

Schools Bill Committee Stage

Our Counting Children coalition research to date with response from 60% of Local Authorities (“LAs”) found that 100% who responded (107), already track children in the scope of the Bill.

Does the Local Authority track children who are deregistered:	YES	NO	DID NOT YET REPLY
to receive an education otherwise than at school	107	0	69
due to permanent exclusion	106	0	70
due to unauthorised and unexplained absence (authorised absence plus ten days or 20 days) for which reasonable enquiries have been unable to resolve	100	2	73
to move from state into private education	90	3	83
to move out of independent (private) education to anything else	90	7	79
Do you track children whose destination is unknown leaving	YES	NO	DID NOT YET REPLY
Nursery	81	7	88
Alternative provision	96	2	78
Custody	93	2	81
Post-16 education	85	7	84
Do you track children if the authority becomes aware of a child	YES	NO	DID NOT YET REPLY
educated otherwise than at school (Elective Home Education "EHE")	106	0	70
about whose education there is nothing known	102	4	70
whose parents the authority considers to be failing to provide a suitable education (Child Missing Education "CME")	105	0	71
Do you track children who the authority has children in its geographical area that may be passing through but not in education	YES	NO	DID NOT YET REPLY
child born outside England	85	13	78
child of a service family (army, navy etc)	86	13	77
child of a family without permanent address	91	7	78

Notes: FOI obtained data from Local Authorities (“LAs”) in England and Wales (as of June 5, 2022). This is ongoing research and will be updated with responses as returned.

- (1) Four LAs that responded no to tracking children about whom nothing is known, said they could not if *nothing* was known, but suggested they would track if they became known.
- (2) Named data on pupils in Alternative Provision, and/or unauthorised and unexplained absence is already recorded at educational setting / school level daily and is shared in the school census termly at Local Authority and national (“DfE”) levels. The Department for Education has furthermore already begun real-time live (data transfers every 2-4 hours) tracking of named attendance / absence data with 13,000 schools (as of May 2022) and intends this real-time tracking to apply to all 8 million+ pupils from September 2022.
- (3) We remind peers the Information Commissioner 2020 audit recommended 139 urgent actions at the Department for Education, and noted 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.”*** The audit has never been published in full, but the same failing found in the audit applies to the new attendance / absence project: ***“The DfE are not providing sufficient privacy information to data subjects as required by Articles 12, 13 and 14 of the GDPR.”***¹ In 2018 the Alternative Provision census was expanded with reasons for transfer (including pregnancy and mental health reasons). Pupils and families have still never been informed that this new data is collected and kept forever.

¹ It is unclear if and how any of the 2020 ICO audit of the DfE as regards findings on unlawful practice have been addressed. <https://defenddigitalme.org/wp-content/uploads/2021/10/departement-for-education-audit-executive-summary-marked-up-by-DDM-Jan-2021.pdf>

Proposed amendments

The Schools Bill <https://bills.parliament.uk/publications/46433/documents/1770>

The Education Act 1996 <https://www.legislation.gov.uk/ukpga/1996/56/contents>

Explanatory notes

The processing of personal data of children not-in-school by Local Authorities is already required under s436A of the The Education Act 1996, *Duty to make arrangements to identify children not receiving education*. The personal data of the other children in the scope of the Schools Bill Clause 48(5)(b) (ie Alternative Provision, flexi- and part time schooling) is already processed on the school roll/registers. The Education Act 1996 *c.56 Part I Chapter VI Provision of information* also already includes the data processing powers between the Local Authority and Secretary of State proposed under 436F(1) of the Act in Clause 48 of the Schools Bill. This amendment will bring all data processing by Local Authorities under a consistent Code of Practice to provide governance of the new and existing powers to be exercised by Local Authorities and the Secretary of State. This would also provide oversight of the powers of Local Authorities 436C and the Secretary of State powers in the Schools Bill to expand 436D what data items may be collected, expand the list to whom identifying data may be given and for what purposes 436F, creating consistent processes for family notifications before data is collected, and guidance on the capacity of the child and parental rights. Provision of information from parents to the Local Authority must not create a one-way mirror. A published register must 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 free copy of their record on request (*charges are proposed under reforms set out in the DCMS Data Protection Act consultation, Data A New Direction*) to check for missing data, make corrections, and be assured with whom what data has been shared.

Clause 48, page 40, line 25, leave out ‘Registration’ and insert ‘Data processing’.

Clause 48, page 40, line 27, leave out ‘After section 436A insert—’ and insert ‘After section 30 insert—’.

Code of practice

(1) The Information Commissioner must issue a code of practice about—

(a) obligations and rights when processing personal information of parents and children under the Act by,

(i) local education authorities and their further processors, and

(ii) disclosure to the Secretary of State, or any other prescribed person under the Act,

(b) a Local Authority duty to maintain a transparency register of third-party data processing about children and families under the Schools Act 2022 or Education Act 1996,

(c) the right of parents and children to make a Subject Access Request without charge in order to receive a copy and validate the accuracy of personal data held by the Local Authority on no less than an annual basis, and to request correction where necessary,

(d) the nature and frequency of data processing demands by a public authority.

(2) The code of practice must be consistent with the code of practice prepared under section 121 of the Data Protection Act 2018 (data-sharing code) and issued under section 125(4) of that Act] (as altered or replaced from time to time).

(3) A public authority must have regard to the code of practice in processing and disclosing personal information.

(4) A data processor or data controller must have regard to the code of practice for the processing of information under the Act by any person who is accredited under—

(a) section 71(1)(a) of the Digital Economy Act 2017; or

(b) any prescribed person under the Education Act 1996; or

(c) the Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009; or

(d) any other person.

(5) The Information Commissioner may from time to time revise and re-issue the code of practice after consultation with—

(a) the Minister for the Department for Education,

(b) the Statistics Board,

(c) the Welsh Ministers,

(d) organisations that represent the interests of children and families and such other persons as The Information Commissioner considers appropriate.

(6) The Information Commissioner may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

(7) In disclosing information, a person must have regard to the further codes of practice issued by the Information Commissioner under section 128 of the Data Protection Act 2018 (other codes of practice), so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

###