

## 2. Consumer Protection (Amendment) Bill 2015 – Second Reading approved

Mr Corkish to move:

*That the Consumer Protection (Amendment) Bill 2015 be read a second time.*

**The President:** We turn now to the Consumer Protection (Amendment) Bill 2015. I call on the Hon. Member, Mr Corkish, to take the Second Reading.

**Mr Corkish:** Thank you, Madam President.

I wish to move that the Consumer Protection (Amendment) Bill 2015 be read for a second time.

If I may summarise, the key purposes of the Bill are to introduce a ban on cold calling and to update the current Consumer Protection Act 1991.

There are three types of cold calling which we intend to ban and they are doorstep cold calling, telephone cold calling and excursion-based cold calling. The Bill will make it illegal for a trader to enter into a contract using any of these sales methods.

The second policy aim is to enable the OFT to respond more quickly to emerging issues in relation to consumer protection. The OFT requires that it needs to keep the law on consumer protection up to date. It also recognises that, with the key elements of that protection fixed in the 1991 Act, doing so would require a regular stream of Bills. What this Bill seeks to do is to allow the OFT to amend the 1991 Act, by order, to correspond with equivalent UK legislation. It also allows the OFT to apply UK subordinate legislation to the Island with modifications. There is effective scrutiny because an order would require positive approval by Tynwald.

In the event that this Bill receives Royal Assent, it is anticipated it will be brought into operation as soon as practical thereafter.

At the First Reading, Mr Turner asked if the OFT had received any objections to this Bill during the consultation stage. I thank Mr Turner for his support and the point that he raised. I would like to confirm that the OFT did receive one objection to the proposed Bill by a double glazing company in the Island. Eighty-seven per cent of those who responded agreed that it should be a criminal offence for a trader to enter into a contract with a consumer through doorstep cold calling.

Mr Turner also sought assurance that legitimate businesses would not be caught out by this legislation. This Bill seeks to ban pressure selling cold calling on the doorstep, via the telephone and via excursion-based cold calling. I would hope that any legitimate business would not operate this way, and therefore would not be caught out by this Bill. There is nothing wrong with dropping a leaflet through the door, for example, in order to obtain business, as long as the consumer instigates the sale and not the business or trader via the means of cold calling.

Mr Henderson asked at what point the cold calling process becomes illegal. I would confirm that the entering into a contract, or the attempting to enter into a contract, via the means of cold calling, will be, if the Bill is passed, illegal. I again thank Mr Henderson for his support for this Bill.

I thank also the Lord Bishop, who raised the issue of television advertisements. As discussed with him after the First Reading, the advertising and marketing of goods and services are outside the scope of the Consumer Protection (Amendment) Bill 2015. That certainly does not mean that he is not correct to be concerned about advertising and marketing. Certainly the OFT is concerned about marketing and advertising to consumers and the way in which it can lure the unwitting consumer into making rash decisions.

The standards of permitted advertising which we see on our televisions, unless we are using a foreign satellite provider, and in printed material are determined by the Advertising Standards Authority (ASA) in the UK. In terms of local advertising – that is advertising emanating in the Island – the OFT has a role in ensuring that the ASA standards are met.

Although we cannot protect the consumer from advertising and marketing under this Bill, at least the consumer has a choice whether to respond to advertising. That is not perfect because, as the Lord Bishop rightly recognised, the consumer is being influenced, sometimes with inducements, to respond, but at least they do have a choice.

What the Bill seeks to address is the situations where it is the trader who is initiating the sales conversation. These are very convincing salesmen who, having targeted their victim, then complete the transaction. Consumers deserve to be protected and consumers have, through the consultation, told us that they want that protection. Regardless of what the Bill does not do, what it would achieve is that protection.

Finally, I would like to thank my seconder, Mr Anderson, for his support in taking this measure forward.

Madam President, I beg to move that the Consumer Protection (Amendment) Bill 2015 be read a second time.

**The President:** The Hon. Member, Mr Anderson.

**Mr Anderson:** Madam President, I am very happy to second this passage of legislation through this Chamber.

In doing so, can I ask the mover just to confirm the recent publicity in the newspaper this week that cold calling would be covered within this legislation. That was to do with hot tar.

**Mr Corkish:** Yes, indeed, it is –

**The President:** Does any other Hon. Member wish to speak to the Second Reading?

**Mr Corkish:** Sorry, Madam President – too eager.

**The President:** If not ... Did you wish to speak?

**The Lord Bishop:** Just a very brief word, really. I am in favour of this Bill, so that does not ... *[Inaudible]* I do not have a problem with the Bill, but I think we do need to say that we are bolting the stable doors after a couple of the horses have bolted, and the two horses that have bolted are television advertising and internet advertising. Both are, as this Bill deals with, initiated by the person selling the goods, so in some ways, in fact, the principle is exactly the same. The trouble is that they have gone now and we cannot control them – and perhaps we should have thought a long time ago about how to control them in western society. Maybe world society should have worked out how to try and control them a long time ago, but it is too late now.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

I was not going to speak, but after the contribution by the Lord Bishop ... I think it is important we look at them as two separate ways, because, as I pointed out before – and obviously I have come from a background of broadcasting – there are very stringent rules on broadcasting and so forth. This is a very different Bill and it is specifically designed to target what could be very serious bullying and abuse by people who turn up on the doorstep and target vulnerable people.

So, whereas I agree with the Lord Bishop that some advertising we are seeing a lot now, late in the evening, which does get through the broadcast regulators – the likes of Ofcom and the Advertising Standards Authority – for gambling and various other activities ... I would agree with him, and it does surprise me how some of those do target vulnerable people who maybe have addictions, or who end up trying it and believing they are going to win and end up with addiction.

But I think it is important that we see this Bill as going some way to deal with the immediate problem, and that is people without any instigation of their own actions ... somebody knocks at the door, can be very overpowering, intimidating, and sensible people end up being caught and bullied by some of these people. As the Hon. Member Mr Anderson said, there is a case highlighted this week which has caused a lot of angst amongst the local community.

So I think whilst the Lord Bishop has some good points, it is a completely different issue to what we are looking at today and I think we should not let the focus be taken away from what we are trying to achieve with this Bill.

I hope that Trading Standards and the OFT are looking at the standards of local advertising to ensure that they are not misleading and that what is being advertised is correct and genuine.

I will support this Bill.

**The President:** The mover to reply.

**Mr Corkish:** Thank you, Madam President.

I thank Mr Turner for his understanding of what the Bill is trying to do for the Manx public. Indeed, it is the old and vulnerable who in many cases are seduced by this type of advertising. And yes, we are watchful on local advertising, of course.

The Bishop's remarks are noted and accepted by the Office.

In response to Mr Anderson, yes, indeed, the local newspaper coverage has been acted upon by the Department. In fact, there has been a public notice. A media release has been circulated around the Island regarding tarmac jobbers: householders and businesses beware.

Thank you, Madam President. I beg to move that the Consumer Protection (Amendment) Bill be read for a second time.

**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.

### **Consumer Protection (Amendment) Bill 2015 – Consideration of clauses**

**The President:** Clauses.

Clauses 1, 2 and 3.

**Mr Corkish:** Thank you, Madam President.

As previously agreed with you, I will start with clauses 1, 2 and 3. These deal with the introductory matters.

Clause 1 gives the short title of the resulting Act – that is the Consumer Protection (Amendment) Act 2015.

Clause 2 provides that the Act will come into force through an Appointed Day Order or Orders 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 can expire.

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

**The President:** Mr Anderson.

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

**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.

Clause 4.

**Mr Corkish:** Madam President, 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 Act as the 1991 Act.

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

**The President:** The Hon. Member, Mr Anderson.

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

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

Clause 5.

**Mr Corkish:** Thank you, Madam President.

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.

Madam President, I beg to move that clause 5 stand part of the Bill.

**The President:** The Hon. Member, Mr Anderson.

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

**The President:** The motion is that clause 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 6 and 7.

**Mr Corkish:** Thank you, Madam President.

We then move to clauses 6 and 7, which, with your permission, we will group and move together, and I thank you for that.

Once again, these clauses are part of a tidy-up exercise within 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 officer' of the OFT and put the issue of authorisation into the definition of the term, which is contained in clause 20.

Madam President, I beg to move that clauses 6 and 7 stand part of the Bill.

**The President:** The Hon. Member, Mr Anderson.

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

**The President:** The motion is that clauses 6 and 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

**Mr Corkish:** Thank you, Madam President.

This next group of clauses, starting with clause 8, 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 the 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. The public 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 consumers who enter into relevant contracts.

So what is a relevant contract? 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 whether something is in or out of scope, then we would answer three questions: (1) is the purchaser a consumer; (2) is the other person a trader; and (3) 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.

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 is 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 we suggested that limit be £100. There was some discussion in another place that traders might abuse the provision. As the Bill stands, unless the OFT makes regulations prescribing a figure there is no low value exemption.

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

Any regulations or orders require positive approval by Tynwald.

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

**Mr Turner:** Madam President –

**The President:** Are you seconding, sir?

**Mr Turner:** Oh, sorry.

**The President:** The Hon. Member, Mr Anderson.

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

**The President:** The Hon. Member, Mr Coleman.

**Mr Coleman:** Thank you.

Can I ask for an explanation for clause 8(2)(1)(d). Where it says:

after an offer made by the consumer during such a visit,

should that not be 'the trader'?

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

When we were discussing this at the First Reading we were talking about the problems with telephone cold calling and that some of them emanate from off Island and you do not know who you are dealing with. But there are a vast number where you do know who you are dealing with, and

some of them that can infuriate you – the likes of Sky trying to pressure you into upping your already outrageously priced packages with them.

If a complaint was made to the OFT, could they effectively prosecute that trader in a Manx court and then have it enforced in the jurisdiction? Could they take action against them? Of course, we can see how this could be abused by calls emanating from outside the Isle of Man when we know who the trader is, and would the OFT, if a complaint was made against any particular ... You also get credit card companies ringing up, trying to flog you insurance and all sorts of things. Would the OFT be able to take action in the courts and then have it enforced elsewhere?

**The President:** The mover to reply.

**Mr Corkish:** Thank you, Madam President.

I thank Mr Coleman. I shall get a detailed reply to him in a moment.

Turning to Mr Turner first, he is absolutely right, lots of these calls do emanate from faraway places – often India – and I think I address, later on in the Bill, some of the answers he wishes. The point is that ...

Sorry, could I divert to Mr Coleman. The point of this is that during the cold call the consumer might have actually consented. This stops the trader getting off the hook, so to speak.

**Mr Coleman:** But the offer here is being made by the consumer, and therefore the offer is initiating the contract. The acceptance makes the contract.

**Mr Corkish:** Perhaps I can help, Madam President.

The offence in relation to telephone cold calling requires the sale to be made as a result of the telephone cold call. The intention is that there has to be a direct line of activity between the call and the sale and this line is not interrupted by positive actions of the consumer. This is best illustrated by the following examples – and these examples, I hope, may help Mr Coleman.

Trader A makes an unsolicited telephone call to a consumer and introduces a product. Trader A contacts the consumer later without being asked to do so and completes the sale. Trader A is making the sale as a result of the unsolicited telephone call.

Trader B makes an unsolicited telephone call to a consumer and introduces a product. At the end of the telephone call Trader B suggests that the consumer may wish to call into his premises to discuss the product. The consumer decides to visit Trader B and buys the product. Trader B is not making the sale as a result of the unsolicited telephone call, because by visiting Trader B the consumer has broken the link between the unsolicited telephone call and the sale.

Trader C makes an unsolicited telephone call to a consumer and introduces a product. Having thought about the matter, the consumer decides to telephone Trader C. During the second conversation the sale is agreed. Trader C is not making the sale as a result of the unsolicited telephone call, because by telephoning Trader C the consumer has broken the link between the unsolicited telephone call and the sale.

Does that address the –?

**Mr Coleman:** It does not.

**Mr Corkish:** It does not address the point that you –

**Mr Coleman:** I just look at the law of contract: offer, acceptance. Unless I have forgotten my law of contract, I do not think it does.

This is actually saying ‘after an offer made by the consumer’ – the purchaser – ‘during such a visit’. I just cannot envisage that. That’s all.

**The President:** For clarification, the Lord Bishop would like –

**The Lord Bishop:** Madam President, may I suggest that the situation that might be envisaged here – and it would be useful to know whether this is what is being envisaged – is that somebody, a trader, offers somebody some goods for £100, the consumer says, ‘I’ll give you £50,’ the trader goes away and says, ‘I’ll think about that.’ Is that the situation we are talking about?

**Mr Corkish:** That is the situation we are talking about. Thank you for the help and clarification.

**Mr Coleman:** Madam President, could I just ask the Hon. Acting Attorney General his view on that?

**The Acting Attorney General:** On ...?

**Mr Coleman:** On that clause.

**The President:** Your interpretation of ...  
Are you looking for clarification on (2)(d)?

**Mr Corkish:** Clause 8(2)(d).

**Mr Coleman:** Yes.

**The Acting Attorney General:** Right. Reading the subsection as a whole:

(1) This Part applies to a contract (a ‘relevant contract’) between a consumer and a trader which is for the supply of goods or services to the consumer by a trader and which is made —  
... (d) after an offer made by the consumer during such a visit, excursion or telephone call.

it refers back to subsection (c), which refers to the ‘as a result of a telephone call’ and (b) to the ‘excursion organised by the trader’.

I do not find any difficulty with that, Madam President, in understanding what it refers to.

**Mr Coleman:** I was a bit confused by the offer being made by the consumer, not by the person who rang them or whom they went to visit.

**The Acting Attorney General:** Yes, but the mischief here is the trader making unsolicited calls, which is the point in (c), making unsolicited, in a sense, excursions or visits to the consumer, and then, as a consequence of that, the consumer makes an offer. That is the mischief, that they have been persuaded to act perhaps against their better judgement as a result of the solicited call or that unwelcome excursion.

**Mr Coleman:** Thank you.

**The President:** I hope that is clear to everyone now.

The motion before the Council is set out at clause 8. Those in favour of clause 8, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

**Mr Corkish:** Thank you, Madam President.

I would just like to thank the Acting Attorney for his help and clarification in the previous clause.

Clause 9. 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 that clause 9 stand part of the Bill.

**The President:** The Hon. Member, Mr Anderson.

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

It comes back to my previous question, really, which I did not get a clear answer on. The person commits an offence. It obviously does not say where they are, so presumably, regardless of whether they are phoning from a telephone in Manchester, they are still committing an offence if they enter into a relevant contract. So the question is: if a complaint is made against that person, will the OFT seek to take action?

**The President:** The mover to reply.

**Mr Corkish:** Thank you, Madam President.

May I just await confirmation of what ... It does refer to the earlier question. I thought I had, but will refer to it here. I am sorry if it has not.

**A Member:** We are dealing with a lot.

**Mr Corkish:** Yes.

We can refer to the Acting Attorney General, but the decision whether to bring it to a court would rest ultimately with the Attorney General's office. Perhaps the Acting Attorney General might comment.

**The Acting Attorney General:** If I might try and help, Madam President, to answer my hon. colleague Mr Turner's point, in the circumstances Mr Turner has outlined an offence would be committed on the Isle of Man and that is not whether the person making that call is sitting in the Island or in the UK.

As to whether or not a prosecution would follow, it could do but obviously the usual considerations would have to be taken with reference to the evidence that has been collated and then whether it is in the public interest to make that particular prosecution. I cannot speak for the Department, but I do not think it would then be a departmental policy but in every circumstance that the prosecution should be encouraged and be looked at on a case-by-case basis.

**The President:** Do you wish to add anything, Hon. Member?

**Mr Corkish:** Not at all, Madam President, just to thank the Acting Attorney General for that clarification.

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

Clause 10.

**Mr Corkish:** Thank you, Madam President.

Clause 10 then deals with what happens in relation to a relevant contract once it is made. It cannot simply cease to exist because the consumer may actually wish it to be 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 involved when a relative or friend of the victim discovers what has happened.

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

**The President:** Hon. Member, Mr Anderson.

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

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

Clause 11.

**Mr Corkish:** Madam President, clause 11 amends section 47A of the 1991 Act in order to bring it into line with the new provisions and to update the penalties for offences relating to failure to provide cancellation rights.

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

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

**The President:** The motion is that clause 11 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 12 and 13.

**Mr Corkish:** Thank you, Madam President, for your indulgence. I shall move clauses 12 and 13 together.

These clauses make minor consequential amendments to reflect the introduction of the new section 46A into the 1991 Act.

I beg to move that clauses 12 and 13 stand part of the Bill.

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

**The President:** The motion is that clauses 12 and 13 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

**Mr Corkish:** Madam President, clause 14 introduces a new provision for OFT officers to make test purchases for the purpose of ensuring compliance with part VII of the 1991 Act.

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

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

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

Clause 15.

**Mr Corkish:** Thank you, Madam President.

Clause 15 amends section 47D of the 1991 Act. In part, these are changes which are necessary to reflect the other changes. We are also updating this section of the 1991 Act to deal with documents which exist other than in written form, such as electronic documents.

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

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

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

Clause 16.

**Mr Corkish:** Thank you, Madam President.

Clause 16 provides some consequential amendments to section 47E, which deals with obstruction of OFT staff involved in enforcement.

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

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

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

Clause 17.

**Mr Corkish:** Thank you, Madam President.

Clause 17 provides that a trader cannot simply get around the new provisions by using the small print of his terms and conditions. More importantly, any term in a relevant contract which seeks to provide that the contract is governed other than by Manx law or enforceable other than by Manx courts is void.

At the First Reading I described this 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 to the Island would be very difficult.

In the event that a trader takes action against a consumer in a jurisdiction outside the Isle of Man, the weight given to Manx consumer product legislation will be a question for that foreign court. The OFT accept that these provisions are not perfect but are the best that can be done in the circumstances. If a trader has to try to enforce any contract in the Island, it would present off-Island traders with a real problem. The trader would expose himself to the risk of prosecution for the original offence.

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

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

**The President:** Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

The mover mentions ... and I have seen this in some contracts, where services are provided to people in the Isle of Man, where it says 'this contract shall be subject to the courts of England and Wales', for example. Could he just clarify whether that is what he is referring to and the fact that that cannot be in a contract, because I would imagine some products and services are provided on the basis they are providing to large areas.

Obviously this is not just talking about the cowboy builders doing the cash jobs; there are actual fully registered businesses also carrying out very aggressive and undesirable practices as well. So the

fact that somebody is registered at, say, Companies House in the UK does not necessarily mean they are reputable; it just means they are registered. Is this saying that any services people may be forced into, they cannot have a get-out and use the England and Wales example?

Also, with regard to Manx courts, there are cases where people have been sued or prosecuted in other courts and then they have applied to have the judgments enforced locally. So, if it can come in, surely it can go out. I do appreciate what the Acting Attorney said earlier on about each case on a case-by-case basis, which obviously is right, but another comments would be I would hope that they do not suddenly look at it and say, 'Well, it might cost a bit too much to do that, so we're not going to bother.' It should be on the merits of the case, rather than other facts such as convenience or cost.

**The President:** Do you wish to reply, sir?

**Mr Corkish:** Thank you, Madam President.

Yes, I did mention earlier in the speak that it was a sting in the tail for outside traders to come up against this, but put quite simply, in answer to Mr Turner, if the contract resulted from cold calling, the jurisdiction is Manx – which I think I tried to explain in the reading of the clause.

Madam President, I –

**The Acting Attorney General:** If I might just, with your leave, add a bit of clarification, I spoke previously with reference to any potential prosecution, we are then looking at a criminal situation, a criminal offence. This is talking of civil rights, and again referring to the Hon. Member Mr Turner's comments, his comments were very much to do with enforcing civil claims as opposed to looking at any prosecution that may follow as a consequence of a breach of the law here which has been created.

Again, just by way of clarification, the impact of this is that a consumer on the Isle of Man entering into a contract which may have issued, let us say, from the UK, which contained a provision which required that that contract be determined otherwise than by arbitration or by the Manx courts, would, on my review of this, be then unenforceable here in the Manx courts. It is not going to render it unenforceable in the UK courts but it would render it unenforceable here. So I think that is a distinction.

**The President:** Did you wish to –?

**Mr Turner:** Could I query, then: even though the cold caller may have committed the offence, could he then decide, 'Well, I'm going to pursue the person because I've got a contract in the English courts,' and then sue the person, the purchaser, in the English courts and pursue them as a civil claim?

**The Acting Attorney General:** Madam President, conceivably, yes. But to then take the point which you have made, if a person were to obtain a judgment from certain courts in the United Kingdom, you can apply for that to be registered in the Isle of Man for enforcement purposes. One of the grounds for defeating that registration process would be that the contract, if were to be made here, would be unenforceable. It is not an absolute right to register for enforcement.

**The President:** Do you want to add anything, sir?

**Mr Corkish:** Just, again, I am grateful for the information given by the Acting Attorney General. I beg to move that clause 17 stand part of the Bill.

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

Clause 18.

**Mr Corkish:** Thank you, Madam President.

Clause 18 amends section 53 of the 1991 Act, which deals with the interpretation of part VII of the 1991 Act. Whilst mostly these are technical amendments to reflect other changes in the Bill, there are two provisions which merit more detailed discussion.

Firstly, the Bill defines a telephone call and includes voice communication over the internet, such as Skype. The Department wishes to make it clear that it does not cover email marketing.

Secondly, we have provided a definition of what constitutes a solicited visit. This is important because what we are doing here is to close down the routes by which unscrupulous traders may seek to evade the new restrictions. 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 a door, which is perfectly legal, but then follows it up with a visit or phone call – again the visit or phone call are not solicited, so the trader is cold calling. The key policy here is that whilst a trader is free to market and advertise his services, the decision to initiate contact rests with the consumer and not the trader. That is fair and that is what consumers tell us that they want, and that is what the Bill seeks to deliver.

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

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

**The President:** If no Member wishes to speak, the motion is that clause 18 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

**Mr Corkish:** Thank you, Madam President.

Clause 19 amends section 57A of the 1991 Act, which deals with distance selling contracts. Telephone cold 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 provisions. This is what this clause does.

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

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

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

Clause 20.

**Mr Corkish:** Thank you, Madam President.

In clause 20 we 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 as 'OFT'. Actually, this process started in the Payment Services Act 2015.

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

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

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

Clause 21.

**Mr Corkish:** Thank you, Madam President.

Clause 21 amends the marginal note to section 62 of the Act. The current wording is at risk of being confusing and the new wording simply makes the purpose clear.

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

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

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

Clause 22.

**Mr Corkish:** Thank you, Madam President.

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

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

Why do we need this power? Firstly, our legislation is desperately out of date – by definition the 1991 Act will celebrate its 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. The OFT knows that in the first three years of the next administration it needs three major Bills. (**Mr Cretney:** Hear, hear.) The OFT knows that it is highly unlikely that it will achieve that. The new section 62A of the 1991 Act would give us a realistic chance to achieve 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 the powers under the proposed section 62A we may be able to deal with the issues by importing and modifying UK provisions.

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

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

**The President:** Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

I fully support this clause but I would ask the mover to maybe feed back that we should always be cautious that the age of a Bill, quite honestly, is irrelevant; it is the provisions contained in it. I think that when Departments, officers and Boards come especially to this place they should explain why. To just say it is old and it is not fit for purpose – this is a general observation – is not exactly helpful. We really do need the detail. So, when future Bills come, I hope we will get proper detail as to why.

I fully agree that there are a lot of Bills on the statute that are not fit for purpose and I am sure the OFT have got provisions, but I would just like to comment that age of the legislation should not be a reason for amending Bills; it should be down to the content. That is what matters, and I would hope that we get proper examples when the time comes.

Thank you.

**The President:** The mover to reply.

**Mr Corkish:** Thank you, Madam President.

I thank Mr Turner. The illustration of the 25 years really was just amplifying the need to bring up to date, to modernise and to address problems of today which perhaps they had in 1991, but I take on board exactly what he says and we will have recourse to that. I thank him.

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

Clause 23.

**Mr Corkish:** Thank you, Madam President.

Clause 23 inserts a new schedule 2B, which defines 'excepted contract'. These include land transactions, deliveries by roundsmen, routine catalogue sales, and insurance contracts.

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

**Mr Anderson:** Madam President, I beg to second and reserve my remarks.

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

That concludes consideration of the Second Reading and clauses of that Bill, Hon. Members.