

7.3. Consumer Protection (Amendment) Bill 2015 – Clauses considered

Mr Quirk to move.

The Speaker: We turn now to the Consumer Protection (Amendment) Bill.
I call on the mover the Hon. Member for Onchan, Mr Quirk.

Mr Quirk: Thank you, Mr Speaker. I have indicated to yourself that I wish to move some of the clauses together and I will indicate voting on those as we go along. Thank you.

I will start then with clauses 1, 2 and 3. These deal with the introductory matters.

Clause 1 gives the short title of the resulting Act – this is the Consumer Protection (Amendment) Act 2016.

Clause 2 provides that the Act will come into force through an Appointed Day Order or an order made by the OFT. It also provides that Appointed Day Orders can make transitional and saving provisions.

Clause 3 provides for the expiry of the resultant Act. Since the purpose is to amend the Consumer Protection Act 1991, once it is fully in force it has done its job. It then expires.

Mr Speaker, I beg to move clauses 1, 2 and 3.

The Speaker: Hon. Member for Middle, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I beg to second the mover of clauses 1, 2 and 3.

The Speaker: I put the motion 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.

Clause 4.

Mr Quirk: Thank you, Mr Speaker.

Clause 4 serves to introduce the purpose of the Bill and the following clauses. They amend the Consumer Protection Act 1991. Throughout today I will simply refer to this as the 1991 Act.

Mr Speaker, I beg to move clause 4.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker. I beg to second.

The Speaker: I put the motion, clause 4. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Quirk: Thank you, Mr Speaker.

Clause 5 of the Bill repeals section 24 of the 1991 Act. The powers in section 24 are superfluous and this clause is a tidy up exercise.

Mr Speaker, I beg to move clause 5.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I beg to move. (**A Member:** Second!) Second, even! (*Laughter and interjections*) Force of habit!

The Speaker: Clause 5. Those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 6 and any others.

Mr Quirk: Mr Speaker, I wish to move clauses 6, 7, 16 and 20 which, with your permission, we will group together, but move individually. Once again, these clauses are part of a tidy-up exercise of the 1991 Act.

Within the 1991 Act there are references in the enforcement provisions to an authorised officer. These clauses amend the term to an authorised officer of the OFT and put the issue of an authorised officer into a definition and term.

In clause 20 we also standardise the references to the OFT in the 1991 Act. In various Acts of Tynwald the Office of Fair Trading is referred to as ‘the OFT’, ‘the Office’ and ‘the Board’. As we amend various Acts we are going to standardise all of these references to ‘the OFT’. Actually this process started in the Payment Services Act 2015.

Mr Speaker, I beg to move clauses 6, 7, 16 and 20.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I beg to second. *(Interjection and laughter)*

The Speaker: I put the motion that clauses 6, 7, 16 and 20 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 8.

Mr Quirk: Thank you, Mr Speaker.

Again, with your permission, I will speak to clauses 8 to 15 and 23 together, but move them individually.

The group of clauses deal with the main purpose of the Bill; namely to ban cold calling. The OFT believes that cold calling is not an acceptable sales technique. At its worst, it allows rogue traders to prey on the old and vulnerable in society. Even for an ordinary citizen, it can lead to bad decision-making on expensive purchases made under pressure. The OFT believes that it has no place in the Isle of Man today and, based on the consultation, the public agree. They are fed up with being pestered.

Clause 8 amends section 46 of the 1991 Act to create a new term ‘relevant contract’. Subsequent clauses then make it a criminal offence for a trader to enter into a relevant contract. Safeguards are also introduced to protect the consumer who enters into relevant contracts.

There was some discussion at Second Reading regarding the scope of the proposed ban on cold calling and it is this clause which defines the scope. Firstly, we are talking about a contract between a consumer and a trader. Secondly, we are talking about contracts for the supply of goods and services.

In order to answer the question of whether something is in or out of scope, we have to answer three questions: is the purchaser a consumer; is the other person a trader; is the contract about the supply of goods or services to the consumer? Answer all three questions with a ‘yes’ and, subject to the exemptions in following clauses, we are in scope.

If then we turn to some of the questions raised around this issue: charity collection – out of scope because there is no trader and no goods or services; carol singers – out of scope because there is no trader and no goods or services; religious recruitment – out of scope because there is no trader and no goods or services. In short, we are talking about someone who is *selling* goods or services to a consumer.

The definition in clause 8 deals with three types of cold calling. Although I explained them at Second Reading, I think it would be helpful to go through them in detail.

Firstly, we have doorstep cold calling. A builder knocks on the door and offers to replace some missing tiles – that is cold calling. Doorstep cold calling is a big concern because the targets are often selected – the old, the frail and the vulnerable. The work is often unnecessary or ridiculously expensive, or both. This is dealt with in paragraph (a) of the new subsection (1) inserted into section 46 of the 1991 Act.

Secondly, we have telephone cold calling. Our consultation shows that the Manx public are absolutely fed up with being pestered and that the telephone preference service is ineffective. Whilst that annoyance is bad enough, the real problem is that consumers are pressurised into purchasing unwanted or expensive goods and services. Again, victims are often the more vulnerable members of society.

We are always aware of the efforts of the UK Information Commissioner to crack down on telesales activities of British companies; and we welcome them. Equally, I thank my constituency colleague, Mr Hall, for raising this issue at the Second Reading. Although anything that the UK Information Commissioner does can only improve the situation, it is unlikely to solve the problem completely. We know much of the activity is coming from call centres in foreign countries. My view is that clause 8 and the efforts of the UK Information Commissioner are not mutually exclusive – they will work together to protect consumers.

Telephone cold calling is defined by paragraph (c) of the same inserted section.

Thirdly, we have excursion-based cold calling. Here the trader takes a group of consumers to a venue, gives them free refreshments and then starts the hard sell. It used to be the preferred technique in timeshare telesales.

We are not suggesting that timeshare will make a comeback. What we are saying is that as we close down other types of cold calling, it would be an opportunity for unscrupulous traders with high value goods and services – for example, to take a group of customers to a hotel, ply them with drinks and sell them double glazing. It is not an acceptable sales technique and the OFT wants to ban it. This is in paragraph (b) of the same insertion.

There is also a paragraph (d) in the insertion. Its purpose is to ensure that no amount of haggling by a consumer provides the trader with a get-out if the contract results from cold calling.

Clause 8 also inserts two new subsections in section 46 of the 1991 Act. These deal with exemptions. There are general exemptions which are contained in the new schedule 2B to the 1991 Act which is inserted by clause 23 and includes deliveries by roundsmen and catalogue sales. So neither of these are cold calling.

This new schedule also allows the OFT to prescribe a limit below which the provisions of the Bill do not apply. In the consultation exercise we suggested that the limit be £100. There was some discussion at the Second Reading and I sensed a degree of concern that traders might abuse the provision. I thank the Hon. Member for Ramsey, Mr Singer, for raising those issues and having consultation.

As the Bill stands, unless the OFT makes regulations prescribing a figure, there is no low value exemption. I would like to leave this provision as it is but the OFT would like to introduce the new provisions without any low value contracts exemption. In other words, we would not make regulations concurrent with the Appointed Day Order and that would mean that there was no low value exemption. We could then see whether it causes a problem and have the means to resolve any problem through regulations. Any regulations require positive approval by Tynwald.

There is also provision which would enable the OFT to make an order exempting other types of contract or classes of person.

Having defined what we mean by 'cold calling', clause 9 goes on to create the offence of entering into a contract as a result of cold calling. Only the trader commits the offence. Penalties are set at custody of up to six months and/or a fine of up to £10,000 in a summary court; and up to two years' custody and an unlimited fine in a higher court.

I would add that, whilst the specific offence is entering into the contract, under Manx law, if a trader attempted to do so, the trader would also be committing an offence.

I beg to move those clauses.

The Speaker: Just to be clear, Hon. Member, you are moving clause 8 at this stage.

Mr Quirk: Yes, and nine –

The Speaker: Mr Quayle.

Mr Quayle: I think we need clarification on the clauses that are being moved, Mr Speaker, just before we move on.

Mr Quirk: Sorry, it was clauses 8 and 9.

Mr Karran: Not if it is not mine.

Mr Quirk: Here is clause 9 first. There was an amendment there.

The Secretary: The difficulty is, Hon. Members, that the new clause is effectively to replace clause 9, so you need to deal with clause 8, then hear Mr Karran's new clause; and then, according to what the result is, proceed with the clauses accordingly.

Mr Quirk: Clause 8, Mr Speaker.

The Speaker: Clause 8 is being moved at this point.
Mr Quayle.

Mr Quayle: Okay. Thank you, Mr Speaker.
I beg to second and reserve my remarks.

The Speaker: Mr Singer.

Mr Singer: Thank you, Mr Speaker.

Can I thank the hon. mover for his comments ... certainly accepting my concerns, because I believe that there should be no low value exemption, because in my view cold calling is cold calling. It cannot be not cold calling at £99, but cold calling at £100.

So I think that, by accepting the 'no value', it is strengthening the powers of the OFT, but it is also very much a protection for the public, particularly those who are more senior and those who are vulnerable.

So I thank the Member for accepting that.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, I would just like the Caairliagh, the mover of the Bill, to clarify maybe at the Third Reading stage with the telecommunications, because of the issue as far as the phone calling. I am led to believe there is some difficulty in getting the same services as the UK as far as phones being intercepted by a similar scheme to what is in the UK is concerned.

I do not expect an answer now, but if he could consult with the Communications Commission towards whether there is some liability on the licence holders for communications in the Island, in order to create an effective mechanism as far as filtration is concerned of phone calls. I know that

my mother, who is very elderly, gets this lady or man from the other side of the world on about 'Mr Thomas', when that was my father's middle name, not his surname. I just feel that if we are looking at the telecommunications sales pitch that we do make some sort of liability through the licensing process for our consumers through the services of telecommunications, so that they do have the same sort of filtration as there is in the UK.

I am not sure whether that facility is provided by our operators, but I know it is provided by UK operators.

The Speaker: Mover to reply. Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

And thanks for the comments from the Hon. Member, Mr Singer, from Ramsey.

With reference to Mr Karran's issue regarding ... the purpose of the Bill really is for cold-calling – whether that is cold-calling through somebody actually knocking at the door, or cold-calling over the telecommunications system, or even the internet.

I will look at the issues that Mr Karran has raised regarding that, but the main purpose of the Bill is to tell the public and the wider world really, if you do cold call in the Isle of Man through the telecommunications system, it is an offence – if the Bill is passed.

I beg to move, sir. (*Interjections by Mr Karran*)

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

I now turn to the new clause in the name of Mr Karran, as set out on the Order Paper on page 7.

Mr Karran, please, to move.

Mr Karran: I am happy to do it this way, as I say.

Obviously what my Bill does is cannibalise section 46A, existing clause 9 as part of the Bill, but it goes further on this point to create the exemption as far as trades are concerned, the regulation under 46C and the issues of developing the possibility of a regulated register as far as certain trades are concerned.

Vainstyr Loayreyder, the Consumer Protection Bill is a very good piece of legislation and it is important that maybe we should give further credence by this House to broaden the ability as far as the Office of Fair Trading bringing in regulation of certain trades.

I do think it is important that you do realise that unless the issue of the telecommunications providing services to stop cold-calling, as part of their licensing facility ... my concern is that we do not seem to have the same safeguards to stop people. We are not going to be able to prosecute somebody in India – but that is an issue that does need to be looked at.

My new clause is a piece of enabling legislation which actually *adds* to the Consumer Protection Bill 2015.

Just last weekend, on Sunday morning, I had an elderly person who had been approached as far as getting their roof fixed. I told him to get onto the Office of Fair Trading because of the issue of being ripped off. Now, whether that was a cold call, I do not know, but what *is* important is that I think we need a basic requirement in order to operate legitimately on the Island, that we should put into primary legislation for secondary legislation, in order to stop elderly people being ripped off by unscrupulous people that are so-called tradesman – when many of them are just comen; and that we bring in a register as far as the Office of Fair Trading is concerned.

This enabling clause would give the Office of Fair Trading the ability to register trades to establish whether they are fit and proper persons, have a permanent business address and comply with the conditions of the Office of Fair Trading requirements. The new clause would allow the Office of Fair Trading to create, subject to conditions, registration of trades, to be renewed on an annual basis if

they want. If a tradesperson is refused registration, then they would be contravening this legislation ... in order to protect.

The new clause will deal with the costs involved by creating a fee. And I believe legitimate businesses would welcome this, because if such registration was able to be adhered to we could end up with a situation where consumers would get even further protection by the process – which I believe is done in the Irish Republic and other jurisdictions. We will ensure that the regulations of the new clause that would *not* be brought in with this piece of legislation but would give the Office of Fair Trading the enabling legislation to bring about a system of registration.

One of the biggest complaints I have – as a former joiner, from my friends in the business – is the issue of the white van man. He does not pay tax, does not pay National Insurance, has no public liability and ends up running of bills – and no-one can ever catch them out.

The whole idea of this new clause is a piece of enabling legislation to allow the Office of Fair Trading to work on the basis of creating in secondary legislation the ability of bringing in an operator as a licence for certain trades, that *they* would specify.

This new clause will not affect the Bill at all, but it will give the Office of Fair Trading the reflective time – maybe after this House has dissolved – and they will have the primary structure to bring in secondary legislation, to bring in that registration process as far as this Bill is concerned.

I am conscious Vainstyr Loayreyder that I do not want this Bill to be delayed, or to be confused, or anything, but my new clause is purely enabling, it gives powers; and the Office of Fair Trading could come back and augment the issue as far as cold-calling is concerned, by bringing in a proper registration of crafts and businesses which can have any criteria – especially when we talk about the issue of the cutbacks, as far as income coming to the Treasury, where there would be a way of making sure that these people as part of that registration process have to be registered for National Insurance, for tax, for public liability and other things in order to add to this proposal.

I hope Hon. Members will support the piece of enabling legislation to help, as I feel cold-calling is an important issue; but what is equally an important issue is the fact that we really should be bringing in some sort of scheme where the Office of Fair Trading can bring in a register, where people have to be registered in order to be able to apply their business – and also where we help to protect the legitimate people who play Queensberry Rules where other people are doing so.

I hope Hon. Members will accept the principle of my proposal. It will not detract from the Bill, but I do feel that it will help as far as a major social issue.

I beg to move.

New clause

Page 9, for lines 14 to 24 (the existing clause 9) substitute –

'9 Sections 46A to 46C inserted – offence to enter into certain contracts

After section 46 insert –

"46A Offence to enter into certain contracts

(1) A person commits an offence if, as a trader, he or she enters into a relevant contract.

(2) A person guilty of an offence under subsection (1) is liable –

(a) on conviction on indictment, to custody for not more than 2 years, a fine or both;

(b) on summary conviction, to custody for a term not exceeding 6 months, a fine not exceeding £10,000, or both.

46B Exemption of traders from section 46A

(1) Regulations made by the OFT may provide for the exemption from section 46A of a trader who carries on business in or from the Island and who is –

(a) registered with the OFT, or

(b) exempt from any requirement to register with the OFT.

(2) Regulations under subsection (1) may contain such provisions as the OFT considers appropriate to establish a system of registration for traders who enter into relevant contracts.

(3) Section 46C contains supplemental provision about the content of regulations made under this section.

46C Regulations made under section 46B

(1) Regulations made under section 46B must —

(a) require the OFT to maintain a register of traders who are registered with the OFT or who are exempt from the requirement to register;

(b) permit the OFT to register a trader only if it is satisfied that the trader —

(i) is a fit and proper person to be registered;

(ii) has a permanent place of business in the Island; and

(iii) complies with such further conditions as the OFT considers appropriate;

(c) enable the OFT to register a trader subject to conditions;

(d) provide for the registration of a trader to be renewable annually;

(e) enable the OFT to impose, vary or revoke the conditions subject to which a trader is registered;

(f) enable the OFT to revoke or suspend a registration if the OFT is satisfied that a trader has ceased to be entitled to be registered;

(g) require the OFT to issue a certificate of registration to the trader on the granting of an application for registration or renewal of registration;

(h) permit any trader who is aggrieved by —

(i) the refusal of the OFT to grant registration;

(ii) the grant of registration subject to conditions;

(iii) the imposition, variation or revocation of any condition of registration; or

(iv) the revocation or suspension of registration by the OFT,

to appeal against the decision of the OFT.

(2) Regulations made under section 46B may —

(a) provide for their contravention to be an offence and prescribe a penalty of the commission of that offence;

(b) exempt a trader from the requirement to register;

(c) permit a person to exercise a discretion in respect of any matters specified in the regulations;

(d) provide for the OFT to consult such other persons as it considers appropriate in relation to an application for registration;

(e) permit the OFT to impose fees for registration and to publish such fees;

(f) permit the OFT to publish forms and other material in respect of any matter specified in the regulations; and

(g) contain consequential, incidental, supplementary and transitional provisions which the OFT considers necessary or expedient.

(3) This section does not limit section 46B.”

The Speaker: The Hon. Member, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

I have no hesitation in seconding anything that will actually strengthen and protect consumers.

Both speakers have talked about the elderly and the vulnerable ... well I fell for their tactics. Somebody knocked on my door a few years ago, as I think Mr Malarkey will remember, before I was elected – and did I not class myself as elderly or particularly vulnerable at that time. I was busy, they seemed plausible and I went, ‘Yes, crack on’ – and I ended up in all sorts of trouble.

So I do not think it is just the elderly and vulnerable that need protecting in these instances. I get complaints about cowboy builders, etc., and cold-calling on doors from people who I would definitely not class as elderly and vulnerable. They are people who may not have had the time to think about it.

And it often starts off as ‘a little tile’, or whatever; and you think, ‘Yes, okay, it’s 20 quid, do it while you are in the area.’ The next thing you know you have got a hole in your roof and, ‘Oh my goodness, look what we have discovered!’

So somebody, like a mother with a young child, who is being harassed and she goes, ‘Yes, okay, 20 quid; I’ll have my slates put back on for that price, it is a good deal.’ But before she knows it she is in a real predicament.

So I think anything that protects and strengthens the legislation and protects our citizens in this area, I think has got to be welcomed.

The Speaker: Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

Speaking to the amendment, I rise to oppose the amendment standing in the name of Mr Karran.

Mr Robertshaw: Pose, did you say? Did you say pose?

Two Members: Oppose.

Mr Robertshaw: Sorry.

The Speaker: You are speaking on the debate.

A Member: On the amendment.

Mr Quirk: Yes, I rise to oppose the amendment standing in the name of Mr Karran. (**A Member:** Oppose.)

Can I indicate to colleagues here that the way the amendment is actually drafted will allow the traders to cold call on the Island – which is against the general principles of the Bill.

The OFT Board has already considered and rejected the idea that we should have a licensing regime for cold-calling. This was in the context of the consultation on the Bill. Firms which operate in the Island proposed this approach in response to the consultation. This was an idea that was carefully considered at board level and was soundly rejected.

The idea of actually allowing firms who the OFT consider as reputable, to cold call, runs totally contrary to the principles of the Bill; in particular that of the public – and especially the vulnerable – and we should afford the protection of the Bill.

Can I also say to Members, too, for those who are unskilled, we do have a scheme with the Employers’ Federation. The scheme is actually monitored under the DED and so we have a perfectly good registration scheme and we would not want to mirror that. And anybody that wants to do work for the Government, or the local authorities, or anything with public footfall, has to be part of the Employers’ Federation Scheme. So they are operating a scheme already.

What we are talking about here is an element of people who do just cold-call and by accepting this amendment it would give an open door to those legitimate traders to cold-call – which is the principle of the Bill. We do not want traders to cold-call people at their house and take advantage of them, when they are young, weak or old. As far as we are concerned there are many other activities they can do – they can advertise and they can put leaflets about – but if they try to cold-call and institute some service directly from that incident ...

Can I also say to Members, last week we had two incidents that happened – and I cannot name them – which were as a result of individuals who cold-called to people in a particular area of West Douglas. So this activity is happening all the time. And I wish to ask Members not to support this amendment because I think it will be a trap door for us and it will not cement the principles we want on this cold-calling Bill.

Can I also say too, my sadness listening to television at the weekend. The Welsh Government are actually bringing forward the cold-calling Bill as well, they are wanting to be the first, as they say in this press release – the first nation to ban cold-calling. But they will not; but hopefully with a fair wind, we will.

Several Members: Hear, hear.

The Speaker: The Hon. Member for Douglas West, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I was just rising to oppose the well-intentioned amendment.

Obviously it is a worthy aspiration – protecting people – but there is always a cost to protecting people. And I just wanted to say that I know this is due, and registration of professionals and tradesmen is an issue that the Office of Fair Trading is working on in general terms, and this seemed to me to have all of the hallmarks of something like the Landlord and Tenant Bill which was excessive regulation compared to the objective; and there are better ways of doing it.

I also cannot help but notice the clause later on about section 62, which allows things to come across – and that might be a good vehicle. I also wanted to confirm that I know this is an issue that has been discussed in the board for a few years, and the board does have a few ideas about working with other people to actually achieve the same objectives that the Hon. Member is trying to achieve with this amendment.

The Speaker: I call Mr Karran to reply.

Mr Karran: Vainstyr Loayreyder, the situation is that obviously with the regulations ... if they *were* registered and if they *were* allowed to cold-call, that would be part of the regulation basis, as far as that is concerned.

Our problem that we have at the moment, is the situation with the registration process as far as economic development is concerned ... and it is to do with Government work. It is not worth the paper it is written on and it does not help the situation at the present time. At the present time we have a situation where we have got a lot of legitimate small operators who are taking on apprentices, paying their National Insurance, paying their income tax and paying their costs for public liability. This piece of enabling legislation leaves the Office of Fair Trading to actually make the secondary legislation.

In my opinion, if there is proper regulation then there might be a reason for allowing cold-calling for legitimate purposes – and it could be in the regulations that it is not enforceable if it is found to be unrealistic contract, so that the Office of Fair Trading can actually turn round to the operator and say, 'You have not acted properly, and because of that you will lose your registration and your livelihood.'

I believe that what this does is actually create the framework. And I would say to the Member for West Douglas, Mr Thomas, this has been going on now for 30 years – 30 years this has been going on – and we are always told, 'Jam tomorrow; we are going to sort this out; we are going to start and address the issue of rogue traders; we are going to bring something in'. And we never do.

I believe that what we should be doing here is getting away from the situation of the movers of this, and read this new clause and read what it is about: it is about giving power, without them coming back with a Third Reading, a Second Reading, clauses, First Reading and then the same process in the Upper House and then having Royal assent.

Here you have today ... get off the fence, do something that is actually going to address an anomaly; and not just for the consumers that the Office of Fair Trading is supposed to be protecting. But also for our responsible business people on the Island having to compete with a situation we have got at the present time where consumers are ripped off, they have got nowhere to go because

these people have long flown as far as the money is concerned, they have got the money – they have brought some elderly person down to the cash machine – they are off ... and there is no way you can deal with them unless you find out their identity.

Also, this piece of legislation is actually about good business sense. One of the questions I raised the other week was about the black economy. One of the complaints that I am being told of by the construction industry – that are not doing the big multi-million pound jobs of Government – but they get so annoyed that they are having to compete with people for jobs where they are not operating on the same criteria.

Hon. Members, to be fair, I have to say that as far as cold-calling is concerned if the criteria is right, and the operators were right, I would have no problem with that – as long as there was a genuine registration and a genuine process so those operatives would know that if they want their business to keep on operating, they would have to have those criteria.

I think this House is missing a situation where you could put the primary legislation in – and then you can deal with the secondary legislation at a later date. This is about allowing that new clause. That new clause is more about regulating and developing something that is worth a carrot, rather than the situation we have as far as the DEDs registration ... and really it shocks me that the Chairman of the Office of Fair Trading is so void of reality, that really ... what input can you have as far as that is concerned, for the ordinary consumers?

If I was sitting in his place as the Chairman of the Office of Fair Trading, I would be looking at this as an opportunity to create the sort of registration regime that we should be having, not just to protect the consumers but also to protect the taxpayer – and the legitimate businesses that do it right.

I hope Hon. Members will support the principle of the new clause.

The Speaker: Hon. Members, I put the question that the new clause, in the name of Mr Karran, form part of the Bill.

Those in favour, please say aye; against, no. The noes have it.

A division was called for and electronic voting resulted as follows:

FOR

Mrs Beecroft
Mr Houghton
Mr Karran
Mr Peake

AGAINST

Mr Boot
Mr Cannan
Mr Cregeen
Mr Gawne
Mr Hall
Mr Harmer
Mr Joughin
Mr Malarkey
Mr Quayle
Mr Quirk
Mr Robertshaw
Mr Shimmin
Mr Singer
Mr Skelly
Mr Teare
The Speaker
Mr Thomas
Mr Watterson

The Speaker: We have 4 votes for, and 18 against. The motion on the new clause therefore fails to carry.

We move on, then, to clause 9 as printed in the Bill.

I call on the mover, Mr Quirk, to formally move. I think you have a written debate; do you wish just to formally move?

Mr Quirk: Yes, sir, clause 9.

The Speaker: Clause 9.

Mr Quirk: Thank you, sir.

Mr Speaker, can I thank Hon. Members for supporting us on that.

Having defined what we mean by cold-calling, clause 9 goes on to create an offence of entering into a contract as a result of cold-calling. Only the trader commits the offence. Penalties are set out at custody for up to six months and a fine of £10,000 in a summary court; and up to two years custody and an unlimited fine in a higher court.

I would add that whilst I specified the offence is entering into a contract, under Manx law, if the trader attempts to do so, the trader would also be committing an offence.

Mr Speaker, I beg to move clause 9.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker, I beg to second.

The Speaker: Mr Karran.

Mr Karran: Can the Caairliagh, the Chairman, just clarify: when he talks about ‘the trader’ does he talk about the individual if they have got some infrastructure ... of the individual who actually bangs on the door and gets the contract? Or is he talking about the person who actually does the work, that comes back later?

I just really think that it is a shame ... and I am glad that the Members for Doolish Twoaie, Douglas North, broke ranks within this House. This is the very thing that I am concerned about, Vainstyr Loayreyder, the fact is that without proper regulation we have the situation where ... what sort of entity are you dealing with?

Is it the person that originally bangs on the door and then sends his operatives around and finds out that the little hole in the roof turns out that they want half the roof removed?

Who actually commits the offence: the person who knocks on the door, or the person who does the job?

The Speaker: The mover to reply.

Mr Quirk: Thank you, Mr Speaker.

Actually, both of them do – both the person who knocked on the door and the guy who is doing the actual job or the individual who is doing the job. So I would ask Hon. Members to support the clause.

What we are doing here today is protecting the consumer, all the time, from cold-calling. Keep them in your mind ... anybody that knocks on your door that cold calls you, it becomes an offence, and that is the issue.

So the guy that knocks on the door or instigates anything like that, and the guy who comes to do the work, both of them are committing an offence and the courts will decide.

The Speaker: The motion, clause 9. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Quirk: Thank you, Mr Speaker.

Clause 10 then deals with what happens in relation to the relevant contract once it is made. It cannot simply cease to exist, because the consumer may actually want it fulfilled. What this clause does is give the consumer enhanced cancellation rights – 14 days rather than the usual seven. This is important because the OFT often only gets to find out after an event, when a relative or friend – or a victim – discovers what has happened and approaches the Department.

I wish to move clause 10, sir.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker, I beg to second.

The Speaker: Mr Karran.

Mr Karran: Can the mover explain why he has gone for the situation of 14 days, and not longer, as far as the clause is concerned with the cancellation of the contract?

Even allowing that the problem might be the fact that the person who banged on the door and got the work, gets a second entity to actually *do* the work. It could be interesting to see that they are both committing an offence, and what the defence will be as far as the individual who actually does work – who could claim innocence as far as it being cold-calling.

The Speaker: Mr Quirk to reply.

Mr Quirk: Thank you, Mr Speaker.

To the Hon. Member, what we are clarifying here is we are giving *longer* for those individuals to report the incident –

Mr Karran: I understand that.

Mr Quirk: So instead of the seven days which would be normal practice on a contract, it is 14 days – just in case there has been a mistake and a legitimate person has done this. But it gives the cancellation right to the consumer.

Don't forget, Members, we are talking about the consumer; the consumer will have the rights here. And the 14 days is preferable, sir.

Mr Karran: I am just asking, why not 21?

The Speaker: I put the motion, clause 10. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

Mr Quirk: Thank you, Mr Speaker.

Clause 11 amends section 47A of the 1991 Act in order to bring it into line with the new provisions, and updates the penalties for the offence relating to the failure to provide cancellation rights.

I wish to move clause 11, sir.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I beg to second.

The Speaker: I put the question, clause 11. Those in favour, say aye; against, no. The ayes have it.
The ayes have it.
Clause 12.

Mr Quirk: And 13, sir?

The Speaker: And 13? Yes.

Mr Quirk: Clauses 12 and 13 make minor consequential amendments to reflect the introduction of the new section 46A into the 1991 Act.
I wish to move clauses 12 and 13, sir.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.
I beg to second the movement of clauses 12 and 13.

The Speaker: Mr Karran.

Mr Karran: Can the mover just explain on the liability of persons over the principal offender? Does that mean that the individual who may have an apprentice or a junior will be on the same basis, as far as the issue of summary conviction for six months or £10,000?

I just need some definition because I think we do need to make sure as far as due diligence is concerned; and the liabilities as far as persons are concerned who the principal offender will be?

The Speaker: The mover to reply.

Mr Quirk: Mr Speaker, I think the Member is talking about something here that has gone past.

What we are talking about here is actually the person who does the cold-calling and introduces – and he is doing a grand job of trying to rock the boat as we are going along – regarding an apprentice.

The apprentice is a minor and the person who makes the call is the offender. At the end of the day it would up to the courts to make that decision if an offence took place, or if the Office of Fair Trading took a prosecution, or the Police, or any other agencies, sir.

So, on that, I wish to just move clauses 12 and 13, sir. *(Interjection by Mr Karran)*

The Speaker: Clause 12 first. Those in favour of clause 12, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 14. Mr Quirk.

Mr Quirk: Clause 14, sir, introduces the new provision for the OFT office to make a test purchase for the purpose of ensuring compliance with Part 7 of the 1991 Act.

I wish to move clause 14, sir.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.
I beg to second.

The Speaker: Mr Karran.

Mr Karran: Can the mover just clarify what he means by 'test purchases', to do with the cold selling?

The Speaker: Mr Quirk to reply.

Mr Quirk: Thank you, Mr Speaker.

Test purchases would be that the OFT has provision to do test purchases for cigarettes and alcohol – test purchases under the Act.

Also, there may be an instance where – and it has happened in the past – people have been cold calling in the street, some years ago now, and actually knocked on the door of one of the officers of the OFT and actually we used that. So this covers the particular issue when an officer makes it legitimate.

I wish to move clause 14.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I beg to second.

A Member: Hold on a sec!

Mr Malarkey: It has already been moved. We have got to vote on it. We need to vote, Mr Speaker.

A Member: Absolutely.

The Speaker: I beg your pardon, I got distracted.

Mr Malarkey: No, Mr Quayle confused you. *(Laughter and interjections)*

The Speaker: Clause 14: those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 15.

Mr Quirk: Clause 15, sir, amends section 47D of the 1991 Act.

In this part there are changes which are necessary to reflect other changes. In part we are updating this section of the 1991 Act. The 1991 Act deals with documents which exist other than in written form, such as electronic documents, sir.

During the Second Reading, Hon. Members asked about how enforcement on banning cold calling would work and how the Office of Fair Trading would enforce it. Whilst I was able to answer the question at a high level, clearly Hon. Members wanted more detail. I have therefore written to Hon. Members setting out the details.

I wish to move clause 15, sir, as part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I beg to second clause 15.

The Speaker: Clause 15, I put the question: those in favour, say aye; against no. The ayes have it. The ayes have it.

We go now to clause 17.

Mr Quirk: Thank you, sir.

Clause 17 provides that the trader cannot simply get around the new provision by using small print in the terms of his conditions.

More importantly, a term in a relevant contract which seeks to provide that the contract is governed other than by Manx law or is enforceable other than the Manx courts is void. At the Second Reading, I described the clause as ‘the sting in the tail’ as far as telephone cold calling is concerned. It is accepted that prosecuting off-Island traders who use telephone cold calling system would be very difficult. In the event that a trader takes action against the consumer in a jurisdiction outside the Isle of Man, the weight given to the Manx consumer in protection legislation will be a question for the foreign court. The OFT accepts that these provisions are not perfect but they are the best that can be done in the circumstances.

If a trader has to try and enforce any contract within the Island, it would present an off-Island trader with a real problem. The trader would expose himself to a risk of prosecution from the original offence.

Mr Speaker, I beg to move clause 17.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I beg to second.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, I think that the mover is actually right. This is the best we have got.

But I would be interested to know from the mover about the issue of a debt collector, as far as the fact that they cannot contract it out. I think it is a great move as far as making sure that it deals with the contract as far as Manx law is concerned, but what is the issue as far as if somebody ends up on a debt register off-Island while we have a debt collector on Island trying to collect it? Obviously it must be unenforceable, I take it. But what I would be interested to know is the issue of what mechanism the Office of Fair Trading can do to help an individual who ends up, in this clause, with a notional debt from another jurisdiction which could affect their creditworthiness as far as credit in other ways? How do you manage to resolve that issue, as far as it is not really a debt because the contract is unenforceable in the Isle of Man?

The Speaker: Mr Quirk to reply.

Mr Quirk: Thank you, Mr Speaker.

The Member for Onchan is quite right. The debt is unenforceable in the Isle of Man and as far as I am aware the debt cannot be passed onto anybody else and that be enforceable on the Island. As a result, when we get a passage of this particular Bill, we will be doing more of an exercise into publicising a help guide for those individuals that do get caught.

What I am hoping, from one of my members here today, is actually making sure that when we have Third Reading and finally we get to the Bill coming into force, that we will be able to have the support of the whole House there to act as agents round the Island, so that Members would know if they are getting into difficulties regarding cold calling ... Cold calling is the issue. We are here to protect the consumer, sir.

I beg to move.

Mr Karran: So you are still on the debt register?

The Speaker: The question, clause 17: those in favour say aye; against no. The ayes have it. The ayes have it.

Clause 18.

Mr Quirk: Clause 18, sir, amends section 53 of the 1991 Act and deals with the interpretation of Part 7 of the 1991 Act.

Whilst mostly they are technical amendments to reflect other changes to the Bill, there are two provisions which merit more detailed discussion. Firstly, the Bill defines telephone calls and includes voice communication over the internet, such as Skype. I just wanted to be clear that it does not cover email marketing.

Secondly, we have a provision and a definition of what constitutes a solicited visit. This is important because what we are doing here is closing down the route which an unscrupulous trader would seek to evade a new restriction. In particular, we are looking to close down two evasion routes. Firstly, the trader telephones the consumer and offers to visit the consumer. Unless the consumer actually contacts the trader and asks the trader to visit, it is not solicited so the trader is cold calling.

Secondly, the trader puts a leaflet through the door, which is perfectly legal, but then follows up with a visit or a phone call. Again the visit and the phone call are not solicited, so the trader is cold calling.

The key policy here is that whilst the trader is free to market and advertise his services, the decision to instigate the contract rests with the consumer and not the trader. This is fair and that is what the consumer tells us is what they want and that is what the Bill seeks to deliver.

Mr Speaker, I beg to move clause 18 stand part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I beg to second.

The Speaker: The question, clause 28: those in favour, say aye; against no. The ayes have it. The ayes have it.

Clause 19, please.

Mr Quirk: Thank you, Mr Speaker.

Clause 19 amends section 57A of the 1991 Act, which deals with distance selling contracts. Telephone calling is of course also distance selling. Having included telephone cold calling as a relevant contract in clause 8, we now need to disapply the distance selling provision. This is what the clause does.

Mr Speaker, I beg to move clause 19 be part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I beg to second.

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

Clause 21.

Mr Quirk: Thank you, Mr Speaker.

Clause 21 amends the marginal note to section 62 of the Act.

The current wording is at risk of being confused and the new wording simply makes the purpose clear.

Mr Speaker, I beg to move clause 21 become part of the Act.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I beg to second.

The Speaker: Clause 21: those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 22.

Mr Quirk: Thank you, Mr Speaker.

Whilst the rest of the Bill has been dealing with cold calling, clause 22 is about the need to keep the Island's consumer protection laws up to date.

Clause 22 inserts the new clause 62A to the 1991 Act, which allows the OFT to amend the 1991 Act by an order to correspond with the equivalent UK legislation. It also allows the OFT to apply UK subordinate legislation to the Island with modifications. In both cases, the UK included not only parliament but also the devolved administrations. Any order is subject to a positive approval within Tynwald so there is an effective scrutiny. Equally, the OFT is committed to adopting a consultative approach.

So why do we need this power? Firstly, our legislation is deeply out of date. By the definition of the 1991 Act we will celebrate our 25th birthday this year. The OFT needed three major Bills in the current administration. This is the only Bill that we have kept in the Government programme. The Competition Bill and the Property Agents Bill were removed from the programme on the basis of prioritisation. I am not having a go at the Council of Ministers or the drafting section.

A Member: It is his seconder.

Mr Quirk: The OFT understands the limitations of financial resources at all levels, and we all end up facing difficult decisions. The OFT knows in the first years of the next administration it needs to have three major Bills.

Mr Speaker, the new section 62A of the 1991 Act would give us a realistic chance of achieving the desired outcome with only one Bill in the programme. The other two Bills – one of which is the stalled Property Agents Bill, are pieces of consumer protection legislation. By using this power under the provision of 62A we may be able to deal with the issues by importing and modifications to UK provisions.

Mr Speaker, I beg to move clause 22 stand part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I beg to second.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, I have no problem with this. It is just a sad situation that when we were trying to do that process before, in order to bring in registration as far as giving an enabling legislation to regulate as far as trades are concerned, that it was somehow different. It is a shame that the Member for West Douglas is now saying that it is fair enough to bring it in through secondary legislation as far as any primary legislation that has been applied by the United Kingdom.

What I would like to know is the issue, if we are talking about legislation with the UK: an individual is pressured by cold calling through the telephone; they then give their card details to the adjacent isle, as far as their debit or credit card to be used. Will there be any power as far as the UK credit card is concerned? Will the Office of Fair Trading be able to force the repatriation of the funds from the individual who gets cold called on the Isle of Man in order to get their money back? And what is the process as far as that is concerned?

I have to say, Vainstyr Loayreyder, I totally agree with the mechanism that is being used by this Bill. That was the same mechanism as far as what I wanted when my enabling legislation – which was crying out to be done for years as far as that is concerned, especially not just for consumers, but also for the trade that find these people as despicable, as far as that is concerned. But I do think it is interesting to see how we are going to bring in enforcement as far as a UK card operator trying to get that money back. When it is classed as illegal here, will they recognise that in the other jurisdiction?

The Speaker: The mover to reply.

Mr Quirk: Thank you, Mr Speaker.

The major issue with the Bill is that, if anybody or an individual trader has instigated cold calling in the Isle of Man, it would be an offence once the Bill is approved.

If those traders or individuals want to enforce anything, they would have to come to the Isle of Man. Immediately, like I said in previous clauses, they will fall foul of the Act themselves and be liable for prosecution, sir. So we are well covered.

I would like to put on record support to the officers who helped last week those individuals who had some difficulties. They helped those individuals out and we prevented some individuals from losing between £300 to £400. This is what the Bill is about. We do have, on the Island, some unscrupulous individuals who are going round different part of the constituency and causing us difficulty. This Bill will give us the opportunity to stop that and do some enforcement, sir.

That is all. Thanks.

The Speaker: Clause 22: those in favour, say aye; against no. The ayes have it. The ayes have it.
Clause 23.

Mr Quirk: Clause 23, sir, which is the last clause, which I dealt with previously but just to reaffirm moving it.

Clause 23 includes the delivery roundsmen and catalogue sales. Neither of these are cold calling, sir.

I beg to move clause 23.

The Speaker: Thank you, Mr Speaker.

I beg to second.

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