

## Three data related bills in Report Stage in the House of Lords (Feb / March 2017):

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### The Technical Education and Further Education Bill

**Report Stage consideration:** February 22

**Bill documents:** <http://services.parliament.uk/bills/2016-17/technicalandfurthereducation.html>

**Key clauses regards data sharing:** Part 3, Clause 38, Information for Secretary of State about further education.

Clause 38 (2) (1) “must give the Secretary of State such information as the Secretary of State may require for purposes connected with further education”

#### Key concerns:

The purposes in old legislation (Section 54 of the Further and Higher Education Act 1992 ) are changed from what “the authority may require for the purposes of claiming any amount in respect of the pupil from another authority” to it appears limitless boundaries on the purposes for which the Secretary of State may use the data as long as generically to do with FE: “as the Secretary of State may require for purposes connected with further education.”

These may be determined by the Secretary of State without limitation, without consent, or informed fair processing. There are no safeguards, oversight or future limitation.

**defenddigitalme consultation:** House of Lords Committee Consultation November 2016 [[download .pdf 176 kb](#)]<sup>1</sup>

**Please see recommendations for amendment:** items 16-24 (on page 2 of 4). These safeguards are in principle lacking and applicable to all three bills.

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### The Digital Economy Bill

**Report Stage consideration:** February 22

**Bill documents:** <https://services.parliament.uk/bills/2016-17/digitaleconomy.html>

**Key clauses:** Part 5, Chapter 1: Clause 31, Clause 36 (5) (6) and (7) (10) and Chapter 2: Civil Registration

Clause 31 (1) A specified person may disclose information held by the person in connection with any of the person’s functions to another specified person for the purposes of a specified objective

Clause 31 (3) A person specified in regulations under subsection (2) must be—  
(a) a public authority, or (b) a person providing services to a public authority

Clause 31 (7)

A disclosure under any of sections 31 to 35 does not breach—

(a) any obligation of confidence owed by the person making the disclosure,

Clause 31 (9) The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households.

Clause 31 (10) The reference in subsection (9) to the well-being of individuals or households includes—

(a) their physical and mental health and emotional well-being,

(b) the contribution made by them to society, and

(c) their social and economic well-being.

Clause 36 (10) Sections 31 to 35 do not limit the circumstances in which information may be disclosed apart from those sections

Chapter 2 (42) (3) A disclosure under this section does not breach any obligation of confidence owed by the civil registration official making the disclosure.

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<sup>1</sup> [http://defenddigitalme.com/wp-content/uploads/2017/02/08022016\\_DEBill\\_Briefing.pdf](http://defenddigitalme.com/wp-content/uploads/2017/02/08022016_DEBill_Briefing.pdf)

Chapter 2. 19 AA and AB list the wider range of bodies it can be shared with, but also that 19 AB (2) Top of page 47 that, "The Minister may by regulations amend subsection (1) so as to add, modify or remove a reference to a public authority or description of public authority."

### **Key concerns:**

A duty of confidentiality will be removed, and sensitive personal data about children, parents and anyone else, will be passed without asking the people involved for consent, or even letting us know our data has been passed to third parties.

Part 5, Chapter 1, Clause 31(changed from 30) and Chapter 2, the Civil Registry, will enable bulk sharing of confidential data, without consent or informing the people data comes from, for policy reasons. It can be changed at the future whim of the Secretary of State without public consultation, and relies on civil society catching poor changes in secondary legislation as we did on the school census expansion, which is utterly inadequate as a safeguard.

If this legislation should pass without amendment, it could be used for example to support the policy reasons given in the MOU between the DfE and HO of creating "a hostile environment" or identity cards for all migrants, or indeed everyone, and we will see harm come from it, not only to our migrant but other vulnerable communities, though use for example of school and health data, for these types of searches.

Further, any future changes to which individuals and organisations may receive these information is left to the discretion of the Minister. Again, these may be determined by the Secretary of State without limitation, without consent, or informed fair processing. There are no safeguards, oversight or future limitation.

**defenddigitalme Report Stage Briefing:** Why pupil data is the wrong model to copy. [[download .pdf 256 kb](#)]<sup>2</sup>

**BMA Briefing (health):** <https://www.bma.org.uk/collective-voice/influence/uk-governments/westminster/briefings/digital-economy-bill>

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## **The Higher Education and Research Bill**

**Report Stage consideration:** March 6

**Bill documents:** <http://services.parliament.uk/bills/2016-17/highereducationandresearch.html>

**Key clauses regards data sharing: Section 1, Clauses 75(4)(c) , 76 (1) and (2)and 76 (3) (b) and 76(4)**

75 (4)(c) "Qualifying research" means— research into any other topic approved by the Secretary of State

76 Use of application-to-acceptance information for research purposes

(1) The Secretary of State may—

(a) use information obtained under section 75 for use for qualifying research, and

(b) provide information obtained under section 75 to an approved person for use for qualifying research.

(2) The Secretary of State or an approved person may publish the product of research conducted using information obtained under section 75 so long as—

(a) a purpose of the Secretary of State or the approved person in publishing it is to provide statistical information,

(b) no individual to whom the information obtained under section 75 relates may be identified from the publication, and

(c) the publication does not include information obtained under section 75 that may be regarded as commercially sensitive.

(3) "Approved person" means—

(a) a body approved by the Secretary of State for the purposes of this section that uses or disseminates information for the purpose of research ("an approved body"), or

(b) an individual approved by the Secretary of State or an approved body for the purposes of this section ("an approved researcher").

(4) An approved body may provide information obtained under section 75 to an approved researcher, but an approved researcher may not provide that information to—

(a) another approved researcher, or (b) another approved body.

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<sup>2</sup> [http://defenddigitalme.com/wp-content/uploads/2017/02/08022016\\_DEBill\\_Briefing.pdf](http://defenddigitalme.com/wp-content/uploads/2017/02/08022016_DEBill_Briefing.pdf)

## Key concerns:

Consent procedures for data collection will be undermined for collection since The Secretary of State will become the Data Controller.

For example to compare with today, while Higher Education applicants can't opt out on collection of UCAS sharing their data during admissions for regulatory or statutory purposes, or for public interest academic research (currently explicitly and only with the ADRN), there is a nuanced consent process for other third party purposes which must be respected by all uses of the data after collection. HE Applicants have the option to consent separately from data use for other purposes.<sup>3</sup>

In 2015 UCAS carried out a survey which had 37,000 responses<sup>4</sup>. A large majority, 90%, of respondents said they wanted to be asked for their consent before their personal data is shared with anyone outside of the admissions service. A majority wanted to be asked for their consent before sharing across a range of data uses.

This bill overrides that consent which, "could undermine applicants' trust in the admissions service, degrade the quality of data collected, and potentially deter some people from applying to university altogether." (Point 25, UCAS evidence to Committee)<sup>5</sup>

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## References:

**Download:** The Digital Economy Bill: why National Pupil Data is the wrong model to copy [[.pdf 256 kB](http://defenddigitalme.com/wp-content/uploads/2017/02/08022016_DEBill_Briefing.pdf)]  
[http://defenddigitalme.com/wp-content/uploads/2017/02/08022016\\_DEBill\\_Briefing.pdf](http://defenddigitalme.com/wp-content/uploads/2017/02/08022016_DEBill_Briefing.pdf)

### Case studies include National Pupil Data commercial use:

This focuses on the National Pupil Data handling, current DfE policy in practice, as well as the current laws and future needs of GDPR that the Digital Economy Bill will override or fail to meet with reference to s30 and Chapter 2.

Summary: What the government says about its handling of personal confidential data, and what it does in reality are not aligned with the Principles of the Data Protection Act 1998.

These three bills are likely to copy and paste the same problems across all administrative datasets as the data are moved under the broader vertical control, of the Secretary of State with little limitation, and the Digital Economy Bill removes horizontal protections for the citizen in data sharing across departments and to commercial bodies for broader purposes.

### Why there must be safeguards on the face of the bills

1. Purposes with open definitions of 'well being' and 'research' are misused today, purpose limitation \*is\* required
2. Fair Processing
3. Privacy and security
4. Retention
3. Accuracy and Right to have errors corrected

The Supreme Court ruling in the Named Persons case on the failure of broad unspecified purposes, "The Christian Institute and others (Appellants) v The Lord Advocate (Respondent) (Scotland)" in June 2016, Universal Declaration of Human Rights, the UN Convention on the Rights of the Child, the Charter of Fundamental Rights, and GDPR requirements.

### Appendix for reference see pages 7, 8 and 9:

[http://defenddigitalme.com/wp-content/uploads/2017/02/08022016\\_DEBill\\_Briefing.pdf](http://defenddigitalme.com/wp-content/uploads/2017/02/08022016_DEBill_Briefing.pdf)

8. Three Case Studies of commercial use of children's confidential pupil data without consent
9. On School Census and use of Nationality data for broad policy purposes adopted without scrutiny (until challenged by civil society, and the Lords on 31/10/2016)
10. GDPR summary of child relevant articles and recitals, many of which conflict with the spirit and intent of these bills

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<sup>3</sup> <https://www.ucas.com/corporate/about-us/our-personal-data-policy>

<sup>4</sup> <https://www.ucas.com/corporate/news-and-key-documents/news/37000-students-respond-ucas%E2%80%99-applicant-data-survey>

<sup>5</sup> <https://www.publications.parliament.uk/pa/cm201617/cmpublic/HigherEducationandResearch/memo/HERB10.pdf>