

4. MOTION

**Data Protection Bill 2018 –
Standing Order 4.6 suspended to take Second Reading**

The Hon Member for Douglas Central (Mr Thomas) to move:

That Standing Order 4.6 be suspended to the extent necessary to allow the Second Reading of the Data Protection Bill 2018 to be taken at this sitting.

The Speaker: Item 4. I call on the Hon. Member for Douglas Central, Mr Thomas, to move.

Mr Thomas: Thank you very much, Mr Speaker.

I would like to move a motion to suspend Standing Orders and to hold the Second Reading of this Bill directly after the First Reading.

My understanding is that, Mr Speaker ... [*Inaudible*] the contents of the Bill, solely for the reason for the suspension of Standing Orders. Is that sufficient?

The Speaker: To explain the timing, yes.

Mr Thomas: So, in essence, my motive in this regard is timing. This is not about rushing consideration of an important Bill; this is about creating the opportunity for full discussion, frank discussion, at the right points in the Bill.

Hon. Members will know that during the sitting of the Keys last week, the public were informed that we had a presentation in the Barrool Suite during lunchtime, which is when the First Reading would have happened if it had happened last week. Two weeks before that we published this Bill as part of the consultation about the regulations and orders that would, if this Bill is passed, be made under this Bill as an Act subsequently. So I do hope that Hon. Members will understand that as the May deadlines for the Law Enforcement Directive and the GDPR are important, they are pressing, they need to be made no later than May Tynwald. I do hope that Hon. Members will give me leave to actually continue with the Second Reading at today's sitting.

Without going into the contents of the Bill, I would remind Members that it is a framework Bill. It is a seven-clause enabling Bill; it gives powers to people. We have still got 200 to 300 pages of regulations and orders to be considered in Tynwald when the substantive issues in this process will be considered.

The Speaker: Beg to move.

Mr Thomas: I beg to move.

The Speaker: I call on Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.
I am still slightly unclear in terms of –

The Speaker: Mr Shimmins, are you not seconding the motion?

Mr Shimmins: No, sorry.

The Speaker: Right. Mr Ashford.

Mr Ashford: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: That is the contribution, then.
Now, Mr Shimmins.

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Mr Shimmins: Thank you, Mr Speaker.

I am still slightly unclear about why this is lastminute.com. We have known about the May deadline for some time. Perhaps I could ask the Minister to provide an explanation about why we are being asked to rush this process.

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Thank you.

Mr Thomas: Thank you.

The Speaker: One moment, Mr Thomas. I just want to make sure that nobody else wishes to speak – in which case, mover to reply.

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Mr Thomas: Thank you very much, Mr Speaker, and for that helpful question from the Hon. Member for Middle.

This is not lastminute.com. The EU has taken a long time considering GDPR and if you look at the Information Commissioner's website, it is not possible to actually provide advice about some areas inside the GDPR world because they have not as yet been decided by the EU working groups.

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We are at exactly the same stage, if this motion goes through today, as they are in the United Kingdom. In the United Kingdom the Bill is currently at Second Reading in the House of Commons and they are not expecting it to come out of the House of Commons before the end of April.

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The third point to make is that in Jersey and Guernsey, yes, they have a very different legislative process: they just have more or less two readings of Bills like this in the legislative process. In Jersey, they have actually had the Bill taken through just a few days ago at the end of January, and Guernsey was at the end of November.

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The point I would make is that the mechanism that is being proposed is potentially superior because it gives more flexibility to have an excellent data strategy that works for people and businesses in the Isle of Man, because with this short enabling framework Bill, we will be able to revisit any regulations and orders we make in the coming months, in coming years, as the EU or the UK or anybody else might reflect on how they have done it.

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So, in essence, this Bill is not lastminute.com; it is at the end of a long process. If I just go back and remind people of what happened in 1973 when the Isle of Man joined the European Union, we had years and years of preparing for joining the European Community, as it was at that time, just like we have got years and years of preparing for Brexit at the moment, but the Bill that took us into the European Community went through both Branches of this Hon. Court in about three weeks. That is how we should see this piece of legislation: it is a short Bill, enabling legislation, providing the opportunity for orders and regulations to be made subsequently upstairs.

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The Speaker: Hon. Members, the motion before you is that Standing Order 4.6 be suspended to the extent necessary to allow the Second Reading of the Data Protection Bill 2018 to be taken at this sitting. Sixteen votes are required for this motion to carry. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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**Data Protection Bill 2018 –
Second Reading approved**

The Hon Member for Douglas Central (Mr Thomas) to move:

That the Data Protection Bill 2018 be read a second time.

The Speaker: I turn then to the Second Reading. I call on Mr Thomas.

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Mr Thomas: Thank you, Mr Speaker.

I am bringing this Bill forward today as part of the Government's commitment to ensure we are compliant with the EU's General Data Protection Regulation which comes into force on 25th May 2018.

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Hon. Members, the first EU directive on data protection was agreed in 1995. This legislation was used to update the Island's data protection legislation in 2002. Since that time, the digital world has changed beyond all recognition. In 2002 there was no Facebook, Twitter or Netflix; Government digital services were in their infancy and big data as a concept or a business model was just beginning to emerge. We need to respond to ensure that our data is protected with up-to-date legislation that is fit for purpose.

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Mr Speaker, Hon. Members, after considering the options available to it, the Council of Ministers proposes to take an approach to implementing the GDPR that is flexible, appropriate and responsive to future need.

The Bill before you is a short, enabling Bill which gives powers to the Council of Ministers to directly apply EU legislation which applies to data protection into Manx domestic law by order, subject to Tynwald approval. The provisions in the Bill are similar to those in sections 2A and 2B of the European Communities (Isle of Man) Act 1973.

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While we are here to scrutinise this Bill, I think it is important to give some indication as to how the powers in the Bill would be used. The Orders which would be moved using the powers in this Bill, were it to be successful in the Branches, are now published and subject to public scrutiny and consultation. These Orders would apply, with certain modifications, the EU GDPR and the EU Law Enforcement Directive directly into Manx law as described above. These Orders would be subject to Tynwald scrutiny and ultimately approval.

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In addition, the implementing regulations would be subject to the same scrutiny and approval processes. I remind Hon. Members – in fact, I implore Hon. Members – that these orders and regulations are very important and they are currently the subject of consultation, which is scheduled to close on 5th March.

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It is vital that the Island ensures it is in a position of legislative equivalence with the EU, even more so after the United Kingdom leaves the European Union. We need to ensure we are able to retain our adequacy ruling in the future so that companies that have business here and in the European Union can continue to do business with and process the data of European Union citizens.

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With that, Mr Speaker, Hon. Members, I beg to move.

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The Speaker: I call on the Hon. Member for Middle, the Chief Minister, Mr Quayle.

The Chief Minister (Mr Quayle): Thank you, Mr Speaker.

I beg to second the motion, but would point out that whilst this Government does try to give Members as much notice as possible, to have full debate, there will be times, especially with Brexit, when we will have to move legislation fairly quickly. But I would point out to my hon. colleague for Middle, I would just like to say 'Credit Union Bill' to him. *(Laughter)*

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Thank you.

The Speaker: I call on the Hon. Member for Ramsey, Mr Hooper.

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Mr Hooper: Thank you, Mr Speaker.

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I do have real concerns about the approach that is being taken by this administration in respect of how we ensure that privacy rights and rights over data are being protected. I fully accept that we must maintain adequacy with the EU and that this approach of using secondary legislation to simply insert the EU directive and regulation directly into Manx law is quite an efficient way of doing this. But we have to take a step back and look at the potential knock-on effect of taking this approach.

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I would like to echo the concerns that were raised by Mr Shimmins about the late timing of this Bill. This approach of using secondary legislation, I feel, has almost been forced on us because this administration decided to follow the UK. Delays in the UK inevitably had a knock-on effect here, delaying our own legislation, so I do believe this Bill is very much last minute; we have had nearly two years to get to this point and I would urge the Minister simply to reflect on this when considering following the UK or waiting for the UK to make decisions in other areas.

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I expect that every Member here knows what GDPR and LED stand for in this context, but do we all appreciate – I mean really appreciate – what they mean? They mean privacy. They ensure that we as individuals have ultimate ownership and control over our own data, how it is used, what it is used for, how it is processed and, importantly, how it is accessed and who by.

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These are fundamental rights we need to ensure are difficult for future governments to change. It is my firm belief that we need to enshrine these fundamental rights into primary law. Primary law is the only way to ensure that future changes are subject to appropriate levels of scrutiny. Secondary legislation is fine for much of the detail of the regulations, the actual operational aspects, but the underlying right, the fundamental principles of data protection, need to be protected; and secondary legislation, whilst it does have the full force of law, does not provide sufficient protection.

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The rights I am talking about are rights to ensure that our data is held and used lawfully for specific and relevant purposes for which consent has already been provided, that it is accurate and up to date and is kept safe and secure. Essentially, that the data belongs to us as individuals and not to corporations or the state who we may wish to share our data with.

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Members, I cannot impress upon this House enough that this is possibly one of the most important issues that we are going to be asked to address. The world is ever more connected and ever more reliant on digital services, and perhaps the Island even more so, given our unique circumstances and the international reach of our economy.

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I would hope that Hon. Members will join me in impressing upon this administration the importance of ensuring that people's privacy rights are properly and rightly located in primary law. I also would echo the Minister's comments and urge Members to properly scrutinise the draft Orders that are out for consultation. We have to get this right.

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I appreciate that due to time constraints that have arisen from Government's approach, it would be very difficult to amend the Bill in front of us, and that is not a step I really want to have to take, so instead I am going to ask the hon. mover to make a firm commitment today that the Data Bill that is already included in his legislative programme will be forthcoming and not subject to his usual delays. We all know how flexible the Minister is when it comes to timescales – the waxing and the waning of the moons and such like. I want him to commit today that he will be including these fundamental principles and rights surrounding the use of personal data and privacy within that legislation. Ideally, I would like to see a comprehensive Information Bill that encompasses both data protection and freedom of information – personal and public data, but I suspect asking the Minister to make this commitment would be a step too far.

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Thank you, Mr Speaker.

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The Speaker: I call on the Hon. Member for Ramsey, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I would like to reiterate my colleague from Ramsey's views that the fundamental principles here are about privacy rights and data security. However, whilst I have no problems with the motion and this Bill being brought forward, it is purely facilitating far greater rules and orders to
190 come forward in the future from the European Union.

I think it is very important that the Minister for Policy and Reform has stressed the need to have flexibility, appropriateness and responsiveness to some of these regulations and orders coming through, because whilst privacy rights are a fundamental principle for the individual, I am very concerned that some of these orders and regulations coming through from Europe may
195 cause local businesses and companies significant financial problems in terms of meeting them.

The significant burden on our industries and companies on the Isle of Man might limit their ability to function in the wider world and also perhaps limit their ability to function at all. I know of some companies already who are doing the mathematics between bringing in all the regulations and the potential fines they may take, and which would be greater.
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So I think it is extremely important that when these rules and regulations and orders come through they are scrutinised by this House. Whilst the adequacy assessment is obviously essential and maintaining equivalents is vital, that does not mean to say we have to have identical regulations. Through GDPR, I do believe there is an ability for the Isle of Man to craft, by slight changes, a competitive advantage for those people working on this Island.
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There is, unfortunately, with the European Union, a slight feeling that, 'Do as we say but not necessarily as we do'. On a recent visit to Brussels, the home of the European Parliament, I went into a pub to find that everyone was smoking inside and yet that would be frowned upon in Europe, frowned upon in the Irish Republic. Europe has been very good at giving rules and regulations, but they themselves select what is appropriate for them. All I ask is that, although I agree with this Bill to facilitate these rules and regulations, we take a very close eye at them and make sure that they are fit for purpose on this Island.
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Thank you, Mr Speaker.

Several Members: Hear, hear.
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The Speaker: The Hon. Member for Douglas East, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

I will make my contribution small because, effectively, I am following on from both the Members in Ramsey in terms of expression about concern.
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The hon. mover will continue to enjoy my support, I am certain, with regard to this Bill and I appreciate the difficulties and the circumstances he finds himself in but, Mr Speaker, I would just like to ask the mover to comment on how he sees the regulations in another place being handled by Hon. Members in the future.
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I think we all recognise that we all try to give the Order Paper in another place due deliberation but when we get to EU regulations we tend to, as it were, skip through them. I wonder is the Hon. Member mindful of this? Particularly with regard to the Hon. Member for Ramsey's comment about the equivalency and is there any movement here at all for the House to deliberate on them and is there any way that we can present the GDPR regulations when we are dealing with them in a slightly different way so it will help Members focus on them and consider them carefully?
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Thank you, Mr Speaker.

The Speaker: I call on the Hon. Member for Middle, Mr Shimmins.
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Mr Shimmins: Thank you, Mr Speaker.

I think we all understand the need for urgency at times and I think already this House has shown flexibility and responsiveness when required. I have to say, I was slightly mystified by the Chief Minister's comments about the Credit Unions Bill in this regard. I am concerned that the way this Bill is being brought forward – in a rushed manner – does not reflect well on the Government. The timescales here were eminently predictable; we have known this situation for months, if not years. Perhaps the Minister might want to reflect on the way that this is being brought forward and the concerns that he is hearing from a number of Members. I would like to hear his response and we are in a situation which really is of our own making, Mr Speaker.

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The Speaker: I call on the Hon. Member for Ayre and Michael, Mr Baker.

Mr Baker: Thank you, Mr Speaker.

Just a minor point from me, building on the comments of my hon. friends from the north of the Island, Dr Allinson and Mr Hooper. This is an important subject; I do endorse the approach that is being brought forward here with enabling legislation supported by more detailed Orders in due course. My point is a simple one: it appears on reading the Bill that Orders will be brought forward and they will be subject to negative resolution in Tynwald. I just wonder whether – in the light of the sentiment that has been established – it would be preferable for it to be moved by positive resolution to actually focus Hon. Members' minds and create a focal point for debate.

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Thank you.

The Speaker: Hon. Member for Douglas East, Miss Bettison.

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Miss Bettison: Thank you, Mr Speaker.

Following on from some of the comments and concerns that I share with my hon. colleagues around the Chamber, I wonder whether the Minister might commit to holding workshops where we could actually go through these regulations post the consultation responses, to be clear exactly on where we are heading with them and to be absolutely certain, in our minds, that we are content with that as a process and that we can absolutely affirm our confidence in this legislation.

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Thank you.

The Speaker: I call on the mover to reply, Mr Thomas.

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Mr Thomas: Thank you, Mr Speaker.

I appreciate and value, as does everybody else involved, all of the very positive suggestions for what we should be doing from where we are now. This Minister has heard at least two of the hon. questioners say we need to reflect on how we ended up where we are and what we do next. But the point I want to reiterate is that we are in a good place with this Bill, because we have had a lot of reflection on the best way to bring into force, in the Isle of Man, so that the six vitally important GDPR data privacy principles are properly enshrined in primary law. And we have reflected a great deal on how we make sure we set up the environment so that we can have the best possible data strategy for internationally facing businesses who need to do business with EU citizens. We are also reflecting on the small businesses and the charities and the individuals, because Hon. Members will remember that we have a CPD workshop coming up on what GDPR means for us, as politicians, and how we deal with constituents' data.

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Firstly, just to answer the Hon. Member for Douglas East, Miss Bettison's question, it seems an excellent idea to build on that workshop with more substantive workshops for Members about the LED and GDPR in all of its parts, and I make that commitment today.

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The second commitment I make is that this is ...

No, before I make a commitment, a statement, particularly responsive to Mr Perkins and a few other people's questions about whether or not this is a Manx version of GDPR or whether it is just an EU legislation. The crucial thing is that we have been reflecting very much on 'Manxifying', making it appropriate for Manx domestic law, the GDPR. We are not taking the UK approach; we are not taking the Guernsey approach; we are not taking the Jersey approach; we are not taking the Luxembourg approach. We have considered all of those approaches, and a great deal more, and we are taking the Manx approach, that is well considered. It is true that a few months ago, based on excellent input from the Information Commissioner, from industry, from political colleagues, from officer colleagues, we decided to slightly twist the way that we were going to make these regulations and orders. We are perfectly satisfied; we could have made these under the European Communities (Isle of Man) Act 1973. But we have decided to actually make them under a domestic piece of legislation, this Data Protection Bill, which I hope is enforced with Royal Assent, no later than April, after having proper consideration and making sure it is the right approach for a Manx way. We are absolutely making changes to GDPR, where we are allowed to make changes, but mitigating and managing the risk that we will lose the absolutely vital equivalence and adequacy that we need to have.

So there will be workshops for us. This is a Manx approach. We have got an excellent Information Commissioner. We have got systems in place in our companies that have been gearing up for years to this GDPR approach, as we have. I am sure all of that will come together. There is no Damocles' Sword hanging over us in May 2018, we have got some time to make sure everything is working properly and we are beginning a process, or we are a long way through the process, and that process will continue to make sure that we do things right by our citizens and efficiently and effectively by our businesses and other organisations.

The other commitment I was asked to make, from the Hon. Member for Ramsey, Mr Hooper, was to make a firm statement that the data privacy principles inside the GDPR, the six principles, were important, and they categorically are. They are important for people and it is important that everybody else understands that. In legal terms it is exactly equivalent to have them in domestic law, through regulations and orders, as it would be inside a Bill, but I accept that the Bill will have been through the primary legislation process, rather than the secondary legislation process. So I will go slightly further, even than the Hon. Member for Ramsey invited me to go, I will state that we do have an additional Data Protection Bill inside our legislative programme and why wouldn't we change that to be entitled an Information Bill? Why wouldn't we look to investigate whether or not it makes sense to bring together our freedom of information legislation and our data protection legislation in coming years into one statement of this Island's recognition of the value of data for organisations, but also the importance of protecting people's rights and data?

So I will make the commitment that the Hon. Member for Ramsey has requested, and we will revisit this in coming years to see whether we can have an all-encompassing piece of information legislation. That would not be under some sort of consolidation approach; that would be looking at this again, with two or three years' experience of how it is working, to see whether we can put together a perfect piece of legislation for the Manx context, for people here, for businesses here and for other organisations here.

What else was I asked to commit to? I think it was just a suggestion from the Hon. Member for Ayre and Michael, Mr Baker, about whether we had the right Tynwald procedure for the orders and the regulations. We have got the procedure enshrined in the Legislation Act 2015. Regulations are for positive approval; orders that are bringing into force European Union directives are always for negative approval. This is something that we can consider at the clauses stage if we get to that stage. We have used the Tynwald process, as is appropriate for the nature of the instrument, I am happy and satisfied with that. But it is something that I would like to talk with the Hon. Member for Ayre and Michael about, with officers, and we can see what we can do before the clauses stage, if this Hon. House gives us the vote to continue to the next stage.

340 Is there anything I have missed? (**A Member:** No!) Obviously there are new standards now for
summing up speeches that were set in the Abortion Reform Bill last week, so I want to make
sure that I do rise to those standards.

Thank you very much, Mr Speaker, I beg to move.

345 **The Speaker:** Hon. Members, the motion I put to the House is that the Data Protection Bill
2018 be read a second time. All those in favour, please say aye; against, no. The ayes have it. The
ayes have it.

Hon. Members, that concludes the business before the House today. The House now stands
adjourned until next Tuesday, 13th February, in our own Chamber.

The House adjourned at 11.07 a.m.