

Children



At a glance



- There are a handful of child-specific provisions in the GDPR, particularly in relation to grounds for processing and notices.
- Children are identified as “*vulnerable individuals*” and deserving of “*specific protection*”.
- Processing of data relating to children is noted to carry certain risks, and further restrictions may be imposed as a result of codes of conduct.
- The GDPR does not prescribe the age at which a person is considered to be a child.
- Where online services are provided to a child and consent is relied on as the basis for the lawful processing of his or her data, consent must be given or authorised by a person with parental responsibility for the child. This requirement applies to children under the age of 16 (unless the Member State has made provision for a lower age limit -which may be no lower than 13).



To do list



Consider whether rules on children are likely to affect you.



If your organisation offers information society services directly to children, assess which national rules will apply and ensure that appropriate parental consent mechanisms are implemented, including verification processes.



Remain aware of national legislation for offline data processing relating to children's data.



Where services are offered directly to a child, ensure notices are drafted clearly with a child's understanding in mind.



Ensure any reliance on “*legitimate interests*” to justify processing children's data is backed up with a careful and documented consideration of whether a child's interests override those of your organisation.



Be watchful for relevant codes of conduct which might affect any associations or groups your organisation might participate in.



Degree of change

Commentary

The importance of protecting children is mentioned several times in the GDPR. In practice, there is little new harmonisation offered in the final text, and substantive restrictions will likely come either from existing or new national laws or codes of conduct. (See section on [codes of conduct and certifications](#) for further details.)

Parental consent

Directive [95/46/EC](#) (the “Data Protection Directive”) did not contain any specific restrictions on processing children’s data, and rules on children’s ability to consent have been drawn from national laws. The GDPR does not offer much harmonisation. The major provision in relation to children is Article 8, which requires parental consent to be obtained for information society services offered directly to a child under the age of 16 – although this ceiling can be set as low as 13 by a Member State, and only applies where the processing would be based on the child’s consent. It is not entirely clear whether this consent requirement will apply if the child/teen’s personal data is unintentionally collected online. Initial guidance in the UK from the Information Commissioner’s Office appears to suggest that for the requirement to apply the information society service must “(target online services) at children”.

The controller is also required, under Article 8(2) GDPR, to make “reasonable efforts” to verify that consent has been given or authorised by the holder of parental responsibility in light of available technology.

This only affects certain online data – offline data will continue to remain subject to the usual Member State rules on capacity to consent. Article 8(1) is also not to be considered as affecting the general contract law of Member States regarding the validity, formation or effect of a contract with a child. Organisations will still need to consider local laws in this area.

Notices addressed to children must be child-friendly

Article 12 GDPR provides that the obligations to ensure that information provided to data subjects is concise, transparent and in plain language are to be met “in particular for any information addressed specifically to a child”. Recital 58 expands:

“Given that children merit specific protection, any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand.”

The term “child” is not defined by the GDPR. Controllers should therefore be prepared to address these requirements in notices directed at teenagers and young adults.

Miscellaneous provisions – helplines, codes of conduct and work for supervisory authorities

Article 6(1)(f) GDPR notes that the rights and freedoms of a data subject may “in particular” override the interests of the controller or third party where the relevant data subject is a child. Controllers should ensure that documentation is kept demonstrating that relevant competing interests have been appropriately considered where relying on legitimate interests for processing data relating to children.

Recital 38 notes that the use of child data in marketing, or for profiling purposes or in connection with the supply of services to children are areas of concern requiring specific protection under the GDPR. The recital also states that parental consent should not be required in the context of preventative and/or counselling services offered directly to a child although this suggestion does not appear to be reflected in the articles of the GDPR itself.

Recital 75 notes that children are “vulnerable natural persons” and that processing children’s data is an activity that may result in risk “of varying likelihood and severity”.

Article 40 requires Member States, supervisory authorities, the European Data Protection Board and the Commission to encourage the creation of codes of conduct, including in the area of the protection of children, and concerning the way in which consent can be collected from the holder of relevant parental responsibility. Organisations that process personal data relating to children should watch for the creation of such codes, which might impose particular additional requirements.

Finally, supervisory authorities, when promoting public awareness and understanding of risks, rules, safeguards and rights in relation to the processing of personal data, pursuant to the obligation imposed on them by Article 57(1)(b), are required to give “specific attention” to activities addressed to children.



Where can I find this?

Articles 6(1)(f), 8, 12(1), 40(2)(g), 57(1)(b)
Recitals 38, 58, 75