

15/12/2016 Executive summary: School census expansion 2016-17

The Memorandum of Understanding first made public on 15 Dec, and related information via FOI, reveal the **intent was to give pupil nationality data to the Home Office**. This changed on Oct 7, 2016 (the day after the first collection of the new data) after campaign pressure from over 20 rights organisations and scrutiny.

We still have deep concerns that this new census nationality data may be used for Home Office purposes, even if the nationality data itself is not exchanged, country-of-birth, language and nationality data may be accessed and used by the Department for Education search algorithms for this bulk data analysis for immigration purposes and the results providing a higher matched rate of data to the Home Office as a result.

Letters leaked to the BBC, reveal plans agreed in summer 2015 between the Department for Education and the Home Office in response to Home Office pressure to introduce stringent immigration control measures in schools, including passport checks.

Collecting nationality data was a 'compromise' on Theresa May's school immigration check plan.

The agreement and its timing confirms what many feared when the review of 'education tourism' was announced in August 2015: that the change to collect country-of-birth and nationality data signed off in the following November 2015 meeting was not about collecting personal data in the best interests of pupils or for education purposes, but a Home Office requested measure, for the purposes of immigration enforcement.

This conflicts with what Ministers have said about the intentions for collection country-of-birth and nationality data. Whether deprioritising would have led to the withholding of a child's right to education, or deportation, is questionable given the monthly policy introduced at the same time, to start using the National Pupil Database for regular provision of home address and school address to the Home Office.

The language collection was called out in July by practitioners in Schools Week who saw through its flimsy design, added on in February 2016, seemingly as an afterthought.

In mid-October the Italian government objected to the recording of two specific language sub-set fields and questioned why these but no others were being recorded on Italian children after parental complaints. Given the stereotypical prejudices associated with Sicilians and Neapolitans and the Home Office access to data, this use of dialect is clearly politically sensitive, and resulted in an international diplomatic complaint. Newspaper Corriere della Sera reported that the first complaint came from Bradford. La Stampa reported:

"The embassy, therefore, asked the Foreign Office for "the immediate removal" of this unnecessary pseudo-ethnic characterization, which has nothing to do with the importance of genuine regional or Italian dialects." and that "The Foreign Office promised to correct the modules to erase all traces of possible offence." That means deleting data. Will the past data collected deletion be confirmed to individuals, how will schools be told to change their forms?

The ethnicity data collection caused discrimination and flawed ascription including councils such as Brighton and Hove, and Kent, telling schools to ascribe data and over rule parents and pupils consent who chose not to provide it. The school census system design has fields set up to enable this (ie Capita SIMS).

The purpose behind collecting country-of-birth and nationality data in the school census has been blown out of the water. The language codes have been the subject of a Foreign Office apology and reportedly an offer to delete data already collected. The ethnicity data collection is flawed in policy and practice.

We are see confirmed that the Home Office will not be able to use the new country-of-birth and nationality data to target migrants through increased data matching at DfE. We are yet to hear how failure in fair collection will be resolved and fixed before January 19th, the next on-roll collection day.

How long can this school census expansion retain any integrity?

1/12/2016 Leaked letters to BBC reveal proposals how schools could reduce immigration

But the plans were rejected by then education secretary Nicky Morgan – who wrote to prime minister David Cameron stating her “profound concern”. **‘Instead a compromise was agreed to place a legal duty on schools to collect the nationality and place of birth data of pupils.’**

The Education Department had concerns that, “Introducing these checks could lead to some children not being registered for school because of real or perceived fear of deportation.”

“Leaving aside the fact that these young people will not receive a decent education, this is a safeguarding risk - we have real concerns that children out of school may be at greater risk of radicalisation or other harms.

“The overall effect of a deprioritisation measure would be to concentrate children of illegal migrants in the least popular schools in any area, jeopardising our increasingly important focus on tackling both segregation and extremism, and with consequent impacts on the children of British nationals who attend the schools.” They also had concerns about destabilising the admissions process.

29/11/2016 Lord Nash confirms data may be retracted The Department will remove any information collected on country of birth and nationality during the autumn census that parents wish to have retracted, Written answer in the House of Lords on November 24 HL3296: “Where a parent has exercised this right, the Department will remove any information collected on country of birth and nationality during the autumn census.” **We ask now: how will parents and pupils be told, and does this offer expire?**

28/11/2016 UK Statistics Authority writes to The Department for Education asking them to set out plans for ongoing review saying that maintaining public trust is essential, requiring an ongoing commitment to communications and transparency including “clear communication of purpose”.

16/11/2016 Early Years country-of-birth, nationality and language scrapped. The DfE has dropped plans to collect country-of-birth and nationality data from children aged 2-5 in the Early Years (EY), and Alternative Provision, on Jan 19. Ethnicity is still expanded to all under 5s, including childminders and private providers of state funded hours. *NOTE: We believe there was/is no SI in place to amend the Early Years legislation.*

03/11 Schools Week: Nicky Morgan questioned the Department intended purposes admitting “there had been “talk” about sharing the [new census country-of-birth and nationality] information while she was still in charge, and indicated that she had blocked it.”

28/10/2016: Written PQ 48635 Extent of Home Office access to pupil’s home address

Very first government admission at all outside of our FOIs and questions asked since May. HO given [pupils home address and school address](#) from pupils’ school census records The HO had requested the details of nearly 2,500 individuals since only July 2015. 520 records were returned with information, and we don’t know for certain how many individuals that involves. HO access expressly for immigration control and enforcement purposes now **on monthly basis (FOI 41221)**.

06/10/2016 FOI Ref: 2016-0042333 Purposes of all cases within the Home Office requests “are a) dependant(s) of a parent/guardian who is suspected of an offence under section 24 or 24A of the Immigration Act 1971, or section 35 of the Asylum and Immigration (Treatment of Claimants) Act 2004 has been, or is being committed (or b) the child in question is an unaccompanied minor.”

This makes it possible that NATT has accessed the data of British children, as well as migrant and/ or undocumented children, in order to return identifying data on adult relations or communities.

28/10/2016 Lord Nash wrote that new data will be kept separately due to their sensitivity

- we believe this offers no additional protection from other uses, no matter what database is called

- we believe it undermines basis for collection to link with "attainment and destinations".
- protecting children's well-being and professional, parental and children's trust are paramount for minorities of all kinds who wish their children's confidentiality to be assured in state education
- current HO purposes, including home address access, makes it impossible to trust future scope.

This policy risks that some of the most vulnerable in our communities:

- fear putting children into school
- not only foreign families will be concerned about back door access, i.e..women at risk/travellers
- those who have had past dealings with police

24/10/2016 Written question 49953 asked by Angela Rayner on Data sharing agreement

To ask the Secretary of State for Education, if she will publish the agreement (MOU) between her Department and the Home Office on the sharing of data from the national pupil database. Press and campaigners have been told to FOI to see the agreement. It did not exist on 29/09/2016.

26/07/2016 Written question 42942 No change in handling and disclosure of information

Question: what limitations will be placed by her department on disclosure of such information to

- (a) other government departments and
- (b) private third parties

and whether her Department plans to change its protocols or processes for handling and disclosure of confidential information when country of birth and nationality data is collected.

Nick Gibb replied: "There are currently no plans for the Department to change the existing protocols and processes for the handling and disclosure of confidential information."

"These new data items will provide valuable statistical information on the characteristics of these groups of children, and *along with their attainment and destinations...*"

27/10/2016 Written question 50649 asked by Mike Kane on Schools' legal position

To ask the Secretary of State for Education, with reference to her Department's training guide video for autumn 2016, whether schools do not need to obtain pupil or parental consent to share information on pupils' nationality collected through the school census; and whether those schools are protected from legal challenge about breaching a duty of confidence.

Note: The Department for Education guidance video has been take down which made this assertion. (Reference copy).

Professional criticism of policy and new plans

Sir Michael Wilshaw: "I'm amazed by it and shocked by it. Schools shouldn't be used for border control - that's the job of the border agencies. Schools have got enough to do raise standards than to worry about who they are taking in and whether they've got a passport." 1/12/2016

The National Union of Teachers has called for [this use of pupil data by the HO to end](#), emphasising that "schools are not part of policing immigration". 27/10/2016

The UK Statistics Authority: [urges the Department for Education](#) to set out plans for ongoing review saying that maintaining public trust is essential, requiring an ongoing commitment to communications and transparency including "clear communication of purpose"

Professionals similarly appalled: [including comment from NALDIC](#), The national subject association for EAL (English as an Additional Language) - promoting teaching and learning of bilingual pupils in the UK.

Laura McInerney, Schools Week editor, and Guardian writer, in The Guardian Schools – [What society lets families fear deportation for sending children to school?](#) 18/10/2016

EAL professionals feel its implementation is rushed and poorly thought out "it was wrong to just "grab the [scales] from Wales, without consultation". [\[Schools Week\]](#)

Responses in politics

31/10/2016 Lords motion of regret agreed, Hansard and our comment

“this proposal has all the hallmarks of racism” [Lord Storey]

“Parents are upset, not just about how this information might be used but because these questions are asked at all. They are fundamentally intrusive in the same way that the listing of foreign workers would be.” [The Earl of Clancarty]

“Unfortunately, all the evidence points to this being an immigration tactic rather than having anything to do with trying to improve the education of young people or supporting our schools”. [Lord Paddick]

The House of Lords: motion-of-regret was laid by Lord Storey in the Statutory Instrument praying period

The House of Commons: EDM laid by Jeremy Corbyn after the Statutory Instrument praying period 8/11.

Condemnation from opposition Secretaries of State for the Home Office and Senior Leaders:

Diane Abbott, Shadow Home Secretary – Let teachers teach, not act as border guards 28/12
Politics Home – The Government has an irrational and damaging determination to campaign against migrants

Tim Farron 6/10 on the changes “Let teachers teach”
24/10 Lib Dems reaction to story on ascribing ethnicity by Brighton and Hove city council
17/11 on the news the country-of-birth collection is scrapped for pre-schoolers

Caroline Lucas has consistently asked Parliamentary questions since its May 2016 introduction

Mike Kane Shadow Minister for Schools - party press release on news “extremely concerning” 13/10/2016

Response from the public

[The Against Borders for Children’s campaign](#) has received hundreds of faulty and unfair collection forms, saying wrongly that the data are required for funding, giving no opt out (which was available) and often asking children without parental consent for the data, sometimes in front of peers. We have received further complaints from parents and pupils directly as well — the most recent from an Irish mum who is upset her son was the only one asked in the class to “take this letter home to Mum, we need to see your passport” in front of his friends. Given widespread public, [press](#) and professional condemnation, we are pleased that the House of Lords supported Lord Storey’s motion to regret.

While the Department stuck its head in the sand after criticism and concerns raised since May 2016, and suggested in September that there had been no complaints using Mumsnet as its measure, that has now changed. The Mumsnet comments don't hold back.

Press coverage <http://defenddigitalme.com/press-coverage/>

These data will be collected again from all school children and ethnicity expanded to include further settings and data from the rising 2s in the Early Years Census on 19/01/2017.

Briefing prepared for Motion of regret, afternoon of October 31st, 2016

Lord Storey to move that this House regrets that information about pupils' nationality and country of birth collected under the Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016 (SI 2016/808) could be used to help determine a child's immigration status.

Call to annul the Statutory Instrument 2016/808: Summary

1. This Statutory Instrument enables the collection of country-of-birth and nationality data for every school child in England to be sent to the National Pupil Database.
2. This Statutory Instrument¹ was laid on July 27th and came into effect on September 1st, 2016. It has been **rushed through Parliament in the six week summer holidays without scrutiny before it came into effect. There was no public consultation. The business case and minutes of the decision-making have been withheld by the Department, preventing scrutiny of the policy intent or the cost versus benefit to children, schools and local authorities** of complying with the request for data, either before it was to come into effect, or now.² (Requested on July 4, 2016.)
3. **The policy and its implementation in practice have caused confusion and harm.** This includes parents children and young people who have experienced discrimination and embarrassment in front of their peers calling for **'this racist policy to be scrapped.'**³
4. **We believe the intended purposes of this data collection need intense scrutiny.** Since the Department is refusing to enable this, we are asking for the SI to be annulled, and the collection of the new data to be paused until full, transparent explanations are available on policy intent, uses of data to date are clarified, and its oversight and safeguards are in place to ensure there are no surprises in future.
5. On October 6th, 2016, School Census day, a delayed Freedom-of-Information request revealed that the National Pupil Database census data are already being used by the Home Office through the Department for Education **to target individuals connected to immigration status**⁴.
6. This was an unwelcome surprise. As Schools Week Editor Laura McInerney asked in the Guardian: **what society lets families fear deportation for sending their children to school?**⁵
7. **The DfE is passing out home address and school address on named individuals to the Home Office** from personal confidential data families entrusted to schools during the admissions process, and extracted in school censuses. These requests are for thousands of individuals.
8. Without **independent oversight and statutory safeguards** many fear that these new data could also be used to search for people; not only helping to determine a child's immigration status, but target and track their wider family members and communities.
9. **These new expanded census data, adding 'country-of-birth and nationality' add a way to actively seek out migrants, their homes and schools.**
10. The country-of-birth and nationality elements need to be withdrawn, and the English-as-an-Additional language element rewritten after considered consultation. Further, we call for independent oversight to be brought in to ensure existing policy of use for immigration enforcement and all other data uses is carried out with the utmost transparency and scrutiny.
11. Timeline: In August 2015 the former Secretary of State for Education announced plans in the media to measure the impact of "education tourism".⁶

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

² **FOI Pupil data: decision making on additional census data items** https://www.whatdotheyknow.com/request/pupil_data_decision_making_on_ad?utm_campaign=alaveteli-experiments-87&utm_content=sidebar_similar_requests&utm_medium=link&utm_source=whatdotheyknow

³ <https://news.co.uk/essentials/news/education/parents-call-racist-country-birth-request-policy-schools-scrapped/>

⁴ https://www.whatdotheyknow.com/request/sharing_national_pupil_database?nocache=incoming-878444#incoming-878444

⁵ Guardian Education October 18 2016 <https://www.theguardian.com/education/2016/oct/18/deportation-boycott-school-census-data-nationality-parents>

⁶ Review of 'education tourism' <http://www.telegraph.co.uk/news/uknews/immigration/11805477/Nicky-Morgan-orders-immigration-review-to-examine-education-tourism.html>

12. November 2015: The Department for Education Star Chamber Scrutiny Board signed off the census expansion for country-of-birth and nationality data collection to be included in the 2016-17 school and Early Years censuses. These extract named, highly sensitive, personal confidential data, including special needs and detailed ethnicity data, which are then sent to the DfE every term each year, and stored indefinitely in the National Pupil Database, now with lifetime school records of 20 million people.⁷
13. A freedom-of-information request asking for **the meeting minutes and the business case shared in that meeting has been refused**⁸, preventing independent public scrutiny of plans or policy intent before the SI became legislation or since. (Mentioned in the government response to the Scrutiny Committee.)⁹
14. **December 2015: the technical change form includes nothing on language skills.**¹⁰ The aim is: *“to identify children who have moved into the English education system from abroad to to ascertain the impact that such entrants have on the education system.” “The introduction of these data items will assist in the identification of such pupils and may facilitate the targeting of support to such pupils.”*
15. **Schools Week, June 2016:** “Nicky Morgan, the education secretary, announced she had ordered officials to investigate whether immigration levels are linked to “education tourism”. Schools Week wrote, “It is understood the [new census] information **will not be used as part of its investigation into the “impact of mass migration” on schools**¹¹ and said that Louise Casey had already undertaken a similar review.
16. **September 26th 2016: an open letter from over 20 rights’ organisations**¹² under the Against Borders for Children campaign and public pressure the Department told the BBC later that day, that the nationality data would not be given to the Home Office.
17. **October 6th 2016: Freedom of Information request**¹³ **confirmed Home Office access purposes.**
18. October 12th 2016: **the Lords government spokesman said,** “I reassure the House that the information is **kept within the Department for Education and is not passed on to the Home Office**”.¹⁴
19. **Indicators for English-as-an-Additional-Language (EAL) are already collected.** The additional 2016-17 fields¹⁵ were ONLY for “country-of-birth “and “nationality” when approved in December 2015. EAL appears to be an additional approval in February 2016¹⁶ but it is unclear why. EAL practitioners have said they are poorly thought out.¹⁷ It is questionable how standard the 5-level assessment tool will be. While the change request says “some children may have multiple nationalities”, forms seen to date cannot collect more than one. Most truly bilingual children will not be recorded as EAL at all. Some practitioners warn it could be “messy and inaccurate”.¹⁸ Changes were announced in May ‘after a delay’¹⁹, despite this warning: “Early guidance is imperative for Local Authorities and Schools to plan.”
- ²⁰ 21. **Concerns were raised to the Lords Secondary Legislation Scrutiny Committee,** as it was rushed through in the recess, following efforts since June to ask for changes to be reconsidered before the SI was laid.²⁰ **Notably in the reply, the Government**²¹ **does not respond to the issue of Home Office access at all.**

⁷ NPD has grown to 20 million people’s named records stored forever http://www.theregister.co.uk/2016/02/12/national_pupil_database_now_holds_20_million_records/

⁸ FOI made on July 4, 2016 for the Star Chamber Scrutiny Board Minutes https://www.whatdotheyknow.com/request/pupil_data_decision_making_on_ad#outgoing-574764

⁹ Lords Secondary Legislation Scrutiny Committee publications <http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/publications/> Government response http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/DfE-Response-SI2016_808.pdf

¹⁰ RFC change specification http://defenddigitalme.com/wp-content/uploads/2016/07/RFC_856_new_data_items_country_of_birth_and_nationality.pdf

¹¹ <http://schoolsweek.co.uk/schools-must-collect-data-on-immigrant-children-from-autumn/>

¹² Over 20 organisations sign Against Borders for Children letter to Justine Greening <http://www.schoolsabc.net/2016/09/20-orgs-support/>

¹³ Freedom of Information request published October 6th https://www.whatdotheyknow.com/request/sharing_national_pupil_database?nocache=incoming-878444#incoming-878444

¹⁴ October 12th Hansard: <https://hansard.parliament.uk/lords/2016-10-12/debates/BE938C0A-75F0-453B-8EB3-D4DC2C4556AF/SchoolCensusPupils%E2%80%99Nationality>

¹⁵ RFC change specification http://defenddigitalme.com/wp-content/uploads/2016/07/RFC_856_new_data_items_country_of_birth_and_nationality.pdf

¹⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509299/RFC_875_-_new_data_item_for_proficiency_in_English.pdf

¹⁷ EAL rushed and poor in implementation <http://www.teachertoolkit.me/2016/10/01/eal-census/>

¹⁸ <http://schoolsweek.co.uk/schools-must-collect-data-on-immigrant-children-from-autumn/>

¹⁹ https://www.whatdotheyknow.com/request/school_census_guidance_for_21062?utm_campaign=alaveteli-experiments-87&utm_content=sidebar_similar_requests&utm_medium=link&utm_source=whatdotheyknow

²⁰ <http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/Defenddigitalme-submission-SI2016-808.pdf>

²¹ http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/DfE-Response-SI2016_808.pdf

How have individual pupils' data been used to date?

22. All the data in the National Pupil Database are collected on a named pupil basis, and released at pupil level to a range of third parties.²² **They are not 'solely for the DfE to use,' or anonymous statistics. See page 19-21** of the National Pupil Database user guide.²³ **All data in the NPD are released in raw identifiable formats at an individual pupil level**, with no suppression for small numbers on release.
23. The data are most often released on an individual, occasionally named²⁴, identifiable basis. The DfE shares this database of 20 million people at pupil level, with other government departments today.
24. **Of the 709 requests²⁵ and releases of identifiable data** from the DfE request process in 2012-2016, only 23 have been for aggregated data. The rest are all of identifying, individual pupil level.
25. Safeguards like assessment for privacy impact, ethical review, routine audit procedures are lacking. The Telegraph, for example in 2015, had not confirmed whether it had destroyed millions of children's identifiable data²⁶ it received and past its destruction due date. Extra sensitive data (special needs/disability data, reasons for exclusion like violence /theft) are released to journalists as well
26. It is said that the benefit of giving the data to third-parties is for public interest and 'promoting the education of well-being of children'. Data consultancies and pupil-tutor matching services are not what many think of as 'research' among appropriate recipients for their children's confidential sensitive data.
27. **Commercial publications** that use sensitive identifiable pupil level data include comparison websites for example. Releases are for long periods of use. Identifiable and sensitive pupil level data was released for this web comparison tool and publication and Schools Guide for six years.²⁷ Is that "research" purposes?
28. Releases are not always for very specific purposes.
29. **The Times newspaper were granted Tier 2, identifiable and sensitive individual pupils' data**, for the purposes of "Stories on the newspaper/digital, ranking of schools, interactive tool on the website." and the Times, "To pick interesting cases / groups of students".²⁸ Variables requested included postcode, date-of-birth, absence, exclusions, children in need indicator, Special Educational Needs (see final page samples), Type of disability, language, ethnicity and exam candidate number.
30. While users give assurances that, no pupil or family will be identified when they publish they data, and they will not "share or publish individual level data" the disclosure by the DfE to users for example to Schools Guide²⁹, is sensitive identifying data about individual pupils who have not consented to this use.
31. **The Home Office using pupil data to access individual home address and school address, including for immigration enforcement, had not been disclosed or discussed by the DfE** before this response from the DfE FOI team published October 6th 2016³⁰ Ref: 2016-0042333 "Police and the Home Office access is to search for specific individuals in the National Pupil Database and to return the latest address and/or school information held where a match is found in the NPD."
32. The Home Office requests are to support the Absconder Tracing Team's (NATT) key objectives and commitment to upholding a duty of care for missing children and abuse of immigration control.
33. Related to dependant(s) of a parent/guardian suspected of an offence under section 24 or 24A of the Immigration Act 1971³¹ or section 35 of the Asylum and Immigration (Treatment of Claimants) Act 2004³²
34. **Each Home Office request includes lists of people**, to enable to the Department to search for them in the NPD. **The total volume of pupil records used July 2015-Sept 2016 in 25 requests, was a total of 2,462 individuals and 520 records returned to the Home Office.**"[update Oct 28th 2016]
35. There is also use by academic public interest researchers. Other research models provide more secure infrastructure to enable use without copying and sending it across the country. **See our research paper.**

²² Third party register of other releases <https://www.gov.uk/government/publications/national-pupil-database-requests-received>

²³ http://defenddigitalme.com/wp-content/uploads/2016/08/NPD_user_guide.pdf

²⁴ <http://defenddigitalme.com/2016/02/scope-creep-in-national-pupil-database-now-means-names-released/>

²⁵ 709 releases of identifiable pupil data - March 2012-March 2016 <http://defenddigitalme.com/2016/10/new-releases-of-school-census-data-from-the-national-pupil-database/>

²⁶ Telegraph newspaper application request for sensitive identifiable pupil data <https://www.whatdotheyknow.com/request/293030/response/723407/attach/3/Daily%20Telegraph.pdf>

²⁷ Lucas Publications: Tier 2 sensitive, identifiable pupil data 20 <https://www.whatdotheyknow.com/request/293030/response/723407/attach/7/Lucas%20Publications.pdf>

²⁸ The Times, News UK 2013 NPD data request <https://www.whatdotheyknow.com/request/293030/response/723407/attach/5/The%20Times.pdf>

²⁹ <https://www.whatdotheyknow.com/request/293030/response/723407/attach/11/School%20Guide%20UK.pdf>

³⁰ FOI request that revealed Home Office purposes https://www.whatdotheyknow.com/request/sharing_national_pupil_database?nocache=incoming-878444#incoming-878444

³¹ 1971 Immigration Act - Legislation on immigration enforcement actions used to enable NPD use by the Home Office <http://www.legislation.gov.uk/ukpga/1971/77/section/24>

³² Asylum and Immigration Act 2004 Legislation on immigration enforcement actions used to enable NPD use by the Home Office http://www.legislation.gov.uk/ukpga/2004/19/pdfs/ukpga_20040019_en.pdf

Conclusion

36. According to the 2015 report ³³ from Professor Steve Strand at the Oxford Migration Observatory, the leading academic on the National Pupil Database: “The NPD is limited in a number of ways, it does not have a variable such as **nationality or country of birth that can be used to identify migrants.**”
37. **What is said, is that it will be used to target resources. The truth is that the National Pupil Database is already being used to target children and communities, and in secret.**
38. **What is said, is that the information is not given to the Home Office. The truth is that information from the National Pupil Database is already being given to the Home Office.**
39. **What is said, is that new data items will provide valuable statistical information³⁴ on the characteristics of these groups of children. The truth is that these data used are not only used as statistics, but given out at individual pupil level from millions³⁵ of individual children.**
40. **Since all the raw identifiable and sensitive data in the National Pupil database are already given to a wide list of third party uses³⁶ including the press, and commercial business, there is no basis for the claim made that the data are solely for the DfE to use in research, statistics and analysis.**
41. **The Government Lords spokesman said on October 12th³⁷, I can reassure the noble Lord the information is not given to the Home Office. The government seems unwilling to mention current Home Office use of identifiable, confidential data.** There is no new way we are yet aware of, that the DfE will separate some data for one purpose from another or restrict some data from being sent to the Home Office or to journalists, and maintain the purposes for which it was said the data were necessary.
42. **Other organisations are concerned that press access to the new data could also be problematic,** given the rise over recent years in xenophobic sentiment in the British media, as noted by the United Nations³⁸, and some fear that newspapers granted access to the data may use it to single out and stigmatise communities or schools.³⁹ **The NUT called for transparency of all data use with consent.**
43. **The rush to implement this in schools has caused distress and discrimination.** Parents, even celebrities who provided the new data, but did not know their children’s data would be sent to the national database have written to campaigners and commented on social media, they **don’t know what to do.**⁴⁰
44. **It is now a question of trust.**
45. **Will the government only use the new census data for the purposes it states?**
46. **Will it continue to use National Pupil Data to find adults through their children’s school records?**
47. **What oversight and transparency have there been to date for these purposes?**
48. **Crucially, if not on a statutory footing, what value will any assurance that the government may now give, that scope creep of the use of these named children records will not change in future?**
49. **Will 2013 plans return?**⁴¹ Schools carrying out checks on migrant status as part of school admissions or limits on access to education for everyone?⁴² Cabinet Office letters show this was planned in 2015 again.
50. **The country-of-birth and nationality collection need withdrawn, English-as-an-Additional language rewritten after considered consultation, with safeguards and oversight for all use.**

³³ Prof. Steve Strand on adding nationality and country-of-birth to the NPD <http://www.migrationobservatory.ox.ac.uk/resources/briefings/educational-outcomes-among-children-english-additional-language-eal/>

³⁴ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-07-14/42842/>

³⁵ Sensitive identifiable data are released from the NPD by the DfE several years worth at a time, sending out millions of children’s data https://www.whatdotheyknow.com/request/pupil_data_sensitive_data_releas

³⁶ defenddigitalme blogpost detailing the 709 releases of identifiable pupil level data <http://wp.me/p6LXMz-cL>

³⁷ <https://hansard.parliament.uk/lords/2016-10-12/debates/BE938C0A-75F0-453B-8EB3-D4DC2C4556AF/SchoolCensusPupils%E2%80%99Nationality>

³⁸ <http://www.un.org/apps/news/story.asp?NewsID=50675#>

³⁹ <https://www.schoolsabc.net/2016/09/letter-justine-greening/>

⁴⁰ Lily Allen Singer and parent “ I got my notice on Tuesday and it said all entries had to be in by Friday. I think it’s probably too late” <https://twitter.com/lilyallen/status/784857733606629376>

⁴¹ **Ministers planning immigration crackdown on ‘education tourists’** <https://www.theguardian.com/politics/2013/mar/27/ministers-immigration-crackdown-education-tourists>

⁴² Article 26. Everyone has the right to education <http://www.un.org/en/universal-declaration-human-rights/>

Examples of sensitive data fields collected and shared

The current detailed list of data captured can be found in the [School Census Guide v.1.3 2016-17](#)⁴³:

- Language codes already recorded for pupils with English as an Additional Language [pp137-140](#)
- Ethnicity codes — complex and detailed [pp130-136](#)
 - Pupil exclusion reasons — highly sensitive, data are never expunged from the NPD records [p142](#)
- Special Educational Needs (SEN) health data, also used by third parties without consent [p142](#)

Nationality data

It was said on Oct 12th, the Government, *"will use information on pupils' nationality and country of birth to understand how we can give all pupils a better education that caters to their individual needs."*

The data in the system may bear little resemblance to what parents provide, there is generally only one field on forms. The Department advises schools that "they do not need to ask for consent"⁴⁴ and drop down forms in some school systems (SIMS) have fields to ascribe the source of language, nationality and ethnicity.

A large range of ethnicity groups and subgroups are captured [[pp 130-136](#)] which are often used together with the existing language data already collected as a proxy for heritage data. However academies are not required to maintain consistency by using common school transfer files, so "all pupils" data are not treated equally. **These fields can also be selected and ascribed at the discretion of the school administrator.**

What is required vs already known for a study of the impact of children on the education system is unclear. Nationality is not a required field. It is therefore doubtful what quality the data will be. Given the extensive concerns and lack of purposes given in the guidance, and damage done during its collection, many parents and pupils have refused to supply the data. **We know of schools that have decided to leave the default for all. We also know of schools that have asked the children to complete the paperwork in class, and return it without parents having seen the entry. It is unlikely to be a reliable and consistent quality measure.**

What will new data be used for?

On July 26, 2016 the Minister for School Standards wrote in answer to a Parliamentary Question: "There are currently no plans for the Department to change the existing protocols and processes for the handling and disclosure of confidential information."⁴⁵

The Home Office has been using individual pupils' home address and school address to target individuals which was not public. There was no intent to change current data handling practices, so we can reasonably assume these data would also have been accessible to the Home Office in future.

When over 20 human rights organisations⁴⁶ wrote a letter under the Against Borders for Children campaign on 26th September the Department spokesperson told the BBC⁴⁷ that, "Pupil nationality data 'will not be passed to Home Office'. That pupil data already is and would continue to be was not mentioned.

No one to date (5 Dec 2016) has been able to see the new 'data sharing agreement' reportedly "in place" on October 12th according to the Guardian but that we know on September 29th was "a recent development".

What weight will it have to prevent the scope creep that has moved the National Pupil Database from collection of a few data in 2000, and use for internal Department statistics, to giving out individual children's personal data including their reason for exclusions, absence, children in care status, ethnicity, geographical and personal identifiers, full attainment history and for commercial purposes without consent?

⁴³ School Census Guide v.1.3 2016-17 <http://defenddigitalme.com/wp-content/uploads/2016/10/School-census-2016-to-2017-guide-version-1.3.pdf>

⁴⁴ <https://www.youtube.com/watch?v=3zTJpLLfx3K>

⁴⁵ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-07-15/42942/>

⁴⁶ <https://www.schoolsabc.net/2016/09/letter-justine-greening/>

⁴⁷ <http://www.bbc.co.uk/news/education-37474705>

This change enables the identification of migrants

The new, 'country-of-birth and nationality' adds a way that could be used to actively seek out migrants, their homes and schools in NPD.

According to a 2015 report from Professor Steve Strand at the Oxford Migration Observatory, the leading academic on the National Pupil Database, and in the context of discussing language and data in the NPD⁴⁸:

“The NPD is limited in a number of ways, however. Importantly, it does not have a variable such as nationality or country of birth that can be used to identify migrants.”

The idea of identifying migrants with real consideration for targeting funding, teaching needs is positive, but there is no funding proposal behind this census expansion that has been put into the public domain.

The Government has been unwilling to discuss existing use of the data

Deportation and immigration enforcement are among the purposes for which pupils' home address and school addresses, have been given out to the Home Office (HO). These data on named individuals have been taken from the existing school census data at the Department for Education (DfE), and used for enforcement, in addition to purposes for legitimate safeguarding support, and for use by police. These uses are only known in the public domain as a result of a Freedom-of-Information request published on Oct 6th.

MP Greg Mulholland asked Justine Greening on October 10th, whether the policy risked turning teachers into border guards. Until October 27th the spokespeople from the Department, The School Standards Minister, The Education Secretary, and Lords spokesman have all stuck to the same line since May 2016:

“These data items will not be passed to the Home Office. They are solely for internal DfE use for analysis, statistics and research.”

a in written answer on June 24 to our earlier questions from the Department

b Two Parliamentary written questions in July (Nick Gibb)⁴⁹ (42842) and (42942)

c Department BBC press comment on September 26th⁵⁰

d House of Commons on Monday October 10th, Edu Questions (Justine Greening)⁵¹

e and in the Lords in the afternoon of October 12th Viscount Younger of Leckie said⁵²

“I can reassure the noble Lord the information is not given to the Home Office.” and that “that the information is kept within the Department for Education.”

Each of these opportunities has afforded Education officials at all levels to speak clearly and honestly about all Home Office use of identifiable data under questions of use by 'other government departments.'

What purposes were signed off for this change?

“Whilst the department collects limited information on children who have moved into the English education system from abroad, the collected information is insufficient to ascertain the impact that such entrants have on the education system. The introduction of these data items **will assist in the identification of such pupils** and **may** facilitate the targeting of support to such pupils.” (RFC form)⁵³

⁴⁸ Prof. Steve Strand on adding nationality and country-of-birth to the NPD <http://www.migrationobservatory.ox.ac.uk/resources/briefings/educational-outcomes-among-children-english-additional-language-eal/>

⁴⁹ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-07-15/42942/>

⁵⁰ <http://www.bbc.co.uk/news/education-37474705>

⁵¹ <https://hansard.parliament.uk/Commons/2016-10-10/debates/4B7349AD-337E-4FAC-BA3E-C8C9877ADA5A/TopicalQuestions#contribution-DBFF2B4F-0BAD-4B57-BC9A-A4F7711E3397>

⁵² <https://hansard.parliament.uk/lords/2016-10-12/debates/BE938C0A-75F0-453B-8EB3-D4DC2C4556AF/SchoolCensusPupils%E2%80%99Nationality>

⁵³ RFC change specification http://defenddigitalme.com/wp-content/uploads/2016/07/RFC_856_new_data_items_country_of_birth_and_nationality.pdf

The original Dec 2015 change specification is exclusively to add files to collect “Country-of-Birth” and “Nationality”. No technical change at this time is publicly documented that will add anything to do with language skills. EAL assessment was added only in February 2016.

An FOI request for the meeting minutes from that SCSB November 2015 Star Chamber where the changes were approved, has been refused preventing independent public scrutiny of plans or policy intent.

The business case for the census and early years census expansion costs and the benefit and risk for local and national changes are unknown, since they have also been declined. We await the DfE's response.

Policy implementation

The guidance was published by the Department on May 4 2016 a month later than initially anticipated due to a delay in obtaining clearance.⁵⁴ It is not clear why this was published before the SI was laid on July 27.

Autumn census was 6th October 2016. Given the summer holidays this meant a very short time for Local Authorities and schools to receive the new communication understand it and implement the collection. It left no time for scrutiny or public consultation before becoming statute on September 1 2016.

The lack of openness in discussion at each opportunity on Home Office access, the lack of willingness to open decision-making and business case open for scrutiny, and lack of meaningful safeguards to know that these new sensitive data would not be used for the purposes many see as a breach of confidence have created a deficit of trust. Its implementation has also caused harm.

The Against Borders for Children campaign collated parents and pupils' reactions and samples of forms shared. The majority of paper forms did not explain that the submission was optional or that parents could indicate 'Refused' or 'Not Yet Obtained'. Text messages didn't go into any explanations at all. The majority of schools informed parents it was data 'required' and for funding. Schools worry they will be sanctioned and wrongly assumed it was required.

Parents who had concerns but did not know it was optional, took to social media asking each other what to do. Even celebrities⁵⁵ felt helpless.

- **Brighton and Hove City Council wrote to schools in their area that in the event of parents or pupils refusing ethnicity, they could ascribe it.**
- **Schools Week investigated the school census of its own accord, and found classroom discrimination where only children who were not white-British were being asked to bring in passports to school.**⁵⁶
- **Parents at a school in London have asked on October 17th, what they can do if the school wishes to withdraw its entire country-of-birth and nationality school census data submission, as they didn't feel parents had made informed decisions to provide their personal data**
- **Children and young people have felt discrimination and embarrassment in front of their peers calling for this 'racist policy to be scrapped'**⁵⁷

Schools Week reported: “*confusion could increase fears among ethnic minority families about how the data might be used, although education leaders say they have received assurances it will not be passed to the Home Office.*” The National Union of Teachers (NUT) called for transparency of all data use with consent.

Campaigners continue to receive emails and social media messages of parents with children, or directly from teens who feel harassed, discriminated against, embarrassed in front of peer groups. It is changing pupils' and family relationships with school staff ⁵⁸ and influencing young people's perceptions forever.

⁵⁴ This FOI request suggests that the new census items were known but delayed in Spring 2016 School Census guidance for 2106/2017 https://www.whatdotheyknow.com/request/school_census_guidance_for_21062?utm_campaign=alaveteli-experiments-87&utm_content=sidebar_similar_requests&utm_medium=link&utm_source=whatdotheyknow

⁵⁵ Lily Allen Singer and parent “ I got my notice on Tuesday and it said all entries had to be in by Friday. I think it's probably too late” <https://twitter.com/lilyallen/status/784857733606629376>

⁵⁶ Schools Week investigation finds classroom discrimination in data collection <http://schoolsweek.co.uk/pupils-who-were-not-white-british-told-to-send-in-birthplace-data/>

⁵⁷ Parents call for “racist policy to be scrapped” <https://inews.co.uk/essentials/news/education/parents-call-racist-country-birth-request-policy-schools-scrapped/>

⁵⁸ Parents and pupils call for collection to be scrapped, calling it racist <https://inews.co.uk/essentials/news/education/parents-call-racist-country-birth-request-policy-schools-scrapped/>

Supplementary: Example of common errors in sample collection form

- Required, mandatory, no opt out offered.
- Assurance that data will be held confidentially and no mention of handing out to third parties.
- The Information will not be used for any other purpose.
- [Redacted for personal and school identifying information]

18 July 2016

Our Ref: [Redacted]

TO: **ALL PARENTS AND CARERS**

Dear Parents and Carers

The Department for Education (DfE) has stated that each school must provide information on every student's nationality and country of birth.

As this is a mandatory requirement, we would be grateful if you would please complete the attached form, for each child attending [Redacted] and return to the School Office by Friday, 22 July 2016.

We would like to reassure you that the information provided will be held confidentially at all times and it will be passed on to any other school to which your child transfers to avoid repeating the exercise.

The information provided will be used to compile statistics on the school careers and experiences of children from different backgrounds, to help ensure that all children have the opportunity to fulfil their potential. These statistics will not be published in a way that allows individual children to be identified publicly and the information will not be used for any other purpose. From time to time this information will be passed to the Local Authority and the DfE to contribute to local and national statistics.

It is imperative that this form is completed and returned to the school. Please complete the attachment and send back to school or send an email with all the stated information to [Redacted]

Should you need any help completing the form, please do not hesitate to contact the School Office.

Thank you in advance for your support.

Yours sincerely

0 words

Example of screen to capture data without consent “ascribing” sensitive personal data at the school’s discretion; and SEN codes released

Pupil SEN type [ALL schools]

| Code | Description |
|------|----------------------------------------------------------|
| SPLD | Specific learning difficulty |
| MLD | Moderate learning difficulty |
| SLD | Severe learning difficulty |
| PMLD | Profound & multiple learning difficulty |
| SEMH | Social, emotional and mental health |
| SLCN | Speech, language and communication needs |
| HI | Hearing impairment |
| VI | Visual impairment |
| MSI | Multi-sensory impairment |
| PD | Physical disability |
| ASD | Autistic spectrum disorder |
| OTH | Other difficulty / disorder |
| NSA | SEN support but no specialist assessment of type of need |