



The Schools Bill Part 3: (Clauses 48-49) School attendance and children not in school

About Counting Children

Counting Children is a new and growing non-partisan coalition of organisations and academics in England and Wales, with intersectional interests from across the fields of safeguarding and child protection, education, SEND, data protection, law, and human rights. The Counting Children coalition has formed following recent debates and media using misleading data on Children Not in School. The growing group of supporters include Big Brother Watch, Defend Digital Me, Not Fine In School, No More Exclusions, Square Peg, York Travellers Trust – plus individuals including Professor Eileen Munro. <https://countingchildren.uk/>

1. Recommendations

1. **A Human Rights Impact Assessment of the Bill should be made.** This memorandum does not address the human impacts at all from Clause 48, such as intrusive monitoring that will result from the registers, or the risks to private and family life, even threats to life² evidenced in cases of domestic abuse where partners find out new home addresses. These risks are not addressed for individuals as children or addressing the lifelong risk. The sensitivity of this identifying personal confidential data is not matched by high standards of thinking on security, retention, or purpose limitation. Access will be unlimited and by an unknown number of persons. Often to be collected only in order to rule out that there are no concerns, which challenges the grounds for necessity of retention of detail– nor is there any attempt to propose privacy preserving mitigations in the expanded data powers of the Secretary of State.
2. **A data processing Code of Practice is required** like the Digital Economy Act 2017³.
3. **Registers of data re-use beyond direct care or service provision (third party access)** are required so Local Authorities are able to meet their legal obligations to be able to tell families where data has gone and to see, request and correct any of it.
4. **Delegated powers must be made affirmative not negative statutory process** when it comes to the Secretary of State powers to expand what data items may be collected, expand the list to whom identifying data may be given, and for what purposes.
5. **Clause 48 Registration**
 - a. 436C(1)(a) Child's name and personal details. No accommodation is made for children at risk and for whom the exposure of new contact details on collection, or through later sharing, may create a threat to life.

¹The Munro Review of Child Protection: Final Report (2011)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/175391/Munro-Review.pdf

² Such as Julius Czapla aged 2 in Edinburgh in November 2020.: Father guilty of murdering son, 2, 'out of spite to get back at mother' <https://www.itv.com/news/2022-05-04/father-guilty-of-murdering-son-2-out-of-spite-to-get-back-at-mother> or Mary Shipstone aged 7 in 2014 <https://www.theguardian.com/uk-news/2014/sep/12/girl-six-shot-northiam-east-sussex>

³ Digital Economy Act 2017 (Part 5, Chapter 1, section 43) <https://www.legislation.gov.uk/ukpga/2017/30/section/43/enacted>

- b. 436C(1)(b) Content and maintenance of registers requires the home address of both parents. This makes no allowance for other, or estranged family circumstances. We assume this is an oversight and needs to be 'as appropriate'.
 - c. 436C (1)(d) any other information that may be prescribed. We are concerned that if this uses the suggestions made in the consultation, this could include equality monitoring at child level, not statistics. This must not happen or we will repeat the huge mistake to collect Higher Education students' sexual orientation and gender reassignment of named individuals, now stored by the DfE at national level.⁴
 - d. 436C(2) Any other undefined data is a blank cheque for an unlimited retention policy and not aligned with data protection principle requirement of data minimisation. This line should be removed. It is this issue that is deeply contentious with many home educators, where unlimited sample work is demanded and at will, without any boundaries for the family to rely on to say.
 - e. 436C3(e) must include formal processes for family notifications before data is collected, and guidance on the capacity of the child and parental rights..
 - f. 436D provision of information from parents to the Local Authority must not create a one-way mirror. A published register is needed to show where personal data has been passed on to (a register of third party use), updated in a timely way and parents should be provided with a copy of their record on an annual basis to check for missing data, make corrections, and be assured with whom what data has been shared.
 - g. 436D(1)(c) power must be limited otherwise it leaves parents open to harassment.
 - h. 436E (1) could include online providers and remote tutoring. Is this intentional?
 - i. 436F (1) Use of information in the register: must not be passed on to the Secretary of State at individual level but *only* as aggregated data. It is not *necessary* (a data protection test) for the Department that has no remit for interventions with individuals.
 - j. 436F (2) Use of information in the register must exclude marketing and advertising purposes under the loose definition of 'promotion'.
 - k. 436G (3) add (e) in Support: an annual copy of the child and parent's record in accordance with safeguarding considerations and UK data protection law.
 - l. SCHEDULE 31A Add '8'. Create a duty upon the Local Authorities to track the number of penalty payments and number of individuals fined, and provide this aggregated data to the Department for Education on an annual basis for review and publication, commencing no later than 18 months after the commencement of the Act. Since there is no evidence of the practice around monetary penalties and that increasing the fines will be beneficial to children and families, despite existence since 2007, it would be wise to create a post legislative review requirement of these extreme changes to more punitive measures, both financial and criminal sanctions.
6. **Clause 49 School attendance orders** Territorial scope: there is not enough definition of whether the home or school attendance address counts as in scope and for any implications for enforcement. Similarly there is no consideration of families moving abroad and if and how the penalties would still apply.⁵

⁴ Defenddigitalme (2019) Statement on student religion or belief, and sexual orientation data in the National Pupil Database <https://defenddigitalme.org/2019/07/27/statement-on-student-religion-or-belief-and-sexual-orientation-data-in-the-national-pupil-database/>

⁵ BBC (2018) The school children who live in England but are taught in Scotland <https://www.bbc.co.uk/news/uk-scotland-south-scotland-44540012>

2. Questions

- a. **Clause 48:** the power in Subsection (6) of new section 436B appears to be excessive or suggests that the latter category in Clause 48 is poorly thought out if it cannot be addressed without giving the Secretary of State unlimited powers to change at will in future, without parliamentary approval. Why is this so vague?
- b. **Clause 48:** Why can the Government not confirm precisely the specific, narrow, necessary and proportionate purposes for which the Henry VIII powers in Subsection (6) of new section 436B are required and put them on the face of the Bill?
- c. **Clause 48:** The relevant children in subsection (5)(b)(i) of new section 436B are on school registers. This is supposed to be about Children Not in School. Why are children who are already on school registers and additionally on the AP register, also to be included here?

3. Summary

Children in and out of school need safety, not surveillance.⁶ *“There remains little evidence that specific instruments to safeguard children’s rights in relation to dataveillance have been developed or implemented, and further attention needs to be paid to these issues.”* (Lupton and Williamson, 2017).

We challenge the assumption that establishing statutory ‘Children Not In School’ registers, as well as creating a duty on local authorities to provide support to home educating families, will enhance the ability of local authorities to undertake their responsibilities related to children who are not in school. What does a database on its own do? Nothing. So what will happen as a result of the database? This impact has not been mentioned in the Bill Assessments.

There is concern in home educating⁷ racially minoritised communities, that *“any guidance which seeks to ‘safeguard’ is more likely to contribute to the securitisation of Black families”*.⁸

From our research in 2021-22 of 172 Local Authorities about Children-Not-in-School we are yet to find any Local Authority that does not already keep such registers. For children labelled as “missing education” (CME) this is already compulsory on a statutory basis.

Local authorities already have a duty under section 436A of the Education Act 1996 to make arrangements to establish the identities of children in their area who are not registered pupils at a school and are not receiving suitable education otherwise. Parents already have a duty under Section 7 of the Education Act 1996 to ensure a child receives education. In addition our research shows that Local Authorities already keep data on children educated otherwise than outside of school, in particular for any child who leaves school the Local Authorities track this

⁶ Feldstein, S. (2020). State surveillance and implications for children. UNICEF Good Governance of Children’s Data. <https://www.unicef.org/globalinsight/media/11101/file/UNICEF-Global-Insight-data-governance-surveillance-issue-brief-2020.pdf>

⁷ Mazama, A., & Lundy, G. (2012). African American homeschooling as racial protectionism. *Journal of Black Studies*, 43(7), 723-748 <https://www.jstor.org/stable/23414694>

⁸ No More Exclusions. (2020). Home education enquiry consultation submission <https://nomoreexclusions.com/wp-content/uploads/2020/11/HOME-EDU-INQUIRY.pdf>

under fifteen different categories⁹. While all these reasons are stated in law in the Education (Pupil Registration) (England) Regulations 2006 already, what they do not have today is the Secretary of State (Henry VIII) powers that this Bill imposes on *how* to do it, to direct and control them without positive scrutiny and oversight from Parliament, for example, to dictate data expansions or that the data must be transferred to the national level.

Policy makers must articulate more precisely what the new legislation will change in relation to existing policy and practice beyond more punitive outcomes for non-compliance. These changes must be seen within the context of planned reforms to UK data protection law outlined in the DCMS consultation on changes to the UK Data Protection regime, *Data: A new direction?*¹⁰ The reforms will create a riskier environment for data, with reduced protections for people in how their data is used by others on the basis of an expanded ‘legitimate interests.’ Safeguards will be removed or reduced by the reforms, including in automated decision making or being informed how data is used, both disproportionately affecting the data rights of children and young people due to their disempowerment, and lack of agency.

4. Delegated Powers (School attendance and Children Not in School)

The Delegated Powers Memorandum¹¹ (DPM) is as subtle in its suggestions as it is sweeping in the powers it grants across the Bill with regards to the registers and expanded data policy around school attendance and Children Not in School.

It grants whoever holds the office of Secretary of State to be able to change what information is collected, the thresholds and specifics of who it is shared with, and the details of the register into infinity, without parliamentary oversight.

Which children are in scope?

“Clause 48 requires each local authority in England to keep a register of certain eligible children in their area. Two types of children of compulsory school age will be eligible: those who are not registered as pupils at ‘relevant schools’ and those for whom their school has arranged or agreed for them to be absent from the school some or all of the time and receive education otherwise than at the school.” (p35)

These children in subsection (5)(b)(i) are already on the school register and remain counted in the current termly school census. In addition, as a result of attending AP, their personal data is provided twice at named level and they are counted in both the existing school census DfE data collections termly as well as the annual Alternative Provision Census.

Which organisations will be required to provide data?

The suggestion in the Memorandum on Delegated Powers that, *“The use of the affirmative procedure could require a disproportionate amount of Parliamentary time”* suggests either the requirements are poorly planned or will be of significant burden to Local Authorities. In either

⁹ For example Bristol <https://www.bristol.gov.uk/documents/20182/34960/CME+Guidance+for+schools> Grounds for deleting a pupil of compulsory school age from the school admission register as set out in the Education (Pupil Registration) (England) Regulations 2006 (as amended) <https://www.legislation.gov.uk/ukxi/2006/1751/regulation/8/made>

¹⁰ DCMS consultation Data: a new direction (DCMS) September 10, 2021 <https://www.gov.uk/government/consultations/data-a-new-direction>

¹¹ Delegated Powers Memorandum (May 2022) Schools Bill (pp35-
<http://countingchildren.uk/wp-content/uploads/2022/05/Delegated-Powers-Memorandum-Schools-Bill.pdf>

case, any expansion of the data items must always receive scrutiny via the affirmative procedure not only “*the first time*” as described. A precautionary principle must be applied to prevent future decisions taken to change the powers in 436E(2) without scrutiny.

Who may access and receive sensitive and identifying personal data?

Section 436F(2) authorises local authorities to provide information from their registers to persons (to be set out in regulations). This is weak protection and without future oversight. This destroys the notion that smaller decentralised databases are somehow intrinsically ‘safer’ than a national database, since the contents of small databases once shared and linked in effect create a national database. There should be barriers on this at national level, and instead only statistics should be made available beyond the purposes of direct care (i.e. named level data is necessary across or between Local Authorities providing services to the child in Section 436F(3) but not at the DfE or Children’s Commissioner whose business is not in individual interventions).

The Memorandum on Delegated Powers says that, in line with other regulations that prescribe persons (such as The Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009) the negative procedure is considered appropriate and the affirmative procedure would be considered disproportionate. We disagree.

This distribution list (“prescribed persons”) who receive data is critical to create trust in the process. This recipients’ list has been expanded for national pupil data since it first began to be collected in 1998, but without due scrutiny, Today journalists, think tanks, businesses that create heat maps for estate agents have already received identifying pupil data from the Department for Education, without families knowledge or consent. Police and Home Office have access via the Department for Education.

In fact data should not be distributed at all. Data management should follow the 5-safes standards, and not be copied and distributed (making data inaccurate as soon as it is out of sync with the local master copy, and prone to theft and loss, without oversight of who can access it). Instead, access to data should be distributed through secure role-based data management with thorough audit procedures, and not distribute the data itself.

5. Data security

In 2007, in debate around ContactPoint, Lord Errol raised the question of security that applies just as well today: *“My challenge on that rests once again on the law of unintended consequences in the security world. If you are an abused partner and trying to hide your new address, or you are in a witness protection programme, it is likely that at some point someone could access your address through the back door of one of these other databases where people do not realise that the address is sensitive. I am worried about having yet another database where parents’ addresses are to be maintained.”*

In 2008, Michael Gove rightly pointed out concerns about the plans for ContactPoint¹²: ***“ContactPoint can never be secure. The government has proved that it cannot be trusted to set up large databases, and cannot promise that inappropriate people would not be***

¹² Conservatives would scrap controversial ContactPoint database
<https://web.archive.org/web/20220516062130/https://www.telegraph.co.uk/news/politics/conservative/3097404/Conservatives-would-scrap-controversial-ContactPoint-child-database.html>

able to access the database, it would be irresponsible to implement something that is such a danger to our children. After all the problems we have with this government losing sensitive data we need to do things differently. We need to invest in people. Strengthening relationships, not building another Big Brother system."

6. Data accuracy

Counting Children was formed due to the shared concerns about the current quality and standards of debate about children out of school and the effects of inaccurate use of facts and figures by politicians and leaders of national institutions. If we are to shape better policy and practice for real children's lives it is important that terms like "ghost children" are avoided and made up numbers should be challenged. The *conflation* of different characteristics of children out of school for different reasons creates misleading numbers and associated inferences and will lead to bad policy choices. Therefore discussion should speak separately about:

(a) Children out of school as a result of "not returning" after COVID-19

The idea that over a hundred thousand children have failed to "return" to state schools after the pandemic is inaccurate, because it suggests that these children (or this many equivalent children) were regularly attending school before the pandemic, which is not the case. Before Covid-19, in the autumn term of 2019, 60,244 pupils¹³ were classed as severely absent.

(b) Absence

In March 2022, **attendance** in all state-funded schools (excluding exam-leave years 11-13 off-site for approved purposes) was **92.3%**. Historically, the main driver for absence is *illness*. In 2020/21, this was 2.1% across the year. During Covid, the absence rate for pupils with an EHC plan was 13.1% across 2020/21. There are further important caveats to remember when talking about absence data comparisons over time. The persistent absence threshold has consistently been made easier to reach since 2010, moving from 20% in 2010, to 15% until 2014/15 and only 10% since 2016. So a child is classified as "persistently absent" much more quickly today than ten years ago. Furthermore, the legal status of educational establishments (ie academisation) changes how data is counted and when.

<https://explore-education-statistics.service.gov.uk/find-statistics/attendance-in-education-and-early-years-settings-during-the-coronavirus-covid-19-outbreak> It is not *necessary* to take the personal data of millions of children into new databases, in real time, to track their attendance.

(c) Children in Need (CIN)

The Children-in-Need census covers all children who are referred to children's social care services, even if no further action is taken. This includes children looked after (CLA), those supported in their families or independently (CSF/I), and children who are the subject of a child protection plan. Local Authorities already send child-level highly sensitive data in the CIN Census to the Department for Education. Page 15 of that guidance talks about this being able to, "*track and analyse the journeys of individual children.*" p18-19 lists the child level data items including '*latest category of abuse*'. Records are matched and linked in the child's National Pupil Database record using the Unique Pupil Number (UPN) at the DfE.

¹³ CSJ report (2021) Can't Catch Up | page 3

http://countingchildren.uk/wp-content/uploads/2022/05/Cant_Catch_Up_FULL-REPORT.pdf

(d) Elective Home Education (EHE)

Guidance for local authorities and schools about children educated at home <https://www.gov.uk/government/publications/elective-home-education> Since 2016 schools must already inform the Local Authority of every child who was on a school roll but leaves school for elective home education (at a non-standard transition time).

(f) Alternative Provision (AP)

Local Authorities collect and submit named, child-level data on each child in receipt of any education in Alternative Provision to the Department for Education AP census (guidance last updated: 28 May 2021). Some pupils may legitimately appear on both the AP census and the schools census in the same year. For example, where their main source of education could be in AP, but they could also be registered at a maintained school that has not arranged the AP. In this case, the local authority is taking responsibility for the pupil's education and to reflect this, the pupil will be recorded on the annual AP Census as well as the termly School Census. <https://www.gov.uk/guidance/alternative-provision-ap-census>

(g) Children Missing Education (CME)

Guidance for local authorities and schools about children missing education ("CME") ("not in receipt of a suitable education") The latest published version is from 2016 so does not reflect the change of compulsory receipt of education or similar until the leaving age 18. <https://www.gov.uk/government/publications/children-missing-education> After children are labelled as CME there is a further disaggregation that exists but is not seen in the census. The 2014 NCB report, "*Not present, what future?*" estimated based on FOI from 45 Local Authorities that 1,022 of CME children were "off the radar" and from this extrapolated that nationally it could be up to 3,000 children at any one time. These children are known and were counted, found to be missing education, and in addition have since become of unknown whereabouts. This arguably should be one focus of current work to find those known 'needles' in the haystack of ca.15million children in England and Wales, rather than adding more hay.

Counting children consistently: Case Study Alternative Provision 2018

The Children's Commissioner says she asked Local Authorities for the numbers of children not in education.¹⁴ "*We simply asked them the questions: how many children have you got on the school roll? How many children are not in school?*" This is not simple. The complexity of this latter question must not be ignored. Data quality is a significant issue and will not provide better information to the Department nor solve social issues by demanding more data.

In 2018 defend digital me asked every Local Authority (153) with responsibilities for education in England and Wales for the number of children outside mainstream education, in Alternative Provision (AP). We found that some counted actual heads (total number of children) in AP on the census date (every year in January). Others counted the total number of children ever in AP across the year, totalled up across all 365 days. Since each child may be part-time in AP, even one day a week, some LAs recorded the number of hours purchased from AP providers

¹⁴ Telegraph (2022) Thousands of children have fallen off the radar during lockdown, warns Dame De Souza <https://www.telegraph.co.uk/news/2022/01/18/thousands-children-have-fallen-radar-lockdown-warns-dame-rachel/>

and divided it by the number of hours equivalent to full-time education, to calculate a full-time equivalent (FTE) of the number of children ever in AP across the year. Data standards must be addressed in consultation with stakeholders including representatives of local data users and civil society. More databases will intensify not solve these data issues. Given children may be in more than one fixed data category across a year we believe the questions of how many children are classed in what way can only ever be a close estimate at any point in time.

7. Human Rights Assessment

The Human Rights Impact Assessment of the Bill¹⁵ is completely inadequate about, “*Sharing of information (clause 48): the Department considers that any interference with Article 8 is necessary and proportionate for the protection of the right of children to an education and to protect health and morals through safeguarding (paragraphs 98 to 99)*”. There is for example nothing to suggest privacy preserving methodologies were considered in this need for better information such as not transferring data but statistics in the Secretary of State powers, or small number suppression, or sealed envelopes for those at risk to preserve confidentiality. The outdated mode of thinking about data ‘sharing’ and ‘transfers’ does not address the different levels of privacy impact depending on what data is collected, used by whom for what.

The Assessment of the Bill raises some further questions:

It omits the human costs and rights *implications* of the register not of itself but because it would require active *monitoring* of children educated otherwise than in school. As Jane Lowe, one of the trustees of Home Education Advisory Service, told the Education Select Committee in November 2020, “*It would mean that someone who was a stranger came into their home—In real terms, it would probably cause more distress than following up on families where there are genuine concerns.*”

The rights assessment omits any meaningful assessment against Protocol 1 Article 2: the Right to education that ensures freedom from interference from the State insofar as, “*...the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.*” The word “respect” means more than “acknowledge” or “taken into account”; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State (Campbell and Cosans v. the United Kingdom, § 37).

8. Questions of necessity and purpose

If the intention of the Bill is to ensure safeguarding of children then the framing and detail should be specific to address this. The question then is **how**, since a register alone cannot address this need. The creation of additional or expanded registers neither provides any better protection for the children for whom there are known safeguarding and welfare protection issues (on existing school roll for example) nor does it mean that children *not* on any current register will become registered. This proposal disproportionately targets all the wrong families

In 2016 following the child death review of Dylan Seabridge, Carl Sargeant (Cabinet Secretary for Families and Children) said in the Welsh Senedd, that, “*my personal view is that I don’t*

¹⁵ Government Memorandum on Human Rights (May 2022) prepared for the Schools Bill http://countingchildren.uk/wp-content/uploads/2022/05/DfE_ECHR_Memorandum.pdf

*think a register will fix this problem.*¹⁶ As Lowe further told the Education Select Committee in November 2020¹⁷, *“Dylan Seabridge sticks in my mind because that case was thoroughly known about to the local authorities. It was a question of a prompt action not being taken. It was not a question of the child not being known.”*

The Chair of the Education Select Committee in fact noted from the Committee review into Elective Home Education, in a letter to then Secretary of State Gavin Williamson in December 2020, that, *“We take on board the point made during the session that a register on its own would not achieve much.”*¹⁸ *It would need adequate resourcing and a clear purpose, along with sensitive and consistent communication. Indeed, one measure of its success would likely be the extent to which more consistency of support is available to home educating families.”*

There is no commitment to resources nor clear purposes stated in the Bill how more data collection will achieve anything of the claims. The distinction is not made between the set up of a register and the statutory monitoring that it would mean as a result. Robert Halfon, Committee Chair pointed out that, *“As a witness put it on 24 November¹⁹, ‘one of the roles of a register is to rule out all those children that you don’t need to have worries about.’”*

This neatly challenges the premise on two fronts: (1) the necessity and proportionality to place the sensitive personal data of every child in scope on permanent record does not stand up to scrutiny, by taking the personal details of the people who do not need it, into new surveillance measures and exposed to new powers at the whim of the Secretary of State, and (2) the severe risk that this data burden creates more data that is unneeded and further bureaucracy for families and Local Authorities where there is no concern, in services already overstretched without adequate resources to care for children that most need it.

The UK ICO has previously described necessity²⁰. *“It is not enough to argue that processing is necessary because you have chosen to operate your business in a particular way... not whether it is a necessary part of your chosen methods.”* Limiting the fundamental right to the protection of personal data and privacy, must be strictly **necessary**. Not just because you want it and it applies individually, not as a collective. **Proportionality** requires that advantages due to limiting the right are not outweighed by the disadvantages to exercise the right.

9. Future proofing: predictive analytics and machine learning (AI)

There is a risk that with increased data comes increased automation of service provision and decision making. This data needs safeguards to prevent scope creep nudging the use of the new databases towards high-risk and unsuitable systems, such as AI for child protection and predictive analytics. Such systems are already in use across various Local Authorities in England today but without procurement standards or oversight, many believe²¹ that use should

¹⁶ Plenary - Fifth Senedd 2016 <https://record.senedd.wales/Plenary/3616#C2888>

¹⁷ Oral evidence: Home Education, HC 839 (2020) <https://committees.parliament.uk/oralevidence/1267/html/>

¹⁸ Letter from Chair of the Education Select Committee Robert Halfon to Gavin Williamson December 3, 2020 <http://countingchildren.uk/wp-content/uploads/2022/05/Halfon-to-Williamson-Dec-3-2020.pdf>

¹⁹ Oral evidence: Home Education, HC 839 (2020) <https://committees.parliament.uk/oralevidence/1267/html/>

²⁰ ICO on necessity and proportionality

<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing>

²¹ Letters to the Editor from multiple experts (2018) Don’t trust algorithms to predict child-abuse risk

<https://www.theguardian.com/technology/2018/sep/19/dont-trust-algorithms-to-predict-child-abuse-risk>

end. In different places in the U.S. (ahead of the UK here) rollouts have stopped “because it didn’t seem to be predicting much”.²²

“When this task is placed in the wider context of the technical processes involved and the social situations in which the tools are used, a large number of problems emerge - the hidden bias in the algorithms, the incompleteness and unreliability of the datasets, the lack of transparency, and the impact upon families.” (Munro, 2019)²³

In September 2020, the What Works for Children’s Social Care published a research report²⁴. “On average, if the model identifies a child is at risk, it is wrong six out of ten times. The model misses four out of every five children at risk. None of the models’ performances exceeded our pre-specified threshold for ‘success’.”

The real risk of over-datafication of children-not-in-school is that any child 'not in school' will be seen with suspicion; every parent of children educated otherwise will be considered a risk. Broad access to such data will make every police officer a truancy officer and a border guard.

10. Ongoing misuse of National Pupil Data today

In 2012 just ten years after the DfE began collecting pupil names in the School Census, Michael Gove, then Secretary of State for Education, changed the law²⁵ to routinely give away individual-level personal confidential data from the NPD to journalists, businesses, charities, think tanks and researchers. Data released is identifying and sensitive. Parents are not told who has access to it.²⁶ The fifteen million named individuals in the database at the time, in 2012, were not informed. They never have been since. Now the NPD holds over 23 million people’s named records and the DfE gives them away. Surveillance polled parents in 2018 on behalf of defend digital me.²⁷ Sixty-nine per cent of parents said that they had not even been informed that the DfE may give away children’s pupil data which is identifying and sensitive.²⁸

The ICO carried out an audit in late 2019-20 of the DfE²⁹, and found policy on learners’ records was, “**designed to find a legal gateway to ‘fit’ the application**”. There were insufficient controls, oversight, or lawful basis. And “**the DfE are not fulfilling the first principle of the GDPR, outlined in Article 5(1)(a), that data shall be processed lawfully, fairly and in a transparent manner.**” As far as we know, there is no plan to address this.

²² Chicago Tribune (2017) Data mining program designed to predict child abuse proves unreliable, DCFS says <https://www.chicagotribune.com/investigations/ct-dcfs-eckerd-met-20171206-story.html>

²³ Munro, Eileen. (2019). Predictive analytics in child protection. https://www.researchgate.net/publication/332528200_Predictive_analytics_in_child_protection

²⁴ What Works for Children’s Social Care. (2020) Machine Learning in Children’s Services: Does it work? <https://whatworks-csc.org.uk/research-report/machine-learning-in-childrens-services-does-it-work/>

²⁵ Hansard 6 Nov 2012 : Column 35WS Ministerial Statement <https://publications.parliament.uk/pa/cm201213/cmhansrd/cm121106/wmstext/121106m0001.htm>

²⁶ School Census technical specification 2021-22 See Annex G pp146-155 https://web.archive.org/web/20220413154759/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1047457/2021-22_School_Census_Business_and_Technical_Specification_Version_1.7_publishing.pdf

²⁷ Defend digital me (2018) Only half of parents think they have enough control of their child’s digital footprint in school <https://defenddigitalme.org/2018/03/13/only-half-of-parents-think-they-have-enough-control-of-their-childrens-digital-footprint-in-school/>

²⁸ Schools Week (2020) Achievement for All had ‘detrimental effect’, finds EEF trial <https://schoolsweek.co.uk/achievement-for-all-had-detrimental-effect-finds-eeef-trial/>

²⁹ ICO Audit of the DfE national pupil database (2020) <https://defenddigitalme.org/wp-content/uploads/2021/10/department-for-education-audit-executive-summary-marked-up-by-DM-Jan-2021.pdf>

The NPD is now “one of the richest education datasets in the world,³⁰ There have been over 2,000 releases containing sensitive, personal or confidential data at pupil level³¹, each release of *millions of records each time*. 1,545 individual pupil records have even been handed over, matched to Home Office data by the Department for Education between July 2015 and July 2020. The promise twenty years ago that names would only be used for statistics was broken. Gambling companies were found using the Learner Records Service to onboard new customers in 2020.³² Still there has been no communication to families or the 15 million pupils, now adults, who have never been told their personal data has been commodified just because they went to state school. This *must* be prevented for any new compulsory databases and the rights of the child must be better protected, learning from the lessons of the DfE ICO audit.

11. Costs

The Home Education Advisory Service commissioned an independent survey of expected costs of registers: “*We had a chap from Citibank, a financial analyst, way back in 2010, and he worked out that there would be several scenarios that could result from registration and monitoring, and particularly the draconian monitoring that was proposed at that time. He said it could easily run to £500 million just to set the thing up.*”

There is conflicting information between the Bill Explanatory Notes that claims the Bill “*does not have any significant financial implications. There would be minor one-off costs for educational settings to consider and understand legislation and guidance and implement the necessary policy changes.*” And the Schools Bill Impact Assessment,³³ “*Similarly, we expect there to be a one-off implementation cost to local authorities in FY 2023/24, but a non-cashable annual saving in attendance staff costs thereafter.*”

Further, the new duty to support Home Educators (436B to 436H, Local Authorities in England must have regard to the guidance) appears to bring no new funding with it, so will have an additional negative cost impact of staffing or provision on Local Authorities.

The lack of assessment of any financial implications for Local Authorities must be an error in the accompanying files, because both in terms of any new or upgraded technology introduction, and forward looking staffing costs for systems use, initial and ongoing systems training, systems and extra records maintenance and data storage, as well as human interventions from the monitoring that will be required as a result, are all missing.

“*Any non-cashable annual saving in attendance staff costs thereafter,*” is surely a fiction. We suggest that this cost impact assessment should be recalculated based on the real issues.

Download our full briefing and read more as the Bill progresses at:
<https://countingchildren.uk/policy/>

³⁰ DfE (2019) Impact Assessment of the National Pupil Database
<https://defenddigitalme.org/wp-content/uploads/2022/01/DfE-NPD-DPIA-Public-Summary-v1.0-May-2019-002-9.pdf>

³¹ UIN 120141, tabled on 18 December 2017 Pupils: personal records
<https://questions-statements.parliament.uk/written-questions/detail/2017-12-18/120141>

³² BBC Papers (January 2020) <https://youtu.be/Y8a-S7LGvL8>

³³ Impact Assessments May 2022 Schools Bill (separate from the human rights impact assessment)
http://countingchildren.uk/wp-content/uploads/2022/05/Schools_Bill_impact_assessment.pdf