

## medConfidential briefing on the **Data Protection Bill: Clause 15 & Schedule 2 para 4**

Schedule 2 paragraph 4 shows the broad sweeping scope of the Henry VIII power in clause 15 - proposing that data subjects' rights are non-existent where "*application of those provisions would be likely to prejudice*" "(a) *the maintenance of effective immigration control, or (b) the investigation or detection of activities that would undermine the maintenance of effective immigration control*"<sup>1</sup>.

That text, under the heading "immigration", removes all rights from a data subject that the Home Office wishes they did not have. Such removals are not restricted to those who have been found guilty of immigration offences, but apply to every data subject, including Home Office "clerical errors". It is exactly those clerical actions that Data Protection regulates.

**There is no justification for this power provided in the Bill.** Given the focus on non-UK citizens, it is unclear whether the Bill would be receive adequacy for EU transfers post-brexit, since the rights of citizens can be abridged by the Government in secret, and this is most likely to occur for every EU citizen post-Brexit. Given the ongoing policy paranoia of the Home Office, it will also like affect UK citizens who may be picked up in the immigration dragnet, and who would be unable to discover why.

**Schedule 2 paragraph 4 should be removed in its entirety.**

**Clause 15** seeks to allow the current or future Government to amend or add additional such clauses by Regulation, for any purposes. This is overly broad. Schedule 3 names some purposes of this clause, which includes: "child abuse data" and "health data".

NHS England have produced a paper<sup>2</sup> covering the power of those rights. Arguing why it should build a "national data lake" of every patient treatment in England, it says these rights are the only mechanism by which a patient could dissent (other dissent choices, including the forthcoming announcement from the Department of Health, could be set aside):

"The NDG Review opt out will not apply. However the GDPR Right to object and the GDPR right to restrict processing will apply should a data subject wish to exercise that right" - NHS England<sup>3</sup> (figure 2 shows that "near real-time" data is needed to monitor nurses, which is also likely to lead to public dissent...)

**While Schedule 2 paragraph 4 should be removed entirely**, and to prevent a return through Regulation, **Clause 15 should also be amended to insert at end:**

(4) Regulations under this section shall only relate to the continuation of processing underway before commencement of this section.

Powers to set-aside confidentiality were already passed in primary legislation. Any powers to set aside data protection law must be on the same basis. While data loopholes for departments may be bureaucratically attractive, Data Protection swiss cheese is not an option for a Government that wishes to trade with the single market...

Contact: [coordinator@medconfidential.org](mailto:coordinator@medconfidential.org)

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<sup>1</sup> Para 4: [https://publications.parliament.uk/pa/bills/lbill/2017-2019/0066/lbill\\_2017-20190066\\_en\\_14.htm#sch2](https://publications.parliament.uk/pa/bills/lbill/2017-2019/0066/lbill_2017-20190066_en_14.htm#sch2)

<sup>2</sup> <https://medconfidential.org/2017/what-is-nhs-englands-national-data-lake/>

<sup>3</sup> Para 125: <https://medconfidential.org/wp-content/uploads/2017/09/2017-07-13-Target-Architecture.pdf>