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An Chomhairle Náisiúnta
Curaclaim agus Measúnachta
National Council for
Curriculum and Assessment



Primary Curriculum Review and Redevelopment

Written submission template for organisations, groups and individuals
responding to the *Draft Primary Curriculum Framework*

Individual submission details

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Date	
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The Data Protection Commission (DPC) is the national independent authority in Ireland responsible for upholding the fundamental right of individuals in the European Union (EU) to have their personal data protected. Accordingly, the DPC is the Irish supervisory authority responsible for monitoring

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the application of the General Data Protection Regulation (GDPR), as well as various other regulatory frameworks such as the Irish ePrivacy Regulations (2011) and the EU Directive known as the Law Enforcement Directive (LED). The statutory powers, duties and functions of the DPC are as established under the Data Protection Act 2018, which gives further effect to the GDPR, and also gives effect to the LED. Our mission is to safeguard individual data protection rights by driving compliance through guidance, supervision and enforcement.

Public Consultation by the National Council for Curriculum and Assessment on the Draft Primary Curriculum Framework

Submission of the Data Protection Commission

Introduction

The Data Protection Commission (DPC) is the national independent authority in Ireland with responsibility for upholding the fundamental right of individuals to have their personal data protected, and enforcing the obligations of data controllers and processors in this context. The statutory powers, duties and functions of the DPC are detailed in the Data Protection Act 2018 (the 2018 Act) which gives further effect to the General Data Protection Regulation (EU) No. 2016/679 (the GDPR).

The GDPR, which became applicable as a law on 25 May 2018, recognised for the first time in EU data protection law that there are specific risks posed to children when their personal data is collected and processed and that they therefore merit special protection as data subjects. The GDPR emphasises the need for clear communication with children around how their personal data is processed and points out that children may be less aware of the risks involved in such processing, as well as the consequences of such processing, their rights and the safeguards. As such, the area of protection of children's data and their rights under the GDPR has been a key priority for the DPC since 2018 (further detail on this can be found later on in this submission).

The DPC welcomes the National Council for Curriculum and Assessment's (NCCA) decision to review and redevelop the primary curriculum in recognition of the fact that classrooms, children, and indeed society have changed significantly since the publication of the Primary School Curriculum in 1999. The DPC fully supports the NCCA's position that *"we need to ensure that the curriculum can continue to provide children with relevant and engaging experiences as we look to the third decade and beyond in the twenty-first century"*, and welcomes the particular focus given in the Draft Primary Curriculum Framework to ensuring that children have the skills to succeed in the digital environment, as indicated by the proposed *"Being a digital learner"* competency. The rapidly evolving nature of the digital environment means that the national curriculum must keep pace with technological developments as well equip children with the awareness, knowledge and skills needed to deal with the challenges and risks (including in connection with the use of their personal data) arising from their interaction with the latest apps and online and

connected services that are popular with children in Ireland. Crucially, it must be able to pre-empt nascent threats by instilling a culture of continuous learning, curiosity and also caution among children when it comes to sharing their personal data online. For this reason, the DPC firmly believes that there is a need for a free-standing, comprehensive, ongoing programme for digital citizenship on the national primary curriculum that continues from early childhood (commencement in primary school) into teenage years, and that a core part of this programme should be dedicated to educating children specifically about data protection issues.

Given the vulnerability of children, the particular risks they face in the online world, and the rapid evolution of regulation in this area, the DPC considers that children need a primary framework curriculum that gives them a clear and accurate understanding of these issues, why they are important, and which also prepares them to be responsible digital citizens throughout their schooling and into adulthood. While the DPC is primarily concerned with its own area of regulation, namely data protection, and does not have a statutory remit in respect of other areas which will inevitably be relevant to children's engagement in the digital environment, such as online safety and wellbeing issues (e.g. cyberbullying, harmful and illegal content, addictive technologies, fake news etc.), it follows that a comprehensive digital citizenship programme would also cover such topics. Indeed online safety and wellbeing issues and data protection naturally complement and are mutually supportive of each other. For example, a child's awareness of the risks of sharing their personal data (e.g. contact details online with someone they do not know) will inevitably support their online (and indeed real-life) safety.

Children and the digital world

We live in an age where vast amounts of information about us are collected, stored, used and shared by countless organisations – and much of the time this happens without our knowledge, particularly when we engage in online activity. Entry into the digital world now happens at a very early age with pre-school children frequently interacting with online organisations through the use of mobile phones, connected toys and other devices¹. This collection and use of each child's personal data, once it begins, will doubtless continue throughout their lifetime as they live their daily lives using online social media, communication, entertainment, information, shopping, banking and countless other services.

Children represent one in three internet users², but this digital world which they inhabit was not designed with them in mind³ and brings with it a myriad of challenges and risks. According to Sonia Livingstone, a prominent academic in the field of children, media and the Internet, children begin to face privacy decisions and risks the minute they enter the digital environment, *"long before their media literacy prepares them to make decisions in their own best interests"*⁴. The GDPR highlights this vulnerability of children, with Recital 38⁵ stating that children merit specific protection when it comes to the processing of their personal data because they may be less aware of risks, consequences and safeguards involved, as well as their data protection rights.

According to statistics published by CyberSafeIreland in their 2019 annual report⁶, 65% of 8-12 year olds in Ireland have their own social media and/or instant messaging account, despite minimum age restrictions on most of the popular apps being 13 or more. However despite prolific use of social media, children are often unaware that personal data includes things like photos or videos of them, or that their personal data is being collected for specific reasons, such as providing customised in-app experiences, advertisements, or even that their personal data will be retained for a certain period of time. Many children are also unaware that companies may invisibly collect large volumes of personal data through a person's use of their apps (e.g. as opposed to personal data they have directly provided such as their name and email address). For example, online service providers, such as communications and social media companies, may be able to tell how many messages someone may have sent to a particular contact, what a user searches for in an app, the kind of content that a user views, what kind of posts they click on the most, their current location or places they have been, details about photos and videos on the user's phone and frequently they are able to predict what a user's likes and dislikes are. Existing evidence suggests that children may provide personal data passively and unconsciously while using online services like social media, provoked by the platform design and configuration⁷.

While social media usage is just one facet of digital life, it is evident that children in Ireland are active participants in the digital world. This situation has been further exacerbated in context of COVID-19 and the disruptions to daily lives of children that have ensued. According to a study by Dublin City University⁸, 72% of children aged 10-18 in Ireland are using their social media accounts more often now than before lockdown, and 71% of children who own smartphones are reportedly using their devices more frequently. Similar trends of increased usage apply to the use of gaming technologies and messaging apps.

Children's increasing reliance on connected technologies and online experiences makes it all the more essential that they are educated about the inherent risks and how they can avoid or at least navigate the pitfalls of the online world; this includes a fundamental knowledge and understanding of data protection and their rights.

Children and the GDPR

There tends to be a general misconception that children do not have the same data protection rights as adults, but this is not the case. Children have all of the same rights as adults over their personal data – data about them is still *their* personal data and does not belong to anyone else, such as a parent or guardian. Data protection rights apply to children just as much as they do to adults. However, there are child-specific protections built into certain provisions in the GDPR, which organisations must comply with. For example, Article 8 of the GDPR sets the limitations as to the minimum age at which children can give their own consent to the processing of their personal data (the so-called “age of digital consent”). This age is set at 16 in Ireland under Section 31 of the Data Protection Act 2018.

The GDPR also contains a number of additional protections that apply to children at any age. For example, Article 12(1) of the GDPR explains that transparency information (e.g. information about what personal data is being processed, by whom, for what purpose and how long it will be kept for) must be provided in a concise, transparent, intelligible and easily accessible form using clear and plain language, in particular where the information is addressed specifically to a child. As mentioned above, Recital 38 of 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”. Additionally, Recital 65 of the GDPR explains that the right to have one's personal data erased under Article 17 of the GDPR (“right to be forgotten”) should in particular apply where an individual gave consent to the collection of their data as a child and now wishes to withdraw that consent, because they did so under circumstances where they were less aware of the risks arising from sharing personal data in the digital environment.

As such, educating children about their data protection rights is an essential part of giving them the confidence to “*critically engage and contribute in a digitally connected and interdependent world*”, as is one of the objectives stipulated in the Draft Primary Curriculum Framework.

The DPC's work on children's issues

In 2018, the DPC launched an extensive two-limbed public consultation initiative in an effort to address a number of questions arising in the context of newly introduced child-related provisions under the GDPR and to raise awareness among children and young people of these issues and their data protection rights. Stream 1 of the consultation was focused on adult stakeholders and the DPC invited all interested parties – including parents, educators, children's rights organisations, child protection organisations, representative bodies for parents and educators, as well as organisations that collect and process children's data – to submit their responses to any or all of the 16 questions set out in the dedicated online consultation document⁹. In this regard, the DPC was delighted to receive a submission from the National Council for Curriculum and Assessment as part of this stream of the consultation.

Stream 2 of the DPC's consultation focused on collecting the views and perspectives of children themselves, a decision which was driven by Article 12 of the UN Convention on the Rights of the Child which stipulates that children have a right to have their voices heard and express their opinions on matters which affect them directly, with due weight given to those views in accordance with their age and maturity. The DPC contacted every primary and post-primary school in Ireland – as well as all Youthreach centres – and invited them to take part in the consultation. For the purposes of this children-focused consultation, the DPC created and distributed a pack of lesson plan materials designed to help teachers explain and discuss data protection issues with their students, with a particular focus on social media and the types of personal data routinely disclosed by users with technology companies through their activity on social media platforms (these materials have been attached to this submission for reference). The DPC's lesson plan involved students examining the terms and conditions of "SquadShare", a fictitious app created by the DPC for these purposes, and prompted students to explore their data protection rights and share their opinions about SquadShare collecting and using their personal data. One of the main themes to the feedback the DPC received from the students who participated in this consultation was surprise and concern at the level of control they were granting to apps like SquadShare over their personal data. Many also felt strongly that these practices had not been made clear to them at the point of signup.

Below are some extracts from the responses the DPC received¹⁰:

"When you input your personal data, they should ask 'Do you want to know where your information goes?' " (Mixed group, age 8-12)

"Send us examples of how personal data has been used in the past." (Age 10-11)

"Tell us immediately on signing up for an app how our data will be used before we sign up and agree to the terms and conditions. We would like the chance to think about it first." (Age 10-11)

"Big companies (e.g. Google) could come into schools and let students know how their data is used."(Mixed Student Council, age 12-18)

"It should be possible to ask someone online questions if you don't understand something."
(Age 12-13)

"Use language children and teenagers can understand easily so that they are properly informed." (Age 12-13)

It was apparent to the DPC from the feedback received in this consultation that there was a real appetite and enthusiasm among children to learn more about data protection, what it is they are agreeing to when they engage in certain online activities, and to understand what exactly that engagement means in terms of companies being able to use, share, and even monetise their personal data.

The DPC also received encouraging feedback from teachers on our lesson plan materials. Below is an extract of some of the responses made by teachers.

"We spent three class hours on the topic and it was very well received. They found the module to be interesting and the students really enjoyed the conversations which it created."

"We found these lessons so informative, insightful and have even shared the information at home with our families. We thoroughly enjoyed completing these lessons."

"The children found it very interesting and were particularly shocked that their data could be sold to another party!"

"My fifth class found the lessons very worthwhile and they were quite surprised to learn about some of the terms and conditions"

"My class enjoyed this scheme very much and were very animated and interested throughout."

"A very worthwhile process and great lesson plan!"

Data protection education – A national and international perspective

The importance of educating children about data protection and their rights has long been a topic of global concern in the data protection sphere. The former International Conference of Data Protection and Privacy Commissioners (renamed as the Global Privacy Assembly) has issued a number of resolutions¹¹ in recent years addressing children’s online privacy and the need for educational initiatives, and expressing increasing concern about the online encroachment into the private lives of children and the fact that children are often unaware that their information, habits and behaviour are being tracked online. Similarly, the UN Committee on the Rights of the Child recently published for public consultation a draft General Comment on children’s rights in relation to the digital environment, in which it was emphasized that **“states should ensure that schools teach digital literacy as part of the basic education curricula from the earliest years, and such teaching should be evaluated for its outcomes”**¹². (The finalised General Comment is due for publication in the coming months). The DPC made a joint submission to the UN Committee’s consultation alongside other national data protection authorities under the umbrella of the Global Privacy Assembly’s Digital Education Working Group (DEWG). In particular, that submission emphasised the following:

*“Digital literacy curricula should distinguish clearly between data protection issues on the one hand and broader online safety issues such as cyberbullying, harmful online content and fake news on the other. Ensuring that children understand from an early age the difference between these issues is key to empowering them in the digital environment”*¹³

Likewise, in the “Growing Up Digital” taskforce report¹⁴ in January 2017, the Children’s Commissioner for England also called for the creation of a digital citizenship programme to be compulsory in every school from the age of 4 to 14. Similar sentiments were echoed in submissions¹⁵ made to an Irish Parliamentary Committee on Children and Youth Affairs in the context of its examination of cyber security for children and young adults. Indeed, some elements of digital literacy are already a focus of many educational programmes. However, in addition to taking account of the more high-profile risks around issues like cyberbullying and general online harassment which attract much attention, children also need to be educated about the perhaps more oblique risks arising from their personal data being collected in the digital ecosystem.¹⁶

Other organisations in the Irish education sphere have also made recent moves towards informing children about their data protection rights. Webwise, the Irish Internet Safety Awareness Centre which aims to educate and promote dialogue between children, teachers and parents on safe and appropriate use of the internet and new media, recently published their “#Connected” resource which is an introduction to digital literacy for the Junior Cycle. This resource includes important modules such as “Big Data and the Data Economy” and “My Rights Online” and aims to “empower young people to be effective, autonomous and safe users of technology and online media”¹⁷. The Children’s Rights Alliance also recently published their “Guide to Children’s European Rights to Online Privacy and Safety”¹⁸ which explains to young people their rights as a child or a young person using the internet and apps on their phone and their data protection rights.

Conclusion

The DPC welcomes the emphasis that the Draft Primary Curriculum Framework places on preparing children for the digital environment as an integral part of their learning and development. We hope to have demonstrated in this submission the importance of having a comprehensive and ongoing digital citizenship programme, which commences upon a child’s entry into primary school and is built upon throughout every subsequent school year on the national primary curriculum. The “Being a digital learner” strand of the Draft Primary Curriculum Framework represents an important opportunity for integrating a digital citizenship educational programme which will enable both the empowerment and the protection of children in the online world. In addressing critical online safety and wellbeing issues in such a programme, there is a natural space for also educating children about how to control and protect their personal data in the online environment by making informed choices about with whom, and when they choose to share it and by being curious and cautious about their personal data. While online safety and wellbeing issues are outside the remit of data protection and the DPC, these objectives are two sides of the same coin. By giving children a clear understanding of the underlying concepts including their rights in the online world, the importance of keeping personal information protected, as well as an awareness of broader online safety issues, children will be better able to navigate the risks and harness the many benefits of the digital environment to play, interact, learn and create.

The DPC wishes to thank the NCCA for inviting input on this important topic and would be happy to discuss further any of the issues raised in this submission. In accordance with its awareness-raising tasks under the GDPR, the DPC would be happy to provide support/assistance to the NCCA with the development of any educational data protection content/materials that may be produced in the future for the purposes of the national curriculum.

Notes

¹ See for example: ZEEKO (2018) Children's online behaviours in Irish primary and secondary schools. Retrieved from: <https://zeeko.ie/wp-content/uploads/2018/06/ZEEKO-TREND-REPORT-.pdf> - p.4

² Sonia Livingstone, John Carr and Jasmina Byrne, 'One in Three: Internet Governance and Children's Rights', Innocenti Discussion Paper No 2016-01 (UNICEF Office of Research, Florence, 2016).

³ See the ISPCCC leaflet 'Cyber safety is the child protection issue of our time' tweeted by the ISPCCC (@ISPCCCChildline) on 25 October 2017.

⁴ Sonia Livingstone, Mariya Stoilova, Rishita Nandagiri "Children's data and privacy online. Growing up in a digital age. An evidence review" 2018

⁵ Recital 38 of the GDPR states: "*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. 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.*"

⁶ See CyberSafeIreland's 2019 Annual Report, available at: https://cybersafeireland.org/media/1431/csi_annual_report_2019.pdf

⁷ Sonia Livingstone, Mariya Stoilova, Rishita Nandagiri "Children's data and privacy online. Growing up in a digital age. An evidence review" 2018, p. 15

⁸ Please see: <https://antibullyingcentre.b-cdn.net/wp-content/uploads/2020/08/Short-report-Covid-for-media.pdf>

⁹ See the DPC's Stream 1 consultation document: <https://dataprotection.ie/en/news-media/latest-news/public-consultation-processing-childrens-personal-data-and-rights-children>

¹⁰ For more information on the feedback we received from children as part of our consultation, please see our report on Stream II entitled "*Some Stuff You Just Want to Keep Private!*", available at: <https://www.dataprotection.ie/en/news-media/public-consultation/some-stuff-you-just-want-keep-private-preliminary-report-stream-ii>

¹¹ 30th International Conference of Data Protection and Privacy Commissioners (2008, Strasbourg), 'Resolution on Children's Online Privacy', 38th International Conference of Data Protection and Privacy Commissioners (2016, Marrakesh), 'Resolution for the Adoption of an International Competency Framework on Privacy Education'.

¹² UN Committee on the Rights of the Child, General Comment on Children's Rights in relation to the Digital Environment, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/25&Lang=en

¹³ Submission by the Digital Education Working Group (DEWG) is available at: <https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx>

¹⁴ Children's Commissioner, 'Growing Up Digital: A report of the Growing Up Digital Taskforce' (January 2017) 3: https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/06/Growing-Up-Digital-Taskforce-Report-January-2017_0.pdf

¹⁵ Submissions to the Joint Oireachtas Committee on Children and Youth Affairs can be accessed under September 2017 and October 2017 at: http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/cya/presentations/

¹⁶ As illustrated, for example, by dialogue with children recorded by the 5Rights movement at: <http://5rightsframework.com/the-5-rights/5rights-by-young-people.html>

¹⁷ See <https://www.webwise.ie/connected/> for more information

¹⁸ Children's Rights Alliance, *A Guide to Children's European Rights to Online Privacy and Safety*, Nov 2020. Available at:

https://www.childrensrights.ie/sites/default/files/submissions_reports/files/Know%20Your%20Rights%20A%20Guide%20to%20Children%27s%20European%20Rights%20to%20Online%20Privacy%20and%20Safety.pdf