

**4. Data Protection Bill 2018 –  
First Reading approved**

H M Attorney General to move:

*That the Data Protection Bill 2018 be read a first time.*

**The President:** Item 4, Data Protection Bill. I call on Her Majesty's Attorney General to move.

**The Attorney General:** Thank you, Mr President and Hon. Members.

I am pleased to move the First Reading of the Data Protection Bill 2018.

5 The Bill's introduction in another place followed a very wide public consultation in relation not only to the Bill, but also the orders and implementing regulations which it is proposed will be made under the Act which will result from it.

10 You may already have heard, Hon. Members, of some debate on the Bill, which is in essence a short enabling Bill. The Bill's purpose is to give the Council of Ministers powers, subject to approval by Tynwald, to import EU legislation relating to data protection directly into Manx domestic law. The Bill will permit the Council of Ministers to ensure that we have legislation in place which will give us equivalence to the European General Data Protection Regulation, which I will refer to as GDPR, and to the Law Enforcement Directive, which I will refer to as LED.

15 GDPR comes into effect in all the Member States of the European Union on 25th May, while the LED comes into effect on 6th May of this year. These provisions together will change the shape of data protection across the EU and other jurisdictions, requiring mutual accountability and transparency when dealing with personal data and heralding a cultural shift in the way organisations deal with personal data.

20 The Isle of Man is a third country for the purposes of the EU and is not a Member State. It must take steps to enact law to give effect to GDPR and LED in its own domestic law. We need to comply with the GDPR and LED in order to ensure that the Isle of Man retains its data protection adequacy decision from the European Commission, which will in due course be reviewed by the soon to be adopted and created European Board of Data Protection. Our current adequacy decision is based upon the existing provisions in the Data Protection Act 2002, which itself gave effect in Manx law to the EU Data Protection Directive of 1995.

25 Much analysis of other jurisdictions' equivalent GDPR-related draft legislation has resulted in the production of this Bill. The Bill, as I have said, is a short piece of legislation, similar in purpose to the existing provisions of the European Communities (Isle of Man) Act 1973. The 1973 Act permits the Council of Ministers to import EU instruments into domestic law by order. These powers under the 1973 Act are already used extensively and have proved an efficient and effective mechanism for implementing various provisions of EU law, ensuring that our law meets EU standards.

30 The powers in the proposed Bill permit the incorporation into Manx domestic law of EU instruments relating to data protection, including but not limited to the GDPR and the LED. Other EU instruments such as the Network and Information Systems Directive, and the E-Privacy Directive can and may also in the future be incorporated by this mechanism. The Bill does not list such provisions exhaustively.

35 As I said earlier the Bill itself is an enabling mechanism to permit the introduction of EU law relating to data protection, and no more. The detail of the substantive law is not included in the Bill, but will be found in the subordinate legislation which will follow, which will be approved, or submitted to Tynwald for approval. These subordinate enactments are orders and implementing regulations, which will be made by the Council of Ministers and submitted as a package to Tynwald for approval. Upon receipt of Tynwald approval, one of the orders will have the effect of repealing the Data Protection Act 2002 in its entirety; that is, provisions will be replaced and renewed by the GDPR and the LED.

40

45

Turning to the content of the Bill, Hon. Members should please note that the majority of the seven clauses contain standard provisions for short title, commencement, and amendments, and as such, Hon. Members, I would encourage you at this First Reading stage to consider the substantive provisions in the Bill, which are in essence set out: firstly, at clause 4 which gives the Council of Ministers power to apply by order, and with any exceptions, adaptations and modifications the Council may specify, any existing or future EU instrument relating to data protection; and secondly, at clause 5, the power to introduce implementing regulations, as distinct from the EU General Data Protection Regulation which will implement that law in the Isle of Man. Such implementing regulations will deal with how the applied law and its principles and powers will be dealt with in practice on the Island.

As I have mentioned, the whole suite of legislation – the Bill and the proposed secondary legislation – has already been subject to extensive consultation, with positive action taken by the Cabinet Office to encourage industry responses, and follows collaboration with the Information Commissioner who, as our well established and experienced regulator, has ultimate responsibility for enforcing our data protection legislation.

The consultation which, as I say, included the Bill prompted some comment across industry, since the approach the Island is taking to introduce this legislation is different to other jurisdictions by our using the Bill as an enabling power only. It must be understood that the Isle of Man has a very different starting point for its legislation, and the actual content of the Bill has yielded very few comments as it is merely an enabling power upon which we will rely to implement EU data protection instruments in the Isle of Man.

In the development of the approach proposed, the Government has listened to consultation responses, which are understandably most concerned about the content of the proposed substantive law in the implementing regulations to be introduced by secondary legislation. The very reason for using secondary legislation for the substantive rules is that, by its nature, such secondary legislation can remain agile and responsive to industry and future economic needs in the Isle of Man. The implementation regulations will give effect to the EU regulations, and they are already subject to significant redrafting resulting directly from the consultation and other feedback received.

The Information Commissioner joins with me in the support for this approach as a robust and bespoke solution for the Isle of Man, which will withstand withdrawal of the UK from Europe in a way which using the 1973 Act powers would not, and which enables the Island to enshrine the fundamental principles of GDPR and LED into our law directly. This in turn will ensure the prominence of the data protection law in our domestic legal framework so that we can continue to do business with other jurisdictions requiring personal data transfer by retaining our adequacy decision, and comply with the international standard for data protection, whilst retaining flexibility in the implementation regulations for our future needs.

Mr President and Hon. Members, the visibility and transparency of the approach adopted by the Cabinet Office to this legislative mechanism, and the publication of the whole suite of legislation, including the proposed secondary legislation framework in advance, is largely unprecedented in the Isle of Man, but corresponds with the level of very public commitment to the implementation of data protection law in the Island. It is of the utmost importance that the Isle of Man should maintain its excellent reputation as a well-regulated and responsible jurisdiction with which other jurisdictions can do business. A key pillar of this is sufficiently robust data protection laws that are fit for purpose. At present, the best way of ensuring we have such laws is to align ourselves closely to the EU standard. This best suits our current needs without precluding us from subsequently going in a different direction, with the approval of Tynwald, should our future needs so demand.

As I have mentioned, Hon. Members, the Island must meet a rather challenging timetable to ensure that it retains and protects its adequacy decision when the GDPR takes effect on 25th May. To enable it to do so, and hopefully meet this timetable, I will with your approval at the

time, Mr President, invite Hon. Members to consider the suspension of Standing Orders to enable the Bill's passage to be expedited.

Mr President, I now beg to move the Data Protection Bill 2018 be read a first time.

100

**The President:** Mrs Poole-Wilson.

**Mrs Poole-Wilson:** Thank you, Mr President.

I beg to second and reserve my remarks.

105

**The President:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I just want to ask the learned Attorney General to make some general commentary when he sums up. Just for clarification purposes, again, this seems to me to be enabling legislation. It is opening the door through our legislative process for the implementation of EU standards with regard to GDPR and LED, so for this Bill's purposes it does not actually do much as far as that goes, other than open the door and then following that, the secondary legislation and so forth will flow. I would just like a little more on that.

115

And I would like to have a little more on the point, where we already have the 1973 Act and it seems now more appropriate to do business this way. If the Attorney General could just give a little commentary on why it is more appropriate to do it this way. What are the benefits, if I can put it like that?

120

And finally, Eaghtyrane, while we are opening the door for GDPR and LED EU standards to be implemented, could the Attorney General briefly say – I do not expect him to give a great depth of information to this, but just in general terms – what will the general effect of applying the EU GDPR and LED regulations be, just in round terms, and will it have a huge impact on business? I think there are concerns out there, and I think the other concern which the learned Attorney mentioned with regard to ... there was a thought out in the greater public field that we are implementing something different from other EU countries and the UK, and it would be interesting just to make sure that we clarify that for *Hansard*, that we are actually not; it is just the way we are approaching it.

125

Gura mie eu, Eaghtyrane.

130

**The President:** Mrs Poole-Wilson.

**Mrs Poole-Wilson:** Thank you, Mr President.

135

I wonder if I could ask the learned Attorney when summing up – I think he mentioned in his initial remarks that in response to the consultation which closed last Monday, there is redrafting work currently underway in terms of the detailed secondary legislation – I wonder if he has any indication at this stage of when that redrafted legislation may be available for scrutiny by Members of Tynwald, as it is substantial legislation that probably merits very detailed scrutiny before coming towards Tynwald. So if he has any update on that process, that would be helpful.

Thank you.

140

**The President:** Learned Attorney to reply.

**The Attorney General:** Thank you, Mr President.

145

Firstly, I thank Mr Henderson for his very helpful questions which I am pleased to do my best to address today.

Just to re-emphasise the point which I have made that this is, as has been pointed out, essentially enabling legislation, nothing else and nothing more. Its purpose, as I have said, is to enable us to be quick footed if necessary, by secondary legislation, to keep pace with the

150 changes which inevitably are going to happen during the process of firstly the UK exiting the EU  
and secondly with reference to the changes in data protection legislation which I am sure will  
follow as a consequence.

The issue of the 1973 Act and – if I could just summarise Mr Henderson’s question, if I  
understood correctly – why we are not using that Act is a very interesting one. I certainly took  
the view personally that there were sufficient powers under that Act to enable us to introduce  
155 the required GDPR regulations and LED without the necessity of a separate Bill, but the  
consultation with industry, and in particular with the Information Commissioner, was such that it  
was felt that the Island ought to have its own data protection primary legislation, upon which  
the regulations and the guidelines will hang, rather than have it sit alongside what is a vast suite  
of EU legislation which falls under the 1973 Act. So that is why we are here with reference to  
160 that, and I think it is an appropriate approach to dealing with this.

The introduction of GDPR, and the LED but in particular GDPR, is going to have – there are no  
two ways about it – quite a significant effect on business and already with the help of a special  
working group established by the Cabinet Office, there have been training sessions offered to  
both industry and also within the various Department of Government, because it will result in  
165 many changes to processes and that training is key.

I can speak personally from the point of view of Chambers: we are having to adopt many new  
procedures to comply. It is going to be painful. There are associated costs, but if we are going to  
maintain our status under the existing legislation in Europe, with reference to data protection  
and as it will change, these are costs and it is going to be hard work that we are going to have to  
170 carry out to enable us to comply. It is unfortunately just a fact of life which we cannot escape.

We are *not*, to give the assurance to Hon. Members, implementing anything different from  
the UK. The changes that are being made, and I made this comment before, are essentially to  
Manxify what is a very detailed set of new regulations and to ensure that they are fit for purpose  
here, but the underlying purpose, intent and structures – new structures that are going to be  
175 introduced under those regulations – are no different to those that will apply throughout the  
rest of Europe.

If I could then turn to Mrs Poole-Wilson’s question, Mr President, the drafting or redrafting of  
legislation, which is essentially to respond to the consultation and to ensure that it is fit for  
purpose here, is almost completed. Certainly – I am looking across the room to my drafter who  
180 is dealing with this – I cannot give a date as yet, but perhaps when we come back again I can give  
you some further information on that.

Thank you, Mr President.

**The President:** Hon. Members, I put the question that the Data Protection Bill be read for the  
185 first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes this particular sitting. The Council will now stand adjourned  
until 10.30 in Tynwald Court, on Tuesday, 20th March.

Thank you, Hon. Members.

*The Council adjourned at 10.42 a.m.*