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Enclosure 1: ICO letter to SG – Use of SCN – August 2023



The ICO exists to empower you through information.

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9 August 2023

Dear Redacted section 38(1)(b)
Thank you for your letter of 22 May 2023 in which you set out details around the Scottish Government's (SG) use of the Scottish Candidate Number (SCN).

We have now considered and reviewed this information. Our opinion and advice is that the SCN cannot be considered to be a pseudonym for the Health and Wellbeing Census (HWB Census). Specifically, the SCN does not meet the definition of pseudonymisation in Art 4(5) UK GDPR, which requires pseudonyms to be kept separately to the rest of the information. The SCN is stored with identifying information on SEEMiS and there are no controls on the use of the SCN within the education system. Examples of the SCN being used more widely with identifying information include:

- At least one local authority using it as part of email addresses;
- Skills Development Scotland using it with partners (eg for Pathway Apprenticeships and the Modern Apprenticeship Programme).

Whilst we appreciate that Scottish Government analysts themselves do not have direct access to SEEMiS, the fact that there is uncontrolled use of the SCN elsewhere in the education system means that this is not a sufficient mitigation.

Our view is that the required technical and organisational measures described in UK GDPR Article 25: Data Protection by Design and Default are not fulfilled.

The current arrangements (using the SCN) therefore result in the risk that the HWB Census data can be linked back to the respondent and resultant potential harm to



children. The risk arises both from accidental or intentional but unauthorised linkage between the SCN and the pupil's identity occurring in the hands of authorised

parties accessing the data (such as SG and its analyst) and also from access to the data by unauthorised parties in the event of a data breach.

If pupils can be identified within the HWB Census, given the nature of information contained within the survey, the potential harms that may occur are high.

Next Steps

We are due to meet with you and Redacted section 38(1)(b) (14 August) where we can discuss these points.

We are keen to support the SG and local authorities on how they can put in place measures that relate to data that has been collected (and is being processed) as a result of the HWB Census carried out this year and how the SG and LAs might design arrangements for any similar activities in the future.

At the meeting we can discuss how we can provide feedback and advice to you and local authorities via the HWB Census Implementation Group.

You will also need to review how the SG uses the SCN for other research and planning purposes both in light of our advice here and discussions when we meet.

Conclusion

Without pre-empting the outcomes of our meeting with you, we suggest that SG and local authorities could implement a robust pseudonymisation process by adding one step to the current dataflow. If the SCN was transformed into a different, unique, numerical identifier before the information was accessed by SG, that new identifier could be a pseudonym if the link between the identifier, SCN and student identity was kept securely and not accessed by SG or third parties.

We consider that given the serious risks that currently exist, and that the SG and local authorities need to protect against, that measures which should mitigate the risks will not be disproportionately difficult to implement.

We recommend that you give thought on how the SG can provide a leadership role on setting policy, governance and controls around the use of the SCN.

We will be writing separately to local authorities to set out our view that the SCN does not amount to pseudonymised information where its use is not controlled and where pupils can be re-identified.

Yours sincerely

Jenny Brotchie (Regional Manager – Scotland)

Enclosure 2: Risk Assessment of the Scottish Government's use of the Scottish Candidate Number (SCN) as a Pseudonym for Statistical and Research purposes

Education Analytical Services Division



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22 May 2023

Dear Ms Brotchie

Risk Assessment of the Scottish Government's use of the Scottish Candidate Number (SCN) as a Pseudonym for Statistical and Research purposes

I am writing in response to your letter, dated 2 March 2023, with regards the Scottish Government's use of the Scottish Candidate Number as a pseudonym for statistical and research purposes.

Further information of the work undertaken by the Scottish Government in relation to your letter is shown below.

Purpose

To undertake a risk assessment of the Scottish Government's use of the Scottish Candidate Number (SCN) as a pseudonym for statistical and research purposes.

Background

Since 2003, pupils are allocated an SCN on enrolment to the Scottish education system. This would largely be when pupils are enrolled at a primary school in Primary 1, but pupils could be allocated an SCN at any time (e.g. when an older child or young person, of school-age, moves in to Scotland and enrolls at a Scottish school).

Prior to 2003, the SCN was only allocated to pupils in advance of them undertaking Scottish Qualifications Authority (SQA) examinations (e.g. they were allocated an SCN number by the SQA around Secondary 2 or Secondary 3).

Scottish Candidate Number

The SCN consists of eight decimal data digits followed by a decimal check digit. The first two data digits are the final two digits of the year of issue (so 2022/23 is 23) – with leading zeros where necessary (e.g. 2004/05 is 05).

The next six digits are arbitrary, and are unique within the year but are not guaranteed to be unique across school years.

The final digit is a check digit calculated according to a modulus 11 algorithm using the weights 3 2 7 6 5 4 3 2.

- Each digit is multiplied by its weight factor and the results totalled
- The total is divided by 11
- Take the remainder from this division and subtract it from 11
- The result of the subtraction is the check digit
- If the remainder from the division is 1 and result of the subtraction is therefore 10 the number is incorrect. If there is no remainder from the division, the check digit will be 0.

Current Allocation of SCNs

In Spring of each year, in advance of the start of the next school year, the SQA generate a set of valid SCNs. These SCNs are then grouped into blocks for each Scottish school (based on an estimated number of pupils likely to be enrolled by the school on their school management information system (e.g. SEEMiS) in the forthcoming school year).

The SQA send these blocks of SCNs to SEEMiS so that they are available for use by schools within their school management information system when schools start to create new pupil records due to new school enrolments.

When schools enrol new pupils on to SEEMiS (i.e. create a new pupil record), the SCN field is pre-populated in SEEMiS with the next SCN available to them to use. **Only at this point is there a link made between the SCN generated by the SQA and the pupil to which it refers.**

As such, SEEMiS is the only system that directly records and stores the link between the SCN and the pupil to which it refers (for P1 to S6 pupils). Schools not on SEEMiS (e.g. independent schools) have their own management information systems. **Scotland does not have a national pupil database (as is the case in England) that would enable anyone to directly identify (or look up) a pupil based on their SCN.**

SQA's use of the SCN

Around the time pupils are getting ready to undertake SQA examinations (e.g. from around the start of Secondary 4), as part of the examination and certification process, the SQA receive information from SEEMiS (and other non-SEEMiS schools) about these specific pupils. This information will include the pupil's SCN and other details about them (such as their name).

Scottish Government's access to SEEMiS or other organisations systems

The Scottish Government **does not** have any direct access to SEEMiS, or other organisations systems (e.g. the SQA). As such, the Scottish Government **does not** have any direct access to information that would directly identify pupils (such as pupil names, addresses, etc.).

Statistical data received by the Scottish Government

The Scottish Government regular receives pupil level data from a range of organisations for statistical and research purposes only. This includes data from local authorities, via SEEMiS, such as the Pupil Census, Attendance and Absence, Exclusions, and Achievement

of Curriculum for Excellence Levels, but also includes other data not held on SEEMiS (such as the recently introduced Health and Wellbeing Census).

This sharing of data for statistical and research purposes only also extends to include children and young people level data held on other local authority systems (such as those used by children's services in relation to looked after children and child protection data).

The Scottish Government also receives pupil level data from other organisations for statistics and research purposes only, such as the SQA (SQA qualifications), Skills Development Scotland (school leavers' destination), etc.

Scottish Government's use of SCN for statistical and research purposes

Many pupil level data sets received by the Scottish Government (i.e. from local authorities and other organisations) for statistical and research purpose include the SCN, and is treated as a pseudonym for this purpose.

The Scottish Government classifies the SCN as a pseudonym because even though the pseudonymous data could potentially be used to identify individual pupils, the Scottish Government **does not** have access to the key to do this (i.e. it **does not** have access to local authority/school management information systems, local authority social work systems, SQA systems, SDS systems, etc.).

The Scottish Government use of pseudonymised data

By using the SCN as a pseudonym, the Scottish Government:

- cannot re-identify individuals in the context of its processing (as it **does not** have access to the source data systems)
- achieves data minimalization (as it does not itself need to directly identify or take action on any individual – as its sole purpose for processing such data is for statistical and research purposes)
- can quality assurance data for data accuracy – see below
- can undertake its statistical analysis (including data linkage) – see below

Quality Assurance Purposes – requires SCN

On receipt of data, the Scottish Government undertakes a series of quality assurance checks on the data to ensure that the data received is accurate, reliable and of sufficient quality to be badged as National Statistics. If, during this quality assurance process, any queries or errors are spotted in the data then the Scottish Government will feed these back to the relevant organisation/local authority.

An example of a “query” is if something in the data looks illogical (e.g. a Primary 1 pupil appears to be too young/old for their stage).

An example of an “error” is if information for a mandatory field is missing (e.g. the pupil's sex is missing or contains an invalid code).

Further checks on the data include identifying any duplicates in data sets (e.g. different pupils appear to have been given the same SCN).

All of these above quality assurance checks require the Scottish Government to have in its possession the SCN in order to be able to provide the relevant organisation with feedback as to which pupil records (based on the SCN) have generated a query/error.

Statistical Analysis Purposes – requires SCN

The SCN is required by the Scottish Government to enable statistical analysis of the data to be undertaken, including data linkage.

This analysis includes:

- carrying out longitudinal analysis (e.g. looking at progress of the children and young people as they progress throughout their lives as a young person)
- looking at how well pupils do at school (e.g. in their literacy and numeracy, or their school attendance) broken down by their pupil characteristics (note: pupil characteristic information is only gathered in the Pupil Census so other data sets (e.g. attendance/absence) need to be linkable to the Pupil Census in order to achieve this)
- enabling the Scottish Government to undertake other data linkage for its own statistical and research purposes, for example linking data on looked after children and education in order to analyse how this cohort of children and young people are doing at school
- linking qualifications data (provided by the SQA) to School Leaver data (provided by Skills Development Scotland - SDS) and to Pupil Census data (provided by local authorities) in order to undertake analysis of the attainment and destination of school leavers, and by various pupil characteristics (such as pupil's ethnicity, deprivation area, etc.).

Scottish Government IT Security Policy

Establishing and maintaining the confidentiality, integrity and availability of information systems is essential to the operation of the Scottish Government.

Information systems are recognised as a major asset and are always protected.

The Scottish Government's IT Security Policy provides a framework for its staff to meet the Scottish Government's goals to protect government information and technology assets.

Key features include:

- details on information governance roles within the organisation
- information must be classified and protected using the standard government security classifications together with appropriate access control measures.
- identifying and cataloguing sensitive information on our information asset register

Guidance on what staff need to do to adhere to the policy include:

- mandatory training for staff
- clear desk policy and security of equipment
- use of passwords
- adhering to the Scottish Government's IT Code of Conduct
- security responsibilities when home working
- information on data sharing and systems integration

Possible Risk - Insider Threats – *someone with specific knowledge, capabilities or permissions, either in your organisation, a processor you use, or another entity you engage (e.g. a trusted third party).*

Risk description		Insider threats – someone with specific knowledge, capabilities or permissions, either in your organisation, a processor you use, or another entity you engage (e.g. a trusted third party).	
Risk ref number			
Potential impact on the data subjects (people)		Insider threats on data held by the Scottish Government, and accessed by its analysts and support staff (e.g. IT support), could have a major impact on data subjects if the data to which they had access was not controlled, was misused or mishandled. The potential impact on individuals would be revealing personal and sensitive information about them to people who should not have known this, or for staff to find something out about an individual for whom they potentially have prior knowledge of.	
Unmitigated risk score		Mitigation controls	Residual risk score
Likelihood	Not expected to happen but definite potential exists (2-5 years)	Data Access Controls are in place which needs to be followed in order for internal staff be granted access to systems and data. Access is only granted to staff for who it has been deemed to have the necessary data protection and handling training and have a legitimate need to access such data, and such access has been approved by the Information Asset Owner (or their deputy). All internal staff have undergone thorough security pre-employment checks before being employed by the Scottish Government. Once employed, all staff need to comply with the IT Code of Conduct.	Likelihood Can't believe this would happen – will only happen in exceptional circumstances (5-10 years)

Impact Score	MR (8)	<p>They also need to be aware of the legal obligations when they use systems and software. The use of IT facilities is described in the Scottish Government's IT Code of Conduct and covers:</p> <ul style="list-style-type: none"> • personal use of SCOTS and the internet • misuse and unacceptable behaviour • accidental access and sensitive data • how the system is monitored • good practice and legal issues <p>Managers are to make sure all new and existing staff have read the IT Code of Conduct and completed the relevant training. As such, staff are fully aware that using IT for unauthorised purposes will be regarded as improper use and may be a criminal offence.</p> <p>Internal Scottish Government staff do not have access to the systems used by school, local authorities or other organisations who provide the Scottish Government with the data it receives for statistical and research purposes which makes it virtually impossible to be able to re-identify individuals from the data shared.</p> <p>Only with prior knowledge (e.g. the staff member knows who a specific individual was because they already know their SCN – e.g. their own child) would an internal member of staff actually know who a particular individual actually was.</p> <p>Internal staff are to undertake annual data protection training to understand what their duties and responsibilities are when handling data to which they have access to. As such, staff are fully aware than any misuse of data would be a serious breach and relevant action would be taken.</p>	Impact Score	LR (4)
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Possible Risk – External Threats – *someone who may not have direct access to the additional information, but wants to increase their knowledge about the pseudonymised dataset (e.g. by re-identifying the individuals within the dataset).*

Risk description		External threats – someone who may not have direct access to the additional information, but wants to increase their knowledge about the pseudonymised dataset (e.g. by re-identifying the individuals within the dataset).	
Risk ref number			
Potential impact on the data subjects (people)		External threats on data held by the Scottish Government, and accessed by others, could have a major impact on data subjects if the data to which they had access was not controlled, was misused or mishandled. The potential impact on individuals would be revealing personal and sensitive information about them to people who should not have known this.	
Unmitigated risk score		Mitigation controls	Residual risk score
Likelihood	<div style="background-color: green; color: black; padding: 10px; text-align: center;"> <p>Not expected to happen but definite potential exists (2-5 years)</p> </div>	<p>Data is stored within the Scottish Government’s Data Management Systems (such as SAS Servers, SQL Servers, Administrative Data Management System (ADMS)) where access is only possible within the SCOTS network (a central government network, compliant to the Public Services Network (GSI) requirements and managed to ISO standard 27001).</p> <p>The purpose of the SQL Servers, SAS Servers, and ADMS are to support secure and UK GDPR-compliant data management with a dedicated team and IT infrastructure.</p> <p>All of these systems have been designed to allow analytical data to be stored securely and have standards and retention policies applied across the Scottish Government.</p> <p>The Health and Wellbeing Census data is stored in ADMS, where access is granted to Active Directory Groups. The ADMS is built around themes, topics, and data items (which are equivalent to a dataset), and permissions can be applied at any of these levels. When data is initially uploaded only data admins in the ADM team can grant access. Permission rights are agreed with the data owner before upload, and applied when the upload is complete.</p> <p>There are six named individuals with administrator access. Four of these are Scottish Government staff and two are employed by the SG’s supplier, Storm ID. All six are required to undertake Data Protection Training each year. All Scottish Government staff are members of the Digital, Data and Technology professions and conduct relevant professional development. The team refers questions beyond our expertise to the SG’s Cyber Security and Defence Branch.</p>	<p>Likelihood</p> <p>Can’t believe this would happen – will only happen in exceptional circumstances (5-10 years)</p>

<p>Impact Score</p>	<p>MR (8)</p>	<p>Access to the data sets is securely restricted to a limited small number of Scottish Government staff based in the Education Analytical Services Division and IT / SAS support teams. Permission to access the data is only given on the submission of a Data Access form signed off by the appropriate Data Controller. It can only be accessed within the Scottish Government's IT network (SCOTS) using network authentication.</p> <p>Access is controlled at two levels:</p> <ol style="list-style-type: none"> 1. At the operating system level, using Windows Access Control Lists (ACLs) to grant access to the members of the approved Active Directory security groups. 2. Within SAS metadata, using SAS Access Control Templates (ACTs) to grant access to the members of groups defined in the metadata. <p>All Scottish Government staff are required to complete annual training on data protection and information security to ensure staff are aware of the responsibilities when handling data.</p> <p>The Information Asset Owner (IAO) for this data is Pete Whitehouse, Deputy Director: Education Analytical Services, and Information & Technology Services (iTECS) fulfils the role of System Custodian.</p> <p>As Systems Custodian, iTECS operates and manages the data storage system to ensure it is protected, held securely and can only be accessed by users who have been approved by the IAO or Systems Owners, in this case, the Scottish Government's Chief Statistician, Ally McAlpine.</p>	<p>Impact Score</p>	<p>LR (4)</p>
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Possible Risk – the likely goals of any attack

The likely goals of any attack – an attacker may have different goals they seek to achieve (e.g. re-identification attacks, where the attacker seeks to re-identify individuals (either as a subset, or all of them)).

Risk description		The likely goals of any attack – an attacker may have different goals they seek to achieve (e.g. re-identification attacks, where the attacker seeks to re-identify individuals (either as a subset, or all of them)).	
Risk ref number			
Potential impact on the data subjects (people)		The likely goals of any attack on data held by the Scottish Government could have a major impact on data subjects if the data to which they had access was accessed. The potential impact on individuals would be revealing personal and sensitive information about them to people who should not have known this.	
Unmitigated risk score		Mitigation controls	Residual risk score
Likelihood	Not expected to happen but definite potential exists (2-5 years)	As a result of the all the security processes and procedures that are in place (as shown in the two previous risks), the Scottish Government deem it highly unlikely any internal or external attack would ever occur. Also, even if the Scottish Government's IT infrastructure was compromised, then the attacker would need to either have prior knowledge or compromise another organisation's IT infrastructure in order to be able to directly identify the data subject.	Likelihood Can't believe this would happen – will only happen in exceptional circumstances (5-10 years)

Impact Score

MR (8)

There is no national pupil database in Scotland (as is the case in England). The only system that that would enable the linking of most pupil's names to their Scottish Candidate Number is school management systems (i.e. SEEMiS). However, there are other individual school management information systems that don't use SEEMiS (e.g. independent schools) and other organisations systems (e.g. the SQA, Skills Development Scotland, etc.) that store information that directly links a pupil's SCN to their name.

The Scottish Government is committed to making its data accessible, subject to data protection legislation. If the data they require is not currently available to them, then the applicant can apply for access to data held by the Scottish Government – following these instructions: [Scottish Government statistics: request our data - gov.scot \(www.gov.scot\)](http://www.gov.scot)

The Scottish Government Analytical Division Heads will consider applications that request data which:

- will not be linked to other datasets
- are considered to be low risk based on a risk score

The Statistics Public Benefit and Privacy Panel (SPBPP) will consider applications that request data which:

- will be linked to other datasets
- will be used under a programme of research
- will not be linked to other datasets but are considered to be medium to high risk on risk score

If approved, any data that is eventually shared with the researcher will not include the original SCN. The SCN will be removed and will either:

- not appear at all and will not be replaced with a further identifier (because this is not needed)

Impact Score

LR (4)

		<ul style="list-style-type: none">• be replaced with a hashed version of the SCN (as stored in ADR-Scotland ADR Scotland - ADR UK)• replaced with an identifier that enables data linkage – and uses the NRS Indexing Team in this process: NRS Indexing Team National Records of Scotland (nrscotland.gov.uk)		
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Conclusion

In light of all the process, procedures and mitigations that the Scottish Government has in place in relation to personal data it receives and processes for statistical and research purposes, it firmly believes that the risk to accidental misuse of this data is highly unlikely. However, in the unlikely event that the data was misused or compromised in some way, the Scottish Government has robust processes and procedures in place in which it would follow.

Additional Information

Finally, your letter also stated that we should review transparency materials and work with LA controllers to ensure that pupils understand the lawful basis for the processing, that the data will be pseudonymised instead of anonymised and they understand how to access their data protection rights at all stages of processing.

I attach documentation that shows the set of materials the Scottish Government produced and shared with local authorities in which they were encouraged to use/customise (as they see fit) when undertaking their own Health and Wellbeing Census. However, I am sure that you will appreciate that although the Scottish Government provided such materials, it was ultimately the responsibility of each local authority to use them.

You will see from a random sample of local authority websites how such information was used:

<https://www.glasgow.gov.uk/index.aspx?articleid=29049>
<https://www.dundee.gov.uk/service-area/children-and-families-service/education/privacy-statement-for-health-and-wellbeing-census>
<https://www.pkc.gov.uk/article/22309/Health-and-Wellbeing-Census>

I sincerely hope that this letter fully addresses the points you raised, and I can only apologise for the delay in getting this response to you.

Redacted section 38(1)(b)
Education Analytical Services

Enclosure 3: ICO Letter to Scottish Government 2 March 2023



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2 March 2023

Dear Redacted section 38(1)(b)

Health and Wellbeing Census (HWB Census)

We are writing to follow up from the meeting we had with you and your colleagues on 14 February.

The key areas we want to offer comments, suggestions and recommendations on are:

- The reliance on the research provisions and the Scottish Government's (SG's) use of the Scottish Candidate Number (SCN) as a pseudonym; and
- Transparency.

You should refer to the following advice when you plan for future HWB censuses and you may wish to consider this advice when considering whether you have appropriate safeguards in place for other processing undertaken by the SG's Education Analytical Services (EAS).

Ensuring that you have appropriate safeguards in place

The SG states in its DPIA that it is relying on the research provisions. The research provisions allow data to be stored indefinitely as long as appropriate

safeguards are in place (UK GDPR Article 5(1)(e)).

In order to rely upon the research provisions, the SG needs to have **appropriate safeguards** in place to protect the rights and freedoms of the individuals whose personal data it is processing. These safeguards should take the form of technical and organisational measures to ensure respect for the principle of data minimisation.

Our guidance states:

- where possible, controllers should carry out research using anonymous information. If data is anonymised, it is not personal data and data protection law does not apply. Where it is not possible to use anonymised data, controllers should consider whether it is possible to pseudonymise the data. Pseudonymous data is still personal data and data protection law applies; and that
- controllers should ensure that they do anonymisation or pseudonymisation at the earliest possible opportunity, ideally prior to using the data for research purposes.

Currently, the SG uses the SCN as a pseudonym when processing the HWB Census. We raised concerns, however, that there are no governance controls in place as to how and when the SCN can be used by other controllers and what other personal data it can be linked to. This creates an ongoing risk that the third parties and rogue actors may have access to data that links the SCN to directly identifiable information about pupils such as name and the school they attend. In turn, this means that should a third party, or rogue actor within the SG, gain unauthorised access to the HWB Census data (and any other research data for which the SCN is used as a pseudonym), that data could be readily re-identified. This risk has not been identified or addressed within the published DPIA.

For that reason, our view is that it seems unlikely that appropriate safeguards are in place to protect the rights and freedoms of individuals as required by Article 89 of the UK GDPR. In addition, if you are relying on the SCN as a pseudonym and a risk reduction mechanism to comply with the security principle and data protection by design and default, it is unlikely to be sufficiently robust. As we discussed, whilst the compliant use of the SCN for other purposes is a matter for other controllers, the SG has obligations to ensure that it has appropriate safeguards in place when relying on the

research provisions as well as appropriate risk reduction measures in place to comply with Article 25 Data Protection by Design and Article 32 Security.

You should therefore review your current risk assessment and compliance. In reviewing your risks you should take into account:

- The nature, scope and context of the processing (the HWB Census involves the processing of children's special category and potentially criminal offence data);
- The risks posed to children's rights and freedoms, including in the event of re-identification;
- Whether existing pseudonymisation and other risk reduction mechanisms are suitably robust to mitigate against these risks. You should specifically consider the risk of re-identification associated with uncontrolled use of the SCN.

Relevant sources of information to guide the SG's reappraisal regarding the use of the SCN include:

- UK GDPR Article 89(1) safeguards (including the relevant recitals);
- the ICO's guidance for the research provisions within the UK GDPR and the DPA 2018.

Necessity and Proportionality

You indicated that you can undertake certain analysis without the SCN. Given the risks associated with the use of the SCN as a pseudonym, you should review whether the benefits of using the SCN outweigh the risks to individuals.

Transparency

In our discussion about transparency, we highlighted the importance of data subjects (and potential data subjects) being able to understand all aspects of how their data will be used if they choose to take part in a Local Authority (LA) run HWB Census. The transparency information should be age appropriate. In considering this, whilst the activity is not in scope of our Children's Code, we recommend that you refer to its standards when you write and design transparency information for any future HWB Census. Data subjects must be able to readily understand where they can exercise their information rights. There must be no ambiguity regarding whether data is anonymised or pseudonymised. Potential data subjects (and their parents and carers) should be shown this clear and understandable information with sufficient time to make informed choices as to whether to take part fully or

partially for any similar exercises in the future. The information provided to them should cover the processing of all controllers who will use data that a participant decides to provide. They should be able to make their decisions with a clear understanding of how controllers work together and for what purposes. The SG should work with LAs on both formal transparency information (eg privacy notices) and supporting material (eg FAQs) to ensure the information is clear and accurate.

Summary of required actions:

- **You should reassess the risks to the rights and freedoms posed by the processing and apply appropriate safeguards and mitigations to ensure compliance with Article 89, Article 32 and Article 25 of the UK GDPR. Your risk assessment and risk reduction measures should take account of the lack of controls and governance around the use of the SCN and the impact this has on how robust a risk reduction measure the SCN is when used as a pseudonym.**

As discussed at our meeting, it may be appropriate to review other datasets held by EAS and to carry out equivalent risk assessments for these.

- **You should review transparency materials and work with LA controllers to ensure that pupils understand the lawful basis for the processing, that the data will be pseudonymised instead of anonymised and they understand how to access their data protection rights at all stages of processing.**

Policy and governance for any use of the SCN

We intend to follow this up with relevant controllers. We would however welcome your thoughts on any involvement EAS might want to have in this.

Since we had our meeting, we have started to look at similar identifiers used in education settings elsewhere in the UK to inform our thinking.

You and Stuart may find it helpful to look at the Department for Education's document: Unique pupil numbers (UPNs) A guide for schools and local authorities to initiate some thinking in this area.

We would be grateful if you consider the advice above and provide us with an update by 7 April. If there is anything which you would like to discuss or have clarified, please do not hesitate to contact us via scotland@ico.org.uk.

Please note that this advice is without prejudice to any future intervention by the Commissioner in accordance with his tasks and powers, in line with his Regulatory Action Policy.

Yours sincerely

Jenny Brotchie (Regional Manager – Scotland)

Enclosure 4: Health and Wellbeing Census - SG and ICO Initial Meeting – response from ICO on joint data controllers

From: Redacted section 38(1)(b)@gov.scot>
Sent: Tuesday, February 14, 2023 1:34 PM
To: Redacted section 38(1)(b)@gov.scot>
Subject: FW: Health and Wellbeing Census - SG and ICO Initial Meeting

Hi Redacted section 38(1)(b)

Not sure why Stephen didn't copy you in on this, but useful to see the bit I've highlighted below:

I also attach a quick email exchange I have had this morning with our internal folk about the SCN issue which basically says that the SCN/identifiability issue is actually more of an LA issue (than an SG issue). What I ideally would like here is for the ICO to offer a solution that actually helps LAs collect personal information (which I truly believe is unavoidable here because without the SCN the pupil would need to pretty much identify themselves anyway with information about themselves) but for which they will only need/use for stats/research purposes only, but that also protects LAs in relation to their duty of care responsibilities.

Redacted section 38(1)(b)

From: Stephen Peacock <Stephen.Peacock@ico.org.uk>
Sent: 14 February 2023 11:22
To: Redacted section 38(1)(b)@gov.scot>
Cc: Jenny Brotchie <Jenny.Brotchie@ico.org.uk>; Adam Surtee <Adam.Surtee@ico.org.uk>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>; Taylor A (Alison) <Alison.Taylor@gov.scot>; Kenneth Macdonald <Kenneth.Macdonald@ico.org.uk>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>
Subject: RE: Health and Wellbeing Census - SG and ICO Initial Meeting

Redacted section 38(1)(b)

In advance of our meeting this afternoon, I wanted to respond to your question about your responses to our questions from 2022.

I am satisfied that the SG has set out a robust argument that LAs and the SG are all separate controllers.

We do have some concerns about the risk assessment around the use of the SCN (in the context of how it is used in LAs) and implications that may have on its suitability as a pseudonym. We can discuss this aspect at our meeting.

We are certainly keen to hear about the SG's collaborative work with relevant bodies and organisations to ensure that the issues raised, and

lessons learned, from this first HWB Census are being fully considered and taken on board in order to ensure that any future HWB Censuses undertaken by local authorities do not face similar issues in future years.

Here is a draft agenda for you to consider to aid our conversation:

1. Update from SG on plans for this year's census and any changes to the model
2. The **use of the SCN**
 - Strength of it being a pseudonym
 - Associated risks
3. The use of the **research provisions: safeguarding**
4. End to end **transparency information: making it easy for pupils to understand the data flows and access their rights**
5. **Retention** of data

Regards,

Stephen



Stephen Peacock
Senior Policy Officer – Scotland

Information Commissioner's Office, Queen Elizabeth House,
Sibbald Walk, Edinburgh EH8 8FT
T. 0330 414 6439 ico.org.uk twitter.com/iconews

*For information about what we do with personal data see our
privacy notice at www.ico.org.uk/privacy-notice.*

From: Redacted section 38(1)(b)@gov.scot>

Sent: 01 February 2023 15:03

To: Stephen Peacock <Stephen.Peacock@ico.org.uk >

Cc: Jenny Brotchie <Jenny.Brotchie@ico.org.uk>; Adam Surtee <Adam.Surtee@ico.org.uk>;
Redacted section 38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot; Redacted section
38(1)(b)@gov.scot; dpa@gov.scot; Alison.Taylor@gov.scot; Kenneth Macdonald
<Kenneth.Macdonald@ico.org.uk >; Redacted section 38(1)(b)@gov.scot; Redacted section
38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot;
dpa@gov.scot

Subject: FW: Health and Wellbeing Census - SG and ICO Initial Meeting

Importance: High

External: This email originated outside the ICO.

Hi Stephen

On Tuesday 28 February 2023, the Scottish Government is due to release its initial findings from the Health and Wellbeing Census carried out by local authorities in the

2021/22 school year. 16 local authorities have shared their data with the Scottish Government, and the statistical publication (and accompanying tables) will be based on these authorities. As this is the first time this data has been collected and shared by local authorities in this way, the statistical publication will be released under the banner of “experimental statistics” (see below for an explanation as to what this means).

I just wanted to re-touch base with you to establish where things are at in relation the response we provided in light of the considerations you asked of us in 2022 (see our latest email to you). Were you satisfied with our last response and is the matter now concluded as far as it can be for now. Please be rest assured that once the Scottish Government has released these initial findings on Tuesday 28 February 2023, it will start working collaboratively with relevant bodies and organisations to ensure that the issues raised, and lessons learned, from this first HWB Census are fully considered and taken on board in order to ensure that any future HWB Censuses undertaken by local authorities do not face similar issues in future years.

If you would find it helpful to meet up to re-discuss this before these statistics are released, then please let me know.

I look forward to hearing from you.

Redacted section 38(1)(b)

Experimental statistics are Official Statistics that are undergoing development. The Code of Practice for Official Statistics defines experimental statistics as: ‘Experimental statistics are a subset of newly developed or innovative official statistics undergoing evaluation. They are developed under the guidance of the Head of Profession for Statistics (HoP) and published to involve users and stakeholders in the assessment of their suitability and quality at an early stage’. The regulatory guidance document [Experimental statistics – official statistics in development](#) sets out the United Kingdom (UK) Statistics Authority policy on this topic. Experimental statistics status provides a clear statement of the nature of the official statistics going through development, with a potentially wider degree of uncertainty in the resulting estimates as the methods and processes are established and verified.

Testing of the experimental statistics allows producers to gain a good understanding of their quality, including their accuracy and reliability, and their value. Users are central to this process – without their involvement, producers will have an incomplete understanding of the suitability of the statistics.

The Office for Statistics Regulation’s Experimental Statistics Official Statistics in Development guidance (June 2022) states the use of experimental statistics provides an excellent means of demonstrating innovation and improvement, while at the same time showing how the statistics can be appropriately used and understood, with producers then using that knowledge to feed back into the development.

There is an emphasis across the Government Statistical Service (GSS) to consult users during the review of statistics, and to make experimental series available during this period to assist in the quality assurance, development and familiarisation of the statistics. The Code of Practice for Official Statistics promotes and supports the release of experimental statistics to involve users in their development at an early stage; however, it is likely that the statistics will not be fully compliant in all areas due to their nature as 'data being developed'. The practices that are particularly relevant to producing experimental statistics are shown below:

- T2.1 The Chief Statistician/Head of Profession for Statistics should have sole authority for deciding on methods, standards and procedures, and on the content and timing of the release of regular and ad hoc official statistics. This should include: determining the need for new official statistics, ceasing the release of official statistics, and the development of experimental statistics.
- V1.3 User satisfaction with the relevance and usefulness of the statistics and data should be reviewed routinely. This should consider the timeliness, accessibility, clarity and accuracy of the statistics and data.
- V1.5 The views received from users, potential users and other stakeholders should be addressed, where practicable. Statistics producers should consider whether to produce new statistics to meet identified information gaps. Feedback should be provided to them about how their needs can and cannot be met, being transparent about reasons for the decisions made and any constraints.
- V1.6 Statistics producers should periodically review whether to continue, discontinue, adapt or to provide the statistics through other means, in discussion with users and other stakeholders.
- V4.1 Statistics producers should keep up to date with developments that can improve statistics and data. They should be transparent in conducting their development activities, and be open about the outcomes and longer-term development plans.
- V4.2 Statistics producers should consider testing and releasing new official statistics initially as experimental statistics, under the guidance of the Chief Statistician/Head of Profession for Statistics.
- V4.3 Users should be involved in the ongoing development of statistics and data, exploring and testing statistical innovations, so that the statistics remain relevant and useful.

The reason for these statistics being classed as experimental statistics is because they are based on a new survey data source. These will be labelled as experimental statistics as such time is required: a. To receive informed feedback from users and potential users of the statistics; b. For users to become familiar with the new statistics and methodology.

Following this publication Scottish Government will review the current model with stakeholders with a view to improving the quality of the statistics. Where

appropriate, identified improvements will be incorporated prior to the next data collection.

From: Redacted section 38(1)(b)

Sent: 26 May 2022 14:09

To: Stephen Peacock <Stephen.Peacock@ico.org.uk>

Cc: Jenny Brotchie <Jenny.Brotchie@ico.org.uk>; Adam Surtee <Adam.Surtee@ico.org.uk>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>; Taylor A (Alison) <Alison.Taylor@gov.scot>; Kenneth Macdonald <Kenneth.Macdonald@ico.org.uk >; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>

Subject: RE: Health and Wellbeing Census - SG and ICO Initial Meeting

Hello Stephen

The SG have reviewed the position on joint controllership of the HWB Census. Please find attached the review, which concludes the SG are not joint data controllers for the HWB Census. The current model is the HWB Census is 32 local authority locally owned data collections, with local authorities agreeing to sharing their data with SG.

Going forwards, the intention is to continue engagement with stakeholders to plan for future Censuses, that take into account immediate and future discussions and decisions, including gathering feedback from local authorities and other stakeholders on the 2021-22 HWB Census. This will inform future development, planning and delivery.

Local authorities undertaking the HWB Census in 2021-22 are looking to complete their data collection in June 2022. They will then analyse their data for their own purposes, and following data sharing with SG in June, the SG will undertake its own analysis and publication of the data to meet SG and wider external purposes. Detailed planning and engagement on feedback and lessons learned will start in earnest following the completion of collection and analysis of the 2021-22 HWB Census to ensure SG incorporates learnings to introduce improvements for future collections. The review will include the individual's right to be informed, specifically on easily accessible documents including the use of clear and plain language, and age appropriate design. SG are keen for ICO to be involved in future development, planning and delivery of future census collections.

Decisions on the timing of future collections will follow discussions both internally and externally - these discussions have not yet taken place. The HWB Census is currently a local authority collection, and as such it is for local authorities to decide on the timing of future collections to meet their need for the data. The initial model (prior to delays including Covid-19) was that the SG would ask local authorities to undertake and share their own HWB Census data on a four yearly basis. However, now that the Census has commenced, the SG is keen to hold discussions both internally and externally as how frequently LAs themselves would wish to undertake

their own HWB Census and then share their evidence for national level analysis and reporting. These decisions will consider the wider landscape of data collection on children and young people's health and wellbeing, and on the burden on schools and local authorities – working towards the initial aim of simplifying the landscape and reducing the burden. However, LAs may still individually choose to undertake their own HWB Census with additional frequency to best meet their own needs (as each LA is their own Data Controller for the HWB Census in their local area, these are decisions made by the local authorities).

While the timeline provided in the email of 09 May set out the initial plans, local authorities are aiming to complete 2021-22 data collection in June 2022. It would be beneficial to incorporate lessons learned, and feedback from the ICO, in a full review of all the published documentation.

Engagement with ICO on the HWB Census DPIA has prompted a wider review of accessibility (in terms of the ICO guidance on Individual rights and age appropriate design). Therefore the timeline for this wider piece of work is likely to extend beyond July 2022. Prompted by the initial meeting with ICO on 02 February, thinking on the wider review has developed during this process, and so the timeline will be reviewed and updated as the work proceeds. Given this, the timeline will be regularly reviewed to cover the wider scope of future census collections, to allow time for full engagement with all stakeholders which will inform improvements as noted above.

SG engaged with a range of stakeholders, including SOLAR, in the development of the HWB Census to date, and it is expected engagement for future development will continue. SG will reconvene the HWB Census Content Group to review the current questionnaires. Alongside this, it is anticipated engagement with a range of stakeholders will gather further feedback on the 2021-22 HWB census to inform improvement. SG are looking to involve parents/carers and children and young people in the development for future collections. This reflects one of the early themes of the feedback to date, and will support the privacy information being easily accessible, and accessibility (in terms of Individual Rights and age appropriate design).

You have asked SG to consider making DPIAs publicly available to encourage peer review, consistency and transparency. Under the current model, the HWB census is 32 separate local authority data collections which local authorities choose to undertake supporting a consistent national approach to collecting the evidence they require. Local authorities are then asked to share their data with SG. Where this is happening, SG has data sharing agreements in place with each of the local authorities prior to any data sharing. ICO guidance notes it is good practice to publish the DPIAs. SG has done this for their own DPIA, and while we are working collaboratively with the local authorities to support them in implementing their own data collection and analysis, local authorities are the data controllers for their local census collections. The governance sits with the data controller – local authorities, and only with the SG for the data local authorities eventually share with SG. As data controllers, local authorities follow their own processes for data collection and governance. SG does not have the remit to ask local authorities to publish their DPIAs.

Responses to your specific questions are below.

- *SG to consider if there is another approach to create **pseudonymisation** at the earliest point.*
 - *Review complete (July 2022)*

I think you are saying that you expect the review to be completed by the end of July. Is that correct? Yes, for the pseudonymisation of data held by the SG. Local authorities have responsibility as data controllers for the data they collect and process.

The Scottish Government has been collecting individual level data from local authorities and other agencies (e.g. the SQA) for 20 years which includes the SCN. The Scottish Government has always determined this to be a pseudonym for its statistics and research purposes as the Scottish Government does not have access to additional information that directly identifies a child or young person (e.g. name, address). If local authorities were to not ask the pupil to enter their SCN, they would be required to ask pupils to a detailed set of personal characteristics information in order for them to undertake the statistical and research purpose for which they require the data (which would render the data as equally identifiable as simply asking the pupil to enter their SCN).

- *SG to review the Privacy Notice, DPIA and other documentation to provide more clarity on the collection and use of the **SCN**.*
 - *Review complete (July 2022)*

I think you are saying that you expect the review to be completed by the end of July. Is that correct?

Yes – this will cover the SG use of SCN and, as noted above, could impact on long established data collections for which the SCN is currently included as a pseudonym identifier for data shared for statistics and research purposes.

- *SG to review the Privacy Notice, DPIA and other documentation to provide more clarity of **who could identify an individual and in what circumstances confidentiality would be breached**.*
 - *Complete review (July 2022)*

I think you are saying that you expect the review to be completed by the end of July. Is that correct?

Yes that is correct, with the scope being a review of the SG DPIA and Privacy Notice under the current model of SG being the data controller after LAs share their data with SG.

The SG cannot breach the confidentiality of an individual as it does not have access to additional information that directly identifies a child. Any potential breaching of a person's confidentiality would solely lie with local authorities (as part of their duty of care – but as discussed at the initial meeting on 02 February the Census is designed

to minimise the risk of this needing to happen). Any changes to the current approach will require a wider review, and a revised timeline will be developed in that situation.

- At the same time I am not sure if there is a difference between 'Review complete' and 'Complete review'.
There is no difference – that is my inconsistency in drafting the timeline.
- We would like to see a narrative of how the timeline for determining controllership and matters above (including SCN, pseudonymisation and who could identify an individual and in what circumstances confidentiality would be breached) will support risk analysis and all other compliance aspects to be set out in the DPIA and more particularly how they will support a [data protection by design and by default](#) approach.

The SG are happy to keep the ICO updated as it develops its plans for future Censuses, that take into account immediate and future discussions and decisions.

- *Arrange for accessible versions of DPIA, privacy Notice and other documentation for publication (requires APS)*
 - *August 2022* What you mean by **accessible**?

Accessibility here refers to the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018 SG adheres to.

As noted above, engagement with ICO on the HWB Census DPIA has prompted a wider review of accessibility (in terms of individual rights and age appropriate design) of EAS DPIAs and Privacy Notices. Therefore the timeline for this wider piece of work is likely to extend beyond July 2022. Whilst prompted by the initial meeting with ICO, thinking on the wider review has developed during this process and so the timeline will be reviewed and updated as the work proceeds.

- What will the **scope** of the DPIA/DPIAs be? Only SG aspects, or the end-to-end use of data by all parties for the census?

Under the current model, the SG DPIA covers the use of data by SG following data sharing with local authorities. As noted above, the HWB Census is 32 local authority data collections. It is not a single SG collection, and local authorities can choose to use the centrally developed resources and SmartSurvey platform. Currently of the local authorities using the HWB Census, some have made changes to the questionnaires to best suit their local needs, and not all are using the SmartSurvey platform provided under the current SG license arrangement. It is up to local authorities to decide how they best gather the evidence they require.

- *Arrange for **publication** on SG webpage (requires around 3 weeks)*
 - *September 2022*

I think you are setting out that you aim to publish accessible versions of the DPIA, Privacy Notice and other documentation by the end of September 2022. Is that correct?

Yes – however as noted above, this is now part of a wider review of EAS DPIAs and Privacy Notices – this date will need reviewed in light of that wider piece of work noted in the response above. Any changes to the current model will require revision of the governance documentation to reflect that change. In that case, a review of the timelines set out in the spreadsheet provided on 09 May would be required.

Thank you,

Redacted section 38(1)(b)

Redacted section 38(1)(b)
Education Analytical Services: Benchmarking and Improving Evidence

I am currently working at home. Please contact me by email.

Scottish Government | Victoria Quay | Edinburgh | EH6 6QQ
Tel: + 44(0)131 244 Redacted section 38(1)(b)
contactSCOTLAND-BSL | Redacted section 38(1)(b)@gov.scot

From: Stephen Peacock <Stephen.Peacock@ico.org.uk>

Sent: 20 May 2022 12:41

To: Redacted section 38(1)(b)@gov.scot>

Cc: Jenny Brotchie <Jenny.Brotchie@ico.org.uk>; Adam Surtee <Adam.Surtee@ico.org.uk>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>; Taylor A (Alison) <Alison.Taylor@gov.scot>; Kenneth Macdonald <Kenneth.Macdonald@ico.org.uk>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>

Subject: RE: Health and Wellbeing Census - SG and ICO Initial Meeting

Redacted section 38(1)(b)

Thanks for the update

As you know, it is key to know the answer to the controllership question, since that will have a bearing on many responsibilities and legal duties, for example it will define who needs to undertake risk assessments (DPIAs) and who needs to produce transparency information and be the party that responds to data subjects seeking to exercise their information rights and to who they should raise concerns. I note you hoped to share clarity on this w/c 16 May.

The ICO is keen to have early involvement (and ongoing interaction) as the SG and its delivery partners (local authorities and technology companies) plan and then deliver the next census.

We will be looking to see how lessons learned (and our feedback) feed into the DPIA and how [data protection by design and by default](#) aspect of controllers' legal obligation to meet that aspect of the UKGDPR for the census will be achieved.

How about considering local authorities and the SG making DPIAs publicly available (I think it looks like you are taking that approach for the SG already and it is in your time line for next versions)? In moving to that model it will encourage peer review of all the DPIAs and is likely to lead to a more consistent approach and consistent transparency information (produced in age appropriate ways), where only local practice and processes will need to augment or amend such information? What do you think?

Are you engaging with SOLAR on the planning, design and deliver of the census for next year?

I would like to seek a better understanding of the following items from the timeline Excel:

- *SG to consider if there is another approach to create **pseudonymisation** at the earliest point.*
 - *Review complete (July 2022)*

I think you are saying that you expect the review to be completed by the end of July. Is that correct?

- *SG to review the Privacy Notice, DPIA and other documentation to provide more clarity on the collection and use of the **SCN**.*
 - *Review complete (July 2022)*

I think you are saying that you expect the review to be completed by the end of July. Is that correct?

- *SG to review the Privacy Notice, DPIA and other documentation to provide more clarity of **who could identify an individual and in what circumstances confidentiality would be breached**.*
 - *Complete review (July 2022)*

I think you are saying that you expect the review to be completed by the end of July. Is that correct? At the same time I am not sure if there is a difference between 'Review complete' and 'Complete review'.

We would like to see a narrative of how the timeline for determining controllership and matters above (including SCN, pseudonymisation and who could identify an individual and in what circumstances confidentiality would be breached) will support risk analysis and all other compliance aspects to be set out in the DPIA and more particularly how they will support a [data protection by design and by default](#) approach.

- *Arrange for accessible versions of DPIA, privacy Notice and other documentation for publication (requires APS)*
 - *August 2022*

Please can you set out:

- What you mean by **accessible**? Does this include being made available for various audiences: age appropriate and potentially for data protection experts as well as those adults who are not experts but want understand about their children's' data and how it will be used?
- What will the **scope** of the DPIA/DPIAs be? Only SG aspects, or the end-to-end use of data by all parties for the census?
- *Arrange for **publication** on SG webpage (requires around 3 weeks)*
 - *September 2022*

I think you are setting out that you aim to publish accessible versions of the DPIA, Privacy Notice and other documentation by the end of September 2022. Is that correct?

As I mentioned earlier, the ICO is keen to be consulted as you establish the details around your next census and to provide regulatory input as needed.

It should be noted that this advice is without prejudice to any future intervention by the Commissioner in accordance with his tasks and powers, in line with his Regulatory Action Policy.

Regards,

Stephen



Stephen Peacock
Senior Policy Officer – Scotland

Information Commissioner's Office, Queen Elizabeth House,
Sibbald Walk, Edinburgh EH8 8FT
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For information about what we do with personal data see our privacy notice at www.ico.org.uk/privacy-notice.

From: Redacted section 38(1)(b)@gov.scot>

Sent: 09 May 2022 09:29

To: Stephen Peacock <Stephen.Peacock@ico.org.uk>

Cc: Jenny Brotchie <Jenny.Brotchie@ico.org.uk>; Adam Surtee <Adam.Surtee@ico.org.uk>; Redacted section 38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot; dpa@gov.scot; Alison.Taylor@gov.scot; Kenneth Macdonald <Kenneth.Macdonald@ico.org.uk >; Redacted section 38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot

Subject: RE: Health and Wellbeing Census - SG and ICO Initial Meeting

External: This email originated outside the ICO.

Good morning Stephen,

Apologies for the delay, I have been out of the office.

In response to the two outstanding points for action, noted below:

- whether the Scottish Government is a joint data controller for the end to end process; A review has been undertaken, this is currently with colleagues in Legal and Information Assurance and Data Protection for review. I anticipate having a response to you week beginning 16th May.
- when you will have a time line for actions. Please see attached timeline. However, given the timing, we will (in due course) soon be discussing plans for the next Census and will producing a project plan of tasks for this (that takes on board all the lessons learned from the 2021/22 Census). We will be happy to share that with the once produced.

We would also like to know how work with local authorities regarding how and when they are using the SCN is progressing. The Implementation Group has been discussing pseudonymisation along with the range of topics. It is important to note that local authorities have their own plans for analysis and how they may use the data they have collected. Each local authority works within its existing framework for processing their data. As it is the local authority who is the data controller, while SG has raised the issue of good data management, it is not for SG to specify processes for local authority data processing.

Thank you,

Redacted section 38(1)(b)

Redacted section 38(1)(b)

Education Analytical Services: Benchmarking and Improving Evidence

I am currently working at home. Please contact me by email.

Scottish Government | Victoria Quay | Edinburgh | EH6 6QQ

Tel: + 44(0)131 244 Redacted section 38(1)(b)

[contactSCOTLAND-BSL](mailto:Redacted section 38(1)(b)@gov.scot) | Redacted section 38(1)(b)@gov.scot

From: Redacted section 38(1)(b)@gov.scot>

Sent: 03 May 2022 11:51

To: Stephen Peacock <Stephen.Peacock@ico.org.uk >; Redacted section 38(1)(b)@gov.scot>
Cc: Jenny Brotchie <Jenny.Brotchie@ico.org.uk>; Adam Surtee <Adam.Surtee@ico.org.uk>;
Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section
38(1)(b)@gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>; Taylor A
(Alison) <Alison.Taylor@gov.scot>; Kenneth Macdonald <Kenneth.Macdonald@ico.org.uk>;
Redacted section 38(1)(b)@gov.scot>
Subject: RE: Health and Wellbeing Census - SG and ICO Initial Meeting

Hi Stephen

Redacted section 38(1)(b) is not around today, but I just wanted to reassure you that
Redacted section 38(1)(b) has been working on this and is aiming to get something
back to you in the next week or so.

Apologies for the delay.

Redacted section 38(1)(b)

From: Stephen Peacock <Stephen.Peacock@ico.org.uk >
Sent: 03 May 2022 11:41
To: Redacted section 38(1)(b)@gov.scot>
Cc: Jenny Brotchie <Jenny.Brotchie@ico.org.uk>; Adam Surtee <Adam.Surtee@ico.org.uk>;
Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section
38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Data protection and information assets
Mailbox <dpa@gov.scot>; Taylor A (Alison) <Alison.Taylor@gov.scot>; Kenneth Macdonald
<Kenneth.Macdonald@ico.org.uk>; Redacted section 38(1)(b)@gov.scot>
Subject: RE: Health and Wellbeing Census - SG and ICO Initial Meeting

Redacted section 38(1)(b)

I am looking to see when you plan to get back to us on the Health and
Wellbeing Census matters from earlier in this email chain.

Regards,

Stephen



Stephen Peacock
Senior Policy Officer – Scotland

Information Commissioner's Office, Queen Elizabeth House,
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*For information about what we do with personal data see our
privacy notice at www.ico.org.uk/privacy-notice.*

From: Redacted section 38(1)(b)@gov.scot>

Sent: 20 April 2022 09:56

To: Stephen Peacock <Stephen.Peacock@ico.org.uk>; Redacted section 38(1)(b)@gov.scot

Cc: Jenny Brotchie <Jenny.Brotchie@ico.org.uk>; Adam Surtee <Adam.Surtee@ico.org.uk>; Redacted section 38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot; dpa@gov.scot; Alison.Taylor@gov.scot; Kenneth Macdonald <Kenneth.Macdonald@ico.org.uk>

Subject: RE: Health and Wellbeing Census - SG and ICO Initial Meeting

External: This email originated outside the ICO.

Hi Stephen,

Thanks for getting in touch.

Both Redacted section 38(1)(b) and Redacted section 38(1)(b) are on annual leave until next week, and will get back to you as soon as they can. Unfortunately, myself and the other colleagues copied into this email do not have the information required.

Kind regards,

Redacted section 38(1)(b)

Redacted section 38(1)(b)

Education Analytical Services: Benchmarking and Improving Evidence

Scottish Government | Victoria Quay | Edinburgh | EH6 6QQ

From: Stephen Peacock <Stephen.Peacock@ico.org.uk>

Sent: 20 April 2022 08:00

To: Redacted section 38(1)(b)@gov.scot>

Cc: Jenny Brotchie <Jenny.Brotchie@ico.org.uk>; Adam Surtee <Adam.Surtee@ico.org.uk>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Data protection and information assets Mailbox <dpa@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Taylor A (Alison) <Alison.Taylor@gov.scot>; Kenneth Macdonald <Kenneth.Macdonald@ico.org.uk >

Subject: RE: Health and Wellbeing Census - SG and ICO Initial Meeting

Redacted section 38(1)(b)

I am aware that you (I think) and many copy recipients have had holiday time associated with Easter, but could do with an idea of when the Scottish Government can get back to us on the Health and Wellbeing Census.

Thanks,

Stephen



Stephen Peacock
Senior Policy Officer – Scotland

Information Commissioner's Office, Queen Elizabeth House,
Sibbald Walk, Edinburgh EH8 8FT
T. 0330 414 6439 ico.org.uk twitter.com/iconews

*For information about what we do with personal data see our
privacy notice at www.ico.org.uk/privacy-notice.*

From: Stephen Peacock <Stephen.Peacock@ico.org.uk>

Sent: 05 April 2022 16:36

To: Redacted section 38(1)(b)@gov.scot

Cc: Jenny Brotchie <Jenny.Brotchie@ico.org.uk>; Adam Surtee <Adam.Surtee@ico.org.uk>;
Redacted section 38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot; Redacted section
38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot; dpa@gov.scot; Redacted section
38(1)(b)@gov.scot; Alison.Taylor@gov.scot; Kenneth Macdonald <Kenneth.Macdonald@ico.org.uk >

Subject: RE: Health and Wellbeing Census - SG and ICO Initial Meeting

Redacted section 38(1)(b)

Thanks for sending us this update and material.

I wanted to get back to you just now, firstly to ask when you might be able to share your reappraisal regarding

- whether the Scottish Government is a joint data controller for the end to end process; and
- when you will have a time line for actions.

We would also like to know how work with local authorities regarding how and when they are using the SCN is progressing.

We will look to providing you with feedback once we have a better idea of the above matters.

The second reason for getting in touch, is to let you know that we have written to all the local authority DPOs regarding the Census and the processing for which each is a controller.

Key areas that we have asked them to ensure compliance on include:

- pseudonymisation and the use of the SCN;
- DPIAs and associated risk assessments (including any data sharing with the SG); and
- transparency information.

I have attached a copy of the letter we sent to each LA DPO.

Regards,

Stephen



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Senior Policy Officer – Scotland

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privacy notice at www.ico.org.uk/privacy-notice.*

From: Redacted section 38(1)(b)@gov.scot>

Sent: 01 March 2022 12:11

To: Stephen Peacock <Stephen.Peacock@ico.org.uk>; Jenny Brotchie <Jenny.Brotchie@ico.org.uk>; Adam Surtee <Adam.Surtee@ico.org.uk>; Redacted section 38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot; Redacted section 38(1)(b)@gov.scot; dpa@gov.scot; Redacted section 38(1)(b)@gov.scot; Alison.Taylor@gov.scot

Subject: RE: Health and Wellbeing Census - SG and ICO Initial Meeting

External: This email originated outside the ICO.

Good morning,

At the initial meeting, Scottish Government agreed to provide:

1. written responses to the questions sent by the ICO in advance by email,
2. the supporting consent letter for parents/carers, and the pupil leaflet.
3. to consider whether the Scottish Government is a joint data controller for the end to end process
4. A time line for actions.

Please find attached the written responses (these are in bullet point as discussed), the letter to parents/carers and the pupil leaflet. I also attach the instructions for teachers referenced in the written responses. The materials developed are available for local authorities to use as they have been developed. Local authorities may choose to adapt them to best meet local need. Alternatively local authorities may develop their own materials for local use. The attached are those developed by Scottish Government for use.

The consideration of joint controllership and time line are being prepared – I will forward as soon as these are available.

Thank you,

Redacted section 38(1)(b)

Redacted section 38(1)(b) Education Analytical Services: Benchmarking and Improving Evidence

I am currently working at home. Please contact me on 44(0)7917175112.

Scottish Government | Victoria Quay | Edinburgh | EH6 6QQ

Tel: + 44(0)131 244 Redacted section 38(1)(b) | Mobile: + 44(0)7 Redacted section 38(1)(b)
[contactSCOTLAND-BSL](mailto:Redacted section 38(1)(b)@gov.scot) | Redacted section 38(1)(b)@gov.scot

Enclosure 5: SG consideration of ICO actions following initial meeting

SG response to ICO actions following initial meeting:

SG to consider whether they are joint data controllers for the end to end process

1. Under the current model LAs are data controllers for the data they gather and process. SG is the data controller for the data they hold (after LAs share their local data with SG).
2. The approach is that each local authority is provided with a consistent set of materials and technology to self-administer their own HWB Census. This legally renders the Health and Wellbeing Census not as a single national SG Health and Wellbeing Census, but 32 individual local authority Health and Wellbeing Censuses. This approach ensures each LA has access to its own data first and foremost, so that it has the evidence to inform and monitor their legislative duties as soon as children and young people have taken part in their local Census, whilst minimising the burden on local authorities and ensuring a degree of commonality and consistency across Scotland.
3. Once each LA has undertaken its own Census, the SG will ask each local authority to share their data with us (similar to other statistical data collections) in order for the SG to produce national and local level results that will provide evidence for the NIF and Improvement Plan and for other key stakeholders within and outside SG.
4. OCI asked SG to consider whether they are joint data controllers for the end-to-end process.
5. SG do not have a legal basis to request LAs to undertake the HWB Census. LAs have a legal basis

SG to consider if there is another approach to create pseudonymisation at the earliest point

1. The HWB Census collects SCN. This removes the need for pupils to re-supply information already held by local authorities and the Scottish Government (such as their sex, ethnic background, home postcode, etc.). It also improves data quality, as pupils may not know home postcodes for example. This is essential for analysis by SIMD. The SCN will be used to link additional socio-economic and characteristic information already shared by local authorities (such as a child's ethnic background, Scottish Index of Multiple Deprivation, ethnic group, etc.). This enables the local authorities and Scottish Government to undertake statistical analysis and research based on these socio-economic and characteristics, for example to monitor and assess the impact of its policies on sub-populations and diverse equality groups.
2. If SCN is not collected, pupils would complete questions on characteristics such as sex, home postcode, ethnic group for example is also personal data, and means individuals are identifiable. This approach also means socio economic

and equality characteristics such as free school meal registration and ASN status would not be included. These are important for analysis by SG, for monitoring progress and closing the gap which is the key aim of the National Improvement Framework.

3. LAs share their individual level data, including the SCN, with SG. The SG does not have access to any data which contains pupil's name or address. Therefore the SG is unable to link the child's SCN to other information in order to directly identify any pupil.
4. LAs have access to administrative systems which enable them to identify individuals. The SG is currently working with LAs in considering ways, and at the earliest possible stage, they can pseudonymise / anonymise their own data (e.g. by linking the data to other internal sources to obtain the pupil characteristics (using the SCN) and then, once obtained, removing the SCN from the data. LAs will still provide the SG with their data, including the SCN, in order for it to undertake its own internal statistical analysis/research.
5. The SCN is needed to generate a hashed version which is then used for data used in the National Safe Haven. There are existing SG processes and procedures in place for data sharing to ensure that any data shared with externally approved researchers does not include the SCN.
6. ICO asked SG to consider if there is another approach to create pseudonymisation at the earliest point.
7. Following consideration, in order to pseudonymise data at the earliest point, on receipt of the data from LAs, SG will replace the SCN with a hashed SCN (or other unique identifier). This pseudonymised dataset is held by SG for internal processing. The 'key' linking the unique identifier to the SCN would be stored securely, following the existing processes. SG will continue working with LAs to consider ways they can pseudonymise their data at the earliest point.

SG to review the Privacy Notice, DPIA and other documentation to provide more clarity on the collection and use of the SCN.

1. SG will review the Privacy Notice, DPIA,
Confidentiality

1. Only LA staff can identify an individual pupil (SG do not have access to pupil names or addresses), and in the situation where safeguarding concerns were identified, local authorities would follow their existing procedures.
2. The risk of an individual being identified following safeguarding concerns is small and only applies to local authorities. There is variability in local authority processes for child welfare as local authorities develop their own processes based on the guidance. Therefore it is a matter for LAs when a safeguarding concern would be identified, based on their local procedures.

3. The Content Group considered potential child welfare concerns in developing the questions. Questions and response options were reviewed to minimise concerns being identified. The following actions were taken to mitigate the concerns:
 - Scrutiny of the draft set of questionnaires to identify potential questions that could likely raise a wellbeing concern;
 - Revisions to make the questions more subjective;
 - Amending response options to remove any options which would automatically trigger a safeguarding concern (such as age first had sex response option changed to 13 years or younger);
 - In regards the substance use questions, these were removed into a separate completely anonymous questionnaire.
 - Free text responses have been removed.
4. The lawful basis under UK GDPR for collecting the HWB Census data is for statistical and research purposes as part of a public task. As such, LAs or SG cannot use the Census as a “screening” tool to identify and monitor individual pupils. However, if in the usual course of analysing their data, a LA uncovers something which raises a child protection concern, they are legally and morally able to consider taking further action. As the SCN is collected, it is possible for LAs to identify a child or young person from the data.

Transparency

1. SG have provided materials for LAs to use which provide transparency, including the Letter to parents/carers and pupil leaflets, which fulfil the transparency and fairness standards.
2. SG noted the intention to include children and young people in future development of these materials, which was welcomed by ICO.
3. ICO noted the parental consent is not the data protection basis for collecting the data, and suggested using different wording so that was clear.

Enclosure 6: ICO age appropriate Design

ICO age appropriate Design:

1. Best interests of the child:

- Health and wellbeing surveys like this one are not new and play a crucial role in ensuring children and young people have access to the help, advice and services they need.
- It is essential, especially in light of COVID-19, that public services have a robust understanding of the issues affecting children and young people – so that appropriate support is put in place for them and their families.
- The census provides schools, education authorities and national Government the best source of evidence on children and young people's health and wellbeing.
- Information on young people's understanding and experience of relationships and sexual practices help inform learning and support services.
- This Parliament's Education and Skills Committee called for PSE to be reviewed.
- The Review of Personal and Social Education highlighted more needs to be done to ensure children and young people understand healthy relationships and consent.
- The Review was widely welcomed and recognised as a step towards better ensuring our children and young people are equipped with the knowledge, skills and resilience they need.

In undertaking the census:

- Parental consent is sought prior to the census happening.
- Information is shared with parents/carers and pupils on the census.
- Children and young people can opt out of the census, either beforehand or when they start to complete the census, or they can stop the survey at any point once they have started.
- Questions are designed so respondents do not have to answer (skip) any question and continue to proceed;
- Routing is included, so respondents are directed to relevant questions based on their response. For some topics, respondents will not see any further questions on this topic if they skip the question.
- Schools signpost for children whom the questions have raised concerns (this is included in the instructions for teachers).

The model adopted for the census follows that previously used in Scotland and elsewhere for collecting data of this nature from school aged children, in that questionnaires are completed in the class setting. The difference for the HWB census is that it is the LAs collecting the data (rather than a central national collection by SG or external organisation such as HBSC) for their use primarily, to meet the need for local data.

2. Data Protection Impact Assessments:

- The SG has published a DPIA and Privacy Notice identifying and mitigating risks for processing the data held by DG (after data is received from the LAs).
- LAs require to have Privacy notices and DPIAs for processing the data they hold.
- SG has worked collaboratively with LAs in ensuring they have the governance documentation in place to legally and lawfully collect and analyse their own data.

3. Age appropriate application:

- The risks to children that arise from SG data processing are set out in the SG DPIA.
- As this is undertaken in the school setting, by stage, SG have a high level of certainty of the age of users.
- Questions included at each stage are tried and tested (HBSC and SALSUS) and have been asked since 1990, in school settings. Individual LAs have also undertaken their own health and wellbeing collections over time.
- Within the questionnaire, topics are separated by introduction pages which include basic graphics.
- It is up to LAs to decide the pupils to complete the census. Schools are best placed to support children with ASN, using the existing supports in place for individual pupils.
- SmartSurvey accessible versions of the questionnaires developed for LAs to use.

4. Transparency

- SG has published Privacy Notices and DPIA for when it is the data controller (after receiving data from LAs).
- The detailed privacy notice, and versions tailored for parents/carers and for children and young people are also published.
- LAs required to publish Privacy Notices and undertake DPIAs prior to collecting data.
- Other communication materials and activities have been undertaken by LAs. For example, meetings with parent groups, letters to parents, pupil leaflets.
- Materials developed centrally to ensure consistent and correct messages, but LA can choose to develop their own, or to adapt them to meet local need.

5. Detrimental use of data:

- *This covers “use of data that is obviously detrimental to children’s physical or mental health and wellbeing or that goes against industry codes of practice, other regulatory provisions or Government advice on the welfare of children”. “You should not process children’s personal data in ways that are obviously, or have been shown to be, detrimental to their health or wellbeing. To do so would not be fair.”*
- The census is for statistics and research purposes only, uses are set out in the privacy notice. The questionnaires have been specially designed so information provided by children and young people is used for statistical and research purposes only by local authorities and the Scottish Government.
- This ensures any results of the research or resulting statistics will not made available in a form which identifies individual children and young people.
- The census is voluntary, and there are three points at which a child or young person can be opted out.
- Respondents can skip any question in the questionnaire and will be routed to the next relevant question to them based on their responses (which is only possible on the digital platform).
- The HWB Census follows the model for collecting data of this nature from school aged children in Scotland, with the exception that it is LAs collecting the data directly for their own purposes, and sharing with SG. Previously data collection was centrally via SG or other organisations. The model adopted provides LA with the local data they need first and foremost. The arrangements for consent and communication are consistent with those used in other data collections of this nature (HBSC and SALSUS).

6. Policies and Community Standards:

- SG uses of the data, for statistics and research purposes only, are set out in the Privacy Notice. This also points out potential data sharing with other organisations, for research purposes, and how that would happen.
- SG statistics are produced according to the Code of Practice, and the HWB Census analysis will be produced according to this standard.

7. Default settings:

- As a digital questionnaire, the HWB Census does not contain default privacy settings.
- LAs collect their own data on the smart survey platform. The response data is downloaded, the only additional information recorded in SmartSurvey is a unique reference number for each response.
- SG are working with LAs via the Implementation Group to support with good data management for the data they hold. E.g. deleting the SCN at the earliest point.
- The only data shared with the SG is the response data. No additional data is collected.

8. Data minimisation:

- Collecting the SCN allows collecting the minimum amount of data. Pupils inputting SCN means they do not have to input identifiable data such as postcode, gender, ethnic group etc.
- SG good practice also notes we should not collect data we already hold, and make best use of data. The approach taken means pupils enter SCN which can then be linked to the Pupil Census dataset to attach the variables for analysis by equality characteristic, SIMD etc.
- It also reduces the number of questions asked, and ensures high quality characteristic data for use – as not all children know or want to enter postcode for example.
- SG are working with LAs to consider their data management best practice. For example deleting SCN following data sharing with SG. This renders their local data unidentifiable.
- The SG dataset will retain the SCN. This enables wide use of the data for statistics and research, as set out in the DPIA, the SCN allows the HWB census dataset to be linked to other SG datasets for research. However, data made available for research does not contain the SCN.
- All data sharing is within the existing SG processes.

9. Data Sharing:

- Data sharing by SG is set out in the Privacy Notice and DPIA.
- All data sharing is within the existing SG processes.
- By sharing our data with researchers (both internally and externally), we are meeting the requirements of informed decision making by government and researchers, maximising the public value of the statistics, and encouraging analysis and re-use.
- While LAs will share school level results with their schools, this is disclosure controlled. Schools cannot access individual level data, or data that could identify an individual.
- SG are working with LAs to develop easy to use disclosure control tools for school level data. This mitigates the risk of undisclosed school level data being shared with schools.

10. Geolocation:

- No geolocation data is collected.
- Pupils complete the census in a school setting, within usual school hours.
- At pupil level, school name is shared with SG (this is a question the pupil completes within the questionnaire)

- SIMD decile of home postcode is known following linkage with the pupil census. Neither of these makes data identifiable.

11. Parental Control:

- The census does not have parental controls or allow parental monitoring.
- Parents/carers are notified a minimum of 10 days in advance of data collection to inform them and offer opt-out.
- The survey on the SmartSurvey platform is a single use survey – it is not something pupils can go back onto once they have come out of the survey.

12. Profiling:

- No profiling is available in the HWB Census. It is a single response activity.

13. Nudge techniques:

- No nudge techniques are used in the HWB Census.

14. Connected toys and devices:

- There is not functionality for connected toys and devices in the HWB Census

15. Online tools:

- There are no online tools for the HWB Census. Children and young people undertake the census in a class setting, with the class teacher present if support is needed.
- Prior to entering the questionnaire, respondents are required to move through the information provided on screen (also provided in the pupil leaflet) and confirm consent prior to entering the questionnaire.
- As the data is collected for statistics and research purposes, data subjects rights are more restricted. Article 21 (6) states:
“Where personal data are processed for scientific or historical research purposes or statistical purposes pursuant to Article 89(1), the data subject, on grounds relating to his or her personal situation, shall have the right to object to processing of personal data concerning him or her, unless the processing is necessary for the performance of a task carried out for reasons of public interest.”
- As the data we process is lawfully gathered and necessary for the performance of a task carried out for reasons of public interest, children and young people do not have a right to object to the processing of their personal data because it is necessary for the performance of a task carried out in the public interest.
- Also, as we require this data for the performance of a task carried out in the public interest (and for no other purpose, such as direct marketing), Article 17(3) of the UK GDPR states that we are also not required to erase any personal data as we need to retain this data for this purpose.
- As the data we process is lawfully gathered and processed for Research, Statistics and Archiving in the public interest, in accordance with Article 89(1) of the UK GDPR, and that any results of the research or resulting statistics are not made available in a form which identifies individual children, young people or adults, they do not have a right to request access to the data we hold.

Enclosure 7: Scottish Government responses to ICO key questions

1. Key questions:

- Is the candidate number necessary for research purposes?
- Has pseudonymisation/ anonymisation been applied at the earliest possible stage? There is very little detail on this in the DPIA.
- Could the processing cause substantial damage (including loss of confidentiality)
- What transparency information has been provided to school children?

2. More detailed questions:

Nature and scope of processing:

- Has the processing begun? If so, which local authorities have started collecting data?
 - **Yes. A number of local authorities have started collecting data (e.g. Stirling, Perth & Kinross). Others are still to start as they have a 7 month window (Oct 21 to Apr 22) in which to undertake their own Census.**
- Has the DPIA been to the DPO? Was any advice provided? If any advice was provided, has it been followed? If not, have any reasons been noted as to why this was not needed?
 - **Yes. The SG's DPIA was sent to the SG's DPIA team and their comments were incorporated. Each LA has done the same for their own DPIA**
- Is there a difference between what SG may use it for versus, for example, a Council? A school?
 - **Not really. Both the SG and LAs/CPPs are to use the data for stats/research purposes in order to inform and monitor local practice and to drive forward improvement and service planning.**
- Is there a reason why the National Safe Haven was not used?
 - **The National Safe Haven is not a place used to gather data. It's a place where data already gathered is stored so that it is available to externally approved researchers (upon successful application for access to the data).**

Pseudonymisation

- Is collecting the SCN necessary? For what purpose?

- Yes. For analytical purposes. Removes the need for pupils to re-supply information already held by LAs and the SG (such as their sex, ethnic background, home postcode, etc.). Collecting SCN also improves the quality of the data (for example, pupils may not know home postcode). Collecting the characteristic data required for analysis by socio-economic and characteristic information already shared by local authorities with the Scottish Government's Education Analytical Services Division (such as a child's ethnic background, geographical area (Scottish Index of Multiple Deprivation SIMD), their free school meal registration status, etc.). This information will only be linked in order to enable the Scottish Government to undertake statistical analysis and research based on these socio-economic and characteristics, for example to monitor and assess the impact of its policies on sub-populations and diverse equality groups.
- Does the data need to be identifiable at the point of 'research and statistical analysis'?
 - Yes. In order to undertake all of the required level of analysis that is required both nationally and locally.
- To what degree and at what stage is the data pseudonymised/ anonymised?
 - The SG is currently working with LAs in considering ways, and at the earliest possible stage, they can pseudonymise / anonymise their own data (e.g. by linking the data to other internal sources to obtain the pupil characteristics (using the SCN) and then, once obtained, removing the SCN from the data. LAs will still provide the SG with their data, including the SCN, in order for it to undertake its own internal statistical analysis/research.
 - There are processes and procedures in place to ensure that any data shared with externally approved researchers does not include the SCN.
- Has the SG assessed the risks posed by the processing and ensured that an appropriate level of security as set out in Article 32 (including pseudonymisation and encryption of data as appropriate) is in place and that the safeguards set out in Article 89 are in place?
 - Yes. The SG has its own long standing processes and procedures in the processing, storage and handling of personal data it holds for stats/research purposes (including testing of its IT systems).

Re-identification

- Can you provide more detail on the process followed to re-identify/share data if a safeguarding issue is identified?
 - SG does not have access to any data which contains pupil's name or address. Therefore SG is unable to link the pupil's SCN to other information in order to directly identify any pupil.
 - Local authorities have access to administrative systems that enable them to directly identify a pupil based on their SCN.
 - LAs will follow their existing procedures if a safeguarding issue arises. As local authorities have their own safeguarding processes in place, based on the Scottish Government guidance, these differ across local authorities. Therefore, what triggers a safeguarding concern will differ across local authorities. If a safeguarding concern is identified local authorities will follow their existing process.
 - The risk of a safeguarding concern arising is very small. The questions were developed to minimise the risk of safeguarding issues being identified e.g. age first had sex amended to 13 or younger to ensure a response would not automatically trigger a safeguarding issue. However it is not possible to state a safeguarding concern would not be identified at all. Therefore this was made clear in the documentation.
- The DPIA notes that the SG will not be able to "directly identify individual children", what does this mean? How is data matched for research purposes? Is data to be matched imported into SG systems ? Where from?
 - Scottish Government does not have access to any data which contains pupil's name or address. Therefore Scottish Government is unable to link the child's SCN to other information in order to directly identify any pupil, after local authorities have shared their data with the SG. The SG DPIA covers the SG processing of the HWB Census data, following LAs sharing their data with SG. The LA processing is set out in the LA DPIAs and Privacy Notices.
 - Local authorities do have access to their administrative systems which would allow identification of individual pupils. This will be set out in the local authority DPIAs and Privacy Notices.
 - The HWB census datasets shared with SG are individual level data, containing the SCN.
 - The SCN will be used to link the Census data to the to the Pupil census data (which does not contain variables which allow direct identification of pupils).

- The SG holds a pupil census dataset. SG is not importing data from any external systems to link to the HWB Census data.
- This enables the additional socio-economic and characteristic information (already shared by local authorities with the SG) such as a child's ethnic background, geographical area (such as Scottish Index of Multiple Deprivation SIMD), free school meal registration status, etc) to be attached to the dataset.
- This will only be linked in order to enable the SG to undertake statistical analysis and research based on these socio-economic and characteristics, for example to monitor and assess the impact of its policies on sub-populations and diverse equality groups.
- Does the published DPIA cover the processing end to end? If not, do LA's / schools have their own DPIA's? Does the published Privacy Notice cover the processing from end to end?
 - The SG Privacy Notice and SG DPIA (available on the SG's website) sets out the processes in place for ensuring data management and security after the SG has received the data from local authorities (when it becomes the data controller for the data it holds).
 - LAs have their own Privacy Notices and DPIAs covering the LA data collection and management.
 - Schools do not require a DPIA. Schools do not collect the data, nor do they have access to identifiable data. The LA holds the data.

Data sharing

- Who will data be shared with?
 - Data collected by the LAs is shared with the SG.
 - Researchers and academics can apply to access SG data, for research purposes. It is important that can occur to enable full use of the data, and to support research which otherwise would not happen within SG, contributing to a robust evidence base to support evidence based decision making.
 - Any sharing or linkage of data by the SG will be done under the strict control of Scottish Government, and will be consistent with our data policy and the National Data Linkage Guiding Principles. Decisions on the sharing or linkage of data will be taken in consultation with relevant colleagues and individuals within and outwith Scottish Government as part of a Data Access Panel. At all times the rights of the individual (children or adults) under the UK GDPR and other relevant legislation will be ensured.
 - Sharing of HWB data will follow the existing SG process for sharing data.

- What Data Sharing Agreements are in place?
 - DSAs are being put in place between LAs and SG. All LAs sharing their data with SG in May/June will have a DSA in place before any data is shared.
 - DSAs for future requests to access the HWB census data will be put in place prior to any access to the data, in keeping with the existing procedures in place for access to EAS data, via the existing SG processes for sharing data.

Controllership

- Why does SG not consider itself to be a data controller from the outset of the project, given the degree of control it exercises over the purpose and means of the processing?
 - The SG did not consider itself to be a data controller in relation to the initial gathering of the data as each local authority had its own autonomy to undertake its own Census and to adapt the questionnaires as they wished. However, at this stage of the process, the SG does consider itself to be the Data Processor for each LA (and DPAs are in place with each LA).
- Does the contract in place between Scottish Government and 'SmartSurvey' outline data protection responsibilities?
 - Yes, as well as the DPA between the SG and LAs.

Risks

- Our [guidance](#) on assessing risk should be followed.

Retention

- What is the retention period for the data being collected? Will the data be held indefinitely? If so, under what basis, and have the risks been assessed?
 - As with other data held by the SG for stats/research purposes, the data will be held for as long as is required for this purpose. If the data is no longer required for this purpose then it will be destroyed.
- Will it be held in an identifiable form?
 - The data held by the SG for stats/research purposes retains the pupil's SCN in order for it to undertake its own internal research (involving data linkage). However, the SG does not have access to pupil's names and addresses, and does not include the SCN on data it shares for use with external approved researchers (e.g. stored in the National Safe Haven).

Children's code

Has the ICO's age appropriate design code been considered? Although the survey is not likely to be in scope many of the standards will be relevant and aid compliance to data protection law.

- *See separate document for responses to the 15 standards.*
- Each stage has a questionnaire tailored for age. Whilst a similar question may be asked of each stage, it is tailored to stage.
- The questions included in the questionnaires have been asked of children in school settings since 1990. As existing questions they have been tested prior to inclusion in existing surveys (HBSC, SALSUS). They are tried and tested questions.
- The Content Group also reviewed the questionnaires for age appropriateness.
- The census has been ethically reviewed.

Security

- What security measures (technical and organisational) are in place for who have access to the data?
 - The DPIA sets out the security measures for when SG holds the data. LA DPIAs will set out the measures for each LA.
 - The census is collected on the SmartSurvey platform. In relation to the gathering of data for the Census by each local authority, the Scottish Government will act as the Data Processor (and SmartSurvey will act as the sub-processor).
 - The Data Controller for the data gathered by each local authority will be the local authority themselves.
 - There is a call-off contract in place between the Scottish Government and SmartSurvey, and a Data Processor Contract is in place between the Scottish Government and Scottish Local Authorities.
 - LAs are responsible for ensuring data security and managing risk for the data they hold. SG has been working collaboratively with LAs to ensure they are collecting data legally and lawfully.
- Following data sharing by LAs, the data SG will hold will be stored within the Scottish Government's Analytical Data Management System (ADMS) where access is only possible within the SCOTS network (a central government network, compliant to the Public Services Network (GSI) requirements and managed to ISO standard 27001). The purpose of the ADMS is to support secure and UK GDPR-compliant data management with a dedicated team and IT infrastructure.
- When data is initially uploaded only data admins in the ADM team can grant access. Permission rights are agreed with the data owner before upload, and applied when the upload is complete.

- There are six named individuals with administrator access. Four of these are Scottish Government staff and two are employed by the SG's supplier, Storm ID. All six are required to undertake Data Protection Training each year. All Scottish Government staff are members of the Digital, Data and Technology professions and conduct relevant professional development. The team refers questions beyond our expertise to the SG's Cyber Security and Defence Branch.
- Access to the data sets is securely restricted to a limited small number of Scottish Government staff based in the Education Analytical Services Division and IT / SAS support teams. Permission to access the data is only given on the submission of a Data Access form signed off by the appropriate Data Controller. It can only be accessed within the Scottish Government's IT network (SCOTS) using network authentication.
- Further detail on access to the census data held by SG is set out in the DPIA.

Individual rights

- As the data can be identifiable at some stages, have individuals right to access and other applicable rights been considered?
 - Yes. Parents/carers and pupils are all informed in advance of taking part in the Census that they are identifiable from the data, and what their confidentiality in taking part in the Census cannot be 100% guaranteed. However, they are informed that it should be very unlikely for their actual identity will be sought (as the questionnaires have been specifically designed to minimise that need).
 - There are 3 opportunities for pupils to "opt-out" of the Census. Parent/carer can "opt-out", the pupil themselves can "opt-out", and the pupil can take part but refuse to answer questions they don't wish to answer.
 - They are also informed that any results produced by analysing the data will never reveal the identity of an individual pupil.

Transparency

- The published Privacy notices seem to contradict what has been written in DPIA around identifiability of data.
 - The SG cannot identify pupils from the data shared by LAs. LAs can from the data they hold on their administrative systems. This is detailed in the LA Privacy Notices and DPIAs.
 - In order to be transparent, this was included in the SG DPAI and Privacy Notice.

- Is any other transparency information provided to participants? In particular how are children informed that their data may be re-identified and what the implications would be ?
 - Prior to data collection LAs provide
 - (1) the letter to parents/carers which sets out the opt-out for parents, and states pupils are asked for SCN, and that confidentiality would be breached in the case of child welfare concerns being identified.
 - (2) pupil leaflets for children and young people informs them they can opt-out separately, and that confidentiality would be breached in a case of child welfare concerns.
 - (3) prior to completing the survey, pupils are again informed that data confidentiality could be breached in a case of child welfare concerns, prior to seeking consent to take part before they can enter the survey.
 - LAs have their own child welfare processes, which may differ. LAs will follow their existing processes in how to respond to a welfare concern. These processes may differ from authority to authority.
 - The questionnaires were designed to minimise any risk of welfare concerns being identified. However, where data of this nature is collected, it is not possible to rule out 100% a response which a local authority feels it triggers a concern.
- Is this information understandable for a child in P5 (aged 10)?
 - The pupil leaflets were designed to be user friendly. Future developments will look at involving children and young people in developing these support materials.
 - As the information is sent to parents/carers and children and young people as noted above, parents/carers are able to discuss with their children prior to the survey happening.
 - The instructions for Teacher material also includes text for teachers to read out, which includes the privacy messages.
 - The census is administered in the class setting. The class teacher can support children and young people in understanding any queries they may have prior to starting the survey.

Enclosure 8: Meeting with parents groups - draft minutes - 2 December 2021
HEALTH AND WELLBEING CENSUS
MEETING WITH PARENTS GROUPS
01 DECEMBER 2021 AT 14:00, MICROSOFT TEAMS

Attendees

- Scottish Government (SG)
- Connect
- National Parent Forum of Scotland (NPFS)

1. Welcome and Introductions

- All organisations represented

2. Media reception of HWB Census

- Out of scope
- Out of scope
- Out of scope
- Out of scope
- Out of scope
- Out of scope

3. Responding to concerns

- An FAQ document and parental consent slip will be issued to all parents/carers through their local authority. This clarifies which topics will be asked to which year groups, and allows parents to withdraw consent to have their child participate.
- Information has also been provided to local authorities on how to respond to public concerns

4. Data protection

- Data related to sexual behaviours are recognised as a special category under the General Data Protection Regulation (GDPR) as this is recognised as sensitive content. SG recognise that as a general rule, processing of this type of data is prohibited. However, exceptions to this rule are made when explicit consent has been given; the processing of data aligns with laws data processing for a specific purpose related to public interest or health; and/or adequate legal safeguards are in place for processing sensitive personal data in areas such as public health, employment and social protection.
- Questions were raised regarding why pupils are asked to supply their Scottish Candidate Number (SCN). This is a unique number allocated to children and young people when they enter the Scottish education system (usually P1)
- For local authorities to be able to use this data in meaningful ways to improve support, it is necessary to be able to break down this data by a

number of factors including age, ethnicity, socio-economic status, etc. If the census did not ask for SCN it would need to include a number of additional questions regarding ethnicity, postcode, gender etc.

- Use of the SCN avoids identifying children by name.
- Information provided to SG and local authorities is aggregated to identify trends. In analysing this information, SG and local authorities will not seek to analyse individual answers or to identify specific pupils as there are no statistically relevant reasons to do so.
- With the exception of child protection concerns, it is explained to parents and to children and young people that the answers they provide will be treated confidentially.
- It is explained to children and young people taking the survey, and to parents, that the only circumstances in which the local authority would seek to identify a child or young person by name is if they had a serious child protection concern in relation to an answer.
- This is explained to parents in the letter issued to them by their local authority informing them about the census. They may withdraw parental consent if they wish.
- This is explained to children and young people prior to the first question of the census. At this point they can choose not to participate, in which case they will not see any further questions.

5. Rationale for study

- The National Improvement Framework includes commitments to improving the health and wellbeing of children and young people. We need data to determine if we are meeting these commitments
- The needs of children and young people regarding their health and wellbeing are consistently evolving, and data gathered from other studies indicates that covid and the impact of school closures has had a significant impact on the health and wellbeing of children and young people
- The survey allows us to ascertain a national picture of what the most pressing needs of children and young people are in terms of their health and wellbeing. This allows us to direct funds and to tailor curriculum content accordingly to ensure it remains effective.
- Data gathered helps SG and local authorities determine if their current approach to delivering Relationships, Sexual Health and Parenthood education (RSHP) is appropriate and effective in meeting the expressed needs of children and young people
- Previously very similar data was gathered through the Health Behaviours in School-age Children (HBSC) survey. This is an international survey that around 50 nations (including England and Wales) administer to gather data about the health and wellbeing of pupils aged 11-15. However due to the relatively small sample size used for these studies, this approach provided an incomplete picture at

a national scale, as well as proving of very limited use in providing meaningful data to local authorities on the health and wellbeing of children and young people specific to their council area. This led to a number of local authorities pursuing their own disparate approaches to gathering this data.

- In 2015 SG carried out a consultation on how health and wellbeing data was being gathered across Scotland's 32 local authorities. The feedback from this consultation was that there was a need to 'declutter the landscape' through taking a national approach. The consultation identified a need for better, more consistent, and more localised data across all local authorities.
- Information gathered through the HWB census will provide a robust national picture of the health and wellbeing of Scotland's children and young people. This will help inform policy decisions.
- The ability for local authorities to gather statistically significant data specific to their local area will help inform plans to improve local services in areas such as health, education, leisure services etc.
- Local authorities and the schools within them need data that can be broken down on a local level to understand what the main issues are, and to know where to target support to meet need
- The PSE Review conducted in 2019 includes recommendations around improving approaches to monitoring and tracking the health and wellbeing of children and young people. The gathering of data through the HWB census will provide a useful base level measure against which to track the progress and effectiveness of implementing the recommendations of the PSE review.

6. Development of questions

- The majority of questions used in HWB census have been taken or adapted from previous HBSC surveys. These questions have been tested on children and young people, and have been assessed to ensure they are age appropriate, relevant, and that ethical considerations on the gathering of personal information have been considered. HBSC surveys have been carried out every 4 years since 1982.
- In developing the questions SG and stakeholders aimed to use more neutral language to not assume children's circumstances e.g. partner, family
- The survey has been piloted in 3 authorities. This was mainly to ensure there were not any technical issues.
- The covid education recovery group with Scottish Youth Parliament representation, and the Scottish Children's Parliament have been consulted throughout the process
- SG have also spoken to directors of education for all local authorities

- The census takes a holistic approach to understanding children's wellbeing with questions designed to cover emotional wellbeing, mental wellbeing, children's voice, and physical health

7. Pastoral support

- It was acknowledged that due to the personal nature of many questions including those on relationships including peer and family relationships, sexual health, and mental and emotional wellbeing, children and young people may require pastoral support following the study.
- It was advised that schools would be expected to provide pastoral support in line with their usual procedures for supporting the health and wellbeing of young people.
- The introduction to the survey advises children and young people that if they need any support or advice on any of the topics asked about in the survey that they should speak to their school who will be able to provide a list of ways in which they can speak to someone who will be able to help them

8. Lessons learned

- Questions around relationships and sexual health make use of binary language (e.g. do you have a boyfriend/girlfriend). Future census and other communications will endeavour to use more gender neutral language to include non-binary learners.
- Parents groups raised that it would have been useful for SG to contact them prior to the HWB Census being issued to local authorities in order to anticipate parental concerns and aim to provide clear, factual information and support to resolve these. SG acknowledged this point and will seek to engage with parent groups at an earlier stage in the process for any future HWB Census
- Out of scope.

9. Any other business

- Out of scope.

Enclosure 9: Health and Wellbeing Census Position as at July 2019

Health and Wellbeing Census

1. Rationale

The Children and Young Peoples (Scotland) Act (2014) made it a requirement for all local authorities to complete a children's services plan every three years and to base this planning on robust evidence on children's wellbeing defined as SHANARRI. The Programme for Government 2017-18 emphasised Scottish Government's ambition for Scotland to be the best place to grow up. To assess progress on the relevant national outcomes and understand how to improve the health and wellbeing of children and young people, we need a high quality evidence base.

Further, the importance of understanding the circumstances, characteristics, behaviours and experiences of children in Scotland has been underlined by the First Minister's vision for the improvement of educational attainment in Scotland. The twin goals of raising attainment for all children, and closing the poverty-related attainment gap between children living in the most and least deprived areas, signals the need for robust and comprehensive evidence – not only on attainment and achievement, but on a much wider range of aspects of children's lives which will shed light on the differentials in attainment and achievement and how these might be addressed.

In January 2016, the National Improvement Framework for Scottish Education (NIF) was launched, with improving the Health and Wellbeing of children and young people as one of the four key priorities. This was followed by a specific commitment in the 2019 NIF Improvement Plan *We plan to introduce a brand new Health and Wellbeing Census, covering children from late primary through to secondary schools, starting in the 2019/20 academic year.*

It became apparent in planning for the Act that where health and wellbeing surveys existed, some of these were of variable quality, which meant that decisions were being based on poor quality data, if any. A second issue was that the landscape was very cluttered, with wellbeing surveys and/or wellbeing questions being administered by international organisations, Scottish Government, other national bodies, health boards, local authorities (education departments, children's services departments) and other third sector surveys. This was placing unnecessary pressures on respondents and had begun to impact on the quality of the surveys. Work was undertaken to address these twin issues and a consultation and feasibility study identified a single national census as offering a solution.

2. Health and Wellbeing Census (HWB Census)

The HWB Census will cover all aspects of health and wellbeing for children and young people, and importantly will provide local authorities (LAs) and Scottish Government with local statistical evidence in order to focus on where improvement is needed, and to monitor progress over time. Local authorities can also provide school-level data to schools for use in improvement planning. The HWB Census will include all pupils from P5 through to S6, starting in the 2019/20 academic year.

Each individual local authority is being asked to conduct their own Health and Wellbeing Census. To enable them to do this, the Scottish Government is providing each local authority with the technology to do this in a consistent way. The Scottish Government has also been working with a range of stakeholders in designing a set of 'core' questions (and questionnaires) which each local authority will use in order to gather the same statistical information that is first required locally, and then

subsequently shared with the Scottish Government for national statistical and research purposes.

Traditionally, such a Census would be centrally managed (via an approved contractor) by the Scottish Government. However, due to advancements in technology that provide substantial efficiency savings, i.e. using SmartSurvey, the approach being adopted in conducting this national data collection is new and revolutionary. This approach also enables data to primarily be gathered and owned at a local level to drive forward local improvement.

The questionnaire includes questions on diet, exercise/sleep, mental health, emotional behaviours, electronic devices/internet, friends and family life, bullying and school. As well as questions on smoking, alcohol, drugs and sexual health for age appropriate stages. The full current draft of the question set can be found in **Annex A**.

In March 2019, **pilots** were carried out in schools in Dundee, South Lanarkshire and Argyll and Bute. The purpose of the pilot was to:

- test the functionality of the SmartSurvey platform
- test the time taken to complete the questionnaires across all stages
- learn from pupil participation experiences to ensure that the questions being asked are easy to understand, covers topics of importance to children, and used up-to-date terminology ethically robust, and
- test the bandwidth and offline functionality for authorities where remoteness may be an operational issue.

A general summary of the feedback from the pilot authorities is as follows:

- No major technical challenges (QR Code seemed easy to use)
- Time taken to set up was variable – more challenging for P5/P6
- Time taken for children to complete survey: 15 to 40 mins
- Younger children more likely to disengage if too long
- Younger children struggled with wordy questions
- Older children more engaged
- Proximity of children to each other – issues with confidentiality and talking to each other
- Some comments were made that the questions were quite personal and made them feel uncomfortable
- Some comments were made that the questions were good and appropriate
- Some comments were made that the questions would not be answered honestly (e.g. bullying, drinking)
- Some children were provided with additional support in order to take part

3. Legal considerations

3.1. Legal basis and GDPR

The Scottish Government has assisted local authorities to identify the legal and lawful bases for them conducting their own Health and Wellbeing Census. At the end of 2018, the Scottish Government also met with SOLAR to discuss the legal and lawful bases of the Census. The issue of collecting personally identifiable information, and their “duty of care” issue was raised for which has

been a matter of consideration throughout the designing and preparations of the Census (See section 5.3).

The legal bases for local authorities to gather evidence on health and wellbeing and for this to be shared with Scottish Government are set out in the [Local Government in Scotland Act 2003](#), the [National Health Service \(Scotland\) Act 1978](#) and the [Standards in Scotland's Schools etc. Act 2000](#).

The lawful bases for this activity is set out in the General Data Protection Regulation, namely [GDPR Article 6\(1\)\(e\)](#), [GDPR Article 9\(2\)\(g\)](#), [GDPR Recital 162](#) and [GDPR Article 89\(1\)](#).

GDPR Articles 6(1)(e) and GDPR Article 9(2)(g) provide 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 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. 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.

Further detail can be found in **Annex B**.

The Scottish Government also has additional responsibilities under the [Statistics and Registration Services Act 2007](#), as an Official Statistics Producer. These are detailed in **Annex C**.

3.2. Consent

The Health and Wellbeing Census itself, and participation within it, is not mandatory. There is nothing in legislation that compels a local authority to undertake its own Census. Also, there is nothing in legislation that compels children and young people to participate in it. Local authorities have the lawful basis of “public task” under GDPR to conduct their own Health and Wellbeing Census, so do not need to rely on the lawful basis of “consent” under GDPR. However, as it is not mandatory that children and young people take part in the Census, parents/carers or children and young people themselves can “opt-out” of the Census if they so wish.

Parents/Carers and children will be suitably informed of the purpose of the Census, and any limitations on guaranteeing confidentiality in what children say in their responses.

4. Governance processes

4.1. Stakeholder Groups

The **LA Implementation Group** has representation from Director of Education nominees from all 32 LAs, LA legal representatives, SG analysts and policy officials. This group’s role is to oversee successful implementation in LAs.

The **HWB Census – Content Group’s** remit is to agree the 2019/20 question set and agree the development, testing and introduction of new questions for inclusion in future HWB Censuses (and HWB Question Library). The membership of this group includes LAs, one HB, NHS Health Scotland, St Andrews University, SG analysts from EAS and Health and Social Care Analysis, Headteachers, SHINE, Education Scotland, Educational Psychologists and RSHP.

Full detail of these stakeholder groups’ remits and membership can be found in **Annex D**.

4.2. Local Authority Directors of Education (DoE)

ADES were consulted on their views on the HWB Census in March 2019, via communication from the Deputy Director: Improvement, Attainment and Wellbeing Division.

The majority of Directors of Education have been updated on the HWB Census plans through the 2018 and 2019 suite of NIF DoE calls (no calls scheduled with Glasgow, Highland, Moray and Scottish Borders in 2019).

The vast majority of Directors have not raised fundamental issues with the HWB census in the DoE calls and none have indicated that they would not be participating.

Local authority “duty of care” was covered by Scottish Government on all DoE calls; two Directors of Education actively raised their concerns on this issue (see section 5.3).

4.3. Professional Associations

Professional Associations have also been updated on the HWB Census plans since early 2018. It was feedback from these organisations that extended the Census to include S5 and S6 pupils. They, as expected, are mindful of the workload implications on schools to undertake the Census, together with any potential workload issues as a result of its findings. However, they do see the value the Census will have in driving forward improved outcomes for children and young people.

5. Considerations

The section sets out emerging concerns around the HWB Census and what SG and partners have done, and plan to do, in response.

5.1. Census rationale; alignment to CfE Four Capacities and SHANNARI

As described in Section 1, the rationale for the census dates back to 2014 and the Children and Young People’s (Scotland) Act. The Health and Wellbeing Census was designed to streamline the range of existing local, national, international and third party surveys on health and wellbeing issues.

It is designed to capture evidence on health and wellbeing for other services: children’s service planning, health boards, as well to inform the National Improvement Framework key priority Improvement in children and young people's

health and wellbeing, so alignment only to the CfE Four Capacities would not meet its intended purpose.

The questions have been mapped against SHANARRI from the beginning of the questionnaire development process, our starting point was to ensure coverage across these indicators.

The table in **Annex E** shows an outline of the topics/themes covered by each SHANARRI indicator.

5.2. Question set

All questions have been tried and tested in previous Scottish surveys, and have been piloted in the Census where they have been previously used in similar age groups. The Content Group, which is composed of experts in this field of survey design, has assessed age-appropriateness, and in some cases we have simplified the language and response options. Piloting has been led by three Local Authorities on behalf of the Implementation Group to test the appropriateness of questions. This has generated some very useful feedback (including the views from children themselves) (see Section 2) which we have responded to.

We are aware that utilising questions from a range of existing surveys will result in a product that is not necessarily as cohesive as would have been the case if we had designed it from scratch, however this approach has produced a set of questions which are pre-tested, known to be robust, validated and cognitively tested, and meet the requirements of all the policy areas that the Census will inform. Developing a new question set would be a lengthy and costly process.

5.3. Confidentiality and duty of care

As described in Section 3, the legal basis for the collection of these data by local authorities is for statistical and research purposes as part of a public task. The primary purpose is for data analysis for monitoring and improvement purposes.

However, given the sensitive nature of some of the information being collected, this touches upon local authorities' "duty of care"; a want/obligation to take action based on concerning information reported by an individual.

If these data are personally identifiable data (which is permissible if that is needed for the stated purpose), there may be occasions where during the processing of the data that a child wellbeing concern is discovered. [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.

In response to these concerns some sensitive questions have been removed from the HWB Census questionnaire.

5.4. Impact assessments

The Scottish Government, and local authorities, are conducting their own Data Protection Impact Assessments (DPIAs). The Scottish Government are also undertaking a Research Ethics review to ensure that matters and issues in relation to

conducting this type of Census are fully considered. An Equalities Impact Assessment is included as part of the Scottish Government's Research Ethics process, and is being developed in collaboration with local authorities.

5.5. Participation of pupils with ASN

Individual local authorities will be responsible for implementing the census and, as such, should consider how they will be as inclusive as possible (similar to any other local activity undertaken by local authorities). We would advise that pupils should be given the same level of support they would normally have for this type of exercise in class.

5.6. Resource implications

One local authority has raised this as an issue. The Scottish Government is intending providing each local authority with their own 'analysis' tool which will easily enable them to produce school and local authority level results, which have been automatically data disclosed, so that schools will be able to see their own results in the most timely and efficient way. This tool will be provided to local authorities over Summer 2019.

The Scottish Government is also exploring other options for providing additional support to local authorities for interpreting and using their data for service planning purposes.

6. Current position

We are expecting all 32 local authorities to participate in the 2019/20 HWB Census; none have formally informed us to the contrary.

- Two authorities have expressed reservations which indicate there is a risk of non-participation: East Lothian (expressed broad concerns about timing/content and indicated they already conduct their own HWB survey) and Highland (local resource to administer survey). Scottish Government is liaising with Highland Council on this point.
- Six authorities have specifically raised concerns around duty of care (including two LAs which raised these legal concerns at the Director of Education phone calls). (See section 5.3)

7. Next steps

Next steps are to:

- Ensure a common understanding of the purpose of the HWB Census between analysts, policy, Education Scotland and external stakeholders
- Implement enhanced governance structures for the survey to ensure analysts, policy and Education Scotland continue to jointly oversee future development (including question development) of the HWB Census (should include but not be limited to NIF SROs and NIF PB)
- Finalise question set with Education Scotland, Scottish Government and HWB Content Group
- Update NIF Programme Board
- Ministerial Submission to DFM (copy Cabinet Secretary for Health and Sport)
- Communication with ADES on latest position of survey including circulation of final question set, confirmation of participation, and update on decommissioning of other HWB surveys

Annex A – Questionnaires



HWB Census - P5
Draft Questionnaire



HWB Census - P7
Draft Questionnaire



HWB Census - S2
Draft Questionnaire



HWB Census - S4
Draft Questionnaire

Annex B – Lawful bases

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 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.

Such **assessments** should be made retrospectively for ongoing data collections and uses within a reasonable timescale.

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.

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.

Annex C – Official Statistics Producer

The Scottish Government also has responsibilities as a producer of Official Statistics as detailed in the [Statistics and Registration Services Act 2007](#), where [Section 10](#) establishes the [Code of Practice \(CoP\) for Official Statistics](#). This requires us to:

Meet user needs, as defined under principle 1 of the CoP, including: dissemination of official statistics to meet the requirements of informed decision making by government, public services, business, researchers and the public and to maximise public value.

Make statistics available to all users, as in principle 8 of the CoP, including: make statistics available in as much detail as is reliable and practicable, subject to legal and confidentiality constraints and ensure that official statistics are disseminated in forms that enable and encourage analysis and reuse.

By sharing our data with researchers (both internally and externally), we are meeting the requirements of informed decision making by government and researchers, **maximising the public value of the statistics**, and encouraging analysis and re-use.

All onward sharing will be on a case by case basis and with a clearly identified legal gateway and data sharing agreement in place. We will only share the data with researchers if their research question is of public value, and they can demonstrate that they will handle the data securely.

Annex D – Stakeholder Groups

HWB Census – Content Group (meet approx. once every 3 months, plus email correspondence)

To agree the content of the ‘core’ questionnaires, and approved questions for inclusion in the Question Library

To agree the development, testing and introduction of new questions for inclusion in future HWB Censuses (and the Question Library)

- LAs (Falkirk, P&K) – as they took part in Dartington/RCS
- Greater Glasgow & Clyde Health Board (as they undertake their own HWB Survey of S1-S6 pupils)
- NHS Health Scotland (researchers)
- St. Andrew’s University (HBSC researchers)
- SG analysts (LAU, C&F and Health ASUs)
- Headteachers (2 secondary schools)
- SHINE (researchers)
- Education Scotland
- Educational Psychologists
- Sexual Health (RSHP representative)

LA Implementation Group (HWB & PIE Censuses) - (meet every couple of months, in person, teleconference, plus email correspondence)

To enable the SG and 32 LAs to support each other, and collaborate, in order for the PIE and HWB Censuses meet national and local needs, and are successfully implemented within each LA.

- All 32 LAs (analyst / information / performance staff) – could be more than 1 for each LA
- LA legal colleagues (if attended)
- LAU: NIF team
- Policy colleagues (if required)

HWB Census – Child Protection Group (only met once, but have email correspondence when needed)

To enable the SG and LAs to discuss issues in relation to LAs conducting their own HWB Census and the risk this imposes on their “duty of care”, and how such risks could be mitigated against.

- LAs (East Ayrshire, Falkirk, Clacks, P&K, Stirling, East Dunbartonshire) – these LAs were most vocal with their concerns
 - Analysts and some legal representation
- LAU: NIF team

Annex E – HWB Census topic and SHANNARI area

Enclosure 10: Data Protection (DP) - DPIA - health and wellbeing census

From: Redacted section 38(1)(b)@gov.scot> **On Behalf Of** Data protection and information assets Mailbox

Sent: Tuesday, March 26, 2019 2:01 PM

To: Redacted section 38(1)(b)@gov.scot>

Cc: Redacted section 38(1)(b)@gov.scot>

Subject: Data Protection (DP) - DPIA - health and wellbeing census - parental involvement and engagement - comments from DPO and team

Hi Redacted section 38(1)(b)

Redacted section 38(1)(b) and I have made some comments on the DPIA for [out of scope]. I understand that you have used this as an exemplar, so I have copied the comments below. Could you address what we have said where appropriate and resubmit your DPIAs and any DSAs ?

I should also stress that each arrangement needs to be considered in respect of the individual circumstances – legal basis/gateways, parties involved, methods of storage and transmission etc, everything really – all will differ so it can get tangled easily if you start copying answers across.

Thanks

Redacted section 38(1)(b)

General:

1. I think that GCC have raised a valid point but I also think it is resolvable through applying standard approaches without recourse to ICO.
2. A clear demarcation of responsibilities between partners isn't shown here and the work needs agreements between parties to provide that. Data sharing agreements needed.
3. If I have identified the correct asset entry for this activity then it is overdue for review, is marked as archived and the IAO Mick Wilson is not trained.

On the DPIA:

1. Section 3.1 make reference to 'SG having legal powers'. If there are any legal requirements that we can state to strengthen the case then we should bring them in.
2. Section 3.1 – this is a good chance to talk about the benefits to the public of this data sharing and processing, which helps to justify any risks to privacy that you identify. Any benefits can help to justify any risks to privacy that the IAO is accepting rather than eliminating or mitigating.
3. The SQLServer versions in use are Ok so long as patched so we might want to assure ourselves here that a patching policy is in place and that supported versions of the products will be in use.
4. Section 3.3 – it would be helpful to clearly define the roles here – who is/are the data controllers ? Who is the data processor ? Is ScotXed a data processor ? What agreements are in place between the controllers for the data sharing that underpins

this, and the legally binding contract with SG and any data processors ? Are Pulsant a sub-processor, and what contract is in place with them ?

5. Section 3.3 - The statement on retention period is too vague. We should be able to say how long we keep it and how it is protected when it goes to archive.

6. Section 3.3 – the data asset should be owned by the IAO so Mick in this case.

7. Section 3.3 - The statement on further sharing is too vague. We should be explicit on who we will share the data with and what legal basis we have to do that. There is hints towards linkage too. Can we be clear at this point whether we have used anonymization or pseudoanonymisation methods.

8. Section 3.4 – what is the legal gateway for the data sharing ? This is a critical point, and you should cite the legislation that gives SG this power, and how.

The research exemption is not a legal gateway to share data – it exempts an organisation from some of the provisions (purpose limitation, retention limitation, some of the data subject rights) but only if all four of the safeguarding conditions are met. If you wish to use the research exemption you must explain how you are complying with the safeguards.

<http://saltire/my-workplace/it-and-information-management/data-protection/Pages/Data-protection-exemptions.aspx>

As a general note on this section – you talk about a lot of notional actions “we may share data, but only if xyz” and “we consider the six guiding principles” which is all good stuff, but you need to state unequivocally what positive actions you are actually taking in this specific instance.

9. Section 4.1 we should state that SG is the controller once the data is received. I’m not sure how the care inspectorate get the data. Do we have any contractors involved in this and if so are we clear about them being processors and knowing their and our responsibilities.

10. Section 4.3 – the technical info in this DPIA is very helpful for me but we may need to think about redacting if published.

11. Section 5.3 – this is well answered in 3.1 but we should also mention that SCOTS hold cyber essentials plus accreditation.

12. Section 5.7 statement on SARS needs a second look as I’m not sure why we are waiving rights.

13. This section is all technically correct and the references to legislation are right – I would like to see more here in plain English about how you are complying with the safeguarding conditions that allow you to disapply these provisions.

14. Section 5.9 – lack of clear data sharing and controller-processor relationships and associated responsibilities is a risk that should appear here – mitigated by DSAs and contracts between controllers and processors.

15. Section 6.1 – not sure what legislation the first paragraph refers to.

16. Section 6.5 – not sure what state the data is in when we archive – has it bene anonymised by then?

17. Risk 3 needs a DSA in place.

18. My ignorance of ScotXED here but can we conform that it is subject to penetration testing, change control etc.

**Redacted section 38(1)(b)| Head of Data Protection and Information Assurance
| iTECS | Scottish Government**

V Spur | Saughton House | Broomhouse Drive | Edinburgh | EH11 3XD

From: Redacted section 38(1)(b)@gov.scot>

Sent: 18 March 2019 11:57

To: Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>;
Redacted section 38(1)(b)@gov.scot>

Cc: Redacted section 38(1)(b)@gov.scot>

Subject: RE: Meeting with data protection officer - issues with local authorities providing identifiable data

Thanks Redacted section 38(1)(b).

Redacted section 38(1)(b)/ Redacted section 38(1)(b): I have a couple of DPIAs (in relation to the new Health & Wellbeing (HWB) Census and Parental (PIE) Census) for which I've been awaiting comments from the DPIA team for the past 5 weeks or so. They are very similar to these (and attached to show this).

Local authorities have asked to see these as they feel they will help them produce their own DPIAs that they need to do as the original Data Controllers for these 2 new Censuses (as such these were shared with LAs last Thursday, but I stressed to them that there were still in draft!).

Also, the attached DPIAs are to only cover the part of the process when LAs would share their data with the SG for our own statistical and research purposes (i.e. the same purpose as our other transfers of data for stats/research purposes, such as the LAC/CP returns). I stressed to LAs that their own DPIA needs to cover why they need to collect this data, and how they will minimise any risks they identify.

I hope this helps, and look forward to being involved in this work going forwards.

Redacted section 38(1)(b)

From: Redacted section 38(1)(b)@gov.scot>

Sent: 18 March 2019 10:30

To: Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>

Cc: Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>

Subject: RE: Meeting with data protection officer - issues with local authorities providing identifiable data

Thanks Redacted section 38(1)(b)

Redacted section 38(1)(b) – I have attached the draft DPIA, and will arrange an initial meeting with yourself and Redacted section 38(1)(b). My colleagues Redacted section 38(1)(b) and Redacted section 38(1)(b) will also be involved.

Do you have any suggestions for others who should be invited to this meeting?

Thanks

Redacted section 38(1)(b)

From: Redacted section 38(1)(b)@gov.scot>

Sent: 12 March 2019 08:53

To: Redacted section 38(1)(b)@gov.scot>

Cc: Redacted section 38(1)(b)@gov.scot>

Subject: RE: Meeting with data protection officer - issues with local authorities providing identifiable data

Hi Redacted section 38(1)(b)

Redacted section 38(1)(b) is the DPO for SG – broadly speaking his remit is audit and compliance, the team here in iTECS deals with more operational side of things.

I have spoken with Redacted section 38(1)(b) about this so he is excepting to see the DPIA (he is on leave now until 18 March).

Redacted section 38(1)(b) is the contact at the ICO, but I think it would be more helpful if the approach comes from Redacted section 38(1)(b) and I, as a request for feedback on the DPIA.

Thanks

Redacted section 38(1)(b)

**Redacted section 38(1)(b) | Head of Data Protection and Information Assurance
| iTECS | Scottish Government**

V Spur | Saughton House | Broomhouse Drive | Edinburgh | EH11 3XD

From: Redacted section 38(1)(b)@gov.scot>

Sent: 11 March 2019 15:52

To: Redacted section 38(1)(b)@gov.scot>

Subject: FW: Meeting with data protection officer - issues with local authorities providing identifiable data

I sent this note around, following our meeting. I am afraid I wasn't sure of the data protection officer who I should liaise with on the review of the DPIA – could you send me his name.

Also, you mentioned the name of someone in the ICO, but wasn't sure of the spelling – can you remind me

I will get in touch to get a date in the diary for our meeting.

Thanks

Redacted section 38(1)(b)

From: Redacted section 38(1)(b)@gov.scot

Sent: 08 March 2019 13:00

To: Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>

Cc: Wilson M (Mick) <Mick.Wilson@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>

Subject: Meeting with data protection officer - issues with local authorities providing identifiable data

A meeting was held between Redacted section 38(1)(b) (Head of data protection and information assurance) and Mick Wilson, Redacted section 38(1)(b), Redacted section 38(1)(b), Redacted section 38(1)(b) and Redacted section 38(1)(b) (Education Analytical Services) following the correspondence from Glasgow City, with their concerns about providing identifiable data. The purpose of the meeting was to agree what actions to take in order to address the issues identified with the children's social work statistics.

This update is copied to others responsible for publications highlighted by Redacted section 38(1)(b) in his email to Redacted section 38(1)(b) (22nd Feb).

The immediate actions agreed at the meeting were

- i) Revise data protection impact assessment to ensure it is robust and addresses the concerns from GCC – Redacted section 38(1)(b), nominated data protection officer, Redacted section 38(1)(b) to progress. To note our DPIAs will cover our part in the data sharing process (i.e. why we ask LAs for it, how we store it, how we protect individuals, etc. etc.), once we become the 'Data Controller' of the data shared with us.
- ii) Engage with Data sharing and digital identify team (Redacted section 38(1)(b)) on GSS guidance to ensure it is fully applied.
- iii) Redacted section 38(1)(b) to set up an informal discussion on draft DPIA with representative of Information Commissioner Office
- iv) Mick to write to Roger Halliday, highlighting the implications of the issue across the stats group, and flagging the need to liaise with others.

Other actions which were discussed but timing not yet clear

- v) Respond to Glasgow City council (Redacted section 38(1)(b)) outlining approach, and liaise with Redacted section 38(1)(b) on a followup response.

vi) Consider highlighting GSS guidance with SOLAR and invite ICO to lead a discussion with SOLAR on particular issues when sharing data for statistics and research purposes.

Redacted section 38(1)(b) | Statistician | Children and Families Analysis
| Directorate for Education Analytical Services | Scottish Government
0131 244 Redacted section 38(1)(b) | Area 2A North Victoria Quay, Edinburgh EH6 6QQ

Redacted section 38(1)(b)@gov.scot



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Enclosure 11: Official Response to General Correspondence

Thank you for your letter of 21 January 2022. You raise a number of concerns relating to the Scottish Government Health and Wellbeing Census Privacy Notice and compliance with UK GDPR. It may be useful to set out the context of the census and therefore what the Scottish Government Privacy Notice and Data protection Impact Assessment relate to.

As the published documentation sets out, the Health and Wellbeing (HWB) Census is owned and managed by local authorities. This is in response to the 2015 consultation which highlighted a need for local data by local authorities (LAs), Community Planning Partnerships (CPPs) and other local organisations, to plan and implement services, and monitor the impact of service provision. Previous surveys which collected the national level data (such as the Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) and the Health Behaviours in School-Aged Children (HBSC)) did not meet this need for local level data.

The approach adopted for implementing the HWB census is to provide each local authority with a consistent set of materials and technology to self-administer their own HWB Census. This approach ensures that each LA (and their local partners) have access to its own information first and foremost, which is consistent across all local authority areas, so that they each have the evidence they need to fulfil their legislative duties as soon as children and young people have taken part in their local Census.

The data gathered from pupils will be held and stored by the pupil's local authority research team. Schools themselves will not have access to the individual child-level data. However, schools will benefit from this approach by receiving their own summary results which will show what children and young people learning in that school had self-reported. This will enable schools to consider what further action it could take to influence and enhance the health and wellbeing of its children and young people. Schools do not have access to individual level data, and school level analysis shared with schools is disclosure controlled (i.e. methods are applied to suppress any analysis which would allow identification of an individual).

Once each LA has self-administered its own HWB Census, the Scottish Government (SG) has a lawful basis for asking LAs to share their data with us under UK GDPR Article 6(1)(e) public task basis as 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. The Scottish Government also has the legal gateway in law to ask each LA to share their data with us. Under the [National Health Service \(Scotland\) Act 1978](#) Scottish Ministers have a duty "to promote the improvement of the physical and mental health of the people of Scotland" and therefore need data to monitor and evaluate this duty. Furthermore, under the [Standards in Scotland's Schools etc. Act 2000](#), Scottish Ministers have "to ensure that schools managed by education authorities, grant-aided schools, and hostels provided and maintained by education authorities for pupils, are health-promoting". The [Local Government \(Scotland\) Act 1973](#) also states that "the appropriate Minister with respect to any matter may require [a local authority] to provide the Minister with any information with respect to

that matter which is in the possession of, or available to, that [local authority] in consequence of the exercise of any power conferred by or under any enactment". Sharing of the data is required in order for the Scottish Government to conduct national and local level analysis that will provide evidence for the National Improvement Framework and Improvement Plan and for other key stakeholders within and outside the SG. The benefit to the public of this data being shared with Scottish Ministers is to help in the formulation and monitoring of national and local policies, which in turn will ultimately drive forward improvements in the outcomes of Scotland's Children and Young People.

This approach for implementing the HWB census means that in UK GDPR terms each local authority is the data controller for their own census. This means that local authorities can decide for themselves whether or not to undertake their own census. Local authorities are also required to ensure that they fully comply with UK GDPR requirements. The SG and LAs are working collaboratively to ensure that they each conduct their own census lawfully and legally.

As the local authorities collect and analyse their local HWB Census data they are the data controllers and SG is their data processor. When local authorities share their data with the SG, only then does the SG become the data controller of the data it then holds for its own statistical analysis and research purpose. Further detail on the approach is set out in the Scottish Government Health and Wellbeing Census Data Protection Impact Assessment (DPIA).

Therefore the SG Privacy Notice and DPIA available on the SG's website sets out the processes in place for ensuring data management and security after the SG has received the data from local authorities (i.e. when it becomes the data controller for the data it holds). As each local authority is the data controller for their local data collection, they each have their own Privacy Notices and DPIAs which cover the local authority data collection and management. These are available from each local authority.

Responses to the concerns you raised are addressed below.

You note the SG Detailed Privacy Note does not point out that pupils need to log into the survey using their student number and that they can be identified via this method. The collection of SCN is made clear to parents/carers and pupils themselves in the Letter to parents/carers and the Pupil Leaflet. This is provided to parent and carers and pupils by local authorities rather than the Scottish Government.

As set out in the SG DPIA, the individual level data, including the SCN, is shared with SG. The SG does not have access to any data which contains pupil's name or address. Therefore the SG is unable to link the child's SCN to other information in order to directly identify any pupil.

You also ask how the Health and Wellbeing Census complies with UK GDPR Article 5 "Principles relating to processing of personal data":

(a) processed lawfully, fairly and in a transparent manner in relation to individuals ('lawfulness, fairness and transparency');

Lawful basis for local authorities to process the data is Article 6 (1)(e) public task and the legal gateway is:

- the [Children and Young People \(Scotland\) Act 2014](#) which requires local authorities and their relevant health board, in respect of each three year period, prepare a children's services plan for the area of the local authority.
- the [Standards in Scotland's Schools etc. Act 2000](#) under which the education authority must carry out the duty with a view to achieving the strategic priorities set out in the National Improvement Framework.
- the [Local Government in Scotland Act 2003](#) states that a local authority has power to do anything which it considers is likely to promote or improve the well-being of its area and persons within that area

The lawful basis for SG processing the data is Article 6 (1)(e) public task and the legal gateway is as set out above:

- the [National Health Service \(Scotland\) Act 1978](#) (Scottish Ministers have a duty "to promote the improvement of the physical and mental health of the people of Scotland");
- the [Standards in Scotland's Schools etc. Act 2000](#) (Scottish Ministers have "to ensure that schools managed by education authorities, grant-aided schools, and hostels provided and maintained by education authorities for pupils, are health-promoting"); and
- the [Local Government \(Scotland\) Act 1973](#)

Transparency is provided through:

- the local authority privacy notices for their processing of the HWB census
- the SG Privacy Notice for SG processing of the HWB Census
- local communications such as the letter to parents/carers, pupil leaflets and other local authority communications.

The data collected and processed by the Scottish Government will contain certain information on children and young people in Scottish schools which makes the data personally identifiable. However, as stated above, the Scottish Government itself will not be able to directly identify individual children and young people as it does not have access to a child's name or address. The SCN will be used to link additional socio-economic and characteristic information already shared by local authorities with the Scottish Government's Education Analytical Services Division (such as a child's ethnic background, geographical area (such as their Scottish Index of Multiple Deprivation SIMD), their free school meal registration status, etc.). This information will only be linked in order to enable the Scottish Government to undertake statistical analysis and research based on these socio-economic and characteristics, for example to monitor and assess the impact of its policies on sub-populations and diverse equality groups. The data to be shared 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.

The Scottish Government will not publish information that allows individual pupils to be identified. All published statistical outputs are subject to strict statistical data disclosure control. The same is true for local authorities, and they are to ensure that there is no potential for individual identification when LAs share school level reports with their schools, as well as publishing LA level reports.

(b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes ('purpose limitation');

The purpose for local authority data processing is to meet the duties set out in:

- the [Children and Young People \(Scotland\) Act 2014](#) which requires local authorities and their relevant health board, in respect of each three year period, prepare a children's services plan for the area of the local authority.
- The [Standards in Scotland's Schools etc. Act 2000](#), under which the education authority must carry out the duty with a view to achieving the strategic priorities set out in the National Improvement Framework.
- the [Local Government in Scotland Act 2003](#) states that a local authority has power to do anything which it considers is likely to promote or improve the well-being of its area and persons within that area.

The purpose for SG data processing is for Ministers to meet the duties set out in set out in:

- the [National Health Service \(Scotland\) Act 1978](#) (Scottish Ministers have a duty "to promote the improvement of the physical and mental health of the people of Scotland");
- the [Standards in Scotland's Schools etc. Act 2000](#) (Scottish Ministers have "to ensure that schools managed by education authorities, grant-aided schools, and hostels provided and maintained by education authorities for pupils, are health-promoting"); and
- the [Local Government \(Scotland\) Act 1973](#)

The uses of the data by Scottish Government, and potential data sharing, are set out in detail in section 3.3 of the Scottish Government Health and Wellbeing DPIA. The data we collect from LAs is used to monitor the operation of the relevant legislation in Scotland. This enables Scottish Ministers, other public bodies, relevant stakeholders and the general public to monitor the health and wellbeing of children and young people in Scotland, and provides evidence to help with the development or refinement of policies, programmes and services designed to improve outcomes for children and young people of Scotland.

Therefore, for the same reason the Scottish Government collects and analyses the data, the datasets may be shared in order to enable other organisations (public bodies, third sector organisations and academics) to undertake research which can provide evidence on the health and wellbeing of children and young people in the broader public interest. Any onward sharing will be on a case by case basis and with a clearly identified legal gateway and data sharing agreement in place. Any data shared in this way by the SG does not enable identification of individuals, as any data shared externally does not contain the SCN.

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are accurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');

The UK GDPR does not give a definition of the term accuracy. However, the Data Protection Act 2018 (DPA 2018) states that personal data is inaccurate if it is incorrect or misleading as to any matter of fact. As with other surveys, the responses to the individual questions are taken on the basis of trust that they reflect the respondents situation when they respond. In regards to keeping the HWB Census accurate and up to date, this is a survey that collects data at a point in time. The questions are largely subjective and as such reflect how the respondents feel. They are largely not factual questions which are right or wrong. Therefore, as with all survey data of this nature, they are accepted as being correct at the time the individual responds.

The Data protection Act 2018 Schedule 2 Part 6 Derogations etc based on Article 89 for research, statistics and archiving states the listed GDPR provisions do not apply to personal data processed for—

- (a) scientific or historical research purposes, or
- (b) statistical purposes,

to the extent that the application of those provisions would prevent or seriously impair the achievement of the purposes in question.

The exemption is available only where—

- (a) the personal data is processed in accordance with Article 89(1) of the GDPR (as supplemented by section 19), and
- (b) as regards the disapplication of Article 15(1) to (3), the results of the research or any resulting statistics are not made available in a form which identifies a data subject.

As the data we process is lawfully gathered and processed for Research, Statistics and Archiving in the public interest, in accordance with Article 89(1) of the UK GDPR, and that any results of the research or resulting statistics are not made available in a form which identifies individual children, young people or adults, they do not have a right to request access to the data we hold.

The archiving, research or statistics exemption applies if all four of the safeguarding conditions are met. How SG is meeting these exemptions is set out below:

1. Appropriate technical and organisational safeguards exist to protect the personal data e.g. data minimisation, pseudonymisation, or access controls. The SG DPIA sets out the SG processes in place to protect the data including the security and access to the data.
 - Data Sharing Agreements will be in place between the Scottish Government and Local Authorities / grant-aided schools before any data is shared.
 - Local authorities will share their data using Objective Connect which has a Government Grade security where information is always protected.
 - Data will be stored within the Scottish Government's Analytical Data Management System (ADMS) where access is only possible within the SCOTS network (a central government network, compliant to the Public Services Network (GSI) requirements

and managed to ISO standard 27001). The purpose of the ADMS is to support secure and UK GDPR-compliant data management with a dedicated team and IT infrastructure.

- Access to the data sets is securely restricted to a limited small number of Scottish Government staff, with access controlled at two levels:
 1. At the operating system level, using Windows Access Control Lists (ACLs) to grant access to the members of the approved Active Directory security groups.
 2. Within SAS metadata, using SAS Access Control Templates (ACTs) to grant access to the members of groups defined in the metadata.
- As Systems Custodian, iTECS operates and manages the data storage system to ensure it is protected, held securely and can only be accessed by users who have been approved by the IAO or Systems Owners, in this case, the Scottish Government's Chief Statistician, Roger Halliday.
- Local authorities provide the SG with their data, including the SCN, in order for it to undertake its own internal statistical analysis/research such as national level analysis of the health and wellbeing data by equality characteristic and SIMD.
- Any sharing or linkage of data will be done under the strict control of Scottish Government, and will be consistent with our data policy and the [National Data Linkage Guiding Principles](#). There are processes and procedures in place to ensure that any data shared with externally approved researchers does not include the SCN.

2. There is no likelihood of substantial damage or distress to the data subjects from the data processing. The HWB data is used for statistics and research purposes. Children and Young People will be asked to provide a unique identifying number (i.e. their Scottish Candidate Number) for purely statistical and research purposes, in order for the Scottish Government to undertake longitudinal analysis, to link data sets together to obtain key pupil characteristics as well as to conduct further statistical analysis and research. Although this renders the data personal identifiable information, the Scottish Government does not collect and hold the names and addresses of individual pupils. This is held separately on local authority and school management information systems. The Scottish Government will not publish information that allows individual pupils to be identified. All published statistical outputs are subject to strict data disclosure control. Local authorities have access to administrative systems that enable them to directly identify a pupil based on their SCN. The ICO Age appropriate design code notes Standard 5 Detrimental Use of Data covers "use of data that is obviously detrimental to children's physical or mental health and wellbeing or that goes against industry codes of practice, other regulatory provisions or Government advice on the welfare of children". Local authorities will follow their existing procedures if a safeguarding issue arises. The questionnaires have been specially designed so information provided by children and young people is used for statistical and research purposes. The questions developed by the Content Group were designed to minimise the risk of safeguarding issues being identified.

3. The research will not lead to measures or decisions being taken about individuals. The HWB census is for statistics and research purposes only. The questionnaires have been specially designed so that the information provided by children and young people is only used for statistical and research purposes only by local authorities and the Scottish Government. This means that what children and young people say in the Census will remain confidential and will only be seen by a very small number of staff at their school's local authority and the Scottish Government in order for them to carry out analysis of the information. The information collected will be used to inform planning and provision of education, and the linkage of such data to other data sources (such as educational outcomes, health data, etc.). Scottish Government has responsibilities as a producer of Official Statistics as detailed in the [Statistics and Registration Services Act 2007](#), where [Section 10](#) establishes the [Code of Practice \(CoP\) for Official Statistics](#), including that any results of the research or resulting statistics are not made available in a form which identifies individual children and young people.
4. Compliance with the part of the UKGDPR that is exempted would prevent or seriously impair the research purposes. Exclusion of the SCN, for statistics and research purposes stops the Scottish Government ability to undertake longitudinal analysis, to link data sets together to obtain key pupil characteristics as well as to conduct further statistical analysis and research. This is detrimental to the duties set out for Scottish Ministers and education authorities in The Standards in Scotland's Schools etc. Act 2000 in "the steps they have taken with a view to reducing inequalities of outcome for pupils".

You raise concerns that the Scottish Government's privacy notice for parents and carers does not explain to parents or carers that pupils will use their SCN to log into the survey which makes them known to the local government or anyone else who knows their SCN. Each local authority is sharing its own data collected through the census with the Scottish Government, the Scottish Government is not collecting the data itself. Whilst the Scottish Government's DPIA (section 5.8) sets out the SCN will be shared and how SG will manage the data it receives from the local authorities, it makes clear the SCN will be collected and why. Each local authority undertaking their census is required to publish their Privacy Notice prior to collecting data.

Additionally the Letter to Parents/carers issued by the local authorities sets out the SCN will be collected, why, and how the data will be used.

You raise concerns that the SG's Privacy Notice does not make clear that parents can tell their children they can opt out of the Census. There are a range of materials local authorities will use to communicate to parents/carers about the census, reflecting their legal ownership of the data and census process. Local authorities issue a letter to parents/carers a minimum of 10 days prior to starting data collection. There are three points where agreement is sought:

- (1) the letter to parents/carers which sets out the opt-out for parents.
- (2) children and young people can opt-out separately, and they are informed of this in the pupil leaflets.

(3) prior to completing the survey, pupils are again asked if they wish to take part before they can enter the survey.

You raise concerns that the SG's Privacy Note for Parents and Carers does not make clear the purposes for collecting the data and is therefore not compliant with UK GDPR. The SG Privacy Notice only applies when local authorities share their local HWB Census data with the Scottish Government. This Privacy Notice sets out the purposes for which the Scottish Government will use the data. Local authorities also publish Privacy Notices as data controllers, which will set out their purposes of collecting the data.

Lastly, you raise concerns the Scottish Government state in its Privacy Notice that children and young people will not be identifiable. You note that any person who has access to the pupils student ID and the census data is able to identify individuals. This is not the case. When local authorities share their data with the Scottish Government, it does contain the SCN. However the Scottish Government does not have access to any dataset that contains pupil name or address. Therefore the Scottish Government cannot identify any pupil from the SCN.

The situation is different for local authorities, who have access to administrative systems that enable them to directly identify a pupil based on their SCN. The local authority DPIAs set out how each local authority will keep data secure and confidential. However, as with any situation involving children and young people, if welfare concerns, such as abuse or harm to young people, are identified, local authorities are permitted to share information in order to safeguard the young person. This is common ethical practice when undertaking surveys/research involving children and young people. Parents/carers and children and young people are informed of this in advance of any child or young person taking part in the Census, so that they can decide to not to take part in the Census because of this condition.

You note the SG's Privacy Notice also states the information in the survey will not be used to take direct action as a result of the information in the survey. However the school your children attend and the local council have told you if information flagged in the survey suggests a child is involved in behaviour they shouldn't be or if a safeguarding issue is noticed then direct action will be taken. This is because the SG's Privacy Notice only applies to the data shared with SG by local authorities. The SG are not able to identify pupils from the data shared, as described above. However, it is made clear in local authority DPIAs and Privacy Notices that as they themselves hold additional information that enables them to identify an individual pupil, they may need to breach a child's confidentiality in order to respond to child welfare concerns. It is also in the information provided to parents and carers, and to pupils in the pupil leaflet.

Enclosure 12: Information on FOI 202400391660 response

From: Redacted section 38(1)(b)@gov.scot>

Sent: Wednesday, January 10, 2024 8:57 AM

To: Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>;
Redacted section 38(1)(b)@gov.scot>

Subject: RE: ACTION: FOI - HSC - TRIAGE - Health and Wellbeing Census Ethical Approval - MiCase 202400391660 - DEADLINE 25 JANUARY

Hi All,

This is from some time ago but I now remember this.

In terms of process, every project has an ethics checklist. Where a project is deemed sensitive (for a number of reasons) we then escalate to an internal ethics review. In this situation, this was escalated to the Chief Researcher because of the scale of this work – which is why Audrey attended in this instance. This is rarely used. Normally an ethics review would be a group of senior researchers only from across different parts of SG. So it's important to indicate that this was escalated to the highest point internally with scrutiny from the Chief Researcher.

It's correct that if we felt further ethical scrutiny was needed, we could invite external ethics experts. But the outcome of this discussion didn't warrant this because the questions were already being asked successfully in different surveys across Scotland.

Hope this helps.

Redacted section 38(1)(b)

Enclosure 13: Further information on FOI 202400391660 response

From: Redacted section 38(1)(b)@gov.scot>

Sent: Wednesday, January 17, 2024 9:58 AM

To: Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>;
Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>

Subject: RE: FOI 202400391660 - draft response - LS comments

Yes normally it goes to the C2 if there is an overall “red” rating, to consider next steps, otherwise the C1 can sign it off.

If you’re further down the line here you can be more specific, but referring to the “ethics process” is probably wise. That said this attention, and OSR comments, would be reason to rate various aspects as “red” and consider further input.

Redacted section 38(1)(b)
07Redacted section 38(1)(b)

From: Redacted section 38(1)(b)@gov.scot>

Sent: Wednesday, January 17, 2024 9:48 AM

To: Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>;
Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>

Subject: RE: FOI 202400391660 - draft response - LS comments

Thank you for your input.

In response to your question on the ethics process for future development of the HWB Census, decisions on the process will be made as we progress with the development. Given the clear focus and recommendations from OSR on the lack of transparency around ethics on the survey to date, this will be a priority area. My understanding is all projects need to complete an ethics check list and the relevant C2 will decide the action based on that (i.e. whether escalation is needed). If there is a different approach I need to be taking, please let me know.

Thanks

Redacted section 38(1)(b)

From: Redacted section 38(1)(b)@gov.scot>

Sent: Tuesday, January 16, 2024 6:10 PM

To: Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>;
Redacted section 38(1)(b)@gov.scot>; Redacted section 38(1)(b)@gov.scot>

Subject: FW: FOI 202400391660 - draft response - LS comments

Thanks for sight of this. I have made minor amendments, and support Redacted section 38(1)(b) suggestion that we refer to published guidance on the ethical checklist approach in general, and discuss the

particular approach to put the census through the peer review process, with particular involvement from the chief researcher and relevant C2s separately.

On the final question of the OSR mandated review – you note that the questionnaire will undergo the “ethics process”. While this could be a standard updating of the ethics checklist by the project manager, has there been any decision that this should be reviewed by the local C2 Researcher and/or undergo further peer review?

Overall, this is very comprehensive. I would suggest it might be slightly easier to follow if the individual questions were put in heading format, with the responses set out below.

Happy to chat

Redacted section 38(1)(b)
07Redacted section 38(1)(b)