

## Key concerns on AP Census: Children's lifetime confidentiality, Fairness, and Process

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defenddigitalme believes reasons for AP transfer are sensitive data, equivalent to health data, and should require consent for named collection and secondary uses, even with a statutory footing.

[Ofsted's Report on Local area SEND inspections](#) and a recent report by think Tank IPPR [Making the Difference](#) shows the importance of understanding these information. But that should not be at the expense of the lifetime privacy of the children affected.

1. **Privacy Risks:** The Department claims,<sup>1</sup> *"As the AP census already collects a range of characteristic information about individuals, these additional items of information (about the same individuals) do not present any new privacy risks over and above those already present."*

This is incorrect. The Alternative Provision data are added to the growing database of 23 million people, [the National Pupil Database](#). Its data are never deleted. These are *secondary uses of data*, entirely separate from direct care. The risks are significantly raised, in a range of ways including:

- i. **Safeguarding.** Releases at national level to third parties are not anonymous, but identifiable.
- ii. **Direct interventions.** Data are passed on without any checks for errors. The data may carry lifelong stigma and implications for life chances when used inside and outside government for interventions, with risks of negative effects on children if inaccurate or misused. DfE shares them with the [Cabinet Office Troubled Families Programme](#)<sup>2</sup>, the [National Citizen Service](#) and the Duke of Edinburgh scheme. The Football Association Premier League Ltd for example use NPD data to, *"establish an accurate central tracking system, in the best interest of the young players' education."* How might 'young offender' affect a young person's life in these contexts?
- iii. **Third party distribution of data for secondary purposes.** Here risks rise exponentially. Confidential highly sensitive pupil-level data from the National Pupil Database, including sensitive special needs data (SEN) has already been passed on since 2012 to [commercial companies](#), charities, [think tanks](#), [newspaper](#) and TV [journalists](#) at an individual pupil level for millions of pupils at a time, without any suppression of small numbers, without pupil/parental consent or knowledge. [\[The Telegraph\]](#), [\[BBC Newsnight\]](#), [\[The Times\]](#) [\[Private Tutor company Tutor Hunt\]](#), [\[Data consultancy\]](#).[\[Cabinet Office National Citizen Service\]](#) [\[Cabinet Office Troubled Families Programme p7/9\]](#) Data in the National Pupil Database are never deleted. *The University of Cambridge Institute of Criminology* was already given identifying data in 2013 which does not expire until April 2019 to predict pupil exclusion for London schoolchildren.

2. **Fairness:** It appears from the AP [Census Guidance 2018](#), that the Department has no intention to tell schools how to explicitly inform parents and children about the expansion of the data collection. This is despite the Data Protection requirement to explain it with clear reasons to the pupils, understandable by children (especially to meet GDPR Art 12(1)) when data are collected.

3. **Process:** A negative SI appears inappropriate for this type of sensitive, national change. It was approved by the same Board that signed off the [controversial](#) collection of country of birth and nationality data [added to the School Census last year](#), (the [Star Chamber Scrutiny Board](#)) without adequate facts. The Information Commissioner already [intervened recently](#), when the guidance to parents about their rights to refuse and withdraw nationality data, was not made clear enough.

Press are already reporting these types of sensitive data at very low level, and pupil level access is therefore too sensitive: ["Revealed: The 10 schools in Norfolk with the most permanent exclusions."](#) See more background, opinions, and our concerns in an article in [Schools Week](#).

<sup>1</sup> Parliamentary question 108570 on lack of Privacy Impact Assessment for the AP expansion to national level. <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-18/108570/>

<sup>2</sup> Troubled Families use data from the National Pupil Database (not informed or with consent) This example was on absences.

## Questions

1. Government must answer why these sensitive data , equivalent to health data, will not require consent for named collection and secondary uses, even with a statutory footing.
2. Who is accountable to tell children and parents these sensitive data will be collected on named basis in this national database, why the new data are to be collected and how they will be used, and kept for how long. How will this be communicated? The government [response so far is poor](#).<sup>3</sup>
3. Who will access these data, and with what limitations to ensure privacy? For example journalists are given sensitive reasons for exclusion today, including theft, violence, sexual conduct. Will pregnancy and young offender labels be made available to journalists and businesses too?
4. What assessment has the government made how they will meet retention duties to data minimisation regards these sensitive reasons for exclusion and SEN data already collected?

## Background

Following a negative [Statutory Instrument this summer](#), the [Department for Education will collect](#) teen pregnancy and other health related information from AP school children, from January 2018.

This change affects the Alternative Provision Census (AP) collected in mid-January. (See DfE [2018 AP Census Guidance](#).) “Primary reason for placement” options include: Mental health need, Physical health need, Pregnancy / childcare, Pupil in young offender institute / secure training centre, Permanent exclusion, New arrival without a school place.

It is a local authority census that requires the return of *individual* pupil records. Local authorities are responsible for suitable full-time education for permanently excluded pupils, and for pupils who – because of illness or other reasons – would not receive suitable education without such provision.<sup>4</sup>

In 2016, there were 22,212 children recorded as being in local authority funded placements outside of state place funded schools, including children who are educated in private voluntary and independent (“PVI”) settings. (Source: [DfE Explanatory Note](#))

While the information has been captured at local level before, sending it to national level is new.

There has never been any privacy impact assessment done for any school census collections, or National Pupil Database despite it being a government ["mandatory minimum measure" since 2008](#).

There was no public consultation as such, although according to government, *“Input from a sample of local authorities and AP providers and were also considered.”*<sup>5</sup> (See [PQ 108574](#))

### About the Census of pupils in Alternative Provision (AP)

This census has been collected every year at an individual level since 2008. The Census is a local authority (LA) return that requires the submission of individual records of pupils in AP on Census day in January each year. The AP Census covers children who are:

- Of school age 2-19 attending a school not maintained by an authority for whom the LA is paying full tuition fees; and
- Educated otherwise than in schools or Pupil Referral Units under LA made arrangements.
- Includes those excluded from school on a permanent or fixed term basis; or
- Unable to attend school for medical reasons; or awaiting placement in a maintained school

<sup>3</sup> PQ 108559 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-18/108559/>

<sup>4</sup> Alternative Provision background (statutory guidance) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/268940/alternative\\_provision\\_statutory\\_guidance\\_pdf\\_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268940/alternative_provision_statutory_guidance_pdf_version.pdf)

<sup>5</sup> PQ 108574 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-18/108574/>