

## Key concerns on AP Census: Children's lifetime confidentiality, Fairness, and Process

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**Data are collected without consent, on named basis, and soon include pregnancy, young offender, mental and physical health, thanks to a new law [passed this summer](#), SI 807/2017.**

The [Department for Education will collect](#) one of eight reasons for a school child's transfer from mainstream education into Alternative Provision education, from January 2018.

The named, identifying information are added to the National Pupil Database. There is no right to object to data distribution to third-parties including commercial re-use of children's administrative school records.

Data in the National Pupil Database are never deleted.

[Ofsted's Report on Local area SEND inspections](#) and a recent report by think Tank IPPR [Making the Difference](#) shows the importance of understanding these information. But that should not be at the expense of the lifetime privacy of the children affected.

### About the Census of pupils in Alternative Provision (AP)

1. Local Authorities are required to attach one of eight reasons for a child moving from mainstream education into other provision, to their named *individual* pupil record for submission to DfE in mid-January. (See [2018 AP Census Guidance v1.3](#).) Options include: Mental health need, Physical health need, Pregnancy / childcare, Pupil in young offender institute / secure training centre, Permanent exclusion, New arrival without a school place. Special needs are also expanded, including codes on autism, disability or visual and hearing impairment.
2. Local authorities are responsible for full-time education for permanently excluded pupils, and pupils who – because of illness or other reasons – would not receive such suitable education.<sup>1</sup>
3. In 2016, there were 22,212 children recorded as being in local authority funded placements outside of state place funded schools, including children who are educated in private voluntary and independent ("PVI") settings. (Source: [DfE Explanatory Note](#)).
4. The information has been captured at local level before, sending it to national level is new.
5. There has never been any privacy impact assessment done for any school census collection.
6. There was no public consultation as such, although according to government, "*Input from a sample of local authorities and AP providers and were also considered.*"<sup>2</sup> (See [PQ 108574](#))
7. This census has been collected every year at an individual level since 2008. The Census is a local authority (LA) return that requires the submission of individual records of pupils in AP on Census day in January each year, and reflects the data from the previous year. AP Census covers children who are:
  - school age 2-19 at a school not maintained by an authority for whom is paying full tuition fees;
  - educated otherwise than in schools or Pupil Referral Units under LA made arrangements.
  - includes those excluded from school on a permanent or fixed term basis; or
  - unable to attend school for medical reasons; or awaiting placement in a maintained school

<sup>1</sup> Alternative Provision background (statutory guidance) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/268940/alternative\\_provision\\_statutory\\_guidance\\_pdf\\_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268940/alternative_provision_statutory_guidance_pdf_version.pdf)

<sup>2</sup> PQ 108574 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-18/108574/>

## Privacy Risks

8. The Department claims,<sup>3</sup> “As the AP census already collects a range of characteristic information about individuals, these additional items of information (about the same individuals) do not present any new privacy risks over and above those already present.” This is incorrect. The data are added to the growing database of 23 million people, [the National Pupil Database](#). Its data are never deleted. These are *secondary re-use of data*, entirely separate from direct care. The risks are significantly raised:
- i. **Safeguarding:** Releases at national level to third parties are not anonymous, but identifiable.
  - ii. **Third party distribution of data for secondary re-uses.** Here risks rise exponentially. Confidential highly sensitive pupil-level data from the National Pupil Database, including sensitive special needs data (SEN) has already been passed on since 2012 to [commercial companies](#), charities, [think tanks](#), [newspaper](#) and TV [journalists](#) at an individual pupil level for millions of pupils at a time, without any suppression of small numbers, without pupil/parental consent or knowledge.
  - iii. [\[The Telegraph\]](#), [\[BBC Newsnight\]](#), [\[The Times\]](#) [\[Private Tutor company Tutor Hunt\]](#), [\[Data consultancy\]](#). [\[Cabinet Office National Citizen Service\]](#) [\[Cabinet Office Troubled Families Programme p7/9\]](#)
  - iv. *The University of Cambridge Institute of Criminology* was already given identifying data in 2013 which does not expire until April 2019 to predict pupil exclusion for London schoolchildren. Actual criminal records can be filtered and expunged, why not reasons for exclusion: theft, violence, sexual misconduct?
  - v. Press already report these types of stories at very low level, and pupil level access is therefore too sensitive and identifying: [“Revealed: The 10 schools in Norfolk with the most permanent exclusions.”](#)
  - vi. **Direct interventions: (sample case studies)**
    - DfE shares data for direct intervention or use with matched data with the [Cabinet Office Troubled Families Programme](#)<sup>4</sup>, the [National Citizen Service](#) and the Prince’s Trust scheme.
    - The Prince’s Trust young people were identified using names, date of birth, and postcode, and Unique Learner Number where available. The Trust “hoped to send DfE a list of young people, and for DfE to return a list of their data (FSM, SEN, absences, exclusions, behaviours, attainment (at KS3 and KS4), alongside an equivalent control group.” (2013). Why can these data not to be collected with consent?
    - The Football Association Premier League Ltd used NPD data to, “*establish an accurate central tracking system, in the best interest of the young players’ education.*” How might “young offender” affect a young person’s life or treatment in these contexts? Why are these data not consent based?
9. **Fairness:** It appears from the AP [Census Guidance 2018](#), that the Department has no intention to tell schools/LA how to explicitly inform parents and children before the data collection begins. This is despite the Data Protection requirement to explain it with clear reasons to the pupils, understandable by children (especially to meet GDPR Art 12(1)) when data are collected. LAs cannot tell families what they themselves do not know about commercial re-use. The government [response so far is poor](#).<sup>5</sup>
10. **Process:** A negative SI appears inappropriate for this type of sensitive, national change. It was approved by the same Board that signed off the [controversial](#) collection of country of birth and nationality. The Information Commissioner already [intervened recently](#), when the guidance to parents about their rights to refuse and withdraw nationality data, [was not made clear enough](#).

## Questions asked to date for Alternative Provision census

- [109024](#) To ask the Secretary of State for Education, what is the **legal basis** for her Department's collection of data on pregnancy, health and mental health from January 2018 in the Alternative Provision Census.
- [108559](#) To ask the Secretary of State for Education, **what guidance and advice her Department plans to provide for data subjects and parents** on alternative provision collection of pregnancy, health and mental health data from Jan 2018; and to whom those data will be shared/ made accessible.
- [108574](#) To ask the Secretary of State for Education, **what discussion she has had with (a) school leaders, (b) teachers and (c) the public** on the expansion of the Alternative Provision school census to collect school children's (i) pregnancy, (ii) health and (iii) mental health data from January 2018.
- [108570](#) To ask the Secretary of State for Education, whether her Department conducted a **privacy impact assessment** about the collection of data on pregnancy, health and mental health for the Alternative Provision Census 2018.

<sup>3</sup> Parliamentary question 108570 on lack of Privacy Impact Assessment for the AP expansion to national level. <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-18/108570/>

<sup>4</sup> Troubled Families use data from the National Pupil Database (not informed or with consent) This example was on absences.

<sup>5</sup> PQ 108559 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-18/108559/>