

ARE YOU READY FOR THE CHILDREN'S CODE? 5 Top Tips



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Introduction

The ICO's new Age Appropriate Design Code (“**the Children's Code**”) is now effective.

What is the Children's Code?

The Code is ground-breaking in introducing a new and protectionist approach to regulating online services accessed by children in the UK. The aim of the Code is to enhance the privacy rights of children online by requiring organisations to put children's best interests first when they are designing new services in the digital world, instead of considering children as an afterthought.

The Code contains 15 standards of age appropriate design to protect children's privacy. It came into force in September 2020, but organisations were given a 1 year transition period, which **ends on 2 September 2021**, to prepare for compliance with the Code.

If your organisation engages with children online, it is important to determine whether your services are covered by the Code and, if they are, to get ready! Below we outline 5 top tips for organisations wishing to prepare for the Children's Code.

In this guide references to the GDPR are to the General Data Protection Regulation (EU) 2016/679 as implemented into UK law.



For more advice on data protection compliance and use of new technologies or digital services contact

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#1 Check whether you are providing services which are covered by the Code

The Code applies to **Information Society Services** or ISS which include *“any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services”*.

This definition is interpreted very widely in the Children's Code as covering a range of online services including:

“apps, programs and many websites including search engines, social media platforms, online messaging or internet based voice telephony services, online marketplaces, content streaming services (eg video, music or gaming services), online games, news or educational websites, and any websites offering other goods or services to users over the internet”.

The Code makes clear that ISS are also likely to include not-for-profit apps, games and educational sites, even if end-users aren't paying for access to the services, provided the services are typically provided on a commercial basis.



There are some important exceptions which will take certain services outside the Code, including (but not limited to) the following:

- confidential counselling services or preventative services (such as online health screening);
- online public services provided by public authorities (provided the services aren't typically provided on a commercial basis);
- online services run by the police (or other competent authorities) which process personal data for law enforcement purposes; and
- websites that simply provide information about a real world business or service without selling products or online services.

In summary, therefore, subject to the exceptions (some of which are listed above) if you are offering online services (including apps and educational sites) which are used by children, it is likely that you will need to take steps to comply with the Children's Code.



#2 Assess whether children are likely to be accessing your service

Children are defined widely under the Code as anyone under the age of 18. This marks a significant change in the UK where, for some years, additional data protection obligations have been triggered only in relation to children under the age of 13.

If you provide a service that is aimed at children, for instance an interactive game for children, the Code will almost certainly be engaged.

Significantly however, the Code applies to organisations that are providing online products or services that process personal data and **are likely to be accessed by children** in the UK. Therefore, its reach extends beyond services which specifically target children.

In this respect the Code is breaking new ground in reflecting the fact that, in reality, children are major users of online content. They do not confine themselves to 'children's websites' or services. From the perspective of organisations, however, the onus has shifted onto them to demonstrate that they do not have child users and therefore away from regulators being required to demonstrate that they do.

How can you determine whether your service is likely to be accessed by children?

The Code states that this is likely to depend on:

- the nature and content of the service you offer and whether it has particular appeal for children; and
- the way in which the service is accessed and any measures you put in place to block children's access.

The ICO has indicated that it expects most online services used by children to be covered, and those that aren't covered to be exceptional.

If you decide that your service is not likely to be accessed by children and that you are therefore not bound by the Code, it is important to document and support your reasons for your decision. In such cases it will be helpful to refer (as part of your documentation) to any market research, current evidence of user behaviour or the users of similar or existing services.



#3 Check and document your compliance with the Code's 15 Standards

The Code sets out 15 standards which you can view [here](#).

Organisations need to comply with all 15 standards but you may find that some of the standards are not relevant to the particular service that you offer (and therefore can be “ticked off” without the need to make further changes to your website or online service). For instance, the standards below will only be relevant if you use the relevant features (geolocation, parental controls or connected toys) on your website or as part of your service:

- **Standard 10** which requires geolocation features to be switched off by default;
- **Standard 11** which requires organisations to inform children about the use of parental controls on their websites;
- **Standard 14** which requires the use of tools to ensure connected toys are used in compliance with the Code.

On the other hand, some of the standards will need to be followed by all organisations whose services are covered by the Code and therefore compliance with them should be prioritised over the next six months by those offering services covered by the Code. These broader standards include the following:

- **Standard 4 Transparency:** which requires organisations to provide privacy information in clear language suited to the age of children using their service. This standard requires you to

ensure that your privacy notice is written in a way that is easy for children to understand. This obligation, of course, echoes an obligation which already applies to all organisations under the GDPR and so is not new. Overly legalistic or technical language taken from legal templates is unlikely to meet this standard! For a good example of legal documentation which has been adapted to be digestible for children, have a look at **the children's version** of the UN Convention on the Rights of the Child.

- **Standard 9 Data Sharing:** which prohibits the disclosure of children's data unless you can demonstrate a compelling reason to do so, taking account of the best interests of the child.

For all 15 Standards even if you determine that you comply with them, it is important to document clearly why you believe that you are compliant and to keep that assessment under regular review.



#4 Check your privacy settings

Standard 7 under the Code requires that settings must be “high privacy” by default (unless you can demonstrate a compelling reason for a different default setting, taking into account the best interests of the child). The Code notes that many children (like many adults!) are likely to accept whatever the default privacy settings are. Therefore organisations which are offering online services which come within the scope of the Code should review their default privacy settings to ensure that they are appropriate for children.

Remedial steps may include changing settings to ensure that:

- children’s personal data is only visible or accessible to other users of the service if the child amends their settings to allow this;
- your own use of children’s personal data is limited to what is essential to the provision of your service. Any optional uses of personal data, including any uses designed to personalise the service should be individually selected and activated by the child;
- age appropriate explanations and prompts are provided at the point at which a child tries to change a privacy setting (as required under **Standard 4 Transparency**).

#5 Do a Data Protection Impact Assessment

The GDPR requires controllers to carry out a Data Protection Impact Assessment (or DPIA) before beginning any type of processing that is likely to result in a high risk to the rights and freedoms of individuals. The ICO further identifies the profiling or targeting of children with marketing or online services as activities which require a DPIA.

Standard 2 of the Code widens this obligation by requiring that organisations: *“Undertake a DPIA to assess and mitigate risks to the rights and freedoms of children who are likely to access your service, which arise from your data processing.”*

The ICO has produced a **template DPIA** which has been tailored for use in the context of an online service likely to be accessed by children.

Organisations wishing to prepare for the Children's Code would be well advised to start by undertaking a DPIA which will help them to identify the risks associated with their processing activities.

Conclusion

Finally, what are the implications if we don't comply with the Children's Code?

The Code is a statutory Code and therefore must be taken into account by the ICO when it is considering whether an online service has complied with applicable data protection obligations. If you do not conform to the standards in the Code you are likely to find it harder to demonstrate that your processing is fair and complies with data protection legislation. A breach of data protection legislation may, of course, result in regulatory action (including fines) by the ICO. Although the ICO has indicated that it will take a proportionate approach to enforcement (focussing on the areas with the most potential for harm), the use of children's data is a clear regulatory priority for the ICO.

The ICO has indicated that it will investigate and take action either where it identifies concerns about the way children's data is being used or where complaints are made by parents, carers, teachers or children themselves. Therefore any non-compliance with the Code carries a risk of complaints to the ICO which may result in regulatory action and/or reputational damage. Such damage is likely to be particularly harmful to the trust and confidence placed in organisations which regularly engage with children as part of their services or charitable activities. Working towards Children's Code compliance should be a clear priority for such organisations.



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