



Home Office

Baroness Williams of Trafford
Minister of State for
Countering Extremism

2 Marsham Street,
London SW1P 4DF

www.gov.uk/home-office

Lord Clement-Jones
House of Lords
London
SW1A 0AA

Dear Iain,

23 NOV 2017

Data Protection Bill: Exemptions from the GDPR – immigration

Following the debate in Committee on 13 November on your amendment to remove the immigration exemption from Schedule 2 to the Bill, I promised to write to explain further the position of the Government.

In the debate concerns were expressed about the breadth of the exemption, however, as I indicated this is not a blanket 'carve out' for all immigration matters. The exemption can, and would, only be used in a targeted and proportionate way to prevent prejudice to the maintenance of effective immigration control. It cannot be used as a default way of working, rather the application of the exemption must be considered on a case by case basis.

The Information Commissioner's Office will still have oversight of all processing for immigration purposes. We are not seeking to remove a data subject's right of redress but just to maintain the ability that the immigration system currently has to operate effectively.

It was suggested in the debate that this provision could interfere with migrants' Convention rights. The Government accepts that restricting certain rights of data subjects under Chapter 3 of the GDPR has the potential to interfere with their rights under Article 8 (the right to respect for private and family life). The Government considers, however, that the proposed restriction meets the conditions set out in Article 8(2) in so far as it pursues a legitimate aim (maintenance of effective immigration control having been recognised by the courts as an important economic interest of the UK) and goes no further than is necessary to protect those interests. As I have set out above, the exemption contains an inbuilt safeguard in that it can only be invoked to the extent that compliance with the data subject's rights is likely to prejudice the maintenance of effective immigration control or the investigation or detection of activities that would undermine the maintenance of such control.

You made particular reference to the law enforcement exemption and questioned whether this ought to be sufficient for the Home Office's purposes (Baroness Hamwee made a similar point). You are, of course, correct that some of the data processing carried out by the Home Office in the immigration sphere will constitute processing for the purposes of the prevention, investigation or detection of criminal offences, including offences under the Immigration Acts. That data processing, by the Home Office, will fall within Part 3 of the Bill which does provide for the data controller to restrict certain rights of the data subject where that is necessary and proportionate to avoid prejudice to the prevention, detection, investigation or prosecution of criminal offences.

However, not all the data processing conducted for the purposes of maintaining effective immigration control will constitute law enforcement processing and, further, criminal sanctions are not always the most appropriate and proportionate response when dealing with persons who are in the UK without leave.

It is often more proportionate to use administrative means to remove such persons rather than deploy the full force of the criminal law. As the purpose of processing personal data, in such cases, is not generally the pursuit of a prosecution, it is not clear that it would be appropriate, at least not in all cases, to rely on prejudice to the prosecution of offenders or prejudice to the prevention or detection of crime as a ground for restricting a data subject's rights where the real concern lies in the prejudice to effective immigration control.

It is the case that the Data Protection Act 1998 does not mention immigration control as a ground for restricting a data subject's rights to access information. However, the GDPR and applied GDPR go much further in terms of data subjects' rights and so a new and different approach is called for.

I might add that in section 31 of the Freedom of Information Act 2000, the statute book already recognises the need to preserve the operation of immigration controls as a distinct and legitimate objective which can, in certain cases, justify restrictions on access to information, separate from the need to avoid prejudice to the prevention, detection and investigation of crime. Effective immigration control is an important objective of public interest and it has already been seen as a valid reason to have exemptions in the Freedom of Information Act; all we seek here is a similar recognition with respect to data protection.

I hope that this letter, in addition to the examples I gave in the debate to illustrate the operational need for this provision, will reassure you that it is a necessary and proportionate measure for the maintenance of effective immigration controls.

I am copying this letter to Lord Stevenson, Lord Kennedy of Southwark, Baroness Hamwee, Baroness Jones of Moulsecoomb and Lord Lucas and placing a copy in the library of the House.



Baroness Williams of Trafford