

Report to:	Quarterly Senior Management Team Meeting
Report by:	Erin Gray
Meeting Date:	4 August 2021
Subject/ Title: (and VC no)	Age Appropriate Design Code (VC 154142)
Attached Papers (title and VC no)	None

Purpose of report

1. The purpose of this Committee Report (CR) is to make recommendations to the Senior Management Team (SMT) on the applicability of the Age Appropriate Design Code to the work of the Scottish Information Commissioner (the Commissioner).

Recommendation and actions

2. I recommend:
 - (i) SMT note the contents of this CR
 - (ii) SMT agree that the Age Appropriate Design Code does not apply to the work of the Commissioner and that the Commissioner is therefore not required to comply with it, but that where possible, relevant and appropriate, the Age Appropriate Design Code will be considered as a source of best practice guidance (as set out in paragraph 8 below)
 - (iii) SMT note that if in future any online services are developed which would normally be provided for remuneration, the degree to which they would likely be accessed by children must be assessed to determine if the Code would apply (as set out in paragraph 9)
 - (iv) That this CR and accompanying papers are published in line with the “Publication” section below.

Executive summary

About the Age Appropriate Design Code

3. Under section 123(1) of the Data Protection Act 2018 (the DPA) the UK Information Commissioner (the ICO) is required to produce a code of practice on standards of age appropriate design.
4. The ‘Age Appropriate Design Code’ (‘the Code’) was laid to the UK Parliament under section 125(1)(b) of the DPA on 11 June 2020. The ICO issued the Code on 12 August 2020 and it came into force on 2 September 2020 with a 12 month transition period. Organisations should comply by 2 September 2021.
5. Section 123 of the DPA states that the Code applies to “relevant information society services which are likely to be accessed by children” in the UK. This includes many apps, programs, connected toys and devices, search engines, social media platforms, streaming services,

online games, news or educational websites and websites offering other goods or services to users over the internet. The Code sets out 15 headline standards of age appropriate design that organisations need to implement to ensure their services appropriately safeguard children's personal data and process children's personal data fairly.

Applicability of the Code to current services

6. The Code applies to “relevant information society services likely to be accessed by children”. Information society services has broadly the same meaning as it has in the GDPR, in that it is defined as: “any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services”. In practice this means that most for-profit online services are covered by the code.
7. The [ICO's guide on services covered by the Code](#) states: “If you are a public authority which provides an online public service then, as long as the type of service you offer is not typically provided on a commercial basis your service is not a relevant information society service. This is because it is not a service ‘normally provided for remuneration’”.
8. The Commissioner is a public authority which provides some services which may be defined as online public services (for example, the Commissioner's website and appeal portal). However, as none of the Commissioner's services are normally provided for remuneration, it is proposed that SMT agree that these are not a relevant information society service for the purposes of the Code, and therefore that the Code does not apply to services as currently delivered and need not be complied with. It is recommended, however, that where possible, appropriate and relevant, the Commissioner should refer to the Code as a source of best practice guidance.

Applicability of the Code to any future services, where they are normally provided for remuneration

9. If in future the Commissioner were to develop an information society service which is normally provided for remuneration (even if the remuneration or funding of the service does not come directly from the end user), the degree to which the service would be likely to be accessed by children would need to be assessed to determine if the Code were to apply. The [ICO guide](#) states:

“We consider that for a service to be ‘likely’ to be accessed, the possibility of this happening needs to be more probable than not. This recognises the intention of Parliament to cover services that children use in reality, but does not extend the definition to cover all services that children could possibly access. In practice, whether your service is likely to be accessed by children or not is likely to depend on:

- the nature and content of the service and whether that has particular appeal for children; and
- the way in which the service is accessed and any measures you put in place to prevent children gaining access.

“[...] If your service is not aimed at children but is not inappropriate for them to use either, then your focus should be on assessing how appealing your service will be to them. If the nature, content or presentation of your service makes you think that children will want to use it, then you should conform to the standards in this code.

“[...] If you decide that your service is not likely to be accessed by children and that you are therefore not going to implement the code then you should document and support your

reasons for your decision. You may wish to refer to market research, current evidence on user behaviour, the user base of similar or existing services and service types and testing of access restriction measures.”

Risk impact

10. The Commissioner must comply with all relevant legislative requirements; by assessing whether the Code applies as set out in this report, the risk of any potential non-compliance with requirements is mitigated.

Equalities impact

11. No direct impact identified. Where any services relating to children or young people are developed, the Code will be considered as best practice guidance where they are services not normally provided for remuneration. Should any there be any which would normally be provided for remuneration, the applicability of the Code will be considered, as set out in paragraph 9.

Privacy impact

12. No direct impact identified. Where any services relating to children or young people are developed, the Code will be considered as best practice guidance where they are services not normally provided for remuneration. Should there be any which would normally be provided for remuneration, the applicability of the Code will be considered, as set out in paragraph 9.

Resources impact

13. No impact identified.

Operational/ strategic plan impact

14. No impact identified.

Records management impact (including any key documents actions)

15. No impact identified.

Consultation and Communication

16. This CR has been prepared in consultation with members of the Commissioner’s GDPR Working Party and will be published on the Commissioner’s website. The Commissioner’s Data Protection Officer has also been informed.

Publication

17. I recommend that this CR is published in full.