



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

P R O C E E D I N G S

D A A L T Y N

(HANSARD)

Douglas, Tuesday, 9th May 2006

Present:

The President of Tynwald (The Hon. N Q Cringle)

The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles), Mr D Butt,
Mrs. C M Christian, Mrs. P M Crowe, Hon. A F Downie,
The Chief Minister (Hon. D J Gelling CBE), Mr E G Lowey and Mr L I Singer
with Mrs M Cullen, Clerk of the Council.

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The Council adjourned at 1.10 p.m.

Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS

The Lord Bishop

LEAVE OF ABSENCE GRANTED

The President: Hon. Members, we have apologies for absence from Mr Attorney and from Mr Waft, this morning.

Orders of the Day

Agricultural Marketing (Amendment) Bill Second Reading approved

1. Mr Butt to move:

That the Agricultural Marketing (Amendment) Bill be now read a second time.

The President: We move on to our Order Paper, Hon. Members. We have but the two Items on the Order Paper, which are the Agricultural Marketing (Amendment) Bill and the Public Health (Tobacco) Bill. So, starting with the Agricultural Marketing (Amendment) Bill, in the hands of Mr Butt, it is down, Hon. Members, for Second Reading. Mr Butt, please.

Mr Butt: Thank you, sir.

Mr President, as you perhaps know more than most, the Agricultural Marketing Act has been in place since 1934.

At present, the Isle of Man Agricultural Marketing Society consists of 25 members, 23 of whom are producers, with two people appointed by the Department of Agriculture, Fisheries and Forestry. This structure has become rather cumbersome.

Using the enabling powers of this Bill, subsidiary legislation will provide for a streamlined Society consisting of 15 members, which will include four people appointed by the Council of Ministers and one person appointed by the Department of Agriculture. Those five persons will be in addition to the 10 appointed by the producers, and their role will be to provide input on behalf of Government and consumers as well as producers.

These 15 will be directors of the Society, which will become a company limited by guarantee.

It is expected that the slimmed-down organisation will be more easily able to concentrate on the important tasks which need to be undertaken before 2010. This change will reflect

the important involvement of Government in supporting the agricultural industry and the role that the Marketing Society will play in leading the industry through the change in response to the loss of the meat derogation in 2011.

A major concern for the industry and those involved in the Society and the two current marketing associations, the Milk Marketing Association and the Fatstock Marketing Association, is the fact that these bodies do not have limited liability. The 1934 Act provides that the Society and Marketing Associations are constituted under the Act, which also sets out the detail of their structure and proceedings but does not currently provide or permit limited liability.

The amendment in this Bill will enable specially set up limited liability companies to be designated to act as the Society and Marketing Associations. The contents of the memoranda and articles of association of these limited liability companies will be the subject of subsidiary legislation and subject to Tynwald approval. However, the proceedings of these limited liability companies will mainly be regulated by the requirements of the Companies Acts.

There has been very full consultation with the present Society and Associations as to the memorandum and articles of association of the proposed new companies, and the agreed format of the new companies is near to completion. Similarly, consultation as to the method of electing members of the companies is advanced and the final format of the companies and methods of election will be subject to Tynwald approval.

Mr President, I beg to move that the Bill be read for a second time.

Mr Gelling: I beg to second, Mr President, and reserve my remarks, sir.

The President: Mr Lowey.

Mr Lowey: Yes, Mr President.

In supporting it, I think the mover might be able to tell me why it is deemed necessary to have a limited liability company as to the Society and Associations. We say we are doing it because we want to put them into limited liability positions. Why? What is magical about going into a limited liability? How does that help agriculture? That is number one.

The other one that I did highlight at the beginning, on the First Reading, where I note the people who have contracts with the existing Associations and Society, I notice in the schedule, where it says they can be disbanded by the board at any time, if they are not necessary. I notice that their liabilities cannot be washed away.

What about the contractual arrangements that they have with people? They cannot be deemed as liabilities, but they are essential to... Say a firm, for example, Mr President... I am putting this badly, but say a firm, for example, has a contract with one of the societies, which is a major part of their business and they decide, 'Well, now we're not a society any more, therefore we don't require you and under the new organisation we are just getting rid of that contract.' If I am contracted to you for, say, five years, it is not a liability, but it is a responsibility and is that covered in here? Are there rights for those people so affected?

I do not see it, really, in the schedule, or I cannot pick up the piece that says that they will be safeguarded. The liabilities are, but not what I would call the responsibilities

that go with it. Just two minor points.

The rest of the Bill... I understand the need to reform agriculture, and I know the Department is working hard with the Associations. But I think in a public forum like this, when we are passing it, it would be in everybody's interest if that was stated clearly for the record.

The President: Mr Singer.

Mr Singer: I support the Bill, Mr President. Can I ask: the chairmen of the various companies, will they be one of the Government appointees, or how will they be elected?

The President: Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

Rather down the lines of my hon. colleague, Mr Lowey, I just wonder if the mover of the Bill could tell me when we are setting out the orders to transfer properties and liabilities, do the Societies, at the present time, own all the property that they are presumably utilising? I do not know if they do or they do not, but there certainly is quite a lot of the transfer of properties, on page 9 and some of the schedules in the Bill. So I was just wondering about that, in particular.

Thank you, Mr President.

The President: Mrs Christian.

Mrs Christian: Just, Mr President, to welcome the Bill. I think it is a way forward. There are few organisations these days that do not work without limited liability, but again I would be interested in the way in which any current assets, properties, rights and liabilities will be transferred. Who is deemed currently to own them within the membership and how will this be affected, if at all, by the transfer to these companies?

The President: Mr Downie.

Mr Downie: Yes, I would like to ask the Hon. Member: over the years, there have been various associations connected with agricultural marketing—for example, there was a potato producers' organisation in being—and I know that when that was wound up, there were considerable assets.

What I would like the mover to explain to me is that, if there was a winding up of the agricultural marketing Societies, what would happen to any funds that had been accrued?

Reverting back to potato marketing, I think, at the time when they ceased to operate, there was over £70,000 available, and that was distributed amongst some of the producers,

Perhaps it is a bit unfair, at this stage, to be asking a question as technical as that, but I think there is a principle that we need to understand. At the end of the day, the whole object of the exercise, I think, is to provide a framework where they can operate like a limited company and they can access advertising. I know there are certain elements that want to access Government funding, which is good because there are other Government agencies who would want to work much more closely with agricultural marketing and develop a good brand of a good product for the future.

The President: Mr Butt to reply.

Mr Butt: Thank you, sir.

In regard to the last point by Mr Downie, I think if you look at schedule 2, part 2, the dissolution of the current Society and Associations only takes place once the Department is satisfied that all the transfers as necessary have been made. So the idea is, in theory, that at midnight on that day, all the assets get moved over to the new limited liability companies and there should be no loss of assets between the two, the old and the new, and the dissolution of the Society and the Associations only happens when the Department is satisfied that is the case.

As to why there should be a limited liability company, Mr Lowey's point, I believe this is something the industry has been asking for, for some time, to protect their interests so that they are limited by guarantee so that any particular producer will not stand to lose more than... I think the guarantee is £10 per head. It will give them scope then to be perhaps more adventurous in the marketing exercises in the future for the progress towards the derogation.

As to who would be the chairmen, I was at a meeting yesterday where we were discussing the articles, and a memorandum had been produced by the Society and Associations. Now it is being looked at by the Department. The fine detail is still being gone into as to membership, but I understand that the chairmen would be from within the producers rather than from within the Government appointees. Those fine details have not yet been worked on, but they should be completed within the next few weeks.

As to who owns the assets, Mrs Crowe's comment, at the moment, I believe they are owned and there are substantial assets in both the Associations and the Society. They are owned by those Associations and Society, as far as I know, and they will be transferred directly when the new companies are formed under schedule 2. I may be wrong on that, but that is my view from what I have been informed.

Thank you, sir.

Mr Lowey: Could I just ask the mover –

The President: Mr Lowey to come back.

Mr Lowey: – as the mover of the Bill, would he confirm that contracts entered into under the old thing can and will be honoured by the new. The mover knows where I am coming from, really.

Mr Butt: Yes, I have inquired about that and I am told that, the way the property, rights and liabilities may be transferred, the contracts do include those rights. I have had an assurance that the contracts will continue until they expire. It may be that possibly that needs to be highlighted, when we discuss the fine detail of the order.

The President: Mrs Christian, do you wish to come back?

Mrs Christian: Could I just ask for some clarity, perhaps, if not at this stage, at a later stage, and that is has it now... I think the Hon. Member, Mr Downie, illustrated the difficulties with the potato marketing and what assets were left and who actually owned them.

Is there now clarity about who currently owns the assets and who will own the assets in the future and how, when anybody comes in or out of these limited liability companies

as, effectively, a shareholder, will they be paid out?

Mr Butt: I will have to look into that, Mr President.

The President: Okay, Hon. Members, the motion that I have to put to Council is that the Agricultural Marketing (Amendment) Bill be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Agricultural Marketing (Amendment) Bill

Clauses considered

The President: Now, Mr Butt, we could start to go through on the clause stage, sir. Perhaps we could take clause 1 and the schedules.

Mr Butt: Yes, sir. Clause 1 of the Bill deals with the principal matter of the amendment, of which the detail is contained in the schedules. The Bill is intended to provide broad enabling powers. A lot of further detail will come in subsidiary measures made under the Act, once it has been subject to amendment.

Subclause (1) deals with an issue which has been a particular aspiration of the agricultural industry: that is, the extension of limited liability to the Society and the Marketing Associations and those involved with them.

The 1934 Act provides that the Society and Marketing Associations are constituted by the Act. This means that the present Society and Marketing Associations owe their existence to the provisions of the Agricultural Marketing Act. They were not set up under the Companies Acts. Provisions of the Companies Acts which would have enabled them to have limited liability could not therefore be applied.

Subclause (1) provides that the functions of the Society and Marketing Associations can be transferred to the companies. Appropriate limited liability companies will be set up under the Companies Acts for this purpose. I can advise the Council that a lot of work has been carried out by Mr Paul Beckett, the advocate acting on behalf of the Agricultural Marketing Society, to prepare the memorandum and articles of association for each of the companies which will be designated under the amended Act. I do actually have the draft version of those here.

Subclause (1) refers to schedule 1. Hon. Members will see that in the schedule, in paragraphs 1 to 10, they amend the relevant sections of the 1934 Act, so that limited liability companies can be designated and the functions of the Society and Marketing Associations transferred to them; and in paragraphs 11 to 14, it makes consequential amendments to other Acts to meet the changed circumstances.

Subclause (2) refers to schedule 2, which provides a number of supplementary provisions to enable the transfer of the property, rights and liabilities of the current Society and Marketing Associations to the designated corporate bodies. Transfers would be made by the orders, which would be subject to Tynwald approval.

Do we have to go into detail on the schedules? I have details on the schedules.

If you look at schedule 1: paragraph 1 of schedule 1 amends section 2 of the 1934 Act. The amendment provides

for the Marketing Associations and the Society to be designated under the Act instead of being constituted by it at present.

Paragraph 2 substitutes a new section 3 and adds also sections 3A and 3B. The purpose of the new section 3 is to enable the Department to designate a body corporate as the Society.

Section 3(1) will provide the body corporate designated as the Society.

Subsection (2) provides the Department may, by notice in writing, designate a body corporate as the Society.

Subsection (3) provides that the body corporate has to comply with the requirements of an order made under the new section 3A.

Subsection (4) requires the Department to publish the fact that designation has been made.

Subsection (5) provides that in any proceedings, a certificate signed by the Attorney General shall be conclusive of designation.

The new section 3A: 3A(1) will provide powers for the Department to make an order specifying the requirements which a body corporate must comply with to be designated as a society.

Subparagraphs (a) to (h) refer to some of the areas which the Department may cover in an order. The list is illustrative rather than definitive and not all the things mentioned here would necessarily be covered in every order, if there were more than one. The order would set out the shape of a limited liability company for the purposes for which it is envisaged, in order for it to be approved by Tynwald by virtue of section 3A(6). This would include the management structure. There will be 15 members, consisting of 10 producers and five Government nominees. However, the body corporate would in any case be required to meet the provisions of the Companies Acts, which would be overriding.

Subsections (2) and (3) refer to any amendments to the memorandum and articles of association which have to be approved in writing by the Department.

Subsection (4) refers to Government nominees to the Society and enables the Department to make an order providing for attendance allowance and expenses. The intention would be to include these under the payment of members' expenses.

Subsection (5) requires the Department to consult with whatever body is the Society at the time before making any order, which is currently happening.

Subsection (6) requires Tynwald approval of any order.

The new section 3B: subsection (1) makes the provision for the Department to make regulations for the administration and conduct of elections to the Society. It is envisaged that six of the producer members of the Society would be subject to election with four other *ex officio* members arising from their position with the two Marketing Associations.

Section 3B(2) provides that regulations are subject to Tynwald approval.

Paragraph 3 of schedule 1 does for the Marketing Associations exactly what paragraph 2 does for the Society, so the two associations have exactly the same legislation or the same orders.

It substitutes a new section 5 and adds new sections 5A and 5B, in similar terms to those already outlined in the respective sections 3, 3A and 3B. As you can see, they are similar in every regard. Again, orders and regulations are subject to Tynwald approval.

Paragraph 4 makes amendments to section 7 of the 1934 Act. It recognises that the bodies corporate, designated as the Society and the Marketing Associations, have to meet the requirements of the Companies Acts. It is, therefore, no longer necessary or appropriate to refer to those same requirements in the Agricultural Marketing Act, so paragraph 5 repeals seven subparagraphs of subsection 5(1) and amends subsection 5(2).

Paragraphs 5 to 10 of schedule 1 also make necessary amendments to recognise the status of the new bodies under the Companies Act by providing that sections of the 1934 Act, which would no longer be appropriate in the changed circumstances, cease to have effect.

Then paragraphs 11 to 14, as I have already mentioned, refer to the consequential provisions.

If I go on to schedule 2, Hon. Members: schedule 2 deals with the practical aspect of transferring the property, rights and liabilities of the current Society and Marketing Associations to the limited liability companies that would be designated under the provisions of the amended Act. This is dealt with in paragraph 1 and would be done by an order made by the Department, but this step would, by virtue of subparagraph (2), only be taken after consultation with the Society and the Marketing Associations and that is ongoing.

Subparagraph (3) provides that the Department may also make an order to modify any provision of the Agricultural Marketing Acts 1934 to 1955 and any other relevant Acts, wherever necessary, in consequence of the provisions of these amendments.

Subparagraph (4) provides that any order made under schedule 2 would be subject to Tynwald approval.

Subparagraph (5) refers to the current Society and Marketing Associations. When all the transfers of their property rights and liabilities have been transferred to appropriate limited liability companies, the Department then may provide for the former bodies to cease to exist.

Paragraph 2 deals with a variety of ways in which an order may set out the properties, rights and liabilities to be transferred.

Paragraph 3 sets out the nature of the property, rights and liabilities that may be transferred by an order and deals with the position of persons who have any interest or right in the property, rights and liabilities to be transferred.

Paragraph 4, also, deals with the position of individuals or groups of people, whether transferers or transferees or third parties, and provides that an order may contain provisions for creating an interest in their favour by dividing or modifying properties, rights or liabilities.

Paragraph 5 provides that an order places an obligation on those to whom it refers to carry out the agreements specified or described in the order. In default, such an obligation is enforceable by an injunction or other legal remedy.

Paragraph 6, again, deals with the effect of the order and provides that any transfers or creation of interests shall have effect without further assurance in those in respect of whom they are transferred or created.

Paragraph 7 provides that an order may make provision to some or all of the statutory powers and duties relating to property which has been transferred to be carried out by those to whom a property has been transferred.

Paragraph 8 enables orders to deal with incidental, supplemental, consequential and transitional provisions arising from transfers.

Paragraph 9 refers to employment, and provides that where people have been employed in a capacity relating to a property or right exercised by a transfer, their employment shall be construed as continuous, even though that property or right is transferred to the other party.

Paragraph 10 deals with compensation to third parties with an interest or right which is affected in any way by the transfer. Liability to pay compensation would fall to the transferee.

Paragraph 11 provides powers for the Department to obtain necessary information from potential or proposed transferers and transferees to enable an order to be made. A time limit of at least 28 days may be specified and failure to comply may lead the Department to issue a notice requiring production of any specified documents or information which it would be reasonable to require. It would be an offence to intentionally alter, suppress or destroy a document and penalties are provided. The Department may in fact take the matter to the High Court.

Paragraph 12 provides that the current Society and Marketing Associations may do anything appropriate to facilitate the implementation of a proposed transfer to a designated company or for modifying any related proposal of the Department.

Paragraph 13 deals broadly with the matters which would be permissible in terms of proposals related to a proposal of the Department for a transfer of property rights or liabilities.

Paragraph 14 provides that the current Society or Marketing Associations may do anything in relation to a proposal for a transfer or to a related proposal, whether or not it would be promoting its own interests.

Paragraph 15 provides that the powers for the current Society and Marketing Associations to do anything to facilitate proposals would be exercisable whether or not Tynwald approval has been given at that time.

Paragraph 16 deals with the interpretation of the words used in schedule 2.

Mr President, those are the details of the two schedules which are moved with clause 1.

The President: Chief Minister.

Mr Gelling: I beg to second, Mr President, and reserve my remarks, sir.

The President: Mr Lowey again.

Mr Lowey: Thank you, Mr President.

I think clause 1 and the schedules are the machinery in which the regulations, ultimately, will have to be approved by the Department and then come to Tynwald for approval, so again we are going to get a bite at the cherry.

There is just one general observation that I want to make, Mr President. The mover said the proposal was six selected from the industry and four appointed by the board, and I just think that that... If you were a liability company, you would not have 10 people to run it.

I understand the politics of the thing, but to be effective you need a small dedicated team, and that brings me to the point of the costs. I notice that the costs of the transition, or the set of costs, would be about £5,000. If there are 10 people going to be appointed – (**Mrs Crowe:** Fifteen.) Fifteen? It gets worse, but it underlines my point.

Mrs Crowe: Directors' fees.

Mr Lowey: I have to say, the smaller the number of people, the more effective, and this industry needs a bit of confidence, a bit of trust. We all wish it well because it is in all our interests to have a good agricultural policy. All I do say is that I think it is a bit big, and I would be remiss if I did not voice that opinion.

The regulations, I have no difficulty at all with that, because I do think they are what you call machinery and I am sure there is a catch-all clause, at the end there, even if it is not itemised.

The only other thing that I would say is... and it is always awkward when we are in this place, because we have all been there. I recall very well the setting up of the creameries. The industry and the Department of the day could not deal with it, so they came to the industry board and this is an industry and we managed to get them the grants and the loans that were available to industry on exactly the same terms as industry were dealing with.

I know it was a shock to some of the associations that they had to reveal accounts and all the rest of it, but if they wanted to... I said to them on the very first day, 'If you want to be treated like an industry, you have got to act like an industry. The rules apply to you as they would apply to anybody else,' and, to their credit, they went back and came back with all the facts and figures that were required and they got it. I think the creamery has been a great success for the industry. So, the industry can move forwards.

I hope this Bill will allow that, but I hope they will reduce the numbers that will be actually doing the management.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

As the Hon. Member says, the meat of this is in the schedule and, even then, it is not the whole of the meat, because it is all going to come forward in orders, which will be the most significant and perhaps, the most important thing for us to cast our eye over.

The question of membership is an interesting one. At the moment, the body is such that you very frequently see vacancies now. The agricultural industry is shrinking in terms of the numbers of people employed. There are not the numbers of people available or willing to give up their time and to participate and so, it makes sense to have a smaller body than is currently the case. It will remain to be seen whether or not, as time goes on, they can fill even these positions from the industry, but there is, under section 3 – the new section 3B is introduced in schedule 1: an ability for the Department to change the election procedures and change the articles of association, presumably, to alter the numbers who might be involved going forward.

My earlier question about ownership. Obviously, I think I will need to look at the orders when they come forward. There are changes in these schedules which talk about membership and ownership and I am sure those people who are involved in the current organisations, will themselves be keeping an eye on how the transfer will take place. Certainly, there will be orders coming through Tynwald to indicate how the assets and so on will be treated in the future.

It is interesting that, in schedule 2, there are provisions here to say that the Department must be satisfied that liabilities are not being extinguished and I hope that equally

applies that the Department would be interested in whether or not all assets are being transferred and whether or not anyone can opt out. There are issues there that need to be considered.

In paragraph 3 of schedule 2, it is interesting that this gives a power to property rights and liabilities that may be transferred by an order to include property rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferral. That is an interesting concept. I am not sure to what it applies or how it would work, but it seems to give a carte blanche here to transfer everything, property rights and liabilities.

So, Mr President, I think those are the only comments, except to say that continuity of employment is important and is covered there. I am quite sure that those who work for the organisations currently will be relieved to see that in the measure.

I think that covers all my comments and queries but I will, with interest, see the form and nature of the orders that come forward, in due course, to Tynwald.

The President: Mrs Crowe.

Mrs Crowe: We may well move on to this. As is known around this table, I do not have an area of expertise in agriculture.

Mr Singer: Never stop you talking though, will it?

Mr Lowey: You're learning!

Mrs Crowe: Asking a question.

What I was going to ask, though, was really about the company itself and the setting of the... as we have previously referred, having 15 directors, including a chairman, could be quite a costly exercise.

Does the Department have any capability for capping directors' fees or, presumably, it is at the behest of this new limited liability company that they can set the fees for the payment of their chairman and, in fact, the fees for the payment of their directors? The Department may have some... It has not been referred to henceforth but the Department may have some area in which they can, in fact, dictate at what level those fees are taken.

The President: Mr Gelling, Chief Minister.

Mr Gelling: Yes, I think the mover might very well enlighten Members who have commented upon 15 being quite a number of what, actually, the membership is at this time, because it may sound a lot at 15, but what is currently there is –

Mr Singer: Twenty five.

Mr Gelling: – greater than that. I think it will show that, in fact, it is streamlining it down, but in a way that you cannot reduce from a huge number to a very small number. You have got to, probably, see how it works to get it down there. But I think if the mover was to tell us how many members at the moment are represented in there, it will give you quite an idea of how it has been reduced.

The President: Mrs Christian.

Mrs Christian: Mr President, are we treating this as in committee? I think, on the point of directors' fees, it should be like any other organisation. It should be a reasonable reward for the effort put in.

Mr Lowey: Yes, absolutely.

Mrs Christian: And it should have to meet the approval of the shareholders. I do not really see why there is a need for the Department to be involved from that point of view. The Department is going to make expenses payments to its nominees, but other than that, I think it is a matter for the organisation itself. That would be my view.

I do not think we need legislation to deal with that, until or if any difficulty arises in respect of that matter.

The President: Hon. Members, there is a question which, I think, has floated, really, as a result of Mrs Christian's earlier point, in relation to the Department, by order, altering the numbers in the future. I think cognisance would have to be taken in those orders to make sure that the balance between appointees and elected representatives was maintained, and that is not within the clause stage itself.

Mr Lowey: The appointed numbers should reduce accordingly. I am all for streamlining. I think most of us know that large committees, actually, are seldom the best productive.

The industry is in a challenging time, and I understand why they are moving this way and I applaud them for all the efforts that they are doing. The only general advice I would give them is: limit it even further and get behind that team and support it, but not by having 10 or 15 people sitting round a table. It is not the answer, in my view.

The President: Mr Butt to reply, sir.

Mr Butt: Thank you, sir.

I think the numbers as were, or as are current, are probably historical, because we have gone back to 1934. There were 25 people on the committee, at a time when there were a lot more producers.

I understand now that there are as few as 260 producers and, from those, they have to provide 25 members, which is a large proportion, which is why there is difficulty in filling posts.

When the new companies are formed, there will, actually, be 10 producers involved in these two companies, representing the interests of both the meat industry and the dairy industry, which is not an unreasonable number. It could be streamlined, obviously, in the future, but the industry themselves have made a big leap forward by reducing from 23 down to, in effect, 10. I think it might be unreasonable to expect them to jump even further, too quickly, until we find out how it evolves.

Of the 15 people which could be unwieldy, four will actually be appointed by the Council of Ministers – that is the plan – one will be appointed by the Department of Agriculture, with no vote – that person will have no vote, he will just be on the committee, in effect, so the producers will always have a majority at the present time. But the other four or five are there –

The President: At a future time, or the present time?

Mr Butt: At the present time. The other four are there to represent the interests of people other than producers, the shopkeepers and the consumers and the Government, and the Government policy.

It is an important aspect which has been, to a certain extent, missing, because we need the industry to be taken along with the Government, and work with each other to get through the next few years, which are going to be very difficult for the industry.

I think, one of the comments of Mrs Christian about the employment – change of continuation of employment, which is a thing I was worried about, and when I read this carefully, I did not see that until near the end, last week, when I read it. It is an important matter. I think everything in here is, as Mr Lowey says, a catch-all. When you read this carefully, everything seems to be covered. I think the draftsmen have done a reasonably good job, so far.

The transfer, I would envisage, will be, should be fairly smooth as long as the associations agree with the orders that are going to be produced. As regards the expenses and Mrs Crowe's point, the four Government nominees will be paid as per the payment of Members' expenses and, as Mrs Christian said, the others, their payment will be put to the board themselves.

So, I thank you for all your comments.

The President: Before I put it to Council, Mr Lowey wishes to come back.

Mr Lowey: Yes. Just on something which the mover in summing up... I can accept all that, but he did say that the board will be appointed by the Council of Ministers. Correct me if I am wrong, Mr President, but I thought the Council of Ministers now were not appointing anybody, it was all going to the Appointments Commission. Have I got the wrong title for them? But you know what I mean.

We have set up a Commission, of which we have just approved the members last month in another place and, therefore, it will not be the Council of Ministers. It will be the Appointments Commission that will be appointing these. Otherwise, doing primary legislation, one would have thought that this would have been in the appointment.

Mr Butt: I shall make sure the orders refer to that, if that is the new set-up, instead of the Council of Ministers.

Mr Lowey: It is just something that jarred and, if we have got a Commission and we are doing primary law, then it should be in the right format when we do the law.

Mr Butt: That was my wording, I am sorry.

The President: Chief Minister.

Mr Gelling: I think, Mr President, in trying to be helpful, that is for setting up tribunals. I think this will be separate –

Mr Lowey: Just tribunals?

Mr Gelling: – as per this legislation. It is just the appointment to tribunals, not to –

Mr Lowey: I thought the whole idea was to keep the

Council of Ministers away from appointing people.

Mr Gelling: Not tribunals.

The President: We are getting away from the Bill, and we are discussing something which is irrelevant. Mrs Christian.

Mrs Christian: Mr President, the Bill does talk about the articles of association of the Society providing for the Council of Ministers or the Department to nominate. So, if you wanted to take the Council of Ministers out, it would have to be a change to the articles of association.

Mr Lowey: Yes, that it is okay. That is fine.

Mr Butt: Can I just respond to that. In the articles, the draft ones, it does mention Council of Ministers.

Mr Lowey: Yes, that is fine.

The President: Hon. Members, the motion that I put to Council is that clause 1 and the schedules 1 and 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, Mr Butt, please.

Mr Butt: Clause 2: the Department is currently involved in administrative matters under the Act, including in respect of elections. Costs are paid out of money provided by Tynwald. This Bill will not alter that situation. However, clause 1 provides that attendance allowances and expenses may be paid by the Department in respect of Government nominees to the Society. This provision is expected to increase expenditure by an amount not exceeding £5,000 per year.

Clause 2 provides for any increase in the expenses of the Department to be paid out of money provided by Tynwald.

I move that clause 2 stand part of the Bill.

Mr Gelling: I beg to second, Mr President, and reserve my remarks.

The President: The motion, Hon. Members, is that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, Mr Butt.

Mr Butt: Mr President, clause 3 provides for the Bill's short title and the date of commencement. It would be subject to an Appointed Day Order to bring it into force.

I can advise Hon. Members that it would be intended to come forward with the appropriate orders to which the amendment refers at the same time as making an Appointed Day Order.

I move that clause 3 stand part of the Bill.

Mr Gelling: I beg to second, Mr President, and reserve my remarks, sir.

The President: Again, Hon. Members, the motion that I put to Council is that clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Public Health (Tobacco) Bill

First Reading approved

2. Mrs Christian to move:

That the Public Health (Tobacco) Bill be now read a first time.

The President: Hon. Members, having completed the Second Reading and clause stage of the Agricultural Marketing (Amendment) Bill, we turn to the second Item on our Order Paper, which is the Public Health (Tobacco) Bill.

The Public Health (Tobacco) Bill is for First Reading this morning, Hon. Members, and in the hands of the Hon. Member, Mrs Christian.

Mrs Christian: Thank you, Mr President.

The Public Health (Tobacco) Bill before us today for the First Reading seeks, in part 1, to regulate advertising and promotion of tobacco containing products and, in part 2, to place restrictions on the smoking of tobacco in public spaces and work places.

The Bill is brought forward to demonstrate the commitment of the Department of Health and Social Security and Government, to progress the social wellbeing of the people of the Island and to enable them, individually and collectively, to live healthily and fulfil their potential. This can be assisted by the measures outlined in the Bill, which the Department believes will reduce tobacco use in the population.

The Department of Health and Social Security recognise that people have a right to consume a legally available product. However, this right needs to be balanced with a responsibility to ensure that those who do *not* wish to consume tobacco products, can avoid the harmful effects of the smoke produced by those who do.

The Bill does not force people to stop smoking. The legislation places restrictions on the advertising and promotion of tobacco products and provides a framework for controls on the use of tobacco products. It does not prescribe where smoking can take place but it provides powers to bring forward secondary legislation for approval by Tynwald, should the principle in the Bill of no-smoking premises be established by acceptance of this Bill.

Smoking is the number one preventable cause of death and disease in the Island, resulting in nearly 200 local adult deaths and, at least, 20 childhood admissions to Noble's Hospital every year. Ten of these deaths are attributable to tobacco smoke inhaled by people who do not directly smoke. The smoking of tobacco poses an urgent public health challenge because of all the licit and illicit drugs, tobacco accounts, more than anything else, for death and disease.

There have been previous attempts to regulate smoking of tobacco, which have not been successful. However, the Department brings forward this Bill because recent research carried out on the Island has demonstrated overwhelming support for the proposals contained within it. The proposals reflect the majority of public opinion that smoking is harmful to both the smokers and to those who have to share the same public space or workplace and should be prohibited in those situations.

Evidence from other jurisdictions, which have already implemented similar legislation, including Ireland, Scotland,

and New Zealand, suggest that compliance with the Bill will be extremely high due to public acceptance of the principles of smoke-free work places and public spaces, and that the cost of enforcement will be modest.

I beg to move the First Reading of the Public Health (Tobacco) Bill.

The President: Hon. Member, Mrs Crowe.

Mrs Crowe: I am delighted to second, Mr President.

The President: Mr Singer.

Mr Singer: Thank you, Mr President.

There is no doubt that this Bill is draconian and it is meant to be draconian. I have never smoked, but they also say that there is nothing like a reformed smoker who wants to see everybody else go along the same path.

Smoking cessation is a difficult procedure for people to undertake, even with all the help they get nowadays from the various medical patches and whatever. There are many pitfalls along the way, to prevent people from stopping smoking and once they have stopped smoking, it is very easy for them to return to smoking. It is pretty much like alcohol. Once you have been addicted, you dare not ever look at that product again.

The Government's – not just this Government; every Government – approach to smoking is schizophrenic, in that they are saying, 'Don't smoke for your health' but, if you stop smoking, the effect on the revenue of the Government, which funds services, will be quite dramatic. That is the reason that the Government never even consider banning smoking completely, because they need the revenue.

Of course, the effect on other people has to be taken into account. It is very important, and I do not think anybody objects to the proposal that there should be no smoking in areas that the hon. mover has mentioned, such as work places, public transport, public places, public buildings, where the public has no choice other than to enter that place, and it is quite right that they should not be exposed to the effects of cigarette smoke.

There will be an effect on business. Some people say the effect is good and some people say the effect is bad, but there is also the effect on the people who are addicted to smoking – and there is no doubt that they are addicted to smoking. As I said, they cannot just say, 'I am smoking today, and I am not going to smoke tomorrow.'

Where the Bill, I feel, is unfair is enforcing non-smoking on places where, perhaps, there could be a choice for people: a private club where people can choose if they wish to go into that club, or they do not wish to go into that club. They can choose if they want to work in that club or they do not want to work in that club. Restaurants, public houses, where there could be a room that has satisfactory extraction facilities so that, other than the smokers, or the people who choose to be in that room, there is no effect on the general public.

I have been told, and I have heard it said, and it has been mentioned, I know, in the other place, that there will be exceptions in the regulations. But as usual, the position with regulations is that you either agree with them or you disagree with them. You cannot change them when it comes. From what I hear and what has been said and what has been printed, those regulations will be few and far between. I think the prison was one of the places that was mentioned as being,

possibly, an exception, although some people would say, 'Why, the prison, because the people there are supposed to be punished anyway? Why allow them to smoke?'

This is a draconian Bill, because it is not prepared to permit smokers to smoke in areas where it does not affect anyone else involuntarily.

One might think, of course, that the price of tobacco and tobacco products would put young people off buying them. But in fact, I think that education in the schools has failed, is continuing to fail, because you go into the streets now and you see young people smoking. It concerns me greatly, particularly young girls, that they have not had the case adequately explained to them during their period of education, to stop them smoking. **(The Lord Bishop: Rubbish.)**

It is not rubbish. If the case had been put over properly to them, which is the duty of the education system, then there would not be as many people smoking; but there are many people smoking, and it seems to be increasing.

I am not going to oppose this Bill, because there are important and necessary steps to be taken to prevent the effect on non-smokers in the places and public places, but I do think that there could have been a little more thought given to those people who are addicted to smoking, and who could smoke in places where it is not going to affect anybody else.

The President: Mr Downie.

Mr Downie: Yes, Mr President.

I have listened carefully to my hon. colleague, Mr Singer. I tried, with some difficulty, to understand the perspective that he was trying to bring to the debate.

I do not accept that the Public Health (Tobacco) Bill is draconian. You only have to look around you and see the advancement that has been made in other jurisdictions and where, contrary to popular belief, businesses are doing better. There are more people going out to eat in restaurants, because they know that their meal is not going to be polluted by someone smoking on the next table to them.

We are trying to promote an environment that is much healthier. People, I suggest, if they do not smoke, will probably live a lot longer. They will cost the Health Services an awful lot less money. Rather than there being an impact on revenue, I think what you will see, over the next 10 or 15 years, is that the cost of treating lung disease and coronary disease and all the other elements which one can attribute to smoking tobacco... the incidence of that will actually fall.

My own information leads me to believe that we spend many, many thousands of pounds on this Island treating lung disease and cigarette-related diseases. I think it is a sad state of affairs that advertising agents and all sorts of other attempts are made to indoctrinate young people and get them hooked on the smoking habit by getting the message over that it is the macho thing to do, and it is all part of growing up and so on, when those who are a little bit more sensible and, perhaps, reformed smokers realise the harm and damage it does to people's health.

My own view is that it is not only a dangerous habit, but it is a very anti-social habit. I think that a lot of the public and the people who we represent, one way or another, are very, very keen to see this legislation introduced into the Isle of Man.

As far as forming private clubs – smokers' clubs – I do

not think there is a problem with that and, in fact, I would support if groups of people want to go out socially and to a place that is identified as a private club and, providing it does not impinge on the staff, if staff smoke and they want to work there, fine and I think that is something that should be progressed.

When you look at the statistics, there is an awful lot of evidence available now to say that smoking, really, is a thing of the past. I fully support the principles that have been enshrined in the Bill, and I cannot wait to see it come into force, and to look at the way the regulations are being developed.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President.

Thank God for a draconian Bill, if this is one of them! I think this is a very good start and it gets it spot on. It pushes to the regulations the fine points of the law.

I want to talk a bit about education. When things fail, the people we always blame are the people in our schools, because they are sitting targets. As one who has been married to a teacher, now, for a number of years, I get really rather fed up when I hear people talking about, 'Well, if the schools got it right, then the world would be a better place.' This is a fine example of peer pressure, of social pressure. It is nothing to do with education whatsoever. The anti-smoking lobby in our schools has been finely presented, well presented.

I can remember, from my own school days, horrendous pictures being put before me. My peers still went out and smoked. It is peer pressure. If you go to London, into the City of London, you will see the people doing the top jobs, for some extraordinary reason, killing themselves, night after night, in bars and clubs. What they are also doing is killing the people who are working in those clubs, and I think we have to remember that the private clubs are also work places.

The Hon. Member said that, as long as the person working in that club is happy to smoke, then all is well and good. But we have to be quite careful that, when we are talking about private clubs and things like that, they still need staff. They need staff to clean them. They need staff to man them. They need staff to work behind the bars, to serve the food. And if those people are put at risk – and are we, actually, going to say, you can only come and work in this place as long as you smoke? (*Interjections*)

Mr Singer: Totally incorrect, what you are saying.

The Lord Bishop: You get into a whole other interesting bit of legal employment law.

So, I think what I want to say, with the way in which this Bill is put before us today, it is the right way round. It makes a very, very strong stand in the first place about banning smoking in public places – places where we work, places where we socialise – and, from there, we can make exceptions, if necessary. I am quite prepared for there to be places where smokers go to smoke – perfectly alright. But they are *not* to be places where any of us might be called upon to work in any form whatsoever.

So, I fully support the Bill as it stands, and commend the Department for bringing it forward and look forward to seeing the regulations, if the Bill is passed through all its stages.

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President.

I come from a family of smokers. I am the odd one out again. I have never smoked.

I have to say that my family is a good barometer, really. There are over half of them now that do not smoke and for a variety of reasons – health reasons, in some cases. But I am pleased, because I have been saying to them that they have been wasting their money for years. However, that was their choice.

But I have also been a person who practises draconian measures, as it is called – then I have been a draconian master in chief, for a few years, because for the last 12 or 13 years, it has been my privilege to run the Gaiety Theatre, and we put a ban on there long before legislation came in.

By the way, I was pilloried for it, and I got some awful stick from the smokers, but we stuck to it and I think most people now would be horrified, if they went through...

When I come up to modern days, the Villa Marina, we were toying with the idea of having smoke-free zones and the rest but the decision was taken that we would go for a complete ban and I had... at the back of my mind, there was a doubt. I have to say that doubt was totally unfounded, and I think it was the right decision. I think it is backed by the vast majority of people there who do it.

The NSC is another place which I obviously do not have it... the argument that I had with my good friend Mr Singer, this morning, is that, as a chemist, he must know that nicotine is an addictive substance, and he actually mentioned that it was an addiction. It may be an addiction, but I do think, really, it is also, unquestionably, the truth that it does have very serious health problems. I think we would all accept that. The title of the Bill is right: it is *public health*.

Sometimes, the public... you cannot say to somebody with TB who can distribute it... I think the Bishop is right, when you can distribute disease round.

This is not disease, in that sense, but I do think the power of advertising is... Quite right, I think it is the peer pressure. They want to ape their elders, and children, at the end of the day, will always do that.

But I think the sadness for me, at the moment, is the number of young girls that I see smoking. It does not worry me so much about the boys. I think the boys have come on board, they recognise it. It is the girls.

Now, I do not know why that should be. I am not a psychologist, I do not know the ins and outs. I do not blame the teachers, because I do think the message is getting into the schools and into the public places much better than it ever did. I think it is having an effect, and that is why I think the Bill is accepted by most people now.

Yes, there will be a school of thought that says we cannot possibly do without it. I think it is proven now elsewhere, in practice, that it can happen. I think it is the right move, it is the right direction, it is the right time.

I will be supporting the Bill and I do think, for all the right reasons, we are catching up with what we should have all been doing years ago.

I accept that, but that is not looking back and saying it is not the right time. It is the right time. I think the benefits will be almost immediate, and I applaud the Department for introducing the Bill.

The President: Chief Minister, Mr Gelling.

Mr Gelling: Mr President, I think, if you look back over the history, probably, the last war was, really, where the smokers came back, very little did they get in the way of something they could enjoy, except cigarettes, and they were actually handed out. Of course, our men folk all came back from the war, they were all smokers.

The next generation comes along and, if you look at the number of those that smoke compared to their fathers and so on... Again, it was something that men did and the ladies did not.

But putting that to one side, I think there has been a definite improvement with the number who smoke, for health reasons.

I was very fortunate to have 23 consultative documents sent to me from Year 6 at Ballasalla School, where they had been set a project: 'Should people be allowed to smoke or should they not?' It was exceedingly interesting. You could see them at home talking to their parents and, of course, there are downsides to stopping smoking.

Some of them were quite explicit, in the fact that they felt that their dad, for argument's sake, should continue to be allowed to smoke, because they did not really know that he did smoke, because he used to go to the pub for his pint and his cigarette and he never smoked at home. 'Now he smokes at home, so we get the smoke, but we do not want him to stop, because if he does stop, he will get very annoyed and bad tempered, and we will end up at the wrong end of...'

You see, and of course, I think that does give us a social problem as well, because you will have noticed that the people who used to go for the favourite thing, a pint and a fag, do not do that any more. They stay at home and, of course, the family is then having to put up with the fact that they are smoking at home, where the children are in the home and, of course, they will get the effects of that.

It is a social thing, because I think you will find that the places where people used to go and smoke, such as pubs, are the places that are no longer visited. I think if we went back to probably when we were young, when there used to be things that people did for social reasons, where they went to the local village hall and had a jolly good night, and there was neither a cigarette nor alcohol anywhere to be seen.

It would appear today that that is the trend that will change things. Without doubt, it will change things, because you now see people buying their cigarettes, buying their cans and, of course, they do it at home, which will have a social change, because they do not go out and meet people, and it will also have the effect of children in the home.

Certainly, I would suggest, having 12 grandchildren and knowing how they are horrified at the thought of smoking, they really have been indoctrinated somewhere that smoking is out. I look forward to the next generation coming along, being a lot more sensible, more wise than we are and, in fact, it will disappear.

But there will be, certainly, problems, I think, on the way, which we will have to be ready to accept.

The President: Mrs Crowe.

Mrs Crowe: Just to pick up on a couple of things. I think we do need to congratulate the Isle of Man. We have gone some way towards helping with public health, and it was after reading the white paper called 'Smoking Kills'... That is a fact, smoking kills and, despite the fact that we talk about education in school and all the rest of it, we really

cannot be quite as graphic, I suppose, with youngsters as maybe we should be.

Maybe we should be just giving them all the facts. You start smoking when you are 14, if you are a young girl, and the chances are, by the time you are 35, you will have cancer. Do we want to be as graphic as that, or do we want to be a little more delicate?

So, when we come to education, there is a fine line to be drawn between the facts... yes, we have to have the facts, but they are at that time, children. I think we have gone a long way. We have helped with the purchase of tobacco, certainly for youngsters, raising the age to 18 and that is enforced. I think that that has helped slightly with the children, but of course they do get access to cigarettes.

But this, as the Chief Minister says, it is more about public health, so it is all those people who do not smoke, who are affected by the smoke around them, and not only adults, but, more especially, the children who are affected by the smoke. I think Mrs Christian, moving the Bill, said that 20 children a year end up in hospital, and it has now been detected that things like sticky ear and all these different complaints can be directly linked to children being forced to smoke the passive smoke that has been exhaled by people around them.

So, I do believe that we are going a great way to helping the public of the Isle of Man to avoid having imposed on them, because a lot of people who do not smoke, have the effects of smoke inhalation imposed upon them by others. I fully support the Bill, and I hope that we will see a swift progress through the Council.

The President: Mrs Christian to reply.

Mrs Christian: Thank you, Mr President. Can I thank Members for their support of the Bill on the whole.

With regard to the comments of the Hon. Member, Mr Singer, I take the point that he believes that this is draconian. I think that, perhaps, a smoker would regard it as draconian, but the vast majority of the population would think it is a reasonable step to take, in respect of public health.

He commented about cessation being difficult. It is difficult. The Bill does not seek to stop people smoking; it just seeks to control where they are going to do it. If people have a difficulty in the workplace, for example, there are programmes available to help people deal with their addiction, if they are addicts.

The fact that some people are addicted should not blind us to the will of the majority and, in fact, the harm that is done by those who do smoke.

The issue of revenues is, of course, an interesting one. We could be regarded as hypocritical, as having here a substance which is legal, which, if brought along today, would be banned, and yet we continue to accept that it is sold licitly, and we reap the benefit of the revenues. However, in respect of public health, this is the first step. Government is prepared to sacrifice revenues in order to improve the public health situation.

Also, comment was made that maybe clubs should have choice and so on, and I think we will certainly get to some very vigorous debate in another place, when the regulations relating to this Bill are brought forward, as I am sure they will be.

There is as yet no evidence of any satisfactory extraction system to remove the dangerous particles that are left in the

air. We may feel we are moving into a more comfortable environment, because we cannot smell things any more, but there are an awful lot of components in tobacco smoke which cannot be seen or smelt, so until there is some evidence of a very satisfactory extraction system – and in my reading of notes, it is more or less a tornado, before you can be satisfied that the harmful products are removed – then the argument about extraction does not cut much ice.

So far as imposing these changes on people who do smoke is concerned, let us not pretend that this has not been in the offing for a very long time. There can be no smokers out there who have not been conscious of the fact that this may come. Indeed, it is still going to be a little time before it is going to be introduced, subject to its passage through the other branches. People are aware that there may well be change and, indeed, when they go on holiday they are already faced with change in many countries, and in an increasing number of countries.

I do not want to embark on the argument about clubs, except to say that I have a personal view that there should be no exceptions. (Mr Butt: Hear, hear.) However, that is for another place, nor indeed, do I have a view – well, I probably do have a view – about prison, but there will be a debate, I am sure, about people in residential care, where that is their home.

The issue of advertising, which is one of the two prongs in respect of this Bill, is an interesting one. Advertising clearly works, otherwise (*Interjection*) companies would not spend millions on it. There is evidence to suggest that, where advertising has been cut out, there has been a decline in the purchase of tobacco. So, I think it is entirely proper that the advertising is tackled in the Isle of Man, as it is elsewhere.

The Hon. Member, Mr Gelling, has raised an interesting point about whether or not we are moving this problem from the pub to home. I find it hard to believe that there are smokers who only smoke in pubs and never smoke at home. But there is an issue there, I would suggest, with regard to the situation in which children find themselves.

But whilst we may be moving an element of the problem, I think looking at the whole thing in the round is the right way to go.

Comment has been made about education and young people. I would endorse the view that there is a good education system in the schools. If education worked, we would not have drug problems, we would not have obesity, we would not have smoking problems. (*Interjection*) We could do our best, in terms of education, but we cannot always get the message across. If everybody knew how to get the message across effectively, it would save us a huge amount of money in the long term. (*Interjection*)

Some messages are accepted. I think the seatbelt message has been accepted. But smoking, whilst accepted in certain areas, we have failed, particularly with young women. Whilst the Hon. Member, Mrs Crowe, suggests that we have done a good thing in making the purchasing age 18, and I agree with that, we have not stopped young people under 18 from smoking. There is not a law to prevent it, as I understand, and it is not an attractive proposition going to see outside schools every night, lots of young people, lighting up. Perhaps we should be taking some steps there in relation to underage smoking.

However, this Bill does not deal with that. I support that there is a good educational provision, but how you hit the right buttons is a difficult matter. There has been a comment

that people should be allowed to choose to go to areas where they do not have an effect on others. There is nowhere where they do not have an effect on others in an enclosed space, at the moment, and so I think that the principles incorporated in this are right. The detail will be dealt with in another place and there we will have, I think, some interesting arguments about where the exclusions should be allowed.

I hope Members will support the First Reading, Mr President.

The President: Hon. Members, the motion that I put to Council is that the Public Health (Tobacco) Bill be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Public Health (Tobacco) Bill **Standing Order 22(2) suspended** **to take Second Reading**

Mrs Christian: Mr President, I wonder if I may ask Council's indulgence, by seeking suspension of Standing Orders in order to take the Second Reading?

Several Members: Agreed.

The President: Agreed, Hon. Members, I am content that, in fact, we move to the Second Reading.

Mrs Christian: Thank you, Mr President.

The President: And then we will consider the committee stage after the Second Reading.

Mrs Christian: If you wish, Mr President, yes.

Public Health (Tobacco) Bill **Second Reading approved**

Mrs Christian: Just to recap, part 1: clauses 1 to 13 ban the advertising and promotion, including sponsorship, of tobacco products with certain limited exceptions.

Part 2 makes provision for a ban on smoking in certain wholly enclosed places. It will create the offence of permitting others to smoke in and on non-smoking premises and create the offence of smoking in no-smoking premises. There will be a requirement to display warning notices in no-smoking premises, and there will be enforcement powers given to officers of the Department of Local Government and the Environment to enter no-smoking premises for enforcement purposes. Failing to co-operate with an officer who has enforcement powers will be an offence.

Part 3 deals with general matters such as penalties, the liabilities of officers and bodies corporate, interpretation and commencement.

We have touched in First Reading on the issue of revenues. Government revenue from duty and value added tax on tobacco products totals around £25.2 million a year. If there is no change to the Customs and Excise sharing arrangement with the United Kingdom, then the proposals

in this Bill, combined with similar legislation in England and the devolved administrations in Great Britain, are expected to reduce revenue from sales of tobacco products by £252,000 a year for each 1 per cent reduction in smoking prevalence.

In addition, Government expenditure will rise due to the increased cost of enforcement by the Department of Local Government and the Environment and by trading standards officers. Evidence from other jurisdictions which have already implemented similar legislation would suggest that compliance with the Bill should be high, due to public acceptance of the principles.

I think we have already had a feel from our community that they do support these principles. The cost of enforcement, therefore, should not be very high, and I think it is the intention of the Departments that they will start off on an educational basis, rather than a heavy-handed basis where enforcement is concerned.

The belief is that an additional £20,000 per annum may be required by the environmental health section of DoLGE. It is also estimated that an additional £17,500 over three years would be required by trading standards; £10,000 in year one; £5,000 in year two; and £2,500 in year three. There will be minor costs of signage on public buildings for the community at large.

It is estimated that around 30 per cent of expenditure by the Health Services Division of the Department of Health and Social Security is related to smoking related diseases, mainly heart attacks, emphysema, strokes and asthma. This is about £36 million a year, so it is a substantial sum of money expended as the Hon. Member, Mr Downie, indicated on these smoking-related health problems. Each 1 per cent cut in smoking prevalence is consequently estimated to lead to savings of £108,000 a year in treating diseases related to smoking, excluding the costs of enforcement and signage – that is the health cost.

The reduction in smoking prevalence as a result of the Bill and health promotion measures, is estimated to be in the region of 10 to 13 per cent, so the net exchequer savings are estimated to be between £1.08 million a year and £1.4 million a year, excluding enforcement and signage.

I beg to move the Second Reading of the Bill, Mr President.

Mrs Crowe: I beg to second, Mr President.

The President: Mr Singer.

Mr Singer: I think it is peculiar, Mr President, that from what I said to start off with, I said I would support the Bill and there is misrepresentation. People pick up on certain things and forget some of the things that I said. I fully support the Bill and the reasons why it should be there.

I agree completely that you should not be sitting in a restaurant and have somebody smoking next to you. That is why we need this Bill. I know exactly what it does to people's health.

But smoking is not a thing of the past. The Government has made every effort within the Health Service by offering people free smoking-cessation medication – free. If they were to buy a week's supply of the patches, it would cost them £13 or £14, and it is probably an eight-week course, if they manage to get through it. Yet the Government is giving that free, and I praise the Government for that, and any of the similar type of medication to stop people smoking.

I agree with Mr Lowey that it is correct, that there should not be smoking in the NSC and there should not be smoking in the Villa Marina and there should not be smoking in the Gaiety Theatre, because that is where people are going in, people who do not smoke. If there are people smoking near them, then that smoke is going to affect them, and I agree entirely.

So, I do realise the full effects of smoking; but so do the smokers. Smokers know what it is doing to them, but they cannot stop, in many cases, because they are addicted. That is what we are not prepared to accept or realise, that they are addicted.

Whilst some people do manage to stop, because of the help they are given, others cannot. It is somewhat to do with a balance. There is, certainly, an imbalance in this Bill, I think, that it is not recognising that people are addicted, and they cannot say to them, 'Well you're smoking today; tomorrow, you've got to stop smoking.' because they cannot.

Therefore, if we are talking about places where people can go to smoke when they are out in an evening etc. If they go to a place where they know they are going to be exposed to smoke, like a private club, to a certain extent, I know it has an effect on them. It has an effect on the health services, but they know the effect on themselves, but it is not going to affect anybody else in the community who does not want to inhale that smoke.

I understand that the Department has, in fact, agreed to look at and consider an extractor system. I understand that they are going to evaluate it, that was some of the information I had, perhaps you would like to check on that for me.

If we are talking about exceptions, why are we going to exempt the prison? What about the effect the smoke will have on the prison officers? Why are we going to exempt residential homes? That is where you have a lot of people, members of the public, working in residential homes. Why should they be exposed, permitted under the law?

So, that is why I said I understand they are going to be very draconian, these exceptions, if any at all.

So, I do again say, I support the Second Reading. I know exactly what effect smoke has on people, but I do look forward to discussion, when it comes to discussion on the regulations.

The President: Mr Lowey.

Mr Lowey: Yes, I know we are on the Second Reading, but it is the first part and it is advertising that I want to...

There was a phrase used by a political opponent of mine, Mrs Thatcher, when she talked about the IRA, I think it was. She said, 'We must stop them, we must starve them of the oxygen of publicity.' That reinforces to me the power of advertising and, as far as I am concerned, I think we have to control tobacco advertising.

What you cannot do on the one hand is say, 'You can't have it' and 'By the way, boys, we're still promoting and encouraging you to do it.' So, I think this is a necessary, and draconian... It is an infringement of people's free expression and all the rest, but I think it is in the public interest so to do. Therefore, I think we have got to support that particular element of it.

It is no use, wishful thinking that it will go away. I think there is no doubt at all, this is a direct appeal to people to recognise the injury they can do themselves. I do not think it is a defence to say, 'Oh we've tried and we've failed in

the past.' I think we have tried and yes, I agree with Mrs Christian, we have not been effective, but I do think it does not stop us from pursuing what we believe to be right, for the right reasons.

I do not think there is an argument amongst anybody here that the reasons... and you have got to justify the ends. I think this Bill is a justification, to try and get things better for an awful lot of people, not a marginal number of a people but a significant amount of people, and I think that is worth fighting for.

The President: Mr Downie.

Mr Downie: Yes, interesting debate thus far, and just to take up the point about the cost to the Health Services. If you look at the many public buildings in the Isle of Man, you only have to go into the airport and look at the nicotine stains all over the ceilings and walls. The huge cost, at the end of the day, has to be borne by the taxpayer with decoration of public buildings, amenities and so on.

One of the arguments that is often put to me is that all these cigarette ends appear outside of buildings and so on. There are many different types of appliances on the market to deal with that, and I am sure that will be an area that some Government Departments will have to get involved in.

I would just like to ask the mover, the way the Bill is drafted, at the present time, indicates that it is to apply to all tobacco substances. I would take it, in the regulations, there will be a list of substances which are deemed to contain tobacco: for example, snuff and, of course, although they are banned in the Isle of Man, and the Tynwald of the day had the foresight to do that, there are still many European countries, Holland for instance and further afield in America, where it is still available to have these tobacco-related substances in a small tea bag form. They were marketed in the UK as 'skull bandits', and people chew those all day long.

I take it that that will all be dealt with, with an area including all the products related which are going to come under control.

The President: I think, at that point of considering the regulations side of it and what comes into the regulations, I find clause 20(6)(ii), it would be far easier to have said you cannot smoke anywhere *except* where you can smoke.

Mr Butt.

Mr Butt: Thank you, sir.

Just referring to Mr Downie's comment about stains on buildings, I can say that at Laxey Football Club, we built our own clubhouse six or seven years ago, and we made it non-smoking from the start. It was the only non-smoking licensed premises on the Island, at that time.

We have never had to decorate yet and we have not lost any revenue either. I think that is an important point to make.

There are lots of figures being thrown around about how business has gone down in Ireland and Scotland etc. When you look at it carefully, I would be cautious about believing all those figures. Having been to Ireland, as probably many people here have, the place seems to be busy and there seems to be no problem with enforcing the legislation at all.

I was informed by Mr David Marshall who was here last week... He is the MP for Glasgow East – as he said, the unhealthiest place in Britain. He said that the smoking

ban is working well there. There are no problems and people are conforming to it. So, I think we need to be careful, as the debate develops, that we do not listen to distorted figures being put by the lobby who are trying to preserve the licensing trade.

Many people here are of an age, I think, where you have probably seen people who have died from smoking-related diseases, and it is an unpleasant spectacle. I have, in addition, been unfortunate enough to have been to lots of post mortems, maybe 100 or more, and I can say that, if people realised what actually happens inside the human body when you smoke, they would all be put off. As I mentioned on a previous occasion, it is a great shame that young people, especially young girls, cannot see inside what the lungs look like, and the smell and the stench; it is horrendous.

I think this Bill – and I apologise for this – is a breath of fresh air! (*Laughter*) Literally, a breath of fresh air, in that it is not long overdue; it is the way that life is going now, throughout the world. In 10 years' time, we will wonder why we even debated the matter, because it will become so commonplace.

I just hope that there will be no exceptions. As the mover says, I hope there will be no exceptions. We do not need smoking clubs; we do not need smoking rooms. They do not have them in Ireland. They do not have them in Scotland, and there is no need for them in the Isle of Man.

I think we should be as strong as we can on this legislation, because if we are not, one day we will regret that we did not go as far as we should have done.

The President: Mr Lowey.

Mr Lowey: Could I have one final say.

Most of the people that were telling me that we should not... It was 10 or 12 years ago, when we banned it in the Gaiety Theatre. One of the joys of the Gaiety Theatre, of course, is the wonderful ceiling and I was told... They were desperate to tell me why they should permit smoking in the theatre, and one of the reasons, when they scraped the barrel, was that, because of the nicotine smoke, the ceiling had been protected. Apparently, it had formed a film over these. Of course, we were about to paint it, and they had washed it with soap and water. All these beautiful pictures were revealed, and they said, 'Well, if you want to preserve these paintings forever, let us smoke!'

I said: 'Not even for the sake of the paintings on the ceiling, would I permit the smoking!'

It just goes to show you, there was a benefit for smoking in the theatre. But I have to say it is not a reason that I could justify the other side of things, and it is just as an aside.

Mr Singer: Three hundred years later, you get your problems!

Mr Lowey: Otherwise, they would have smoking in the Sistine Chapel, wouldn't they?

Mr Downie: There is – it is called incense!

The President: Right, Hon. Members. Mrs Christian to reply.

Mrs Christian: Thank you, Mr President.

First of all, can I say that I did not ignore the positive

contribution from the Hon. Member for Ramsey. (*Interjection from Mr Singer*) I thank everyone for their support, and I do recognise that he understands the arguments about smoking, as well as anybody else does.

However, I did feel it necessary for me to answer the points which I felt ought to be answered, on what I would regard as the negative side of not accepting the Bill. Government does support cessation, and I think that, possibly in the future, if that programme could be stepped up, it should be run in parallel with the introduction of this legislation, to assist those who truly want to give up. Not everyone will want to give up. It will still continue, and so we have got to try and find a happy medium, somewhere along the way, to, first of all, protect people's health, but still allowing those who wish to indulge to do so.

I am aware that the Department of Local Government was, I understand, approached about an extraction system. I am not aware (*Interjection by Mr Singer*) as to whether... my earlier understanding was that they were not going to be involved in that, but then if something has subsequently happened –

Mr Singer: Will you check for me?

Mrs Christian: I do not know, but I will try and establish whether or not such a test is going ahead. If it were going ahead and found to be effective, then maybe that would affect people's views when we come to regulations in another place.

I will not, at this point, comment on prisons or residential homes. There are issues in connection with all of those, which will need to be sorted out under regulations.

The Hon. Member, Mr Lowey, again, highlighted the advertising issue. When we come to the clauses of the Bill, it will be seen that it is a difficult area, but some steps, as far as are possible, will be taken to minimise the effect of advertising. It cannot be eliminated in its entirety, depending on what source in the world it comes from, but we can deal with it where it emanates from local sources.

It is, certainly, true that there is a public cost of smoking, not only in health terms, but in terms of buildings. I look forward to the day when the Local Government (Amendment) Act goes through, and there is more power to deal with the cleaning-up exercise, when you are following smokers from their offices to the pavement. Perhaps there is a public health issue there.

Mr President, you have commented on there should be a reversal, perhaps, in clause 20, a total ban with exceptions – in effect, we are saying a total ban with exceptions in public places.

The issue of business and the effect upon it is an interesting one. Again, the information I have had seems to indicate that there is some movement: some decline in some areas, some improvement in others. However, there may well be a cost to business, but the indications are that, by and large, there does not seem to be. I think that this is a step worth taking, even if there were a cost to business, because of the overall cost to the community in financial terms, for health care and social cost, even more important for the devastation to families who are affected by smoking-related diseases.

The Hon. Member, Mr Downie, asked about all tobacco substances and the issue of smoking. The control of tobacco advertising, part 1 of the Bill, deals with all types of tobacco

substances, including snuff, chewing tobacco, whatever. Part 2 deals only with smoked products, so that may be pipe smoking, it may be rollies, it may be whatever, but it is only... The public places issue is only for smoked tobacco, so people could transfer to snuff use or to (**Mr Singer:** Chewing.) chewing tobacco at this stage, under the Bill.

I think, Mr President, that has covered the queries which have been raised in relation to the Second Reading. I, therefore, look forward to support from Members for that Second Reading.

The President: Now, Hon. Members, the motion I put to Council is that the Public Health (Tobacco) Bill be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Members, as indicated before, I am in your hands as to whether or not you wish to continue with the clause stage. I am perfectly happy to move on as long as the Council is happy to move on with the committee stage. Are we agreed, Hon. Members? Agreed.

Mr Singer: Mr President, can I just say that, if we are finishing at one, I have got a plane this afternoon, so I would not be here this afternoon, if you are going to go on past that time.

The President: Yes, we will cross bridges as we come to them. I think, that, Hon. Members, will probably be our best bet.

Public Health (Tobacco) Bill

Consideration of clauses commenced and adjourned

The President: So, in that case, with Council being prepared to accept that we move on to the committee stage, clause stage of the Bill.

Mrs Christian, clause 1, please.

Mrs Christian: Yes, thank you, Mr President.

Clause 1 deals with the prohibition of tobacco advertising. The clause makes it an offence in the course of a business to publish tobacco adverts in the Island. It also covers advertising of brand-share products.

So, essentially, anybody who is involved in the commissioning, design, printing, publishing, sale or distribution of such an advert could be guilty of an offence.

I beg to move clause 1 do stand part of the Bill.

Mrs Crowe: I beg to second, Mr President.

The President: Mr Singer.

Mr Singer: Mr President, a small point, but there are... Often, if you go into gift shops, you can buy plaques which are old fashioned plaques, but they are actually advertising tobacco products. The old fashioned adverts, Gold Flake, whatever and they are used to put on your walls, just as an adornment. Is that going to affect somebody who is selling those sort of products, even though they are not directly advertising smoking?

The President: Player's, Gold Flake and so on.

Mr Singer: That is it, yes. That is it, old fashioned, the 1920s or 1930s.

Mrs Crowe: The brands do not exist anymore.

The President: Mr Downie.

Mr Downie: A similar question, Mr President, for example, a lot of the major motor sport events are sadly, in my view, still sponsored by multinational tobacco companies – Marlborough, people like that, Rothman's, for instance – although, in places where the ban has been introduced, there are still people who want to wear the shirt with the corporate image on, which is linked to all the other types of embroideries that appear on these shirts. I am wondering whether the legislation will actually apply to items like that; whether that is classed as tobacco advertising in the truest sense; or is this just another product that has been developed with a logo on it that indicates a link to tobacco?

It is an issue, I think, we will have to deal with, because a lot of motor cycle related events, rallies and car racing, being so popular in the Isle of Man, you could actually have people here with that attire on and who would not be up to speed with our laws.

The President: Mr Butt.

Mr Butt: I was going to respond to that – I know it is not my place. But it is not in the course of a business, it is at a sporting event, rather than a business, so maybe there could be leeway on that. This section says 'in the course of a business' they advertise tobacco, whereas if they are just at a sporting event where they happen to wear the garb...

Mr Singer: It says 'in the course of business *prints*'. They could print a shirt.

The President: Lord Bishop.

The Lord Bishop: A slightly naive question, but I think it has got some basis to it, in clause 13, in the definition, it says:

“‘tobacco product’ means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.”

Are there not products which aid people to give up smoking, which have within them (**Mr Singer:** Nicotine.), partly, (**Mr Downie:** Correct.) nicotine –

Mr Singer: They do have nicotine –

The Lord Bishop: – which would be sucked or chewed and, therefore, is this Bill actually making those illegal, if you choose to advertise those, because they are made partly of tobacco? A strict interpretation of the Bill would say that. I think I am right.

Mr Singer: Would it not be a definition...? Tobacco is other than just nicotine. These are nicotine replacement patches, which contain nicotine, which are basically just replacing the nicotine, but you get rid of all the other 4,000 carcinogens into there, which is tobacco. It is only nicotine

and there is nothing... no mention of nicotine here.

Mrs Crowe: Ah, right, that is handy.

The President: Good question, though.

Mr Lowey: Could I just say, yes –

The President: Mr Lowey.

Mr Lowey: Can I just ask, really, about the idea:

'It is not an offence under subsection (1) for a person who does not carry on business in the Island to publish or cause...'

It presupposes that the Isle of Man would be unique, in other words; but we are a market place of 75,000 or 80,000, perhaps a few more when the census is announced, people. Hardly our market place – no matter how much we think it is the centre of the universe – is not big enough really to be a special one-off.

However, having said that, on the idea of banning sporting motifs, I think now would be very unwise of anybody in the Isle of Man in my view, to promote its event with the sponsorship of a banned substance, which a tobacco group will become and, therefore, I think it is an academic exercise. I really do.

We used to have the Rothman's Rally. That has stopped. We were going to get the TT sponsored by one of these substitute tobacco things, and I think we declined that, because of the medical advice, which we obviously got, which said it could cause mouth cancer. We said we were not having that.

It was lucrative to us to have these things, but we said no, and I think it is right and proper that we should take that moral stand. I really do.

The President: Mrs Christian to reply.

Mrs Christian: Thank you, Mr President.

I think it is probably quite difficult to put the wording together in relation to the advertising and this is why it talks about 'in the course of a business.' So, in the course of a business, you cannot publish, you cannot distribute, you cannot cause tobacco advertisements to be printed or distributed. The point raised by the question of all products, I think, might be an interesting test case.

If those brands were not for sale any more, you would probably be okay, but clause 1(4) says:

'It is not an offence under subsection (1) for a person...'

Oh, no, wait a minute, this is:

'does not carry on a business in the Island [...] by means of a website...'

There is a provision in the exclusions, which allows people, for example, artists, actors, painters, to still depict smoking, to smoke a cigarette in a play and so on, so those issues are not really in the course of a business.

To be honest, I do not know quite where those old fashioned plaques would sit.

Mr Singer: If you go down to Promenade Shirts and you

want a shirt printed and they happen to have a logo that is a cigarette logo, even, whatever—

Mrs Christian: They cannot do that any more.

Mr Singer: They cannot do that.

The President: It is a business.

Mrs Christian: It is a business. With regard to those embroideries, it is done in the course of business in the Isle of Man. With regard to someone visiting the Isle of Man with a shirt, on which there already is a logo, that is an individual visiting; it is not in the course of a business.

There may be rally team here, which says – I do not know – Subaru. If Subaru somewhere else is sponsored by Rothman's, then it is not... unless you know that, it does not mean anything in relation to tobacco. But if you were to produce and sell cigarette lighters with a cigarette advert or a picture on, which relates to a product that people might be aware of, then you would be in trouble, because you are doing that as a branding exercise, which we will come to later.

But in terms of the direct advertising, distribution and promotion of tobacco, an offence is created under this clause.

I think the point on nicotine has been well answered.

The Lord Bishop: Thank you.

The President: Okay, Hon. Members, the motion I put to Council is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, Mrs Christian, please.

Mrs Christian: Thank you, Mr President.

Clause 2 provides that in the case of advertising in the press, anyone in a chain from commissioning to selling an offending publication could also be guilty of an offence. This includes proprietors, editors, advertising agencies.

The clause, also, applies where the publication is by electronic means, but there are certain exclusions set out in clause 3 and defences in clause 4.

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

Mrs Crowe: I beg to second, Mr President.

The President: Mr Singer.

Mr Singer: If a magazine is brought in from somewhere not on the Island, and it is sold in a shop and there happened to be a cigarette advertisement in that, is it expected that the person who is in control of the shop looks through every magazine to have a check there is not an advert published? Is it an offence to sell that magazine with an advertisement in it?

The President: Mrs Christian.

Mrs Christian: To answer that, Mr President, no, there is a defence.

A newsagent cannot be expected to flip through every magazine to see whether there is a cigarette or cigarette-related, tobacco-related advert in it.

Mr Singer: Just if it is on the front?

Mrs Christian: If it was blatantly on the front, then they should not be displaying it and of course, depending on what country it comes from. There may already be a prohibition on tobacco advertising in the country of origin. This clause deals really with materials which are published and printed here.

The President: Okay, Hon. Members, the motion I put to Council is that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have. The ayes have it.

Clause 3.

Mrs Christian: Clause 3, Mr President, deals with advertising exclusions and says when no offence is committed. This deals with the trade, essentially.

Selling tobacco is a legitimate activity and those who sell the product want to communicate with the wholesalers or the retailers. There is a provision in this clause that you can make a communication in part of a business in relation to tobacco trade, provided it is with a certain group of people and those people are set out in clause 3(2).

They have got to be fairly senior people in the business. They have got to be responsible for making decisions on behalf of the business, occupying a position in the management structure or be a person who is a member of the board of directors, if it is a body corporate, or responsible for the conduct of the business in question.

In relation to this clause, the Department of Health and Social Security may provide in regulation that no offence is committed under section 1 in relation to a tobacco advert which is in a place where tobacco products are offered for sale. Those regulations would have to come to Tynwald.

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

Mrs Crowe: I beg to second, Mr President.

Mr Singer: Mr President, if I go into a supermarket and they have special sections set aside where they sell cigarettes, but everybody walks past it, is it not a fact that that cigarette, exposed on the shelf, is an advertisement in itself? If it is, then should they not be behind in a cupboard, so they cannot be seen?

The President: Mrs Christian.

Mrs Christian: Mr President, I think that, partly, this is where the definition of 'place' comes in, to say where or not adverts can be placed, where tobacco products are offered for sale.

My understanding is that the Department would expect that, certainly, if in a supermarket, for example, there is a section which sells tobacco products, that those products alone will be there with no additional advertising. One might argue that they are advertising themselves. One might say this is simply saying what the product is. It is a difficult line.

But if the boxes are just there on the shelf, that is not deemed to be advertising; but if there is a notice outside or a box outside the shop, this is where 'place' comes into it and the Department will have to, in those circumstances, define where such products are offered for sale, and whether or not that is deemed to be advertising.

Mr Lowey: Could I, Mr President, ask the mover... could she just assist me, anyway. I notice on the side notes, where we usually have where the Bill... We take a lot of our legislation from Northern Ireland and, in this case, it cannot be Northern Ireland, because they have not applied it yet. Having said that, do I take it that the numerals P2002/36/5 relate to legislation that is in Parliament? If that is the case, a lot of this is... and there is nothing wrong with that, because these are the mechanics of... although we should try, wherever we can, to be in sympathy or in tandem with adjacent isles, so that we do have that interchange and ability to do it.

If that is the case, I take it that these will have been discussed with the trade, with publishers etc and, therefore, they know what they are able to do and what they are not able to do. I just wondered when I saw that. That was my initial reading of it, that it was the existing legislation in Parliament and, therefore, it has been trialled elsewhere.

The President: Mrs Christian to reply.

Mrs Christian: Yes, thank you, Mr President.

Yes, indeed, the first part of the Bill is lifted from English, from UK law, which is also related to the EU law.

The second part, however, you will notice is based on the Scottish law.

Mr Lowey: Yes, indeed. That is my –

Mrs Christian: So, in terms of the advertising, there is a standard provision over the UK which has been imported into the Island, so that everyone is working on a similar basis, which should assist, I think, understanding,

Mr Lowey: That is fine.

The President: It is the regulations, isn't it, in (4), that will actually have the bite out of this particular... It is the regulation and the interpretation of 'place' that we really have to...

Anyway, Hon. Members, the motion is that clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mrs Christian: Clause 4, Mr President, deals with defences. So, someone who might be charged under clauses 1 or 2 can put forward arguments as to why they were not creating an offence.

If a person did not know and had no reason to suspect that the advert was promoting a tobacco product, they can put that forward as a defence.

I asked, when I discussed this Bill with the Department, 'Give me an example, please', and they gave me the Silk Cut advert as an example, which simply was a piece of purple silk with a cut in it. Now, if you were not a smoker, you would not know what it was about. In fact, a lot of television advertising, I still do not know what it is about! (*Interjections and laughter*)

So, on the other hand, if you worked in a tobacco shop and you were advertising the Silk Cut there, you might not have much of a defence. It would be for the courts to decide, but this is a defence which you can put forward.

If a person cannot reasonably foresee that the advert

would induce people to buy tobacco, that is also a defence.

If a person had no reason to suspect that a tobacco advertisement would be published in the Island, for example they were selling it to some country outside of the Island, which was not covered by this law, then that is a defence.

If a person is distributing anything by electronic means – and this is in subclause (4) – telecoms, for example, could put as a defence, 'I have no idea what everybody is sending by way of a fax'. Therefore, they could say, by way of defence, 'We do not know everything that is going through our service. We do not know everything that people send by fax', and so under the electronic section, they could put forward that as a defence.

Again, we come to the newsagent issue. A person in subclause (6): if you sell a publication and you do not know, you did not have any reason to suspect that it contained a tobacco advertisement, you could put that forward as a defence. Presumably, if it came from books published in a country which has similar legislation, you would certainly not expect to see a cigarette advert in it. If it came from outwith one of those countries, you might be wise to consider whether or not it might have a cigarette advert in it, before you display it. Again, it does not say there is no offence, but you have got a defence there.

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

Mrs Crowe: I beg to second, Mr President.

The President: The motion, Hon. Members, is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mrs Christian: Clause 5, Mr President, deals with displays.

The DHSS may make regulations concerning the permissible display of tobacco products and their prices at places or websites where they are offered for sale. The DHSS regards the current practice of minimal advertising as quite satisfactory and have no current plans to make regulations under this clause.

Subclause (1) makes it an offence to display tobacco products, if it does not comply with any requirements that may be set out in regulations. That also applies to electronic displays on websites.

It also goes on to deal with the meaning of 'place' and places outside the Isle of Man, internet sites and so on. The tricky one here, I suppose, is in subclause (4): when is a display not a display? A display which amounts to an advertisement could be defined as an advertisement and not a display, or a display and not an advertisement.

But the DHSS would have to deal with that issue under regulation. Those regulations would come before Tynwald... well, they would be laid before Tynwald.

The President: Mrs Crowe.

Mrs Crowe: I beg to second, Mr President.

The President: Mr Downie.

Mr Downie: Mr President, I would only see it causing a problem for the DHSS, if the Island was to be overflowing by the Rothman's aerobatic team and they had a display in

Douglas Bay, and then went on to do some somewhere else, you would have no control over it.

The Lord Bishop: Yes, by territorial water.

The President: They are excluded later on, territorial water and fly past. Lord Bishop.

The Lord Bishop: Just a comment to say that, from experience across, in large stores, it has been very interesting to see the dying down of tobacco displays, almost now to invisibility, in the insistence of them being put behind white frame fronts.

So, I can understand the difficulty of defining 'place', but I think, clearly, these regulations are being brought in across. They have managed quite satisfactorily to remove from display things that I remember from my childhood, when the display cabinet had the maker's name emblazoned across the top and down the sides and everything else. It makes for a much quieter display and you do not notice it.

So, while I think that the definition of a 'place' will be an interesting one to watch, I think it is possible to do it and to achieve the end.

The President: Picking up on a point which was made earlier in relation to the antique displays and, of course, your suggestion that, perhaps, Mrs Christian, they would be governed under those regulations of (4), would they not? Clause 5(4) would actually cover antique displays?

The Lord Bishop: Yes.

Mrs Christian: But if it is for sale, it –

The President: It does not say, but –

Mrs Christian: – is not a display.

The President: But if they were displayed under those regulations, could regulations not cover them, or should they?

Mrs Christian: It is possible, but it is still in the course of a business, for sale, but whether it is promoting tobacco, is a fine point.

Mr Gelling: I think, Mr President, I think that is the point. If they were in a tobacco shop, selling tobacco, they would be a display, but if they were in an antique shop, selling them, because (*Interjection by Mrs Christian*) they are selling for their actual sign, they would not be a display.

Mrs Christian: Perhaps 'place' there is important, Mr President.

Mr Lowey: Could I just say, a sign of the times, how many newsagent shops did you used to see, with Players and then the name of the newsagent given by...?

They are not now displayed, because, from that end, they recognise the law has changed, and it does not happen now.

The President: But they may, very well, become collectors' items.

Mr Lowey: They could very well. I wish I had half a dozen.

The President: Anyway, Mrs Christian, are you content?

Mrs Christian: Yes, can I move that clause.

The President: In that case, Hon. Members, the motion that I put to Council is that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

Mrs Christian: Thank you, Mr President.

This deals with the prohibition of free distribution. It is not permitted to give away products or coupons to the public in the Island for the purpose of promoting a tobacco product. You cannot give it away with something else either. If it was given away with a packet of fish and chips or something, you still cannot do it.

But there is a defence in subclause (2), if you are giving this away to somebody who is in the tobacco... and here we are going back to wholesaler/retailer – and only to those same categories of people as I referred to in the earlier clause, the senior managerial people. You cannot give any vouchers away to the general public or purchasers.

Again, there is a defence in subclause (5), if you did not know that what you were doing might encourage someone to buy cigarettes. So, for example, if you were a supermarket and you said, 'If you buy £25 worth of goods this week, you get a £5 voucher free', and that person chose to spend the £5 voucher on cigarettes, you could offer, as a defence, that you did not know it was going to be used for cigarettes.

There is a definition of what a coupon is and the Department can make regulations providing for this section to apply to making products or coupons available for nominal or discounted sums. Again, this is the United Kingdom wording brought into the Island and I do not think the Department perceives, at the moment, that there is really a problem in this area. The regulations may be modified by the Department as they consider appropriate.

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

The President: Mrs Crowe.

Mrs Crowe: I beg to second, Mr President, and reserve my remarks.

The President: Lord Bishop.

The Lord Bishop: As a child, I used to play with cigarette cards...

Mr Singer: So did I.

Mr Lowey: I knew you were going to say that. Me too.

Mr Singer: Capstans.

The Lord Bishop: Well, I am not committing myself as to what make they were. (*Laughter*) Where, in this, if anywhere, is the publication and production of cigarette

cards and then moving out from the cigarette packet and the person who bought the packet, into the realms of the young person, who, actually, is probably the collector? Therefore, the moving out from the person who bought the thing, being the adult, and the advertisement then moving out into a larger... Or have there not been cigarette cards? (**Mrs Christian:** No.) Am I being...?

Mr Lowey: No, there have been cigarette cards.

Can I just say that the very point the Bishop has raised, I was going to touch on because cigarettes cards are social history. In my young days, it used to be footballers, especially at World Cup time, so here you have it. There have been, in recent World Cup times not long ago, cigarette cards and I am quite sure there may be this time. I doubt it somehow but they were in the last World Cup.

Having said that, Walter Raleigh has got a lot to answer for, hasn't he? He brought us tobacco, which is addictive, but he also brought us the potato and I suppose the potato is addictive, too, isn't it? (*Interjections*) Or if they make crisps, I am an addict, I suppose, so when we have finished with smoking, Mrs Christian, perhaps, we can concentrate on the potato. (*Laughter*)

The President: Mrs Crowe.

Mrs Crowe: To be helpful regarding cigarette cards, there are collectable cards, certainly, published for things like the World Cup, motor sport, all that sort of thing. They are marketed separately in separate packets and the children can buy them for a small amount of money.

I, certainly, have not seen it (**Mr Lowey:** Cigarettes?) (*Interjections by Mr Lowey and Mr Singer*) being involved in the tobacco trade, I suppose, for about 20 years. I have not seen any in the last 20 years, but they can certainly purchase them – but children can purchase them separately in little packets for pocket money and then start doing as you used to do, with cigarette cards, collect them and swap them, etc.

I thought, actually, the comment Mr Lowey was going to make would be the fact that the Benson and Hedges girls would no longer be present giving out cigarettes free to the public, and I do think that is absolutely...

Mr Singer: Still, I would not say anything like that. (*Interjection by Mr Lowey*)

Mrs Crowe: I think it is one of the things that got people hooked onto smoking was the... and, of course, the industry knew that full well. (*Interjections*) So, they gave out free cigarettes to all and sundry and I am pleased that it is no longer going to be allowed to happen in the Isle of Man.

But I am also saddened to know that, in fact, it is in Africa where this is promoted so heavily, inducing people to start smoking. I do think the industry itself has got to be a little more sensible about these things, without having us legislators putting in place what they should, actually, be doing morally.

The President: Mr Singer, do you wish to comment?

Mr Singer: No, we were just talking about Player's No. 7.

Mr Lowey: Swapping cards.

The President: Mrs Christian to reply.

Mrs Christian: Thank you, Mr President.

With regard to cigarette cards, although the Hon. Member, Mrs Crowe, says that they are still for sale, I know nothing about this area, I would think that, if they are, they would not be able to carry any reference to cigarettes.

Mrs Crowe: Oh, absolutely not. No, the same type card is available.

Mrs Christian: The cards are available. There are many collectors' cards now but I think that all of them would be caught, if they had any reference to cigarettes, under clause 8 or even clause... yes, clause 8, under the branding issue. I, too, used to collect cards. I cannot remember that they were cigarette cards, unless they came out of the Barratts sweet cigarette packets.

Mrs Crowe: Oh, you goody-goody. (*Laughter*)

Mrs Christian: But even those sweets are now not allowed to be called cigarettes. They are candy sticks as I understand it. They still stock them, (*Laughter*) but they do not have red ends any more, either. (*Laughter*)

The President: Hon. Members.

Mrs Christian: So, the whole issue of this inducement to young people –

Mrs Crowe: Yes.

Mrs Christian: – is being eroded, slowly but surely. I think that, if there were any issues there, they would certainly be covered in other clauses, if not that one.

The President: The motion then, Hon. Members, that I put to Council is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

Mrs Christian: Clause 7 deals with sponsorship, Mr President.

It is prohibited to do anything in a sponsorship agreement, if the effect is to promote a tobacco product. This does not prevent parent companies, for example, promoting or sponsoring activities.

For example, a tobacco company, without using the brand name of its cigarette brands, could sponsor an event – for example –

Mr Singer: Imperial Tobacco.

Mrs Christian: – say, British American Tobacco (BAT). BAT could sponsor the opera or runners or a health programme, but they could not do it under the title of a cigarette product that they sell.

An offence is committed if a deal does turn into a promotion of a tobacco product. An offence is committed by both parties to the agreement. As I say, they have got to be careful that they are not actually sponsoring a product, if they are going to accept money from a company which

owns tobacco production companies.

There are defences in relation to this. If the defendant did not know and had no reason to suspect that the sponsorship deal was promoting a tobacco product, they can argue that.

Subclause (4) provides a defence where the person did not know that the contribution was made in the course of the business. Again, a person can argue that they did not know that they were committing an offence under this section.

I beg to move that clause 7, dealing with sponsorship, should stand part of the Bill.

Mrs Crowe: I beg to second, Mr President.

The President: Mr Singer.

Mr Singer: Is it a weakness? For example, if you use the name of the company... Well, the name of the company is Imperial Tobacco. Quite clearly, it has got the word 'tobacco' in it. BAT – I assume the T stands for 'tobacco'. Therefore, if they just use their company name, they have still got 'tobacco'. What does tobacco mean? It means smoking.

That seems to be a weakness to say that they can use that. Yes, they can give money, if they are not going to promote the company but, to promote the company, they are still promoting tobacco in my view, especially if tobacco is in the name.

The President: Mr Lowey.

Mr Lowey: But most of these big companies are multi-faceted. Even allowing BAT – British American Tobacco – it is into hotels, it is into a variety of things.

I agree with the Member when he says that most people would look at it and say, 'tobacco', but having said that, it would not be a brand of tobacco. Most people do not say, 'I smoke cigarettes', do they? They, usually, say, 'I am a Woodbine man' or whatever.

Mr Singer: For young kids, it is tobacco and promoting something like.

The President: Mrs Christian to reply.

Mrs Christian: Thank you, Mr President.

I think that is an interesting point, because the company we have used to illustrate it does contain the word 'tobacco' in the name. I think that my understanding of it is that that would be permissible as a sponsorship. It does not promote a particular tobacco product –

Mr Singer: It promotes all of them.

Mrs Christian: But you could argue that it promotes tobacco as a product. However, that is my understanding of how this would be interpreted. It might be, for those who are accepting sponsorship from such a company, to satisfy themselves that they had a defence before they used that name. Indeed, it would be for them to decide whether it was appropriate to accept money from a tobacco company, depending on what their event was.

If an innocent contribution is made, then they have got a defence but I think anybody... This does not say that there is no offence. It says that you have got to be careful who you

accept sponsorship from and how you use it.

If you were using BAT, then I think I would be careful to check beforehand that I was not likely to be promoting a tobacco product. But it clearly is meant to convey the message that you do not say that this event is sponsored by this particular brand of cigarette product or whatever.

The President: The motion, Hon. Members, that I put to Council is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8. Mrs Christian, please.

Mrs Christian: Yes, this deals with the issue of brand sharing, which is the sort of stretching of advertising and, again, this comes down to the fact how difficult it can be to cover the advertising area, in order to reach the aim that you are trying to achieve.

What happens here is that tobacco branding on non-tobacco products is controlled by regulation. The example given by the Hon. Member, Mr Downie, earlier if T-shirts or rally cars or lighters, or whatever it may be, carry reference to a tobacco product, then they are deemed to be advertising, unless they meet and comply with the Department's regulations on the issue.

Those regulations will be laid before Tynwald and the regulations can be amended as the Department considers appropriate. They will be dealt with in relation to the offences under sections 1, 2, 5, 6 or 7. Anybody who contravenes a prohibition or a restriction contained in the regulations is guilty of an offence. So, it will be for the Department to produce regulations on branding.

I beg to move that clause 8 do stand part of the Bill.

Mrs Crowe: I beg to second, Mr President.

The President: It will only be for the Department to bring forward the regulations if they wished. It is not –

Mrs Christian: Yes, they may.

The President: It is permissive. It is not mandatory. Mr Butt.

Mr Butt: Yes, could I ask a question on what 'stretch branding' means.

Does it mean a firm like Alfred Dunhill, which was a cigarette manufacturer, but they now make watches and after-shave? Does it cover those sort of things? Golf clubs, yes. So, the cigarette name is, basically, on totally different products to tobacco? Is that what they intended this section to be?

The President: Mr Lowey.

Mr Lowey: My interpretation would be that they would be able to sell those watches, but they would not make any inference that they were associated with tobacco. In other words, a Dunhill watch is a Dunhill watch, just like I normally get, but it is getting our minds set for the future, as opposed to when the tobacco was gone, it would still be a Dunhill watch.

The President: Mr Downie.

Mr Downie: I think, Mr President, what happened is that Dunhill, originally, manufactured cigarette lighters and all that type of associated equipment and then, later on in life, they branched out into cigarettes. In fact, I do not think they are, actually, in the cigarette business at all now. But on the back of that, they have developed into watches, gloves, accessories, golf clubs, and so on. So, I think when there is not a clear link to tobacco or a smoking-related product, I do not think there is a problem.

The President: Mrs Christian to reply.

Mrs Christian: Mr President, these are the difficult areas that, I think, are going to be dealt with under the regulations.

It does say that it is intended that the regulations will set out the limited circumstances in which brand sharing will be permissible, so it assumes that, by and large, it will *not* be permissible. I am not quite sure how they are going to define it in relation to a specific product, for example, a Dunhill example. I do not know whether Dunhill is a cigarette that you can still buy. (**Mrs Crowe:** No.) So, maybe, they would be allowed to do it.

But it might be difficult to define these regulations unless you have a particular application before you in respect of a particular product. I see that as being a difficulty for the Department to resolve in its regulations, unless they require an application to be submitted or some such measure. I really do not know in what form the regulations will come forward.

The President: They may never come forward.

Mrs Christian: They may not but, if they do not, I think that the promotion... I think that if something is solved by way of being in the course of a business which actually intends to promote a tobacco product, then they might be caught under another clause.

The President: Okay, Hon. Members, the motion I put to Council is that clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Mrs Christian.

Mrs Christian: Mr President, in this section, the Office of Fair Trading will be the enforcement body and they will ensure that the regulations are monitored in relation to this part.

The Department – that is the Department of Health and Social Security – can, in relation to cases of particular description, provide that any duty imposed by the Office of Fair Trading shall be discharged by the Department and not by the OFT, but I think that it is likely that the OFT will be the body that carries out the enforcement of this.

The Department could take over the conduct of any proceedings that were instituted by the OFT, if they felt it appropriate as well, under this clause. I think they have simply adopted this from the parliamentary provision in the UK, but in the Island, I feel quite sure that the onus for monitoring all of this will fall on the OFT.

I beg to move that clause 9 do stand part of the Bill.

The President: Mrs Crowe.

Mrs Crowe: I beg to second, Mr President, and in saying so, I feel quite certain that the OFT who, if they choose to take a prosecution, have never been unsuccessful in prosecuting any cases that they have taken to court.

Mr Singer: Kiss of death.

Mrs Crowe: I feel quite certain that the Department will have no need whatsoever to oversee the work of that Department.

The President: The motion I put to Council is that clause 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10, Mrs Christian, please.

Mrs Christian: In order to carry out their duties, authorised officers have the right to enter premises, other than premises used only as a private dwelling house. They can carry out inspections on the premises, they can inspect books and data, take possession of any records that they feel appropriate to take, and require information from people in relation to the matter that they are investigating.

These are standard powers which are not varied from the usual powers of officers under these sorts of circumstances. The Department of Health and Social Security also has a power under this clause to direct that any of the enforcement functions can be taken over by them in any particular class of cases.

I beg to move that clause... I am sorry. No, I have got that wrong. That was on the earlier one. The Consumer Protection Act sets out these standard powers but they are tailored to fit the subject matter of this Bill. There is nothing unusual about them.

I beg to move that clause 10 do stand part of the Bill.

Mrs Crowe: I beg to second, Mr President, and reserve my remarks.

The President: The motion, Hon. Members, is that clause 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11, Mrs Christian, please.

Mrs Christian: Again, these are fairly standard provisions, Mr President. If anyone obstructs an authorised officer in the course of their business by making false statements, an offence is created. There is a defence to that offence, if the accused says that they did not know that the information that they were given was false and they had grounds to believe it was true.

I beg to move that clause 11 do stand part of the Bill.

Mrs Crowe: I beg to second, Mr President.

The President: I am finding it interesting that clause 11 was actually, referred to in clause 10. Never mind, there we are. Hon. Members, the motion that I put to Council is that clause 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12, Mrs Christian.

Mrs Christian: Clause 12 deals with the burden of proof.

This clause makes it clear that the burden imposed on the person wishing to rely on a defence in clauses 4(1) to (6), 6(5), 7(3) and (4) and 11(3) is evidential and not legal. This means that, if the defendant wants to rely on one of the defences, then the defendant must submit sufficient evidence to raise an issue with respect to the defence, rather than prove the defence on the balance of probabilities.

I beg to move that clause 12 do stand part of the Bill.

Mrs Crowe: I beg to second, Mr President.

The President: The motion, Hon. Members, is that clause 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13, Mrs Christian.

Mrs Christian: Clause 13 is interpretation in relation to part 1, Mr President. It also states that references to publishing include electronic publishing.

I beg to move that clause 13 do stand part of the Bill.

The President: Mrs Crowe.

Mrs Crowe: I beg to second, Mr President.

The President: Mr Singer.

Mr Singer: Could I just ask for some clarity, please.

On this definition of 'tobacco product', which we were told – which was a question, I think, asked by Mr Downie, originally – that it means products which are smoked. This now talks about 'smoked, sniffed, sucked or chewed'. Does that make any difference to the fact that those can still be used – the non-smoked ones can still be used in a public place?

Mrs Christian: Mr President, I did answer that question.

Mr Singer: Right. I just wanted clarification of that.

Mrs Christian: I did say that part 1 covered all tobacco products, including chewing tobacco, snuff and so on –

Mr Singer: Okay.

Mrs Christian: – but that part 2 relates only to smoked tobacco.

Mr Singer: Right, thank you.

The President: The motion, Hon. Member, is that clause 13 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That completes part 1 and we now go on to part 2, which is 'Smoking: prohibition and control'. Clause 14, Mrs Christian.

Mrs Christian: Yes, Mr President.

We now move to the offences of permitting others to smoke in no-smoking premises, which is dealt with in clause 14.

Subclauses (1) and (2) make it an offence for the person in charge of no-smoking premises, knowingly, to permit others to smoke there.

Two defences are provided under subclause (3). The first offence is to prove that they, or anyone working for them, had taken all reasonable steps to stop other people from smoking on their premises. The second open to them is to prove that there were no lawful and reasonably practicable means by which they could prevent the other person from smoking in the premises.

I beg to move that clause 14 do stand part of the Bill.

Mrs Crowe: I beg to second, Mr President.

The President: The motion, Hon. Members, is that clause 14 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

Mrs Christian: Mr President, it will be necessary for appropriate premises to display no-smoking signs, and they have to be conspicuous, visible and legible. If a person is in charge of no-smoking premises, and they have failed to display such signs, then they have committed an offence. So, the signage must be clear, state that the premises are no-smoking and that it is an offence to smoke there or, knowingly, to permit smoking there.

There is a defence that anybody who is in charge, or anybody working for them, or represented as an agent, took all reasonable precautions and exercised all due diligence to ensure that the signs were in place. DoLGE, in this case, is given powers to make regulations which will provide further details as to the form, manner of display and content of no-smoking signs.

I beg to move that clause 15 do stand part of the Bill.

Mrs Crowe: I beg to second, Mr President.

The President: The point I made before, Hon. Members, was that, if we made everywhere no smoking, there would be a lot less signage because now every place is going to have to have a sign up saying that it is no-smoking.

Mrs Crowe: Yes.

The President: It would be much better the other way round, so that you just had –

Mr Lowey: Smoking signs up.

The President: – where you could smoke, there was a sign.

Mr Lowey: In Peel, that would be difficult, Mr President, because you would have to say 'smook'. *(Laughter)*

The President: The motion I put to Council is that clause 15 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 16, Mrs Christian.

Mrs Christian: Here we create the offence of a person smoking in no-smoking premises.

Can I add that I think it is intended that the signage be small, discreet and appropriate to the building to which it is attached. So, you might not get glaring plastic things that are attached to conservation area buildings and so on. **(The**

Lord Bishop: Churches.) Churches, yes.

And, again, there is a defence that, if the person smoking can prove that they did not know that they were in no-smoking premises, they can argue that case. However, the onus is on them to prove it.

I beg to move that clause 16 stand part of the Bill.

Mrs Crowe: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: Could I just say does the signage have to be in English or can it be in Manx? I am sure that is going to be raised. (*Interjection by Mr Singer*)

Mrs Christian: I expect, Mr President, that it could be in both, but I doubt that it could just be in our one.

Mr Lowey: Manx Gaelic.

Mr Singer: You could have a cigarette...

Mr Butt: It might be just a graphic.

Mrs Crowe: I think it may be a graphic – the standard graphic with a cigarette and a big bar across, or whatever.

Mr Lowey: Thank you.

Mr Singer: In Manx.

The President: The motion I put to Council is that clause 16 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

Mrs Christian: Proceedings for offences under the previous clauses 14 to 16, Mr President. This clause links the start of the time limit for summary proceedings in relation to those clauses to the point at which DoLGE is given sufficient evidence on the offence to justify bringing the prosecution.

Subclause (2) provides that a certificate from DoLGE as to the date on which that evidence came to light is conclusive evidence about the date on which it happened.

I beg to move that clause 17 do stand part of the Bill.

Mrs Crowe: I beg to second, Mr President.

The President: The motion, Hon. Members, is that clause 17 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 18, Mrs Christian.

Mrs Christian: Clause 18 allows an environmental health officer of DoLGE to enter no-smoking premises to check whether any offences under the clauses which we have just debated is being committed or has taken place. The environmental health officer, using powers of entry, may use force to gain entry, if necessary.

An offence is committed under subclause (3), if the environmental health officer reasonably believes it is being committed or has committed an offence under clauses 14, 15 or 16, or has information relating to the offence, which fails,

without reasonable excuse, to give their name and address when requested to do so. So, this deals with the powers of entry and the requirement to give identification.

I beg to move that clause 18 do stand part of the Bill.

The President: Mrs Crowe.

Mrs Crowe: I beg to second, Mr President.

The President: The motion, Hon. Members, is that clause 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 19.

Mrs Christian: Crown application, Mr President. Some enclosed public spaces will be operated and controlled by the Crown.

Clause 19 provides that any regulations made under it shall bind the Crown, although no criminal liability arises. I understand this is standard in relation to the Crown.

I beg to move clause 19 do stand part of the Bill.

The President: Mrs Crowe.

Mrs Crowe: I beg to second, Mr President.

The President: The motion, Hon. Members, is that clause 19 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 20, Mrs Christian.

Mrs Christian: This deals with the definition of smoke and no-smoking premises.

In clause 20, 'smoke' means smoke tobacco, any substance or mixture which includes it or other substance. So, a person may be smoking the tobacco or smoking it in a pipe or whatever. So, we are talking here only of smoked tobacco in relation to this section.

'No-smoking premises' means such premises or class of premises being premises of a kind mentioned in subsection (4), as are prescribed by regulations made by DoLGE, after consulting such persons as it considers appropriate on a draft of the regulations. This is the nub of the matter, I think, for many people, as to what will be defined as no-smoking premises, under the regulations which DoLGE would bring forward.

Regulations under subsection (2), as you will see, may prescribe premises or parts of premises or classes of premises or parts of premises which are excluded from the definition and there we will have the debate as to whether or not prisons, residential homes, parts of pubs, private clubs or whatever should be exempt. This makes provision for such regulations to be drafted and to define what are no-smoking premises.

The regulations, also, will deal with the definition of what is wholly or substantially enclosed, who the public are and what 'has access' means. Regulations under subsection (2) may define or elaborate on the meaning of 'premises'.

There are difficulties, for example, in relation to things like taxis. I understand that taxis may be defined as no-smoking when they are being used as a taxi, but not as no-smoking when they are being used by the driver to get himself from home for work, which, it seems to me, contaminates the atmosphere anyway, but that is the sort of issue which might be covered by regulation.

It will also deal with vehicles, vessels, trains and other means of transport.

The President: But not aeroplanes.

Mrs Christian: Except aircraft, yes.

Mr President, regulations made by virtue of subsection (7) of this clause may provide as to how the statement in a section 15(1)(b) notice is to be expressed – that is the no-smoking notice – and this is where they will cover the treatment of historic buildings or historic transport and so on, ensure that the notification is appropriate to the circumstances.

I beg to move that clause 20 do stand part of the Bill.

Mrs Crowe: I beg to second, Mr President.

The President: Mr Singer.

Mr Singer: Could I ask the mover: what is the position if a landlord closes a pub at night, does the door, or somebody closes a restaurant at night, and that is then... the public cannot enter it? Can they then themselves smoke in those premises, or can their staff who are behind, say cleaning up, then smoke in their premises?

The President: Mr Downie.

Mr Downie: Yes, I just want a clarification. At section 20(1), I take it that where it says:

'lit substance or mixture which includes tobacco or of any other lit substance or mixture which is in a form or in a receptacle in which it can be smoked'...

So that is a general catch-all which would include... I know people have some obscure things they smoke, like cinnamon. People smoke cinnamon sticks, cannabis, cocaine.

If it can be smoked, it is not allowed. (**Mrs Crowe:** Hookahs.) Coca leaves and different things.

Mr Butt: Banana skins.

Mr Downie: And the issue regarding the licensed premises, I understood that they are always licensed premises and the only part that is separate is the living accommodation.

Mr Singer: That is what I was trying to find out.

The President: Lord Bishop.

The Lord Bishop: Can I just hope that under subsection (9), when we get to the regulations, we bear in mind that we are, also, entering the world of disability and that the signs are not necessarily signs that you can see; the signs are also signs that you can touch. I think that is actually quite an important world into which we should begin to move. We assume that all signs are visible signs.

Mrs Crowe: I think Mr President's point then becomes even more in that case.

Mr Singer: You need to know where they are before you can touch them.

The President: Mrs Christian, reply.

Mrs Christian: Yes, thank you, Mr Premises. (*Laughter*) Sorry, Mr President!

The Lord Bishop: Licensed and otherwise.

Mrs Christian: Smoking on licensed premises.

Mr Butt: It has been redefined.

Mrs Christian: I need to check that, but I would believe that the licensed premises, as such, would be covered, even after the doors have shut, because they are still not private quarters.

Mr Singer: And shops and restaurants.

Mrs Christian: The same with shops and restaurants. What they do in the private accommodation sector of those buildings, I think would be outwith the Act. I will check that, but I would tend towards the view that they will be covered, even if they are closed.

The Hon. Member, Mr Downie, is right that it is tobacco mixed with other substances or other substances which are being smoked. It is the smoke which is the issue and the offensive products that you get from smoking a variety of products, whether it is herbal tobacco or traditional tobacco or cinnamon or whatever else people may choose to be smoking. I think those were the only –

The disability issue, yes, that is an interesting one and, maybe, when we move to having almost everywhere signed smoke-free then we could take all the signs down and reverse it, as Mr President has suggested. But, at the moment, I will raise that point with the DHSS and DoLGE, who would be enforcing the signage.

The President: Hon. Members, the motion that I put to Council is that clause 20 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Procedural

The President: Now, Hon. Members, I think, at this stage, it is an appropriate time in which we stopped, in reality. I am aware you have still got part 3 to continue, so there is a natural break here.

Perhaps I could suggest, Hon. Members, at our next sitting, we complete part 3 and do the Third Reading. Is that agreeable to Hon. Members? (**Members:** Agreed.)

If you are agreed with that, Hon. Members, our adjournment will be to the sitting of Tynwald commencing on 16th May and, thereafter, to 23rd May, which will be our next sitting.

The Council adjourned at 1.10 p.m.