

Briefing Paper (31 March 2021):

The 'Immigration Exemption' in the UK Data Protection Act 2018 is a barrier to any approval of the United Kingdom's adequacy status.

We ask that the Parliament adopt the following resolution:

Notes that there are clear barriers to the UK achieving adequacy status and it is for the European Union and United Kingdom to decide how to address these shortcomings.

Notes that, based on information available to date, the UK having adopted an immigration exemption within its data protection legislation which is not adequate and is a serious breach of the General Data Protection Regulation and standards required of a third country's level of protection of personal data.

Calls on the Parliament to assess the extent of the seriousness of the breach, the use and extent of the immigration exemption, and weighing up the likelihood of the UK taking action to remedy this problem in the time available before adequacy can be provided.

Calls on the European Union to carefully consider any adequacy decision or recommendation in light of its findings.

The UK Data Protection Act 2018 contains an immigration exemption clause that creates a two-tier system of data protection with lesser rights for migrants. EU citizens and all migrants living in the UK are particularly at risk because of the hostile immigration control practices of the UK Government.

In this environment, private citizens and public servants must check the immigration status of other citizens when offering jobs, when renting accommodation, when providing healthcare, when opening a bank account, when marrying people and more. All these groups count as "data controllers" who could use this new exemption to withhold information they have about an individual, without real justification.

The exemption allows any data controller, from the UK Home Office through to public authorities, landlords and private companies involved in the immigration process, to restrict access to personal information, when releasing it would "prejudice effective immigration control". This includes the right of access to personal data, and the right to know who your data has been shared with.

the3million, the largest grassroots organisation in the UK representing the interests of EU citizens impacted by Brexit, and the Open Rights Group, a digital campaigning organisation working to protect citizens' rights to privacy and free speech online, are campaigning for the exemption to be removed from UK law. They argue that the vague purpose of maintaining effective immigration control provides a blanket exemption from fundamental data protection rights and is ripe for abuse.

The exemption is a barrier to the UK receiving adequacy status.

[European standards](#) for adequacy require that:

- The data subject should have the right to obtain rectification of their personal data as appropriate;
- The data protection system should ensure a high degree of accountability and awareness among data controllers on their obligations, tasks and responsibilities and among data subjects of their rights.
- The data protection framework should oblige controllers to be able to demonstrate compliance with the law

Importantly, on the concept of adequacy the European Data Protection Board states:

“Data protection rules are only effective if they are enforceable and followed in practice. It is therefore necessary to consider not only the content of the rules applicable to personal data transferred to a third country... but also the system in place to ensure the effectiveness of such rules.”

It has [emerged](#) that the UK Government has used this controversial exemption in response to 70% of its immigration-related data requests in 2020 (19,305 requests made, 14,027 requests had the exemption applied)

The UK Government does not monitor appeals against the use of the exemption. Furthermore, it does not provide any external guidance to the wide array of data controllers who can use this exemption to withhold information. Adding to the concern of the lack of notification and accountability, the UK’s supervisory authority reported only three appeals against the exemption’s use between 2018 and 2020.

We do not have confidence that the exemption meets the standards required for adequacy to be granted. This exemption applies to some of the most vulnerable members of society in the United Kingdom and strikes directly at the fundamental right of data protection. It poses a particular risk for those millions of EU citizens resident in the United Kingdom who are relying on the Withdrawal Agreement and who have to hand their personal data to the Home Office and other agencies to be able to stay and work in the UK.

The UK has a ‘hostile environment’ towards migrants and the exemption is another tool in its framework. Its continuation puts at risk the rights of the millions of EU citizens living in the UK the EU committed to protecting, as well as other migrants.

We call on the EU to consider carefully the evidence and the UK’s indifference to respecting the rights of migrants and citizens before granting adequacy.

Further reading:

The Open Rights Group have shared this [report](#) highlighting the scale of the exemption and its use with the European Commission and the European Data Protection Board as part of their adequacy assessment process for the United Kingdom.