

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?

No

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

Whilst the 'About this code' section is well-written and readily readable, when considered in relation to our sector: educational establishments in the UK, it would be beneficial to provide further details on the relevance of the term ISS when applied to an educational (specifically school) setting. With the wide variation in establishments and a continued lack of clarity around the roles and responsibilities between educational establishments as data controllers and providers of ISS as data processors this additional detail would further help educational establishments more adequately understand their position.

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

No

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

Similarly to above, it may be that between these two sections further clarification can be provided for any sector making use of ISS and proving these to their clients. The term ISS is not well-known beyond DP

specialists, further work to exemplify what is/is not an ISS within this section would further help organisations identify if they are indeed a provider. Perhaps a simple table with some examples of ISS/Not ISS would be appropriate?

By way of further example - 'Likely to be accessed by children' - clearly many educational establishments provide services that are, indeed, accessed by children, such as maths apps and websites where children learn through gaming. These are an ISS, but as ICO guidance (<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/children-and-the-gdpr/what-are-the-rules-about-an-iss-and-consent/>) states "If an ISS is only offered through an intermediary, such as a school, then it is not offered 'directly' to a child", meaning that the school is not the ISS provider. This section provides a further opportunity to clarify this for the benefit of our sector.

The third paragraph of the 'Does is apply to services based outside the UK?' reads in a slightly misleading way and appears to contradict some of the statements made in paragraphs 1 and 2.

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 If NO, then please provide your reasons for this view.
2. Age-appropriate application
Yes If NO, then please provide your reasons for this view.
3. Transparency
Yes If NO, then please provide your reasons for this view.

4. Detrimental use of data

Yes

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

5. Policies and community standards

Yes

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

6. Default settings

Yes

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

7. Data minimisation

Yes

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

8. Data sharing

Yes

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

9. Geolocation

No

If NO, then please provide your reasons for this view.
What is meant by granularity...provide more details.
Consider proposing the use of geo-fencing as applied by some online providers to educational establishments rendering them 'not-spots' to access the service.

10. Parental controls

Yes

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

11. Profiling

Yes

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

12. Nudge techniques

Yes

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

13. Connected toys and devices

Yes

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

14. Online tools

Yes

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

15. Data protection impact assessments

Yes

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

16. Governance and accountability

Yes

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

No

If YES, then please provide details.

2. Age-appropriate application

No

If YES, then please provide details.

3. Transparency

Yes

We have become familiar with labels for many aspects of life, for example nutritional labelling on food packaging, laundry labelling and eco labelling on devices. We are advocating the creation of a labelling schema for T&Cs and Privacy statements. This would allow users, at a glance, to have an appreciation of the extent of the collection, and use of personal data in a similar way. Having conducted research, the Polisis project (<https://pribot.org/polisis/>) from Ecole Polytechnique Federale de Lausanne, uses AI to read and interpret Terms and Conditions and present them in a visual manner. A further example was developed by researchers at Carnegie Mellon and Columbia Universities, called Useable Privacy.org, this service uses a blend of machine learning, AI and natural processing to display terms in a visual matrix.

Terms and conditions and privacy statements should be suitable for the minimum age the service is designed for. For example, for over 13's the

terms should be written with a complexity of language that a 13 year old can understand. As a matter of course, encouraging providers to use a readability index, such as the Gunning Fog index (<http://gunning-fog-index.com/>), to verify that their terms are written with appropriate complexity would be a positive step.

4. Detrimental use of data

No

If YES, then please provide details.

5. Policies and community standards

YES/NO.

The majority of providers provide reporting mechanisms to report violations of their policies. SWGfL, on behalf of the UK Safer Internet Centre, recently launched report harmful content.com, the national reporting hub for reporting online harm. Users who have reported content to a provider but are not content with the response are able to obtain support from report harmful content.com in terms of advice, support and mediation. The UK Safer Internet Centre assesses these reports against the providers terms and through understanding and navigation of terms and conditions is able to support users.

6. Default settings:

No

If YES, then please provide details.

7. Data minimisation

No

If YES, then please provide details.

8. Data sharing

No

If YES, then please provide details.

9. Geolocation

No

If YES, then please provide details.

10. Parental controls

No

If YES, then please provide details.

11. Profiling

No

If YES, then please provide details.

12. Nudge techniques

YES/NO.

If YES, then please provide details.

13. Connected toys and devices

No

If YES, then please provide details.

14. Online tools

No

If YES, then please provide details.

15. Data protection impact assessments

No

If YES, then please provide details.

16. Governance and accountability

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

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

2. Age-appropriate application

Yes

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

There are two areas of concern with regards to age-appropriate applications: 1 - using age ranges does not take into account the cognitive skill level of the child and whilst it does enable a broad set of principles to be applied to a child's usage of an application, the range of cognitive levels displayed by maturing children will influence their ability to make appropriate decisions. The issue of those children with special need is mentioned in Appendix A, but it would be helpful if this was also

included in the main text of the code. Furthermore, whilst consideration is given to the difficulties children may have in obtaining adult support, or identity documents, there is not enough consideration given to those children wishing to access a service suitable for their needs and with good cognitive skills that have neither adult support or identity documents - this situation may be unpalatable for children and providers alike.

2 - whilst the code suggests age-verification alongside other models of age identification, the two other models are significantly weaker and may preclude some services from being accessed by older children. Whilst it's right that the application should be designed in a way as to prioritise the safety and safeguarding of children, other models of identifying their age should be considered.

3. Transparency

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 academic position on screentime is still developing and refining it's focus with multiple studies identifying different positions. We recommend a cautious position should be taken on this standard of the code.

5. Policies and community standards

Yes

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

We welcome the aspiration to uphold the published terms and community standards thereby reducing the levels of inappropriate or unacceptable content that children might encounter. Many social media companies have invested heavily in moderation teams involving a blend of computer and human interventions and this is beginning to have impact, but more work is still required in this regard. Smaller, start-up companies will find the requirement to "have mechanisms in place to swiftly and effectively deal with" unacceptable content difficult to justify in the short term. Given the scale of existing moderation teams and the high costs in creating a successful team, this may preclude some services from entering the UK market. This could result in the UK being unable to access some new applications.

6. Default settings

No

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

7. Data minimisation

No

<p>If YES, then please provide your reasons for this view.</p>
<p>8. Data sharing</p>
<p>No</p>
<p>If YES, then please provide your reasons for this view.</p>
<p>9. Geolocation</p>
<p>Yes</p>
<p>If YES, then please provide your reasons for this view. Specifically in this section of the code, what is a 'session' when using a service. Many services remain on in the background after the app is 'closed'. Greater clarity and visibility would be helpful in understanding what the triggers are for geolocation reverting back to 'off'</p>
<p>10. Parental controls</p>
<p>Yes</p>
<p>In this section it would be beneficial to reference that the app should include the inability for the child to turn-off or negate the parental tracking. If an icon is lit and the child knows they are being tracked some may attempt to disable to app to circumvent this. Many of the apps and services made available through the app stores are associated with age ratings defined by the app store provider. Whilst these are a helpful guide for young people and parents alike, limited easy-to-access information is provided and they can miss-represent the terms and conditions of the provider. The collection of data that governs the use of services, in some cases, does not form part of the age rating process. The code should guide app stores to incorporate the age requirements of the providers own terms and conditions into the published age rating for the app on the app store. An app designed for over 13's should never be presented as suitable for over 4s, for example.</p>
<p>11. Profiling</p>
<p>No</p>
<p>If YES, then please provide your reasons for this view.</p>
<p>12. Nudge techniques</p>
<p>No</p>
<p>If YES, then please provide your reasons for this view.</p>
<p>13. Connected toys and devices</p>
<p>Yes</p>
<p>Again, whilst we support the requirement to be clear about the processing of personal data we recommend that providers consider the use of simple and easy-to-access privacy labelling. It would be beneficial to see the inclusion of a labelling requirement on the packaging to support the decision-making process by providing a range of colour-coded icons highlighting the areas of privacy and data protection risk.</p>

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

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

Paragraph on the conflict between existing 'child' or 'under-age' users and new users on-boarding after the code is implemented resulting in a difference between existing and new user experiences - is this in the best interest of the child, either excluding them from their social groups or app or providing them with a different experience to their peers.

2. Age-appropriate application

Yes

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

Challenges around age identification of young people below 18 - even if implementing Carnegie-Mellon university tests as part of or after on-boarding.

3. Transparency

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

For many providers, their business model is based on a free-to-use or 'freemium' service provision. This essentially means that the 'user is the

product' the data that the user generates as a consequence of their usage is leveraged and monetised by the provider to fund their service and provide profit. The challenge for providers will be how they will be able to provide services when their primary income stream is removed. This may have the impact of reducing the ability of the provider to operate in the UK where there is little or no perceived income stream.

5. Policies and community standards

Yes

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

Report Harmful Content.com a service provided by SWGfL for the UK Safer Internet Centre is the national reporting hub for reporting online harm. Users who have reported content to a provider but are not content with the response are able to obtain support from report harmful content.com in terms of advice, support and mediation. The UK Safer Internet Centre assesses these reports against the providers terms and through understanding and navigation of terms and conditions is able to support users. The service is platform agnostic, offering support and mediation to users of 13 platforms. Whilst this can be extended to support other providers, their ability to do so could, in the initial stages of the product lifecycle, be limited by the size of the moderation team, or the finances available to a start-up company. This is despite the assertion made that innovation in data ethics may be an important competitive differentiator.

6. Default settings

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

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

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

9. Geolocation

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

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

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.
'legitimate' profiling for academic purposes vs 'non-legitimate' for content provision.

12. Nudge techniques

Yes

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.
Use of nudging in games acceptable?

13. Connected toys and devices

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

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

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

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

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

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

Given the complexities and current inconsistencies around terms and privacy and the lack of an existing labelling scheme, we feel that this standard will require additional time to enable the creation of an appropriate scheme and for providers to adopt this. The period for implementation is difficult to be unequivocal on at this stage, but we would suggest that a period of 12-18 months would be appropriate.

4. Detrimental use of data

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

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

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

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

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

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

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

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

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

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

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

Yes

Education for a Connected World by UKCIS (<https://www.gov.uk/government/publications/education-for-a-connected-world>) This framework describes the digital knowledge and skills that children and young people should have the opportunity to develop at different ages and stages of their lives.

2. Age-appropriate application

Yes

The UK Safer Internet Centre organises Safer Internet Day (<https://www.saferinternet.org.uk/safer-internet-day/safer-internet-day-2019/impact-safer-internet-day-2019>), a national day dedicated to raising awareness of online safety challenges and opportunities and is part of a global event. This represents a great opportunity to involve a wide range of stakeholders raise awareness of the issues. A similar approach could be beneficial in raising awareness of this code and the age-appropriate requirements.

3. Transparency

Yes

Polisis's tool, Pribot - Ai-powered simple representation of privacy terms and conditions. <https://pribot.org/>
UK Safer Internet Centre's Social Media Checklists - source of supportive information about priacy and settings across a range of social networks. (<https://www.saferinternet.org.uk/advice-centre/teachers-and-school-staff/teaching-resources/social-media-checklists>)

4. Detrimental use of data

No

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

5. Policies and community standards

Yes

Report harmful content - the national reporting hub for reporting online harm (<http://reportharmfulcontent.com>)

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

Yes

Internet Matters - <https://www.internetmatters.org/parental-controls/>
UK Safer Internet Centre - <https://www.saferinternet.org.uk/advice-centre/parents-and-carers>
Common Sense Media - <https://www.common sense media.org/>

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

Yes

BBC Own it - <https://www.bbc.com/ownit>

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).

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

Yes

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

Q11. Is the '**Glossary**' section of the code clearly communicated?

Yes

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

Q12. Are there any key terms missing from the '**Glossary**' section?

No

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

Q13. 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.

Q14. Is there any information you think needs to be changed in the '**Annex A: Age and developmental stages**' section of the code?

No

Please refer to the developmental progressions described within Education for a Connected World
<https://www.gov.uk/government/publications/education-for-a-connected-world>

Q15. 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?

No

Please refer to the developmental progressions described within Education for a Connected World
<https://www.gov.uk/government/publications/education-for-a-connected-world>

Q16. 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.

Q17. 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.

Q18. Do you think any issues raised by the code would benefit from further (post publication) work, research or innovation?

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:	<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 of the public or a parent)?	<input type="checkbox"/>
An ICO employee?	<input type="checkbox"/>
Other? Please specify: Representatives from the the South West Grid for Learning Trust	<input checked="" type="checkbox"/>

Thank you for responding to this consultation.

We value your input.