

INDEX OF ENCLOSURES Description	Date	Explanation of redactions	Clause
Enclosure 1: Health and Wellbeing Census Ethics Checklist	19 August 2019	Personal details	Section 38(1)(b)
Enclosure 2: Data Protection (DP) - Education Health and Wellbeing Census - SGLD to Education	18 July 2019	Personal details Out of scope	Section 38(1)(b)
Enclosure 3: HWB Implementation Plan	10 January 2019	Personal details	Section 38(1)(b)
Enclosure 4: Legal Basis for Health and Wellbeing Census and Duty of Care position	18 July 2019		

Enclosure 1: Health and Wellbeing Census Ethics Checklist

1.1 ETHICS CHECKLIST

Project Title: Health and Wellbeing Census of Children and Young People 2019

Project Manager: Redacted Section 38(1)(b) Personal details

Department/ Division/Branch: EAS/Learning Analysis

GSR Principle 1: Sound application and conduct of social research methods and appropriate dissemination and utilisation of the findings

Principle Components	Issues	Sensitivity Rating
<p>a) Scope out existing/similar research <i>Example questions:</i></p> <ul style="list-style-type: none">• <i>Does a new piece of primary/secondary research need to be done? Is this a duplication of existing research?</i>• <i>Is other research already taking place with the same groups which could be amalgamated to prevent over-researching small populations?</i>	<p>The need for this research has been identified as far back as 2015 on recognition by Scottish Government and a range of stakeholders that the current Health and Wellbeing Survey landscape in Scotland is fragmented and does not offer consistent, local authority level results allowing for comparisons at this level.</p> <p>While some local authorities undertake their own surveys of young people's health and wellbeing, such collections are uncoordinated in terms of timing, scope and questionnaire content. An international survey of school aged children's health and wellbeing (HBSC) takes place in Scotland as well but it does not routinely provide local authority level results.</p> <p>A significant amount of work has been undertaken since 2015 by the Scottish Government, NHS Health Scotland and Local Authorities to address this gap by proposing a new Health and Wellbeing (HWB) Census that offers local authority and school level results, allowing for meaningful comparisons at national and local authority levels to inform and drive forward</p>	<p>Green</p>

	<p>improvements based on its findings, and to monitor the effectiveness of any actions/interventions.</p> <p>In addition to the HWB Census filling in the gap in knowledge that current data collections are unable to provide, we have worked closely with Local Authorities to ensure that, where feasible, the new census would replace the existing LA data collections, therefore not introducing additional burden on respondents whilst creating consistency in what's gathered from all children and young people across Scotland.</p> <p>It will be imperative for SG to embed the HWB census as part of the health and wellbeing data landscape and make the most efficient use of all related data. SG are facilitating meetings with HBSC and SALSUS to agree and influence opportunities in going forward.</p> <p>The HWB project team also engage in detailed conversations with SG research teams, RCS, GIRFEC, PISA and GUS colleagues to discuss census content to effectively inform the content of future studies.</p>	
<p>b) Proposed methodology <i>Example questions:</i></p> <ul style="list-style-type: none"> • <i>From an ethical perspective, is the research design appropriate to the groups being interviewed?</i> 	<p>A dedicated Content Group was created to guide the methodological aspects and content of the HWB Census questionnaires. The group comprised analysts, researchers</p>	<p>Green</p>

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- *Is the research placing an unnecessary burden on respondents?*
 - *How will the research address the inclusion of and consider the diverse perspectives of people according to their gender, disability, ethnicity, religion, sexual orientation, socio-economic status and age?*

and staff from Scottish Government, NHS Health Scotland, Local Authorities, St. Andrew's University, ScotCen, headteachers, Educational Psychologist and (lately) RSHP. One of the key areas of consideration for the Content Group was ensuring that questions and the way they were delivered were age-stage appropriate for the researched age groups (P5 to S6).

The Content Group agreed that the majority of the questions proposed for use in the HWB Census questionnaire would come from previously used health and well-being and, therefore, have previously been ethically and cognitively tested and approved for use for the specific age groups that the HWB Census covers (P5 – S6).

A pilot took place in March and April in 2019 with 3 CPPs to test the technology, census administration, the questions as drafted at that's stage. This provided very helpful feedback on question content which enabled revisions to be made. The questionnaire content group have made these revisions. The final amended questionnaires have now also been checked by the content group for fluency, readability and ethical considerations before going live. The administration of the census and the technology worked well.

The HWB Census is expected to be delivered electronically, in a classroom setting. This will

ensure that teacher/admin support is available at all times to students completing the survey, but also that the complex structure of the survey is in effect hidden behind the electronic interface with seamless transition between filter questions (i.e. survey routing) and relevant parts of the questionnaire. Efforts have also been made to make the electronic questionnaire visually engaging for children and young people, with use of illustrations (and emoticons) in the electronic questionnaire.

Time needed to complete the questionnaire has been one of the key considerations in designing and agreeing the core questionnaires and it has been agreed that the survey should not take longer than 35 minutes (slightly shorter for younger children) to complete the core set of questions (whilst also allowing some 'space' in the questionnaire for LAs to add further HWB questions based on local priorities), to minimise survey fatigue and reduce burden on respondents. In practice, we anticipate this will be much shorter for most respondents, since prevalence data for substance abuse amongst younger age groups indicate that only a small percentage of school age children would be asked to answer more probing questions about these types of behaviours.

The survey is universal for all children in state schools in P5 through to S6. Equality

	<p>considerations have been at the forefront of HWB Census development, both in terms of making the survey accessible to a wide range of respondents but also ensuring that key equalities data were collected as part of this work. Consideration to audio support and offering different language versions has been given. However, as with other online systems asked of children (e.g. SNSA), these have not initially been included but will be kept under regular consideration.</p> <p>In line with similar school/LA surveys, LAs are encouraged to provide any support required to pupils with ASN requirements and reading/English language difficulties by providing staff able to read/translate the questions for them. The Census Implementation Group will discuss and agree examples of good practice to support this.</p> <p>This is a sensitive area where sensitive questions will be included within the proposed set of questionnaires. This is being managed with appropriate diligence and due care by Scottish Government and by LAs (see section 4a for more information).</p>	
<p>c) External Ethical Scrutiny <i>Example questions:</i></p> <ul style="list-style-type: none"> <i>Are you interviewing NHS staff or patients? If so – the successful contractor will be required to obtain clearance from the National Research Ethics Services (NRES) Scotland Committee.</i> 	<p>Not applicable, we do not anticipate covering any of the identified populations and the census itself is not subject to procurement activities. The only component of this work being procured is the electronic data collection platform, which is not</p>	<p>Green</p>

- *Are you interviewing participants who may lack the mental capacity to provide informed consent? If so, the successful contractor may be required to obtain clearance from NRES: <http://www.cso.scot.nhs.uk/nrs/research-ethics/>*
- *Are Academic institutions likely to be asked to tender? If so, they will still be required to go through their ethics committees. How will this affect the timetable?*

covered as part of this project ethical review process.

d) Tendering

Example questions:

- *Is this research using a new technique or is it innovative in its approach?*
- *Are there enough suppliers with the right experience to deliver the project without increased ethical sensitivity?*

The Census will be delivered using an electronic dedicated survey platform called SmartSurvey procured by the Scottish Government using the G-Cloud procurement framework set up by the Cabinet Office. Suppliers submitted an application to be added to the Crown Commercial Services Digital Market where they are legally required to meet a set of minimum standards against the G-Cloud Framework.

The use of electronic survey platforms for data collection in the public sector is not a new development and does not constitute an innovative approach in itself. However, the use of this technology to enable each local authority to administer and gather its own Census data is new.

Consideration has been given to ensuring that the IT system has sufficient capacity to collect information from a large number of respondents at the same time (potentially looking at up to 450,000 pupils). While the

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Scottish Government will act as the data processor (and SmartSurvey is the sub processor) of the IT platform, local authorities will have their own sub-accounts to facilitate data collection at their end and will be the data controllers (i.e. owners of their own Census data).

Smart Survey has successfully been used by a range of government departments and NDPBs such as NHS boards in England, Cabinet Office and Education Scotland. Smart Survey were the only electronic data collection platform identified by the G-Cloud procurement framework, that met our search criteria. The data collected through Smart Survey is stored on UK based servers, the platform also offers a high standard of data security, as demonstrated by:

- SSL encryption on any survey. Password protection is applied and IP restriction imposed on user accounts and survey responses
- ISO 27001 Certification – the highest possible standard for data security.
- Full compliance with GDPR

Pre, during and post fieldwork, full support to LAs will be offered by both the platform contractors and the HWB Census project team in the Scottish Government. The project team develop and provide SmartSurvey User Guides to LA contacts aimed at providing clear step by step instructions on how

to set up the Census on Local Authority accounts. With SG taking the lead role on this, it ensures a consistent approach across all the LAs. Smart Survey contractors also operate a support service for dealing with more complex technical queries, which will be available for LAs to obtain support directly from the service supplier.

e) Analysis and Reporting of findings
Example questions:

- ***What measures are in place to ensure that the reporting and interpreting of findings protects against distortion and bias?***

Given the census approach for the collection, issues of population representativeness will be secondary to ensuring that the reporting of any findings highlights any potential bias in the results.

While the onus is on each LAs to ensure schools in their areas have made the necessary preparations to deliver the Census, the HWB Census project team will continue to highlight, prompt, and facilitate the exchange of good practice between LAs.

This will take place both as part of the LA Implementation Group activities, a dedicated Knowledge Hub Group that has been set up, and via email communication with LAs.

Communication activities around the census are considered to be key in ensuring a high degree of participation. The HWB census project team will put in place a dedicated web landing page to provide links to key GDPR documentation such as Privacy Notices, Data Process Impact Assessment and relevant information via dashboards for

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which parents, children, teachers and LA staff may find helpful to allow them to make an informed decision about participation and how schools, LAs and SG will use the data.

LAs are responsible for their own analysis and interpretation. However, SG will continue to work with the census Implementation Group to establish LA requirements for data analysis. LAs will be provided with an analytical tool to allow them to interpret data in the same way across all LAs and instantly produce school and LA summary reports suitably suppressed for small numbers where pupil identification would otherwise be possible. SG will continue to support LAs on data interpretation approaches and techniques as the project continues.

We are aware of the need to reach out to the children who are not present at school on the day of the Census, as excluding them is a potential source of bias. LAs will manage this as part of their normal processes and protocols for being as inclusive as possible and are to come up with individual solutions to this issue, while the HWB Census project team will monitor their approaches.

Pupil census information offer us a good idea of socio-demographic characteristics of pupils in Scotland. Responses will be monitored to ensure the sample is consistent with the

	<p>expected characteristics of students in particular LAs.</p> <p>This is particularly important for the unlikely event response rates are low, in order to establish whether these are associated with any systematic bias.</p>	
<p>f) Freedom of Information Example questions:</p> <ul style="list-style-type: none"> • <i>What impact does FOI legislation have on the ethically sensitive management of all stages of the project, particularly on release of sensitive information? (E.g. release of an interim report)</i> 	<p>Any FOI requests would follow existing protocols.</p> <p>As local authorities are to use the lawful basis under GDPR in that the data is being 'processed for stats/research purposes for a public task' then certain exemption apply to such data (e.g. subject access requests).</p> <p>There is the risk that local authorities (or schools) could be asked to release their own results (which is no different to schools being asked for information in relation to any other data it holds). However, the SG works with LAs to ensure that such requests are met, or to reiterate if an exemption could be applied (e.g. if the results are due for release by the SG within 12 weeks of the FOI request being made).</p>	<p>Green</p>
<p>g) Dissemination strategy Example questions:</p> <ul style="list-style-type: none"> • <i>What elements do we want to disseminate?</i> • <i>What is our role/responsibility to different stakeholders and research participants around dissemination?</i> • <i>What are the most effective and efficient ways of disseminating?</i> • <i>What report format best meets</i> 	<p>SG will work with the Census Implementation Group representatives to share and agree all supporting materials to ensure LAs and school staff are fully prepared to undertake the census. Each LA will have the responsibility to share appropriate information with school staff and parents with SG providing a facilitating and</p>	<p>Green</p>

the needs of the policy customers/service providers/users? What are the accessibility and equality issues relating to how findings are made available/formatted?

- *Who might help us disseminate?*

mentoring role. LAs will also be encouraged to share their own analysis with other LAs to learn from each other.

SG will disseminate data via a standardised reporting platform to ensure consistency.

Data from the survey will be provided to us by each of the 32 LAs once they have completed their fieldwork.

LAs are the data owners and therefore, in order for SG to carry out analysis, there would be Data Sharing Agreements put in place with all 32 LAs. Data would be shared using an existing trusted and reliable secure file transfer platform called Objective Connect.

The finer details on how data would be analysed by SG is yet to be determined but is likely to include a national report (containing local authority level results) which would be standardised using the same format and online dashboards to provide all interested stakeholders and users LAs with interactive functionality to more fully exploit the findings from the Census. Again, as mentioned earlier, data interpretation guidance would be provided to LA staff by SG.

SG will provide LAs with an analysis tool that will help them to produce and share suitably anonymised and aggregated level data with their schools, pupils and parents/carers.

GSR Principle 2: Participation based on valid informed consent

Principle Components	Issues	Sensitivity Rating
<p>a) Consent to take part in primary research</p> <p><i>Example questions:</i></p> <p>Access protocols and first stage consent</p> <ul style="list-style-type: none"> • What access protocols, if any, apply? <p><i>(The Scottish Government has formal access protocols for: Courts, Police, Crown Office and Procurator Fiscal, Prisons, Associate Directors of Social Work and Children’s Reporter. There are also access protocols for Schools. See Annex E of management guidance)</i></p> <p><i>Consent via gatekeepers or proxy</i></p> <ul style="list-style-type: none"> • Is this required? If so, what processes need to be followed? • Do steps need to be taken to ensure representativeness, i.e. to ensure that participants are not “hand-picked” by gatekeepers or that there is a biased minority view promoted? <p><i>Participants</i></p> <ul style="list-style-type: none"> • What processes are in place to ensure that participants are informed about the project, the purpose, the client, topics and that their participation is voluntary? • What measures can you take to ensure that participant agreement is made before the interview is conducted? • If you require to follow up participants with further research, has this been made clear and consent given? 	<p>The census is to be rolled out in schools and collected under the GDPR lawful basis of “public task”. As participation in the Census is not mandatory, parents/carers/children will be provided with information in order for them to make an informed decision as to whether they (or their child(ren) if aged below 16) want to take part or “opt-out” of the Census. Local authorities will be responsible for providing and creating the necessary materials that will help parents/carers/children make such an informed choice. The SG will also be providing information on the Census on its own website.</p> <p>Privacy notices and Data Privacy Impact Assessments (DPIA) will be developed by individual local authorities to inform participants about the privacy implications of the project. SG will also produce a Privacy Notice for the census and a DPIA for which both would be made available on the SG HWB Census web page.</p> <p>In addition to the above, schools will be advised via their supporting materials that pupils will have every opportunity to opt out before and during completing the census. Questions are not mandatory and pupils can choose to not answer any of the questions they feel they do not wish to answer. Some questions also offer a “prefer not to say” option. Once the census has been completed, data cannot be deleted</p>	<p>Green</p>

	<p>upon request by a parent or respondent as this is an exemption under GDPR when data is being processed for stats/research purposes.</p>	
<p>b) Children and Young People (aged 15 and under)</p> <p><i>Example questions:</i></p> <ul style="list-style-type: none"> • <i>Consent from a parent or legal guardian is usually advised for children aged under 16 to participate in research. What processes are in place to ensure this is done? Remember that an opt-in basis should always be considered first.</i> • <i>How can you ensure that children and young people are adequately informed about the work and give informed consent?</i> • <i>(Note- Disclosure check issues are dealt with below under GSR Principle 4b Avoidance of Personal Harm.)</i> 	<p>As highlighted above, consent from parents/carers and children will be sought on an “opt-out” basis as the Census is not mandatory. Under GDPR, the Census is being conducted under the lawful basis of “public task”, not “consent”.</p> <p>The SG are working closely with local authorities in the creation and sharing of materials that will assist them all to conduct their own Census legally and lawfully, and that parents/carers/children can make an informed choice as to whether they wish to participate or not. FAQ’s, appropriate lines on legal requirements for use of the data are also being shared with LAs to help them communicate transparently with their schools, parents and children.</p>	<p>Green</p>
<p>c) Vulnerable Adults</p> <p><i>Example questions:</i></p> <ul style="list-style-type: none"> • <i>Are there any groups that might have difficulty giving informed consent themselves?</i> • <i>How can you ensure that participants are adequately informed about the work?</i> 	<p>Careful consideration has been given to ensure that participants are fully informed about the census through the means of dedicated communication material produced both by the local authorities and Scottish Government. These include websites, leaflets, letters (etc) but depending on local arrangements can also take form of teacher parent meetings and information sessions for children. The language in such communications will be targeted to ensure its age appropriateness.</p>	<p>Amber</p>

	<p>Scottish Government and participating LAs (via the Implementation Group) will draw on the experiences of other surveys such as the HBSC, RCS, SALSUS, etc. to ensure best practice in obtaining informed consent from all age groups is being followed.</p> <p>SG are recommending that the process remains the same for all participants but will rely on LAs local knowledge and experience in managing this group.</p>	
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GSR Principle 3: Enabling participation

Principle Components	Issues	Sensitivity Rating
<p>a) Reducing the barriers to participation <i>Example questions:</i></p> <ul style="list-style-type: none"> <i>What steps can be taken to encourage and widen participation? (e.g. cover for travel costs, childcare, varying times and locations of interviews, accessibility of venues etc.)</i> <i>Do you need interviewer assistance such as offering help with completion or a translator?</i> 	<p>One of the reasons for choosing SmartSurvey was the flexibility on offer in making the questionnaire available to participants. The questionnaire platform offers LAs the opportunity for paper based questionnaires for those that may require additional support in going through the platform. Questionnaires can be completed via PC, tablet or by mobile and automatically adjusts format accordingly. Links to the questionnaires can be provided using a typical url or a QR code can be offered which may help pupils more easily participate if using a device that can scan QR codes.</p> <p>The census will take place in schools and within school hours and as such does not require special arrangements to be made to accommodate those taking part. Young people taking part will already have been required to be present at school.</p>	<p>Green</p>

	<p>The Implementation Group will be discussing and looking to agree a suite of instructions for teachers to ensure a consistent administration across all LAs for the census.</p>	
<p>b) Ensuring that hard to reach groups are included <i>Example questions:</i></p> <ul style="list-style-type: none"> • <i>Is the research and sample design appropriate? Does it unjustifiably discriminate against certain groups of the population?</i> • <i>Do you need to over sample certain groups and/or weight the data?</i> • <i>Do you need to consult with others so that barriers to participation for certain groups are reduced?</i> 	<p>The census approach adopted by this census means that everyone attending publicly funded schools and within the appropriate stages is eligible to take part. As such, we cover the entire school population within the eligible stages.</p> <p>Areas of concern include ensuring that students who for whatever reason cannot attend school at the time of fieldwork and ensuring that questionnaires are accessible to students with additional support needs. Solutions to both are being considered by local authorities delivering the Census, who will be making relevant local arrangements.</p>	<p>Amber</p>

GSR Principle 4: Avoidance of personal harm		
Principle Components	Issues	Sensitivity Rating
<p>a) Research Participants <i>Example questions:</i></p> <ul style="list-style-type: none"> • <i>Might some of the research questions cover stressful or culturally sensitive subjects? If so, how will stress and sensitivities be minimised.</i> • <i>What can be done to keep the interview length to the minimum?</i> • <i>Do you need to ensure that there is post-interview support?</i> 	<p>Some of the questions covered in the Census will touch on both stressful and culturally sensitive subjects. These might include issues such as substance misuse, sexual activity, life satisfaction, feeling safe, and/or bullying. This is being managed by the Questionnaire Content Group and followed up with work via the Implementation Group.</p> <p>All questions in the Census have been developed using pre-existing survey questions that are already being asked of children and young people in surveys such as HBSC, PISA, GUS and SALSUS. The dedicated Census</p>	<p>Red</p>

Content Group has considered the inclusion of some of the more sensitive questions above and the age appropriateness of such questionnaire items. It has concluded that gathering such information is necessary from the research point of view and the impact on young people should be minimal due to the questions having been tested and successfully used in other similar surveys targeting the relevant age groups. In some cases, where questions were deemed inappropriate for a particular age group, these have been removed from a questionnaire for that stage but not for older stages.

Parents/carers (and the child themselves) will be offered the option to opt-out their child in advance of the survey. Opt out is essential given the reason for undertaking the work from a GDPR perspective is 'public task' because CPPs are required to collect information to inform their legislative duties. In addition, pupils will be offered further options to not take part, either by deciding on the day and/or making use of the "prefer not to say" (or skipping a question) for each of the questions they feel uncomfortable in answering.

Post completion, local authorities and schools will be required to provide children and young people with the contact details of an individual from whom they can seek immediate help. They will also be provided with the name of organisations who are able to offer support with particular types of issues if something in the Census has raised an issue for which they now wish to talk about.

	<p>As indicated earlier in this document, the Content Group has worked to ensure the questionnaire can be completed within a class period. The questionnaire has been designed to minimise the burden on respondents by targeted use of filtering/routing questions.</p>	
<p>b) Interviewers/ Researchers Example questions:</p> <ul style="list-style-type: none"> • What procedures are in place to ensure interviewers are properly trained and vetted? Is an appropriate level of disclosure being sought? (See the advice note on Disclosure Scotland checks http://www.scotland.gov.uk/Resource/0046/00465181.pdf for guidance on the level appropriate for your research. What procedures are in place for disclosure of abuse? • What procedures are in place to ensure the safety of the interviewer/researcher? • Have the interviewer/researchers demonstrated awareness of equality issues and an ability to work inclusively? 	<p>The Health and Wellbeing Census is delivered electronically and administered in a classroom environment by school staff who will already be familiar with the pupils taking part in the research. As such, interviewers will not be required for this work and the usual safety arrangements appropriate for a school setting will apply. Making use of feedback from the three pilots, the Implementation Group will look at examples of good practice to help with producing a set of instructions for the school census administrators to follow. This will help to provide a consistent approach across Scotland but local authorities will be able to adapt these to suit their local circumstances.</p> <p>Local authorities and schools will be responsible for developing their own arrangements for ensuring that pupils with additional support needs can participate in the census.</p>	<p>Green</p>

GSR Principle 5: Non-disclosure of identity, personal information and privacy impact

Principle Components	Issues	Sensitivity Rating
<p>a) Data Protection Act compliance Example questions:</p> <ul style="list-style-type: none"> • Describe the personal data being collected and the method for storing and transfer of this data. Are 	<p>There is already in place a Privacy Notice and DPIA for existing data collections within Learning Analysis Division. However, the HWB project team will create a specific Privacy Notice, DPIA and relevant data sharing agreements in accordance with the guidelines laid out</p>	<p>Green</p>

<p><i>you collecting any "sensitive" data, as defined by the Act?</i></p> <ul style="list-style-type: none"> <i>• Is personal data of identifiable people being used when anonymised data would adequately achieve research objective?</i> <i>• If you are using personal data gathered for another purpose, do you have an adequate legal basis to share the data and use it in this research?</i> <i>• Are respondents clearly informed that their personal data will be used in this research? Are they informed about any third parties that will have access to their personal data?</i> <i>• What procedures are in place to ensure respondent confidentiality, including but not limited to ensuring respondent names and addresses are stored securely and kept separately from their responses?</i> <i>• Is there a Controller/processor contract in place if analysis of data is contracted out to an external provider?</i> 	<p>by the ICO and GDPR protocols. This will be in place in time for when the 32 LAs go 'live' with the Census, and also when they are due to submit data to SG for the national publication.</p> <p>LAs will need to have their own documentation in place for them capturing the data and SG will work closely with Implementation group representatives as well as the SOLAR DP Group to help create generic documents for each LA to use and adapt individually for their own census.</p> <p>Each local authority will be the Data Controller of their own Census. The Scottish Government will be acting as their Data Processor as local authorities make use of the SmartSurvey platform to administer their own Census. SmartSurvey will act as the sub-processor. All of the necessary Data Processor Agreements and Contracts are in place between local authorities, the Scottish Government and SmartSurvey Ltd.</p>	
<p>b) Research Findings and Report <i>Example questions:</i></p> <ul style="list-style-type: none"> <i>• How can you ensure that the data collected during the research is not going to be used for anything other than its original purpose?</i> <i>• Reporting should not identify any individual. What measures are in place to protect the anonymity of research participants and organisations or, in some</i> 	<p>The SCN will be captured for every pupil completing the questionnaire in order to minimise the amount of pupil characteristics each pupil needs to complete at start of questionnaire and to make the dataset held within SmartSurvey less identifiable as well as providing opportunities for different levels of analysis for maximum use on reporting.</p> <p>The SG will link the SCN with pupil census data to draw down the pupil</p>	<p>Red</p>

cases, to obtain permission to name?

- *Do you have measures in place to guard against re-identification of individuals using research findings? This can be especially pertinent to groupings of 5 participants or less.*
- *Is the personal data deleted when it is no longer needed for this research purpose?*

characteristics. At no point will any SG staff have access to the names of pupils. The questionnaire data held on the SmartSurvey servers will also never contain pupil names.

As the purpose of the data processing is for 'stats/research purposes', there are conditions that are to be met when processing data for this purpose (such as not using the data to take direct measures or actions on data subjects, or to publish results that identify individuals). Therefore, the confidentiality of the data subject is usually guaranteed.

However, as the data needs to be personally identifiable data for this stats/research purpose, this has added a complexity in that local authorities may discover during the processing of this data that they have a concern over a child's wellbeing which they feel they cannot ignore (as part of their "duty of care"). Child Protection legislation states that by breaching a child's confidentiality under this situation is unlikely to breach Data Protection legislation (providing a local authority can justify why they believed the breach was necessary).

Therefore, as part of process of informing parents/carers/children in deciding if they wish to take part in the Census, it will be important that they are suitably informed of this potential requirement to breach a child's confidentiality if the situation requires this. Legal advice sought on this issue has advised that we need to be explicit to parents about the potential for breaking confidentiality.

At the Ethics review meeting on 20th August 2019, we also agreed that we

would retain the Child Protection sub-group which has been advising on child protection matters. They will focus explicitly on child protection issues arising from full roll out and ensure the survey retains the appropriate balance to ensure it does not become a screening tool yet people also take responsibility for any child welfare concerns.

Summary of key sensitivities

Overall
Sensitivity
Rating

What are the key sensitivities? How are you addressing them?

Red

Proposed methodology:

- Will need to monitor appropriateness of questions after piloting and in the early stages of the census roll out.
- The census may not reduce the burden on the cluttered landscape as much as we'd hoped and work should be ongoing to aim to reduce burden as much as possible.
- It will be important to monitor sample bias throughout the census, especially looking at those not at school and in the private sector and how useful the census is for management purposes with this inherent bias. (also a key issue raised in section 3b).
- On dissemination, it will be necessary to monitor this as the project progresses. For example, it may be helpful for local authorities to share good practices on dissemination in due course.

Vulnerable adults:

- Understand the scale of vulnerable adults taking place
- Local authorities have the responsibility to decide how vulnerable adults ought to be treated in relation to consent. However, given the context of the survey in a school setting, it would be advisable to recommend a uniform approach for all participants, despite their age and vulnerability, to avoid stigma and/or complexity of consent processes for schools and local authorities.

Avoidance of personal harm:

- The content of the survey is always going to be sensitive and this needs to be managed accordingly. I am confident that all is being done to reduce harm in relation to question content and wording of questions. The questionnaire content team is working closely on this and also considering ethical issues in their decision
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making. Care needs to be taken that the quality of the survey is not compromised by avoiding sensitive questions. Instead support needs to be in place (which the project team are putting in place) to help children and young people responding to such questions.

- Going forwards, sensitivity of questions should be monitored throughout fieldwork phase.
- It is essential plans are in place to consistently update guidance materials with the contact information of key individuals and organisations from whom to seek help.

Research Findings and Reporting:

- In the context of this project design and execution, I am satisfied that the measures in place are appropriate and ethically sound. However, availability of Scottish Candidate Number for tracking responses could be a concern if correct research and statistics protocol is not followed. Advice to be given about responsibilities of a researcher (especially where LA officials don't consider themselves to be researchers) to handle information sensitively and balance their responsibility as researchers protecting the anonymity of respondents and their ethical and legal responsibility to report any perceived crime or wellbeing concerns for children to the appropriate authorities. This advice should be clear to local authorities, Local Authorities should be reminded that this is not a screening tool but a survey instrument with appropriate legal gateway stated as 'research and statistics' only.

Date(s) of completion: 17 July 2019

Name and date of Ethical Advisor sign off: Redacted Section 38(1)(b) Personal details

Applicable for red projects only - Date of Ethical Sponsor and/or Peer Review Group sign off : Audrey MacDougall 20 August 2019

1.1.1 Appendix: Red projects and peer review

Only complete Annex A if your overall project rating is 'red' and has been judged by your C2 as requiring a peer review.

To be filled in by the project manager if applying to OCR for a peer review (i.e. if the overall sensitivity rating is red and your C2 Ethical Sponsor judges it should go to peer review):

Name of applicant: Redacted Section 38(1)(b)
Personal details

Directorate/Division/Team:
Education Analytical Services

**Date of application to OCR for Peer Review: 18
July 2019**

Peer Review sign off by Ethical Sponsor:

Directorate/Division/Team:

To be filled in by the project manager (and shared with Ethics Peer Review Group) following the peer review:

Date of Peer Review Meeting:

Peer Reviewers names:

What are the key sensitivities? Sensitive topic; Provision of SCN for data linkage purposes How are you addressing them?

Red/ Amber/ Green

Sign off by Ethics Peer Review Group chair:

Name:

Directorate/Division/Team:

Date of next review meeting (if required): Post-census administration of feidlwork

Enclosure 2: Data Protection (DP) - Education Health and Wellbeing Census - SGLD to Education

From: Redacted Section 38(1)(b) Personal details @gov.scot>

Sent: 19 July 2019 12:59

To: Redacted Section 38(1)(b) Personal details

Cc: SGLD School Education; Redacted Section 38(1)(b) Personal details; Data protection and information assets Mailbox; Redacted Section 38(1)(b) Personal details; Redacted Section 38(1)(b) Personal details; Redacted Section 38(1)(b) Personal details; Wilson M(Mick); Redacted Section 38(1)(b) Personal details

Subject: Data Protection (DP) - Education Health and Wellbeing Census - SGLD to Education - 18 July 2019 - FOR INFO - 2

Categories: NON URGENT

Hi Redacted Section 38(1)(b) Personal details

Thanks for the email. And I will try to answer the points you raise which I hope provide further explanation as to the purpose of the Census for both LAs and the SG, and the issues we have been grappling with in relation to LAs processing personally identifiable data for stats/research purposes versus their "duty of care" responsibilities.

If you find it helpful to meet up face to face to discuss this, then I'm happy to arrange this.

Redacted Section 38(1)(b) Personal details

From: Redacted Section 38(1)(b) Personal details @gov.scot>

Sent: 18 July 2019 18:44

To: Redacted Section 38(1)(b) Personal details @gov.scot>

Cc: SGLD School Education <SGLDSE@gov.scot>; Redacted Section 38(1)(b) Personal details @gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>; Redacted Section 38(1)(b) Personal details @gov.scot>; Redacted Section 38(1)(b) Personal details @gov.scot>

Subject: Education Health and Wellbeing Census - SGLD to Education - 18 July 2019

Dear Redacted Section 38(1)(b) Personal details

My colleague Redacted Section 38(1)(b) Personal details has passed on these papers to me in relation to the work that is ongoing on the preparation of the Health and Wellbeing Census which I understand you are involved with progressing on behalf of the Scottish Government.

Yes, I am the lead statistician for the development and implementation of a new HWB Census.

While the paperwork attached is not perhaps 100% consistent – my understanding from a quick skim of this is that SG will be the data processors and the Local Authorities will be the data controllers. The survey is not compulsory but neither is consent being used as the basis for involvement in the survey. The GDPR basis is public task – and that is being linked to the duties in the Standards in Scotland's Schools etc. Act 2000 for health promotion. Section 2A of the 2000 Act is copied below for ease and places duties on the Scottish Ministers and on Education authorities to ensure that schools are health promoting. This appears to be the main provision that you are relying on in the education field (although I note that there is also reference to the Local Government Act which also would appear to be relevant.)

That is correct. We have helped to steer LAs to know what their legal basis is for conducting their own HWB Census (and that they do not have to use the GDPR lawful basis of 'consent')

I note from the Local authority Q+ A that the position appears to be that:

schools will not have access to individual level pupil data that would identify pupils (page 4 of 8) and that

any information provided would remain confidential (page 7 of 8)

Yes. Only a small number of individuals (i.e. analysts) within each local authority would have

access to the raw individual level data. This is for local authorities to ensure that they have the correct procedures in place in order to ensure that any data they have is held securely, and access restricted to a 'need to know' basis.

However one the ethics checklist at 19 refers to concerns about when "confidentiality" would need to be breached. This appears to be at odds with the statements above – if the information being provided is to remain confidential then how can a "local authority" process it in such a way as to identify a child such that a wellbeing concern would be raised? I have cut and pasted the text below and it may be that once all of the documents are brought into consistency then there are no issues but I think that this is a particular point which needs to be considered. If for example in the process of a child completing the survey – they have a concern about an issue and choose to share that with a member of school staff then the fact that the survey has triggered this disclosure if not really critical to how that would then be handled by the staff member of the authority. However I am not really sure what is meant by local authorities "may discover" that they have a concern over a child's wellbeing. And if the systems are designed in a way that information which is being purported to be being collected on a "confidential" basis – is not actually going to kept confidential in the hands of the local authority – then I think that needs to be explored further.

This has been the most challenging part of asking each LA to conduct their own HWB Census. As we are asking LAs to conduct their own HWB Census and to process that data purely for stats/research purposes as part of a public task, then they should not ever breach the confidentiality of what children say in the Census, they should never act on the information provided, and they should never publish anything that identifies individual children. This is stated very clearly in the relevant GDPR articles and recitals.

GDPR Article 6(1)(e) provides a lawful basis for processing data where:

"processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller".

GDPR Article 9(2)(g) provides a lawful basis for processing special category data where:

"processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller".

GDPR Recital 162 states that statistical purposes mean any operation of collection and the processing of personal data necessary for statistical surveys or for the production of statistical results. Those statistical results may further be used for different purposes, including a scientific research purpose. The statistical purpose implies that the result of processing for statistical purposes is not personal data, but aggregate data, and that this result or the personal data are not used in support of measures or decisions regarding any particular natural person

GDPR Article 89(1) provides a lawful basis for processing of data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, and the data shall be subject to appropriate safeguards, in accordance with this Regulation, for the rights and freedoms of the data subject. Those safeguards shall ensure that technical and organisational measures are in place in particular in order to ensure respect for the principle of data minimisation. Those measures may include pseudonymisation provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.

Data minimisation is the process of reducing the amount of personal data used to the minimum required to properly fulfil a given purpose. Data held should be periodically reviewed to ensure that it is still needed, and if not, appropriately deleted.

Pseudonymisation is the process by which personal data is reduced to a form that can no longer be attributed to a specific data subject without the use of additional information, provided that such information is kept separately and securely.

Article 89 allows the UK to provide exemptions from certain data subject rights, in situations where personal data are processed for statistical purposes. These exemptions are within the DPA 2018. Preference should be given to full anonymisation where possible, then to pseudonymisation, and finally to use identifiable data only when essential.

Data protection impact assessments, even if not legally required by virtue of the processing being unlikely to result in a high risk to the rights and freedoms of individuals, are still a useful tool and should be considered.

Data Protection Act 2018

Additional safeguards are required by the Data Protection Act 2018.

DPA 2018, Part 2, Chapter 2, Section 19(2) states that such processing does not satisfy the requirement in Article 89(1) of the GDPR for the processing to be subject to appropriate safeguards for the rights and freedoms of the data subject if it is likely to cause substantial damage or substantial distress to a data subject.

DPA 2018, Part 2, Chapter 2, Section 19(3) states that such processing does not satisfy that requirement if the processing is carried out for the purposes of measures or decisions with respect to a particular data subject, unless the purposes for which the processing is necessary include the purposes of approved medical research.

However, these are similar safeguards to those that applied under the Data Protection Act 1998, and so organisations should be familiar and comfortable working within them.

The expectation is that local authorities, the Scottish Government (and any other further sharing of this data) will not be processed to support measures or decisions with respect to particular individuals, it is being shared for the purpose of research and producing aggregate statistics. The data will not be processed in a way that substantial damage or distress is, or is likely to be, caused to any data subject and the results of any research or any resulting statistics are not made available in a form which identifies a data subject.

However, a few local authority analysts have raised their concern that because they will be holding and processing personally identifiable information (even though this would only be for stats/research purposes as defined above), they (and some of their legal colleagues) have stated that they would still have a “duty of care” to act on this information if they come across something that now (or in the future) flags up to them a child wellbeing concern.

Everyone I speak to (researchers, policy colleagues, LA staff) agrees that this would need to be done (as a child wellbeing concern is of higher importance than maintaining confidentiality). This is morally, ethically and legally the right course of action given a local authority’s “duty of care”.

However, what I have been saying to LAs is that if they should not be actively looking through the data to uncover any wellbeing concerns. If LAs do this, then that are using the data for a nonstats/research purposes (e.g. they would then be using the Census to ‘screen’ children), and as such they should not be using the lawful basis of conducting their own HWB Census for stats/research purposes as part of a public task.

However, if a LA sees something in their analysis which triggers a concern (e.g. 2% of children are being bullied), then they may wish to look at which children declared this to see if they need to take any appropriate action (which may directly affect the child/young person – which is a breach of the lawful stats/research purpose but is legally necessary as part of a LAs “duty of care”).

This is stated in guidance that some CPCs have produced back in 2014, an example of which can be found here (see page 12):

https://www.pkc.gov.uk/media/19726/CPC-Practitioners-Guide-InfoSharing-Final-13-03-14-2-/pdf/CPC_Practtioners_Guide_InfoSharing_-_NEW_PDF_2016.pdf?m=636114321573670000

I am not aware of legal advice having been sought on this particular stream of work – although I do recall that we have been asked about similar data collection processed in the past so it may be that some of that advice has been used for the design of this census. The main divide in terms of data protection queries is that the subject branch provided advice on what “public functions” are available within the subject area – so I see as set out about that you have identified the 2000 Act and it looks to fit within section 2A. The data protection and information assets team are the first port of call on general data protection issues and they would provide assistance with privacy notices, data sharing agreements etc.

We haven't formally approached for any legal advice (as the implementation of the Census is designed in that each LA will be conducting its own HWB Census). The SG is providing LAs with the technology (as a Data Processor) and consistent tools (i.e. questionnaires) in order for them to all ask children and young people the same questions (and have been involving representation from local authorities during this process and addressing any issues and concerns raised throughout and modifying the questionnaire accordingly).

I am in the process of drafting our own DPIA, Privacy Notices, Data Sharing Agreements (etc.) and these will be finalised before any data is gathered by LAs or shared with the SG. However, these would only cover why the SG requires LAs to share their data with us for our own stats/research purpose as part of a public task. This would be no different to other data that is shared between local authorities and the SG for stats/research purposes. We are actively working with the DPIA team over these documents.

However for example I am not clear from what I have seen so far – why it is ‘necessary’ for SG to have access to individual level information. Rationale in relation to that necessity would be relevant in determining whether the collection is properly in exercise of the public function being quoted.

We can explain and justify why the SG (and indeed LAs) requires individual level data in order for it to carry out its function of conducting stats/research as part of a public task. We have recently been having to do that in relation to our existing data collections from local authorities.

Please do get in touch if you need further advice / assistance – and once the questions and the associated paperwork have been further developed it may be useful for those to be subject to a further legal check. [Out of Scope]. It is in everyone's interest that the relevant

documentation around this is as robust and consistent as possible before an data is actually collected.

Hope this is of assistance and look forward to hearing from you. Redacted Section 38(1)(b) Personal details

Quote for ethics checklist

“The SCN will be captured for every pupil completing the questionnaire in order to minimise the amount of pupil characteristics each pupil needs to complete at start of questionnaire and to make the dataset held within SmartSurvey less identifiable as well as providing opportunities for different levels of analysis for maximum use on reporting.

The SG will link the SCN with pupil census data to draw from the pupil characteristics. At no point will any SG staff have access to the names of pupils. The questionnaire data held on the SmartSurvey servers will also never contain pupil names.

As the purpose of the data processing is for 'stats/research purposes', there are conditions that are to be met when processing data for this purpose (such as not using the data to take direct measures or actions on data subjects, or to publish results that identify individuals). Therefore, the confidentiality of the data subject is usually guaranteed.

However, as the data needs to be personally identifiable data for this stats/research purpose, this has added a complexity in that local authorities may discover during the processing of this data that they have a concern over a child's wellbeing which they feel they cannot ignore (as part of their "duty of care"). Child Protection legislation states that by breaching a child's confidentiality under this situation is unlikely to breach Data Protection legislation (providing a local authority can justify why they believed the breach was necessary).

Therefore, as part of process of informing parents/carers/children in deciding if they wish to take part in the Census, it will be important that they are suitably informed of this potential requirement to breach a child's confidentiality if the situation requires this."

Section 2A of the 2000 Act

[F12ADuties in relation to promotion of health

This section has no associated Explanatory Notes

(1)The Scottish Ministers must endeavour to ensure that—

- (a)schools managed by education authorities,
- (b)grant-aided schools, and
- (c)hostels provided and maintained by education authorities for pupils, are health-promoting.

(2)An education authority must endeavour to ensure that—

- (a)schools managed by them, and
- (b)hostels provided and maintained by them for pupils, are health-promoting.

(3)The managers of a grant-aided school must endeavour to ensure that the school is health-promoting.

(4)In carrying out the duty imposed by subsection (2) or (3), an education authority or, as the case may be, the managers of a grant-aided school must have regard to any guidance issued by the Scottish Ministers for the purposes of this section.

[F2(4A)Each education authority must prepare and publish each year a statement (an "annual statement") setting out the ways in

which the authority proposes to carry out the duty imposed by subsection (2) during the relevant period.

(4B)As soon as reasonably practicable after the end of each relevant period, each education authority must prepare and publish a report setting out the ways in which the authority has carried out the duty imposed by subsection (2) during the relevant period.

(4C)In subsections (4A) and (4B), "relevant period", in relation to an annual statement, means the period of 12 months beginning

with the day after the day on which the annual statement is published.]

(5)In this section, a school or hostel is "health-promoting" if it provides (whether on its own or in conjunction with Health Boards,

parents or any other person)—

- (a)activities, and
- (b)an environment and facilities, which promote the physical, social, mental and emotional health and well-being of pupils in attendance at the school or residing in the hostel.]

From: Redacted Section 38(1)(b) Personal details @gov.scot>

Sent: 18 July 2019 16:19

To: Redacted Section 38(1)(b) Personal details @gov.scot>; Redacted Section 38(1)(b) Personal details @gov.scot>

Subject: FW: catch up on Census

Hi Redacted Section 38(1)(b) Personal details / Redacted Section 38(1)(b) Personal details,

[Out of Scope]

It looks as though some of the questions are now being adjusted so that the information being sought is not as “intrusive” as it could have been.

[Out of Scope]

I’m more than happy to discuss this, so please let me know if it would be helpful to have a chat.

Many thanks

Redacted Section 38(1)(b) Personal details

Redacted Section 38(1)(b) Personal details † Solicitor

Scottish Government Legal Directorate † Children, Families & Education Division † Area GD South † Victoria Quay † Edinburgh † EH6 6QQ † Telephone: 0131 244 Redacted Section 38(1)(b) Personal details † [Redacted Section 38\(1\)\(b\) Personal details @gov.scot](#)

This correspondence is from the Scottish Government Legal Directorate. To the extent that it may contain legal advice, it is legally privileged and therefore may be exempt from disclosure under the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004.

From: Redacted Section 38(1)(b) Personal details [@gov.scot](#)>

Sent: 18 July 2019 13:40

To: Redacted Section 38(1)(b) Personal details [@gov.scot](#)>; Redacted Section 38(1)(b) Personal details [@gov.scot](#)>; Redacted Section 38(1)(b) Personal details [@gov.scot](#)>

Subject: RE: catch up on Census

Hi all

The legal person Education Analytical Services have dealt with before (but not on the HWB Census) has been Redacted Section 38(1)(b) Personal details:

<http://s1431a/content/corporate/systems/staffdirectory/search/BranchDetails.aspx?id=5675>

I also attach are current version of the Research Ethics Checklist I mentioned I discussed with my Senior Researcher (Redacted Section 38(1)(b) Personal details) yesterday. This shows the sorts of issues we have had to consider as part of introducing this new Census (but will shortly be amended to reflect the points raised by Redacted Section 38(1)(b) Personal details).

Because some aspects of the project are rated “Red”, we are meeting up with Audrey MacDougall (Scottish Government’s Chief Researcher) to seek her advice and approval for this research to be undertaken.

I also attach a note that I produce over the past couple of weeks that outlined the current position.

I also attach a note that I produced and provide to LAs to help them with their local discussions about the need for them to conduct their own HWB Census, as well as to help them to conduct their own DPIA, produce Privacy Notices and to provide parents/carers/CYP with information so that they can make an informed decision as to whether they want their child/young person to take part in the Census.

I am also in the middle of producing our Data Protection Impact Assessment (DPIA), and our Privacy Notice.

We already have a Data Processing Agreement in place so that relationship between LAs and the SGs specifies our roles whilst LAs are conducting their own Census (i.e. the LA is the Data Controller, the SG is the Data Processor and SmartSurvey is the sub-processor).

We will also be producing a Data Sharing Agreement so that these are in place for when the SG asks each LA to share their data with us in June 2020.

I'm happy to share the questionnaires with you once I have made the changes I outlined to you. This should be done over the next week or so.

In the meantime, hopefully all of the attached documents help bring you up to speed with the legal and lawful bases for LAs to conduct their own HWB Census (and then to share their data with the SG once the Census is complete).

Redacted Section 38(1)(b) Personal details

-----Original Appointment-----

From: Redacted Section 38(1)(b) Personal details

Sent: 11 July 2019 12:41

To: Redacted Section 38(1)(b) Personal details; Redacted Section 38(1)(b) Personal details; Redacted Section 38(1)(b) Personal details; Redacted Section 38(1)(b) Personal details

Subject: catch up on Census

When: 18 July 2019 11:00-12:00 (UTC+00:00) Dublin, Edinburgh, Lisbon, London.

Where: VQ 3rd Floor Meeting Room 3H-98(4)

Hi Redacted Section 38(1)(b) Personal details

Further to our email exchange, I'm just putting some time in diaries to chat about the census

Thanks

Redacted Section 38(1)(b) Personal details

Enclosure 3: HWB Implementation Plan

HWB Project Management - Implementation Plan

WORKSTREAM	DATE STARTED	DATE COMPLETED	How is this being managed?	Ethics Review Checklist Principle	COMMENT from Redacted Section 38(1)(b) Personal details for ethical review considerations. Comment refers particularly to how its being managed column.
1. Identify questions to be recommended within the question bank to be made available to LAs.					
Create, provide remit for and fully support a Questionnaire Content Group to identify the questions from all relevant Health and Well Being censuses to be included in question bank.			SG to identify a suitable Chair (NHS Health Scotland) and create the membership made up from researchers, policy, education scotland, experienced local authority and health board reps. SG to set the timescales in line with project plan and provide clarity on group purpose, remit and expected deliverables.	4	Ensure you refer to selecting people with experience of H&WB, child development at different ages and stages.
Group to identify the questions from existing HWB censuses and make recommendations on those to be included within the question bank.			Chair with support from SG to work with members in identifying the questions to be included. SG to ensure that experienced members are helping to identify the questions looking at appropriate decision making processes.	4	Rather than processes is it more about criteria? You could then s specify 'especially relevance to current thinking on H&WB, pre-used and therefore psychometrically tested and ethically checked. (I don't feel they're developing any new questions so this seems appropriate text)
2. Identify the 'core' questionnaires to be recommended to the LAs, allowing LAs still to have control over which questions they wish to add/remove.					
Content Group to make recommendations on stage specific questionnaires and the specific questions to be included within each one.			Content Group members to identify the questions to be included within each of the questionnaires using sound judgement based on previous experiences. SG to ensure cross-referencing with NIF, NPF and other key measures happen and provide relevant support as required.	4	Add that the group members have been selected for prior experience in stage-specific questionnaires. Also add that you will pilot the survey questions before they're issued.
LAs to review the core set of questions to satisfy themselves they are happy with the questionnaire set and add/remove based on own professional/expert advice, and to consider 'duty of care' issues.			SG to share recommended core questions with Directors of Education/Children's Services and Implementation Group members and use appropriate strategies to manage the risks involved in LAs amending/removing/adding questions. In addition, encourage LAs to follow appropriate lawful, legal and ethical processes for their census.	4	rather than 'encourage' I'd suggest 'specify that' (whether LAs respond is up to them but it's our duty to be clear that this isn't an option form our perspective. Also include reference to a pilot of the

					census before roll out.
Content Group to recommend an appropriate structure/design and rooting for the questionnaires to follow.			SG to consider most appropriate use of knowledge and experience to ensure that the questionnaires design and rooting flow well and are considered with an ethical approach.	4	Typo in this section: 'rooting' should read 'routing'. Also specify that the questions for the census will be piloted for routing (LA's own questionnaire development should also be piloted in this way but we have less control over this. Guidance on piloting would be helpful for LAs).
3. Work with LAs on all matters relating to GDPR and the legal and lawful basis for LAs to collect this information.					and ethical?
Ensure all activities within the project are GDPR compliant.			SG to fully understand and appreciate what is required to provide confidence that what is being proposed is fully GDPR compliant.	2	I'd suggest you include 'to work with legal professionals within SG'
Ensure that SG are ethically confident the data capture process as well as the bank of questions and questionnaires themselves.			SG to follow appropriate ethical process to review all aspects of the project and share outcome accordingly putting in place relevant strategies to manage any issues identified as part of the review process.	2	I'm not sure what this work stream box means.
Encourage LAs to clarify understanding with other LAs and discuss within their LA with those who have experience in providing appropriate advice.			SG to provide an environment that allows for such sharing of information and provide the SG's understanding for the legal and lawful basis for LAs to capture this data. SG are not in a position to provide legal advice.	2	In the work stream box, do you mean understanding of GDPR specifically? Just be clear what you want them to have understanding of. On the how's it being managed, be careful of word 'information'. I don't feel we're asking them to share information - this implies data. Is it advice? or learning?
Engage with relevant groups (e.g. SOLAR) on behalf of local authorities to raise awareness of censuses and discuss all matters relating to data protection, GDPR, impact assessments and privacy notices.			SG to arrange to time with SOLAR (LA lawyer group) to provide an update on the purpose, intent and plans for the HWB census. SG to look at ways in which this group may be able to provide support to LAs by working as a group to create generic documentation for all LAs to use.	2	

Discuss and agree the appropriate measures required to ensure non-disclosure of identity and personal information.			SG to share existing suppression methods adopted by EAS to be used as an example for LAs to potentially adopt themselves, and to consider ways in supporting LAs to create a suitably anonymised data set for 'safe' sharing and analysis.	5	
Work with LAs to agree questions that will not put LAs in a position where they will need to act upon responses as part of their "duty of care".			SG to facilitate discussions with policy colleagues in particular as well as all other relevant stakeholders	5	Reference to policy colleagues - is this within LAs? Is this also part of the box in workstream 1 where you refer to DoEs? This would appear to me to be part of this process so could be mentioned again.
4. Provide LAs with an electronic survey platform to administer the Census locally.					I feel you need something more explicit here/elsewhere on how data will be used nationally. Principle 3 in this is about participation. Consideration then needs to be about accessibility. IT systems? What about language access? What about children not in school etc? Being explicit about how a platform is addressing these issues in relation to participation is needed here.
Procure an appropriate secure survey platform on behalf of LAs that satisfies GDPR requirements and ensures LAs can make additional use of the platform out with the censuses.			SG to use of the G-Cloud Framework to procure a survey platform to match the requirements required for carrying out survey work securely and electronically.	3	I feel you need to be clear that this is competitive tendering, open and transparent procurement process or just simply consistent with EU procurement regulations. Is it worth saying here that you've purchased 'SmartSurvey' because when you get to that in the next box it's not clear that this is the same thing.
Create Question Bank and Questionnaires within SmartSurvey to make available to LAs in time for early adopter authorities and for go live			Work with SmartSurvey Support team to consider best approaches in design/structure for question bank and to prepare LA Questionnaire Templates	3	

<p>Ensure that SG and LAs are sufficiently skilled to carry out their own surveys.</p>			<p>SG to learn themselves and subsequently provide training/support to LAs in using this platform along with SmartSurvey support team.</p>	<p>3</p>	<p>For how long? Legacy documents? This is an ongoing service and so how will this be sustained after initial training? Is it advisable to produce training documents that will be made available to ensure legacy?</p>
<p>5. Monitor individual LA progress in preparing themselves for implementing their own HWB Census, and to provide any support (or direction) as and when required.</p>					<p>In this section I feel we need a way to distinguish between the mandatory requirements of a census with full national geographical coverage every 4 years and the more ad hoc censuses that can be undertaken locally. We need some reassurance that this will be carried out ethically- for example, will data be unusable for national analysis once it's been collected if some LAs opt out? How do we ensure everybody participates for national good and national policy making and not just local?</p>
<p>Establish a LA Implementation Group to plan and prepare fully for the census roll out in Autumn 2019.</p>			<p>SG to communicate with Directors of Education to nominate a co-ordinator who would be responsible for all planning and preparations within the LA to undertake their own local census.</p>	<p>2</p>	
<p>SG to act as "facilitators" to encourage LAs to share knowledge and experience of conducting similar censuses within the school environment. Provide the necessary advice/support/direction to LAs as and when required to ensure that they are fully prepared to carry out the census.</p>			<p>SG to arrange meetings and opportunities for LAs to share knowledge and experiences and encourage learning from each other.</p>	<p>2</p>	
<p>Arrange meetings with appropriate groups and organisations in order to provide additional support to LAs.</p>			<p>SG to arrange meetings with SEEMIS to identify opportunities to develop generic solutions for school level reports to help classroom teachers assign the correct unique links to the children.</p>	<p>2</p>	

<p>Work with LAs to agree and generate a possible Checklist that could be used by LAs to help them prepare for carrying out their own census - seeking appropriate expertise within their authority accordingly to satisfy themselves they are content to carry out census that is fully GDPR compliant.</p>			<p>SG to monitor and evaluate LA "readiness" to carry out the census in time for pilot/early adoption and go live - making use of the agree proposed checklist. If insufficient, escalate within LAs at appropriate levels accordingly.</p>	2	
<p>Establish a secure shared platform for both SG and LAs to share all supporting documentation agreed to be useful.</p>			<p>SG to identify relevant software such as Sharepoint or Knowledge Hub to encourage further LA collaboration and provide a central point of resource for the LAs to source all relevant documentation.</p>	2	
<p>6. Review how the new health and wellbeing census would fit in with existing health and wellbeing surveys and look at opportunities to provide an element of consistency on data collection and minimise burden on data providers accordingly.</p>					<p>Ethically, this is more a necessity than the wording implies. Rather than 'provide an element of consistency' we need to 'ensure' consistency so that we're managing optimum use of all our data sources. There's an additional question from an ethical perspective about the making clear the rationale for this study is there - political will/desire, users needing this; and specifically that this is the best option (option appraisal). A business case would make this clear. On user need, this requires something too about dissemination and how that has been considered in light of demands for data.</p>
<p>Work with existing organisations who capture health and wellbeing data in order for the census to compliment existing sample data collections</p>			<p>SG to facilitate meetings with HBSC and SALSUS to agree and influence opportunities in going forward.</p>	1	<p>Some of the relevant surveys will remain in-house - e.g. PISA, GUS and so it's worth also mentioning the Survey manager's network within SG to ensure it maintains contact with all surveys continuing internally too.</p>

<p>Obtain confirmation from local authorities and health boards who currently undertake HWB data collections that this new census would replace and therefore avoid duplication.</p>			<p>SG to work with LAs to agree the benefits of carrying out this census and ensure consistent evidence reporting against the National Improvement Framework, National Performance Framework and other key measures. Fundamentally agreeing this census will act as the main source of information across Scotland.</p>	<p>1</p>	<p>I feel there's something here about ensuring the survey remains consistent with user need. And also that we ought to provide ongoing management over the relevance of the study/questions. Data collections tend to have user groups and review processes in place for this purpose. Perhaps a suitable review period would be every 4 years given the full census will only happen every 4 years. [I would also suggest that we wouldn't expect confirmation from LAs that they've disposed of their old surveys for several years after the census and platform have been rolled out. I think we can say that we can get confirmation that it 'would' replace their current surveys but not that it 'has' for some time afterwards. Ethically, I would suggest we want an action to say we will check in that this 'has' happened. Otherwise, the census is merely duplicating collections and therefore placing a burden on respondents.</p>
<p>Discuss and agree the documentation required</p>				<p>5</p>	
<p>Work with LAs to agree questions that will not put LAs in a position where they will need to act upon responses as part of their "duty of care".</p>				<p>5</p>	
<p>Agree appropriate suppression measures for schools where low numbers could potentially identify individuals.</p>					

Enclosure 4: Legal Basis for Health and Wellbeing Census and Duty of Care position

The Legal Basis for H&WB Survey and Duty of Care to Disclose Concerns to Appropriate Authorities

What is the legal basis for local authorities to undertake their own Health and Well Being (HWB) Census?

The [Local Government in Scotland Act 2003](#) states that Local Authorities (LAs) have a power to do anything which it considers is likely to promote or improve the well-being of its area and/or persons within that area. The [Standards in Scotland's Schools etc. Act 2000](#) state that education authorities must endeavour to ensure that their schools are health promoting. Therefore, the gathering of this evidence at a local level is needed in order for LAs to identify and drive forward improvements where it is needed, and to monitor whether improvement happens as a result.

The approach being introduced in relation to the HWB Census will provide each LA with an opportunity to gather, process and analyse their own data in order to look at their own evidence for statistical and research purposes only as part of their public task.

What is the legal basis for the Scottish Government to ask local authorities for their data to be shared with them?

The [National Health Service \(Scotland\) Act 1978](#) states that it is the duty of Scottish Ministers to promote the improvement of the physical and mental health of the people of Scotland. The [Standards in Scotland's Schools etc. Act 2000](#) also states that Scottish Ministers must endeavour to ensure that education authority and grant-aided schools are health promoting.

Therefore, the gathering and sharing of this data with the Scottish Government (SG) will assist the SG with having statistical and research data as part of their public task in planning for and implementing national policies; to better understand some of the factors which influence pupil attainment and achievement; to target resources better; and to provide a window on society, the economy and on the work and performance of government by publishing statistical publications and additional tables about the health and wellbeing of children and young people living in Scotland.

What is the lawful basis for the Health and Well Being (HWB) Census being undertaken by local authorities, and their data then shared with the Scottish Government?

[GDPR Article 6\(1\)\(e\)](#) provides a lawful basis for processing data where:

“processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”.

[GDPR Article 9\(2\)\(g\)](#) provides a lawful basis for processing special category data where:

“processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”.

[GDPR Recital 162](#) states that statistical purposes mean any operation of collection and the processing of personal data necessary for statistical surveys or for the production of statistical results. Those statistical results may further be used for different purposes, including a scientific research purpose. The statistical purpose implies that the result of processing for statistical purposes is not personal data, but aggregate data, and that this result or the personal data are not used in support of measures or decisions regarding any particular natural person

[GDPR Article 89\(1\)](#) provides a lawful basis for processing of data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, and the data shall be subject to appropriate safeguards, in accordance with this Regulation, for the rights and freedoms of the data subject. Those safeguards shall ensure that technical and organisational measures are in place in particular in order to ensure respect for the principle of **data minimisation**. Those measures may include **pseudonymisation** provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.

Data minimisation is the process of reducing the amount of personal data used to the minimum required to properly fulfil a given purpose. Data held should be periodically reviewed to ensure that it is still needed, and if not, appropriately deleted.

Pseudonymisation is the process by which personal data is reduced to a form that can no longer be attributed to a specific data subject without the use of additional information, provided that such information is kept separately and securely.

[Article 89](#) allows the UK to provide exemptions from certain data subject rights, in situations where personal data are processed for statistical purposes. These exemptions are within the DPA 2018.

The safeguards described in [Article 89](#) can be divided into technical and organisational measures.

Technical measures

Compliance with technical standards for security (e.g. physical security of areas where data are held, secure IT systems and networks, appropriate use of encrypted storage and communication).

These measures should already be in place, and must be regularly reviewed and, where necessary, updated. Organisations should ensure sufficient and up-to-date documentation is available to meet their obligation to demonstrate compliance.

Types of policy and guidance documents could include: Data Protection Policy; Data Security Policy; Data Retention Policy; Physical Security Policy; Clear Desk Policy; Data breach guidance; Data Protection Impact Assessment guidance; Suitable training for all staff processing personal data; and Technical means to support data minimisation, most importantly pseudonymisation technologies.

The GDPR requires that **data minimisation** be considered at all steps of processing. **Data minimisation** is the practice of identifying the minimum amount of personal data you need to properly fulfil your purpose e.g. what is the minimum amount of data that you need to hold in an identifiable format to produce the statistical output.

Preference should be given to full anonymisation where possible, then to pseudonymisation, and finally to use identifiable data only when essential.

Other technical means for **data minimisation** and enhanced confidentiality should also be considered, e.g. splitting identifiers from sensitive data fields, restricting access to files or specific fields on a 'need to know' basis and automatic disclosure control software.

Organisational measures

General policies and procedures that protect the data should be employed (e.g. security clearance, 'clear desk' policies, regular access reviews, disclosure control policies).

As with technical measures, these should already be in place, and must be regularly reviewed and updated. Organisations should ensure sufficient and up-to-date

documentation is available to meet their obligation to demonstrate compliance with GDPR.

Data protection impact assessments, even if not legally required by virtue of the processing being unlikely to result in a high risk to the rights and freedoms of individuals, are still a useful tool and should be considered.

Organisations need to be **proactive** in making a full, well documented assessment at the earliest feasible stage. It will be necessary to show that an **assessment** has been made and any appropriate actions taken before a new data collection begins, and (proportionately and appropriately) in relation to each separate stage of processing and use.

In particular, the assessment at each stage should show that the statistical purpose is valid, that the possibilities for **data minimisation** have been considered in relation to that specific purpose, processing or use, and that suitable technical and organisational measures have been implemented.

It should be noted that (a) regular consideration of the need for retention of the data, and (b) the effective application of disclosure control is integral to the organisational safeguards that need to be demonstrated.

Data Protection Act 2018

Additional safeguards are required by the Data Protection Act 2018.

[DPA 2018, Part 2, Chapter 2, Section 19\(2\)](#) states that such processing does not satisfy the requirement in Article 89(1) of the GDPR for the processing to be subject to appropriate safeguards for the rights and freedoms of the data subject if it is likely to cause substantial damage or substantial distress to a data subject. [DPA 2018, Part 2, Chapter 2, Section 19\(3\)](#) states that such processing does not satisfy that requirement if the processing is carried out for the purposes of measures or decisions with respect to a particular data subject, unless the purposes for which the processing is necessary include the purposes of approved medical research.

However, these are similar safeguards to those that applied under the Data Protection Act 1998, and so organisations should be familiar and comfortable working within them.

Because the data is intended to only being processed for stats/research purposes, the expectation is that local authorities, the Scottish Government (and any other

further sharing of this data) will not be processed to support measures or decisions with respect to particular individuals. Any sharing of the data is also for the purpose of stats/research and producing aggregate statistics. The data will not be processed in a way that substantial damage or distress is, or is likely to be, caused to any data subject and the results of any research or any resulting statistics are not made available in a form which identifies a data subject.

Confidentiality and duty of care

As described above, the legal basis for the collection of these data by local authorities is for statistical and research purposes as part of a public task. Therefore, the primary purpose is for data analysis for monitoring and improvement purposes by generating aggregated summaries, etc..

However, given the sensitive nature of some of the information being collected, this touches upon local authorities' "duty of care".

As these data will be personally identifiable data (which, as stated above in bold red, is permissible if that is needed for the stated purpose), there may be occasions where during the processing of the statistical data for its intended statistical purpose, a child wellbeing concern is discovered. Existing [Child Protection Guidance](#) indicates that, when it can be justified, a child's confidentiality can be breached if it is in the best interest of the child to do so (even if the information was given in confidence).

To minimise the risk of a child wellbeing concern being discovered during processing of the data, the Scottish Government is working to ensure that some of the questions which are more likely to raise wellbeing concerns are removed / modified from the HWB Census questionnaire, or are asked separately so the responses cannot be attributed to a particular child.