

## Summary: use of identifying pupil data from the National Pupil Database

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In 2012, after identifying data had been used for many years by public interest academic researchers, the government changed the law, and began to hand it out to new third party recipients like commercial companies, websites, charities, think tanks, newspaper and TV journalists, and data intermediaries and consultancies. (see page 12 for list of case studies). Data are released as identifying and sensitive data<sup>1</sup>, and there is no consent for its release. There is no small numbers suppression (see the 2013 release to the Telegraph of millions of children).<sup>2</sup>

Pilot surveys<sup>3</sup> in 2014-15 showed schools, children and parents didn't know this database exists.

The National Pupil Database (NPD) is "one of the richest education datasets in the world" according to the DfE User Guide<sup>4</sup>. The NPD holds detailed personal information from every child in state education, and some independent school pupils since 1996. It now includes nearly 23 million individual named records<sup>5</sup>. In any given year the total is ca 8 million<sup>6</sup> active pupils and a new intake adds 700,000 more. The NPD is a melting-pot mega-database of linked data (see Annex section 2: Data Sources), the majority is submitted three times a year in the school census.

### What must change

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1. **Safe:** Access to sensitive pupil data must change, modelled on the five safes<sup>7</sup>: safe people, safe projects, safe settings, safe disclosure and safe data. Enable data access. Stop "sharing".
2. **Fair:** Every child must know who has their personal data and be informed what it is used for before data are collected for defined purposes. Every use must be documented with oversight, and subject access rights, which are refused today by the DfE, should be restored to enable children to know who holds their personal data, for how long, and what they have done with it.
3. **Transparent:** Children must be told DfE hands out identifying personal data to commercial companies, journalists, charities, at al. Not anonymous, but "identifying and sensitive" data.
4. **Proposal for local level:** School information management systems (SIMS) must be required to offer tools to be able to audit systems, and tell families in a child-friendly way which organisations have had access to a child's records, when and for what purpose from the SIMS. Schools should be required to offer annual data usage reports, that empower parents and pupils rights, and enable schools to meet their responsibilities. This should apply equally to all children in education, whether maintained by the Local Authority, or other school types, such as academies or free schools for example.
5. **Proposal for national level:** Children and parents have their rights respected to make Subject Access Requests at the Department for Education. Empower citizens to see what data the Department holds on the person making the Subject Access Request. This will also improve data accuracy and integrity, and enable participation in how data can create public benefits.
6. **Secondary uses of data beyond the child's own education and care, should require consent.** Every use of data should be safe, fair and transparent to a child, with no surprises. That includes use by all government departments. Data collected for one purpose, may not be used for something quite different (like collected for school, used for immigration purposes).

<sup>1</sup> Ref pp19-21 Tiers 1-4 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/472700/NPD\\_user\\_guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472700/NPD_user_guide.pdf)

<sup>2</sup> "There is no suppression applied to data extracts from the NPD before release" <http://defenddigitalme.com/wp-content/uploads/2017/05/Telegraph.pdf>

<sup>3</sup> Background research with schools and pupils [http://defenddigitalme.com/wp-content/uploads/2016/09/58\\_Persson\\_PRINT\\_last.pdf](http://defenddigitalme.com/wp-content/uploads/2016/09/58_Persson_PRINT_last.pdf)

<sup>4</sup> NPD User Guide p 5/40 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/472700/NPD\\_user\\_guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472700/NPD_user_guide.pdf)

<sup>5</sup> FOI [https://www.whatdotheyknow.com/request/pupil\\_data\\_national\\_pupil\\_data\\_2?nocache=incoming-764676#incoming-764676](https://www.whatdotheyknow.com/request/pupil_data_national_pupil_data_2?nocache=incoming-764676#incoming-764676)

<sup>6</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-02-02/62925/Schools:CensusParliamentaryWrittenquestion-62925>

<sup>7</sup> The 'Five Safes' – Data Privacy at ONS <https://blog.ons.gov.uk/2017/01/27/the-five-safes-data-privacy-at-ons/>

## Is the national pupil data released identifying and sensitive? Yes.

**The National Pupil Database User Guide<sup>8</sup> All Tiers 1-4 are all “identifying” and 1-2 classed as “sensitive”. Note: UK Data Service permits accredited researchers access to Tiers 2-4<sup>9</sup>, not Tier 1.**

Information Tier	Information Type	Description	Governance
1	Individual pupil level data - Identifying and / or Identifiable and Highly Sensitive	Individual pupil level extracts that include identifying and highly sensitive information about pupils and their characteristics including items described as 'sensitive personal data' within the UK Data Protection Act 1998.  Examples of identifying data items include names, address and date of birth.  Examples of highly sensitive data items include looked after status, in need status, full ethnicity, full language and primary and secondary SEN Type, reasons for exclusions and absence and service child indicator.	Data Management Advisory Panel
2	Individual pupil level data - Identifiable and Sensitive	Individual pupil level extracts that include sensitive information about pupils and their characteristics including items described as 'sensitive personal data' within the UK Data Protection Act 1998 which have been recoded to become less sensitive.  Examples of sensitive data items include ethnic group major, ethnic group minor, language group major, language group minor, special educational needs and eligibility for free school meals.	Education Data Division
3	Aggregate School level data - Identifiable and Sensitive	Aggregated extracts of school level data from the department's School Level Database which include items described as 'sensitive personal data' within the Data Protection Act 1998 and could include small numbers and single counts.  For example, there is one white boy eligible for free school meals in school x that did not achieve level 4 in English and maths at Key Stage 2.	Education Data Division
4	Individual pupil level data - Identifiable	Individual pupil level extracts that do not contain information about pupils and their characteristics which is considered to be identifying or described as sensitive personal data within the Data Protection Act 1998.  For example, the extracts may include information about pupil attainment, prior attainment, progression and pupil absences but do not include any trivially identifying data items like names and addresses and any information about pupil characteristics other than gender.	Education Data Division

• Age and month of birth  
• Boarder  
• Date of entry to / leaving school  
• FSM / Ever FSM eligibility  
• Minor and major ethnic groups  
• Minor and major language groups  
• Mobility  
• Part-time / Full-time status  
• Persistent absence indicator  
• SEN provision  
• Super Output Area

Anyone requesting access to sensitive data in tier 2 will be expected to explain on a field by field basis why each item is required and why the same outcome cannot be achieved using less sensitive data.

More information on the full list of data items available in each information tier is available in the [NPD data tables](#).

### 2.2 The application process

Users requesting access to any pupil level data from the NPD must complete and return the application form and information security questionnaire. [These forms](#) are available on the department's website or from the NPD Data Request Team at [NPD.REQUESTS@education.gsi.gov.uk](mailto:NPD.REQUESTS@education.gsi.gov.uk)

People requesting access also need to demonstrate they will comply with all the relevant requirements of the Data Protection Act 1998. They will need to demonstrate that they:

- (or their organisation) are registered with the Information Commissioner's Office to process personal data or fall within an appropriate exemption.
- Have appropriate security arrangements in place to process the data.
- Intend to use the data only for the specified purpose.
- Will keep the data only for the specified length of time.
- Will not further disclose, publish or pass on the data without the prior written approval of the department.

### 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

**These  
SEN**

**classifications** for example are only the highest level codes, but Tier 1 has more detail. Extended data and those of ethnicity for example, all Tier 1, highly sensitive and identifying.

**Reasons for exclusion** include things such as sex, drug and alcohol related, theft, violence and abuse. These are never deleted. They are generally descriptive rather than 'criminal' records. Yet these data are given to the press, and may be accessible to use in Troubled Families identification, and linkage in research and across other government departments. How accurate are they and should these records never be expunged?

**Reasons for transfer are about to add even more sensitive information** [\[see link\]](#)

<sup>8</sup> The National Pupil Database User Guide p19-21 <https://www.gov.uk/government/publications/national-pupil-database-user-guide-and-supporting-information>

<sup>9</sup> UK Data service restrictions on Highly sensitive Tier 1 data <https://discover.ukdataservice.ac.uk/series/?sn=2000108#access>

## Legal Basis for Data Collection and Pupil level data Release

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See Parliamentary [question HL2783](#) for an annex with a list of legislation relevant to educational data collections. (Also listed at end of this document) as Appendix: 9).

Children who had already left school before the law changed in 2012 have never been informed, and there is no plan<sup>10</sup> according to Lord Nash, to tell them that the government now gives out their personal data to a wide range of third parties, including commercial users. This must change if data is to meet the “fair and legal” requirements of Data Protection law and continue processing. The DfE website<sup>11</sup>, fails to mention commercial use of identifying data, and fails to reach parents.

Section 114 of the Education Act 2005, and section 537A of the Education Act 1996, together with the 2009 Prescribed Persons Act, was updated in 2013<sup>12</sup>, to allow the release of individual pupil data to third parties. Which data items are involved is based on the 2006 Act around the register data a school must hold, which has subsequently had many amendments.

The Data Protection Act 1998 (**s33**) gives research exemptions for the purposes of statistical and historic research purposes, most significantly on the principles of indefinite retention and data minimisation, as well as Subject Access rights. To qualify for the research exemption, the research must be able to comply with the following ‘relevant conditions’:

- (a) that the data are not processed to support measures or decisions with respect to particular individuals, and**
- (b) that the data are not processed in such a way that substantial damage or substantial distress is, or is likely to be, caused to any data subject.**

Campaigners [defenddigitalme](#), question<sup>13</sup> whether this legal basis is met for some releases such as prescribed persons between 2012 and 2017 from the National Pupil Database and whether new [Home Office](#) ‘direct interventions’ put the research exemption status of the Database at risk because the relevant conditions (a) and (b) are no longer met and are seeking [the UKSA](#) opinion.

[defenddigitalme](#) also asks whether processing of sensitive personal data meets the Schedule 3 of the Data Protection Act and conditions relevant for purposes of the first principle and for example whether journalists meet the specific people listed in the Prescribed Persons Act and referred to as ‘persons’ in the Education Act (Regulations) or public perception of ‘researcher’. When asked in November 2017 ([PQ 109114](#)) the Department answer was very vague.

In July 2016 the Department had laid Statutory Instrument (SI) 808/2016 “*The Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations*”<sup>14</sup> in order to start collecting nationality and country of birth data from every child in the school census and the Early Years Census. There was no time for parliamentary debate between when the SI was laid on July 27, 2016 and before the legislation came into effect on September 1, 2016.

This poor process was repeated in 2017 for the Alternative Provision expansion via SI 807/2017.

Children are vulnerable persons and their data merits special protection under new data law.<sup>15</sup>

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<sup>10</sup> A privacy notice on the DfE website does not reach parents or pupils and cannot reach former pupils, now aged 18-36 HL5598 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2017-02-23/HL5598/>

<sup>11</sup> Notices fail to be transparent or reach pupils <https://www.gov.uk/government/publications/data-protection-and-privacy-privacy-notice>

<sup>12</sup> The Education (Individual Pupil Information) (Prescribed Persons) (England) (Amendment) Regulations 2013 <http://www.legislation.gov.uk/ukxi/2013/1193/regulation/2/made>

<sup>13</sup> <http://defenddigitalme.com/call-to-review-relevant-legislation/>

<sup>14</sup> The Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016 <http://www.legislation.gov.uk/ukxi/2016/808/made/data.html>

<sup>15</sup> Under GDPR children merit specific protection R. 38 <https://gdpr-info.eu/recitals/no-38/> and R. 75 <https://gdpr-info.eu/recitals/no-75/>

## What data types are made available?

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Pupils' personal confidential data collected on a named basis in the school census are released.

The sensitive and identifying items that require DMAP approval include name, date of birth, postcode, candidate numbers, Pupil Matching Reference (Non Anonymised), detailed types of disability, indicators of adoption from care, reasons for exclusions (theft, violence, alcohol etc).<sup>16</sup>

**Of the documented 1,000+ third party requests for identifiable data<sup>17</sup>** that went through the DfE Data Management Advisory Panel (DMAP) request process between March 2012 and May 2017, only **30 were for aggregated data**. The 23 documented rejected applications<sup>18</sup> included a request made "by mistake" from the Ministry of Defence to target its recruitment marketing<sup>19</sup>. About 60% of the applications approved for identifying and sensitive pupil level data, were from commercial companies, think tanks, charities and press. 40% academic.

In a presentation to the NPD User Group in September 2016, the Director of the DfE Data Modernisation group acknowledged the release of sensitive data: "*People are accessing sensitive data, but only to then aggregate. The access to sensitive data is a means to an end to produce the higher level findings.*"<sup>20</sup>

The identifying pupil level data<sup>21</sup> for release which must be approved by the DMAP, are classed into four tiers by the Department for Education, as described in the NPD User Guide<sup>22</sup>. Releases of the data since 2012 from the Department for Education to third parties have been of (Tier 1) identifiable and highly sensitive, (Tier 2) identifiable and sensitive, (Tier 3) aggregated but may be identifying due to small numbers and (Tier 4) identifying non-sensitive (according to DPA) items.

The DMAP processes all Tier 1 requests. The Terms of Reference lists the identifying items they approve on page 10, "Annex B - Identifying and / or Identifiable and Highly Sensitive data items." Tier 2,3 and 4 data are reviewed and processed by only the Education Division team, not DMAP. Anyone can view the list of completed National Pupil Database Third Party Requests. A list of completed National Pupil Database Third Party Requests<sup>23</sup> for identifying, Tier 1-4 data, and those requests in the pipeline, are published on a quarterly retrospective basis.

There has never been a privacy impact assessment of school census, or any of its many expansions since it began in 2000. The Department refuses to do so<sup>24</sup>. There is no ethics committee for the review of identifying or sensitive data releases from the National Pupil Database by the internal Data Management Advisory Panel (DMAP).

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<sup>16</sup> DMAP Terms of References pages 10-14 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/537139/Data-Management-Advisory-Panel-terms-of-reference.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537139/Data-Management-Advisory-Panel-terms-of-reference.pdf) first published via FOI in 2015 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/537139/Data-Management-Advisory-Panel-terms-of-reference.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537139/Data-Management-Advisory-Panel-terms-of-reference.pdf)

<sup>17</sup> Releases analysis <http://defenddigitalme.com/2017/10/who-got-your-pupils-personal-and-school-data-in-2017/>

<sup>18</sup> Pupils Personal Records: Parliamentary Written question - 57722 Jim Cunningham to Nick Gibb <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-12-14/57722/>

<sup>19</sup> Schools Week June 2015 <http://schoolswweek.co.uk/mod-makes-inappropriate-request-by-mistake/>

<sup>20</sup> Presentation to NPD User Group Sept 2016 <http://www.bris.ac.uk/media-library/sites/cmpo/documents/bradley2016.pdf>

<sup>21</sup> para 3.2.2 pages 31-37 <http://defenddigitalme.com/wp-content/uploads/2016/10/School-census-2016-to-2017-guide-version-1.3.pdf>

<sup>22</sup> page 19 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/472700/NPD\\_user\\_guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472700/NPD_user_guide.pdf)

<sup>23</sup> NPD third party requests <https://www.gov.uk/government/publications/national-pupil-database-requests-received>

<sup>24</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-18/108570/>

## The third party recipients of identifying pupil data

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### Commercial 'for-profit' Companies

#### 1. Case study: [\[download Tutor Hunt case study .pdf 929 KB\]](#)

One recipients of Tier 1 (identifying and highly sensitive) data is a private tutor-pupil matching service. Tutor Hunt was formed in 2005 and has slowly grown to be one of the largest tuition web sites within the United Kingdom with more than a quarter of a million registered users signed up.

Campaigners dispute this meets 'research purposes' because data is used to create a website product, rather than 'research', namely show heat maps of pupils around each school in England.

The [request for identifying data](#) made to the Department for Education Data Management Advisory Panel in 2015, said that its purpose for getting home postcode, date of birth (month and day) plus Schools Unique Reference Number, for all pupils at all schools was, *"to give parents a quick and easy way to determine which schools they can apply for and how likely they are to attain a place at the school, and requires the post code of all the students at each school to achieve this."*

#### 2. Case study: [\[download Good Schools Guide case study .pdf 818 KB\]](#)

*"Outputs are well disguised and we have had no complaints about the use of this data."*  
[source: Lucas publications, [original application form \(download\)](#)]

For overall justification, we come under paragraph 6(1) of Schedule 2. The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

For access to sensitive personal information, in our case the SEN data, we come under:

**Paragraph 7** of Schedule 3, in that our interest is in identifying and keeping under review the existence or absence of equality of opportunity or treatment between persons who have and have no Special Educational Needs, with a view to enabling such equality to be promoted or maintained. Nothing we do supports measures or decisions with respect to any particular data subject, and nor does it cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.

**Paragraph 9** of Schedule 3, in that the processing is in the substantial public interest; is necessary for research purposes, does not support measures or decisions with respect to any particular data subject, and does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.

#### 3. Case study: [\[download Mime Consulting case study .pdf 818 KB\]](#)

*"We use data from the NPD to track your students wherever they go within England."* Commercial data intermediaries are processing pupil data supplied by schools and from requests of the NPD, with little oversight of use after release, without pupil or parental knowledge, and at unknown overall cost and measurable benefit to the education system in England.

We use data from the National Pupil Database (NPD) to track your students wherever they go within England. We compare the cohort against national averages as well as other students in the schools the pupils went to. The report provide insights into the relative influence of the primary school on the pupils future outcomes.



## What's wrong with this data practice? defenddigitalme opinion

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**It's not safe.** The raw data are sent to the requestor's own location. That's no way to handle sensitive data. For example in 2015 when we asked, no one had audited the Telegraph to see if the data had been destroyed on time, (they hadn't), after being used for the purpose they'd been granted it for. In fact, there **still is no regular audit practice** to check that these third parties really delete the data they've been sent, even though the DfE now publishes planned destruction dates. Children's data integrity matters to protect them from identity fraud, or safeguard them from harm.

Government use, policy and practice, are based on a model of data sharing, passing raw data from one location to another, which is obsolete<sup>28</sup>. It's long overdue that every user of identifiable data comes to the data for any indirect uses beyond the child's schooling and education support, and the Department stops sending out data into the wild. Data must be made safe, because signatures on paper **license agreements, without audits, are not serious protections for pupils' personal data to avoid it being lost in the post<sup>29</sup>, left in a car park<sup>30</sup>, stolen<sup>31</sup>, sold<sup>32</sup>, or misused.**

**By contrast**, other public interest research use of pupil level data through other routes of access such as the UK Data service or ESRC funded Administrative Data Research Network grant access to the same data, *AND* ensure the data are kept safe, research outputs are reviewed and not disclosive, researchers are accredited after training, the impact on privacy is assessed before giving access to the data, and **an ethics committee review is required** the use for appropriate use and reputational risk. None of this happens through the DfE DMAP access route. Press rooms, a home-based web company, most commercial data firms and university settings can't compare.

Once handed out, **the DfE has no control what happens next.** The children whose data it is, don't get told, never mind asked if they are willing to be commercially exploited, and future plans for increased interoperability with EdTech companies and school data, seem set to make it worse.

**Concrete harms** come from the Department for Education collusion in immigration enforcement using census data. Children have already been taken out of school not only by immigration enforcement, by parents fearful that the Border Force \*might\* visit school. Children are not only deprived of their education, but off the radar they are potentially at increased physical risks too. There is no accountability or oversight of the use of census data by any third parties, or wellbeing.

**It's not fair and transparent.** These uses are not what the public expects when we entrust our children's personal data to a school for our child's education. It is not what schools believe it is used for when they pass on school census data. **Data are not fairly and legally processed unless pupils and parents know what their data will be used for, by whom and why.** So far, **pupils and parents have been REFUSED subject access to see their own data in the national pupil database by the DfE, to check if it has been ascribed by others<sup>33</sup>, or rectify errors.**

There is no clear ethics or oversight of releases. "Schools Week understands [MOD and providers in 2015] were considering creating a mobile app for army recruitment using pupils' data.<sup>34</sup>

<sup>28</sup> Cabinet Office Privacy/Consumer Adv. Group Chair resigns <https://ntouk.wordpress.com/2017/05/03/the-canary-that-ceased-to-be/>

<sup>29</sup> Timeline: Child benefits records loss <http://news.bbc.co.uk/1/hi/7104368.stm>

<sup>30</sup> Patient records left on car roof scattered in hospital grounds in data breaches by HSE <http://www.independent.ie/irish-news/health/patient-records-left-on-car-roof-and-scattered-in-hospital-grounds-in-data-breaches-by-hse-35612475.html>

<sup>31</sup> <http://www.abc.net.au/news/2015-11-12/qld-school-students-personal-details-stolen-in-website-hack/6935118>

<sup>32</sup> Data are being traded on a 'huge scale' <http://www.thedrum.com/news/2017/01/21/personal-data-being-sold-huge-scale-little-4p>

<sup>33</sup> Schools told to ascribe pupil ethnicity by Brighton and Hove Council in an email circular to Heads and on their website <http://www.independent.co.uk/news/education/education-news/schools-told-to-guess-pupil-ethnicity-a7372271.html>

<sup>34</sup> MOD recruiting app rejected and appeal <https://schoolswk.co.uk/army-recruiter-considers-appeal-to-access-pupil-data/>

## Good use of data should mean no surprises

The DfE can't continue to outsource the responsibility for our children's privacy to third parties.

Fundamentally, should our children's personal confidential data be given to anyone for profit, or to "pick interesting cases"<sup>35</sup>, for any non-direct schooling or direct care purpose without our knowledge. The question now is, when will pupils and parents be told?

The Department and data intermediaries are sitting on database of millions of former pupils who provided their personal data before 2010 for the purposes of their own education and who are now older than 19. When asked in Parliament, Ministers confirmed by omission that there is no plan to inform them of the new uses of their individual personal data by third parties since 2011<sup>36</sup>, or delete the data.

At national, regional and local school level, pupil data must be safe, fair, and transparent. There should be no surprises.

**While there is talk of a three way management process of NPD, the DfE does not intend to end the practice of handing out identifying pupil level data, even to commercial third parties for example. They see safe setting use as an additional pathway, rather than replacement, and now think that an API as proposed by ODI, may not "offer the analytical capabilities customers want".**

Technology also offers opportunities to make efficiency savings, we have recently prototyped a new 'Data Exchange' system to simplify how we collect data from the sector into the department and this is built upon a common and open set of standards. This will:

- enable interoperability across the sector, by which we mean that EdTech products will be able to "talk to each other", reducing the need for data administrators to enter data manually multiple times across their internal systems
- provide a single service for all data collections based upon APIs and user-friendly portal access which will simplify current processes and reduce the administrative burden across the sector

Over the next 12 months we will continue to work with schools and software suppliers to further develop this prototype with the intent to expand this to all schools during 2018.

We also want to allow better use of the data we hold for academic research. At all times, the need to preserve appropriate privacy and security will remain paramount and will be non-negotiable. We will:

- work with the [Office for National Statistics](#) to make research samples of the National Pupil Database available through the Virtual Microdata Laboratory (VML) service, and provide secure access to the service from multiple sites
- work with the [Open Data Institute](#) to develop a secure way of allowing users to make use of the data we hold, whilst preventing sensitive information being seen by the user. This will facilitate the development of high quality evidence and research, contributing to our understanding of what works to improve outcomes in education

image:  
[UK Digital Strategy 2017](#)

<sup>35</sup> The Times 2013 [http://defenddigitalme.com/wp-content/uploads/2017/04/The\\_Times.pdf](http://defenddigitalme.com/wp-content/uploads/2017/04/The_Times.pdf)

<sup>36</sup> Personal Records:Written question - HL5598 Lord Scriven to Lord Nash, March 2017 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2017-02-23/HL5598/>

## Appendix - FAQs

### 1. What is the National Pupil Database?

The National Pupil Database (NPD) is controlled by the Department for Education, built from multiple data collections from individuals age 2-21 in state funded education in England. Data are matched and linked using pupil names, dates of birth and other personal and school characteristics, to pupils' attainment and exam results over a lifetime school attendance.

In December 2015, the database contained 19,807,973 individual pupil records<sup>37</sup> obtained through FOI. It is "one of the richest education datasets in the world" according to its own user guide.<sup>38</sup>

Schools use Management Information Systems (MIS) to collect and analyse pupil level information at local level. Data from these systems are used to complete the termly school census returns provided to Local Authorities (regional) or directly to the Department for Education (national) three times a year. The National Pupil Database has expanded in its scope of the items collected, and from children of a wider age range over time.

The earliest records date from 1995-6. Data once stored in the National Pupil Database, are never deleted.

Similar but separate systems operate across the rest of the United Kingdom.

### 2. Sources of pupil data in the NPD

Details of all data sources contained within the National Pupil Database, and the academic years for which they are available																		
Data Source	95/96	96/97	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12	12/13
Census/PLASC <sup>1</sup>							✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
PRU Census															✓	✓	✓	✓
Early Years Census														✓	✓	✓	✓	✓
Alternative Provision														✓	✓	✓	✓	✓
Early Years Foundation Stage Profile <sup>2</sup>								✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Year 1 Phonics <sup>*</sup>																		✓
Key Stage 1			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Key Stage 2	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Year 7 Progress Tests <sup>3</sup>						✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Key Stage 3			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Key Stage 4 Awarding Body data					✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Key Stage 4 Achievement & Attainment Tables data <sup>4</sup>							✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Key Stage 5 Awarding Body data						✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Key Stage 5 Achievement & Attainment Tables data <sup>5</sup>							✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Individualised Learner Record <sup>6</sup>						✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
HESA data										✓	✓	✓	✓	✓	✓	✓	✓	✓
Children Looked After <sup>7</sup>											✓	✓	✓	✓	✓	✓	✓	✓
Children In Need <sup>7</sup>														✓	✓	✓	✓	✓
PLAMS <sup>8</sup>												✓	✓	✓	✓	✓	✓	✓
NCCIS																	✓	✓
Independent Specialist Providers (ISP)																✓	✓	✓

Tables show details of all data sources contained within the linked set of data which form the National Pupil Database, and the coverage of children by age bracket, within each source.

### 3. Data types held

The pupil level data are personal confidential data which include sensitive personal data<sup>39</sup> as defined by the Data Protection Act 1998.

<sup>37</sup> FOI [https://www.whatdotheyknow.com/request/pupil\\_data\\_national\\_pupil\\_databa\\_2?nocache=incoming-764676#incoming-764676](https://www.whatdotheyknow.com/request/pupil_data_national_pupil_databa_2?nocache=incoming-764676#incoming-764676)

<sup>38</sup> para 1.3 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/472700/NPD\\_user\\_guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472700/NPD_user_guide.pdf)

<sup>39</sup> Schedule 3 additional protections of data classed as "Sensitive data" <http://www.legislation.gov.uk/ukpga/1998/29/schedule/3>

## The National Pupil Database contains:

**Identifiers:** the pupil, school and local authority identifiers. With effect from 2010/11, the pupil's UPN (unique pupil number) remained consistent throughout their time in school and remain permanently on the record.

**Fixed pupil characteristics:** data which are expected to stay the same, such as date of birth. However some characteristics which may be expected to be static, for example ethnicity, may be inconsistent within an individual record. Ethnicity was found in 2016 to have been ascribed by school staff in some counties, even to the point of overriding parental and pupil choices to refuse to provide the optional information as recommended to schools by Brighton and Hove City Council<sup>40</sup> ahead of the autumn school census. This option was changed in system providers' design to remove fields 'ascribed by' as a result.

**Time-varying pupil characteristics:** these may change in each sweep of the census because they describe the circumstances of the pupil at that time.

**Key stage test results and other attainment data:** data at the ages of five, Early years foundation stage profile or (FSP) seven (KS1), eleven (KS2) 14 (KS3), 16 (KS4 or GCSE) and 18 (KS5).

**School type characteristics:** these describe the school the pupil attends at each sweep of the census. School staff data is not included in this census for the National Pupil Database, but through the separate Workforce Census. Workforce personal data includes identifiers such as names and National Insurance numbers and characteristics such as ethnic group, employment contracts and remuneration details, qualifications and absence information.

There are about 400 possible variables to collect on individual pupils. The full national code sets of all the items of data that can be collected on individual children can be downloaded from the Department for Education are listed in the common basic data set (CBDS)<sup>41</sup>, including health and SEND (special educational needs and disability).

All local-authority-maintained schools, take part in the census including:

- nursery schools
- primary schools, including middle-deemed-primary schools
- secondary schools, including middle-deemed-secondary schools
- special schools (for children with special educational needs or disabilities), including hospitals
- pupil referral units (PRUs - for children who can't go to a mainstream school)
- community, foundation, voluntary-aided, and voluntary-controlled schools
- some schools not maintained by the local authority, including:
  - academies, including alternative provision (AP) academies (for children who can't go to a mainstream school)
  - free schools, including AP free schools (for children who can't go to a mainstream school)
  - studio schools
  - university technical colleges (UTCs)
  - non-maintained special schools (schools for children with special educational needs that the Secretary of State for Education has approved under section 342 of the Education Act 1996)
- Schools for service children overseas take part in this census on a voluntary basis.

Data Source	Ages
Census/PLASC <sup>1</sup>	3-18
PRU Census	3-18
Early Years Census	3-4
Alternative Provision	3-18
Early Years Foundation Stage Profile <sup>2</sup>	4
Year 1 Phonics	5
Key Stage 1	6
Key Stage 2	10
Year 7 Progress Tests <sup>3</sup>	11
Key Stage 3	13
Key Stage 4 Awarding Body data	14-21
Key Stage 4 Achievement & Attainment Tables data <sup>4</sup>	15 (14/16)
Key Stage 5 Awarding Body data	14-21
Key Stage 5 Achievement & Attainment Tables data <sup>5</sup>	16-18
Individual Learner recData ord <sup>6</sup>	14-21
HESA data	17-21 (18-19 in 04/05)
Children Looked After <sup>7</sup>	0-18
Children In Need <sup>7</sup>	0-18
PLAMS <sup>8</sup>	16-18
NCCIS	
Independent Specialist Providers (ISP)	

<sup>40</sup> <http://www.independent.co.uk/news/education/education-news/schools-told-to-guess-pupil-ethnicity-a7372271.html>

<sup>41</sup> <https://www.gov.uk/government/publications/common-basic-data-set-cbds-database>

#### 4. The two-tier Data Access, Review and Approval Process via the DfE

The Department for Education application procedures for handling requests for data from the National Pupil Database, from March 2012, enabled interested parties to request extracts of data from the National Pupil Database (NPD) using forms available on the Department for Education website. The DMAP Terms of Reference<sup>42</sup> (TOR) was first published in July 2016 by the DfE

The DMAP processes all Tier 1 requests. The TOR lists the identifying items they approve on page 10, "Annex B - Identifying and / or Identifiable and Highly Sensitive data items."

The tier 2,3 and 4 data (identifying and sensitive, or identifying) are routinely reviewed and processed by only the Education Division team, not DMAP.

#### **Annex B - Identifying and / or Identifiable and Highly Sensitive data items**

Identifying data items requiring approval by DMAP:

- Pupil Matching Reference (Non Anonymised)
- Unique Learner Number
- Unique Pupil Number
- Name(s)
- Date of Birth
- Home Address
- Postcode
- Exam Candidate Number
- Exam Candidate ID

Highly Sensitive data items requiring approval by DMAP:

- Looked after status
- In need status
- Adopted from care
- Primary & secondary special educational need type
- Pupil's type of disability
- Extended ethnicity codes
- Extended language codes
- Service child
- Reasons for absence
- Reasons for exclusion
- Census output area (COA) code

<sup>42</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/537139/Data-Management-Advisory-Panel-terms-of-reference.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537139/Data-Management-Advisory-Panel-terms-of-reference.pdf)

## 5. Samples of third party use from the Third Party Release Register<sup>43</sup> and FOI

Organisation	Original Request Application	Case study summary
Tutor Hunt	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/TutorHunt.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/TutorHunt.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/05/Tutor_Hunt.pdf">http://defenddigitalme.com/wp-content/uploads/2017/05/Tutor_Hunt.pdf</a>
The Times newspaper	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/The-Times.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/The-Times.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/04/The_Times.pdf">http://defenddigitalme.com/wp-content/uploads/2017/04/The_Times.pdf</a>
The Telegraph newspaper	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/Daily-Telegraph.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/Daily-Telegraph.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/05/Telegraph.pdf">http://defenddigitalme.com/wp-content/uploads/2017/05/Telegraph.pdf</a>
The Cabinet Office	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/Cabinet-Office-060913.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/Cabinet-Office-060913.pdf</a> and <a href="http://defenddigitalme.com/wp-content/uploads/2017/03/Cabinet-Office-190214.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/Cabinet-Office-190214.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/06/Cabinet_Office.pdf">http://defenddigitalme.com/wp-content/uploads/2017/06/Cabinet_Office.pdf</a>
Sagacity	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/Sagacity_ResearchLtd.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/Sagacity_ResearchLtd.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/06/Sagacity_Research.pdf">http://defenddigitalme.com/wp-content/uploads/2017/06/Sagacity_Research.pdf</a>
Performance in Context (PIC)	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/PIC.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/PIC.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/06/PIC.pdf">http://defenddigitalme.com/wp-content/uploads/2017/06/PIC.pdf</a>
OPM	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/OPM.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/OPM.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/06/OPM.pdf">http://defenddigitalme.com/wp-content/uploads/2017/06/OPM.pdf</a>
Mime Consulting	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/MimeConsulting.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/MimeConsulting.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/06/Mime_Consulting.pdf">http://defenddigitalme.com/wp-content/uploads/2017/06/Mime_Consulting.pdf</a>
Lucas Publications	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/Lucas-Publications.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/Lucas-Publications.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/05/GSG.pdf">http://defenddigitalme.com/wp-content/uploads/2017/05/GSG.pdf</a>
Julian Clarke Ltd	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/Julian_Clarke.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/Julian_Clarke.pdf</a> and page 2 <a href="http://defenddigitalme.com/wp-content/uploads/2017/03/JulianClarke_p2_Redacted.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/JulianClarke_p2_Redacted.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/05/Julian-Clarke-Ltd.pdf">http://defenddigitalme.com/wp-content/uploads/2017/05/Julian-Clarke-Ltd.pdf</a>
Innovative Consultancy	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/Innovative_Consultancy.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/Innovative_Consultancy.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/06/Innovative_Consultancy.pdf">http://defenddigitalme.com/wp-content/uploads/2017/06/Innovative_Consultancy.pdf</a>
Good Schools Guide	<a href="https://www.whatdotheyknow.com/request/293030/response/723407/attach/7/Lucas%20Publications.pdf">https://www.whatdotheyknow.com/request/293030/response/723407/attach/7/Lucas%20Publications.pdf</a> and <a href="http://defenddigitalme.com/wp-content/uploads/2017/02/DR150817.01_GSG.pdf">http://defenddigitalme.com/wp-content/uploads/2017/02/DR150817.01_GSG.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/05/GSG.pdf">http://defenddigitalme.com/wp-content/uploads/2017/05/GSG.pdf</a>
Fischer Family Trust	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/FFT-1.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/FFT-1.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/06/FFT.pdf">http://defenddigitalme.com/wp-content/uploads/2017/06/FFT.pdf</a>
Civitas	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/Civitas.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/Civitas.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/06/Civitas.pdf">http://defenddigitalme.com/wp-content/uploads/2017/06/Civitas.pdf</a>
BBC Newsnight	<a href="http://defenddigitalme.com/wp-content/uploads/2017/03/BBC-Newsnight.pdf">http://defenddigitalme.com/wp-content/uploads/2017/03/BBC-Newsnight.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/06/BBCNewsnight.pdf">http://defenddigitalme.com/wp-content/uploads/2017/06/BBCNewsnight.pdf</a>
UCAS	<a href="http://defenddigitalme.com/wp-content/uploads/2017/06/UCAS.pdf">http://defenddigitalme.com/wp-content/uploads/2017/06/UCAS.pdf</a>	<a href="http://defenddigitalme.com/wp-content/uploads/2017/06/UCAS-1.pdf">http://defenddigitalme.com/wp-content/uploads/2017/06/UCAS-1.pdf</a>

<sup>43</sup> <https://www.gov.uk/government/publications/national-pupil-database-requests-received> and Previous versions of this data can be found on the [UK Government Web Archive](#).

## 6. Future DfE data plans. Prototypes completed, rollout expected in 2018

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The DfE Data Modernisation Lead presented a talk to the National Database User Group in September 2016, in which he outlines changes on the way.

There is little transparency on intent, progress and its expected impact although it has been underway since 2013.

2013: <http://www.government-online.net/data-exchange-project/>

2017: <https://dfedigital.blog.gov.uk/2017/09/06/progressing-through-alpha-putting-user-needs-first/>

The Data Exchange done well, could offer good functionality, but it appears the DfE is intent on embedding the issues they already have and has their head in the sand over known privacy issues. Identifying data needs to 'all' be made safe, not simply give another additional route of access to academics, and "EEF provided with cut of NPD" I just moves the issues down a level.

**Plans: See UK Digital Strategy** (section "Education")

"Over the next 12 months we will continue to work with schools and software suppliers to further develop this prototype with the intent to expand this to all schools during 2018".<sup>44</sup>

### The Data Exchange (DX)

This will potentially multiply issues, like Gremlins, unless they fix what is currently missing and changes they need to meet legal requirements first.

DX will facilitate the interoperable flow of data around the sector, with potential to replace large 'bulk upload' collections such as School Census and ultimately replace 'COLLECT', the current data collection system.<sup>45</sup>

**i) Current Fair Processing arrangements do not meet Data Protection law** for use of:

- a) existing National Pupil Database and
- b) new school census data collections
- c) some releases of "sensitive data" do not meet 'relevant conditions' of Schedule 3<sup>46</sup>

**ii) Section 33 of the Data Protection Act research exemptions:** personal data processed (or further processed) 'only for research purposes'. These are explicitly statistical or historical purposes. Many NPD releases from DMAP, and uses, fail these. One solution is explicit consent.

**iii) Never been any independent Privacy Impact Assessment for the NPD or any new plans**

Since the Data Exchange project is "*a major project to transform how data is collected for statutory purposes*" with "*massive impacts on how data is moved around the sector in the coming years,*" The Department should have completed a Privacy Impact Assessment (PIA). PIAs are a "mandatory minimum measure" in the UK government and its agencies since 2008 [4.4]<sup>47</sup> and GDPR where the project employs a new technology or with potentially significant effect.

It will be insufficient to only make excerpts of data from the National Pupil Database available in safe settings for research. All use of identifiable pupil data, must be made safe, including all uses mentioned above. The research uses cannot be seen as a 'bolt-on' to existing practices. Outsourcing the more problematic issues of identifying data used by third parties without parental and pupil fair processing or consent, to second tier management via EEF as proposed in the slides seen will not solve the issues.

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<sup>44</sup> UK Digital Strategy April 2016 <https://www.gov.uk/government/publications/uk-digital-strategy/uk-digital-strategy>

<sup>45</sup> Data Exchange background [https://eduwarenetwork.com/2014/06/02/what\\_will\\_data\\_exchange\\_mean\\_to\\_schools/](https://eduwarenetwork.com/2014/06/02/what_will_data_exchange_mean_to_schools/)

<sup>46</sup> The Data Protection Act 1998 Schedule 3 <http://www.legislation.gov.uk/ukpga/1998/29/schedule/3>

<sup>47</sup> PIA [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/60968/cross-gov-actions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60968/cross-gov-actions.pdf)

## 7. Controversy over School Census Expansion in 2016-17

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In July 2015 the Home Office began to use NPD data for direct interventions in immigration enforcement among a range of strategic data sharing aims.

These include [para 15.1.2]<sup>48</sup>: “to re-establish contact with children and families the HO has lost contact with and trace immigration offenders,” to “Create a hostile environment for those who seek to benefit from the abuse of immigration control,” and “To reduce the illegal migration population.”

There was no public or parliamentary discussion of this policy introduction.

In July 2016 the Department laid Statutory Instrument (SI) 808/2016 “*The Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations*”<sup>49</sup> in order to start collecting nationality and country of birth from every child in the School Census and the Early Years Census.

Communication to schools, parliament, and campaigners said there were “no plans to pass these data” to the Home Office or share with “other government departments”. This was stated in:

- a) Ministerial answer to two Parliamentary written questions in July 2016 [42942]<sup>50</sup> and [42842]<sup>51</sup>
- b) the BBC press statement in September 2016 issued by the Department for Education<sup>52</sup>
- c) the Secretary of State statement in October in Education Questions<sup>53</sup> in the House of Commons
- d) and in the House of Lords questions on October 12<sup>54</sup>,
- e) and in the House of Lords Motion-of-Regret on October 31, 2016<sup>55</sup>

However, in version 1.0 of the MOU, “(Once collected) Nationality” was listed among the data items that would be transferred by the DfE to the Home Office. The data sharing agreement was in place between the two departments between July 2015 until it was amended on October 14, 2016. That is to say that when the Statutory Instrument was laid, and came into effect, and at the time of the communications above, the plans to pass nationality data to the Home Office had already been put in place, and signed off in a live data sharing agreement, over a year earlier.

Only version 2.1 of the MOU was deposited (available from December 2016 after parliamentary questions in both houses) in the House of Lords, reference, DEP2017-0027. It had been revised on October 14, 2016, and backdated to effective date October 7, 2016. Nationality had been removed compared with version 1.0 which contains paragraph 15.2.6 including in the data items to be transferred, “(Once collected) Nationality.” effective from July 2015 to October 6, 2016

Campaigners say<sup>56</sup> that these ongoing uses of the database for non-educational purposes threaten the statistical integrity of the National Pupil Database. Public and professional trust has been damaged in data collection, and campaign group defenddigitalme believes that the use jeopardises the privileges of research exemptions the NPD enjoys under data protection law.

<sup>48</sup> MoU v1.0 “(Once collected) Nationality” [paragraph 15.2.6] and strategic aims [15.1.2] <https://www.whatdotheyknow.com/request/377285/response/941438/attach/4/20151218%20DfE%20HO%20Final%20V0%201%20REDACTED.PDF.pdf>

<sup>49</sup> The Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016 <http://www.legislation.gov.uk/ukSI/2016/808/made/data.html>

<sup>50</sup> PQ 42942 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-07-15/42942/>

<sup>51</sup> PQ 42842 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-07-14/42842/> note the caveat “unless legally required to do so.” The DfE-HO MOU is not a legally binding agreement, as the MOU itself states in para 1.7

<sup>52</sup> Pupil nationality data ‘will not be passed to Home Office’ <http://www.bbc.co.uk/news/education-37474705>

<sup>53</sup> Education Questions October 10, 2016 <https://hansard.parliament.uk/Commons/2016-10-10/debates/4B7349AD-337E-4FAC-BA3E-C8C9877ADA5A/TopicalQuestions#contribution-DBFF2B4F-0BAD-4B57-BC9A-A4F7711E3397>

<sup>54</sup> <https://hansard.parliament.uk/lords/2016-10-12/debates/BE938C0A-75F0-453B-8EB3-D4DC2C4556AF/SchoolCensusPupils%E2%80%99Nationality>

<sup>55</sup> Motion-of-Regret debate, 31 Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016 [https://hansard.parliament.uk/lords/2016-10-31/debates/6D06F8D5-7709-43DF-87ED-33CBBC7324FF/Education\(PupilInformation\)\(England\)\(MiscellaneousAmendments\)Regulations2016](https://hansard.parliament.uk/lords/2016-10-31/debates/6D06F8D5-7709-43DF-87ED-33CBBC7324FF/Education(PupilInformation)(England)(MiscellaneousAmendments)Regulations2016)

<sup>56</sup> Full briefing on school census expansion [http://defenddigitalme.com/wp-content/uploads/2017/03/Briefing\\_DDM\\_06032017-1.pdf](http://defenddigitalme.com/wp-content/uploads/2017/03/Briefing_DDM_06032017-1.pdf)

## 8. Comments: the use of pupil data by the Home Office for immigration purposes, and autumn 2016 start to collect children's nationality data

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In a House of Lords motion-of-regret in October 2016<sup>57</sup>, The Earl of Clancarty summed up public feeling<sup>58</sup> for many families who were unhappy about the expansion, "*Parents are upset, not just about how this information might be used, but because these questions are asked at all.*" and in the House of Commons an EDM was made after the praying period had ended<sup>59</sup>.

Labour Shadow Home Secretary Diane Abbott commented – Let teachers teach, not act as border guards 28/12<sup>60</sup> and in Politics Home – "The Government has an irrational and damaging determination to campaign against migrants."<sup>61</sup>

Liberal Democrat Tim Farron 6/10/2016 commented on the changes saying, "Let teachers teach" <sup>62</sup> and on 17/11 on the news the country-of-birth collection is scrapped for pre-schoolers<sup>63</sup>

Green Party Leader, Caroline Lucas has consistently asked Parliamentary questions since its May 2016 introduction and leader Jonathan Bartley wrote 'The School Gates Should Not Be A Border Checkpoint'.

The National Union of Teachers called in October 2016<sup>64</sup> for any use of pupil data by the HO to end, emphasising that, "*schools are not part of policing immigration*". Their members opposed it unanimously at their annual conference in April 2017 and called for proper information to be given to schools and parents.<sup>65</sup> "*Government needs to ensure that use is consent based – again, so that relations between schools and parents are not compromised.*"

Ed Humpherson, the General Director of Regulation at the UK Statistics Authority (UKSA), suggested<sup>66</sup> in February 2017, (after the Spring school census in January in which there was widespread failure to fairly and legally collect and process the new school census nationality data) that the Department writes before the next autumn school census to "*inform parents ... of their rights in regard to this collection*". This communication to the public has still not happened. There are no Department plans to do so, according to Lord Nash.<sup>67</sup>

Laura McInerney, Schools Week editor, and Guardian writer, asked in The Guardian Schools – What society lets families fear deportation for sending children to school?<sup>68</sup> [See timeline]

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<sup>57</sup> Motion-of-Regret debate, 31 Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016 [https://hansard.parliament.uk/lords/2016-10-31/debates/6D06F8D5-7709-43DF-87ED-33CBBC7324FF/Education\(PupilInformation\)\(England\)\(MiscellaneousAmendments\)Regulations2016](https://hansard.parliament.uk/lords/2016-10-31/debates/6D06F8D5-7709-43DF-87ED-33CBBC7324FF/Education(PupilInformation)(England)(MiscellaneousAmendments)Regulations2016)

<sup>58</sup> Parents call for 'racist' immigration request policy to be scrapped from schools <https://news.co.uk/essentials/news/education/parents-call-racist-country-birth-request-policy-schools-scrapped/>

<sup>59</sup> EDM 670 laid by the Labour Party after the praying period <http://www.parliament.uk/edm/2016-17/670>

<sup>60</sup> Let teachers teach, not act as border guards <http://dianeabbott.org.uk/news/articles/news.aspx?p=1021303>

<sup>61</sup> <https://www.politicshome.com/news/uk/home-affairs/immigration/opinion/house-commons/81231/diane-abbott-mp-government-has>

<sup>62</sup> "Let teachers teach" <https://twitter.com/LibDemPress/status/784038062372380672>

<sup>63</sup> <https://twitter.com/LibDemPress/status/799311832502521856>

<sup>64</sup> NUT statement "Schools are not part of policing immigration" <https://www.teachers.org.uk/news-events/press-releases-england/school-census-data>

<sup>65</sup> The April 2017 NUT conference supported motions opposing nationality and country of birth collection and called for more information to be given to schools and parents <https://www.theguardian.com/education/2017/apr/17/nut-to-tell-parents-not-to-give-details-of-childrens-nationality-and-birthplace>

<sup>66</sup> Director General for Regulation at UK Statistics Authority calls for communication and greater transparency of school census <http://defenddigitalme.com/2016/04/director-general-for-regulation-uk-statistics-authority-supports-call-for-transparency-and-better-data-handling-of-20-million-pupils-data/>

<sup>67</sup> No communication plan <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2017-02-23/HL5598>

<sup>68</sup> Laura McInerney, Oct 18, 2016 <https://www.theguardian.com/education/2016/oct/18/deportation-boycott-school-census-data-nationality-parents>

## 9. Annex to HL2783

Schools are required to collect pupil information under the following legislation (2-pages):

### Primary Legislation

[Section 537A of the Education Act 1996](#) governs the principles for the provision of information about individual pupils.

### Subordinate Legislation

- Education (Individual Performance Information) (Identification of Individual Pupils) Regulations 1998, [SI 1998/1834](#) (made under sub-s (2)).
- Education (School Performance Information) (England) Regulations 1998, [1998/1929](#) (made under sub-s (1)).
- Education (Information About Post-16 Individual Pupils) (Wales) Regulations 2003, [SI 2003/2453](#) (made under sub-ss (1), (2), (4)).
- Education (Information About Children in Alternative Provision) (England) Regulations 2007, [SI 2007/1065](#).
- Education (School Performance Information) (England) Regulations 2007, [SI 2007/2324](#).
- Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, [SI 2007/2979](#).
- Education (Information About Individual Pupils) (Wales) Regulations 2007, [SI 2007/3562](#) (made under sub-ss (1), (2), (4)).
- Education (School Performance Information) (England) (Amendment) Regulations 2008, [SI 2008/364](#).
- Education (School Performance Information) (England) (Amendment) (No 2) Regulations 2008, [SI 2008/1727](#).
- Education (School Performance Information) (England) (Amendment) Regulations 2009, [SI 2009/646](#).
- Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009, [SI 2009/1563](#) (made under sub-ss (4)–(6)).
- Education (Information About Children in Alternative Provision) (Wales) Regulations 2009, [SI 2009/3355](#).
- Education (Individual Pupil Information) (Prescribed Persons) (England) (Amendment) Regulations 2010, [SI 2010/1940](#) (made under sub-ss (4)–(6)).
- Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments) (Wales) Regulations 2010, [SI 2010/2431](#).
- School Performance Information (Wales) Regulations 2011, [SI 2011/1963](#) (made under sub-ss (1), (2)).
- Education (Information About Individual Pupils) (Wales) (Amendment) Regulations 2011, [SI 2011/2325](#) (made under sub-ss (1), (2), (4)).
- Education (School Performance Information) (England) (Amendment) Regulations 2012, [SI 2012/1274](#) (made under sub-ss (1), (2)).

- National Curriculum (Amendments relating to Educational Programmes for the Foundation Phase and Programmes of Study for the Second and Third Key Stages) (Wales) Regulations 2013, [SI 2013/437](#) (made under sub-ss (1), (2)).
- Education (Individual Pupil Information) (Prescribed Persons) (England) (Amendment) Regulations 2013, [SI 2013/1193](#) (made under sub-ss (4)–(6)).
- Education (School Performance Information) (England) (Amendment) Regulations 2013, [SI 2013/1759](#) (made under sub-ss (1), (2)).
- Education (Information About Individual Pupils) (England) Regulations 2013, [SI 2013/2094](#) (made under sub-ss (1), (2)).
- Education (Information About Individual Pupils) (Wales) (Amendment) Regulations 2013, [SI 2013/3137](#) (made under sub-ss (1), (2), (4)).
- Education (Pupil Information and School Performance Information) (Miscellaneous Amendments) (England) Regulations 2013, [SI 2013/3212](#).
- Education (Information) (Miscellaneous Amendments) (England) Regulations 2015, [SI 2015/902](#).
- Education (School Performance Information) (England) (Amendment) Regulations 2015, [SI 2015/1566](#).
- Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016, [SI 2016/808](#) (made under sub-ss (1), (2)).
- National Curriculum (Miscellaneous Amendments) (Wales) Regulations 2016, [SI 2016/837](#) (made under sub-ss (1), (2)).
- The Education (Information About Children in Alternative Provision) (England) (Amendment) Regulations 2017 [SI 2017/807](#).

## About defenddigitalme and our aims

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We campaign for safe, fair, and transparent use of pupil data in education in England.

### The campaign calls on the Department for Education (DfE) to:

- bring the data into a safe setting for research access
- stop giving out identifiable data to for-profit third parties and to press without consent
- start telling pupils and parents what it does with their identifiable data
- be transparent about all data policy and practices

**In the short term, we want to see identifying data only available through safe access, by safe users, and safe data disclosure.** Users should come to the data, not send data to users with increased risks of loss, theft, and misuse. We believe children and parents should be fairly informed how their personal data are managed, and released from the National Pupil Database by the DfE. That includes consent choices over for-profit use of data.

**School information management systems (SIMs) must enable schools with the tools to be able to audit, know which users have accessed which data, and pass this knowledge on in a legible child-friendly way.** SIMs should enable annual data usage reports, the ability for parents and pupils to view a report of which organisations have had access to a child's records. This should include the third party app providers that a school shares pupil data with to manage their health and absence reporting, homework setting, doing homework, and its tracking. Direct and indirect uses of pupil data. Only by understanding how our own personal data and lives interact with how decisions are made about us, how we can choose to grant access to our personal data for public benefit, and empowered to correct mistakes, will we hope to have informed digital citizens in the future, and improved public data integrity and the benefit that may bring.

**Children and parents should be able to make secure Subject Access Requests to the Department for Education.** This would empower citizens to see what data the Department holds, and who it has been shared with and why. This secure process may be through a school that knows the pupil and their circumstances. Individuals can check accuracy, request factual corrections, build trust in national uses of government data to see that what government says what will be done with their data, is what is done with their data. And in doing so, people can participate actively in understanding where data can be used for good and bring about public benefit.

**Our ongoing<sup>69</sup> and immediate campaign work also includes opposing<sup>70</sup> the Department for Education school census expansion<sup>71</sup> to collect nationality and country of birth data from every child,** collected not for educational purposes, but which began in September 2016<sup>72</sup> and was originally intended of pass to the Border Force Casework Removals Team. Data transfers between the Department for Education and Border Force continue on a monthly basis. **We are calling for transparent oversight and accountability of DfE-HO ongoing monthly transfers.** These uses put vulnerable children at risk, harm data integrity, harm public trust in the school census overall, and in the trustworthiness of government data sharing and law making processes.

Getting pupil privacy right matters to ensure children feel their rights are respected, and can develop freely as adults with autonomy, to protect against discrimination, feeling used, and against imbalance of power. Contrary to the popular myth privacy does matter to young people.

defenddigitalme is a non-profit and non-partisan campaign, awarded its first external funding, in the form of a single annual grant from the Joseph Rowntree Reform Trust Ltd, in April 2017.

<sup>69</sup> Briefing: the school census expansion and NPD [http://defenddigitalme.com/wp-content/uploads/2017/02/Briefing\\_DDM\\_19022017.pdf](http://defenddigitalme.com/wp-content/uploads/2017/02/Briefing_DDM_19022017.pdf)

<sup>70</sup> Opposing the census expansion <http://defenddigitalme.com/how-to-opt-out-of-the-new-school-census-data-collection/>

<sup>71</sup> School census added country of birth and nationality to pupil data collection in England from September 2016 [http://defenddigitalme.com/wp-content/uploads/2016/07/RFC\\_856\\_new\\_data\\_items\\_country\\_of\\_birth\\_and\\_nationality.pdf](http://defenddigitalme.com/wp-content/uploads/2016/07/RFC_856_new_data_items_country_of_birth_and_nationality.pdf)

<sup>72</sup> Timeline of school census expansion <http://defenddigitalme.com/2016/11/school-census-expansion-timeline-2016-17>