

Secondary Legislation Scrutiny Committee
The House of Lords
London
SW1A 0AA

Dear Honourable Members of the Committee,

2016 No. 808: The Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations with regard to expanding the data collection and storage in the National Pupil Database of country of birth, nationality, and more from every school child in England, 2-19.

The Statutory Instrument (SI) No. 808 ¹ was laid before Parliament on July 27 - after the start of your summer recess - and will take effect on September 1, 2016, before your return.² We kindly ask therefore for your urgent consideration as this data expansion affects 8 million school children age 2-19, and all schools in England, collecting data at national level for indefinite third-party use.

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.

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.

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

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

¹ <http://legislation.data.gov.uk/uksi/2016/808/made/data.html>

² <http://www.parliament.uk/about/faqs/house-of-lords-faqs/lords-recess-dates/>

³ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-07-14/42842/>

⁴ <http://www.bbc.co.uk/news/education-36855827>

⁵ <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdombycountryofbirthandnationalityunderlyingdatasheets>

⁶ http://defenddigitalme.com/cbds_version_16_may_2016/

⁷ <https://www.gov.uk/government/publications/national-pupil-database-requests-received>

⁸ <https://www.whatdotheyknow.com/request/293030/response/723407/attach/5/The%20Times.pdf>

⁹ <https://www.whatdotheyknow.com/request/293030/response/723407/attach/10/BBC%20Newsnight.pdf>

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?

We believe that this needs legal review¹⁰ with regard to Human Rights, and in particular after the July 28 Supreme Court ruling on sharing data for indirect purposes in the Named Person plans¹¹.

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.

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.

Thank you for your urgent consideration of review of this Statutory Instrument.

Sincerely,

Jen Persson
coordinator, defenddigitalme

About the campaign: Defenddigitalme

Defenddigitalme is a volunteer non-profit campaign group asking the Department for Education (DfE) to change their policies and practices to protect 20 million children’s identifiable personal data in the National Pupil Database (NPD). More information: <http://defenddigitalme.com/>

¹⁰ <http://defenddigitalme.com/call-to-review-relevant-legislation/>

¹¹ <https://www.supremecourt.uk/cases/uksc-2015-0216.html>

¹² p2 Metadata Requirements: http://defenddigitalme.com/wp-content/uploads/2016/07/RFC_856_new_data_items_country_of_birth_and_nationality.pdf

¹³ <http://www.theguardian.com/politics/2013/may/22/immigrant-status-checks-on-schoolchildren-vetoed>

¹⁴ <http://www.telegraph.co.uk/news/uknews/immigration/11805477/Nicky-Morgan-orders-immigration-review-to-examine-education-tourism.html>

¹⁵ <https://www.theguardian.com/commentisfree/2013/dec/15/uk-immigration-policy-britons-spouses-trauma>

¹⁶ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-07-14/42842/>

¹⁷ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-07-15/42942/>

¹⁸ https://www.whatdotheyknow.com/request/pupil_data_sharing_with_the_poli#incoming-846569