

**This Briefing is supplementary to our Report Stage Briefing.**

<http://countingchildren.uk/wp-content/uploads/2022/07/Report-Stage-Schools-Bill-Counting-Children-Briefing-3.1-1.pdf>

**This is to address the amendments<sup>1</sup> proposed by the government to the Schools Bill to address peers' concerns with Clause 49 (was 48) published on July 8th, 2022 in HL Bill 35-I Marshalled list for Report.**

**Peers should note that debate has omitted any discussion of new DfE policy aims that bring a securitisation approach to school attendance through more surveillance, in the Department for Education Attendance Alliance — including Home Office and police.<sup>2</sup>**

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**Peers should ask themselves the following questions. If any answers are no, there are insufficient safeguards in the Bill to prevent this harm. Is it your intention:**

- for identifying and sensitive personal confidential data from thousands of children in the registers to be passed on to journalists?
- that protected characteristics be retained indefinitely on named records together with home address creating a register of people's religion and sexual orientation and disability at Local Authority and national levels?<sup>3</sup>
- detailed records of categories of child abuse and family neglect can be distributed to an unlimited number of people, including for commercial reuse when added to the National Pupil Database, with no ability for a child or family to know with whom that data has been shared and for what purposes or for how long.
- for personal confidential data from the families of children in the registers to be passed on to the Home Office for immigration enforcement?

**Each of these problems is what happens today with millions of children's personal confidential data extracted from schools and educational settings. If you do not intend to duplicate this for home-schooled and other children in the scope of the Bill (including those thousands in Alternative Provision, part time**

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<sup>1</sup> HL Bill 35-I Marshalled list for Report <https://bills.parliament.uk/publications/47302/documents/2139> Published on July 8, 2022

<sup>2</sup> DfE Attendance Alliance <https://www.gov.uk/government/groups/attendance-alliance-group>

<sup>3</sup> The Higher Education and Research Act 2017 mandated equality monitoring collection at national level without safeguards for students so now the DfE has a database of named millions of people <https://defenddigitalme.org/2019/07/27/statement-on-student-religion-or-belief-and-sexual-orientation-data-in-the-national-pupil-database/>

and flexi-schooled already on school databases and the National Pupil Database) then you must put safeguards around these proposals.

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## Amendment 68 and 69

*“Clause 49, page 42, leave out line 30”*

The government claims that the amendment removes the broad power to prescribe information that must be contained in the register of children not in school and it is replaced with a more targeted power, specified in amendment 69.

It does not do this because the power remains unlimited for the Secretary of State to determine at will in (k) **any other information about the child’s characteristics, circumstances, needs or interactions** with a local authority or educational institutions that the Secretary of State thinks should be included in the register **for the purposes of promoting or safeguarding the education, safety or welfare of children.**”

“For the purposes of promoting education” is undefined, it could even include promotion in terms of commercial marketing. Remember that the same purposes are used in the definition of the distribution of pupil data and that data is given away to companies. For example one produces and sells heatmaps to estate agents of pupils school intake distribution from the data they get given. (i.e they get pupil address data connected to school data to show where pupils live).<sup>4</sup> *“Locrating Ltd will also generate charts for each school showing which schools pupils have come from and which schools pupils move to. In addition, Locrating Ltd will provide a function to estate agents to show information around properties they are marketing (e.g. such as local amenities, transport and schools) for the benefit of people using their websites.”*

Since 2012, the Secretaries of State have expanded pupil data collected every year, sometimes thorough more than one statutory instrument (see pages 76-77) <https://defenddigitalme.org/wp-content/uploads/2020/11/The-state-of-data-2020-v2.2-1.pdf>

## High Risks from amendment 69

Collection of the child’s protected characteristics (within the meaning of the Equality Act 2010) (These are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.) are unnecessary at national level for non-direct care of children. The Local Authorities and Department for Education should receive such data as **\*statistics\*** not raw data attached to individual names so that they are unable to give away this highly sensitive data at identifying pupil level or keep it on a named database with home address as is done today thanks to the Higher Education and Research Act 2017. Our research found that students have never been told and do not know that they are on these databases. In 2019 the Department for

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<sup>4</sup> The DfE Third Party Data registers most recent document does not show all of the historical releases, since the register has been broken up and archived since 2012, when for example data was given to journalists at the Times, the BBC, The Telegraph, and to a wide range of commercial companies <https://www.gov.uk/government/publications/dfes-external-data-shares>

Education (DfE) held sexual orientation data on almost 3.2 million named individuals, and religious belief data on 3.7 million people. The records go back to starting in 2012/13, so include both current students and those who have finished university. (For more detail see our case study:

<https://defenddigitalme.org/2019/07/27/statement-on-student-religion-or-belief-and-sexual-orientation-data-in-the-national-pupil-database/> )

The Department appears to have made no attempt to research or adopt privacy preserving methods or tools for collecting this *information*, without collecting the raw data itself.

## Children in Need

**The new government amendment 69 in (c) (d) and (e)** proscribes the collection of data that is \*already done\* by Local Authorities and is sent to the Department for Education but this clause would increase the risk because names will be attached to the data to be distributed rather than when used for direct care use only and for other purposes only without names. While the removal of names alone is not anonymisation and does not prevent the data from being identifying, it can offer a small safeguard over and above where they are included.

The Children in Need census is already sent to the Department for Education. Read the detailed level of data including categories of abuse, family neglect in Appendix B of the CIN Census DfE guide. The Department currently adds this data to the National Pupil Database on receipt using other identifiers including unique pupil numbers assigned even pre-birth, but names are not present in transit. This amendment will change that, and add no safeguards. There are no safeguards or policies here on sealed envelopes, for example, protection of children at risk of violence should their home address be exposed in retention, transit or after distribution to thousands of recipients.

**See the codestates pages 63-69.**

[https://defenddigitalme.org/wp-content/uploads/2022/07/5Children\\_in\\_need\\_census\\_2022\\_to\\_2023\\_guide.pdf](https://defenddigitalme.org/wp-content/uploads/2022/07/5Children_in_need_census_2022_to_2023_guide.pdf)

## Children Not in Receipt of a Suitable Education

g) whether, under arrangements made under section 436A, the child has been identified as a child who is of compulsory school age but who is not a registered pupil at a school and is not receiving suitable education otherwise than at a school;

Why is this amendment necessary to specify this register should duplicate what is already done under the same law?

**Section 436A of the Education Act 1996 to make arrangements to identify, as far as it is possible to do so, children missing education (CME). This is why this whole part of this Bill is an unnecessary duplication of existing law.**

If the duty on Local Authorities in Section 436A of the Education Act 1996 to make arrangements to identify, as far as it is possible to do so, children missing education (CME) is not sufficient or not working, the new powers will fail unless the Bill addresses why.

## Amendment 70

It would already be unlawful without their consent under the UK Data Protection Act 2018 for information to be *published* from a register under section 436B which identifies a child who is eligible for registration or a parent of such a child, or allows such a child or parent to be identified. However the main problem of collection is not that publication is a risk as a result of human error. Instead, it is that these data are given away to third parties that is the harm to children and families rights and freedoms in data protection terms, and creates intrusion.

This amendment does nothing very useful however leaves open for the Local Authority and/or DfE to copy and paste the model used for distribution of the personal confidential data of over 21 million people in the National Pupil Database.

Since 2012 the Department for Education has given away names and addresses in research data uses, as well as for linkage with other government departments including Home Office immigration enforcement. But even without names, almost every release is identifying.

Commercial re-use of the identifying and sensitive personal data from the National Pupil Database continues without the people in the database being told.

Outputs may be “well disguised” on publication, as described in the application from the Good Schools Guide but the data given to the companies is identifying and often sensitive, personal confidential data at pupil level. The release of the data from the Department for Education should be considered the point of publication, not what the recipients decide to do with it. This amendment will not protect children from distribution of their personal confidential data to thousands of strangers and without any recourse to know where their data has gone for what purposes or how long or ability to exercise any of their rights in law.

The breaches of UK Data Protection law at DfE level documented in the 2020 ICO audit<sup>5</sup> include that, “*the Data Sharing Approvals Panel (DSAP) official remit is to govern all of DfE's external, individual level data sharing. Whilst DSAP is the official gateway for shares, not all sharing decisions throughout the DfE and its executives agencies are considered by DSAP so there is limited oversight and consistency around how data is shared externally,*” and “*In 400 applications, [note this is not all of the releases since 2012] only approximately 12 were rejected due to an approach which is designed to find a legal gateway to 'fit' the application rather than an assessment of the application against a set of robust measures designed to provide assurance and accountability that the sharing is lawful in line with statutory requirements.*”

## Amendment 85 (2)

*“The Secretary of State must make that information available as part of the National Pupil Database.”*

The Members’ statement here suggests only public interest reasons, “*..to aid policy formulation and child safeguarding,*” but omits that the data once added to the National

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<sup>5</sup> ICO audit of the Department for Education National Pupil Database (2020)  
<https://defenddigitalme.org/wp-content/uploads/2021/10/departement-for-education-audit-executive-summary-marked-up-by-DDM-Jan-2021.pdf>

Pupil Database will be distributed for commercial purposes, including for example, the Good Schools Guide with which there may be a conflict of interest in this Member’s proposal.

### Case study: Good Schools Guide (multiple years)

<https://defenddigitalme.org/wp-content/uploads/2022/07/GSG.pdf>

### Application

<https://www.whatdotheyknow.com/request/293030/response/723407/attach/7/Lucas%20Publications.pdf>

### Case study: The Times Newspaper (July 2013)

[https://defenddigitalme.org/wp-content/uploads/2022/07/The\\_Times.pdf](https://defenddigitalme.org/wp-content/uploads/2022/07/The_Times.pdf)

There is no clear legal basis for passing journalists individual level, sensitive data which are compatible with the purposes for which a child’s data is given to school, their education and the expectation that their confidentiality is maintained. However would the DfE argue this is the promotion of education as it has argued it is “research purposes”?

Information Tier	Information Type	Description	Tier Requested
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.	<input checked="" type="checkbox"/>
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 recorded 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	



<p><b>Please define the sensitive data item(s) that you require.</b> e.g. Date of birth, Postcode etc.</p>	<p>Special Educational Needs, Service child, Pupil's type of disability, Children in Need, CLA, PMR, UPN, ULN, candidate ID, exam candidate number, output area, language, ethnicity, FSM, absences, exclusions, pupil premium, postcode, date of birth</p>
<p><b>What will you be using the sensitive data item(s) for?</b></p>	<p>Journalistic purposes: to model the impact of the variables requested on the progression of students.</p>
<p><b>If you require Date of birth, Ethnic code or Home address (including Postcode), why are the mapped data item(s) not adequate for your needs?</b> e.g. Why is year and month of birth of pupil not sufficient for Date of birth?</p>	<p>All data that can be mapped is requested as so.</p>

**Project Aims:**

- To rank schools based on performance progression
- To carry out rigorous statistical analysis
- To pick interesting cases/groups of students
- To build an interactive tool to make inference about students progression

### Mime Consulting case study (23 requests fulfilled 2012-2016)

is a data consultancy that uses the data it receives from the DfE National Pupil Database “to track children in England wherever they go.”

[https://defenddigitalme.org/wp-content/uploads/2022/07/Mime\\_Consulting.pdf](https://defenddigitalme.org/wp-content/uploads/2022/07/Mime_Consulting.pdf)

Commercial data intermediaries are processing pupil data supplied by schools via the DfE, 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.

### Tutor Hunt Case study 2015

[https://defenddigitalme.org/wp-content/uploads/2022/07/Tutor\\_Hunt.pdf](https://defenddigitalme.org/wp-content/uploads/2022/07/Tutor_Hunt.pdf)

Another of the thousands of Tier 1 (identifying and highly sensitive) data recipients 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. Defenddigitalme argues this fails to meet '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."*

**The handful of rejected applications for pupil data included a request made "by mistake" from the Ministry of Defence to target its recruitment marketing.**

<https://schoolsweek.co.uk/mod-makes-inappropriate-request-by-mistake/>

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## Where does your data go?

Fundamentally, should parents and children's personal confidential data be given to anyone for profit, or to "pick interesting cases", for any non-direct schooling or direct care purpose without our knowledge. The question is, when will the Department for Education tell pupils and parents that the personal details from school records of over 23 million people have been given away for commercial reuse for over ten years and continue to be so without our knowledge or permission or any opt in-or out?

At very least if all this new data is to be collected and retained, there must be a duty of Local Authorities to maintain a register of all data distribution to any relevant persons and their processors as in the Digital economy Act 2017 when processing data for identification of fraud purposes. We believe the best way to put these safeguards in place is for a dedicated Code of Practice on data processing (as per Full Briefing) that could include such guidance as on registers of use. If that will not be put on the face of the Bill, then a register of data use must be:

insert New Clause X —

(1) Any "relevant person" that enables the access to or distribution of information from the registers where that information constitutes personal data, must maintain and publish a record of all categories of processing activities which the relevant person as data controller, a joint-controller or the processor carries out.

(2) The controller must publish these records of processing in an appropriate register—

(1) made publicly accessible online and available at no charge to the reader,

(2) available to the Information Commissioner in machine readable format.

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## About Counting Children | <https://countingchildren.uk/policy/>

Counting Children is a growing coalition of UK based 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. Our supporters

include 4Front; Big Brother Watch; defenddigitalme; No More Exclusions; Not Fine in School; Square Peg; York Travellers Trust; The Victoria Climbié Foundation UK; Professor Andy Bilson of The Parents, Families and Allies Network (PFAN); Dr Ian Cunningham, Centre for Self Managed Learning; Professor Eileen Munro, Emeritus Professor of Social Policy, London School of Economics (and author of the government 2011 Review into Child Protection); Dr Harriet Pattison, Centre for Personalised Education.