
DATA PROTECTION BILL 2018

Explanatory Memorandum

1. This Bill is promoted by Mr Thomas, MHK on behalf of the Council of Ministers.
2. *Clauses 1 and 2* deal, respectively, with the Short Title and Commencement of the resulting Act.
3. *Clause 3* deals with the interpretation of key terms used in the Bill.
4. *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.
5. *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”.
6. *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.
7. *Clause 7* empowers the Council of Ministers to by Order amend the resulting Act in specified circumstances, subject to Tynwald approval.
8. 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.
9. 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*.



Ellan Vannin

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Index

Section	Page
1 Short title.....	5
2 Commencement.....	5
3 Interpretation.....	5
4 Application to the Island of data protection EU instruments.....	6
5 Implementation of EU obligations.....	7
6 Ambulatory references to EU instruments.....	8
7 Power to amend this Act.....	9



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1 A **BILL** to enable provision to be made to adequately protect personal data; to
 2 regulate the control and processing of personal data; and for connected
 3 purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

4 1 Short title

5 The short title of this Act is the Data Protection Act 2018.

6 2 Commencement

7 (1) This Act (except section 1 and this section) will come into operation on
 8 such day or days as the Council of Ministers may by order appoint.

9 (2) An order under subsection (1) may make such consequential, incidental,
 10 supplemental and transitional provisions as appear to the Council of
 11 Ministers to be necessary or expedient for the purposes of the order.

12 3 Interpretation

13 (1) In this Act —

14 “**the EU**” means the European Union, being the Union established by the
 15 Treaty on European Union signed at Maastricht on 7 February
 16 1992 (as amended by any later Treaty);

17 “**EU institution**” means any institution of the EU;

18 “**EU instrument**” means any instrument issued by an EU institution;

19 “**EU obligation**” means any obligation created or arising by or under the
 20 Treaties;

21 “**the Treaties**” has in this Act the same meaning as it has in the *European*
 22 *Communities (Isle of Man) Act 1973*.

23 (2) The Council of Ministers may by order amend subsection (1).

24 Tynwald procedure – negative.

4 Application to the Island of data protection EU instruments

(1) Despite any other statutory provision, the Council of Ministers may by order apply to the Island as part of the law of the Island, to such extent and subject to such exceptions, adaptations and modifications as may be specified in the order, any instrument to which this section applies.

Tynwald procedure – approval required.

(2) This section applies to any EU instrument relating to the protection of personal data. EU instruments of this type include but are not limited to the following –

(a) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

(b) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;

(c) Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime; and

(d) Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.

(3) An order under this section may include provisions repealing or amending any provision of any statutory provision (other than this section) which is inconsistent with, or is unnecessary or requires modification in consequence of the order or any instrument applied to the Island by order.

(4) An order made under this section must have annexed to it a text of the instrument applied by the order, incorporating the exceptions, adaptations and modifications specified in the order.

(5) The Council of Ministers must cause a copy of the text prepared under subsection (4) to be supplied to any person requesting the same on the payment of such fee as may be prescribed under Part 5, Division 4 (general fee power) of the *Interpretation Act 2015*.

- 1 (6) A copy made available for purchase under subsection (5), purporting to
2 have been made under that subsection, is admissible in evidence in all
3 the courts in the Island and, until the contrary is proved, is evidence of
4 its contents.
- 5 (7) Subsections (4) to (6) are subject to subsections (8) to (12).
- 6 (8) Subsections (9) to (12) apply if an order made under this section provides
7 that a reference in it to an EU instrument (or a provision of such an EU
8 instrument) is to be construed as a reference to the instrument or
9 provision as amended from time to time (see section 6).
- 10 (9) To avoid doubt, the text to be annexed under subsection (4) is the text of
11 the legislation at the time the order is made.
- 12 (10) However, the Council of Ministers —
- 13 (a) may update the text to reflect any amendment made to the EU
14 instrument or provision after the making of the order; and
- 15 (b) must update the text if a request is made in accordance with
16 subsection (11).
- 17 (11) A person making a request under subsection (5) may further request that
18 the copy to be supplied be a copy of the updated text and the Council of
19 Ministers must comply with the request on the payment of such fee as
20 may be prescribed under Part 5, Division 4 (general fee power) of the
21 *Interpretation Act 2015*.
- 22 (12) A copy made available to purchase under subsection (11) is admissible in
23 evidence in the same manner and to the same extent as a copy made
24 available under subsection (5) (see subsection (6)).

25 5 Implementation of EU obligations

- 26 (1) Subject to subsection (4), the Council of Ministers may by regulations (to
27 be referred to as “**implementing regulations**”) make such provision as
28 appears to it to be necessary —
- 29 (a) for the purpose of implementing any EU obligation that the Island
30 has relating to the protection of personal data, or enabling any
31 such obligation to be implemented, or of enabling any rights
32 enjoyed or to be enjoyed by the Island under or by virtue of the
33 Treaties to be exercised; or
- 34 (b) for the purpose of dealing with matters arising out of or related to
35 any such obligation or rights;
- 36 (c) for the purpose of implementing any instrument applied to the
37 Island under section 4; or
- 38 (d) for the purpose of dealing with matters arising out of or related to
39 any such instrument.

- 1 (2) In the exercise of any statutory power or duty, including the power to
2 give directions or to legislate by means of orders, rules, regulations or
3 other subordinate instrument, the person or body entrusted with the
4 power or duty may have regard to the objects of the EU and to any such
5 obligations or rights.
- 6 (3) The provision that may be made under subsection (1) includes, subject to
7 subsection (4), –
- 8 (a) any provision that could be made by an Act of Tynwald; and
9 (b) a provision –
- 10 (i) authorising the making of regulations; or
11 (ii) specifying detail as to the permissible content of
12 regulations to be made,
13 either by the Council of Ministers or another person,
14 and any enactment made or to be made will be construed and have
15 effect subject to this subsection and subsections (1) and (2).
- 16 (4) The power conferred by subsection (1) to make provisions for the
17 purposes in that subsection does not include power –
- 18 (a) to make any provision imposing or increasing taxation; or
19 (b) to make any provision taking effect from a date earlier than that of
20 the making of the instrument containing the provision.
- 21 (5) Where implementing regulations contain a declaration to the effect that
22 they are made in implementation of an EU obligation, such declaration is
23 conclusive evidence of the existence of such an obligation.
- 24 (6) Section 30 of the *Legislation Act 2015* applies to implementing regulations.
- 25 (7) Implementing regulations must specify the Tynwald procedure
26 applicable to any regulations made under a provision described in
27 subsection (3)(b).
- 28 (8) In this section, “**implementing regulations**” are a public document –
- 29 (a) of a legislative character separate and distinct from “regulations”
30 referred to in section 16(1)(a)(i) of the *Interpretation Act 2015*; and
31 (b) under which such “regulations” may be made in accordance with
32 subsection (3)(b).

33 6 Ambulatory references to EU instruments

- 34 (1) A public document referred to in subsection (2) may provide that a
35 reference in it to an EU instrument or a provision of an EU instrument is
36 to be construed as a reference to the instrument or provision as amended
37 from time to time.

- 1 (2) Subsection (1) applies in respect of a public document made after this
2 section comes into operation which –
3 (a) is an order made under section 4; or
4 (b) contains implementing regulations made under, or regulations
5 referred to in, section 5.

6 **7 Power to amend this Act**

- 7 (1) Subsection (2) applies if it appears to the Council of Ministers to be
8 necessary or expedient to amend this Act in consequence of –
9 (a) any development in the operation of arrangements made or
10 mechanisms designed in accordance with an order under section
11 4 or implementing regulations under section 5; or
12 (b) any amendment of the law of the European Union relating to the
13 protection of personal data.
14 (2) If this subsection applies, the Council of Ministers may by order amend
15 this Act.
16 Tynwald procedure – approval required.
17 (3) An order under subsection (2) may contain such incidental,
18 supplemental or transitional provision as appears to the Council of
19 Ministers to be necessary or expedient.

IN THE KEYS

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Approved by the Council of Ministers
for introduction in the House of Keys.

MR THOMAS

6 FEBRUARY 2018