

## Order of the Day

### 3. CONSIDERATION OF CLAUSES

#### 3.1. Data Protection Bill 2018 – Clauses considered

Mr Thomas to move.

**The Speaker:** We turn to consideration of clauses, the Data Protection Bill 2018, and I call on Mr Thomas to move.

5 **Mr Thomas:** Thank you, Mr Speaker.

We move today to the clauses stage of this important Bill. Hon. Members, Mr Speaker, this is a short enabling Bill, giving the Council of Ministers powers, subject to approval by Tynwald, to import EU legislation relating directly to data protection into Manx law. This is specifically to allow us to ensure that we have legislation in place which will give us equivalence to the European General Data Protection legislation, which comes into effect on 25th May of this year.

10 Hon. Members, to remind you, the detail does not and should not rest in this Bill; rather the orders and implementing regulations are where the substantive provisions can be found. I think it is important to say at this point that we are consulting on the provisions in the secondary legislation and I encourage those who have an interest in this matter to ensure that they submit their response before 5th March 2018. There is a very real opportunity to ensure the regulations in particular are not only correct but meet our needs here in the Isle of Man. We have already received some very good feedback from the Information Commissioner, from professional bodies representing some of our key financial industries and from other people and we are acting on those submissions for the draft of the regulations.

15 So, Mr Speaker, if I may to turn to clauses and move clauses 1, 2 and 3 together.

20 Clauses 1 and 2 deal with the short title and the commencement of the Act respectively. The short title of the Act clearly states that this is a Bill dealing with data protection.

Clause 2 gives the Council, by appointed day order, to bring the Act into operation at the time of its choosing. Clause 2 also, as is usual, gives powers to Council to make incidental consequential, supplemental, incidental and transitional amendments as are necessary by order.

25 Clause 3 contains the standard interpretive definitions, which are based on those already in existence in the European Communities (Isle of Man) Act 1973. Clause 3 also gives powers to Council to modify these interpretations by order. If those interpretations are definitions subsequently changed due to the changes in the way in which the Isle of Man's relationship changes with the EU or the UK, following its withdrawal from the EU, for example.

30 Mr Speaker, I beg to move clauses 1, 2 and 3.

**The Speaker:** Mr Ashford.

35 **Mr Ashford:** I beg to second, Mr Speaker, and reserve my remarks.

**The Speaker:** The question is that clauses 1, 2 and 3 stand part of the Bill. All those in favour, say aye; against, no. The ayes have it. The ayes have it.

We turn now to the new clause in the name of Mr Hooper.

40 **Mr Hooper:** Thank you, Mr Speaker.

This amendment is quite straightforward for this new clause. It simply takes Article 5 from the proposed GDPR and embeds this into primary law.

45 So I believe I am moving this clause in principle, which I will do now. I will move it in principle and then speak to the detail shortly.

So I beg to move, Mr Speaker.

*New Clause:*

1. Page 6, in line 1 immediately before clause 4 insert the following new clause —

**“NC Data protection principles**

(1) Any action referred to in subsection (2) that is taken in respect of personal data must comply with the data protection principles specified in subsection (2).

This is subject to subsection (3).

(2) Personal data must be —

- (a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');
- (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes must not be considered to be incompatible with the initial purposes ('purpose limitation');
- (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');
- (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes subject to implementation of the appropriate technical and organisational measures in order to safeguard the rights of the data subject ('storage limitation');
- (f) processed in a manner that ensures appropriate security of the personal data, including protection against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

(3) The requirements in subsection (1) are subject to any qualifications or restrictions which, by implementing regulations under section 5, are imposed in accordance with an EU instrument applied to the Island under section 4.”.

**The Speaker:** Dr Allinson.

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**Dr Allinson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Thomas.

55 **Mr Thomas:** I fully – as does Council of Ministers – respect the intent of this amendment. In essence, the six data privacy principles stated in this amendment are more or less the same as the ones in the GDPR, just making some legal adjustments.

I do not think it is necessary to have these principles in this primary legislation which, we have to remember, is an enabling Bill. There is nothing wrong with the principles, it is just they do not mean anything outside their context, and they do not really mean anything outside of the framework in which they will be applied.

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So I will actually be speaking quite forcibly against this clause, if it is moved, and Hon. Members should make up their minds at this stage whether or not they think it is necessary for this clause to be moved.

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**The Speaker:** Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

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I know we are at principle stage, I wonder whether the mover could indicate whether in fact this in any way inhibits Government from assembling aggregated and anonymised data because it specifically refers to personal data, but once it moves into anonymised aggregated data it is no longer effectively personal data, just so long as an individual in those circumstances cannot be identified.

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**The Speaker:** I call on Mr Hooper to respond to the debate on the clause in principle.

**Mr Hooper:** Thank you, Mr Speaker.

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In all honesty, dealing with Mr Robertshaw's comments, I do not know the answer to that question. I strongly suspect the answer is no, it does not prevent Government from collecting and collating anonymised data, but I think that question is better directed at the Minister of the Cabinet Office, in fairness, who are actually going to be moving the secondary regulations themselves which will deal with all the detail underpinning the Bill.

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The reason that I think it is quite important that we put this in primary legislation is actually quite straightforward. The Minister has said that these principles are important but they do not stand alone and I would agree with that to some extent. The principles deal with the lawful processing of data, making sure the data is collected only for specified purposes, to make sure that data held is adequate and relevant, that it is accurate and up to date and it is held only for as long as necessary and it must be held securely. And I think these principles are important when talking about a framework or an enabling Bill. Ideally these will be in primary legislation because it will prevent any future Government from tampering with them easily. Everything would have to go through Tynwald, but I firmly believe that we get more scrutiny of primary legislation than we do of secondary orders.

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I think this Bill, as an enabling Bill, is the right place for these principles and I will explain why. The long title of this Bill is:

A Bill to enable provision to be made to adequately protect personal data; to regulate the control and processing of personal data;

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This Bill is not simply about applying EU regulation to the Isle of Man. This Bill is about protecting personal data and I think, when we are deciding on where these principles should sit, if we are saying we are going to build a framework around how we protect personal data, how we regulate the way that it is processed, I think it is very important to underpin within that framework these principles. And so if this Bill is setting out that framework surely we must be willing to include the principles here rather than saying well, we have a Data Protection Bill that does not do anything in respect of data protection. All the Bill does is let people import EU rules. Well, that is not the purpose of the Bill as set out in the long title, and so far there is not really anything else in the Act that deals with the protection of personal data, except for the ability to import EU GDPR. I suppose that is for me why this is the right place for these principles. I do firmly believe that we need to make sure that we put them down in such a way as that they cannot be amended, they cannot be taken away, they cannot be changed, without proper debate and scrutiny.

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So, to that end, Mr Speaker, I beg to move.

110 **The Speaker:** The question is that the new clause be approved in principle. Those in favour, say aye; those against, no. The noes have it.

*A division was called for and electronic voting resulted as follows:*

**FOR**

Dr Allinson  
Mr Baker  
Mrs Beecroft  
Mrs Caine  
Mr Callister  
Mr Hooper  
The Speaker

**AGAINST**

Mr Ashford  
Miss Bettison  
Mr Boot  
Mr Cannan  
Mrs Corlett  
Mr Cregeen  
Ms Edge  
Mr Harmer  
Mr Malarkey  
Mr Moorhouse  
Mr Peake  
Mr Quayle  
Mr Robertshaw  
Mr Shimmins  
Mr Skelly  
Mr Thomas

**The Speaker:** Seven votes for, 16 votes against. The new clause fails to carry in principle. We therefore move to clause 4, and I call on Mr Thomas to move.

115 **Mr Thomas:** Thank you very much, Mr Speaker.

Just before moving clause 4, I absolutely stress what I have said at the Second Reading, which is that the Council of Ministers has a Data Protection Bill which is in the legislative programme and will be coming where these principles can be put into primary law. But I also want to refute the idea that secondary regulations, where these principles will be placed in their context, is in any sense inferior to primary legislation because those regulations will be subject to Tynwald approval and are being properly considered in the consultation and will be the subject – as I promised the Hon. Member for Douglas East, Miss Bettison – of intensive workshop discussion with Members in the coming weeks.

120 Mr Speaker, Hon. Members, clause 4 gives the Council of Ministers powers to apply by order, and with any exceptions, adaptations and modifications the Council may specify, any EU instrument relating to data protection. For clarity, we have included specific existing EU data protection legislation, including the GDPR and the Law Enforcement Directive. We have also included the Passenger Name directive and the EU directive on information and network security as types of data protection instrument which may be applied by order. This is not an exhaustive list and these instruments, along with any others which are applied by order under this power, would be subject to the same scrutiny.

125 This clause also gives powers to Council to make amendments under an order to amend other legislation, where so required to ensure consistency with the instrument that is being applied. This power is consistent with similar powers in the existing European Communities (Isle of Man) Act 1973. And the order, the underpinning EU regulation, does allow for anonymised data to be kept. It is quite clear, in fact, in the data privacy principles because statistical purposes are already covered in the privacy principles themselves.

130 I beg to move, Mr Speaker, Hon. Members.

140 **The Speaker:** Mr Ashford.

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

145 **The Speaker:** The question is that clause 4 stand part of the Bill. All those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 5, Mr Thomas.

**Mr Thomas:** Thank you, Mr Speaker.

150 This clause deals with what we are terming 'implementing regulations'. Once an EU instrument has been applied by order in clause 5, in most cases it will need to be accompanied by regulations which give the detail of how the applied law and its principles and powers will work in practice. It is important to spend some time to establish the difference in this legislation between implementing regulations and regulations, and that is what I will do. Implementing  
155 regulations are defined in clause 5(1)(a),(b),(c) and (d) of the Bill. They are required to ensure the proper implementation of an EU instrument and may contain a broad range of provisions. These again, Mr Speaker, are similar to provisions that already exist and are frequently used in the European Communities (Isle of Man) Act 1973. In this case, however, we have narrowed the definition under which this legislation can be used to the European Union data protection  
160 instruments. The implementing regulations do not fall under the definition of regulations as set out under section 16(1)(a)(i) of the Interpretation Act 2015.

Section 5(6) at line 24 on page 8, also clearly sets out the authorising procedure for these implementing regulations – that is under the Legislation Act, section 30, Tynwald approval, positive approval. So the regulations must be moved and approved in the other place. I hope  
165 that will give Hon. Members some comfort about the scrutiny to which those implementing regulations will be subject. Separate regulations can be authorised to be made under the implementing regulations and these will be the sort of regulations we would expect to see under normal primary legislation such as fee schedules, for example. The implementing regulations cannot be used to impose or increase taxation and cannot be made retrospectively.

170 I beg to move, Mr Speaker.

**The Speaker:** Mr Ashford.

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

175 **The Speaker:** The question is that clause 5 stand part of the Bill. All those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 6, Mr Thomas.

180 **Mr Thomas:** Thank you, Mr Speaker.

This is a relatively standard clause which acknowledges that where an order or implementing regulations make reference to an EU instrument, that instrument may change from time to time and so any reference to that instrument is construed as to an instrument that may change from time to time.

185 I beg to move.

**The Speaker:** Mr Ashford.

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

190 **The Speaker:** The question is that clause 6 stand part of the Bill. All those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 7, Mr Thomas.

195 **Mr Thomas:** Thank you, Mr Speaker.

This clause gives Council powers to amend this Act by order, subject to Tynwald approval, at section 7(1)(a) if there are developments or changes which may affect any orders made under section 4, or implementing regulations made under section 5.

200 In addition, if there are changes to EU data protection law, then there are also provisions under section 7(1)(b) to amend the Act.

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

**The Speaker:** Mr Ashford.

205 **Mr Ashford:** I beg to second, Mr Speaker, and reserve my remarks.

**The Speaker:** The question is that clause 7 stand part of the Bill. All those in favour, please say aye; against, no. The ayes have it. The ayes have it.