Information Commissioner's Office

Consultation:
Children and the GDPR guidance

Start date: 21 December 2017
End date: 28 February 2018

Children and the GDPR

Contents (for web navigation bar)

Version 1.0 20171221

At a glance

- Children need particular protection when you are collecting and processing their personal data because they may be less aware of the risks involved.

- If you process children's personal data then you should think about the need to protect them from the outset, and design your systems and processes with this in mind.

- Compliance with the data protection principles and in particular fairness should be central to all your processing of children's personal data.

- You need to have a lawful basis for processing a child's personal data. Consent is one possible lawful basis for processing, but it is not the only option. Sometimes using an alternative basis is more appropriate and provides better protection for the child.

- If you are relying on consent as your lawful basis for processing personal data, when offering an online service directly to a child, only children aged 13[1] or over are able provide their own consent.

- For children under this age you need to get consent from whoever holds parental responsibility for the child - unless the online service you offer is a preventive or counselling service.

- Children merit specific protection when you use their personal data for marketing purposes or creating personality or user profiles.

- You should not usually make decisions based solely on automated processing about children if this will have a legal or similarly significant effect on them.

- You should write clear privacy notices for children so that they are able to understand what will happen to their personal data, and what rights they have.

- Children have the same rights as adults over their personal data. These include the rights to access their personal data; request rectification; object to processing and have their personal data erased.

- An individual's right to erasure is particularly relevant if they gave their consent to processing when they were a child.

[1] This is the age proposed in the Data Protection Bill and at the time of writing is subject to parliamentary approval.

Checklist

General

- We comply with all the requirements of the GDPR, not just those specifically relating to children and included in this checklist.
- We design our processing with children in mind from the outset, and use a data protection by design and by default approach.
- We make sure that our processing is fair and complies with the data protection principles.
- As a matter of good practice, we use DPIAs to help us assess and mitigate the risks to children.
- If our processing is likely to result in a high risk to the rights and freedom of children then we always do a DPIA.
- As a matter of good practice, we consult with children as appropriate when designing our processing.

Bases for processing a child's personal data

- When relying on consent, we make sure that the child understands what they are consenting to, and we do not exploit any imbalance in power in the relationship between us.
- When relying on 'necessary for the performance of a contract', we consider the child's competence to understand what they are agreeing to, and to enter into a contract.
- When relying upon 'legitimate interests', we take responsibility for identifying the risks and consequences of the processing, and put age appropriate safeguards in place.

Offering an information Society Service (ISS) directly to a child, on the basis of consent

- If we decide not to offer our ISS (online service) (online service) directly to children, then we mitigate the risk of them gaining access, using measures that are proportionate to the risks inherent in the processing.

- When offering ISS (online service) to UK children on the basis of consent, we make reasonable efforts (taking into account the available technology and the risks inherent in the processing) to ensure that anyone who provides their own consent is at least 13 years old.

- When offering ISS (online service) to UK children on the basis of consent, we obtain parental consent to the processing for children who are under the age of 13, and make reasonable efforts (taking into account the available technology and risks inherent in the processing) to verify that the person providing consent holds parental responsibility for the child.

- When targeting wider European markets we comply with the age limits applicable in each Member state.

- We regularly review available age verification and parental responsibility verification mechanisms to ensure we are using appropriate current technology to reduce risk in the processing of children's personal data.

- We don't seek parental consent when offering online preventive or counselling services to a child.

Marketing

- When considering marketing children we take into account their reduced ability to recognise and critically assess the purposes behind the processing and the potential consequences of providing their personal data.

- We take into account sector specific guidance on marketing, such as that issued by the Advertising Standards Authority, to make sure that children's personal data is not used in a way that might lead to their exploitation.

- We stop processing a child's personal data for the purposes of direct marketing if they ask us to.

- We comply with the direct marketing requirements of the Privacy and Electronic Communications Regulations (PECR).

Solely automated decision making (including profiling)

- We don't usually use children's personal data to make solely automated decisions about them if these will have a legal, or similarly significant effect upon them.

- If we do use children's personal data to make such decisions then we make sure that one of the exceptions in Article 22(2) applies and that suitable, child appropriate, measures are in place to safeguard the child's rights, freedoms and legitimate interests.

- In the context of behavioural advertising, when deciding whether a solely automated decision has a similarly significant effect upon a child, we take into account: the choices and behaviours that we are seeking to influence; the way in which these might affect the child; and the child's increased vulnerability to this form of advertising; using wider evidence on these matters to support our assessment.

- We stop any profiling of a child that is related to direct marketing if they ask us to.

Privacy notices

- Our privacy notices are clear, and written in plain, age-appropriate language.

- We use child friendly ways of presenting privacy information, such as: diagrams, cartoons, graphics and videos, dashboards, layered and just-in-time notices, icons and symbols.

- We explain to children why we require the personal data we have asked for, and what we will do with it, in a way which they can understand.

- As a matter of good practice, we explain the risks inherent in the processing, and how we intend to safeguard against them, in a child friendly way, so that children (and their parents) understand the implications of sharing their personal data.

- We tell children what rights they have over their personal data in language they can understand.

- As a matter of good practice, if we are relying upon parental consent then we offer two different versions of our privacy notices; one aimed at the holder of parental responsibility and one aimed at the child.

The child's data protection rights

- We design the processes by which a child can exercise their data protection rights with the child in mind, and make them easy for children to access and understand.

- We allow competent children to exercise their own data protection rights.

- If our original processing was based on consent provided when the individual was a child, then we comply with requests for erasure whenever we can.

- We design our processes so that, as far as possible, it is as easy for a child to get their personal data erased as it was for them to provide it in the first place.

About this guidance

These pages sit alongside our Guide to the GDPR and provide more detailed, practical guidance for UK organisations who are processing children's personal data under the GDPR.

This guidance focuses on the additional, child specific considerations. You must also read the Guide to GDPR for the requirements that apply to all data subjects.

When we refer to a child we mean anyone under the age of 18. This is in accordance with the UN Convention on the Rights of the Child which defines a child as everyone under 18 unless, "under the law applicable to the child, majority is attained earlier" (Office of the High Commissioner for Human Rights, 1989). The UK has ratified this convention.

When we refer to someone with parental responsibility for a child we mean someone who, according to the law in the child's country of residence, has the legal rights and responsibilities for a child that are normally afforded to parents. This will not always be a child's 'natural parents' and parental responsibility can be held by more than one natural or legal person.

The GDPR contains provisions intended to enhance the protection of children's personal data and to ensure that children are addressed in plain clear language that they can understand. Transparency and accountability are important where children's data is concerned and this is especially relevant when they are accessing online services. However, in all circumstances you need to carefully consider the level of protection you are giving that data.

This guidance will help you understand the child specific considerations you need to think about when deciding on your lawful basis for processing a child's personal data.

It will help you understand what you need to do when you offer an ISS (online service) to a child and process their personal data on the basis of consent, and what you need to consider if you are thinking about marketing or profiling children.

It also explains what you need to include in your privacy notices, and what rights children have under the GDPR.

For an introduction to the key themes and provisions of the GDPR, you should refer to the Guide to the GDPR. You can navigate back to the Guide at

any time using the link at the top of this page. Links to other relevant guidance and sources of further information are also provided throughout.

When downloading this guidance, the corresponding content from the Guide to the GDPR will also be included so you will have all the relevant information on this topic.

What's new?

In brief...

- A child's personal data merits particular protection under the GDPR.
- If you rely on consent as your lawful basis for processing personal data when offering an ISS (online service) directly to children, only children aged 13 or over are able provide their own consent. You may therefore need to verify that anyone giving their own consent in these circumstances is old enough to do so.
- For children under this age you need to get consent from whoever holds parental responsibility for them - unless the ISS (online service) you offer is an online preventive or counselling service.
- You must make reasonable efforts (using available technology) to verify that the person giving consent does, in fact, hold parental responsibility for the child.
- Children merit specific protection when you are collecting their personal data and using it for marketing purposes or creating personality or user profiles.
- You should not usually make decisions about children based solely on automated processing if this will have a legal or similarly significant effect on them. The circumstances in which the GDPR allows you to make such decisions are limited and only apply if you have suitable measures to protect the interests of the child in place.
- You must write clear and age-appropriate privacy notices for children.
- The right to have personal data erased is particularly relevant when the individual gave their consent to processing when they were a child.

In more detail....

What has remained the same? (link)
What's new? (link)

What has remained the same?

The GDPR does not represent a fundamental change to many of the rights that children have over their personal data. The Data Protection Act 1998 (The 1998 Act) does not specifically mention children however its provisions apply to them as individuals in their own right. For example, children have the right to request a copy of their personal data under both pieces of legislation and have the right to request that you stop processing their data. Unlike the GDPR, the 1998 Act does not explicitly require that children's data is protected and does not require that privacy notices must be clear and accessible to a child or tailored specifically for them. However, you may well have already adopted procedures that comply with these requirements as a matter of good practice.

Fairness and compliance with data protection principles remain key concepts under the GDPR and should still be central to all your processing.

The concept of competence remains as valid under the GDPR as under the 1998 Act. In many circumstances, you may wish to continue to allow an individual with parental responsibility for a young child to assert the child's data protection rights on their behalf, or to consent to the processing of their personal data.

Likewise, if an older child is not deemed competent to consent to processing or exercise their own data protection rights, you may allow an adult with parental responsibility to do this for them.

You may have processed a child's personal data applying the 'legitimate interests' condition for processing under the 1998 Act and, unless you are a public authority, this is an equally valid basis for processing under the GDPR. Public authorities now need to consider whether the processing is necessary in the performance of one of their public functions or if one of the other Article 6 bases for processing applies.

We already advise data controllers to adopt a privacy by design approach, and to take into consideration the rights and freedoms of the particular data subjects whose personal data they are processing when designing new systems and processes. Data controllers who have adopted this approach for children should find they have already implemented many of the specific requirements of the GDPR.

However, it is recommended that you review any processing you undertake to ensure that it is compliant with the new GDPR requirements set out in this guidance and the Guide to GDPR, as there are some new requirements particularly about online processing.

What's new regarding children?

The GDPR explicitly states that children's personal data merits specific protection.

It also introduces new requirements for the online processing of a child's personal data.

In circumstances where an ISS (online service) is offered directly to a child, and you rely on consent as your basis for processing, only children aged 13 or over are able to give their own consent. For children under this age, unless the ISS (online service) is an online preventive or counselling service, consent needs to be provided by the holder of parental responsibility over the child.

This means that if you make your ISS (online service) available to children, and you wish to rely on consent to legitimise your processing, you need to verify that anyone providing their own consent is old enough to do so.

You are also required to make reasonable efforts (using available technology) in these circumstances to verify that consent provided on behalf of a younger child has, in fact, been provided by the holder of parental responsibility for that child.

The GDPR also states explicitly that specific protection is required where children's personal data is used for marketing purposes or creating personality or user profiles. So you need to take particular care in these circumstances.

The GDPR gives children the right not to be subject to decisions based solely on automated processing (including profiling) if these have a legal or similarly significant effect on them. Although there are exceptions to this right they only apply if suitable measures are in place to protect the rights, freedoms and legitimate interests of the child, and Recital 71 to the GDPR gives a clear indication that they should not be the norm. So if you currently make these types of decisions about children you need to carefully review this processing.

Finally, the GDPR requires the provision of age-appropriate privacy notices for children, and says that the right to have personal data erased is particularly relevant when processing is based upon the consent of a child.

These issues are discussed further within this guidance:
What should my general approach to processing children's personal data be? (link);
What do I need to think about when choosing a basis for processing children's personal data? (link);
What are the rules about ISS (online service) and consent? (link);
What if I want to market children? (link);
What if I want to profile children or make automated decisions about them? (link);
How does the right to be informed apply to children? (link);
What rights do children have? (link); and

How does the right to erasure apply to children? (link).

Key provisions in the GDPR
See Articles 6(1), 8, 12(1), and Recitals 38, 58, 65, 71, 75 (external link)

What should my general approach to processing children's personal data be?

In brief...

- Children need particular protection when you are collecting and processing their personal data because they may be less aware of the risks involved.
- If you process children's personal data, or think that you might, then you should consider the need to protect them from the outset, and design your systems and processes with this in mind.
- Fairness, and compliance with the data protection principles, should be central to all your processing of children's personal data.
- It is good practice to consult with children when designing your processing.

In more detail....

Why do children merit specific protection?

Recital 38 of the GDPR states that:

Quote

"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. Such specific protection should, in particular apply to 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 consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child."

What do I need to do about data protection by design and default?

If you process children's personal data then you should think about the need to provide the specific protection required by Recital 38 from the outset and design your processing, products and systems with this mind. This is vital if you regularly or systematically process children's personal data. It is usually easier to incorporate child friendly design into a system or product as part of your initial design brief than to try and add it in later. We recommend that you use a Data Protection Impact Assessment (DPIA) to help you with this, and to assess and mitigate data protection risks to the child. You should also take into account the age-appropriate rights and freedoms of the child so that their freedom to learn, develop and explore (particularly in an online context) is only restricted when this is proportionate. If your processing is likely to result in a high risk to the rights and freedoms of children then you must do a DPIA. For further information about DPIAs please see our Guide to the GDPR.

Transparency is also key. You can raise children's (and their parents') awareness of data protection risks, consequences, safeguards and rights by:

- telling them what you are doing with their personal data;
- being open about the risks and safeguards involved; and
- letting them know what to do if they are unhappy.

This will also help them make informed decisions about what personal data they wish to share.

Your approach should be privacy by design and by default, taking into account the age of the children whose personal data you will be processing as far as you can. For example, to protect children from unwittingly sharing their data, set privacy settings on Apps to 'not to share', and when activating 'sharing mode' include a clear, child friendly explanation of the increased functionality and its risks.

How important are fairness and the data protection principles?

As with any other processing, fairness and compliance with the data protection principles should lie at the heart of all your processing of children's personal data. The purpose of these principles is to protect the interests of the individuals and this is particularly important where children are concerned. They apply to everything you do with personal data (except where you are entitled to an exemption) and are key to complying with the GDPR. The data protection

principles are set out at Article 5 of the GDPR and explained further in the Guide to the GDPR

What if I'm not sure whether my data subjects are children or not?

This can be an issue, particularly with online or other remote processing. If you aren't sure whether your data subjects are children, or what age range they fall into, then you usually need to adopt a cautious approach. This may mean:

- designing your processing so that it provides sufficient protection for children;
- putting in place proportionate measures to prevent or deter children from providing their personal data;
- taking appropriate actions to enforce any age restrictions you have set; or
- implementing up-front age verification systems.

The choice of solutions may vary depending upon the risks inherent in the processing, the rights and freedoms of the child, and the particular provisions of the GDPR that apply to your processing. You should always think about both the target age range for your processing and the potential for children outside this age range providing their personal data.

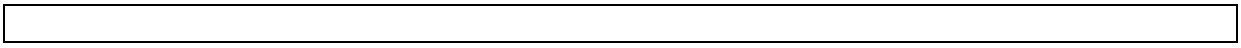
Should I consult with children?

It is good practice to consult with children themselves when you are designing your processing, including diverse groups who can provide a range of feedback. This can help you to identify risks, design safeguards and assess understanding, as well as giving you an opportunity to test your system or product on the end user.

It is also consistent with the UN Convention on the rights of the child which provides at Article 12 that every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously.

Key provisions in the GDPR
See Articles 8, 12(1), 25 and Recitals 38, 58 (external link)

Further reading
UN Convention on the rights of the child (external link)



What do I need to think about when choosing a basis for processing children's personal data?

In brief…

- As with adults, you need to have a lawful basis for processing a child's personal data and you need to decide what that basis is before you start processing.
- You can use any of the lawful bases for processing set out in the GDPR when processing children's personal data. But for some bases there are additional things you need to think about when your data subject is a child.
- If you wish to rely upon consent as your lawful basis for processing, then you need to ensure that the child can understand what they are consenting to, otherwise the consent is not 'informed' and therefore invalid. There are also some additional rules for online consent.
- If you wish to rely upon 'performance of a contract' as your lawful basis for processing, then you must consider the child's competence to agree to the contract and to understand the implications of this processing.
- If you wish to rely upon legitimate interests as your lawful basis for processing you must balance your own (or a third party's) legitimate interests in processing the personal data against the interests and fundamental rights and freedoms of the child. This involves a judgement as to the nature and purpose of the processing and the potential risks it poses to children. It also requires you to take appropriate measures to safeguard against those risks.

In more detail….

Version 1.0 20171221

What are the lawful bases for processing?

Before you start processing the personal data of any individual, you need to consider your basis for processing to help ensure it is lawful. The possible lawful bases for processing are outlined in Article 6 of the GDPR.

For the full list and further explanation on choosing a basis for processing, please see our Guide to the GDPR.

You may rely on any of the bases given in Article 6 as your lawful basis for processing a child's personal data (unless you a public authority in which case you won't usually be able to rely on legitimate interests). However, for some of the bases there are some important additional considerations that you need to take into account when your data subject is a child.

Key provisions in the GDPR
See Articles 6 and 9 (external link)

What if I'm relying on consent?

The GDPR allows you to process personal data on the lawful basis of consent. For further information on this basis for processing please see our Guide to GDPR and our draft GDPR consent guidance.

Article 6(1)(a)

Quote
"the data subject has given consent to the processing of his or her personal data for one or more specific purposes;"

There may be circumstances in which you wish to process a child's personal data using consent as the lawful basis for your processing. You should bear in mind however that consent puts the onus on the child (or their parent) to decide whether the processing is acceptable or not. It may therefore sometimes be more appropriate and provide better protection for the child to consider alternative bases for processing. Although consent is a lawful basis for processing children's personal data, using it does not necessarily guarantee that the processing is fair.

Our draft GDPR consent guidance provides details about the various requirements for valid consent, and you need to meet all of these. In addition, you need to consider the competence of the child and whether they are able to understand the implications of the collection and processing of their personal data. If they do have the relevant understanding then they are considered competent to give their own consent to the processing, unless it is evident that they are acting against their own best interests.

You should also take into account any imbalance in power in your relationship with the child, to ensure that if you accept their consent it is freely given.

Where the child is not competent to understand what they are consenting to, then, in data protection terms, their consent is not 'informed' and it therefore isn't valid. If you wish to rely upon consent in this situation, you need the consent of a person with parental authority over that child.

In England Wales and Northern Ireland there is no set age at which a child is generally considered to be competent to provide their own consent to processing. In Scotland children aged 12 or over are presumed to be of sufficient age and maturity to provide their own consent for data protection purposes, unless the contrary is shown.

However, the GDPR seeks to recognise the difficulties of assessing competence in an online context by allowing Member States to set an age at which children can give their own consent to the processing of their personal data when an ISS (online service) is offered directly to children. The issues surrounding online consent and children are discussed in the next section: 'What are the rules about an ISS (online service) and consent?' (link).

In some offline contexts it may be straightforward to assess the competence of an individual child. However, if you aren't in a position to make an individual assessment then you should at least take into account the age of the child and the complexity of what you are expecting them to understand.

If you accept consent from a holder of parental responsibility over a child then you need to think about how you will get that consent reaffirmed by the child when they become competent to provide their own consent (or in the context of an ISS (online service), reach the age of digital consent). We recommend that you are clear that this needs to happen at the time when you collect consent from the holder of parental responsibility, and that you periodically engage with the child about this too. This should mean that, as the child approaches the age of digital consent or develops their understanding and competence, both parent and child are already aware that the child will need to provide their own consent for the processing to continue.

Key provisions in the GDPR
See Articles 6(1)(a), 7, 8, 9(2)(a) and Recital 38 (external link)

What if I'm relying on 'performance of a contract'?

The GDPR gives you a lawful basis to process personal data when this is necessary to fulfil a contract you have with the data subject. For further information on this basis for processing please see our Guide to the GDPR.

Article 6(1)(b)

Quote
"the processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering a contract;"

When you wish to enter into a contract with a child you must consider their competence to agree to the contract and understand the implications of the associated processing of their personal data.

The legal age of capacity to enter into contracts is 16 in Scotland (with some exceptions). In the rest of the UK there is no definite age at which a child is considered to have the legal capacity to enter into a contract. The basic rule is that children over the age of 7 are generally able to enter into contracts, but (with some exceptions) the contracts they make may be 'voidable'. This means that you can't hold the child to what they have agreed to, or enforce the terms of the contract against them – they can effectively cancel the contract at any time. If the contract is voided then you do not have a lawful basis for processing their personal data.

This applies in all circumstances, including where you are offering an ISS (online service).

This is a complex area of law so if you are considering entering into a contract for the processing of their personal data with a child, we would strongly recommend that you seek your own legal advice about the validity of the contract. This is important as it may affect whether or not you have a lawful basis for processing their personal data. Similarly if you are thinking about allowing a parent to agree to a contract with you on behalf of a child under a power of attorney you should again take legal advice. You should not rely upon this summary as a full explanation of the law.

Key provisions in the GDPR
See Articles 6(1)(b), 8, 9 and Recital 44, 45 (external link)

What if I am relying on 'legitimate interests'?

The GDPR allows controllers (apart from public authorities acting in the performance of their public tasks) to process personal data under the lawful

basis of legitimate interests. For further information on this basis for processing please see our Guide to the GDPR

Article 6(1)(f)

Quote
"the processing is necessary for the purposes of the legitimate interests pursued by the controller or a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child".

Under this basis for processing you need to balance your own (or a third party's) legitimate interests in processing the personal data against the interests and fundamental rights and freedoms of your data subjects. This is sometimes referred to as doing a Legitimate Interests Assessment and the steps you need to go through are considered in more detail in the Guide to the GDPR You need to make some judgements about the nature of the processing and the potential risks it poses and take appropriate measures to safeguard against those risks.

Article 6(1)(f) places particular emphasis on the need to protect the interests and fundamental freedoms of data subjects when they are children. This recognises Recital 38 which says that children require specific protection with regard to their personal data because they may be less aware of the risks and consequences of the processing, the safeguards that could be put in place to guard against these, and the rights they have.

When using 'legitimate interests' as a lawful basis for processing children's personal data, you therefore have a responsibility to protect them from risks that they may not fully appreciate and from consequences that they may not envisage. It is up to you, not the child, to think about these issues and to identify appropriate safeguards. You should be able to demonstrate that you have sufficiently protected the rights and fundamental freedoms of the child and that you have prioritised their interests over your own when this is needed.

Using legitimate interests as your lawful basis for processing a child's personal data puts the onus on you, rather than the child (or adult acting on their behalf), to make sure that their data protection interests are adequately protected. You need to consider what the child might reasonably expect you to do with their personal data, in the context of your relationship with them.

In practice this means that if you intend to process children's personal data you need to design your processing from the outset with the child, and their increased need for protection, in mind. You should take into account the age range of the children that you are designing your processing for when doing this, as this may affect their level of understanding and the amount of

protection that they need. Although there are no defined rules on this, younger children generally need more protection and expect less autonomy than older children. The freedom of children to learn, develop and explore should only be restricted if this is proportionate response to the identified risks. We recommend that you use a data protection impact assessment to help you to assess this. It is also good practice to consult with children as part of your design process as this may be your best method of assessing need and understanding.

Even if you aren't actively seeking to process children's personal data (for example if you are designing a product or service that is aimed at adults not children) you need to think about whether children are able or likely to access the product or service, as if they are you may end up processing children's personal data anyway. In this circumstance you need to consider the data protection risks and either put in place appropriate safeguards to protect against them or take measures appropriate to the risks involved to deter children from providing their personal data.

Similar considerations apply if you design a product for older children, but think that younger children are likely to use it.

Key provisions in the GDPR
See Article 6(1)(f), 12(1), 25, 35 and Recital 38, 78 (external link)

Further reading
Our current DPIA Code of Practice (external link) considers data privacy impact assessments under the DPA. This will be updated to reflect the requirements of the GDPR.

For further information on the existing ePrivacy rules, please see our Guide to PECR.

What if I am relying on another lawful basis for processing?

Article 6 of the GDPR lists other lawful bases for processing personal data. The public task basis is particularly relevant for public authorities which process children's personal data.

Each of these other bases for processing includes a necessity test. The protection of children's data may be a particularly relevant point when considering this test, deciding whether the processing of children's data is targeted and proportionate, and assessing whether the purpose behind the processing can be achieved in a less privacy intrusive way. Controllers need to use their own expertise in the area concerned and apply this to the child specific context. Beyond this however, we think the same basic tests will

apply whether the data subjects are adults or children, and we therefore don't consider them any further here. For further information about all the bases for processing and how to choose the most appropriate one please see our Guide to the GDPR.

What if I'm processing special categories of personal data?

If you are processing 'special categories' of personal data, such as health data, then as well as needing a lawful basis for processing under Article 6 you also need to identify a condition for processing under Article 9 of the GDPR. This is because Article 9 prohibits the processing of this kind of personal data unless specific conditions are met.

The conditions in Article 9 tend to apply in very specific circumstances and many of them include a necessity test. If a necessity test applies then, again, the protection of children's personal data may be a particular consideration when applying this test and controllers need to use their sector specific expertise. Beyond this, we think the same basic tests will apply whether the data subjects are adults or children, and we therefore don't consider them any further here.

Further detail on the conditions for processing special categories of personal data please see our Guide to the GDPR.

What are the rules about an ISS (online service) and consent?

In brief…

- Consent is not the only basis for processing children's personal data in the context of an ISS (online service).
- If you rely upon consent as your lawful basis for processing personal data when offering an ISS (online service) directly to children, in the UK only children aged 13 or over can consent for themselves.
- You therefore need to make reasonable efforts to verify that anyone giving their own consent in this context is old enough to do so.
- For children under this age you need to get consent from whoever holds parental responsibility for them - unless the ISS (online service) you offer is an online preventive or counselling service.
- You must make reasonable efforts (using available technology) to verify that the person giving consent does, in fact, hold parental responsibility for the child.
- You should regularly review the steps you are taking to protect children's personal data and consider whether you are able to implement more effective verification mechanisms when obtaining consent for processing.

In more detail….

What does Article 8 say?

Article 8 of the GDPR applies where you are offering an information society service (ISS (online service)) directly to a child. It does not require you to always get consent for an ISS (online service), but if you choose to rely on consent it sets out further conditions as follows:

Quote
"1. Where point (a) of Article 6(1) applies in relation to the offer of information society services directly to a child the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

Member states may provide by law for a lower age for these purposes provided that such lower age is not below 13 years.

2. The controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

3. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child."

What is the definition of an ISS (online service)?

The basic definition of an ISS (online service) in article 1(1)(b) of Directive (EU) 2015/1535 is:

Quote
"any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

For the purposes of this definition:

(i) 'at a distance' means that the service is provided without the parties being simultaneously present;

(ii) 'by electronic means' means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

(iii) 'at the individual request of a recipient of services' means that the service is provided through the transmission of data on individual request."

It essentially covers most online services, even if the 'remuneration' or funding of the service doesn't come directly from the end user. For example an online gaming app or search engine that is provided free to the end user but funded via advertising still comes within the definition of an ISS (online service).

It includes services for the online sale of goods and on-demand music and video services and downloads, but does not include traditional television or radio transmissions that are provided via general broadcast rather than at the request of an individual.

If you are uncertain whether your service is an ISS (online service) or not then you should take your own legal advice, or refer to the following 'further reading' which provides further detailed clarification.

Further reading
Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council (1) (external link)

2000/31/EC (the Directive on electronic commerce: recital 18)
CJEU Judgement Ker-Optika, Dec 2010 (C-108/09, paragraphs 22 and 28)
CJEU Judgement Uber, May 2017 (C-434/15, paragraphs 30-37).

When is an ISS (online service) 'offered directly to a child'?

An ISS (online service) which explicitly states that it is for children, or has children of any age as its target audience is clearly being offered directly to a child.

The Commissioner also considers an ISS (online service) is offered directly to a child when it is made available to all users without any age restrictions or when any age restrictions in place allow users under the age of 18.

If an ISS (online service) is only made available to users who are aged 18 and over then it is not being offered directly to a child. However, if your ISS (online service) states that it has such an age limit then, in the event of a complaint, the Commissioner may look for evidence that the limit is applied in practice, and not just in theory, when deciding whether Article 8 applies. She may consider evidence such as site content, marketing plans, systems or processes designed to limit access, and information provided to users, in this respect.

This means that you need to carefully consider your target audience, and be clear about what age group you intend to allow to access your ISS (online service). If you decide not to offer your ISS (online service) to children then

you need to consider how to mitigate the risk of them gaining access, using measures that are proportionate to the data protection risks inherent in the processing.

We strongly recommend that you use a data protection impact assessment to help you in this task and to evidence and explain your approach to processing.

When does the UK age limit apply?

Article 8 of the GDPR allows Member States to decide the age at which children can consent to the processing of their personal data in the context of an ISS (online service), at national level.

The UK has set this limit at age 13 and when the Data Protection Bill is finalised it should provide more detail about exactly when the UK age limit will apply.

At the moment we think that regardless of where they are based, ISS (online service) providers that are offering UK versions of their online service, or actively targeting UK children will need to apply the UK age limit to UK children.

Similarly UK based ISS (online service) providers which target wider European markets will need to be aware of and comply with age limits set in other Member States.

In practice this may mean that the child needs to select, or confirm, their main country of residence when they give their personal data to an ISS (online service); so that the ISS (online service) provider knows which age limit to apply.

But if an ISS (online service) provider only intends to provide its service to children in its own country, and any use by children in other countries is not actively sought or pursued, then it won't need to vary its age limit to meet the different Member State requirements.

You should note however that this interpretation may change depending upon the final text of the Data Protection Bill and we cannot be any more definitive at this stage.

What does Article 8 of the GDPR require?

In circumstances where you are offering an ISS (online service) directly to children and you wish to rely upon consent as your lawful basis for processing their personal data, Article 8 of the GDPR (as implemented in the UK) provides that:

- only children aged 13 years and over may lawfully provide their own consent for the processing of their personal data;

- an adult with parental responsibility must provide consent for processing if the child is under 13; and

- in such cases you must make reasonable efforts, taking into consideration available technology, to verify that the person providing parental consent does, in fact, hold parental responsibility for the child.

If your ISS (online service) is an online preventive or counselling service these conditions do not apply and children of any age are able to give their own consent, subject to the considerations for competence and other guidance provided about consent above. In practice it may be more appropriate for you to rely on another basis for processing in this context, particularly if you are a public authority providing the online service as part of your public tasks.

What do I have to do if I offer an ISS (online service) directly to children?

If you offer your ISS (online service) directly to children and wish to rely upon consent as your lawful basis for processing, then you have to make sure that anyone providing their own consent to the processing of their personal data is old enough to do so. Although the GDPR does not contain an explicit 'age of consent' verification requirement, this is the implication of Article 8. If you do not verify this then you may process a child's personal data without valid consent. You should not have to verify the exact age of the data subject in this context: you only need to establish that they are old enough to provide their own consent.

As there is no 'reasonable efforts' qualification to obtaining valid consent, it remains a matter of fact whether you have obtained the lawful consent of someone who is able to give it for themselves or not. However, in practice, in the event of a complaint, the Commissioner will consider whether you have made reasonable efforts to verify that the data subject is old enough to provide their own consent, taking into account the risks inherent in the processing and the available technology.

The GDPR also explicitly requires you to make reasonable efforts, taking into consideration the available technology, to verify that any person giving consent on behalf of a child who is too young to provide their own consent, does in fact hold parental responsibility over the child.

A data protection impact assessment should help you to decide what steps you need to take to verify age and parental responsibility. It may also help you to evidence that they are reasonable in the event of a complaint to the Commissioner.

Key provisions in the GDPR

See Article 8 (external link)
Further reading Article 29 Working Party Guidelines on consent under Regulation 2016/679, WP258 (external link)

What does 'reasonable efforts' mean?

This varies depending upon the risks inherent in the processing and the technology that is available.

For example, you may wish to request an email address for a child who wants to subscribe to a band's e-newsletter via a website. As long as you are only going to use the email to send the requested e-newsletter, you may consider that the risks involved in collecting this personal data are at the lower end of the spectrum. A reasonable effort in this circumstance might therefore entail simply asking for a declaration that the user is old enough to provide their own consent, or a declaration of parental consent and responsibility, via a tick box or email confirmation. You may consider that further checks are not reasonable (or indeed practical) and that these steps are sufficient given the low risk to the child of the proposed processing.

However, if your ISS (online service) allows individuals to post personal data via an unmonitored chat room, it becomes more risky to allow a child to participate. You therefore need to adopt more stringent means to verify the consent you've obtained. For example, you may decide to use a third party verification service - to verify that the child is old enough to provide their own consent, or to check the identity of the person claiming parental responsibility and confirm the relationship between them and the child.

The implied need to age-verify raises the issue of how you can do this remotely and in a privacy friendly way with the minimum need for collection of 'hard identifiers' such as passport scans or credit card details. Collecting such information is unlikely to comply with the data protection by design approach in the GDPR. There is also the additional challenge that in the UK 13-17 year olds are likely to have a more limited range of identity documents available to them than adults.

The Commissioner recognises that your ability to undertake age verification in order to manage consent for online processing may be dependent upon the availability of suitable technologies and age verification mechanisms in the marketplace.

You should be wary of mechanisms which involve detailed collection and retention of any individual's personal data as this raises further data protection concerns. It is preferable to use 'attribute' systems which offer a yes/no response when asked if an individual is over a given age, or if this person holds parental responsibility over the child.

If you do collect personal data for the purposes of satisfying Article 8 then you need to make sure that you process it in accordance with all the requirements of the GDPR. This includes:

- minimising the data that is collected;
- not retaining it beyond the time that it is needed; and
- adequately protecting it.

At present in the UK it may not be easy in such online circumstances for all groups of adults to prove they actually hold parental responsibility for a child. For example parental responsibility for 'looked after' children is decided by the family courts and may be officially held by a corporate body but delegated for day-to-day purposes to the person providing the care. It may therefore, be reasonable instead to accept a verification which relies upon a declaration or statement of relationship from a verified adult.

How reasonable this approach is considered to be will depend on the availability of verification services in the marketplace and the ease of using them. The Commissioner believes that there are suitable technologies in the marketplace but she is not in a position to provide recommended services at the present time. Longer term the option of formally certified age verification services under the GDPR may be possible. We envisage that verification will become easier over time as the technology becomes available. The 'reasonable efforts' expected will therefore change as the marketplace develops but your approach should remain the same: evaluate the risk and in the light of those risks make reasonable efforts to verify that you have valid consent.

Key provisions in the GDPR
See Articles 6(1)(a), 7, 8, 12(1) and Recitals 38, 58 (external link)

What if I want to market Children?

In brief...

- Children merit specific protection when you are using their personal data for marketing purposes. You should not exploit any lack of understanding or vulnerability.
- They have the same right as adults to object to you processing their personal data for direct marketing. So you must stop doing this if a child (or someone acting on their behalf) asks you to do so.
- If you wish to send electronic marketing messages to children then you also need to comply with the Privacy and Electronic Communications Regulations 2003.

In more detail....

Can I use children's personal data for the purposes of marketing? (link)
What should I consider if I want to use a child's personal data for the purposes of marketing? (link)

Can I use children's personal data for the purposes of marketing?

The GDPR states that children's personal data merits specific protection, which should in particular apply to the use of their data for marketing purposes or creating personality or user profiles.

You are not necessarily prevented from using children's personal data for marketing purposes, but you need to make sure that you meet all the requirements of the GDPR. For example, you need to ensure the processing is fair and complies with all the data protection principles. You need to have a lawful basis for processing and must explain what you are doing with their personal data in a way that they can understand. In all circumstances you need to ensure the child is specifically protected when their personal data is processed for these purposes. You should not exploit any lack of understanding or vulnerability.

Children have the same right as adults to object to the processing of their personal data for direct marketing purposes. So, if they ask you to stop processing their personal data for this purpose you need to stop doing so. You also need to tell them about their right to object, either the first time that you send them a direct marketing message, or before you send this first message.

Version 1.0 20171221

If you intend to use profiling or behavioural advertising to market children then you should also read the section of our guidance What if I want to profile children or make automated decisions about them? .

If you intend to send electronic marketing messages to children then you need to comply with the Privacy and Electronic Communications Regulations 2003 and you should read our Guide to PECR. In many circumstances under PECR you need to ask for consent for direct marketing. You should note that the Directive from which these regulations are derived is currently under review and the rules may be subject to change.

What should I consider if I want to use a child's personal data for marketing purposes?

Recital 38 says that children merit specific protection when their personal data is used for the purposes of marketing because they may be less aware of the risks, consequences and safeguards concerned.

If a child gives you their personal data, such as an email address, or information about their hobbies or interests, then they may not realise that you will use it to market them, and they may not even understand what marketing is and how it works. This may lead to them receiving marketing that they do not want. If they are also unable to critically assess the content of the marketing then their lack of awareness of the consequences of providing their personal data may make them vulnerable in more significant ways. For example, they may be influenced to make unhealthy food choices, or to spend money on goods that they have no use for or cannot afford.

So, if you wish to use a child's personal data for marketing you need to think about if and how you can mitigate these risks.

Advertising standards stipulate that marketing targeted directly at or featuring children should not contain anything that is likely to result in their physical, mental or moral harm. For example, adverts must not exploit their credulity, loyalty, vulnerability or lack of experience. They must not condone or encourage poor nutritional habits or an unhealthy lifestyle in children.

It is good practice to consider sector specific guidance on marketing, such as from the Advertising Standards Authority, to make sure that you do not use children's personal data in a way that might lead to their exploitation.

Key provisions in the GDPR
See Articles 6, 12(1), 21 and Recitals 38, 58 (external link)

Further reading
For more general information on advertising regulation visit the websites of

CAP and ASA (www.asa.org.uk).

Further reading
For further information on the existing ePrivacy rules, please see our Guide to PECR.

Our Direct marketing guidance should also remain useful, and will be updated to reference the new requirements of the GDPR.

What if I want to profile children or make automated decisions about them?

In brief…

- In most circumstances you should not make decisions about children that are based solely on automated processing, (including profiling) if these have a legal effect on the child, or similarly significantly affect them.
- The GDPR gives children the right not to be subject to this type of decision. Although there are exceptions to this right, they only apply if suitable measures are in place to protect the rights, freedoms and legitimate interests of the child.
- If you profile children then you must provide them with clear information about what you are doing with their personal data. You should not exploit any lack of understanding or vulnerability.
- You should generally avoid profiling children for marketing purposes. You must respect a child's absolute right to object to profiling that is related to direct marketing, and stop doing this if they ask you to.
- It is possible for behavioural advertising to 'similarly significantly affect' a child. It depends on the nature of the choices and behaviour it seeks to influence.

In more detail….

What does the GDPR say about solely automated decision making, profiling, and children?

Article 22 of the GDPR makes no specific reference to children which means that the same basic rules apply to them as to adults. These are considered in detail in our request for feedback on profiling and automated decision making paper.

Version 1.0 20171221

They have the right not to be subject to decisions based solely on the automated processing of their personal data (including profiling) where those decisions have a legal or similarly significant effect upon them, unless one of the following exceptions apply. The decision:

- is necessary for the performance of a contract between data subject and controller, and the controller has put in place suitable measures to safeguard the data subjects rights, freedoms and legitimate interests;

- is authorised by Union or member state law which includes suitable measures to safeguard the data subject rights, freedoms and legitimate interests;

- is based on the data subjects explicit consent, and the controller has put in place suitable measures to safeguard the data subjects rights, freedoms and legitimate interests.

If the controller has to put suitable measures in place to safeguard the rights of data subjects, then these must include at least:

- the right to obtain human intervention on the part of the controller; and

- the right for the data subject to express his or her point of view and to contest the decision

If the decision involves the processing of special categories of personal data then the exceptions that can be relied upon to justify the processing are more limited, and the processing can only take place if:

- The decision is based on the data subject's explicit consent and suitable measures to safeguard the data subjects rights, freedoms and legitimate interests are in place; or

- The processing is necessary for reasons of substantial public interest, on the basis of Union or member state law, and suitable measures to safeguard the data subjects rights, freedoms and legitimate interests are in place.

Key provisions in the GDPR
See Articles 22 and 9(2)(a) and (g)

However, Recital 71 says that "*such measure"* (solely automated decision-making, including profiling, with legal or similarly significant effects)"*should not concern a child"*. Although this wording is not reflected in the Articles of the GDPR itself, and so cannot be taken to represent an absolute prohibition on this type of processing in relation to children, it does give a clear indication that such processing of children's personal data should not be the norm.

The need for particular protection for children in this context is also reflected in Recital 38, which says:

Quote
"Children merit 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. Such specific protection should, in particular, apply to 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."

Article 21 also gives data subjects, including children, an absolute right to object to profiling that is related to direct marketing.

What is profiling?

Profiling is defined in Article 4(4) of the GDPR as follows:

Quote
" 'profiling' means any form of automated processing of personal data consisting of the use of person data to evaluate certain aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour location or movements;"

Not all decisions based solely on automated processing qualify as profiling, and not all profiling qualify as a solely automated decision for the purposes of Article 22, although there is considerable overlap.

For further discussion of this please see our request for feedback on profiling and automated decision making paper.

Can a child be subject to profiling?

The rules in Article 22 of the GDPR relate to solely automated decisions (which can include profiling) rather than to the process of profiling in itself. This means that profiling that isn't used to make decisions about particular individuals, or profiling that feeds into a wider decision making process with a human element, isn't covered by the Article 22 rules. Neither are solely automated decisions (including profiling) which don't have a legal or similarly significant effect on the data subject.

If Article 22 doesn't apply then, as long as you make sure that you give specific protection to the child in accordance with Recital 38, the GDPR does not prevent you from profiling children. However, you still need to meet all

the other requirements of the GDPR, such as processing fairly, having a lawful basis for processing and providing a privacy notice which the child can understand. You should be clear about what you are doing and why and not exploit any lack of understanding or vulnerability on the part of the child.

If Article 22 does apply, then you are not prohibited from profiling children but you should pay careful attention to Recital 71 and to the Article 29 Data Protection Working Party Guidelines on Automated Individual decision-making and Profiling for the purposes of Regulation 2016/679 which says that 'where possible controllers should not rely upon the exceptions in 22(2) to justify [solely automated decision making about children, with legal or similarly significant effect]'

If you do rely upon one of the exceptions in Article 22 to justify such processing you need to demonstrate that there are suitable measures in place to properly protect the interests of the children whose personal data you are processing. In accordance with Article 22(2) if you are responsible for implementing these measures (rather than them being laid down by Union or member state law) they must include at least giving children the right to obtain human intervention, and the right to give their own view and contest a decision. Depending on the circumstances you may need to do more than this. In any case you need to make the processes by which children exercise their Article 22(2) rights child friendly and easy for them to access, use and understand. And again, you still need to comply with all the other requirements of the GDPR.

You also need to tell the child that you intend to use their personal data to make automated decisions about them and explain to them, in language they can understand, the logic involved in the decision making and the significance and envisaged consequences of the processing. This is a requirement under both Articles 13 and 14 of the GDPR

If you are considering profiling children for marketing purposes then you should take into account the following comments from the Article 29 Data Protection Working Party Guidelines on Automated Individual decision-making and Profiling for the purposes of Regulation 2016/679 that 'Because children represent a more vulnerable group of society, organisations should, in general, refrain from profiling them for marketing purposes. Children can be particularly susceptible in the online environment and more easily influenced by behavioural advertising. For example, in online gaming, profiling can be used to target players that the algorithm considers are more likely to spend money on the game as well as providing more personalised adverts. The age and maturity of the child may affect their ability to understand the motivation behind this type of marketing or the consequences.'

You should also note that the child's right to object to your processing their personal data for the purposes of direct marketing extends to any profiling

that is related to that direct marketing. So if the child (or someone acting on their behalf) asks you to stop profiling for this purpose, then you must do so.

Key provisions in the GDPR
See Article 6(1)(a), 6(1)(f), 8, 12(1), 22, 23 and Recital 71, 75 (external link)

What does 'produce legal effects' and 'or similarly significantly affects' mean?

This is discussed in more detail in our request for feedback on profiling and automated decision making paper.

A legal effect on a child is something that has an impact on their fundamental legal rights and freedoms, or affects their legal status in some way.

A decision which 'similarly significantly affects' a child therefore needs to have an impact on them that is equal or equivalent to affecting their fundamental legal rights and freedoms or legal status.

Decisions based upon solely automated processing of personal data are sometime used with the aim of influencing a data subject's future choices and behaviours. For example, in the context of behavioural advertising, a profile of past browsing habits may be used to automatically display certain products to particular individuals, with the aim of influencing them to buy those products. This can be a particular issue where children are concerned because they may be more easily influenced, and less able to understand the motivation behind such processing. An EU study on the impact of marketing through social media, online games and mobile applications on children's behaviour found that marketing practices have clear and sometimes subliminal impacts on children's behaviour.

Whilst not every choice a child makes in response to such processing has a 'similarly significant' effect on them, some may. For example, solely automated processing of a child's personal data that influences a child to make poor food choices, to the detriment of their physical health, could be said to affect them in a way that is 'similarly significant' to a legal effect.

If you wish to make decisions based upon the solely automated processing of children's personal data, with the intention of influencing their choices or behaviour, you therefore need to consider what impact those choices or behaviours may have upon the child, and decide whether this amounts to a similarly significant effect. If it does reach this bar then Article 22 will apply and, in line with Recital 71 and the opinion of the Article 29 Data Protection Working Party, we would advise you to think very carefully before you proceed with the processing, and if you do go ahead, then make sure it can be justified under one of the exceptions.

Wider evidence may help you in assessing the impact of your processing. For example CAP has rules banning the advertising of high fat, salt or sugar (HFSS) food or drink products in children's media, because of its likely effect on children's health. The rules, which apply to media targeted at under-16s, came into effect on 1 July 2017. The ban applies in traditional and online children's media, from magazines and cinema to social media and advergames.

In general, if advertising standards prohibit or limit the marketing of certain types of products to children, this should give you a good indication that influencing a child's choices in this area could potentially have a similarly significant effect on them. And even if the 'similarly significant effect' bar is not met, you should remember that the Article 29 Data Protection Working Party recommends that you should avoid profiling children for the purposes of marketing.

Key provisions in the GDPR
See Article 6(1)(a), 6(1)(f), 22 and Recital 38, 71, 75 (external link)

Further reading
For further information on profiling please the Article 29 Data Protection Working Party Guidelines on Automated Individual decision-making and Profiling for the purposes of Regulation 2016/679

How does the right to be informed apply to children?

In brief...

- You must provide children with the same information about what you do with their personal data as you give adults. It is good practice to also explain the risks inherent in the processing and the safeguards you have put in place.
- You should write in a concise, clear and plain style for any information you are directing to children. It should be age-appropriate and presented in a way that appeals to a young audience.
- If you are relying upon parental consent as your lawful basis for processing it is good practice to provide separate privacy notices aimed at both the child and the responsible adult.
- If you provide an ISS (online service) and children younger than your target age range are likely to try and access it then it is good practice to explain any age limit to them in language they can understand.

In more detail....

What information should I give to children? (link)
How should I provide privacy information? (link)

What information should I give to children?

You must provide children with the same information about what you do with their personal data as you would give to adults. In order for processing to be fair, there is the same need for transparency, as this gives an individual control and choice.

A full list of the information you must provide, which varies depending upon whether the personal data has been provided by the individual themselves or a third party, is given in our Guide to the GDPR.

As one of the reasons why children require specific protection is that they may be less aware of the risks of the processing, it is also good practice, to explain the risks involved in the processing, and any safeguards you have put in place. This will help children (and their parents) understand the implications of sharing their data with you and others, so they can take informed and appropriates actions to protect themselves.

Version 1.0 20171221

You should make your privacy notice clear and accessible and aim to educate the child about the need to protect their personal data.

Key provisions in the GDPR
See Articles 12, 13, 14 and Recital 58, 60 (external link)

Further reading – ICO guidance
Privacy Notices, Transparency and Control (external link)

How should I provide privacy information?

You should write in a concise, clear and plain style for any information you are directing to children in a privacy notice.

It should be child-appropriate and, as far as possible addressed directly to the relevant age group. For example, you should make a distinction between addressing a 10 year-old and addressing a 16 year-old child. If your target audience covers a wide age range, consider providing different versions of your notice.

If you are relying upon parental consent as your lawful basis for processing, then it is good practice to provide both a child-friendly and adult-friendly version of the privacy notice. This will give the consenting parent the information they need, and also help to inform and educate young children for the future and enable them to exercise their rights on their own behalf, should they wish to.

You should present your privacy notice in a way that is appealing to a young audience. You should consider using diagrams, cartoons, graphics and videos that will attract and interest them. In an online context, you should consider the use of dashboards, layers, just-in-time notices, icons and symbols.

In circumstances where you are directing an ISS (online service) at a particular age group, but are aware that children under your target age may wish to access your service, it is good practice to ensure that the younger child is made fully aware of the age limit of the site in language which is accessible and which they can understand. User testing may help you to assess this.

Key provisions in the GDPR
See Article 12(1) and Recital 58, 60 (external link)

Further reading
ICO guidance - Privacy Notices, Transparency and control (external link)

The UK Council for Child Internet Safety (UKCCIS) has produced guidance and collated examples of good practice with respect to online fair processing information provided to children. This can be found at:

Child Safety Online: A practical guide for providers of social media and interactive services 2015 (external link)

The Children's Commissioner has published guidance on providing simplified terms and conditions for children

What rights do children have?

In brief...

- Children have the same rights as adults over their personal data.
- They can exercise their own rights as long as they are competent to do so.
- Where a child is not considered to be competent, an adult with parental responsibility may exercise the child's data protection rights on their behalf.

In more detail....

What rights do children have?

Children have the same rights as adults over their personal data. These are set out in Chapter III and VIII of the GDPR and are also listed below. For more detailed information about how these rights apply to all data subjects, please refer to our Guide to the GDPR. Where these provisions raise child specific issues these are covered below or elsewhere in our pages on Children and the GDPR.

All data subjects, including children have the right to:

- be provided with a transparent and clear privacy notice which explains who you are and how their data will be processed. See 'How does the right to be informed apply to children?' (link);
- be given a copy of their personal data;
- have inaccurate personal data rectified and incomplete data completed;
- exercise the right to be forgotten and have personal data erased. See How does the right to erasure apply to children? (link) ;
- restrict the processing in specified circumstances;

- data portability;
- object to processing carried out under the lawful bases of public task or legitimate interests, and for the purposes of direct marketing. See What if I want to market children? (link)
- not be subject to automated individual decision-making, including profiling which produces legal effects concerning him or her or similarly affects him or her; See What if I want to make automated decisions (including profiling) about children? (link)
- complain to the ICO or another supervisory authority;
- appeal against a decision of a supervisory authority;
- bring legal proceedings against a controller or processor; and
- claim compensation from a controller or processor for any damage suffered as a result of their non-compliance with the GDPR.

Key provisions in the GDPR
See Articles 7(3), 13-22, 34, 77-79, 82 and Recitals 38, 58, 65, 75 (external link)

When may a child exercise these rights on their own behalf?

A child may exercise the above rights on their own behalf as long as they are competent to do so. In Scotland, a person aged 12 or over is presumed to be of sufficient age and maturity to be able to exercise their data protection rights, unless the contrary is shown. This presumption does not apply in England and Wales or in Northern Ireland, where competence is assessed depending upon the level of understanding of the child, but it does indicate an approach that will be reasonable in many cases. A child should not be considered to be competent if it is evident that he or she is acting against their own best interests.

If you have already decided that a child is competent to provide their own consent then it will usually be reasonable to assume they are also competent to exercise their own data protection rights.

If a child is competent then, just like an adult, they may authorise someone else to act on their behalf. This could be a parent, another adult, or a representative such as a child advocacy service, charity or solicitor.

When may a parent exercise these rights on behalf of their child?

Even if a child is too young to understand the implications of their rights,

they are still the rights of the child, rather than of anyone else such as a parent or guardian.

You should therefore only allow parents to exercise these rights on behalf of a child if the child authorises them to do so, when the child does not have sufficient understanding to exercise the rights him or herself, or when it is evident that it is not in the best interests of the child to respond to the child instead of the parent.

This applies in all circumstances, including in an online context where the original consent for processing was given by the person with parental responsibility rather than the child.

How does this work in practice?

An adult with parental responsibility may ask you for a copy of the personal data of their child, or attempt to exercise one of the child's other rights on their behalf.

If you are satisfied that the child is not competent, and that the person who has approached you holds parental responsibility for the child, then you may respond directly to the adult.

If you are confident that the child can understand their rights, then you should usually respond directly to the child. You may, however, allow the parent to exercise the child's rights on their behalf if the child authorises this, or if it is evident that this is in the best interests of the child

What matters is whether the child is able to understand and deal with the implications of exercising their rights. So for example, does the child understand what it means to request a copy of their data and how to interpret the information they receive as a result of doing so? When considering borderline cases, you should take into account, among other things:

- where possible, the child's level of maturity and their ability to make decisions like this;
- the nature of the personal data;
- any court orders relating to parental access or responsibility that may apply;
- any duty of confidence owed to the child or young person;
- any consequences of allowing those with parental responsibility access to exercise the child's rights . This is particularly important if there have been allegations of abuse or ill treatment;

- any detriment to the child or young person if individuals with parental responsibility cannot access this information; and

- any views the child or young person has on whether their parents should have access to information about them.

Key provisions in the GDPR
See Article 8 and Recital 38 (external link)

How does the right to erasure apply to children?

In brief…

- Children have the same right to have their personal data erased as adults.
- This right is particularly relevant when an individual originally gave their consent to processing when they were a child, without being fully aware of the risks.
- One of the specified circumstances in which the right to erasure applies is when you collected the personal data of a child under the lawful basis of consent, when offering an ISS (online service) directly to a child.
- It should generally be as easy for a child to exercise their right to erasure as it was for them to provide their personal data in the first place.

In detail……

What is the right to erasure?

Article 17 of the GDPR gives both adults and children the right to have their personal data erased in some specified circumstances where, although the original collection and processing may have been compliant with the GDPR, continuing to hold their personal data against their wishes is not. It is sometimes known as the 'right to be forgotten'. The right is overridden if certain compelling reasons to retain the personal data apply, despite the individual's objections. For further detail of the circumstances in which it applies and the reasons for which it can be overridden please see our Guide to the GDPR.

What does the GDPR say about the right to erasure and children?

Recital 65 of the GDPR says that the right to erasure:

Quote
"…is relevant in particular where the data subject has given his or her

consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet. The data subject should be able to exercise that right notwithstanding the fact that he or she is no longer a child….”

This is consistent with the general principle at Recital 38 that children merit specific protection because they may be less aware of the risks and consequences of processing their personal data, and applies regardless of whether the consent was originally given in an online or offline context.

In addition, Article 17(1)(f) provides that one of the specific circumstances in which the right to erasure applies is when:

Article 17(1)(f)

Quote
“the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).”

Further guidance on the child specific Article 8(1) provisions is given in What are the rules about ISS (online service) and consent?

What does this mean in practice?

If an individual wants you to erase personal data that they provided when they were a child, then you should comply with their wishes whenever you can. Especially if it seems likely that they gave their personal data without fully understanding the implications of doing so.

The GDPR seeks to provide a greater degree of control over their personal data for individuals and the right to erasure is part of this.

However, the right to erasure is not an absolute right, and it can be overridden in certain circumstances, including where it is necessary for exercising the right of freedom of expression and information. When considering whether the right to erasure should be overridden in this case, you should take into account that freedom of expression is itself a qualified right. It may be restricted if this is necessary for the protection of the rights of others. So effectively you need to balance the right to freedom of expression against the need to protect the rights of others.

In a situation where a data subject provided their data when they were a child, without fully understanding the implications of doing so, there will generally be an increased expectation of what may be considered ‘necessary’ to protect the rights of the child. So the right to erasure is more likely to prevail in this

circumstance then if data was provided by an adult. This will have to be decided on a case by case basis.

There are further circumstances in which the right to erasure can be restricted. However, we do not consider these any further here as we do not think they raise any particular, child specific issues. See our Guide to the GDPR for further detail on all the circumstances in which the right to erasure does not apply.

You need to make sure that your processes for exercising the right of erasure are easy for a child to access and understand. Article 7(3) of the GDPR says that it 'shall be as easy to withdraw consent as it is to give it'. We consider that, as a matter of good practice, this general principle should also apply to any processes related to the right to erasure. So as far as possible, it should be as easy for a child to get their personal data erased as it was for them to provide it in the first place. For example, if you started processing without asking the child to provide original identity documents then it is usually disproportionate to make this a condition of erasure.

In an online context dashboards and take-down tools should be available to allow children and other users to easily delete or remove personal data. Many social media services already have these services for some information posted online.

The right to erasure does not necessarily have to be exercised by the same person as provided the original consent. If consent was originally provided by a holder of parental responsibility this does not mean that they will also have to request the erasure. If the data subject is no longer a child, or if they are now competent to exercise their rights on their own behalf then you should usually accept their request for erasure without needing to involve the parent (or holder of parental responsibility).

Similarly, if a child is competent to provide their own consent to processing and to exercise their own data protection rights you should not accept a request to erase personal data from a holder of parental responsibility without taking the wishes of the child into account.

In cases where there is a dispute between a child and their parent about whether personal data should be erased or not, or where a child wishes to have personal data erased without their parent's knowledge, then you need to consider the level of understanding of the child and also what is in their best interests. This needs to be done on a case by case basis.

Key provisions in the GDPR
See Article 17 and Recital 65 (external link)

Key provisions in the GDPR
Further reading

The ICO has published the Delisting criteria it uses under the 1998 Act when it receives requests for personal data that has been posted online to be delisted. These were jointly agreed by the ICO and other European data protection authorities.