

3. Public Health (Tobacco) (Amendment) Bill 2015 – Second Reading approved

Mr Coleman to move:

That the Public Health (Tobacco) (Amendment) Bill 2015 be read a second time.

The President: The Public Health (Tobacco) (Amendment) Bill 2015 which is in the charge of the Hon. Member, Mr Coleman.

Mr Coleman: Thank you.

Madam President, Hon. Members, this Bill is the Public Health (Tobacco) (Amendment) Bill 2015. The Public Health Tobacco Act 2006 has been successful in protecting people from secondhand 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 amongst 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 the United Kingdom 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 supported 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.

Madam President, I beg to move that the Public Health (Tobacco) (Amendment) Bill 2015 be read for the second time.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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

The President: We turn to clauses.
We will take clauses 1, 2 and 3 together.

Mr Coleman: Thank you Madam President.

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

Clause 2 deals with the commencement and 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 new regulations, which contain the detail about how the new controls will be enforced, can be laid as soon as possible thereafter.

Discussions which are planned with local tobacco retailers about the regulations will also include further discussions about the proposed six-month grace period which the Department is intending to give to allow retailers to install the necessary new displays.

Clause 3 relates to the expiry: 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.

Madam President, I beg to move that clauses 1, 2 and 3 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Can I just ask the Member, he mentioned the six-month grace period there and regulations: am I right in assuming then that the six-month grace period would be made under the order under clause 2, subsection (2) as effectively a transitional provision?

The President: The Hon. Member, Mr Coleman, to reply.

Mr Coleman: Thank you.

It will be made under that section, yes, and it will be a transitory, one-off period. It essentially will give the vendors of tobacco products enough time to: (a) get their displays into compliance with the Act and also, (b) give them time to handle their own internal financial issues which may result in this.

The President: The motion is that clauses 1, 2 and 3 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.
Clauses 4 and 5.

Mr Coleman: Thank you, Madam President.

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'.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clauses 4 and 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.

Mr Coleman: Thank you, Madam President.

Clause 6 contains the first of numerous amendments which update the 2006 Act to bring the Isle of Man into line with European Union directives relating to information society services – that is internet services. These amendments simply bring the Island into line with the equivalent United Kingdom legislation.

It is recognised that offences relating to advertising on the internet would be difficult to enforce as the Island simply does not have the expert technical and legal resources to do so. However, it is anticipated that most reputable service providers will adhere to a law, whereas they might be less inclined to abide by a voluntary code of practice, so the potential for abuse in this area is considerably reduced.

Clause 6 firstly 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.

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

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion 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.

Mr Coleman: Thank you, Madam President.

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 President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I did comment at an earlier reading of this Bill on the complexity in this, and I would like to pick up on the earlier comment that the mover made with regard to, if there is a choice between a voluntary code or having it in the statute, then obviously it is far more rigorous to have it as part of the law.

I think we have seen quite a few voluntary regulatory regimes that have not particularly worked – it will work when it suits them and does not when there is something that does not particularly suit whoever is concerned with it.

I think this is going to be virtually impossible to police – that does not mean to say we should not have it in the Bill. Advertising by the internet is almost down to a personal level now, where people have adverts fired to them depending on their browsing history, so it is a very difficult one. I think it is probably nigh-on impossible to police; but again, I do support the provision being in there that should, obviously, evidence come to light that somebody is abusing the position, then there are the relevant tools here to deal with it.

So, whilst I am very sceptical we will ever see it in use, I do support the provision being in the Bill.

The President: The mover to reply.

Mr Coleman: Thank you, Madam President.

I thank Mr Turner for his comments and I think his comments are realistic and face the new information age that we live in.

I think what we have here is the situation where we will act when we are advised that something is happening, whether in an EEA state if they have virtually the same legislation that we will have, and if they identify where an advertisement is coming from and they tell us that it is in the Isle of Man, then we will use Isle of Man legislation; if in the Isle of Man someone advises that a site in Liechtenstein is doing tobacco advertising, then we would notify the authorities in Liechtenstein, and they would use the legislation to operate in that jurisdiction.

I genuinely thank Mr Turner for his comments, I think they are quite appropriate.

The President: The motion 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 and the schedule.

Mr Coleman: Thank you, Madam President.

Clause 8 covers advertising and advertising exclusions, and the schedule deals with the effect of the Act on information society service providers.

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 – exclusions being where an Act is deemed not to be an offence.

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 – that is received other than by technology; 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 – being the ones which were mentioned previously as European Union, the Isle of Man, and the EEA; 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 Island 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: have not requested information about such products, or 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 information 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.

There is no option to introduce regulations to add further exceptions included in this amendment as the UK equivalent legislation does not include such an option and it is difficult to see what other exceptions there might be. It was therefore felt that this would simply be a case of providing for the making of regulations just for the sake of it without having any intention to actually make any.

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 to insert the schedule into the Act.

Moving on to the schedule, Madam President: the schedule of this Bill inserts a new schedule into the Act, in accordance with the new subsection 3(5) of the Act – advertising: exclusions – to make exception for conduits of information and for caching and hosting information.

Paragraph 1 of the schedule provides interpretation, for the purposes of the schedule. Firstly, ‘recipient of the service’ is defined to mean a person who uses information society services. Secondly, ‘relevant offence’ is defined as an offence under section 1 – Prohibition of tobacco advertising; 2A – Advertising: information society services; 4D – Displays on a website; 6 – Prohibition of free distributions; or, 8 – Brandsharing of the Act.

Paragraph 2, subparagraph (1), makes exceptions to the relevant offences for conduits, where the service provider simply provides access to a communication network, or transmits information provided by a recipient of the service, and the transmission condition is satisfied.

Subparagraph 2(2) states the transmission condition as where the service provider does not: (a) initiate the transmission; (b) select the recipient; or (c) select or modify the information.

Subparagraph 2(3) states that the exception in subparagraph 2(1), whereby a service provider is not guilty of a relevant offence if he transmits information provided by a recipient of the service in a communication network, does not apply where paragraph 3 – Exception for caching – applies.

Subparagraph 2(4) states that the provision of access to a communication network and the transmission of information in the network includes automatic, intermediate and transient storage of information for that purpose.

Subparagraph 2(5) states that subparagraph 2(4) does not apply if the information is stored for longer than is reasonably necessary for transmission.

Paragraph 3 of the schedule makes exceptions to the relevant offences for caching. Subparagraph 3(1) confirms that this relates to information which is provided by a recipient of information society services and is the subject of automatic, intermediate and temporary storage solely for making the onward transmission of information more efficient.

Subparagraph 3(2) makes exceptions to the relevant offences for caching where: (a) the service provider does not modify the information; (b) the service provider complies with any conditions attached to having access to the information; or (c) where subparagraph 3(3) applies, the service provider expeditiously removes the information or disables access to it.

Subparagraph 3(3) states the circumstances whereby subparagraph 3(2)(c) applies as where the service provider obtains actual knowledge that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled.

Paragraph 4 of the schedule makes exceptions to the relevant offences for hosting information.

Subparagraph 4(1) provides exceptions where the service provider did not know that the information they were storing contained offending material, or where they obtained actual knowledge to this effect, they expeditiously removed the information or disabled access to it.

Subparagraph 4(2) defines 'offending material' as material the storage of which would constitute a relevant offence.

Madam President, I beg to move that clause 8 and the schedule do stand part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Again some very technical details in what the Member has just given us, much of which will relate to the technology industry and how they deal with the data and the information that is there.

I think, with the amount of information that is certainly on the internet, it is going to be a very difficult process. This, effectively, brings us into line with the other jurisdictions around us – which certainly gives me some comfort.

It is quite interesting that when they banned tobacco advertising on television – which was quite a while ago now, I think – occasionally there are programmes that look back at nostalgia and some of these old adverts are shown, more as a nostalgia feature. You remember the Hamlet advertisements, and they still crop up on websites showing old adverts – the Milk Tray man and all these other things as well. So I think it is going to be quite an interesting process we are going in, maybe we will probably see some of these historic adverts being removed.

Also, of course, tobacco advertising was synonymous through the 1960s, 1970s and into the 1980s with motorsport sponsorship and, again, that was all removed; but we still see replica vehicles being decked out with the advertisements – and that forms part of the nostalgia for some of these events. We, of course, all probably remember the Rothmans rally here in the Isle of Man, for many years obviously it was a great success, but times have changed. So I would hope that certainly the nostalgia element, we would treat such things with a bit of realism and look to properly target where there is abuse of the system.

It is just an observation really, but again it is incredibly technical, the amendments that are going through here. So I do support them but these are just comments, really, on this particular clause.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

In relation to the comments the Hon. Member has just made, can I ask the mover that such areas would be treated with a light touch?

The President: Hon. Members, first I have to confess I found some difficulty in following through the references (*Laughter*) which the Hon. Member was making. However, the motion before us is that –

Mr Coleman: Madam President, can I respond?

The President: Oh, yes, indeed, sorry.

Mr Coleman: Thank you.

With reference to Mr Turner's comments: yes, it is a very technical Bill, but I think it gives evidence to the fact that when you have an internet age, things are going around being stored because the line is too busy to [*Inaudible*] and that is the caching part of it. When you have disk units they actually have a cache in them as well, because it can transmit the data faster than the computer can handle it, so it goes into a cache.

Getting on to the other issues about the historical stuff: when you use another vehicle or activity to advertise – say it used to be Marlboro and Rothmans and people like that – that is what they call brandsharing, and that type of brandsharing is obviously not going to be allowed in the future with this Act. And as far as being sympathetic, we have actually looked into... You have probably seen the enamel signs that used to be in stations? When you go to York Railway Museum they are all over the place. But the UK has taken a view and although it is not in statute, they have basically said, if you cannot buy what it is advertising, it is almost like a piece of art. And I would hope that it will probably be the OFT who will be making the decisions with reference to these issues – they were the ones who supplied the information about the signs, so I would think they would take a light touch with reference to that as well.

The President: Can I ask, will they be prohibiting the reintroduction of brands with the old names?

Mr Coleman: They may well!

The President: Right, Hon. Members. The motion is that clause 8 and the schedule stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 9.

Mr Coleman: Thank you, Madam President.

Clause 9 refers to advertising and its defences.

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.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion 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.

Clauses 10 and 11.

Mr Coleman: Thank you, Madam President.

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), 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*. This provision is the same as in the current Act and is in line with the UK equivalent legislation. There are currently no regulations for the display of an advertisement in the UK so there is no current intention to have the in the Isle of Man.

The new section 4B – Tobacco displays: exclusions and defences – 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. Regulations are in train under this subsection and will be the subject of discussions with local tobacco retailers in due course.

Subsections 4B(4) to 4B(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 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. Regulations are also in train under this subsection and will be discussed with the local tobacco retailers.

Subsections 4C(3) and 4C(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*. This provision is the same as in the current Act and is in line with the UK equivalent legislation. There are currently no regulations for the display of prices in the UK so there is no current intention to have any in the Isle of Man.

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 4D(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*.

Section 4D is in line with the UK equivalent legislation. There are currently no regulations in the UK so there is no current intention to have any here either.

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

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is 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 Coleman: Thank you, Madam President.

Clause 12 simply amends section 6 of the Act, which deals with the prohibition of free distributions in respect of information society services.

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.

As with clause 8 there is no option to introduce regulations to add further exceptions included in this amendment as, again, the UK equivalent legislation does not include such an option and it is difficult to see what other exceptions there might be.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion 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.

Mr Coleman: Thank you, Madam President.

Clause 13, again, simply amends a section of the Act, in this case section 8 which deals with brandsharing, in respect of information society services.

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 and periodicals; 2A – advertising: information society services; 4A – prohibition of tobacco displays; 4C – prices of tobacco products; 4D – displays on a website; and 6 – prohibition of free distributions, or 7 – prohibition of sponsorship of the Act.

Regulations under section 8 are in train. However, in accordance with the equivalent regulations in the UK the exceptions are currently only intended to be applied to sections 1, 2, 6 and 7.

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.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion 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.

Clause 14.

Mr Coleman: Thank you, Madam President.

Clause 14 deals with the prohibition of the sale of tobacco from automatic machines.

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 – a vending 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’.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Wild.

Mr Wild: Just to ask, out of interest, what the definition of ‘automatic’ is, because there are some machines where I think you can simply turn a handle and the item will come out.

The President: If no other Member wishes to speak, the mover to reply.

Mr Coleman: I think, again, this is going to be down to the people in the OFT when they go along. Even what you are talking about is automatic in the fact that you do not go in, give the person money, and take a product. What you are doing is going to a device which you put money in, you turn a handle and it may come out – whether it comes out mechanically or electrically it is still done automatically without a personal interface. So in my view that would classify as automatic. But I think the people who will be reinforcing this will be the OFT and they will develop a set of standards for doing that.

Mr Wild: Thank you.

The President: The motion 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.

Mr Coleman: Thank you, Madam President.

Clause 15 introduces the amendments to section 10 of the Act.

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.

Madam President, I beg to move that clause 15 stand part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.
I beg to move an amendment to clause 15, Division 3 in section 10 amended (3), it states:

'In subsection (4) for 'Deemster' in both places, substitute 'judge of the High Court'.

My amendment is designed to ensure that we keep the term 'Deemster' at the face of our legislation. I have no wish to be pedantic on this and certainly acknowledge that the introduction of the phraseology, judge of the High Court, will no doubt speed up the process, but I have an opinion that referral to the term of Deemster is a significant judicial technology in our Island and relates to its language and its culture.

Such removal or disregard for it on this occasion, and perhaps other opportunities presented to us, provides for the risk of allowing our Manx terminology and aspects of our language to become diluted and perhaps undervalued.

I am advised that the amendment has no effect to the meaning of this Bill, but that is my opinion for the amendment to this Bill.

Madam President, I beg to move that amendment standing in my name.

Amendment to clause 15

Page 14, lines 27 and 28, for 'judge of the High Court' substitute 'Deemster or other judge of the High Court'.

The President: The Lord Bishop.

The Lord Bishop: Madam President, thank you.

I am sure the Hon. Member, Mr Turner and I both remember a number of occasions in the past in this Chamber when this matter has been raised and we have been assured that there is a technical reason why the term 'judge' should be used rather than Deemster.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Yes, the Lord Bishop is quite right. I think the debate... well we have had more than one debate in here on the subject, I think it possibly may have been before the Hon. Member Mr Corkish joined us.

It goes back to when they reviewed the Rules of the High Court so that different appointments could be made for different judicial officers to deal with different cases, and I am pretty sure that we said that the phrase, for example 'judge of the High Court' was listed somewhere like the Interpretation Act, for example, to mean... and then it listed the various roles that it would mean.

So Deemster was very much still there, but for practical reasons it was removed, as the Lord Bishop said, because it may be that you get a judicial officer, the High Bailiff, Deputy High Bailiff – or I presume Magistrates' Courts could deal with certain things in other circumstances.

So whilst I agree with the Member's sentiment to retain as much of this as possible, it may be practical that it is best to standardise it so that it is clear.

The Acting Attorney General: Madam President?

The President: The Acting Attorney General.

The Acting Attorney General: If I could make a few comments hopefully to help Members with this.

The problem with using simply the description 'Deemster', which the Act currently does and which this Bill seeks to amend, without any further embellishments is that expression does not include a judicial officer, such as the High Bailiff or Deputy High Bailiff, sitting in the High Court on the civil side. The distinction historically, which Hon. Members have referred to, seems to have been created as it was felt inappropriate for the High Bailiff and Deputy High Bailiff to sit in criminal matters in the High Court. So we have two different approaches to this, which is the debate which had taken place historically.

So, where we sit at the moment, the expression 'Deemster' does not include... I have cited the example, the High Bailiff or Deputy High Bailiff – and it was to resolve that issue in this particular legislation. Basically, when you come to look at section 4 of the Act where this provision applies it deals with the enforcement steps which are taken under the Public Health (Tobacco) Act, and it was felt more appropriate that a judicial officer – so that is somebody *other* than the Deemster, or along with the Deemster such as the High Bailiff or Deputy High Bailiff – ought to play a role and be appropriately deployed.

So in a sense, my comments that I wanted to make today were in simple terms that it is not necessary for the expression 'judge of the High Court' to actually be added to because it already includes a Deemster, and in pure and simple drafting terms the amendment therefore serves no purpose whatsoever – and actually simply adds extra words to the statute book for no useful purpose. So that is basically the formal position.

I have a personal view that I do empathise with the Hon. Mr Corkish in wanting to preserve the description Deemster; but behind the scenes and behind the meaning of the words 'judge of the High Court' it is protected, because the definition of that includes the Deemster. But it does not appear as the Hon. Member, Mr Corkish, has indicated on the face of the Act if this Bill goes forward, because it deletes the word Deemster and replaces it with the judge of the High Court. But putting that word back in is simply otiose in drafting terms and I personally believe that Council might, in those circumstances, be best advised to leave the Bill as drafted.

The President: The Hon. Member, Mr Cretney.

Mr Cretney: Yes, just on a technical point, Madam President, I did not hear anybody seconding –

The President: It has not been seconded yet.

Mr Cretney: So we are still allowed to discuss something in here? Obviously I am new to this –

The President: Well I do not know whether you are going to second, so I cannot... the learned Acting Attorney General has given some advice on the issue.

Mr Cretney: And two other Members have spoken on it without it being seconded.

The President: Okay, I did not know whether they were going to second or not, so I had let them speak and they did not second –

Mr Cretney: Okay, I thought maybe I had missed something in the Standing Orders of the Legislative Council –

The President: No, I am sorry, you are right I perhaps should have stopped them if they were not going to second –

Mr Wild: I was about to second, Madam President. *(Laughter and interjections)*

The President: Well, at least I am informed of what you are going to say.

You are correct, I should perhaps have stopped them talking at all about that subject, but...

Mr Wild: Thank you, Madam President, I would just like to second the amendment and reserve my remarks.

The President: Does any other Member wish to speak?

The mover to reply.

Mr Coleman: Madam President, I have a somewhat selfish view to this amendment, and I have sympathy with the amendment as well, but I think the learned Attorney General has indicated that it means nothing.

However, it means something to the passage of this Bill today. What it means is that if the amendment is accepted, then we will not be able to have this Bill into the process within the UK for Royal Assent until probably very late this year because the amendment will have to then be verified in the House of Keys – and their next sitting is 27th October. So from that point of view, I am somewhat reluctant to support it.

I think that we have an opportunity here to put through a piece of legislation where two or three months could prevent a person starting on the track of using tobacco. I know that is a long... if you are bringing into the issue of causation, okay, which is the legal concept of causation? It is really stretching the trail.

A Member: Hear, hear. *(Laughter and interjections)*

Mr Corkish: It is a smokescreen!

Mr Coleman: I thank... at the moment I do not know whether I am talking to the amendment or I am talking to clause 15?

The President: You are speaking to both, sir.

Mr Coleman: Well, I have given my view on the reasons why I will not be supporting the amendment; and I just beg to move, Madam President.

The President: The motion before us is set out at Item 15, and to that we have the amendment in the name of Mr Corkish.

I will put to you the amendment first. Those in favour, please say aye; against no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

Mr Anderson

Mr Wild

Mr Corkish

AGAINST

The Lord Bishop

Mr Turner

Mr Coleman

Mr Cretney

Mr Henderson

The President: Hon. Members, 5 votes for and 3 against, the amendment fails to carry. **(Mr Corkish:** Shame.) Sorry, the other way round – 3 votes for and 5 against. *(Laughter)*

Mr Corkish: Shame as well!

The President: Oh dear, it's getting too warm in here. *(Laughter)*

Can I put to you the clause as printed, Hon. Members. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 16.

Mr Coleman: Thank you, Madam President.

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

Madam President, I beg to move that clause 16 does stand part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 16 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 17.

Mr Coleman: Thank you, Madam President.

Clause 17 deals with defences and the burden of proof.

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 there is sufficient evidence to raise an issue with respect to that defence.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

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

Clause 18.

Mr Coleman: Thank you, Madam President.

Clause 18 makes necessary amendments to the interpretation of part 1 of the Act, in section 13, as a consequence of the other amendments in the Bill, and to tidy up certain wording anomalies.

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, 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. The 1973 Act defines 'a member State' as 'a member of the European Union'; '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).

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion 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.

Mr Coleman: Thank you, Madam President.

Clause 19 refers to the powers that enter and require information.

Clause 19 simply amends the wording in section 18 of the Act, which deals with powers of entry, so that part 2 of the Act is in line with a similar provision in section 10 of part 1 of the Act.

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 – in this respect.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion 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.

Mr Coleman: Thank you, Madam President.

Clause 20 relates to fixed penalties for offences under part 2 and withdrawal of fixed penalty notices.

The following provisions relating to fixed penalty notices, were included in the Bill at the request of the Department of Home Affairs and the Department of Environment, Food and Agriculture, and with the support of the Council of Ministers. It will be for DEFA to make any regulations relating to fixed penalty notices. In the meantime all offences, including any new offences which DEFA might introduce such as the proposed new offence of smoking in a car when children are present, can continue to be dealt with through the courts.

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 payment may be made; (d) the payment method options; and (e) the consequences of non-payment.

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

Subsection 20A(5) states that the Department of 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 the fixed penalty notice is given.

Subsection 20A(7) allows the Department of 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 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 Environment, Food and Agriculture forms part of the General Revenue.

Subsection 20A(12) allows the Department of 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 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 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.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Cretney.

Mr Cretney: Yes, could I ask the mover if he knows who it is intended the authorised persons will be, who will carry out this enforcement?

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Maybe the Member could just give an idea of some of the offences they would envisage using the fixed penalty regime for.

Also, on issuing a fixed penalty, would there also be a record kept – because usually a fixed penalty is generally not recorded anywhere. So, if there is an offence committed and then there is persistent offending going on, how far down the road would you be going with a fixed penalty regime before a prosecution – if you know if that information is recorded?

Maybe he could give us a flavour of what the Department has in mind for what type of offences they would consider the fixed penalty regime for.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

I am not sure if the hon. mover can help me or maybe the learned Attorney would be the best person.

There are a lot of references here to different Departments and their responsibilities. As we are all aware over the last few years the Departments have changed their make-up and their titles: could you just give me a steer on the powers within Bills, generally, when titles of Departments change – for example there is one reference here to three different Departments in one short area, and if any Department changed its make-up and its title how does that affect legislation?

The President: Could I ask the learned Acting Attorney General?

The Acting Attorney General: Yes, thank you, Madam President.

I think, as Hon. Members will be aware, at times when there are transfers of functions between Departments, a transfer of functions order is made, and under those orders it is possible to make consequential amendments to the statute. So if, for example, the functions of DEFA under this particular Bill would be transferred to another Department, the transfer of functions order would actually specify the legislation which would be amended as a consequence.

Mr Anderson: So there would be a whole loss?

The Acting Attorney General: Yes, and the same would apply if the name of a Department was changed.

Mr Anderson: Thank you.

The President: The mover to reply.

Mr Coleman: Thank you, Madam President.

I will go to Mr Cretney's question about who will carry out these things. I think it depends upon what it is that is going to be done. I think we have already stated that the Office of Fair Trading people will be going in and looking at certain things to do with advertising and stuff like that. I think we also said that DEFA people will be going in and doing some of the other issues that we have covered in in the Bill thus far.

With reference to the issue of smoking in cars, I think that is inevitably going to fall down to the Constabulary, because there is no one else out there... I mean, you are not going to have DEFA people walking the streets looking for that; you cannot have DEFA or OFT people stopping cars and saying, 'Here you are, here is a fixed penalty notice.'

So I think that, depending upon the offences... and I have covered some of the things there in Mr Turner's question as well. And Mr Turner, when we did the First Reading, actually commented on the fact that we have a multi-departmental initiative going on here, and I think that the enforcement of it is going to be multi-initiative as well, depending upon the type of thing which is being identified.

I don't know if I have answered...?

Mr Cretney: You have. But if I may, Madam President, I just have a concern that from time to time extra powers are passed on to the Constabulary, for example – and then extra powers and more extra powers – and I just hope that they are in a position to actually do what we are hoping they are going to be able to do.

Mr Coleman: May I answer?

The President: Indeed.

Mr Coleman: The Department of Home Affairs has been involved in this particular thing, especially on the fixed penalty side of the notices, totally all the way through this... although it is the Department of Home Affairs probably speaking for the Constabulary – but that has been the case right the way through the fixed penalty issue in this Bill.

The President: The motion is that clause 20 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 21.

Mr Coleman: Thank you, Madam President.

Clause 21 deals with repealed and consequential amendments and penalties.

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).

This clause is included as a consequence of a request from DEFA for an amendment to require the regulations which they are responsible for to require Tynwald approval. No similar representations have been made to change the regulations for which the Department of Health and Social Care is responsible away from being laid before Tynwald, so they will remain as per the current Act. The DEFA changes mean, however, that the penalties are now better placed in the parts of the Act they relate to.

Subsection 21(2) therefore 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 2 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.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 21 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 22.

Mr Coleman: Thank you, Madam President.

This clause corrects an omission from the original 2006 Act which was spotted during the drafting process for this Bill.

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 President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 22 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 23.

Mr Coleman: Thank you, Madam President.

This clause also corrects an omission from the original Act. It would seem that this was a deliberate omission from the original Act but, after taking legal advice, it was decided that it would now serve a useful purpose to help the Isle of Man to keep up to date with the United Kingdom, particularly in relation to the fast-moving developments in electronic technology.

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.

Madam President, I beg to move that clause 23 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Yes, thank you, Madam President.

'Power to amend the Act': it is obviously not unique, it is in other provisions, but I think it is important we flag up that it is... usually the correct procedure for amendments to legislation would be through the Branches as appropriate. I understand why they are doing this, it is a bit like the powers they were given to move quickly on illegal substances.

Again, I think it is important we do put it on record and ensure that the Department do so – which I am sure they will – in a fully transparent manner, and no doubt those orders would then go for approval. There are provisions for public documents coming up in the next section.

So I think, as long as they get the correct airing... but obviously the preferred way would be through the two Branches. But, again, I understand the need to have this is that things do move quite fast in certain areas, and it is important we keep up with the other jurisdictions; and obviously from time to time, take the lead from the UK who have vast resources in this area.

The President: The Hon. Member, Mr Cretney.

Mr Cretney: I just want to support this because I think it gives additional flexibility. And it will be the two Branches, because it will be the two Branches sitting together in Tynwald who the orders will be placed in front of.

So there will be the scrutiny – which I agree – the Hon. Member has indicated.

The President: The mover to reply.

Mr Coleman: Thank you, Madam President.

I thank Mr Turner and Mr Cretney for their support. I think they have correctly recognised that we are in such a fast-moving age of technology that I think in many ways we are going to need to be reactive to what happens. We may not be able to plan for something, it may be that we get a notification from Belgium that someone has started doing something, and that we find that the legislation just cannot prevent it and we need to make changes to it on a very urgent basis. And it is like viruses, as soon as they have fixed one virus another one crops up, and it is that quick. So we really do need to be able to move on our feet very quickly – and it also gives us flexibility.

As Mr Cretney has said, it is going to be laid before Tynwald and I would imagine that if it was going to be far reaching there will be a level of consultation, although that might take a bit of time. I think it would be, as Mr Turner said, very like the issue of illegal substances where a new one crops up so quickly that we just have to react quickly.

So with that, Madam President, I would like to move.

The President: Could I just ask for clarification from the learned Acting Attorney General that the requirement for the order to go before Tynwald is in the principal Act, because it is not in this one.

The Acting Attorney General: Yes, it is in the principal Act.

The President: The motion is that clause 23 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 24.

Mr Coleman: Thank you, Madam President.

Clause 24 relates to public documents and replaces section 23 of the Act with a new section.

This change is also as a consequence of the DEFA decision to request that part 2 regulations are approved by Tynwald, rather than laid before.

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.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 24 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 25.

Mr Coleman: Thank you, Madam President.

Clause 25 relates to interpretation.

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 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 Environment, Food and Agriculture (DEFA), the Department of Health and Social Care (DHSC) and the Isle of Man Office of Fair Trading (the 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, and substitutes ‘authorised person’ for ‘environmental health officer’ in subsections 18(1) and (3) of the Act.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 25 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 26.

Mr Coleman: Thank you, Madam President.

Clause 26 refers to amendments in the Children and Young Persons Act 1966.

Clause 26, which was added in the House of Keys, consists entirely of consequential amendments to the Children and Young Persons Act 1966 to remove references to vending machines as a consequence of the new offence in clause 14.

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 actions 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 any person under the age of 18 years, or the owner of the premises where the machine is kept.

Subsection 26(3) makes amendments 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 for the use of people aged 18 or over, is repealed.

Secondly, subsection 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 references 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 enforcement action which may be taken by the Isle of Man Office of Fair Trading in relation to complaints 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.

Madam President, I beg to move that clause 26 do stand part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 26 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.