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GUIDANCE TO LOCAL AUTHORITIES

REQUIREMENTS WITH RESPECT TO “FAIR PROCESSING” UNDER THE DATA PROTECTION ACT AND THE PASSING OF INFORMATION TO CONNEXIONS

“Fair processing” under the Data Protection Act

Schools, Local Authorities (LAs), the Department for Education and Skills (DfES), the Qualifications and Curriculum Authority (QCA), Ofsted, the Learning and Skills Council (LSC), Department of Health (DH) and Primary Care Trusts (PCTs) are all “data controllers” under the Data Protection Act 1998 in that they determine the purpose(s) for which “personal data” (ie data about living individuals from which they can be identified) is processed and the way in which that processing is done. This guidance deals specifically with personal data about pupils, although personal data may also be held on other groups such as teaching and non-teaching staff, and similar considerations with regard to “fair processing” will apply to them.

Data controllers have to provide “data subjects” (individuals who are the subject of personal data) with details of who they are, the purposes for which they process the personal data, and any other information that is necessary to make the processing of the personal data fair, including any third parties to whom the data may be passed on. This is referred to as a “fair processing notice”.

In respect of the Data Protection Act there is a presumption that a child of twelve years of age and over has sufficient maturity to exercise their rights under the Act, though in practice there will be exceptions to this. This is endorsed by guidance issued by the Information Commissioner.

The fair processing obligations on the data controller may appropriately be met by providing a fair processing notice to the parent (or the person with parental responsibility) where a child is younger than twelve, though the parent should be encouraged to share it with the child if the child has the maturity to understand it. However, where the child is aged twelve or more, the fair processing notice should be provided both to the child *and to* the parent. This acknowledges both the rights of the child and the parent’s need to be aware of how their child’s information is handled.

Further information about fair processing requirements, and guidance on the Data Protection Act generally, can be obtained from the Information Commissioner’s website (<http://www.ico.gov.uk/eventual.aspx?id=34>).

The suggested text of the fair processing notice is set out at the end of this guidance.

LAs should work with schools to ensure that:

- schools issue the fair processing notice to all current pupils of the age of 12 and over and to their parents and to the parents of all current pupils under the age of 12 as soon as possible, even if a fair processing notice has been previously issued to them; this is to ensure that all are informed of any additional data collection and any changes in the use of the data;
- this notice covers processing carried out by LAs, DfES, QCA, Ofsted, the LSC, DH and PCTs as well as by the school (rather than these organisations sending separate notices, which would be logistically very difficult and confusing for parents);
- schools issue the same notice to new pupils and/or their parents as part of the enrolment process;
- schools reissue the notice to pupils at age 16, to draw to their attention that the right under the Learning and Skills Act to opt out from the passing on of information over and above name and address of pupil and parent to those providing Connexions services, passes from the parent to the pupil at that age. It is suggested that the notice should be reissued to pupils at the beginning of the term in which they reach 16, and not on each individual pupil's birthday.

Schools are not issued with separate guidance about the issue of the fair processing notice and so LAs should act promptly to ensure that schools receive the notice and substitute it for the previous notice.

Most of the fair processing notice relates to all schools, but there are two versions of the sections about pupils' rights under the Data Protection Act and passing information to Connexions – the first for schools which do not have pupils of secondary age, and the second for schools which do.

Before forwarding the text to schools LAs will need to consider the adequacy of the paragraph describing the uses of personal data by the LA, and also insert contact details for the authority's Data Protection Officer.

As well as issuing the notice directly to parents or pupils, schools may also include this notice in other communications with parents (eg the school prospectus, the governors' annual report, the individual pupil report, or the annual data checking sheet), and/or display the text on a school website or in a prominent location in the school. These are not however requirements, nor are they a substitute for the arrangements indicated above.

Passing information to Connexions

In addition to the obligation on schools to provide certain information to other schools, LAs, the Department, QCA, Ofsted, the LSC, DH and PCTs, there is a legal requirement under Section 117 of the Learning and Skills Act 2000 to pass information on request to those involved in the provision of Connexions services (the Connexions Service, Connexions Partnerships and the Connexions Card). Connexions services are available for pupils between the ages of 13 and 19 years.

Those aged 16 years and above who have a Connexions card will have received additional fair processing information as part of their application for the card. Data processing issues relating specifically to the card are not therefore covered in this fair processing notice which still needs to be sent to all pupils. It should also be noted however that the card scheme has now closed and no new applications are being processed.

The information which schools are required to provide consists of:

- a. the names and addresses of pupils and their parents – which must be supplied on request to those providing Connexions services in any event;
- b. other information requested relevant to the provision of Connexions services – in this case parents (or pupils themselves if aged 16 or over) have the right to instruct the school not to supply this information to those providing Connexions services.

Note that the provision in b. is an **opt-out**, not an opt-in. Until and unless the parent or pupil gives an instruction, the school remains under a statutory duty to provide information to those providing Connexions services on request.

For the **Connexions Service**, the fair processing notice given to the parent and the child needs to advise them of the passing on of information to Connexions, and must also advise them of the right to instruct the school not to provide information beyond name and address.

Note that the right to opt out from the passing on of information over and above name and address of pupil and parent to those providing Connexions services passes from the parent to the pupil at age 16.

To give parents or pupils who wish to opt out an adequate opportunity to do so, information should not be passed to Connexions until **28 days** after the notice is **received by** them. Parents or pupils are entitled to register an opt-out subsequently even if they do not do so within the initial 28 day period. In that event no further **additional** information should be passed to Connexions after the opt-out has been received.

The Connexions Service supports young people, helping them to achieve their potential and to realise benefits from education and training. It is very important that Connexions partnerships receive the information about their clients which they need to do this job effectively – subject only to the opt-out provision described above. The information required will include contact details of pupils and their parents or carers, gender, date of birth, ethnicity, special educational needs, school attended, and Key Stage or examination results.

Provision of information by LAs or DfES

In some areas Connexions partnerships are arranging to obtain information from LAs rather than schools, and this helps both to minimise burdens on schools and maximise the flow of information to Connexions. For the same reasons the Department is considering the transfer of some information to Connexions at national level. However transfers of information at LA or national level should not take place in cases where parents or pupils have exercised their opt-out right or not yet been given the opportunity to do so. A Connexions flag has been included in School Census so that these cases are readily known to the LA and the Department.

Regulation 24 (1) (j) of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 (SI 2001 No 3455) allows an LA to pass a statement of special educational needs in respect of a child to the Connexions Service without that child's consent but only for the purposes of writing or amending a transition plan.

Information provided to Connexions before parents or pupils have been notified

If a school or LA has provided pupil information beyond name and address to the Connexions Service inadvertently without notifying parents or pupils that this is happening, and then receives a parental or pupil opt-out when the fair processing notice is issued, the school or LA must advise the parent or pupil of the situation, and also inform the Connexions partnership that the opt-out has been claimed and of the need for them to take appropriate action. In the event of pupils, at age 16, opting out of the provision of information to Connexions providers when their parents have not previously done so, the Connexions provider should be informed in the same way.

Fair processing notice – suggested text

DATA PROTECTION ACT

Schools, Local Authorities (LAs), the Department for Education and Skills (DfES), the government department which deals with education, the Qualifications and Curriculum Authority (QCA), Ofsted and the Learning and Skills Council (LSC) all process information on pupils in order to run the education system and Department of Health (DH) and Primary Care Trusts (PCTs) process information on pupils in order to tackle the year on year rise in obesity among children, and in doing so have to comply with the Data Protection Act 1998. This means, among other things, that the data held about pupils must only be used for specific purposes allowed by law. We are therefore writing to tell you about the types of data held, why that data is held, and to whom it may be passed on.

The **school** holds information on pupils in order to support their teaching and learning, to monitor and report on their progress, to provide appropriate pastoral care, and to assess how well the school as a whole is doing. This information includes contact details, national curriculum assessment results, attendance information, characteristics such as ethnic group, special educational needs and any relevant medical information. From time to time schools are required to pass on some of this data to LAs, the DfES and to agencies that are prescribed by law, such as QCA, Ofsted, LSC, DH and PCTs.

The **Local Authority** uses information about children for whom it provides services to carry out specific functions for which it is responsible, such as the assessment of any special educational needs the child may have. It also uses the information to derive statistics to inform decisions on (for example) the funding of schools, and to assess the performance of schools and set targets for them. The statistics are used in such a way that individual children cannot be identified from them. LAs have a duty under the Children Act 2004 to cooperate with their partners in health and youth justice to improve the well-being of children in their areas. As part of this duty they will be required to maintain the accuracy of the information held on the Information Sharing (IS) Index about children and young people in their area (see IS Index under Department for Education and Skills).

The **Qualifications and Curriculum Authority** uses information about pupils to administer national curriculum assessments throughout Key Stages 1 to 3. This includes both assessments required by statute and those that are optional. The results of these are passed on to DfES to compile statistics on trends and patterns in levels of achievement. The QCA uses the information to evaluate the effectiveness of the national curriculum and the associated assessment arrangements, and to ensure that these are continually improved.

Ofsted uses information about the progress and performance of pupils to help inspectors evaluate the work of schools, to assist schools in their self-evaluation, and as part of Ofsted's assessment of the effectiveness of education initiatives and policy. Inspection reports do not identify individual pupils.

The **Learning and Skills Council** uses information about pupils for statistical purposes, to evaluate and develop education policy and to monitor the performance of the education service as a whole. The statistics (including those based on information provided by the QCA) are used in such a way that individual pupils cannot be identified from them. On occasion information may be shared with other Government departments or agencies strictly for statistical or research purposes only. The LSC or its partners may wish to contact learners from time to time about courses, or learning opportunities relevant to them.

The **Department of Health** uses aggregate information (at school year group level) about pupils' height and weight for research and statistical purposes, to inform, influence and improve health policy and to monitor the performance of the health service as a whole. The DH will base performance management discussions with Strategic Health Authorities on aggregate information about pupils attending schools in the PCT areas to help focus local resources and deliver the Public Service Agreement target to halt the year on year rise in obesity among children under 11 by 2010, in the context of a broader strategy to tackle obesity in the population as a whole. The Department of Health will also provide aggregate PCT level data to the Healthcare Commission for performance assessment of the health service.

Primary Care Trusts use information about pupils for research and statistical purposes, to monitor the performance of local health services and to evaluate and develop them. The statistics are used in such a way that individual pupils cannot be identified from them. Information on the height and weight of individual pupils may however be provided to the child and its parents and this will require the PCTs to maintain details of pupils' names for this purpose. PCTs may also provide individual schools and LAs with aggregate information on pupils' height and weight.

The **Department for Education and Skills** uses information about pupils for research and statistical purposes, to inform, influence and improve education policy and to monitor the performance of the education service as a whole. The DfES will feed back to LAs and schools information about their pupils for a variety of purposes that will include data checking exercises, use in self-evaluation analyses and where information is missing because it was not passed on by a former school.

The Children Act 2004 provides for the Secretary of State to issue Regulations requiring the “governing body of a maintained school in England” to disclose information for inclusion on the Information Sharing (IS) Index. The purposes of the index are to:

- help practitioners working with children quickly identify a child with whom they have contact;
- determine whether that child is getting the universal services (education, primary health care) to which he or she is entitled; and
- enable earlier identification of needs and earlier, more effective action to address these needs by providing a tool to help practitioners identify which other practitioners are involved with a particular child; and
- encourage better communication and closer working between practitioners.

The index will hold for each child or young person in England:

- basic identifying information: name, address, gender, date of birth and a unique identifying number based on the existing Unique Identifying Number/National Insurance Number;
- basic identifying information about the child’s parent or carer;
- contact details for services involved with the child: as a minimum school and GP Practice but also other services where appropriate; and
- the facility for practitioners to indicate to others that they have information to share, are taking action or have undertaken a common assessment in relation to a child.

The index will NOT record statements of a child’s needs, academic performance, attendance or clinical observations about a child.

All practitioners and system support staff (in LAs who will be responsible for maintaining the data) will have to have relevant training and to have undergone rigorous checks and appropriate security clearance procedures. To ensure high standards of accuracy, information on the IS Index will be drawn from a number of sources including the termly School Census from which, from January 2007, pupils’ home address will be collected.

The DfES will also provide Ofsted with pupil data for use in school inspection. Where relevant, pupil information may also be shared with post 16 learning institutions to minimise the administrative burden on application for a course and to aid the preparation of learning plans.

Pupil information may be matched with other data sources that the Department holds in order to model and monitor pupils' educational progression; and to provide comprehensive information back to LAs and learning institutions to support their day to day business. The DfES may also use contact details from these sources to obtain samples for statistical surveys: these surveys may be carried out by research agencies working under contract to the Department and participation in such surveys is usually voluntary. The Department may also match data from these sources to data obtained from statistical surveys.

Pupil data may also be shared with other Government Departments and Agencies (including the Office for National Statistics) for statistical or research purposes only. In all these cases the matching will require that individualised data is used in the processing operation, but that data will not be processed in such a way that it supports measures or decisions relating to particular individuals or identifies individuals in any results. This data sharing will be approved and controlled by the Department's Chief Statistician.

The DfES may also disclose individual pupil information to independent researchers into the educational achievements of pupils who have a legitimate need for it for their research, but each case will be determined on its merits and subject to the approval of the Department's Chief Statistician.

Plus the following paragraphs if the school does NOT have secondary age pupils

Pupils, as data subjects, have certain rights under the Data Protection Act, including a general right of access to personal data held on them, with parents exercising this right on their behalf if they are too young to do so themselves. If you wish to access the personal data held about your child, then please contact the relevant organisation in writing:

- the school at XXXXXXXXXXXX;
- the LA's Data Protection Officer at XXXXXXXXXXXX;
- the QCA's Data Protection Officer at QCA, 83 Piccadilly, LONDON, W1J 8QA;
- Ofsted's Data Protection Officer at Alexandra House, 33 Kingsway, London WC2B 6SE;
- LSC's Data Protection Officer at Cheylesmore House, Quinton Road, Coventry, Warwickshire CV1 2WT;
- the DfES's Data Protection Officer at DfES, Caxton House, Tothill Street, LONDON, SW1H 9NA;
- the DH's Data Protection Officer at Skipton House 80 London Road London SE1 6LH;
- your local PCT.

In order to fulfil their responsibilities under the Act the organisation may, before responding to this request, seek proof of the requestor's identity and any further information required to locate the personal data requested.

Separately from the Data Protection Act, regulations provide a pupil's parent (regardless of the age of the pupil) with the right to view, or to have a copy of, their child's educational record at the school. If you wish to exercise this right you should write to the school.

Or the following paragraphs if the school has secondary age pupils

Pupils, as data subjects, have certain rights under the Data Protection Act, including a general right of access to personal data held on them. If you wish to access your personal data, or you wish your parents to do so on your behalf, then please contact the relevant organisation in writing:

- the school at XXXXXXXXXXXX;
- the LA's Data Protection Officer at XXXXXXXXXXXX;
- the QCA's Data Protection Officer at QCA, 83 Piccadilly, LONDON, W1J 8QA;
- Ofsted's Data Protection Officer at Alexandra House, 33 Kingsway, London WC2B 6SE;
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Providing information to Connexions services providers and the right to opt out

Connexions is the government's support service for all young people aged 13 to 19 in England. It also provides support up to the age of 25 for young people who have learning difficulties or disabilities (or both).

Connexions brings together all the services and support young people need during their teenage years offering differentiated and integrated support to young people through Personal Advisers (PAs). For some young people this may be just for careers advice, for others it may involve more in-depth support to help identify barriers to learning and find solutions brokering access to more specialist support, eg drug abuse, sexual health and homelessness. PAs work in a range of settings including schools, colleges, one-stop shops community centres and on an out-reach basis.

For pupils of 13 years and over, the school is legally required to pass on certain information to Connexions services providers on request. This information includes the name and address of the pupil and parent, and any further information relevant to the Connexions services' role. However parents, or the pupils themselves if aged 16 or over, can ask that no information beyond name and address (for pupil and parent) be passed on to Connexions. If as a parent, or as a pupil aged 16 or over, you do not want Connexions to receive from the school information beyond name and address, then please contact the school within **28 days** of receiving this note. If you do not notify the school that you wish to exercise your right to opt out after the 28 day period has elapsed information will be passed to Connexions providers upon request.

The LA and DfES may supply to Connexions services providers information which they have about children, but will not pass on any information they have received from the school if parents (or the children themselves if aged 16 or over) have notified the school that Connexions should not receive information beyond name and address.