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Joan McAlpine MSP
Convener
Culture, Tourism, Europe and External Relations Committee
The Scottish Parliament
Edinburgh
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RW
22nd May 2018

Dear Joan,

THE IMMIGRATION EXEMPTION IN THE DATA PROTECTION BILL

As agreed during my attendance at the meeting of the Culture, Tourism, Europe and External Relations Committee on 10 May 2018, I am writing to respond to the point on the immigration exemption in the Data Protection Bill raised by Mairi Gougeon MSP.

The UK's new Data Protection Bill will further strengthen UK standards, ensuring they are up to date for the modern age, and it will implement the EU's new data protection framework in our domestic law.

The immigration exemption will only apply where it is necessary and proportionate to do so in accordance with our soon to be published guidance. The exemption provides that rights (such as the right to access data) can only be restricted where giving effect to those rights would be likely to prejudice effective immigration control.

Further, it is not a blanket 'carve out' or derogation and must be used only on a case by case basis and not as a matter of routine. It is also not a permanent restriction of a right, once the circumstances that led to the decision to restrict have been addressed then any rights that had been restricted must be fully applied.

It is the default position that all rights are exercisable by all data subjects unless there is evidence that would lead to the prejudice test being satisfied. This is not designed to routinely prevent anyone from accessing their data but to ensure we can effectively carry out immigration enforcement functions. With respect to EU Nationals we will do all we can to assist them in proving their status eligibility and minimise the effort they need to go through in order to make the process as simple as possible.

In addition the Home Secretary has asked for a review of how the exemption is working after it has been in effect for 12 months. The Home Office would welcome input from stakeholders, such as your committee, as part of that process.

A handwritten signature in black ink, appearing to read 'Robin Walker', written in a cursive style.

**ROBIN WALKER MP
PARLIAMENTARY UNDER SECRETARY OF STATE FOR
EXITING THE EUROPEAN UNION**