



**Isle of Man**

*Ellan Vannin*

**CONSUMER PROTECTION  
(AMENDMENT) BILL 2015**



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# CONSUMER PROTECTION (AMENDMENT) BILL 2015

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## Explanatory Memorandum

1. This Bill is promoted by Mr Quirk on behalf of the Council of Ministers.
2. *Clauses 1, 2 and 3* deal with introductory matters. *Clause 1* gives the short title of the resulting Act, *clause 2* deals with the commencement of the Act, and *clause 3* with the Act's expiry once it has been promulgated and all of the amendments to the Consumer Protection Act 1991 ("the 1991 Act") have taken effect.
3. *Part 2* contains a series of amendments to the 1991 Act, which are introduced by *clause 4*. In the following paragraphs of this Memorandum a reference to a section is to that section of the 1991 Act.
4. *Clause 5* repeals section 24 which is of no practical utility.
5. *Clauses 6 and 7* amend references to officers as a consequence of the changes made to the interpretation provision by *clause 20(1)(b)*.
6. *Clause 8* amends section 46 to redefine the scope of Part VII. It makes it clear that the Part will not apply to an excepted contract (as defined in Schedule 2B to the 1991 Act, added by *clause 23*) or to contracts, persons or circumstances prescribed by an order under the new subsection (1C).
7. *Clause 9* inserts a new section 46A which makes it an offence for a trader to enter into a relevant contract (as defined in the substituted section 46(1)).
8. *Clause 10* amends section 47 dealing with the cancellation of a contract. The principal change is the extension of the time within which a consumer may give notice of cancellation from 7 to 14 days. The clause also alters the point from which time runs to reflect the possibility that the notice informing the consumer of the right to cancel may not be given at the time the contract is concluded in cases where the consumer and trader conclude the contract over the telephone or using other electronic means.
9. *Clause 11* amends section 47A to reflect other changes made by the Bill, but also re-categorising the offence under section 47A(3) to an either way offence and increasing the penalty on summary conviction to 6 months' custody and a fine of £10,000.
10. *Clauses 12 and 13* consequentially amend sections 47B and 47C to reflect the introduction of *clause 46A*.
11. *Clause 14* inserts a new provision enabling an officer of OFT to make test purchases for the purposes of enforcing Part VII including the new provisions.
12. *Clause 15* amends section 47D, partly to reflect other changes made by the Bill but also to make it clear that the power to require documents for the purposes of an investigation includes the power to require the provision of information

which is not in documentary form and where information is recorded in a form which is not legible, the person producing it may be required to make it available in legible form.

13. *Clause 16* makes amendments to clause 47E consequent on other changes in the Bill.
14. *Clause 17* extends the restriction on contracting-out of the terms of Part VII, or seeking to make the proper law of a relevant contract the law of a place outside the Island.
15. *Clause 18* amends the interpretation provisions in section 53: the provisions apply for the purposes of Part VII.
16. *Clause 19* amends section 57A to clarify that Part VIIIA (distance selling) of the 1991 Act does not apply to a relevant contract (as defined in the substituted section 46(1)) made as the result of a telephone call by or on behalf of the trader to the consumer which the consumer neither initiated nor requested.
17. *Clause 20* amends the general interpretation provision in section 60 to adjust the definition of “officer” and to replace the definition of Board with a definition of OFT as the Office of Fair Trading.
18. *Clause 21* amends the marginal note in respect of section 62 to make it somewhat more transparent as to its purposes, which are to preserve the rights of a person being investigated so far as they relate to legal professional privilege and the right not to incriminate oneself or one’s spouse or civil partner.
19. *Clause 22* inserts a new section 62A which will enable the OFT to amend the 1991 Act to reflect future changes in legislation in the United Kingdom and to apply, as part of the law of the Island and subject to any necessary modifications any relevant UK subordinate legislation.
20. The Bill has no financial or manpower implications.
21. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.



*Eilan Vannin*

## CONSUMER PROTECTION (AMENDMENT) BILL 2015

### Index

Section	Page
<b>PART 1 – INTRODUCTORY</b>	<b>7</b>
1 Short title.....	7
2 Commencement.....	7
3 Expiry.....	7
<b>PART 2 – AMENDMENT OF THE CONSUMER PROTECTION ACT 1991</b>	<b>8</b>
4 Amendment of the Consumer Protection Act 1991.....	8
5 Section 24 repealed – enforcement (Parts II and III of the Consumer Protection Act 1991).....	8
6 Section 26 amended.....	8
7 Section 29 amended.....	8
8 Section 46 amended – contracts to which Part VII applies (cancellation of certain contracts).....	8
9 Section 46A inserted – offence to enter into certain contracts.....	9
10 Section 47 amended – cancellation of contract.....	9
11 Section 47A amended – failure to provide notice of cancellation rights.....	10
12 Section 47B amended – defence of due diligence.....	10
13 Section 47C amended – liability of persons other than the principal offender.....	10
14 New section 47CA – test purchases.....	10
15 Section 47D amended – enforcement powers.....	11
16 Section 47E amended – obstruction of OFT’s officers.....	11
17 Section 52 substituted – no contracting-out.....	11
18 Section 53 amended – interpretation of Part VII of the Consumer Protection Act 1991.....	12
19 Section 57A amended – contracts to which this Part applies.....	13
20 Section 60 amended and associated consequential amendment – interpretation: general.....	14
21 Section 62 amended – self-incrimination and legal professional privilege.....	14
22 New section 62A – application to the Island of certain subordinate legislation and power to amend the Consumer Protection Act 1991.....	14

23 New Schedule 2B inserted – meaning of “excepted contract” for the purposes of section 46..... 15





*Ellan Vannin*

## CONSUMER PROTECTION (AMENDMENT) BILL 2015

- 1 **A BILL** to amend the Consumer Protection Act 1991 in respect of cold calling  
 2 and the cancellation of certain contracts; and for connected purposes.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### 3 **PART 1 – INTRODUCTORY**

#### 4 **1 Short title**

5 The short title of this Act is the Consumer Protection (Amendment) Act 2016.

#### 6 **2 Commencement**

- 7 (1) This Act (other than this section and section 1) comes into operation on  
 8 such day or days as the Isle of Man Office of Fair Trading by order  
 9 appoints and different days may be appointed for different provisions  
 10 and for different purposes.
- 11 (2) An order under subsection (1) may make such consequential, incidental,  
 12 transitional and saving provisions as the Isle of Man Office of Fair  
 13 Trading considers necessary or expedient.

#### 14 **3 Expiry**

- 15 (1) This Act expires —
- 16 (a) on the day after its promulgation if all of its provisions are in  
 17 operation on its promulgation; or
- 18 (b) otherwise, on the day after the last provision is brought into  
 19 operation.
- 20 (2) The expiry does not —
- 21 (a) revive any enactment amended by this Act as the enactment  
 22 operated before the amendment commenced;
- 23 (b) revive anything not in operation or existing when the amendment  
 24 took effect; or

- 1 (c) affect the continuing operation of the amendment.

2 **PART 2 – AMENDMENT OF THE CONSUMER PROTECTION**  
3 **ACT 1991**

4 **4 Amendment of the Consumer Protection Act 1991**

5 The *Consumer Protection Act 1991* is amended in accordance with sections 5 to  
6 23.

7 **5 Section 24 repealed – enforcement (Parts II and III of the Consumer**  
8 **Protection Act 1991)**

9 Section 24 is repealed.

10 **6 Section 26 amended**

11 In section 26(1) for “a duly authorised officer” substitute **an officer**.

12 **7 Section 29 amended**

13 In the heading to section 29 for “authorised officer” substitute **officer of**  
14 **OFT**.

15 **8 Section 46 amended – contracts to which Part VII applies (cancellation**  
16 **of certain contracts)**

17 (1) Section 46 is amended as follows.

18 (2) For subsection (1) substitute –

19 **(1)** This Part applies to a contract (a “**relevant contract**”) between a  
20 consumer and a trader which is for the supply of goods or  
21 services to the consumer by a trader and which is made –

- 22 (a) during an unsolicited visit by the trader to the consumer’s  
23 home or place of work, or to the home of another  
24 individual;
- 25 (b) during an excursion organised by the trader away from the  
26 trader’s permanent or temporary business premises;
- 27 (c) as the result of a telephone call by or on behalf of the trader  
28 to the consumer which the consumer neither initiated nor  
29 requested; or
- 30 (d) after an offer made by the consumer during such a visit,  
31 excursion or telephone call.

32 (1A) Subsection (1) is subject to the qualifications in subsections (1B)  
33 and (1C).



- 1 (1B) This Part does not apply to an excepted contract.
- 2 (1C) OFT may by order prescribe —
- 3 (a) contracts to which this Part does not apply;
- 4 (b) persons or classes of persons to whose contracts this Part
- 5 does not apply;
- 6 (c) other circumstances where this Part is not to apply.
- 7 An order under this subsection may amend or repeal any
- 8 provision of this Part (including a provision contained in
- 9 Schedule 2B) if it appears to OFT to be necessary or expedient to
- 10 do so in consequence of or in connection with the provision made
- 11 by the order. **22**.

- 12 (3) For subsections (2) and (3) substitute —
- 13 **23**(2) Schedule 2B has effect to define “**excepted contract**” **22**.

## 14 9 Section 46A inserted – offence to enter into certain contracts

15 After section 46 insert —

### 16 **23** 46A Offence to enter into certain contracts

- 17 (1) A person commits an offence if, as a trader, he or she enters into a
- 18 relevant contract.
- 19 (2) A person guilty of an offence under subsection (1) is liable—
- 20 (a) on conviction on information, to custody for not more than
- 21 2 years, a fine or both;
- 22 (b) on summary conviction, to custody for a term not
- 23 exceeding 6 months, a fine not exceeding £10,000, or
- 24 both. **22**.

## 25 10 Section 47 amended – cancellation of contract

- 26 (1) Section 47 is amended as follows.
- 27 (2) In subsection (1) —
- 28 (a) for “No contract to which this Part applies shall be” substitute
- 29 **23** A relevant contract is not **22**; and
- 30 (b) for “7 days” substitute **23** 14 days **22**.
- 31 (3) For subsection (2) substitute —
- 32 **23**(2) The notice must be dated and delivered to the consumer —
- 33 (a) if the consumer and the trader are in the same place when
- 34 the contract is made, at the time the contract is made; and
- 35 (b) in any other case within 48 hours of the time at which the
- 36 contract is made. **22**

- (4) In subsection (3) for the words preceding “a notice in writing” substitute
- █ If within the period of 14 days —
  - (a) following the making of the contract in a case falling within subsection (2)(a); or
  - (b) following the delivery of a notice under subsection (1) in a case falling within subsection (2)(b),
- the consumer serves █.

## 11 Section 47A amended – failure to provide notice of cancellation rights

- (1) Section 47A is amended as follows.
- (2) In subsection (1) —
- (a) for “a contract to which this Part applies” substitute █ a relevant contract █; and
  - (b) omit “(or, in the case mentioned in subsection 46(1)(c), has failed)”.
- (3) In subsection (2) —
- (a) after paragraph (a) █ and █ is inserted; and
  - (b) paragraph (c) and the “and” immediately preceding it are repealed.
- (4) For subsection (3) substitute —
- █ (3) A person guilty of an offence under subsection (1) is liable —
  - (a) on conviction on information to custody for a term not exceeding 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. █.
- (5) Subsection (4) is repealed

## 12 Section 47B amended – defence of due diligence

In section 47B(1) for “section 47A” substitute █ section 46A or 47A █.

## 13 Section 47C amended – liability of persons other than the principal offender

In section 47C(1) and (2) for “section 47A” substitute █ section 46A or 47A █.

## 14 New section 47CA – test purchases

After section 47C insert —

1

**47CA Test purchases**

2

3

4

OFT may make such purchases of goods, and secure the provision of such services, as may appear expedient for the purpose of determining whether or not the provisions of this Part are being complied with. 22.

5

**15 Section 47D amended – enforcement powers**

6

(1) Section 47D is amended as follows

7

(2) In subsection (1)—

8

(a) for “a duly authorised officer” substitute **44**an officer **22**; and

9

(b) for “section 47A” substitute **44**section 46A or 47A **22**.

10

(3) After subsection (5) insert —

11

**44**(6) In this section “document” includes information recorded in any form.

12

13

(7) The reference in subsection (1) to production of documents is, in the case of a document which contains information recorded otherwise than in a legible form, a reference to the production of a copy of the information in a legible form. **22**.

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**16 Section 47E amended – obstruction of OFT’s officers**

18

(1) Section 47E is amended as follows

19

(2) In subsection (1)(c) omit “authorised”.

20

(3) For the section heading substitute **44**Obstruction of OFT’s officers **22**.

21

**17 Section 52 substituted – no contracting-out**

22

For section 52 substitute —

23

**44**52 No contracting-out

24

(1) A term contained in a contract is void if, and to the extent that, it purports to disapply this Part (or any of its provisions) if this Part would otherwise apply.

25

26

27

(2) A term contained in a relevant contract is void if, and to the extent that, it would —

28

29

(a) make the proper law of the contract the law of a place outside the Island; or

30

31

(b) require any matter to be determined otherwise than by arbitration or by the Manx courts.

32

33

(3) For the purposes of subsection (2)(b) —

“arbitration” is to be construed in accordance with the *Arbitration Act 1976*; and

“the Manx courts” means —

- (a) the High Court;
- (b) the Judicial Committee of the Privy Council; and
- (c) the Court of Justice of the European Communities. <sup>22</sup>

## 18 Section 53 amended – interpretation of Part VII of the Consumer Protection Act 1991

(1) Section 53 is amended as follows.

(2) In subsection (1)—

(a) at the beginning of the alphabetical list of definitions insert —

<sup>23</sup> “**arbitration**” means arbitration in accordance with the *Arbitration Act 1976*; <sup>22</sup>

(b) omit the definition of “charge on land”;

(c) for the definition of “consumer” substitute —

<sup>23</sup> “**consumer**” means an individual who in making a relevant contract is acting for purposes which can be regarded as outside his or her business; <sup>22</sup>;

(d) for the definition of “trader” substitute —

<sup>23</sup> “**trader**” means a person who, in making a relevant contract, is acting in his or her business capacity and includes anyone acting in the name or on behalf of the trader; <sup>22</sup>;

(e) at the appropriate points in the alphabetical list insert the following definitions —

<sup>23</sup> “**relevant contract**” has the meaning given in section 46(1); <sup>22</sup>;

<sup>23</sup> “**solicited visit**” has the meaning given in subsection (1A) (and “**unsolicited visit**” shall be construed accordingly); <sup>22</sup>

<sup>23</sup> “**telephone call**” includes —

- (a) any form of voice communication by means of a telecommunication system;
- (b) any form of communication comprising or including the transmission of sound by means of the internet; <sup>22</sup>; and

<sup>23</sup> “**unsolicited visit**” see the definition of “**solicited visit**” above. <sup>22</sup>.

(3) After subsection (1) insert —

<sup>23</sup> (1A) A “**solicited visit**” is a visit by a trader, whether or not he or she is the trader who supplies the goods or services, to a consumer’s

- 1 | home or place of work or to the home of another individual,  
2 | which is made at the express request of the consumer.
- 3 | But neither of the following is a solicited visit —
- 4 | (a) a visit by a trader which is made after he or she, or a  
5 | person acting in his or her name or on his or her behalf —
- 6 | (i) contacts the consumer (otherwise than at the  
7 | consumer’s express request) and indicates during  
8 | the course of the contact (either expressly or by  
9 | implication) that he or she, or the trader in whose  
10 | name or on whose behalf he or she is acting, is  
11 | willing to visit the consumer; or
- 12 | (ii) visits the consumer (otherwise than at the  
13 | consumer’s express request) and indicates during  
14 | the course of that visit (either expressly or by  
15 | implication) that he or she, or the trader in whose  
16 | name or on whose behalf he or she is acting, is  
17 | willing to make a subsequent visit to the consumer;
- 18 | (b) a visit during which a contract is made which relates to  
19 | goods or services which are materially different, either in  
20 | nature or quantity, from those originally requested by the  
21 | consumer.
- 22 | (1B) For the purposes of subsection (1A)(a) a visit is not solicited by  
23 | virtue of the contact or visit being preceded by advertising  
24 | material which the trader has delivered, or has caused to be  
25 | delivered to the —
- 26 | (a) consumer’s home;
- 27 | (b) consumer’s place of work; or
- 28 | (c) home of another individual.
- 29 | (1C) For the purposes of this section —
- 30 | “advertising” means any form of representation which is made in  
31 | connection with a business in order to promote the supply or  
32 | transfer of a product or service; and
- 33 | “contact” includes (without limiting the breadth of that word) contacting  
34 | by telephone or by means of an electronic communication within  
35 | the meaning of section 12 of the *Electronic Transactions Act 2000*. <sup>22</sup>

## 36 | 19 Section 57A amended – contracts to which this Part applies

- 37 | After section 57A(4) insert —
- 38 | <sup>23</sup>(5) This Part does not apply to a relevant contract made in the  
39 | circumstances set out in section 46(1)(c). <sup>24</sup>

1 **20 Section 60 amended and associated consequential amendment –**  
 2 **interpretation: general**

3 (1) Section 60(1) is amended as follows –

4 (a) omit the definition of “the Board”.

5 (b) for the definition of “officer” substitute –

6 **“officer”** means a person authorised in writing to assist OFT in  
 7 discharging its functions under this Act; **”** and

8 (c) after that definition insert –

9 **“OFT”** means the Isle of Man Office of Fair Trading; **”**.

10 (2) Consequent upon subsection (1)(a) and (c), for “the Board” in every other  
 11 place where that phrase occurs in the *Consumer Protection Act 1991*  
 12 substitute **“OFT”**.

13 **21 Section 62 amended – self-incrimination and legal professional**  
 14 **privilege**

15 For the marginal note immediately preceding section 62 substitute –

16 **“62 Self-incrimination and legal professional privilege”**.

17 **22 New section 62A – application to the Island of certain subordinate**  
 18 **legislation and power to amend the Consumer Protection Act 1991**

19 After section 62 insert –

20 **“62A Power to amend Act and apply certain subordinate legislation of**  
 21 **the United Kingdom**

22 (1) OFT may by order –

23 (a) modify this Act in such manner as appears to it expedient  
 24 for the purpose of making this Act correspond (subject to  
 25 such modifications as it considers appropriate) with the  
 26 corresponding legislation of the United Kingdom;

27 (b) apply to the Island as part of the law of the Island, subject  
 28 to such modifications as may be specified in the order, any  
 29 subordinate legislation of the United Kingdom concerning  
 30 matters relating to consumer protection.

31 (2) An order under subsection (1) may include provision repealing or  
 32 amending any provision of an enactment which is inconsistent  
 33 with, or is unnecessary or requires modification in consequence  
 34 of, the order or any subordinate legislation of the United  
 35 Kingdom applied to the Island by the order.

- 1 (3) An order under subsection (1)(b) may do all or any of the  
2 following —
- 3 (a) specify the modifications subject to which the subordinate  
4 legislation of the United Kingdom applies to the Island;
- 5 (b) set out the subordinate legislation of the United Kingdom  
6 applied by the order, incorporating the modifications  
7 subject to which it applies to the Island;
- 8 (c) in the case of an order applying subordinate legislation of  
9 the United Kingdom which amends previous subordinate  
10 legislation of the United Kingdom applied to the Island, set  
11 out the previous legislation so applied as amended,  
12 incorporating the modifications subject to which that  
13 legislation applies to the Island.
- 14 (4) In this section references to legislation of the United Kingdom  
15 includes references to legislation applying in any part of the  
16 United Kingdom. **22**.

17 **23 New Schedule 2B inserted – meaning of “excepted contract” for the**  
18 **purposes of section 46**

19 After Schedule 2A (list of terms which may be regarded as unfair) insert —

20 **23 Schedule 2B**

21 **MEANING OF “EXCEPTED CONTRACT” FOR THE PURPOSES OF**  
22 **SECTION 46**

23 [SECTION 46(2)]

24 **1 Meaning of “excepted contract”**

25 A contract is an excepted contract if it is within any of the following  
26 paragraphs.

27 **2 Land transactions**

- 28 (1) A contract is within this paragraph if it is one —
- 29 (a) for the sale or other disposition of land, or any estate or  
30 interest in land (including a charge on land);
- 31 (b) to finance the purchase of land;
- 32 (c) for a bridging loan in connection with the purchase of land;  
33 or
- 34 (d) for the construction or extension of a building or other  
35 erection on land.

1 In paragraph (a), “charge on land” includes any security charged  
2 on land.

- 3 (2) But a contract is not within this paragraph if it is a contract for the  
4 supply of goods and their incorporation in any land or a contract  
5 for the repair or improvement of a building or other erection on  
6 land, where the contract is not financed by a loan secured by a  
7 land mortgage.

8 **3 Deliveries by roundsmen**

9 A contract is within this paragraph if it one for the supply of food, drink  
10 or other goods intended for current consumption by use in the  
11 consumer’s household and supplied by regular roundsmen.

12 **4 Routine catalogue sales**

- 13 (1) A contract is within this paragraph if it is one for the supply of  
14 goods or services which satisfies all the conditions in  
15 subparagraphs (2) to (4).

- 16 (2) The condition is that the terms of the contract are contained in a  
17 trader’s catalogue which is readily available to the consumer to  
18 read in the absence of the trader or his representative before the  
19 conclusion of the contract.

- 20 (3) The condition is that the parties to the contract intend that  
21 continuity of contact will be maintained between the trader or his  
22 representative and the consumer in relation to the transaction in  
23 question or any subsequent transaction.

- 24 (4) The condition is that both the catalogue and the contract contain  
25 or are accompanied by a prominent notice indicating that the  
26 consumer has a right —

27 (a) to return to the trader or the trader’s representative goods  
28 supplied to the consumer within the period of not less than  
29 14 days from the day on which the goods are received by  
30 the consumer; and

31 (b) otherwise to cancel the contract within that period without  
32 incurring any liability, other than any liability which may  
33 arise from the failure of the consumer to take reasonable  
34 care of the goods while they are in the consumer’s  
35 possession.

36 **5 Insurance contracts**

37 A contract is within this paragraph if it is a contract of insurance.



1  
2  
3  
4

**6 Low value contracts**

A contract is within this paragraph if it is one under which the total payments to be made by the consumer do not exceed such amount as may be prescribed. **22**.

IN THE KEYS

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**CONSUMER PROTECTION (AMENDMENT) BILL 2015**

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A **BILL** to amend the Consumer Protection Act 1991 in respect of cold calling and the cancellation of certain contracts; and for connected purposes.

Approved by the Council of Ministers  
for introduction in the House of Keys.

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MR D J QUIRK

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DECEMBER 2015