

October 6, 2017

Constitutional and Legislative Affairs Committee
National Assembly for Wales

Dear Chairman, and Honourable Members of the Committee,

SI 2017 No. 940 (W. 233) The Education (Supply of Information about the School Workforce) (Wales) Regulations 2017¹

The Statutory Instrument (SI) No. 940 was laid on September 26 and will take effect on October 31, 2017. We kindly ask for your urgent consideration as it affects school staff in Wales, regards collecting individual personal confidential data at national level for indefinite third-party use.

Public consultation took place over a few weeks in January this year, and received 34 responses. The concerns summarised in the consultation response are yet to be addressed, including interference with the human right privacy, and how purposes will be communicated, real assessment compared to a statistical collection. Assurances given offer little, except to refer to law:

“With regards to concerns over data confidentiality, the Welsh Government reassures respondents that the data collection will be conducted in accordance with the Data Protection Act (DPA) (and the General Data Protection Regulation (GDPR) which will replace the DPA from May 2018) and that individual level data will remain secure throughout the collection and linking process.” (Govt.)

Concerns raised by unions in consultation responses included: *“The summary of proposals and the Regulations need to provide far more clarity and reassurance about how this data will be used, stored and communicated... We can see the benefits of an individual level census if the acknowledged concerns about the use of personal data are addressed. (Union).”²*

“a summary of information could be transferred to the Government, to satisfy statistical requirements without interfering with the individuals’ privacy. (Union).”

The data to be collected on a named basis are confidential and sensitive

(a) gender; (b) date of birth; (c) national insurance number; (d) full name; (e) ethnic group; (f) national identity; (g) official reference number assigned by the Council, as well as in depth data about salary, teaching, training and absence.³

Purposes of the planned impact are generalised and without clear limitation

From FOI⁴ we know that staff personal data in England are already given to third parties, without publication of how these data are handed out, who decides what is distributed for how long, or any oversight of retention, destruction or audit of uses. We believe that teachers should be told their personal confidential data are given to third parties, with a consent mechanism for identifying use.

There is no public transparency in England of how these data are used, and that they are kept on named basis, indefinitely. There is no register published, which and why organisations get the data.

Further, the wording in 7(h) is similarly broad to that of pupil data legislation in England, made in 2012, *“persons conducting research ...which may be expected to be of public benefit.”*

We are concerned that this will open up workforce data to commercial use without consent. This is not to be confused with the risk of data being onwardly sold, which although possible, is prohibited

¹ Statutory Instrument No. 940/2017 <https://www.legislation.gov.uk/wsi/2017/940/made>

² page 9/21 https://consultations.gov.wales/sites/default/files/consultation_doc_files/170814-sor-school-workforce-data-collection-en.pdf

³ See schedule 1 and schedule 2 https://consultations.gov.wales/sites/default/files/consultation_doc_files/170104-draft-regs-en.pdf

⁴ FOI on third party use of England teaching workforce data https://www.whatdotheyknow.com/request/agreement_between_dfe_and_dbs_an?nocache=incoming-1015769#incoming-1015769

in the SI. The legislation wording however does not prevent the use of companies for commercial data analytics for example. Public benefit is open ended, and while may be well intentioned, does not restrict commercial use, and has exposed children's confidential sensitive pupil data and digital identity to thousands of users.

In England 23 million+ children's identifiable, individual-level personal, confidential and sensitive data from the National Pupil Database are all given out to third parties⁵, including commercial businesses, Fleet Street⁶ and television journalists⁷, and charities.

Given current sensitivity around nationality and workforce, this data merits special attention, and not to be dismissed as simply wanting to know whether the workforce is Welsh or not, for example. For example, up to 1,500 children's personal confidential are being passed from school census data to the Home Office Casework Removals Team in the active⁸ MOU between the DfE and Home Office which only became public knowledge through FOI. The current school census guidance to schools fails to mention any use for immigration purposes⁹. What assurance is given that workforce data will not be used similarly and that any assurance will not change in future?

We believe that this SI needs review with regard to Human Rights, in particular how this will be effectively communicated to the workforce and whether or not any consent mechanism is in place.

Questions

1. Please can you publish the privacy impact assessment (a government mandatory minimum measure since 2008), ¹⁰ and any review of the effect on fundamental human rights? (As also recommended by the Office of the Information Commissioner in March 2017).¹¹
2. How will principles of Data Protection law of fair processing and communicating purposes, data minimisation and retention be met? What plans are there to tell the staff who will have access to their National Insurance and Salary data for example, as well as other personal data. A privacy notice is often insufficient to effectively communicate to individuals affected.
3. Will there be a published third-party register¹² which and why organisations access this data?
4. Is there any independent oversight of the decision making process for data access approvals?
5. We wish assurances that there will not be future access to this database for similar purposes of immigration enforcement such as identifying individuals including 'to effect removal' as current use of pupil data in England¹³, and guarantee of no change of purpose in future.

Thank you for your urgent consideration of review of this Statutory Instrument.

Sincerely,
Jen Persson
Director, defenddigitalme

⁵ Third party pupil data requests (note pre 2016 archived on page) <https://www.gov.uk/government/publications/national-pupil-database-requests-received>

⁶ The Times journalists data access request approved <https://www.whatdotheyknow.com/request/293030/response/723407/attach/5/The%20Times.pdf>

⁷ Newsnight access to sensitive identifying data <https://www.whatdotheyknow.com/request/293030/response/723407/attach/10/BBC%20Newsnight.pdf>

⁸ Number of children's data handed over are not transparent http://defenddigitalme.com/wp-content/uploads/2017/06/HomeOffice_pupilaccess_tracker.pdf

⁹ 2017-18 school census guidance <https://www.gov.uk/government/publications/school-census-2017-to-2018-guide-for-schools-and-las>

¹⁰ See Cabinet Office, Cross Government Actions: Mandatory Minimum Measures, 2008, Section I, 4.4: All departments must "conduct privacy impact assessments so that they can be considered as part of the information risk aspects of Gateway Reviews".

¹¹ ICO response <https://ico.org.uk/media/about-the-ico/consultations/2013679/school-workforce-data-collection-ico-response-20170303.pdf>

¹² A third party use of pupil data in England is published <https://www.gov.uk/government/publications/national-pupil-database-requests-received>

¹³ DfE Home Office pupil data sharing Strategic purposes paragraphs 15.1.1 and 15.1.2 <https://www.whatdotheyknow.com/request/377285/response/941438/attach/5/20161016%20DfE%20HO%20MoU%20redacted.pdf>