

Request to review S.I. 2016 No. 808: The Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations:

DfE response to queries raised by Jen Persson (defenddigitalme)

Comment 1:

There has been no Parliamentary discussion and no public consultation for this expansion of pupil data collection³, no Privacy Impact Assessment or published Business Case. Many school staff and parents have concerns that it is neither necessary or proportionate to collect from 8 million children. There are no published plans for funding to be connected to nationality or country-of-birth⁴. There is no public transparency of the costs of the technical system changes and impact of its collection on school staff time, versus expected benefit or value against data already available.⁵ Our request to the Department for Education (DfE) for the publication of minutes from discussion by the DfE Star Chamber Scrutiny Board about proceeding with this expansion has been declined.

DfE response:

All Departmental proposals for new, or revised, data collections are reviewed by the [Star Chamber Scrutiny Board \(SCSB\)](#). The SCSB is an independent external panel of representatives from schools and local authorities with responsibility for representing the sector and ensuring that all proposals are necessary, provide value for money and are designed to add as small a burden to the frontline as possible. The collection of data required by SI 2016/808 was considered, and approved, by the SCSB on behalf of the sector. Should there have been concerns regarding these changes, SCSB would have raised these for discussion requesting clarification or amendment before providing their formal decision to accept or reject the changes.

All amendments to DfE data collections considered by the SCSB are supported by a detailed business case. As part of the SCSB business case, there is consideration of the cost to schools and local authorities of complying with the request for data (known as the compliance cost) and this is weighed up by the board against the benefits of holding/collecting the data. The compliance cost of approved changes are reported by the Department for Education to the Office for National Statistics (ONS) and published within the [Online List of Government Statistical Surveys \(OLGSS\)](#) [*Note: The latest ONS compliance costs published relate to the 2015-16 financial year. The changes imposed by this S.I. will not come into force until the 2016-17 financial year and therefore will be reflected in next years published report.*]

The minutes of the meetings of the SCSB were withheld under exemption 35a of the Freedom of Information (FOI) Act which allows for the withholding of information if it relates to the formulation or development of government policy. As all requests for changes to data collections have to be approved by Star Chamber, it was determined that if details of their discussions are made public this could have a detrimental effect on the efficient operation, and decision making powers, of this board. Without protecting the thinking space and the ability for the Department to receive free and frank advice from Star Chamber on behalf of the sector, there is likely to be a corrosive effect on the conduct of good government, with a risk that full consideration of the options will diminish and decision making will become poorer.

There is no legal requirement to conduct a privacy impact assessment. The school census is a long standing data collection with established protocols and processes in place for the handling, collection and disclosure of individual level information. As the census already collects a range of characteristic information about individuals, these additional pieces of information (about the same individuals) do not present any new privacy risks so a formal privacy impact assessment was not required.

The Department provides a privacy notice template for schools to use to explain to parents what personal data they collect, why it is collected, who it is shared with and what it is used for in line with the requirements of the Data Protection Act. As data controllers in their own right, we do not advise schools directly on their collecting and processing of personal data or regulate their compliance with the Data Protection Act but the template we provide to schools gives parents access to further information about the Department's use of their children's data.

There is no quantifiable evidence to support the claim that many school staff and parents have concerns regarding the collection of this new data. The Department have not received any formal complaints from schools or parents regarding the changes to the school census data and, for example, discussions on parental public forums (such as [mumsnet](#)) suggest that the majority of people are supportive of the changes.

Comment 2:

These new data are to be extracted through the school census and early years censuses and there are growing concerns about a significant invasion of privacy and potential discrimination [Summary in the article on the [LSE digital parenting blog](#)] especially in the current political and media climate.

DfE response:

The article referred to above was written by the person querying this S.I. This does not include any quantifiable evidence of growing concerns within the sector. If referencing this article during review of this SI, it is also worth noting some significant factual inaccuracies in the article which do not accurately reflect the data collection changes imposed by this SI. For example:

“While the Government Digital Service has recently done work on standardising country names as an official register, the DfE data will use a “Free text field for country name”, which will result in all sorts of possibilities and poor quality data”

The ‘country of birth’ and ‘nationality’ data items are not free text. The allowable values for these data items are underpinned by the nation states codeset present within the DfE [Common Basic Dataset \(CBDS\)](#) which is aligned with the ONS [National Statistics country classification \(NSCC\)](#) based on the International Organization for Standardization (ISO) 3166-1. These codesets are provided as a drop down codeset within school systems and data submitted will be validated to ensure data returned is valid (i.e. present within the codeset).

“Unease about the plans is growing in staff rooms among teaching staff and parents”

There is no quantifiable evidence provided to support this statement. As described above (under comment 1), the Department have not received any formal complaints from schools or parents regarding the changes to the school census data and discussions on parental public forums (such as [mumsnet](#)) suggest that the majority of people are supportive of the changes.

“We have already seen several school forms asking for birth certificates and ID cards from pupils, to ensure data provided on the form matches “which country issued the pupil’s passport.”

As data controllers in their own right, we do not advise schools directly on their collecting and processing of personal data. However the [school census guidance for schools and local authorities](#) explicitly state that country of birth and nationality should be as stated by the parent / guardian and there is no requirement for the school to request, or see, documentary evidence (such as a copy of the birth certificate or passport).

“Undocumented families or those in migration situations will be adversely affected, barriers in enrolment may develop, fundamental rights and entitlements to education called into question”

Under the current School Admissions Code and related admissions law, it would not be lawful for nationality or country of birth to be used to determine eligibility for a school place.

As with other pupil characteristic information already collected via the school census (e.g. first language and ethnicity), where parents do not wish to declare a nationality or country of birth they can withhold this information if they so wish. In these situations schools would return ‘refused’ as part of the census.

“Confidential and sensitive personal data from the 20 million individuals in the National Pupil Database right now are handed out ‘into the wild’ directly to third parties”

Decisions on whether DfE releases personal data to third parties are subject to a [robust approval process](#). All requests for NPD data are reviewed in line with the Data Protection Act (DPA) 1998 and a data management approvals panel reviews ALL requests for sensitive data and / or matching request applications to ensure protection and fairness of data processing. Where all data protection, security and legitimate use criteria are satisfied, DfE will still undertake all steps possible to de-sensitise the data (e.g. aggregating to age groups, or broad level ethnicity groups) and will most usually undertake data linking on a requestor’s behalf in order to support the research whilst keeping the pupil data shared to a minimum

Comment 3:

Further, this SI must be seen in the context of expanding the whole collection, now over 400 potential pieces of data on every pupil in England; named data that are never deleted but stored and used indefinitely. The overall scope and size of data collection is increasingly detailed, invasive and lacks transparency as parents are still denied access to request a copy of the data stored on their own child in the National Pupil Database. The common basic data set (CBDS) is vast.⁶

DfE response:

The school census is the department's primary source of administrative data about pupils attending schools in England. The data collected is vital in supporting a number of the department's strategic objectives and is widely used by DfE policy divisions, local authorities, external agencies (such as Ofsted) and educational researchers for the purpose of improving, and promoting, the education or well-being of children in England. The analysis of individual pupil records by the Department:

- Supports the drive to increase accountability and raise standards - e.g. through the school performance tables
- Provides accurate targeting of funding - approximately £40 billion of funding is allocated based on the pupil level data returned via the school census
- Allows the Department to identify where individuals who share particular characteristics experience educational challenges and put in place policies to advance equality of opportunity for those individuals; and
- Provides a robust evidence base to support the development and evaluation of wider government policy relating to education

The business and technical specification relating to the school census data collection is available [here](#). There are a maximum of 95 pupil level data items collected via the school census. However many of these data items are only relevant to pupils of certain ages or attending certain schools (e.g. 19 of the 95 data items are only relevant to post 16 students in school sixth forms, 6 data items are only relevant to pupils in special schools, etc) and therefore the true number of data items collected per pupil is much lower.

The [Common Basic Dataset \(CBDS\)](#) is not a database of information held by the Department for Education and, instead, is a file containing definitions for common data items that schools and local authorities use locally within their management information systems. Alongside this, the CBDS also provides definitions for all data items collected via centrally specified data collections and transfers.

The purpose of this SI is specifically to allow the collection of data via the school census. The subsequent handling and processing of data within the national pupil database is covered by other legislation. The data relating to country of birth and nationality will be handled and processed in the same manner as the other sensitive pupil level data already collected by the Department and held in the National Pupil Database (see further information below).

Comment 4:

The 20 million children's identifiable, individual-level personal, confidential and sensitive data from the National Pupil Database are all given out to third parties⁷, including commercial businesses, Fleet Street⁸ and television journalists⁹, and charities. This SI enables more data to be collected which will also be given out in identifiable format from individual children. How are our individual children's 'education and well-being promoted' (the conditions of the Education Act 1996 that permits the release of individual level pupil data to third parties) by giving away their personal data to outside non-secured settings, to commercial third parties and journalists? How are the principles of the Data Protection Act 1998 of fair processing and communicating purposes effectively met?

The National Pupil Database (NPD) is a valuable resource the Department uses to develop educational policy but the Department only collects data that it has legislative powers to collect for legitimate purposes.

The Department makes it clear what information it holds and why it is held, the uses made of it by DfE and its partners and publishes a statement on its website setting this out (see <https://www.gov.uk/data-protection-how-we-collect-and>

[share-research-data](#)). The Department also encourages schools to inform parents and pupils, of how we use their data, in their privacy notices that they make available to parents.

DfE does release subsets of NPD data, subject to several criteria being satisfied. One of these is that the benefit of proposed research to current/future children can be demonstrated. Decisions on whether DfE releases personal data to third parties are subject to a [robust approval process](#) and are based on a detailed assessment of who is requesting the data, the purpose for which it is required, the level and sensitivity of data requested and the arrangements in place to store and handle the data meet strict security criteria. All requests for NPD data are reviewed in line with the Data Protection Act (DPA) 1998 and a data management approvals panel reviews ALL requests for sensitive data and / or matching request applications to ensure protection and fairness of data processing. Where all data protection, security and legitimate use criteria are satisfied, DfE will still undertake all steps possible to de-sensitise the data (e.g. aggregating to age groups, or broad level ethnicity groups) and will most usually undertake data linking on a requestors behalf in order to support the research whilst keeping the pupil data shared to a minimum. DfE details this in the data request application form as follows:

The Data Protection Act (DPA) 1998 requires that data controllers have a fair and lawful basis for processing personal data. As existing controller of the data, DfE require an understanding of the basis on which the requester considers their processing will be fair and lawful. Part of that includes the requester explaining the condition(s) for processing on which they will rely. For the purposes of the NPD data process, sensitive personal data is personal data consisting of information as to the racial or ethnic origin of the data subject, or their physical or mental health or condition.

Comment 5:

Concerns include that discrimination may develop in-practice as some schools are asking for documents for some groups of pupils to ensure this matches DfE user guidelines to check “which country issued the pupil’s passport”¹² even if seeing the passport is not required. Barriers in enrolment may arise for undocumented children prejudicing their fundamental rights and entitlements to access education, and school staff and parents have raised concerns whether the “best interests of the system” and political policy are being placed above the interests of the child. Questions we have received from staff include: “Are we being asked to act as border police?”

Purposes of the planned impact are generalised and without clear limitation

Given the previous 2013 plans¹³ to restrict children from immigrant families receiving school access on arrival, and in 2015 Nicky Morgan introduced the concept of ‘education tourism’¹⁴, there are concerns that vetoed plans will be reintroduced, or data used¹⁵ in immigration enforcement.

Schools Standards Minister Nick Gibb wrote in late July in response to Parliamentary questions¹⁶, these data purposes are for the Department’s internal use for the analytical, statistical and research purposes and to improve the “*understanding of the scale and impact of pupil migration on the education sector*” and he wrote that there are “*currently no plans to share the data with other government departments unless we are legally required to do so.*” Further: “*There are currently no plans for the Department to change the existing protocols and processes for the handling and disclosure of confidential information.*”¹⁷ New data will be shared in the same ways as today.

DfE response:

There is currently a dearth of information held to understand how effective the education sector is for foreign nationals and to effectively measure the impact of foreign nationals on the education sector. This new information will help bridge that data gap and provide the Department with valuable statistical information on the characteristics of these groups of children and along with their attainment and destinations, will allow the Department to measure whether the individual pupils, or the schools they attend, face additional educational challenges.

The information is solely for internal DfE use for analysis, statistics and research. It is important we assess the quality of these data and understand what it is telling us. Our decisions are reviewed periodically but at this point in time there are no plans to release these data items externally (including to other government departments).

The [school census guidance for schools and local authorities](#) explicitly state that country of birth and nationality should be as stated by the parent / guardian and there is no requirement for the school to request, or see, documentary evidence (such as a copy of the birth certificate or passport).

The [School Admissions Code](#) exists to ensure that places in all state funded schools are allocated in a fair and transparent manner. Under the current School Admissions Code and related admissions law, it would not be lawful for nationality or country of birth to be used to determine eligibility for a school place.

Comment 6:

He failed to say the Department for Education in fact already shares this database of 20 million people at individual level, with other government departments today, and has done since 2012.

Through FOI¹⁸ we are told that the Home Office has already received data from the database on 18 occasions since April 2012, without transparent oversight. The Police have made 31 requests. And the Cabinet Office have also been granted access to named children's records.

As described above, decisions on whether DfE releases personal data to third parties (including other government departments) are subject to a robust approval process and any sharing of individual level data will only take place where legislation allows it to do so and it is in compliance with the Data Protection Act 1998.

With regards to requests from the police, such disclosures are considered under section 29(3) of the Data Protection Act, at the discretion of the Department for Education where the public interest argument in favour of disclosure has been shown and where it is shown that failure to disclose the information would significantly prejudice the police investigation. All requests from the police must be in writing and requests are handled on a case by case basis. The decision as to whether to disclose requested information is taken at an appropriately senior level in our organisation and the reasons for the decision are documented.