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


Which aspects of GDPR affect children most?


- 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

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
- Reputation 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

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 Strirling, 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 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

The GDPR: making it happen in 250 days

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<tr>
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<tbody>
<tr>
<td>Requirements</td>
<td>Design</td>
<td>Develop Build and Test</td>
<td>Rollout</td>
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<tr>
<td>Define requirements: now, future, fit-gap</td>
<td>Functional report design</td>
<td>Develop role based materials online</td>
<td>Report ‘Back-to-School’</td>
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<td>Engage stakeholders on new legal reqs, consent and age verification</td>
<td>Functional design steps to mapping as-is to future GDPR model (FOI where necessary)</td>
<td>Deliver drafts for edit over summer</td>
<td>Deliver role based materials online</td>
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<td>National stakeholders onboard, legal support</td>
<td>Model the planned outputs with civil society and coordinate report chapter delivery</td>
<td>Draft fit gap tools, user roles, training content</td>
<td>Train-the-trainer materials for schools own implementation</td>
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<td>Design evidence based report structure incl. templates for civil society chapters</td>
<td>Schools and regional stakeholders onboard</td>
<td>Test train-the-trainer materials in civil society and with stakeholders</td>
<td>Support requests for fit gap mapping / training</td>
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<td>Beyond 25, May 2018: audit against model</td>
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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 changes to get there by May 25, 2018
- The fit gap can be used as a reference model for future audit and checking ongoing progress
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.

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 law: 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, 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

Civil society and academic advocacy

Through collaboration across specialties 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, carteren 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
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
10. Technical: Encryption, device and network security, cloud storage etc.

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
Using the EU Kids online evidence base

Your opinion please

2017 delivery deadlines to make it happen

Next steps

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