

BAR COUNCIL PARLIAMENTARY BRIEFING



DATA PROTECTION BILL – IMMIGRATION CONTROL EXEMPTION

1. This briefing explains how the ‘immigration control exemption’ in paragraph 4 of Part 1 of Schedule 2 to the Data Protection Bill threatens to undermine access to justice and the Rule of Law. The Bar Council also notes that the lawfulness of the exemption is in question¹ and supports calls by other organisations, including the Immigration Law Practitioners Association (ILPA) and Liberty, to remove this exemption from the Bill.

Impact of the immigration control exemption

2. If enacted, the exemption will allow² the Home Office, for the purposes of immigration control, to deny individuals access to their personal data. This data involves information to which they can currently gain access by making a Subject Access Request (SAR). The availability of this information can be vital to the fairness of legal proceedings that individuals need to bring to enforce or to protect their rights.

The importance of Subject Access Requests

3. In order for individuals effectively to challenge detention or an unlawful decision by the Home Office, or to make an application for immigration or asylum, they need to understand their own immigration histories and to know what information the Home Office holds on them, as it is this information on which claims and legal challenges (and decisions made by the Home Office) will be based. Where both sides do not have access to the same information, the fairness of legal proceedings inevitably is compromised.

4. SARs are often the only route through which legal practitioners can obtain access to such information and thereby understand the complicated immigration histories of some of their clients, many of whom will not have access to relevant documents or an accurate recollection or legal understanding of their own circumstances.

¹ The text of schedule 2, part 1, paragraph 4 is not reflective of the stated permissible exemptions under Article 23 of the GDPR. For more information see the ILPA briefing (include ref)

² See ILPA Data Protection Bill briefing

5. Circumstances in which SARs are essential for such purposes include the following:³
- Where individuals are held in detention they are, for obvious reasons, often unable to obtain relevant documents and paperwork.
 - For asylum applications, an understanding of previous submissions to the Home Office is often required to determine whether a new claim can be submitted.
 - Applicants who have been victims of domestic violence have often been controlled by their partners for years before seeking help with immigration matters. A SAR may be the only way of establishing the basis of any application for settlement and of gaining independence from an abusive partner.
 - Where disclosure is requested in response to a pre-action letter in judicial review, the Home Office routinely refuses to provide the required information and instead directs legal representatives to make a SAR.
 - Where someone is appealing against a refused application, the Home Office is required to provide all the evidence on which it relied in its 'reasons for refusal letter', but it often fails to do so. As a result, there is often no or incomplete evidence to show the basis for Home Office allegations of, for example, an adverse immigration history. SARs are vital in identifying and challenging incorrect claims of this sort by the Home Office.
6. A large number of real-life case studies has been gathered by ILPA members which show the wide range of circumstances in which SARs are used and are essential.⁴

Protection from unlawful decision-making

7. In addition to the shortcomings listed above, the Home Office has a well-catalogued track-record of making unlawful decisions. As Lord Rogers told the House recently, in the ten years to 2015, a quarter of a million appeals were allowed against the Home Office.⁵

9. Allowing the Home Office an exemption from SARs in immigration matters will have the effect of insulating the Government from challenges to unlawful decision-making and of preventing individuals from correcting mistakes and overturning unlawful decisions that can have life-changing consequences.

10. The Home Office does not applying the law as it has been mandated by Parliament with the consistency that should be expected of one of the high offices of state. Whilst correcting this deficiency is outside of the ambit of this Bill, the status quo should not, at least, be allowed to worsen.

Bar Council, February 2018

³ A number of these examples are explained in greater detail in the ILPA briefing on the Data Protection Bill

⁴ Annex to the ILPA briefing on the Data Protection Bill

⁵ [Hansard, Oral Questions, 5 February 2018, Volume 788](#)

For further information please contact:

*The General Council of the Bar of England and Wales
Luke Robins-Grace, Senior Public Affairs and Communications Adviser,*

Lrobins-grace@barcouncil.org.uk

020 7611 4689

289-293 High Holborn

London, WC1V 7HZ