

### 3. CONSIDERATION OF CLAUSES

#### Public Health (Tobacco) (Amendment) Bill 2015 – Clauses considered

Mr Quayle to move.

**The Speaker:** We turn to Item 3, consideration of clauses. We are dealing with the Public Health (Tobacco) (Amendment) Bill, which is being moved by the Hon. Member for Middle, Mr Quayle. I call on Mr Quayle to move clauses, please.

**Mr Quayle:** Mr Speaker, Hon. Members, this Bill is the Public Health (Tobacco) (Amendment) Bill.

The Public Health (Tobacco) Act 2006 has been successful in protecting people from second-hand smoke and has had some success in reducing the use of tobacco products on the Island. However, in line with the Isle of Man Tobacco Strategy, the Department of Health and Social Care is keen to continue its efforts to prevent the promotion of tobacco to further reduce the burden of ill health caused by tobacco use.

The Department is committed to doing everything possible to shield people, and particularly young people, from the influence of tobacco product promotion through highly visible displays and easy access to cigarettes.

The evidence shows that young people are influenced by 'cool, fun and attractive' tobacco advertisements and displays to take up smoking. Large displays normalise tobacco use and create a perception that tobacco is easily obtainable.

Studies have shown that impulse buying of tobacco products as a result of seeing a display remains high, especially among young people. By reducing the visibility of tobacco products and advertisements, the Department wants to further discourage people from taking up smoking and also provide a public health incentive to existing consumers to reduce their consumption.

There is also international concern that the sales of tobacco products to young people from 'self-service' vending machines, which are often not directly supervised so there are no routine age checks, are increasing.

The aim of this Bill, therefore, is primarily to extend the provisions of part 1 of the 2006 Act banning tobacco advertising, to severely restrict the display of tobacco products and to ban the sale of tobacco products from vending machines.

Additional controls have already been established in English and Scottish primary legislation and the Department feels that similar controls would be appropriate for the Isle of Man. A comprehensive public consultation exercise undertaken in 2012 also showed that the majority of respondents support further controls.

The Department has also identified a need to do more to protect people from second-hand smoke so, as part of the same consultation exercise, the Department asked the public for their views on introducing legislation to ban smoking in cars when children were present.

This was also supported so the Department, at the same time as seeking approval from the Council of Ministers for this Bill to be drafted, and in conjunction with the Department of Home Affairs and the Department of Environment, Food and Agriculture, also requested support for proposals for new regulations to ban smoking in cars when children are present.

These regulations are to be progressed by the Department of Environment, Food and Agriculture in due course but, following further discussions with the Department of Home Affairs, it was agreed by the Council of Ministers that, in order to reduce the cost of enforcement and to increase the likelihood of enforcement action, provision should be included in part 2 of the Act for fixed penalties to be imposed for smoking offences, where appropriate, as an alternative to court action. Therefore, an amendment has also been included in this Bill to that effect.

Mr Speaker, turning to the content of the Bill, the Bill contains 25 clauses and a schedule and, should the Branches of Tynwald support the Bill, it will come into operation on the day on which Royal Assent to it has been announced at Tynwald by the President of Tynwald.

Clause 1 confirms the short title for the Act as the Public Health (Tobacco) (Amendment) Act 2015.

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir, and reserve my remarks.

**The Speaker:** I put the question 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, sir.

**Mr Quayle:** Thank you, Mr Speaker.

Clause 2 allows for all sections of the Act, apart from section 1 and the section resulting from this clause, to be brought into operation using appointed day orders, and allows an appointed day order to also make consequential, incidental, transitional or saving provisions.

It is the Department's intention to make an appointed day order at the earliest possible juncture after Royal Assent is announced, so that the new regulations which are also necessary for the operation of the amended Act can be made as soon as possible thereafter.

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** I put the question. Clause 2, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, sir.

**Mr Quayle:** Thank you, Mr Speaker.

Clause 3: subsection (1) of clause 3 states that this Act will expire on the day after it is promulgated if all of its provisions are in operation, or on the day after the last provision is brought into operation.

This does not affect the continuing operation of the amendments. It simply tidies up the Statute Book and removes spent material.

Subsection (2) confirms that the expiry does not: (a) revive anything from any Act which this Act amended; (b) revive anything not in operation when the amendment took effect; or (c) affect the continuing operation of the amendment.

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** I put the question. Clause 3, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 4 and 5 together, I think. Mr Quayle.

**Mr Quayle:** Mr Speaker, I would like to take clauses 4 and 5 together, if that is acceptable.

Clause 4 introduces the amendments to the 2006 Act which are set out in clauses 5 to 25.

Clause 5 simply amends the heading of part 1 of the Act to read 'Part 1 – Tobacco Advertising and Control', ahead of the part being separated into divisions for tidying-up purposes, and adds the first division heading as 'Division 1 – Tobacco Advertising and Display'.

I beg to move that clauses 4 and 5 do stand part of this Bill.

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** I put the question that clauses 4 and 5 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

**Mr Quayle:** Clause 6 replaces the previous subsections (4) and (5) from section 1 of the Act in order to update the wording to make it an offence for an Island-based service provider to advertise tobacco via information society services – that is, via the internet – anywhere in an EEA State, in the same way that such advertising would be an offence on the Island under sections 1(1) and (2) of the Act.

This amendment and the later amendments relating to internet services simply bring the Island into line with the equivalent United Kingdom legislation and satisfy European Union directives in this area.

'EEA State' is defined elsewhere in the Act as a member state of the European Community or Norway, Iceland or Liechtenstein.

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** Clause 6 – I put the question. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

**Mr Quayle:** Clause 7 inserts a new section 2A into the Act which makes the proprietor or editor of an Island-based information society service provider guilty of an offence if a tobacco advertisement is published via the internet in the Island or in an EEA State.

Section 2A also makes it an offence for such an internet advertisement to be procured, either directly or indirectly.

I beg to move that clause 7 do stand part of this Bill.

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** I put the question. Clause 7: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

**Mr Quayle:** Subsection (1) of clause 8 introduces the amendments to section 3 of the Act set out in this clause.

Subsection 8(2) includes the offences in the new section 2A – advertising: information society services – in the exclusions in section 3 and adds two additional exclusions.

The full list of exclusions will now be: advertisements within the tobacco trade; advertisements included in information provided in response to a particular request by an individual for information about a tobacco product; advertisements in a publication, other than an in-flight magazine, which is printed outside of a relevant territory and whose principal market is not within a relevant territory; or advertisements published by means of an information society service by a person who does not carry on business in a relevant territory and the advertisement is not intended to be accessed principally by persons in a relevant territory.

‘Relevant territory’ is defined elsewhere in the Act as the Isle of Man and any EEA State.

Subsection 8(3) inserts new subsections (1A) and (1B) into section 3.

Subsection (1A) provides that communications made by means of the internet to people who have requested information about a tobacco product are only excluded if the original request was not made using the internet or was made from an internet site which does not advertise tobacco products to people who: (a) have not requested information about such products; or (b) have not initiated a process for purchasing tobacco products by means of that service.

Subsection (1B) states that the supply of information to an individual is not a tobacco advertisement if it is done via an internet service which provides information about tobacco products as part of the provision of the means by which tobacco products may be purchased, and the information is not provided until after the individual has initiated the purchase process.

Subsection 8(4) omits the reference to ‘on a website’ from paragraph 3(3)(a) as provisions relating to the internet are now to be dealt with elsewhere in the Act.

Subsections 8(5) and (6) insert a new subsection (5) into section 3 to give effect to a new schedule relating to the liability of information society service providers, and insert the schedule into the Act. I will refer to the schedule again later.

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** I put the question that clause 8 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Just for clarity and the record, Hon. Members, clause 8 also introduces the schedule. Is that understood? (**Several Members:** Yes.) Thank you, Hon. Members.

Clause 9, Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

Subsection (1) of clause 9 introduces the amendments to section 4 of the Act set out in subsections (2) to (6).

Subsection 9(2) amends subsection 4(1) to apply a defence to the offences in the new section 2A – advertising: information society services – whereby an offence is not committed if the person committing the offence did not know, and had no reason to suspect, that the purpose of an advertisement was to promote a tobacco product.

Subsection 9(3) replaces subsection 4(3) of the Act to add reference to the new section 2A – advertising: information society services – in the defence that a person does not commit an offence if they did not know, and had no reason to suspect that a tobacco advertisement would be published in the Island.

Subsection 9(4) adds a new subsection (3A) to section 4 which provides a defence to certain offences relating to information society services in section 1 – prohibition of tobacco advertising; subsection (4) and section 2A – advertising: information society services – whereby a person does not commit an offence if they did not know and had no reason to suspect that a tobacco advertisement would be published in an EEA State.

Subsection 9(5) substitutes new paragraphs (c) and (d) into subsection 4(5) to add the defences that a person does not commit an offence of distributing or causing the distribution of a tobacco advertisement if the advertisement was transmitted using information society services and the person did not carry on business in a relevant territory at that time or, if the advertisement was transmitted electronically in any other way, the person did not carry on business in the Island at that time.

Subsection 9(6) adds a new subsection (5A) to section 4 of the Act which provides a defence to the new offence in subsection (4) of section 1 – prohibition of tobacco advertising – whereby a person is not guilty of an offence of distributing, or causing the distribution of an advertisement, if they were unaware that it was, or contained, a tobacco advertisement, or, having become aware of that fact it was not reasonably practicable to prevent its further distribution.

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** I put the question. Clause 9, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10 and clause 11 together, Mr Quayle.

**Mr Quayle:** Thank you Mr Speaker, I would like to take clauses 10 and 11 together, if that is acceptable.

Clauses 10 and 11, taken together, serve to replace the existing section 5 with four new sections dealing with tobacco displays and tobacco prices.

The new section 4A – Prohibition of tobacco displays – in subsection (1), creates the offence of displaying, or causing the display of tobacco products in the course of a business in a place in the Island.

Section 4A, in subsection (2), also allows the Department to make regulations to provide: (a) for the meaning of place, and (b) for a display which is also an advertisement to be treated as an advertisement for the purpose of offences under the Act, and vice versa.

The new section 4B – Tobacco displays: exclusions and defence – creates exclusions and defences with regard to the offences in 4A.

Subsection 4B(1) creates an exclusion whereby no offence is committed if tobacco products are displayed as part of the tobacco trade and the display is only accessible to persons who are engaged or employed as part of that trade.

Subsection 4B(2) states that no offence is committed if the display is a requested display to an individual aged 18 or over. ‘Requested display’ is defined in subsection 4B(8) as meaning a display to an individual following a particular request to purchase, or for information about, a tobacco product.

Subsection 4B(3) allows the Department to make regulations to provide that no offence is committed if a display complies with specified requirements.

Subsections 4B(4) to (6) give defences where a person is charged with an offence of displaying a tobacco product to someone under 18 if they believed the person was aged 18 or over and they had either: (a) taken reasonable steps to establish the person’s age, including, where appropriate, by requesting evidence, or (b) nobody could reasonably have suspected that they were under 18 from their appearance.

Subsection 4B(7) gives a defence where a person has exercised all due diligence to avoid committing an offence of displaying a tobacco product.

The new section 4C – Displays: prices of tobacco products – firstly, in subsection 4C(1), allows the Department to make regulations to impose requirements in relation to the display of prices and then, in subsection 4C(2) makes it an offence to breach those requirements.

Subsections 4C(3) and (4) allow the regulations to provide for the meaning of place, and for a display of prices which is also an advertisement to be treated as an advertisement for the purpose of offences under the Act, and vice versa.

The new section 4D – Displays on a website – firstly, in subsection 4D(1), allows the Department to make regulations to impose requirements relating to displays on websites, and then, in subsection 4D(2) makes it an offence to breach those requirements.

Subsection 4D(3) extends the above offence to include where the provider does anything in an EEA State which would constitute an offence under 4D(2).

Subsection 4D(4) confirms that the offence at 4D(2) does not apply to service providers established outside of the Island.

Subsections 4D(5) and (6) allow the regulations to provide for a display of prices on a website which is also an advertisement to be treated as an advertisement for the purpose of offences under the Act, and vice versa.

Clause 11 repeals section 5 of the Act which is replaced by the new sections 4A to 4D.

I beg to move that clauses 10 and 11 do stand part of this Bill.

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** The Hon. Member for Ramsey, Mr Singer.

**Mr Singer:** Thank you, Mr Speaker.

Could I just ask for some clarification from the Hon. Minister? If in a retail premises, obviously the tobacco products are covered so they cannot be seen, are you saying therefore even the fact there cannot be a list of what they are selling with the price, the person just has to ask and then they are told the price, but can they actually see what is being sold and the price if they cannot see the product?

**The Speaker:** The mover to reply, Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

I am led to believe that the prices cannot be displayed, but I will clarify that to the Hon. Member should that information be incorrect.

**The Speaker:** I put the question that clauses 10 and 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.

**Mr Quayle:** Thank you, Mr Speaker.

Subsection (1) of clause 12 introduces the amendments to section 6 of the Act set out in subsections (2) and (3).

Subsection 12(2) inserts a new subsection 6(1A) to extend the offence of promoting a tobacco product by giving away products or coupons to include the use of an information society service by an Island based service provider to do this promotion in an EEA State.

Subsection 12(3) adds a new subsection 6(5A) to make it clear that the offence of promoting a tobacco product by giving away products or coupons does not apply to service providers established outside of the Island in respect of information society services.

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, unfortunately I did not catch your eye on clause 8, but on clause 12 what I would like to say is that I would have liked to have seen more flexibility within this provision. As the Member who actually brought it in to make it illegal to sell cigarettes to people under the age of 18 many years ago, I am not a fan of the tobacco industry, but I am concerned that the lack of flexibility of why we could not have seen throughout this legislation certain parts have the flexibility as far as it being in secondary legislation so that the secondary legislation could still be in the control of the Council of Ministers and of this parliament.

I would have liked to have seen in this piece of legislation the issue of actually giving the flexibility to the Department of Health and Social Care of being able to provide regulations so that there is no offence committed, under certain circumstances which could have been specified for by the regulation for the Department if there was to be some sort of promotion in the future.

The Bill will go through, but I am concerned that what we have got to realise is that once this Bill goes through it will not give any flexibility. You will need Royal Assent to actually then take anything away again. Unfortunately I ran out of time to get the amendments put in as far as that is concerned. But I do feel that the Minister needs to realise with this legislation. I think most people support this piece of legislation, but what they are concerned about is the fact that there should be more flexibility – like the prohibition as far as sponsorship is concerned. In my opinion, just like this clause, it should have been put in regulations because there might be a time in the near future when we will be grateful for sponsorship.

**Several Members:** Ugh!

**The Speaker:** Reply, sir.

**Mr Quayle:** Thank you, Mr Speaker.

I thank the Hon. Member for Onchan for his comments. Had he taken part in the consultation then we might have been able to look at his views and see whether we could have implemented them into it. But we have generally followed the UK, Mr Speaker, because there was no particular reason not to. They seem to have everything covered which we felt was needed and there was no point trying to come up with something different just for the sake of it.

There are actually two sections of the existing Act which already deal with exceptions to the advertising offences. Firstly section 3 of the Act and secondly section 4 of the Act. They are quite lengthy, Mr Speaker, so I do not intend to read them out (**A Member:** Hear, hear.) but the exclusions are there.

**The Speaker:** I put the question, Hon. Members. Clause 12, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13, Mr Quayle.

**Mr Quayle:** Mr Speaker, subsection (1) of clause 13 introduces the amendments to section 8 of the Act set out in subsections (2) and (3).

Subsection 13(2) amends subsection 8(3) of the Act to allow the Department, by regulation, to apply any exceptions set out in regulations under section 8 to offences under sections 1 – prohibition of tobacco advertising, 2 – advertising: newspapers, periodicals etc, 2A – advertising: information society services, 4A – prohibition of tobacco displays, 4C – displays: prices of tobacco products, 4D – displays on a website, 6 – prohibition of free distributions or 7 – prohibition of sponsorship of the Act.

Subsection 13(3) adds new subsections (5) and (6) to section 8.

Subsection 8(5) extends the offence of contravening regulations made under section 8, to include such contravention by an Island based service provider using an information society service in an EEA State.

Subsection 8(6) makes it clear that the offence of contravening regulations made under section 8 does not apply to service providers established outside of the Island in respect of information society services.

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, Mr Speaker.

**The Speaker:** I put the question. Clause 13, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14, please.

**Mr Quirk:** Thank you, Mr Speaker.

Clause 14 firstly creates a new division heading in Part 1 of the Act as ‘Division 2 – Sale from Automatic Machines’, and then adds a new section 8A.

Subsection 8A(1) creates the offence of selling tobacco from an automatic machine.

Subsection 8A(2) then makes the person who controls or manages the premises where the machine is located guilty of the offence.

Subsection 8A(3) defines ‘premises’ to mean any place and any vehicle, vessel, hovercraft, stall or moveable structure.

Clause 14, finally, creates another new division heading of ‘Division 3 – Enforcement’.

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, Mr Speaker.

**The Speaker:** I put the question. Clause 14, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 15 and 16 together, Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

I would like to take clauses 15 and 16 together if that is acceptable. Subsection (1) of clause 15 introduces the amendments to section 10 of the Act set out in subsections (2) and (3).

Subsection 15(2) amends the wording in subsection 10(1) of the Act so that instead of an enforcement officer having to produce written authority in respect of his powers under this section he can simply produce evidence of his authority as an enforcement officer of the Office of Fair Trading.

Subsection 15(3) substitutes the term 'Deemster' with the term 'judge of the High Court' so that appeals under this section can be dealt with by the High Bailiff or the Deputy High Bailiff when they are sitting as judges of the High Court.

Clause 16 simply creates another new division heading for Part 1 of the Act as 'Division 4 – General' after section 10 of the Act.

I beg to move that clauses 15 and 16 do stand part of this Bill.

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** I put the question. Clauses 15 and 16, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

**Mr Quayle:** Clause 17 updates subsection 12(1) of the Act to include defences under the new subsections 4B(5) and (7) – tobacco displays: exclusions and defence – in the list of defences which may be satisfied if evidence is adduced which is sufficient to raise an issue with respect to that defence.

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** Clause 17: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 18.

**Mr Quayle:** Subsection 18(1) introduces the amendments to section 13 of the Act set out in subsections (2) and (3).

Subsection (2) firstly omits the definition of 'authorised officer' from subsection 13(1) of the Act and then later effectively replaces it with a new definition of 'enforcement officer', which is defined to mean a duly authorised officer of the Office of Fair Trading. The reason for replacing 'authorised officer' with 'enforcement officer' is to avoid confusion with the term 'authorised person' in section 18 of the Act, which refers to an environmental health officer of the Department of Environment, Food and Agriculture.

Subsection 18(2) also inserts various new definitions into subsection 13(1) of the Act as follows: 'the e-commerce Directive' is defined for the purposes of a new definition of 'information society services' as Directive 2000/31/EC of the European Parliament of the Council of 8th June 2000 on certain legal aspects of information society services, and, in particular, electronic commerce; 'EEA State' is defined to mean a member state of the European Union, Norway, Iceland or Liechtenstein; 'information society services' is defined as having the meaning set out in Article 2(a) of the e-commerce Directive, which lays down a procedure for the provision of information in the field of technical standards and regulations.

The definition also states that the term is summarised in Recital 17 of that Directive as covering:

'any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service'.

'Member State' is defined as having the same meaning as in the European Communities (Isle of Man) Act 1973; 'relevant territory' is defined a meaning the Island and the EEA States; 'service provider' is defined as a person providing an information society service.

Subsection 18(3) adds a new subsection 13(1A) into the Act to, firstly, state that for the purposes of part 1 of the Act an establishment, in connection with an information society service, is the place at which the service provider effectively pursues an economic activity for an indefinite period.

Secondly, subsection 13(1A) states that the presence or use, in a particular place, of equipment, or other technical means of providing an information society service, does not, of itself, constitute that place as an establishment for the purposes of the Act.

Subsection 13(1A) then states that where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment where the service provider has the centre of his or her activities relating to the service.

Finally, subsection 13(1A) states that references to a person being established in any place must be construed accordingly.

Subsection 18(4) replaces the term 'authorised officer' with 'enforcement officer' in sections 10 and 11 of the Act as a consequence of the revised definitions in subsection 18(2).

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, Mr Speaker.

**The Speaker:** Mr Singer.

**Mr Singer:** Could I just ask the Minister for clarity on the definition of 'EEA State' – a member state, Norway, Iceland or Liechtenstein. For clarity, should that say '*and* Liechtenstein'? It looks like an alternative.

**A Member:** Yes.

**The Speaker:** Mr Quayle to reply.

**Mr Quayle:** Thank you, Mr Speaker.

The wording I have here is '*or* Liechtenstein'. It may well be '*and*' for clarity. (**Mr Singer:** For clarity.) Again, it is not an alternative; it should be including all three.

**The Speaker:** I put the question, clause 18: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

**Mr Quayle:** Thank you, Mr Speaker.

Clause 19 inserts a new subsection 18(1A) into part 2 of the Act to state that an authorised person must produce evidence of his or her authority, on demand, when exercising a power under that section.

This insertion is simply intended to bring part 2 of the Act into line with section 10 of part 1, powers of entry etc, in this respect.

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** Clause 19: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

**Mr Quayle:** Thank you, Mr Speaker.

Clause 20 of the Bill inserts new sections 20A and 20B into the Act.

Firstly, subsection 20A(1) allows an authorised person to offer a person who they believe has committed an offence the option of accepting a fixed penalty notice, and paying a fixed penalty, instead of going to court.

Subsection 20A(2) states that a fixed penalty notice must identify, and give particulars of the circumstances of, the offence.

Subsection 20A(3) states that a fixed penalty notice must also state: (a) the amount of the penalty; (b) when it may be paid; (c) where and to whom payments may be made; (d) the payment method options; and (e) the consequences of non-payment.

Subsection 20A(4) states the fixed penalty is £50.

Subsection 20A(5) states that the Department of the Environment, Food and Agriculture may vary the amount of the fixed penalty by order, after consulting the Department of Health and Social Care and the Department of Home Affairs.

Subsection 20A(6) states that the period for payment is 28 days from the day that the fixed penalty notice is given.

Subsection 20A(7) allows the Department of the Environment, Food and Agriculture to extend the period for payment by giving notice to the recipient.

Subsection 20A(8) confirms that no other proceedings may be commenced for an offence if a fixed penalty notice has been given until after the payment period has finished.

Subsection 20A(9) confirms that proceedings may not be commenced or continued once payment has been made.

Subsection 20A(10) states that a certificate signed by or on behalf of the Department of the Environment, Food and Agriculture is sufficient evidence that payment has or has not been made.

Subsection 20A(11) states that any sum received by the Department of the Environment, Food and Agriculture forms part of the General Revenue.

Subsection 20A(12) allows the Department of the Environment, Food and Agriculture by regulations, after consulting the Department of Health and Social Care and the Department of Home Affairs, to: (a) provide that fixed penalty notices may not be given in certain circumstances; (b) provide for the form of a notice; (c) provide for the payment methods; (d) modify the payment period; and (e) provide for the keeping of accounts, and the preparation and publication of statements of account relating to fixed penalties.

Subsection 20B(1) requires the Department of the Environment, Food and Agriculture to consider any representations by or on behalf of a recipient when deciding whether to withdraw a fixed penalty notice.

Subsection 20B(2) states that, if a notice is withdrawn, the Department of the Environment, Food and Agriculture must give notice of the withdrawal and must repay any amount paid. It also states that no proceedings are to be commenced or continued against the recipient for the offence in question in these circumstances.

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, Mr Speaker.

**The Speaker:** I put the question, clause 20: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 21.

**Mr Quayle:** Thank you, Mr Speaker.

Subsection 21(1) of the Bill repeals section 21 of the Act and states that the penalties in that section are relocated in accordance with subsections (2) to (4).

Subsection 21(2) inserts a new subsection 11(4) into the Act – obstruction, etc of officers – to state that a person guilty of an offence under section 11 is liable on summary conviction to a fine not exceeding £1,000.

Subsection 21(3) inserts a new section 12A – penalties for offences under part 1 – into the Act to state that a person guilty of an offence under part 1, except under the section 11 I have just referred to, is liable: (a) on conviction on information, to custody for not more than two years, a fine, or both; or (b) on summary conviction, to custody for not more than six months, a fine not exceeding £5,000, or both.

Subsection 21(4) inserts a new section 20C – penalties for offences under part 2 – into the Act to state that a person guilty of an offence under part 2 is liable on summary conviction to a fine not exceeding £5,000.

I beg to move that clause 21 do stand part of this Bill.

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** I put the question, clause 21: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 22.

**Mr Quayle:** Thank you, Mr Speaker.

Clause 22 of the Bill inserts a new subsection 22(2A) into the Act to state that offences under section 22 apply to the officer of a body corporate as well as to the body itself, and that payment of a fixed penalty by an officer does not preclude prosecution of the body corporate, and *vice versa*.

I beg to move that clause 22 do stand part of this Bill.

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** I put the question, clause 22: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 23.

**Mr Quayle:** Thank you, Mr Speaker.

Clause 23 inserts a new section 22A – power to amend Act – into the Act to allow the Department of Health and Social Care to amend, by order, any provision of the Act: (a) as a consequence of any developments in technology relating to publishing or distributing by electronic means, or (b) for the purpose of making the Act correspond with the equivalent United Kingdom legislation.

I beg to move that clause 23 do stand part of this Bill.

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** Clause 23: those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 24.

**Mr Quayle:** Thank you, Mr Speaker.

Clause 24 replaces section 23 of the Act with a new section.

The new subsection 23(1) states that regulations under part 1 of the Act must be laid before Tynwald and will cease to have effect if Tynwald resolves that they should be annulled.

Subsection 23(2) states that regulations under part 2 of the Act or an order under section 20(A)(5), fixed penalties for offences under part 2, or section 22A, power to amend Act must be approved by Tynwald.

Subsection 23(3) states that subsection (2) does not affect any public documents made before this section comes into operation.

I beg to move that clause 24 do stand part of this Bill.

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, sir.

**The Speaker:** Clause 24: those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 25.

**Mr Quayle:** Thank you, Mr Speaker.

Subsection 25(1), substitutes the existing section 25 with a new section which provides some new interpretation for the Act.

Firstly, 'authorised person' is defined to mean a person authorised by the Department of the Environment, Food and Agriculture for the purposes of, or any provisions of, the Act or any provision having effect under the Act.

The new section 25 then provides for the initials of the Department of the Environment, Food and Agriculture (DEFA), the Department of Health and Social Care (DHSC) and the Isle of Man Office of Fair Trading (OFT) to be used throughout the Act.

As a consequence of subsection 25(1), subsection 25(2) of the Bill then substitutes the relevant initials into sections 3(3), 5(1), 6(7) and (9), 8(1) and (3), 9(2) and (3), 10(8) and (9), 15(3), 17(1) and (2), 20(2) and (8) and 24 of the Act, (**Mr Watterson:** House!) (*Laughter*) and substitutes 'authorised person' for 'environmental health officer' in subsections 18(1) and (3) of the Act.

I beg to move that clause 25 do stand part of this Bill.

**The Speaker:** Mr Quirk.

**Mr Quirk:** I beg to second, Mr Speaker.

**The Speaker:** Clause 25, I put the question: those in favour, say aye; against, no. The ayes have it. The ayes have it.

There has been tabled a new clause. I call on the mover, Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker and Hon. Members.

It has been identified that a consequential amendment to the provisions of this Bill has been omitted from the Bill.

A new clause, to be numbered 26, is therefore required to make some amendments to the Children and Young Persons Act 1966 (the 1966 Act) as a consequence of the banning of tobacco vending machines.

Firstly, subsection 26(1) introduces the amendments which are set out in subsections 26(2) to (5).

Subsection 26(2) repeals section 6(2) of the 1966 Act, which relates to action which can be taken, including the imposition of fines against the owner of an automatic machine for the sale of tobacco which has been used by a person under the age of 18 years, or the owner of the premises where the machine is kept.

Subsection 26(3) makes an amendment to section 6B of the 1966 Act, which deals with the display of warning statements in retail premises and on vending machines.

Firstly subsection 6B(3), which requires a notice to be displayed on automatic machines for the sale of tobacco stating that the machine is only to be used for persons aged 18 years and over, is repealed.

Section 6B(4), which makes the owner of a machine or the owner of the premises where the machine is kept guilty of an offence if no notice is exhibited in accordance with subsection 6B(3), is repealed.

Thirdly, subsections 6B(5) and (6) are amended to omit reference to the repealed subsections 6B(3) and 6B(4) respectively.

Subsection 26(4) repeals subparagraph (d) from section 6D(1) of the 1966 Act, which deals with the enforcement action which may be taken by the Office of Fair Trading in relation to a complaint made under the repealed section 6(2).

Subsection 26(5) repeals the whole of section 110 of the 1966 Act, which deals with appeals to the High Court. Specifically, subparagraph (e) of section 110(1) deals with appeals relating to orders requiring the owner of an automatic machine for the sale of tobacco, or the owner of the premises where the machine is kept, to take precautions to prevent the machine being used by young persons.

However, all of the other subparagraphs from section 110 and subsection 110(2) have already been repealed, so the whole of section 110 can now be repealed.

I beg to move that clause 26 do stand part of the Public Health (Tobacco) (Amendment) Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second, sir, brackets – and reserve my remarks – brackets!

**The Speaker:** Mr Houghton.

**Mr Houghton:** Thank you, Mr Speaker.

The Hon. Member for Onchan, in moving that amendment, which appears to be extremely involved and consequential to a number of sections in the Act, and the previous legislation that he is moving, that comes across as quite confusing, really.

I wonder if he would be good enough in his reply, for *Hansard* circumstances, to describe for this Hon. House what he has actually moved in that consequential... *[Inaudible]* cut out all the brackets and explain what this section actually means in relation to that section. If he would carefully describe that for *Hansard* I would be most grateful and I am sure other Members of this Hon. House would be, too.

**A Member:** I agree.

**The Speaker:** Yes... Mr Quirk, before you get to your feet... The Hon. Member for Douglas North makes a very good point. I notice, Mr Quirk, you moved the new clause 'stand part of the Bill'.

We have two debates on a new clause, the first is that the new clause *form* part of the Bill, which is the equivalent of a Second Reading debate about the principle, which is the point Mr Houghton is making. What is this all about?

Moving subsequently, if that is passed, the clause in detail that it stand part of the Bill is the opportunity to go into all the detailed subsections that you have so ably done.

So the debate that we are actually in is on the principle, and that is what Members of the House want to know. So the floor is open and we have the debate on the principle.

I call on Mr Watterson.

**Mr Watterson:** Could I possibly help Mr Houghton, then, in referring him to the Children and Young Persons Act 1966 and the amendments thereto. Section 6(2) in that... and if you look at the back page of the Order Paper, sir, 26(2) and (3) and (4) all deal with the regulation of vending machines, and (5) repeals the spent provision regarding the use of the High Court process, which is no longer needed because it refers to something else which is being repealed. So, in those simple terms, that is what the new clause would do, if so enacted, because vending machines are going to be far more tightly regulated with the Public Health (Tobacco) (Amendment) Bill than was previously the case under the 1966 Act as amended over time.

So, hopefully, that is in language – nice plain, clear and simple – that will help the Hon. Member.

**The Speaker:** Mr Quirk to reply.

**Mr Quirk:** Thank you, Mr Speaker. I could not have said it better myself! (*Laughter*)

**The Speaker:** I hope Members and Departments will take on board this important point when new clauses come forward, that we have a debate first on the principle in simple language, followed by, if it is passed, a debate on the detail.

Hon. Member, would you, just for the record, care to move that the clause form part of the Bill, please?

**Mr Quirk:** Mr Speaker, I beg to move that clause 26 forms part of the Bill.

**The Speaker:** Duly seconded?

**Mr Watterson:** Mr Speaker, I am happy to second that clause 26 stand part of the Bill, and in addition to the –

**The Speaker:** I am asking... We are still in the first debate, that it *form* part the Bill; we are not yet in the debate on the detail. I just require it seconded quite formally.

**Mr Watterson:** I only wanted to say that of course it is still incumbent on Members to understand the Bill in principle and in detail when they come here, sir.

**The Speaker:** No, all I want is this clause moved formally at this stage that it form part of the Bill. Mr Quirk has proposed, Mr Watterson has seconded.

The question is that the new clause form part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 26 now to be moved in detail that it stand part of the Bill. Mr Quirk, you may consider you have already done that. (**A Member:** Yes.) (*Laughter*) The floor is yours.

**The Chief Minister:** Let's hear it again! (*Interjections*)

**Mr Quirk:** Mr Speaker, I beg to move that clause 26 form part of this Bill – *is* part of the Bill.

**Two Members:** Stand.

**The Speaker:** Mr Watterson.  
Mr Houghton.

**Mr Houghton:** Thank you, Mr Speaker.

Just moving forward with your very kind advice, this was the time now at this particular stage for the Hon. Member, Mr Quirk, to explain to this House precisely what he means –

**Mr Robertshaw:** No, it was not.

**Mr Houghton:** I do thank the Hon. Member, Mr Watterson, for his overview on the issue but I could just do with knowing precisely what he means, if he could do that in his round-up, please.

**The Speaker:** Hon. Member, Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

If I can help tidy this one up, I am sure the Hon. Member for Douglas North would be delighted to know that it purely takes out references to vending machines in the Children and Young Persons Act.

**Mr Singer:** It's no longer relevant. *(Interjection by Mr Robertshaw)*

**Mr Watterson:** Is that a help?

**The Speaker:** Hon. Member, would you care to reply, sir?

**Mr Houghton:** Mr Speaker –

**The Speaker:** No – *(Interjections and laughter)*

**Mr Houghton:** Point of order. I have asked the hon. mover of this new clause to explain what it is all about. There is a procedure here and it is not being followed. It has been answered helpfully by two Members in the run-up to this, I am just after the hon. mover –

**The Speaker:** I call on the mover to reply to the debate.

**Mr Houghton:** Thank you.

**Mr Quirk:** Thank you, Mr Speaker.

Just to respond to the Hon. Member, both of our colleagues in the House have defined it. It also gives a clear indication, as it says, it refers to vending machines in the Bill. I am quite happy if the Member is finding it quite difficult, for me to give a one-to-one.

**A Member:** I beg to move.

**The Speaker:** Hon. Members, I put the question that clause 26 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes Item 3 on our Order Paper and the business of the House today –

**Mr Quayle:** Mr Speaker, point of order.

**The Speaker:** Point of order.

**Mr Quayle:** I have a schedule.

**Mr Robertshaw:** It's done. (*Interjections*)

**The Speaker:** The schedule was passed I think in clause 8 and I clearly said so.

**Several Members:** You did.

**The Speaker:** Hon. Members, the House will now stand adjourned until the next sitting, which will take place at 10.30.

I remind Hon. Members that the annual photograph of the House will be taken at 10.15 on 19th May in the Chamber just before the Tynwald sitting.

Also I would mention that the House will meet on Tuesday, 26th May at 9.15 to swear in the new Members returned for Douglas North and Douglas South in the by-election, and normal business will be taken that day at 10 o'clock.

Thank you, Hon. Members.