

Protecting children's data

Navigating the rules around protecting children's data is not an easy task as the law struggles to keep pace with the seismic advances in information sharing in today's online world.

Mairead O'Reilly outlines some of the headline rules that apply to the processing of children's data in the UK.



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Mairead is a senior associate in our Data Privacy team. She has been advising on data protection law for more than 10 years and enjoys working with a wide range of clients in the charity, social enterprise and commercial sector.

DATA PRIVACY

Our Data Privacy team understands that the right approach to data privacy can be a real asset to your organisation. We also recognise the impact that good privacy practices can have on wider society.

For more information and advice, please refer to our Data Privacy pages at <https://bateswells.co.uk/services/data-privacy>

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What does the General Data Protection Regulation (GDPR) say?

The GDPR does not say a lot about children's data. However, a key message is that children 'require specific protection with regard to their personal data as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data...' (Recital 38).

What are the rules around processing a child's information?

In most cases, the same rules apply to the processing of children's data as those relating to adults. Organisations need to be able to rely on a suitable lawful basis for processing. Each lawful basis needs to be considered in the context of the data subject being a child. For instance, if you are seeking to rely on legitimate interests, you need to give extra weight to children's interests and need a more compelling interest to justify any impact on a child's rights and freedoms.

What are the issues with consent?

It is possible to rely on a child's consent as your lawful basis for processing their data. However, reaching the threshold for consent under the GDPR is not straightforward – particularly when it comes to children. For instance, consent needs to be informed and freely given. If a child does not fully understand the implications of their personal data being processed, it will be difficult to demonstrate that their consent is informed. Similarly, there will often be a clear imbalance of power between a child and a controller where, in effect, a child may feel that consent is not really optional and therefore cannot be freely given.

Collecting children's data online

The GDPR is more specific when it comes to the processing of children's data online. Article 8 requires that if you are offering Information Society Services (ISS) directly to a child and you are relying on consent, the consent of a parent or someone with

parental responsibility is needed for children who are under 16. Most online services are caught by the definition of ISS, including online messaging services, sites offering tickets to events and many online news and educational websites.

EU member states are permitted to vary the age below which the consent of a parent or someone with parental responsibility is needed: in the UK the relevant age is 13. However, if you are collecting personal data online about children in other EU countries, this age may vary.

Of course, you won't always need to get consent to process a child's data online, so in most cases it will be easier to seek to rely on an alternative legal basis for processing, such as legitimate interests. However, there will be cases where consent is needed – for instance when processing special category data, dropping cookies or sending electronic marketing messages.

If you are planning to use children's personal data to offer an online service to a child you must do a Data Protection Impact Assessment.

Age Appropriate Design Code

Finally, if you are engaging with children online, it is important to be aware of the Age Appropriate Design Code – a statutory code of practice published by the ICO. The code is aimed at providers of ISS and contains practical guidance about how to ensure that online services safeguard children's personal data.

FIND OUT MORE

ICO guidance on Data Protection Impact Assessments and the Age Appropriate Design Code are both available on the Information Commissioner's website <https://ico.org.uk>