

Krisztina Katona

Head of Data Policy, Home Office

**THE DATA PROTECTION ACT 2018 (AMENDMENT OF SCHEDULE 2 EXEMPTIONS) REGULATIONS 2024**

Dear Krisztina

Thank you for sharing the draft Regulations to amend the immigration exemption paragraph 4 of Part 1 of Schedule 2 to the Data Protection Act 2018 ("the DPA"). The Regulations will in part amend the terms of paragraph 4 itself, and substitute new paragraphs 4A and 4B to set out new safeguards when applying the immigration exemption as well as record keeping requirements.

We understand that you are consulting with us as required by section 182 of the DPA. We are responding accordingly.

In our view the proposed amendments satisfy the requirements of the judgment in the **3Million & Anor, R (on the application of) v Secretary of State for the Home Department & Anor** [2023] EWCA Civ 1474.

In particular we welcome the addition of the following requirements:

- government must apply the exemption on a case-by-case basis;
- government must take into account the potential vulnerability of the person concerned, and the impact on their rights and freedoms;
- there is a balancing test – the risk to immigration control must be substantial and must outweigh the risk to the person's interests;
- use of the exemption must be necessary and proportionate; and
- there is no longer any requirement to have an immigration exemption policy document.

We can confirm that, in our view, the proposed changes will ensure that the exemption complies with Article 23(2) of the UK GDPR and ensure appropriate safeguards to protect individuals.

Whilst the detail that has been added to the legislation will, in our view, help to ensure that the right issues are considered when decisions are being made about whether to apply the exemption, we would like to take this opportunity to re-iterate the importance of raising staff awareness of the changes and putting in place appropriate training.

Once the Regulations complete the parliamentary process and come into effect we will update our guidance about the exemption to reflect the changes.

Yours sincerely

Emily Keaney  
Deputy Commissioner, Regulatory Policy