



## **DATA PROTECTION BILL 2018**

### **EXPLANATORY NOTES**

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon C C Thomas MHK.

#### **INTRODUCTION**

1. These explanatory notes relate to the Data Protection Bill 2018 ("the Bill"). They have been prepared by the Cabinet Office in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.
3. As the Bill itself is simply an enabling piece of legislation, designed to allow the application, by Order, of European Union instruments relating to Data Protection, much of the information herewith relates to how the Council of Ministers would use the powers in the Bill. In particular, information is provided in respect of the Orders and Regulations which would be introduced using the powers in the Bill.

#### **BACKGROUND**

4. In April 2016, the European Commission published Regulation 2016/679 – the General Data Protection Regulation ("GDPR"). The GDPR would replace the 1995 European Directive (95/46/EC) on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The 1995 European Directive informed the development of the Isle of Man's Data Protection Act 2002.
5. The new GDPR reflects the significant changes in the way that personal data is processed and used alongside the advances in digital technology that have taken place since 1995.
6. A transitional period of two years until 25<sup>th</sup> May 2018 was agreed to allow Member states to adjust to the new requirements and procedures.
7. The ability of Isle of Man based companies to continue to exchange data with, and process data from, EU Member states is critical. This is why the Isle of Man applied to have its Data Protection legislation assessed by the European Commission, which granted an adequacy decision in 2004. This meant that although the Isle of Man is classed as a 'third country' for the purposes of the European Union, the Commission deemed that its legislation, oversight and redress procedures were equivalent to that



of those in the European Union and so the data of EU citizens could be processed by the Isle of Man.

8. Although the existing adequacy decision will not fall on 25<sup>th</sup> May, the Commission has signalled that it intends to carry out reviews of existing decisions at least once every four years.
9. The Isle of Man Government therefore needs to ensure that it has legislation in place which meets the new requirements for Data Protection as set out in the GDPR.
10. The GDPR is directly applicable as part of the law for all the EU Member States, but since the Isle of Man is not a member of the EU it must take steps to apply the GDPR as part of the law of the Island.

## **SUMMARY OF POWERS AND SCOPE**

11. The Council of Ministers propose the use of this short Bill to implement, by Order and supporting Regulations, the provisions in the EU GDPR.
12. The powers in the Data Protection Bill replicate general powers in Section 2A and Section 2B of the European Communities (Isle of Man) 1973 Act (the 1973 Act) for the purpose of applying and implementing relevant EU law in Manx domestic legislation.
13. The Council of Ministers are of the view that a Bill designed explicitly for the purposes of introducing EU data protection instruments, would be a more appropriate approach than simply using the existing general powers under the 1973 Act.
14. This will allow the Council of Ministers to ensure compliance with the new regime set out in the GDPR. The Council of Ministers also proposes, subject to the Bill gaining Royal Assent, that the EU Law Enforcement Directive (LED) is introduced in the same way.
15. The LED covers the processing of data relating to police and judicial activities, recognising the need for a different approach to data processing which protects the rights of individuals' personal data while guaranteeing a high level of public security.
16. The Isle of Man must ensure it has equivalent legislation in place by 6 May 2018 (for the LED) and the 24 May 2018 (for the GDPR).
17. It is proposed that the GDPR and the LED will be applied into Manx domestic law by Order in Tynwald.



18. The Orders will be supported by implementing Regulations which will contain details of the process to be followed and the relevant safeguards which should be applied when exercising the powers in the GDPR. All of this legislation is currently subject to consultation.

## THE CLAUSES

19. **Clause 1** and **2** deal, respectively, with the Short Title and Commencement of the resulting Act.
20. **Clause 3** deals with the interpretation of key terms used in the Bill.
21. **Clause 4** empowers the Council of Ministers to by Order apply to the Island, as part of the law of the Island, any EU instrument relating to the protection of personal data. Such an Order may be applied subject to any exceptions, adaptations and modifications set out in the Order. Any such exceptions, etc. must be visible in the version of the EU instrument that clause 4 requires to be annexed to the Order. The Order may make necessary consequential amendments to any other Manx enactment.
22. **Clause 5** enables the Council of Ministers to make regulations for the purpose of implementing any EU instrument applied to the Island by an Order under clause 4. Such implementing regulations may make any provision that may be made by an Act of Tynwald. They are to be referred to as "implementing regulations" as distinct from "regulations", the latter of which may be made under an enabling provision in "implementing regulations".
23. **Clause 6** makes provision for ambulatory references to EU instruments. Such ambulatory references may be made in either an Order under clause 4, implementing regulations under clause 5 (or any regulations made thereunder), or both.
24. **Clause 7** empowers the Council of Ministers to by Order amend the resulting Act in specified circumstances, subject to Tynwald approval.



## **FINANCIAL AND RESOURCE IMPLICATIONS**

25. While the resulting Act itself is not expected to have any financial or human resource implications, it is highly likely that any Orders and associated implementing regulations made under the resulting Act will have such implications. As the extent of those implications will not become apparent until any such Order and implementing regulations are finalised, it will be specified for Tynwald consideration when the Order is submitted for Tynwald approval as required.

## **HUMAN RIGHTS**

26. In the opinion of the member moving the Bill, its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.