

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

The Attorney General to move:

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

The President: We turn to Item 2, Data Protection Bill. Her Majesty's Attorney General to move.

The Attorney General: Thank you, Mr President.

5 Mr President and Hon. Members, you will recall that two weeks ago when I moved that this Bill be read the first time, I highlighted how significant a step the passage of this Bill would be for the Island.

10 On that occasion, my focus was almost exclusively on the need for the Island to maintain its adequacy finding with the EU in the wake of the imminent entry into force for all EU Member States of the General Data Protection Regulation, which I will refer to as GDPR. That need is no less pressing now than it was then. However, today the extreme urgency of this Bill is further highlighted against the background of very recent events that have been in the news concerning Cambridge Analytica.

15 We have all seen an uninhibited and presumably innocuous sharing of personal data online for social purposes and how that has turned into the inadvertent disclosure of quite staggering amounts of personal information to persons prepared to use it for their own end, regardless of the original purpose for which the information was supplied. The uses to which this data are being put bear no connection with the purpose for which the data were disclosed to the originally intended recipient. The onward transmission of them has, in many cases, happened without even the knowledge, much less the explicit consent, of the data subjects.

In this context, it has become even more important that this Bill passes to enable secondary legislation to be made for our own protection in this information age. This may have been seen as more important than the need for us to have legislative compatibility with other jurisdictions.

25 With that said, I repeat that this Bill will enable the Council of Ministers to by order apply to the Island, as part of the Island's law, any EU instrument relating to data protection.

I would emphasise that, firstly, any such application of an EU instrument may be made subject to any exceptions, adaptations or modifications that the Council of Ministers may consider appropriate for the Island. Secondly, any order made for that purpose cannot come into force unless it has been approved by Tynwald. Thirdly, the Act that will result from this Bill will enable the Council of Ministers to apply the GDPR and the Law Enforcement Directive (LED) to the Island by means of secondary legislation, and it is the expressed intention to submit the required secondary legislation for Tynwald's consideration and, hopefully, approval as soon as the resulting Act comes into operation. Fourthly, the powers being given to the Council of Ministers under the Bill are not limited to the GDPR and LED. Two other EU instruments are specifically mentioned in the Bill, but the Bill makes it made clear that its list of EU instruments is indicative, not exhaustive.

40 Fifthly, the powers in question are almost identical to powers that already exist under the European Communities (Isle of Man) Act 1973. Those powers are frequently used and are responsible for numerous existing and heavily relied-on legislation regimes on the Island. The decision was taken to largely replicate those powers in a data protection context, as opposed to using the powers under the 1973 Act. That decision was based on the fact of giving data protection greater distinctiveness and prominence, giving the ability to tailor some of the powers to the needs of the data protection context, and thirdly to insulate the forthcoming data protection regime more effectively from the effects of Brexit, given the likelihood that on exit
45 from the EU the 1973 Act will be repealed.

At First Reading, Hon. Member of Council, Mrs Poole-Wilson asked when the draft GDPR and LED orders and the associated implementing regulations would be available to Hon. Members for their consideration and scrutiny in advance of the final orders and regulations being presented for approval. As I mentioned at First Reading, drafts of those orders and regulations
50 have already been published in the context of the wide public consultation process on these issues. The responses to that consultation are being considered, and will continue to be, until the orders and regulations are finalised. The Cabinet Office proposes to publish an updated draft of the orders and regulations on or about 18th April.

Hon. Members of Council who may have had the opportunity to have considered the current
55 draft orders and regulations will be aware that they are weighty tomes. They follow and adopt what the EU has issued and thus they are in a form which, if adopted by the Island, will enable us to maintain our compliant status along with all EU Member States. Maintaining that compliant status is essential to enable the Island to continue to do business with EU Member States, as well as with other third countries, like ourselves, who will also have an interest in maintaining
60 adequacy with the EU on the basis of legislative equivalence to the GDPR and LED.

During the March Tynwald, Hon. Member of Council, Mrs Poole-Wilson expressed concern as to the use of secondary legislation in the context of the GDPR and LED to introduce detailed and lengthy statutory provisions. The concern is that doing so could be conceived as not affording both Branches of Tynwald the opportunity to give the legislation the scrutiny it requires. Hon.
65 Members and Mr President, I sympathise with that view, which I sensed was shared by many other Members of Tynwald.

However, the use of secondary legislation provides the ability to introduce legislative provisions quickly and, in this technically complex and ever-evolving world, it is, unfortunately, a necessity; particularly so in the present context. As mentioned, a similar mechanism is used
70 regularly under the provisions of the 1973 Act for matters such as imposing sanctions to enable the Island to comply with its international obligations. In this case, as data protection laws, practices and procedures develop to protect us from the problems I have mentioned, there is no doubt that urgent and complex provisions will have to be adopted speedily in the future. It follows that the ability to be fleet of foot, which this mechanism provides, will be absolutely
75 indispensable going forward.

Mr President and Hon. Members, I should indicate now that, subject to the Bill being read a second time and successfully completing its clauses stage, I will invite you to agree to the suspension of Standing Orders in order to permit the Bill to be read a third time today.

I beg to move that the Data Protection Bill 2018 be read a second time.

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The President: Mr Crookall.

Mr Crookall: Thank you, Mr President.

I beg to second and reserve my remarks.

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The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I was going to pick up the learned Attorney's acknowledgement of the concern that I raised in
90 the March Tynwald regarding the use of secondary legislation. The secondary legislation – and I have the first draft, it is indeed a weighty tome of detail that we will be asked to approve in due course in Tynwald. I thank the learned Attorney for his update that we can hopefully see the redrafted version of this on or around 18th April.

But I wonder whether he would be able to comment on where he feels the balance lies,
95 because very often secondary legislation we get to see approximately two weeks before the Tynwald sitting and also, as Hon. Members of Council will know, secondary legislation is either open for approval or not, and we have no mechanisms really to move amendments as we do

with our primary legislation. So, whilst taking on board the learned Attorney's points about fleet of foot and the need to be able to make legislation in a timely manner to keep pace with a fast-moving situation, particularly as regards data protection, there is also the balance in making sure that the legislation we do put into effect has been adequately scrutinised so that we are clear that it has the effect we want it to have and does not have any unintended consequences.

So I wondered whether the learned Attorney would feel able to remark on that, please.

The President: Learned Attorney to reply.

The Attorney General: Thank you, Mr President and I thank the Hon. Mrs Poole-Wilson for her question, which I will answer as a typical lawyer, to the extent, if I may, that it is very difficult to actually try and set the parameters upon which any influence that I can bring to bear can be taken into account, as far as moving this type of secondary legislation at speed is concerned. I can only emphasise again the need, at times, to be able to be fleet of foot, to meet the challenges that the Island currently and in the future will no doubt face.

What I can say with reference to the data protection regime is that clearly, as Hon. Members I am sure will be aware, this is a matter which my Chambers have been dealing with for some months now. Certainly we urge, and it was accepted by the Cabinet Office, that as soon as appropriate drafts of the regulations – the hefty tome which we have referred to – was put out for public consultation at the earliest opportunity. I can say that very helpful responses to that consultation have been received and as I have already indicated, those comments and the comments received are being worked on and will help inform the final form of the actual regulations which will come forward for approval.

Beyond that, in what circumstances it may arise in the future where this type of speedy secondary legislation is not appropriate is very difficult, Hon. Members, to actually put any parameters on that at this stage.

Thank you.

The President: I put the motion that the Data Protection Bill be read for a second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Data Protection Bill 2018 – Clauses considered

The President: Dealing with the clauses, Mr Attorney.

The Attorney General: Thank you, Mr President.
Clause 1 provides that the short title of the resulting Act will be the Data Protection Act 2018. I beg to move that clause 1 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put clause 1. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

The Attorney General: Thank you, Mr President.

145 Clause 2 provides for the commencement of the resulting Act. The resulting Act is to be brought into operation by the Council of Ministers by means of an Appointed Day Order and may be brought into operation either incrementally or all at once, at the discretion of the Council of Ministers. The Appointed Day Order may be used to make such consequential, incidental, supplemental or transitional provisions as the Council of Ministers considers necessary or expedient.

150 I beg to move that clause 2 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second.

155 **The President:** I put clause 2. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

160 **The Attorney General:** Clause 3 provides definitions of key terms used in the Bill, the intended meaning of which would not otherwise be readily apparent.

Of particular note is the fact that the term 'the Treaties' is expressly made to rely on the 1973 Act for its meaning, thereby obviating the need to replicate the very extensive definition of that term that the 1973 Act provides. It is acknowledged, however, that if the 1973 Act does not survive Brexit, then the resulting Act will be required to itself set out that lengthy definition. In anticipation of that eventuality, subsection (2) of the clause permits the Council of Ministers to by order amend subsection (1).

165 Any such order will be subject to the negative Tynwald procedure. In this regard, it is vital to emphasise that such an order may only amend the definitions, which means there is virtually no scope for such an order to be used to change the meaning of a substantive provision of the resulting Act, surreptitiously or otherwise.

170 I beg to move that clause 3 stand part of the Bill.

The President: Mrs Poole-Wilson.

175 **Mrs Poole-Wilson:** I beg to second.

The President: I put clause 3. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

180 **The Attorney General:** Clause 4 confers on the Council of Ministers power to apply to the Island by order, subject to any necessary adaptation, any EU instrument related to the protection of personal data. The GDPR, LED, the Directive on the Use of Passenger Name Records and the Directive on the Security of Network and Information Systems are specifically mentioned. However, the Bill makes clear that this list is not exhaustive.

185 The Council of Ministers is permitted to use such an order to repeal or amend any legislation, primary or otherwise, that either requires amendment on account of the EU instrument being applied, or is rendered obsolete by the application of the EU instrument.

190 The Council of Ministers is required to annex to any order made in exercise of this power a copy of the EU instrument being applied. The annexed copy must reflect any exceptions, adaptations or modifications to which the EU instrument's application to the Island is subject. Such a copy of the applied EU instrument must be supplied to any person requesting a copy of it on payment of a prescribed fee. It is also provided that such a copy is admissible in any legal proceedings as evidence of its contents.

195 Clause 4 further provides that an EU instrument so applied may be interpreted so as to take
account of amendments that may be made to that instrument at source, subsequent to the
application of that instrument to the Island. In other words, it may be provided that any
200 amendments made to the EU instrument by the EU will take effect in the Island without the
need for further legislative action on the Island; but subject always to any exceptions,
adaptations or modifications to which the instrument's application to the Island was made
subject. If the Council of Ministers intends EU updates to such an instrument to apply to the
Island, it must suitably update the copy of the applied EU instrument to be made available to
persons on request. This is to ensure that users of the applied EU instrument may gain an
accurate picture of the instrument as applied to the Island.

205 I beg to move that clause 4 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

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The President: I put clause 4. Those in favour, say aye; against, no. The ayes have it. The ayes
have it.

Clause 5.

215 **The Attorney General:** Clause 5 empowers the Council of Ministers to make regulations,
referred to as 'implementing regulations', if it considers such regulations necessary for the
purpose of implementing any EU instrument applied to the Island by order under clause 4. It is
expressly provided that such implementing regulations may make any provision that could be
made by an Act of Tynwald. Please note that, in this regard, the Bill is identical to the 1973 Act.

220 Crucially, clause 5 permits the Council of Ministers to use implementing regulations to sub-
delegate legislative power – that is, power to make further secondary legislation as may be
necessary to give proper and full effect to the applied EU instrument – to a third party, invariably
a Department or Statutory Board. This ability of the Council of Ministers expressly includes an
element of retained discretion, in that the Council of Ministers is permitted to use implementing
225 regulations to state what the Council of Ministers will itself provide for in subsequent
regulations. This element of the Bill enhances the flexibility of the mechanism by which the
Island intends to ensure that the data protection legislative framework is sufficiently responsive
to the ever-changing needs of the sector. Adequate safeguards are provided by the fact that the
implementing regulations are subject to Tynwald approval.

230 I beg to move that clause 5 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

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The President: I put clause 5. Those in favour, say aye; against, no. The ayes have it. The ayes
have it.

Clause 6.

240 **The Attorney General:** Clause 6 supplements clause 4 by providing that references to an EU
instrument in any order, implementing regulations or other regulations under the resulting Act
may be construed, in accordance with an express stipulation to that effect in the relevant public
document, as a reference to the EU instrument as it may be amended from time-to-time.

I beg to move that clause 6 stand part of the Bill.

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The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

250 **The President:** I put clause 6. Those in favour, say aye; against, no. The ayes have it. The ayes
have it.
Clause 7.

255 **The Attorney General:** Clause 7 underlines the Bill's focus on flexibility and enabling swift
responsiveness. It permits the Council of Ministers to, by order, amend the resulting Act itself in
appropriate circumstances, such as a pressing development in respect of on-Island
implementing mechanisms or a change at source to the EU instrument applied to the Island.
Such a development or change could conceivably be so significant as to require swift action
which cannot await the completion of all the necessary stages for the passage of an amending
Bill.

260 Once again, suitable safeguards are provided by the stipulation that any such order will not
come into effect unless it has been approved by Tynwald.
I beg to move that clause 7 stand part of the Bill.

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

Mrs Poole-Wilson: I beg to second and reserve my remarks.

270 **The President:** I put clause 7. Those in favour, say aye; against, no. The ayes have it. The ayes
have it.
That concludes the clauses stage.

**Data Protection Bill 2018 –
Standing Orders suspended to take Third Reading**

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.
As I indicated earlier, I beg to move that the Standing Orders of Council be suspended to the
275 extent necessary to permit the Bill to be read a third time today.

The President: Mr Crookall.

280 **Mr Crookall:** I beg to second, Mr President.

The President: The motion is that Standing Orders be suspended to allow the Third Reading
of this Bill to take place today. Those in favour, say aye; against, no. The ayes have it. The ayes
have it, that is carried.

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

285 **The President:** Mr Attorney.

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

290 We come now to the Third Reading of the Bill. I believe I have already explained the content and purpose of the Bill in sufficient detail this morning and do not propose to detain Council any further, except to express my thanks to Hon. Members of Council for their support in the expedited passage of this Bill and further to express my gratitude to Hon. Members of Council, Mrs Poole-Wilson and Mr Crookall, for acting as seconders to assist in the passage of this Bill and its clauses.

Mr President, I beg to move that the Bill be read a third time and do now pass.

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

Mrs Poole-Wilson: I beg to second.

300 **The President:** The motion is that the Data Protection Bill be read for a third time and do now pass. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members, for expediting that.