</b>
YES/NO.
If YES, then please provide your reasons for this view.
<b>10. Parental controls</b>
YES/NO.
If YES, then please provide your reasons for this view.
<b>11. Profiling</b>
YES/NO.
If YES, then please provide your reasons for this view.
<b>12. Nudge techniques</b>
YES/NO.
If YES, then please provide your reasons for this view.
<b>13. Connected toys and devices</b>
YES/NO.
If YES, then please provide your reasons for this view.
<b>14. Online tools</b>
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

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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"/>

<p>An individual acting in another professional capacity? Please specify:</p>	<input type="checkbox"/>
<p>A provider of an ISS likely to be accessed by children? Please specify:</p>	<input type="checkbox"/>
<p>A trade association representing ISS providers? Please specify:</p>	<input type="checkbox"/>
<p>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)?</p>	<input type="checkbox"/>
<p>An ICO employee?</p>	<input type="checkbox"/>
<p>Other? Please specify: A media company (News UK &amp; Ireland Limited) Robert Streeter, Group Data Protection Officer</p>	<input checked="" type="checkbox"/>

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

**We value your input.**

