**RESPONSE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND TO THE CALL BY THE COMMITTEE ON THE RIGHTS OF THE CHILD FOR**

**CONTRIBUTIONS IN ADVANCE OF THE DRAFTING OF A GENERAL COMMENT ON**

**CHILDREN’S RIGHTS IN RELATION TO THE DIGITAL ENVIRONMENT**

The United Kingdom thanks the Committee on the Rights of the Child (“the Committee”) for the opportunity to provide evidence ahead of the drafting of a General Comment on children’s rights in relation to the digital environment. The UK considers that its laws and policies are among the best in this field: below we set out examples of law and policy that we believe to be particularly pertinent to the proposed General Comment.

**1. General Approach**

While it is states that bear the responsibility for promoting and protecting human rights and fundamental freedoms, the UK Government believes that the interpretation and implementation of the United Nations Convention on the Rights of the Child (UNCRC) in the digital age should align with the multi-stakeholder internet governance framework. All stakeholders have important roles to play in maintaining a free, open and secure internet, ensuring that children can benefit from digital opportunities, and protecting them from online harms. Multi-stakeholder collaboration is essential if we are to protect children effectively. The Internet Watch Foundation and the We Protect Global Alliance are good examples of this. Stakeholders, including governments, should pursue cooperation that fosters openness and transparency, creates greater trust, confidence and safety online, while respecting human rights and fundamental freedoms. This should be implemented through processes and mechanisms that are based on multi-stakeholder engagement and collaboration. Children’s views and experiences should also be expressed and taken into account by consulting children and including stakeholders that engage with children.

In taking the General Comment forward, it will be important that the Committee has regard to the particular issues that the digital environment presents to children with disabilities. It should have regard to not just the negative issues (such as discrimination or risk of exploitation), but also the significantly positive ones (for example empowering children in being heard, opportunities for building positive relationships, opportunities for positive role models and images).

**2. Relevant Regional Law and Practice**

2.1 Council of Europe Guidelines

The Council of Europe has published comprehensive guidelines on the rights of the child in the digital environment, which would provide an excellent basis for the Committee in drafting the General Comment. That document is available here: <https://rm.coe.int/guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a>.

2.2 European Union Law

The European Union’s General Data Protection Regulation (GDPR) provides particular protection for children’s personal data. The GDPR states that:

“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.”

2.2.1 The age at which a child is able to give their consent for the processing of their own personal data by information society services

The GDPR allows EU member states to set the threshold for the minimum age at which a child can consent to data processing to any age between 13 years and 16 years. The UK Government set the minimum age to 13 years.

Rather than restricting children’s access to information services, a better approach is to educate children to keep them safe online and to build a shared responsibility between internet services providers, app makers, social media providers and others to make the internet safer. We recommend that the General Comment also reflect this view.

Research shows that while there are risks for children online, there are also benefits for children from using online technologies, such as greater opportunities for socialisation and communication. This is something that we would like to be kept in mind when drafting the General Comment. These activities can lead to improved self-esteem, perceived social support and increased social capital. By setting the age of consent at 13, more children can express their opinions online, as supported by Articles 13 and 17 of the UNCRC. Examples of evidence considered during the development of the UK’s Data Protection Act 2018 (“the DPA 2018”) can be found here:

* <https://pure.qub.ac.uk/portal/files/120352496/Final_Online_Communication_Social_Media_and_Adolescent_Wellbeing.pdf>
* <http://blogs.lse.ac.uk/mediapolicyproject/2015/12/18/no-more-social-networking-for-young-teens/>

2.2.2 Requirements on business and organisations to make privacy notices accessible to children

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.

In order to allow children to understand the implications of sharing their personal data and to exercise their own data protection rights, the GDPR stipulated that clear, accessible, privacy notices should be designed specifically for children. Children should understand why the requested personal data is required, what it will be used for, and the risks involved. Such business practices support the realisation of children's rights.

The UK Information Commissioner provides further guidance and good practice to controllers and processors on child friendly ways of presenting privacy information, such as: diagrams, cartoons, graphics and videos, dashboards, layered and just-in-time notices, icons and symbols. They must explain to children, in a way that they can understand, why the personal data asked for is required and what it will be used for, as well as the risks involved, so that children understand the implications of sharing their personal data. The Information Commissioner’s guidance can be found here: <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/children/>.

2.2.3 The right to be forgotten and the child

The GDPR and the UK Information Commissioner make it clear that if an individual wants personal data that they provided to an organisation when they were a child to be erased, then the organisation should comply with their wishes, subject to certain exemptions. As children are less likely than adults to understand the implications of providing their data to an organisation, this right to be forgotten is more likely to prevail than in circumstances where data is provided by adults.

That being said, the further retention of the personal data is lawful under the GDPR where it is necessary for exercising the right of freedom of expression, for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims. We believe this issue of erasure of personal data should be considered when drafting the General Comment.

2.2.4 Statutory code of practice on age-appropriate design

The DPA 2018 requires the UK Information Commissioner to produce a statutory code of practice on age-appropriate design, after consulting children, parents, persons who represent the interests of children, child development experts and trade associations. This allows for children’s views and experiences to be expressed and taken into account, as well as the views of parents and other caregivers, and we believe that consideration of this type of code could also be of use when drafting the General Comment.

The age-appropriate design code will require companies to anticipate the presence of children and meet their development needs in the area of data protection and sets out the requirements online service providers must meet to make their services suitable for children. The code will provide practical guidance on how to design data protection safeguards into online services to ensure they are appropriate for use by, and meet the development needs of, children while making clear what data is being collected on children, how this data is being used, and how both children and parents can stay in control of this data.

The code will incorporate the key principle of the UNCRC that the best interests of the child should be a primary consideration in all actions concerning children. It also aims to respect the rights and duties of parents, and the child’s evolving capacity to make their own choices.

In particular, the code will aim to ensure that online services use children’s data in ways that support the rights of the child to freedom of expression; freedom of thought, conscience and religion; freedom of association; privacy; and protection from economic, sexual and other forms of exploitation.

Parents or guardians play a key role in protecting their children and deciding what is in their best interests, but in the context of online services parents and children may find it difficult to make informed choices or exercise any control over the way those services use children’s data.

The code will therefore expect providers of those services to take responsibility for ensuring that their services are appropriate to the child’s age, take account of their best interests, and respect their rights, as well as supporting parents or older children in making more informed choices (where appropriate).

2.2.5 Representation of data subjects

The DPA 2018 places a duty on the UK Government to review the operation of provisions for representation of data subjects in the exercise of their rights to lodge a complaint with the Information Commissioner, their right to judicial remedy against the Information Commissioner, controller or processor, and a right to compensation and liability. When undertaking this review, the Government must consider the merits of making provisions for a children’s rights organisation to exercise some or all of these rights on behalf of a child, with or without being authorised to do so by the child, as well as taking into consideration: the particular needs of children separately from the needs of adults; the fact that children have different needs at different stages of development; any challenges that children face in authorising, and deciding whether to authorise, other persons to act as their representative; and the support and advice available to children in connection with the exercise of these rights.

Before preparing the report the Government must consult various stakeholders including children and parents, children’s rights organisations and other persons who appear to the Secretary of State to represent the interests of children, and child development experts.

Given the benefits outlined above, we would recommend that the terms of the General Comment reflect the EU GDPR and the DPA 2018.

**3. Protection of children from online harms**

The Online Harms White Paper (https://www.gov.uk/government/consultations/online-harms-white-paper) sets out our plans to make the UK the safest place in the world to be online. This will make companies more responsible for their users’ safety online, especially children and other vulnerable groups.

We will achieve this by establishing in law a new duty of care on companies towards their users, overseen by an independent regulator. This regulator will set clear safety standards, backed up by mandatory reporting requirements and effective enforcement powers. Companies will be required to account for how they tackle a comprehensive set of online harms. These range from illegal activity and content to behaviours that may not be illegal but are nonetheless highly damaging to individuals and society. Companies will be required to take particularly robust action to tackle terrorist content and online child sexual exploitation and abuse. The regulator will set out how to do this in codes of practice.

Relevant terms and conditions will also be required to be sufficiently clear and accessible, including to children and other vulnerable users. The regulator will assess how effectively these terms are enforced as part of any regulatory action. Where necessary, to establish that companies are adequately fulfilling the duty of care, the regulator will have the power to request explanations about the way algorithms operate. The regulator may, for example, require companies to demonstrate how algorithms select content for children, and to provide the means for testing the operation of these algorithms.

The Government will also develop a new online media literacy strategy. This will be developed in broad consultation with stakeholders, including major digital, broadcast and news media organisations, the education sector, researchers and civil society. This strategy will ensure a coordinated and strategic approach to online media literacy education and awareness for children, young people and adults.

The Information Commissioner has developed a campaign to enable the public to better understand their data protection rights called ‘Your Data Matters’: https://ico.org.uk/your-data-matters/. The Information Commissioner has also produced teaching materials to support and empower children to understand their data rights.

The UK Council for Internet Safety - a new collaborative forum across government, the technology community and civil society - will also be delivering a range of measures to support children’s online safety including:

* creating updated guidance to schools on sexting, and evaluation of online safety provision, and for Initial Teacher Training providers to help them upskill new teachers in online safety;
* promoting the Connected World framework, which describes the digital knowledge and skills that children should have the opportunity to develop at different stages of their lives; and
* developing a digital resilience framework and toolkit to help families, educators, policymakers, frontline service workers and the industry better support users online, across a wide range of harms.

The Government will also be taking steps to tackle children accessing inappropriate content including:

* the introduction from 15 July 2019 of age verification requirements for all commercial online pornography sites, to prevent access by children and young people under 18;
* family friendly filters to filter inappropriate material;
* content warnings for inappropriate content; and
* requiring companies to take robust action where there is evidence that children are accessing inappropriate content.

The UK suggests that the proposed General Comment should encourage all states to develop a national online safety action plan or strategy for children and young people in consultation with key stakeholders, including children and young people. Within the action plan or strategy, links should be made between child protection policies and digital charters and general cyber resilience strategies. Considering the rapid evolution of online technologies and fast growth of social media and gaming services, it is recommended that any national online safety actions and strategies should be reviewed regularly to keep pace with an ever-changing landscape.

The General Comment might also provide an opportunity to consider the impact of the use of digital technologies on the health and wellbeing of children and young people.

**4. Use of Digital Technology in Schools**

The computing curriculum[[1]](#footnote-1) introduced in the UK in September 2014 covers the principles of e-safety at all key stages, with progression in the content to reflect the different and escalating risks that young people face. This includes how to use technology safely, responsibly, respectfully and securely, how to keep personal information private, and where to go for help and support when they have concerns about content or contact on the internet or other online technologies. Such a curriculum, teaching respect and inclusivity, also reduces discrimination.

“Keeping children safe in education”[[2]](#footnote-2) is statutory safeguarding guidance for UK schools and colleges. They must have regard to it when carrying out their duties to safeguard and promote the welfare of children. The guidance sets out that schools and colleges should provide a safe environment in which children can learn. The guidance explains that the use of technology has become a significant component of many safeguarding issues from child sexual exploitation, radicalisation and sexual predation. It goes on to set out that children should be safeguarded from potentially harmful and inappropriate online material, including through schools and colleges having appropriate filtering and monitoring systems in place to protect children. In addition, schools and colleges should have a clear policy on the use of mobile technology, reflecting the unrestricted access many children have to the internet via 3, 4 and 5G.

The UK Council for Internet Safety education subgroup has published ‘Education for a Connected World’[[3]](#footnote-3) to support schools and colleges to equip their children with the digital skills and knowledge they should have the opportunity to develop.

We would recommend that the General Comment encourage States to provide such guidance for schools, colleges and other learning institutions, highlighting what a child should know in terms of current online technology, its influence on behaviour and development, and what skills they need to be able to navigate it. This would help children to stay safe and make a positive contribution online, as well as enabling teachers to develop effective strategies for understanding and handling online risks.

[date] May 2019

1. <https://www.gov.uk/government/publications/national-curriculum-in-england-computing-programmes-of-study> [↑](#footnote-ref-1)
2. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741314/Keeping_Children_Safe_in_Education__3_September_2018_14.09.18.pdf> [↑](#footnote-ref-2)
3. <https://www.gov.uk/government/publications/education-for-a-connected-world> [↑](#footnote-ref-3)