

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's Briefing on Government proposals to record children's nationality and immigration status

October 2016

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/policy/>

Contact

Bella Sankey

Director of Policy

Direct Line 020 7378 5254

Email: bellas@liberty-human-rights.org.uk

Rachel Robinson

Policy Officer

Direct Line: 020 7378 3659

Email: rachelr@liberty-human-rights.org.uk

Sara Ogilvie

Policy Officer

Direct Line 020 7378 3654

Email: sarao@liberty-human-rights.org.uk

Silkie Carlo

Policy Officer (Technology & Surveillance)

Direct Line 020 7378 5255

Email: silkiec@liberty-human-rights.org.uk

Sam Hawke

Policy Assistant

Direct Line 020 7378 5258

Email: samuelh@liberty-human-rights.org.uk

Introduction

1. Under the Education Act, the Secretary of State has the power to prescribe what information schools are required to provide on pupils.¹ The latest additions were introduced through the *Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016* which came into force on 1 September 2016.² The regulations add: nationality, country of birth, and proficiency in speaking, reading, and writing in English to the list of data to be collected by schools. The changes were reviewed and approved by the Star Chamber Security Board (SCSB)³, an external panel of representatives from schools and local authorities. There was no public consultation and no debate in the House of Commons.⁴ No Privacy Impact Statement was produced.
2. Schools have already started collecting the data which is being added to the National Pupil Database, a national database containing personal records of pupils and students at schools in England.⁵ It is the first time that nationality/COB data on children will be collected and stored at the national level and in an identifiable manner.
3. The statutory instrument is subject to negative resolution, and will come into force if it is not subject to a vote and defeated in either House of Parliament. It is currently due to be debated by the House of Lords on the 31 October 2016. **Lord Storey has tabled a Motion of Regret which regrets that nationality/COB data collected under these regulations could be used to help determine a child's immigration status. For the reasons explained in this short briefing, Liberty urges Peers to use this opportunity to speak against the policy and at the very least to vote in support of the Motion of Regret.**

¹ Education Act 1996, ss 408, 537A

² The Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016, regulation 2, available at - http://www.legislation.gov.uk/ukxi/2016/808/pdfs/ukxi_20160808_en.pdf.

³ The minutes of the meetings of the SCSB have been withheld (despite an FOI request) on the basis of the exemption that information does not need to be published if it relates to the formulation or development of government policy (Freedom of Information Act 2000, section 35a).

⁴ Section 408(5) of the Education Act 1996 requires the Secretary of State to consult any persons "with whom consultation appears to him to be desirable" prior to making regulations under section 408. It seems no one appeared to the Secretary of State desirable to consult.

⁵ The database mostly covers state schools, sixth-forms and further education colleges and includes information on test and exam results, prior attainment and progression at different key stages. Attainment information on pupils from independent schools is stored where available. However this makes up a small portion of the overall database. The NPD also includes information on pupils' characteristics including, gender, ethnicity, first language, eligibility for free school meals, absences, and exclusions

Creating a hostile environment in our classrooms

4. This reform bears a striking resemblance to the Home Secretary's recent suggestion that companies will be forced to reveal the number of non-UK workers they employ – proposals widely decried as toxic and xenophobic by the business community and those on all sides of the political spectrum. However, the schools policy goes even further, allowing a national register of non-national children to be established linked to name, address, and other sensitive personal data. This register will be accessible by multiple third parties with opaque and minimal oversight.
5. We think this is a dangerous and stigmatising expansion of border control powers into children's school lives. With consistently high levels of hate crime reported since the Brexit referendum,⁶ measures such as these risk victimising children in schools, a place where they should feel free and safe to learn and grow – rather than be a source of information on their parents or a target for immigration enforcement.
6. Indeed, these proposals raise the spectre of classrooms being divided by passport. This has, in fact, begun – with reports since the implementation of the policy that non-white children have been required to produce immigration documents at school.⁷ Take just one such incident:

“At Garth Hill college in Bracknell, Berkshire, parents received different emails depending on their child's recorded ethnicity. Those with children recorded as being white British were told the school was assuming they were British and born in the UK, and they should only respond if that assumption was incorrect, while those with a different recorded ethnicity were told to send in birthplace data as a matter of urgency.”

7. Against Borders for Children (ABC) – a campaign of concerned organisations, of which Liberty is a member – has received various reports of data collection practices which raise serious human rights concerns. In its briefing on the statutory instrument, it reported the following extremely worrying cases:

⁶ National Police Chiefs' Council, 'Hate crime is unacceptable in any circumstances, say police', 27 June 2016, available here: <http://news.npcc.police.uk/releases/hate-crime-is-unacceptable-in-any-circumstances-say-police> and *The Independent*, 'Brexit caused lasting rise in hate crime, new figures show', 8 September 2016, available here: <http://www.independent.co.uk/news/uk/crime/brexit-hate-crime-racism-eu-referendum-poland-islam-more-in-common-a7231836.html>. See also *The Independent*, 'Hate crimes soared by 41% after Brexit vote, official figures reveal', 13 October 2016, available here: <http://www.independent.co.uk/news/uk/crime/brexit-hate-crimes-racism-eu-referendum-vote-attacks-increase-police-figures-official-a7358866.html>.

⁷ *Schools Week*, 'Pupils who were not white British told to send in birthplace data', 23 September 2016, available here: <http://schoolsweek.co.uk/pupils-who-were-not-white-british-told-to-send-in-birthplace-data/>.

- Children being asked to show ID documents to prove nationality, contrary to DfE guidance;
- Only children with 'foreign'-sounding names being given letters about the new data items;
- Forms being issued that do not make clear that parents have a right to refuse to give nationality/COB data;
- Children being asked in tutor group for their nationality/COB meaning their parents cannot exercise their right to refuse to give the data;
- Schools using ID documents already held to provide the data to DfE without informing parents.

8. In September, the ABC Coalition wrote an open letter to Justine Greening, the Secretary of State for Education, urging her to drop the toxic and divisive proposals.⁸ The Department responded by assuring *The Guardian* that it would not share nationality/COB data collected through the school census with the Home Office. However, Government is refusing to publish this agreement, which in any event does not amount to binding statutory safeguard and could easily be abandoned at a future date with no public knowledge.

Use of DfE data for immigration enforcement

9. Collecting this data risks it being given to the Home Office for the purposes of immigration enforcement at a future date. Indeed, requests under the Freedom of Information Act 2000 have revealed that such data sharing has already occurred, with information from the National Pupil Database being passed on to the Home Office many times since 2012.⁹
10. On 6 October 2016, in a FOIA response to the organisation, defenddigitalme, the Department confirmed that the National Pupil Database had been accessed by the Home Office on 18 occasions, including for use in attempts to locate parents suspected of committing immigration offences. Notwithstanding the Government's claim that an agreement exists concerning nationality/COB data, future reforms could easily allow this 'safeguard' to be abandoned – allowing the Home Office to trawl the nationality/COB data of millions of children. Further, the Department has stated that

⁸ See *The Times*, 'Boycott schools data trawl, parents urged', 27 September 2016, available here: <http://www.thetimes.co.uk/article/boycott-school-data-trawl-parents-urged-30p9j06vj>.

⁹ *The Guardian*, 'Parents urged to boycott requests for children's country of birth information', 26 September 2016, available here: <https://www.theguardian.com/uk-news/2016/sep/26/parents-boycott-requests-childrens-country-of-birth-information>.

Home Office access to other data on the NPD, including name and address data, will continue.

11. Use of schools data for immigration enforcement purposes is a radical innovation and is deeply wrong. It risks creating a climate of fear in schools in which children are left vulnerable. Worse, it risks the British citizen or foreign national children of undocumented parents being removed from school.

No case has been made for nationality/COB data collection

12. The Department for Education has failed to make clear for what other purpose this data will be used. The school census already requires schools to collect 'language code' data to enable funding to be apportioned appropriately to schools with a high proportion of pupils for whom English is not a first language.¹⁰ At one point, the Department suggested that "funding" may be apportioned in light of the novel collection of nationality/COB data.¹¹ But it is entirely unclear what possible connection there could be between this data and funding.
13. The Government later claimed that the data will be used for "analysis, statistics and research", and in particular "to effectively measure the impact of foreign nationals on the education sector".¹² But experts have expressed real puzzlement as to the Government's plans. For example, Di Leedham, a specialist in teaching children English as a second language, wondered why Government would be collecting this data if the purpose was to improve schooling, since there is "no evidence" that pupils who do not speak English as a first language have a negative impact on schools.¹³ Moreover, if this is the Government's stated purpose of the data, it has got its priorities badly wrong: children in school are not merely "foreign nationals" whose "impact" on education needs to be ruthlessly restricted. They are children, deserving of an education.
14. With its new guidelines, the Government is already increasing the quality of the data it records as to language proficiency, with a new series of five rating bands in which a

¹⁰ See 2016 Guidance, section 2.6. See also previous guidance: Department for Education, 'School census 2015 to 2016: Guide, version 2.5', January 2016, sections 1.2 and 4.3.5, available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495464/2015_to_2016_School_Census_Guide_V_2_5.pdf.

¹¹ *Schools Week*, 'Schools must report EAL data differently from September – are you ready?', 9 July 2016, available here: <http://schoolsweek.co.uk/eal-is-this-a-change-for-the-better/>.

¹² *Schools Week*, 'What schools need to know about collecting nationality data', 6 October 2016, available here: <http://schoolsweek.co.uk/school-census-2016-how-should-schools-collect-nationality-data/>. See also 2016 Guidance, section 5.3.5.

¹³ *Schools Week*, 9 July 2016.

child's English proficiency can be determined.¹⁴ There is nothing in its new guidance to explain what value information as to children's nationality or place of birth will provide.

Conclusion

15. Liberty is extremely concerned that Government programs to manufacture a "hostile environment" for migrants in the UK are creating a climate of fear, suspicion, and hostility to individuals of minority races, whilst pushing migrants into more abuse and exploitation underground. Children remain particularly vulnerable to such measures, which will stigmatise those of minority races whether they are migrants or British citizens. The current Government has sought to extend borders into almost all aspects of the UK life, including the driving of cars and the renting of homes. Children's futures must be safeguarded, whatever their race or religion, and they cannot be held responsible for the statuses of their parents. Wherever borders are to extend, there are surely red lines that the Government may not cross, and schools are one of them.

Sam Hawke
Bella Sankey

¹⁴ See 2016 Guidance, section 5.3.3.