

The Skills and Post-16 Education Bill Clause 11: Information sharing in relation to technical education qualifications

The case for a Code of Practice

The purpose of the amendment is simple. The Information Commissioner's Office should develop a Code of Practice for the data processing of students' personal confidential information in post-16 Education including their transition into Further or Higher Education.

This is urgent because Clause 11 in this Bill not only changes how organisations in England with functions "relevant" to England (i.e Ofqual, Office for Students, Ofsted, and "prescribed persons") will obtain millions of students' personal data in infinity, but how it may be used for what purposes by whom is vague. The Westminster Secretary of State has powers to easily expand this in future.

Young people need and want consistent controls across their data life cycle from collection, use across and outside these sectors, data distribution and data destruction when no longer required for the lawful purposes for which it was collected. Institutions have also called for better guidance.

Proposed new clause (A duty on the Information Commissioner)

After Clause 25, insert new Clause—

"Code of practice by Information Commissioner's Office on data sharing in relation to post-16 education

(1) The Information Commissioner must prepare a code of practice for organisations which collect personal data for purposes connected to post-16 education, including the processing of applications for higher and further education courses.

(2) The code must—

- (a) contain practical guidance in relation to the sharing of personal data in accordance with the requirements of data protection legislation;**
- (b) contain such other guidance as the Commissioner considers appropriate to promote good practice in the sharing of personal data of students and potential students; and**
- (c) have regard to children's rights in the digital environment as set out in the United Nations Convention on the Rights of the Child General Comment No. 25.**

(3) Where a code under this section is in force, the Commissioner may prepare amendments of the code or a replacement code to reflect emerging technologies and changing needs of pupils, students and potential students.

(4) In this section—

"good practice in the sharing of personal data" means such practice in the sharing of personal data as appears to the Commissioner to be desirable having regard to the interests of data subjects and others, including compliance with the requirements of the data protection legislation; and
"the sharing of personal data" means the disclosure of personal data by transmission, dissemination or otherwise making it available."

Member's explanatory statement This amendment places a duty on the Information Commissioner to prepare a code of practice in relation to the sharing of personal data between students and others.

Territorial oversight

[The Skills and Post-16 Education Bill \[HL\]](#)¹ Clause 11 is about *Information sharing in relation to technical education qualifications*. [The territorial extent](#) set out in the Explanatory Notes (para 18) includes **all of the UK, and extends to Scotland and Northern Ireland**.

We believe that since Clause 11 goes beyond England, and while the institutions to which the new powers apply are all (currently) based in England, (Ofqual, the OfS, Ofsted and the Westminster Secretary of State) this means that the people and institutions from which they will obtain personal data under those powers, may be at any educational setting across the UK within the scope of the Bill in Post-16 education; and while not mentioned in this Bill one must consider that the third-parties (prescribed persons) to whom the institution may pass on the data may be anywhere in the world, according to their own data sharing powers.

Case study: as regards the existing data sharing powers in these educational institutions, UCAS, HESA, OfS and DfE already pass around students sexual orientation and religion data collected during application process to Higher Education and it's added to students' named national pupil records held by the DfE. **We are probably the only country in Europe that thinks it acceptable for a national government to keep a national list of named individuals' religion or sexual orientation, rather than keep statistics.** It was enabled by the data clauses in the Higher Education and Research Act 2017 introduced for equality monitoring.

Part 3, s40 of **the Technical and Further Education Act 2017** changed **what data could be collected** by the Secretary of State. **Now this 2021 Bill changes how it can be handed out and to whom**, and why. It is vague and open. It should be tightened up. However, a Code of Practice offers at least safeguards that could both support students' rights and give institutions the sector specific clarity and confidence they need for safe data use.

Further reasons for a sector specific case include:

1. **The direction of travel of UK data protection law** outlined in the DCMS consultation on changes to the UK Data Protection regime, *Data: A new direction?*² Many safeguards to be removed will disproportionately affect children and young people.
2. **The 2020 generic ICO Code of Practice on data sharing**³ is **not sufficient for the education sector**. Various Universities and even Department for Education data protection staff submitted consultation responses to the ICO in 2020 asking for sector guidance.

To read more in detail and download a full briefing see:

<https://defenddigitalme.org/2021/10/06/the-skills-and-post-16-education-bill-report-stage>

¹ Skills and Post-16 Education Bill [HL] <https://bills.parliament.uk/publications/41544/documents/288>

² DCMS consultation Data: a new direction (DCMS) September 10, 2021

<https://www.gov.uk/government/consultations/data-a-new-direction>

³ The ICO Data Sharing Code of Practice (2020)

<https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/data-sharing-a-code-of-practice/>