

Getting UK education GDPR ready

General Data Protection Regulation Fit Gap and resource building for children's rights: a civil society approach to making it happen

Draft Proposal v5.0
April 2017



Regulation (EU) 2016/679 of the European Parliament and of the Council*

Enforceable from May 25, 2018 - from Feb 10, 2017 = 15 months

469 calendar days = 250 school days
67 calendar weeks = 50 school weeks

2016-17 year, February 2017 - July 2017

20 school weeks
100 school days

2017-18 year, September 2017 - May 2018

30 school weeks
150 school days

Parliament has similar schedules though 2017-18 recess dates not yet available
*http://ec.europa.eu/justice/data-protection/reform/files/regulation_oj_en.pdf

School calendar 2017/18 (UK)

2017							2017					2018				
February	March	April	May	June	July		September	October	November	December	January	February	March	April	May	
1 We	1 We	1 Sa	1 Mo	1 Th	1 Sa		1 Fr	1 Su	1 We	1 Fr	1 Mo	1 Th	1 Th	1 Su	1 Tu	
2 Th	2 Th	2 Su	2 Tu	2 Fr	2 Su		2 Sa	2 Mo	2 Th	2 Sa	2 Tu	2 Fr	2 Fr	2 Mo	2 We	
3 Fr	3 Fr	3 Mo	3 We	3 Sa	3 Mo		3 Su	3 Tu	3 Fr	3 Su	3 We	3 Sa	3 Sa	3 Tu	3 Th	
4 Sa	4 Sa	4 Tu	4 Th	4 Su	4 Tu		4 Mo	4 We	4 Sa	4 Mo	4 We	4 Su	4 Su	4 We	4 Fr	
5 Su	5 Su	5 We	5 Fr	5 Mo	5 We		5 Tu	5 Th	5 Su	5 Tu	5 Fr	5 Mo	5 Mo	5 Th	5 Sa	
6 Mo	6 Mo	6 Th	6 Sa	6 Tu	6 Th		6 We	6 Fr	6 Mo	6 We	6 Sa	6 Tu	6 Tu	6 Fr	6 Su	
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8 We	8 We	8 Sa	8 Mo	8 Th	8 Sa		8 Fr	8 Su	8 We	8 Fr	8 Mo	8 Th	8 Th	8 Su	8 Tu	
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30 Th	30 Su	30 Tu	30 Th	30 Fr	30 Su		30 Sa	30 Mo	30 Th	30 Sa	30 Tu	30 Fr	30 Fr	30 Mo	30 We	
31 Fr	31 Mo	31 We		31 Mo	31 Th		31 Tu	31 Th	31 Su	31 We			31 Sa		31 Th	

Which aspects of GDPR affect children most?

Link: ec.europa.eu/justice/data-protection/reform/files/regulation_oj_en.pdf

- Article 6: lawfulness and legitimate interests and the interests of children
- Article 7: right to withdraw consent at any time (for consent based data uses)
- Article 8: parental consent
- Article 12: transparent information provision
- Article 17: right to erasure (sometimes conflated in Right to be Forgotten) and correction
- Article 25: privacy by design
- Article 35: data protection impact assessment
- Article 40: codes of conduct
- Article 57: DPAs awareness
- Recital 38: specific protection
- Recital 58: transparent information
- Recital 65: right to erasure
- Recital 71: profiling (relevant for Progress 8 school attainment forecasting)
- Recital 75 : the risk to the rights and freedoms of natural /vulnerable persons



Photo from conference presentation by Professor Eva Lievens, an Assistant Professor of Law & Technology at the Law Faculty of Ghent University and a member of the Human Rights Centre. January 2017, CPDP

Why it matters? We want it all to work well

If you do nothing, poor practices will continue:

- Children exposed to personal risk
 - personal data collection without pupil and / or parental consent
 - data transfers to US
 - loss of control over personal data and digital identity
 - interference with lawfulness and legitimate interests, and the interests of children
- Schools exposed to risk
 - unclear and inconsistent approach for IT, DPO and Governance roles
 - consent and age verification, right to correct inaccurate data, right to erasure
 - insecure practices open to hacking, theft and system ransom
 - GDPR enforcement and increased monetary penalties
 - reputational risk
- Government top-down policy needs change where it involves schools and pupil data
 - illegitimate collection of unfairly processed personal data at local, regional and national level
 - right to erasure
 - right to correct inaccurate data
 - impact assessment
- In the longer term practices will have potential effects on autonomy, trust in digital services, and the economy

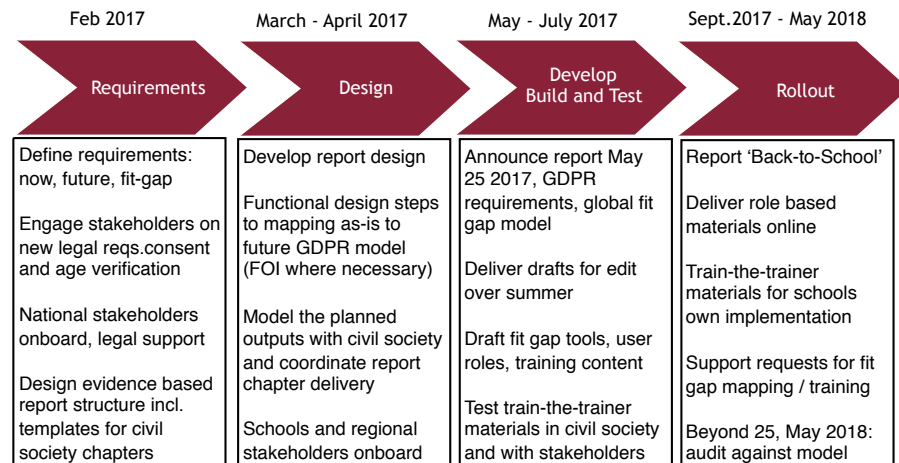
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The GDPR discussion now needs action

- **The GDPR is an opportunity** to not only meet legal requirements in theory, but children's digital rights in practice
- **Educational establishments can both make fixes and build a foundation** issues in applied data privacy and data protection need to be fixed, to improve children's education and empowerment for future workforce and society
- **Start with the 'as is' status in England's schools** Deliver a high-level report for stakeholders on the status quo
- **Clarify the GDPR requirements as related to children** Include in the report with work from leading academics
- **Clearly identifying the changes in legal requirements** that will need to be met, will help schools identify their gaps
- **Develop free tools and a roadmap to get there** to help national, regional and local staff do their own assessment of changes needed to meet their responsibilities for children age 2-19 in England in order to support better children's rights and implementation of the GDPR by May 2018
- **Promote change and encourage actions** that need to be implemented to get stuff done
- **Academic foundations:** We will build-in UK and EU academics' work from [EU Kids Online](#) via LSE, [the University of Nottingham](#), and [University of Stirling](#), to bring a current understanding of children in the classroom, and addresses their inclusion and involvement in change, UCL (IoE) on children and testing, SWGFL and Plymouth Uni on infrastructure and security, as well as experienced voices in children's rights and their interpretation of the GDPR
- **Authorities:** We are seeking the support in name from the [The Information Commissioner](#) in England, [the Children's Commissioner](#), as well as government departments, the DCMS, DfE and BEIS
- **Apple and co.:** We will seek to involve the major players in classroom ed tech where appropriate through UKCCIS
- **Activities:** We can dovetail where appropriate with recommendations from organisations that are carrying out industry scoping (ie UNICEF), NGOs, and initiatives designed to develop frameworks or codes of practice such as 5Rights, but not be bound by them or duplicate their outputs

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The GDPR: making it happen in 250 days



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What is fit gap?

A way to work out what needs to change to meet the new requirements

- Recognition that GDPR requires common standards to be reached and what they are
- Mapping the current practices 'as is' against a future global model of what 'should be'
- Recognition that there are different starting points
- Recognition that there are different needs that will need to change - what different stakeholders will need to stop doing, start doing, and what that means will change in practice, such as no longer signing children up to apps using personal data without affirmative consent in the classroom
- By October 25, 2017: The global fit-gap report for stakeholders shows 'as is', the future model and the gap
- This is used to develop role based training materials and recommendations on a roadmap how to identify the necessary changes at local level and support to make the necessary changes happen
- By Jan 25, 2017 to identify the gaps at local level:
 - schools identify the areas within 9 subjects to address
 - we provide case studies of what the GDPR requires and role based actions
- By Feb 25, 2018 to address the gaps at local level:
 - To identify the gaps at local level Schools can use train-the-trainer materials, checklists and the role mapped change management materials how to get there by May 25, 2018
- The fit gap can be used as a reference model for future audit and checking ongoing progress

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What must happen on age and consent?

- Decisions needed between the Information Commissioner and government for evidence based approach on law on the age of consent and age verification, with academic, civil society and ICT stakeholders input
- Only process data of children aged 16 or older, unless parental consent is obtained. If Member States so legislate, this threshold can be reduced as low as 13 years.
- Where obtaining consent ensure that it is a clear affirmative act, and is freely given, specific, informed, unambiguous and can be withdrawn at any time
- Inform children of their rights as a data subject in clear and plain language, and in a concise, transparent, intelligible and easily accessible form.
- Extend specific protections to children, in particular regarding marketing and profiling, and data processing when services are offered directly to children.
- The definition of “online information services” and the implications of this across access to all Internet sites in the EU needs consideration

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Role of national government

- Legislative measures
 - The Digital Economy Bill and UK Digital Strategy
 - Green Paper on Internet Safety
 - GDPR: Age of consent and age verification needs evidence-based decision and involvement of civil society and academic thinking from policy and technology
 - Domestic laws, policy and practice on classroom data collection and education estates’ surveillance must comply with international human rights norms, including the right to privacy, the new GDPR requirements, and take cyber security as well as information access rights into account
 - A clear and predictable regulatory environment for consent and right to withdraw it, on the rights to erasure, and the collection, processing, use and sale of children’s data
 - UNICEF suggests legislation on safeguarding aspects should at minimum cover Protection in the areas of online harassment, cyberbullying, the sharing of images without consent, and the misuse of personal information but must also address Provision and Participation.
- Enforcement measures and advocacy to consider
 - Training of DPOs, teacher training compulsory modules, lawyers, judges and police
- Policy recommendations for the fit gap report
 - Privacy impact assessments
 - Practical guidelines for state educators including teacher data-workload initiatives and Ofsted
 - Adopt a proactive approach to Prevent programme and right to erasure
 - Support in name at national level and promote need for GDPR legislation alignment

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Civil society and academic advocacy

Through collaboration across specialisms we can make a significant improvement steering the current state of children’s digital rights knowledge, through advocacy to encourage action, better understanding and legislation, and improved policy in schools and across government.

a) Work will either be in the form of new direct contributions, or incorporate existing published work, to deliver a collective ‘big picture’ report on GDPR readiness for introduction as a work-in-progress to key stakeholders by May 25, 2017. It will focus on the state of play today on privacy and data protection in schools ‘as is’, it will document future requirements aligned with GDPR ‘to be’, and identify key areas of what is missing in order to pull together a role based roadmap of action needed and training by May 25, 2018. This will include views of young people and recent research.

b) We are seeking support for review of materials developed within each topic for role based training, such as classroom teacher, office administrator, canteen staff, health and safety, facilities manager, Prevent staff, school nurse.

c) **Report publication September 7, 2017 (TBC considering parliamentary schedule)**

Proposed contributions include, but are not prescriptive or limited to:

1. Identifying controllers, processors, and data protection roles and responsibilities
2. Apps including impacts for BYOD and Big Data in IOT
3. Biometrics in schools (fingerprinting technology, facial recognition, EdTech, RFID)
4. CCTV
5. Classroom management technology: Desktops, chrome books, iPads, laptops, BYOD.
6. Infrastructure, security, access: web browsers, web use, incl. consent, “parental” controls and age verification
7. Public health and education overlap (in-school nurse services, plans for single NHS ID)
8. Prevent policy as applied in practice
9. Pupil direct data collection: local /regional/national (personal: school census, attainment: exams)
10. Technical: Encryption, device and network security, cloud storage et al.

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What about the ICT sector and existing rights?

- UNICEF Framework: *Guidelines for Industry on Child Online Protection*
- Child protection and child rights can come into conflict in classroom policies and practice
 - Child friendly terms and conditions - class group practices means individual rights not explained
 - Consent from children, Parental consent vs Classroom Practice: permission and exclusion risks
 - Profiles private by default - and what about password management?
 - Classroom safeguarding and surveillance vs freedoms to access information and human rights?
- Creating a safe and age-appropriate online environment;
 - Age verification - decision on age required
 - Encryption, filtering, web monitoring and keylogging need review and vendor accountability
- Digital technology seen as tools for not only educational learning and economic benefits but for freedom of access to information, increasing civic engagement and accountability, involvement in the direction of future technologies such as AI
- Interested commercial parties need to be identified and engaged where relevant for education but without introducing GDPR implementation costs to the classroom

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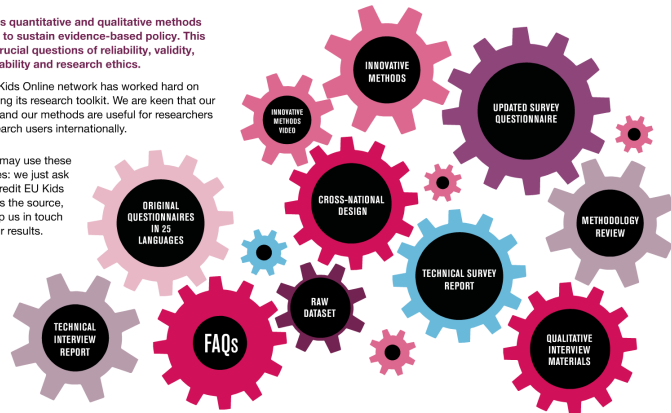
Using the EU Kids online evidence base

Our research toolkit

Rigorous quantitative and qualitative methods are vital to sustain evidence-based policy. This raises crucial questions of reliability, validity, comparability and research ethics.

The EU Kids Online network has worked hard on developing its research toolkit. We are keen that our insights and our methods are useful for researchers and research users internationally.

Anyone may use these resources: we just ask you to credit EU Kids Online as the source, and keep us in touch with your results.



<http://www.lse.ac.uk/media@lse/research/EUKidsOnline/Home.aspx>

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Next steps

- Briefing civil society, ascertain interest in involvement / cost in contributing specialist knowledge chapters to as-is report
- Briefing academics to ascertain interest in contributing to the overall report introduction and conclusions on GDPR impact, current 'as is' in specialist areas, and recommendations to get there
- Briefing the ICO, DCMS, DfE, BEIS, UKCCIS ascertaining support / funding? Tie into Green Paper.
- Briefing ICT stakeholders in schools in England to support changes required
- Briefing education players in England to support changes required
- Be agile and integrate others' work in course of program
- Horizon scanning for other work which may impact or overlap to avoid duplication or conflict with policy maker and legislative development i.e UNICEF: potential code of conduct, best practices, other soft instruments to bind industry to commitments, 5Rights frameworks and codes of conduct

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Your opinion please

- Is anyone else doing this already?
- Is your organisation interested in involvement in...?
 - the first stage specialism chapters 'as is' status draft report by July 25, 2017
 - ongoing support for review of draft by August 15, 2017
 - final edit support August 2017
 - publication around 'Back to School' in September 2017
 - beyond August 2017 for training materials development/ review
 - If yes, do you foresee any costs?
- What other stakeholders are we missing?
- We are pursuing technical solutions addressing age verification and consent separately - all contributions welcome.
- Are you aware of other work which may impact or overlap to avoid duplication or conflict with policy maker and legislative development?
- What have we missed?
- Other questions?

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2017 delivery deadlines to make it happen

- February 10: we scope initial interest
- February 17: stakeholders register your interest and commitment to a contribution and what it will be
- April 10: our delivery of the report template structure for your work
- July 25: your delivery of first stage report contribution
- August 15: revised report draft for first review
- end August: edits and report production
- September 2017: report launch "Back-to-School"

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Campaign

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