



INTERPRETATION BILL 2014

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, HM Acting Attorney General. They do not form part of the Bill and are to be read in conjunction with it.

INTRODUCTION

The main purposes of the Act resulting from the Bill (in these notes called “this Act” for ease of reference, and without implying that the Bill will necessarily pass) are to:

- (a) consolidate and re-enact certain existing legislation in respect of interpretation of statutes;
- (b) state what forms part of, and to state basic rules for interpreting, Manx legislation;
- (b) make generic provisions about functions and powers for Manx legislation and non-legislative public documents;
- (c) shorten Manx legislation by avoiding the need for repetition; and
- (d) promote consistency in the language and form of Manx legislation.

This Act consolidates and re-enacts the Interpretation Act 1976 (the “1976 Act”) and the Statutory Time, et cetera, Act 1883 and the Fees and Duties Act 1989 (the “1989 Act”). However, this Act is more than just a modernised and consolidated redraft of those Acts. It contains other measures to help simplify and streamline legislation and its drafting, explained in detail below. Provisions that re-enact (in whole or part) are shown in the table of derivations at the end of these notes. However, those derivations are merely indicative and are not intended for the interpretation of any provision. In many cases, re-enacted provisions have been improved and supplemented. Also, the drafting has been modernised.

This Act is intended to work together with the Act resulting from the Legislation Bill 2014 (the “Legislation Act”), which consolidates and re-enacts many other existing Acts. The broad divide between the Legislation Act and this Act is that the Interpretation Act deals with interpretative and empowering provisions, whereas the Legislation Act deals with the actual mechanics of legislation (that is, the making, amendment, repeal and publication of legislation of all descriptions). The reason for presenting this material in 2 distinct Acts is that the Legislation Act tends to be more

of interest to drafters of legislation and the legal community than the Interpretation Act. However, this is a division of convenience only. As clause 5 of this Act states, both Acts need to be regarded as a whole. To help users, important links between the 2 Acts are noted.

PART 1 – INTRODUCTORY

1. *Clause 1* states this Act's short title.
2. *Clause 2* provides for commencement of this Act to be by order of the Council of Ministers, except for clauses 1 and 2 which commence on the announcement of Royal Assent to Tynwald.
3. *Clause 3* sets out this Act's main purposes, mentioned above.

Reasons for, and the utility of, the purpose provision:

There are 3 reasons for the clause. Firstly, it gives a general introduction to the scope and intent of this Act and its concepts. This will be of particular help to lay readers as it tells them, at the beginning, broadly what this Act does.

Secondly, since the 1993 House of Lords decision in *Pepper v Hart*,¹ (a judgment accepted by the Deemsters as applicable to Manx statutes, albeit with some *caveats*)² a purposive approach to statutory interpretation has been preferred to a purely textual one in cases of doubt or ambiguity. This has increased the desirability of Tynwald stating in Acts what their purpose is.

Thirdly, it bolsters the approach taken (for example) in clause 98 of general regulation-making powers for the purposes of this Act.

The purposes are only aspirational statements about what the legislation is intended to achieve. The text of this Act facilitates these outcomes, but does not achieve them in itself, because obviously the construction of statutes is ultimately a matter for the judiciary.

4. *Clause 4* provides that this Act is not intended to be a complete code for interpreting Manx legislation. Saying this Act is not a "code" is important: other consistent laws and rules about statutory interpretation will still apply.

Other Statute laws about interpretation:

Subsection (2) gives the most important example of a law which still applies: section 3(1) of the Human Rights Act 2001. The effect of section 3(1) is that so far as possible Manx legislation is to be interpreted consistently with Convention rights applied under that Act.

Another less significant example is section 1 of the General Registry Act 1965. That section will continue to define "General Registry" for the whole Statute book (see the note to the definition of that term in Part 1 of the Schedule to this Act).

Main non-statutory laws and rules of general application

¹ [1993] AC 593. See esp. Lord Griffiths speech at 617.

² For example, *Jones v R* [1999-01] MLR 369 at 381.

The following general legal principles will still apply –

- (a) syntactical maxims about presumptions used by courts, for example:
 - *noscitur a sociis* (the meaning of a word or phrase is to be derived from its context);
 - *ejusdem generis* (general matters are constrained by reference to specific matters);
 - *expressio unius est exclusio alterius* (an express reference to one matter indicates that other matters are excluded);
 - *generalia specialibus non derogant* (if there is a conflict between general and specific provisions, the specific prevails); and
 - (b) legal assumptions made by courts requiring express words or a necessary implication to displace, for example:
 - legislation is not intended to have retrospective or extraterritorial effect or to alter common law or proprietary rights;
 - the Crown is not bound by statutes and that penal sanctions are not intended for the Crown;
 - legislation does not oust the jurisdiction of the courts; and
 - (c) the presumption before the Manx courts that House of Lords decisions about when Explanatory Notes and other extrinsic material may be used as an aid to interpretation (see *Pepper v Hart* and *Westminster City Council v. National Asylum Support Service*³).
5. *Clause 5* provides that this Act is to be read together with the Legislation Act. Both Acts are to apply to all Manx legislation (that is, Acts and statutory documents) and to public documents that are not legislative in character (for example, court orders or judgments or a warrant) (called “non-legislative public documents”).
- Subsection (3) provides that, subject to clauses 6 and 7, all such documents are taken as having been made on the basis that both Acts apply for them. This means that they do not need to be positively applied to operate. Under clause 99, which makes transitional provision about the application of this Act, it applies to existing Manx legislation and non-legislative public documents (subject to some exceptions), but only prospectively.
6. *Clause 6(1)* is an exception to the rule under clause 5. This Act is displaced by a contrary intention under the provision in question, which can be in whole or part. However, subsections (2) and (3) provide that just because this Act and the provision in question covers the same topic does not of itself mean displacement, so long as this Act and the provision being interpreted can still operate together.

³ [2002] 1 WLR. 2956.

7. *Clause 7* is an exception to clause 5 for Parliamentary enactments applied by Manx legislation. They are to be interpreted under relevant Parliamentary enactments about interpretation, but with necessary changes for effective operation in the Island. Subsection (4) clarifies that this rule applies only for Manx legislation and not for non-legislative public documents.
8. *Clause 8* introduces the definitions specific to this Act set out in Part 2 of the Schedule (Part 1 of the Schedule about common defined terms for all Manx legislation is introduced later). The clause also provides that in this Act a reference to a function includes a power and that a reference to performing a function includes exercising a power.

PART 2 – BASIC DEFINITIONS AND REFERENTIAL PROVISIONS

Division 1 – Acts and provisions

9. *Clause 9* defines “Manx legislation” as Acts of Tynwald including this Act itself, statutory documents, and UK legislation and other laws that apply to the Island by virtue of an Act of Tynwald or a statutory document. It also defines “statutory provision” as meaning a provision of Manx legislation.
10. *Clause 10* defines “Act” to mean an Act of Tynwald. It also provides for a reference in a Manx enactment to an Act by its unamended short title to include a reference to the Act by any amended short title.
11. *Clause 11* defines “Manx enactment” as a whole Act or a provision of an Act. References to an enactment are to the enactment as amended or re-enacted.

Default position that references cover public documents as well:

Clause 11 also creates a safe default position that a reference to a Manx enactment includes a reference to any public document in operation under the enactment. This will help to clarify and shorten external references to Acts etc. For example –

Act A empowers a statutory document under it to create a licensing regime. Act B is to be enacted to prohibit certain conduct, except for anything authorised under any sort of such licence. All Act B needs to say is “except under a licence under Act A”. The reference to “Act A” includes licences granted under any such statutory document. This avoids the need to refer to a particular statutory document in operation when Act B is enacted.

12. *Clause 12* defines “provision” to mean words or anything included in the text of Manx legislation.
13. *Clause 13* defines “Parliamentary enactment”, provides that references to them include a reference to any instrument of a legislative character in operation under them and provides that a reference in an Act to any UK legislation is a reference to that legislation as it was in operation when the provision containing the reference commenced.
14. *Clause 14* provides that a reference to an EU instrument amended, extended or applied by another instrument is a reference to the instrument as so amended, extended or applied. This is a re-enactment of section 1B of the 1976 Act.

Division 2 – Public documents

15. *Clause 15* defines “public document” to mean a document made under an Act, whether or not the document is legislative in character.

Statutory documents are a subset of “public document”:

“Public document” is the broad all-encompassing term, of which statutory documents constitute a subset. It is therefore important to bear in mind that the term “public document” includes statutory documents. However, under subsection (2), the Council of Ministers is empowered to exclude any documents from being a public document, and hence exclude them from the ambit of this Act or any other general provisions about public documents.

16. *Clause 16* defines “statutory document” and its “responsible authority”.

Defects in repealed legislation remedied:

Neither the Filing of Statutory Documents Act 1937 (being repealed under the Legislation Act) nor the 1976 Act defined “statutory document”. The scope of that term (and therefore the many provisions referring to it) has always been unclear.

Under the clause, the key aspect of a statutory document is that it must be legislative, the *indicia* for which are given in subsection (2). However, under subsection (3), the Council of Ministers is empowered to exclude documents otherwise falling within the definition from being a statutory document, and hence exclude them from the ambit of this Act or any other general provisions about statutory documents. Such orders are subject to prior Tynwald approval.

17. *Clause 17* defines “non-legislative public document”. These are public documents other than statutory documents. This is the residual category of any public document that is not legislative. Examples of such are given in clause 15, that is, a court judgment or warrant, and documents (not excluded by an exemption order) that are machinery, drafting or formal in nature (for example, a statutory form). This category is needed as a drafting aide so that these documents can be briefly described with clarity in other legislation.
18. *Clause 18* defines “authorising legislation” for a public document. For statutory documents, it is the Act under which the document is made. Generally, this is another Act. However, in some cases this Act itself is the authorising legislation. The most important is orders made under Part 5, Division 4 (general fee power).

PART 3 – LEGISLATIVE TEXT

Division 1 – Introductory

19. *Clause 19* sets out what the Division provides for; that is, what forms the “text” of Manx Legislation.

Reason for change from “part of” to “text”:

As a result of queries in response to consultation on the draft Bill, it was decided to use the concept of the actual “text” rather than what was or not “part of” legislation. If words are physically there, it is counterintuitive and confusing to the ordinary reader to speak of them “not being there”. The concept of text more easily allows for material to “be there” but not be legislative in effect.

Division 2 – The text of an Act or statutory document

20. *Clause 20* gives the general proposition that the text of Manx legislation is all material from the start of the first section to the end of the last one, or if there is any Appendix or Schedule, the last one.
21. *Clause 21* gives the additions to what is generally the “text” under clause 19. The additions are any preamble, enacting words or heading in them.
22. *Clause 22* gives the exclusions to what would otherwise normally be in the “text”, namely the long title, marginal citations, derivations, footnotes, reprint notes and (for amending legislation) material differentiating amendments from the rest of the text typically a marginal line alongside the text of the amendment itself, or italicisation of uncommenced provisions in reprints). The effect is that the starting point for statutory interpretation is that those excluded things must be treated as if they were not there.

Long titles no longer in text:

The major departure from the existing law is long titles. Their exclusion was decided because their function is for legislative procedure during the passage of the Bill, and hence purely ephemeral. For this reason, it has been Parliamentary Counsel’s practice in the United Kingdom not to amend long titles.

Despite this, courts have still considered long titles to be “part of” the Act and hence able to be used to discover its purpose (see the discussion in example 2 to clause 99(2)). However, this causes a tension with how the courts use them if, because of amendments, they later become incorrect or misleading.

It was considered better to exclude them from the text rather than require each amending Act to ensure the long title is “up-to-date” for the Act as amended. Also, the function of stating an Act’s purpose is better served by an appropriate purpose provision, if one is necessary.⁴

Division 3 – The text of certain provisions

23. *Clause 23* includes a heading in the text of the provision to which it relates.
24. *Clause 24* is about examples and notes and their status in legislation.

Benefits of the appropriate use of examples:

⁴ This is supported by GC Thornton, *Legislative Drafting* Fourth Edition, Butterworths 1996, at 193-4.

The use of examples in legislation has also been supported judicially.⁵ However, although they have been in use in Manx legislation since the 19th century,⁶ their use has been constrained in the past because of concerns that they may limit the provisions exemplified.

Thornton on *Legislative Drafting* (1996) commended the judicious use of examples, notes and other supplementary drafting aids. On examples, he said:

*The use of examples is a tool for communication the value of which is being increasingly recognised. ... An easily understood example can provide an insight that is less easily understood in a complex technical provision. Examples are particularly useful in transforming difficult material to terms that are relevant to and easily understood by non-legally trained users.*⁷

Clause 24 removes the basis for any concerns about examples. It provides that an example of or note to a provision is part of the provision's text and that they not exhaustive and may extend the provision's meaning. Like the rest of this Act, this is subject to any contrary intention expressed in the provision itself.

For some of the complex propositions within this Act and the Legislation Act, examples are the best way to communicate how the provisions will work in practice, no matter how simply the provision itself is drafted. This is important as the Acts will be used by non-lawyers (for example, those in Departments drafting statutory documents). For instance, the example to subsection (1) itself helps the ordinary reader form a concrete picture on the operation of the proposition the subsection makes as well as of the ramifications of that proposition.

Drafting benefits:

The clause will also facilitate better drafting by allowing notes and examples to be placed with confidence after the provision to which they relate. Compared with parenthesising them in the text of the same sentence, this approach enables the body of exemplified or noted provisions to be shorter. Also, ideas are able to be presented more logically. The main proposition can come first and the detailed example second. For instance, subsection (1) and its example are much more easily digested by the reader compared with being inserted into the body of the subsection in brackets.

25. *Clause 25* provides for the status of penalties within sections in which they appear. A penalty is part of the section (and generally any subsection it appears after) to which it relates, even if there is an example or note in between the end of the body of the section and the penalty.

⁵ See Lord Denning's support in *Escoigne Properties Ltd v IRC* [1958] AC 549 at 566-7 for legislative drafters using examples in appropriate cases.

⁶ See, for example, section 35(1) of the Bills of Exchange Act 1883. For more recent instances see section 5(5) of the Legitimacy Act 1985, section 15(2)(a) of the Administration of Justice Act 2008 and section 6 of the Criminal Justice (Witness Anonymity) Act 2011.

⁷ GC Thornton, *Legislative Drafting* Fourth Edition, Butterworths 1996, pp. 158-165.

This rule will not apply if the penalty is expressed in a way that it only relates to another provision or to another provision as well. An example of such an expression would be a section of 4 subsections with a penalty at the end of subsection (4) that reads: “Maximum penalty for subsections (2) to (4) ...”. The words saying what provisions the penalty applies to means that that the penalty is not just part of subsection (4), but the clause still operates so that (4) is still part of the section as a whole.

The clause is primarily intended as an aid for clarity and brevity in the drafting of amending legislation. If a subsection has a penalty at the end and the subsection is replaced, the replacement replaces the penalty as well without any need to spell that out.

The clause also facilitates the simplified way of expressing penalties under clauses 56 and 57. By allowing penalties to be placed with confidence after the provision to which they relate, the body of provisions creating offences will be able to be expressed more simply and with less clutter. For an example of this approach, see clause 54(2) (liability of officers of bodies corporate).

26. *Clause 26* is about provisions associated with a heading to a Schedule that refer to the provision in the body of the legislation that “sets up” the Schedule. In drafting parlance, they are called an “authorising provision”. An example of an authorising provision is the words “[Sections 8 and 28]” at the head of the Schedule to this Act.

The clause provides that authorising provisions are part of the heading rather than the body of the Schedule. This will help simplify amendments. So, for example, a section replacing the heading to the Schedule to this Act would automatically replace the words “[Sections 8 and 28]” without any need to spell that out.

PART 4 – INTERPRETATION AIDS

Division 1 – Introductory

27. *Clause 27* applies the Part to all Manx legislation to “set the scene” that the Part is to apply to all Manx legislation and to avoid repeating that message. However, clause 47 (which defines “Tynwald day”) will also to apply to non-legislative public documents and all other documents.

Division 2 – General Aids

Subdivision 1 – Common terms and references

28. *Clause 28* introduces the general definitions for all Manx legislation, set out in paragraph 1 of the Schedule. That paragraph contains a complete list of such definitions in the Act. Those that are in the body of this Act are signposted with the help of the new definition “see” to shorten references to definitions. For example: ‘ “Manx legislation” see section 3(a)’ tells the reader to refer to the definition of that term in section 3(a).

Need for definitions of general application:

Their importance is that such terms can be used in Manx legislation without the need to repeat commonly understood definitions (assuming that a special definition is not needed). Part 1 includes all of those in the 1976 Act and some additions (for example, “affirmative Tynwald procedure”, “negative Tynwald procedure”, “personal representative”, “proceeding” and “see”).

The additions are all terms that are fairly intuitively understood when in context. They do not need individual treatment in Acts unless the term is to mean something unusual. Some have been updated or modernised. For example, “writing” now has digital information at the forefront to reflect the contemporary importance of that form of information. All are terms that will be of general application to a reasonably broad range of legislation.

Defined terms relating to legislation:

Most crucially, the term “subordinate legislation” is now defined so it can be used with clarity (see the discussion for clause 16). The terms “Manx legislation” and “Parliamentary enactment” will help simplify the drafting of legislation. The superseded term “enactment” previously covered both as well as subordinate legislation. This has led to much confusion and lengthy qualification as to which was meant. Legislation will now be able to be drafted more succinctly and precisely by relying on these terms.

Definition of “person”:

This definition differs from the one under the 1976 Act. The 1976 Act definition included bodies unincorporate (for example an unincorporated club itself, as opposed to its members).

At common law, an unincorporated body of persons has no separate legal existence apart from the members of which it is composed.⁸ Therefore, without further elaboration, a reference in an Act to a “person” only meant an individual or a body incorporated by law (for example, a company or Department).

There are differences in the Island’s Statute Book in the reliance on the 1976 Act definition. Most Acts refer to “person”, but few specifically mention unincorporated bodies. Some specifically exclude them. Some provisions imposing offences rely on the existing definition, but then go on to deal with the issue of who is to bear any penalty imposed (an unincorporated body cannot be imprisoned, for example). However, nearly all provisions creating an offence are silent on this point. The case law in England and Wales on provisions referring to “person” as defined similarly to the 1976 Act has interpreted each in its context, with differing results. So, for example, in a provision about licensing the performance of personal services, non-individuals were held not to be included despite the definition.⁹

Because of this and because including unincorporated bodies in “person” is counterintuitive, it is considered that the better starting point for future drafting is only include individuals and incorporated bodies in “person”.

⁸ *Eastbourne Town Radio Cars Association v Customs and Excise Comrs.* [2001] 2 All ER 597.

⁹ *Haringey LBC v Marks & Spencer PLC, et al.* [2004] 3 All ER 868.

This will have 2 benefits. Firstly, clearer drafting and less contention about the meaning of the reference: if it is intended to include unincorporated bodies, that intention will need to be made clear. An example of this approach is clause 60 (service of documents on body corporate or association), which clearly applies to unincorporated bodies. Secondly, if, in a particular case, “person” is to include unincorporated bodies, the issue of who is to be prosecuted and who is to bear any penalty will need to be spelt out so the responsible individuals are clearly identified.

Under clause 99 (operation of Act for existing Manx legislation and other documents), this change will only have effect for future events and will not affect the law for past events (see, in particular, the example to clause 97(1)).

29. *Clause 29* provides that a definition applying to Manx legislation applies to the whole of it, but if expressed to be for a particular provision it does not apply to another provision. Examples of the operation of the clause are:

1. *The Schedule to the ABC Act 1999 defining terms for the whole of that Act a “definition Schedule” includes the definition: “x” see section 3 of the XYZ Act 1998. There is nothing in the ABC Act 1999 indicating the intended application of the definition of x. The definition of x in the XYZ Act 1998, s 3, therefore, applies to the entire ABC Act 1999.*
2. *In an Act, the word “z” is defined in a definition Schedule. The relevant definition provides, in part, that: “z”, in Part 4 (registration of cats), means The definition of z applies only to Part 4.*
3. *In Part 6 of an Act (which is headed “Part 6 — Complaints”), the word “a” is defined in section 50. The section is not divided into subsections but contains a number of definitions. Section 50 begins with the words “In this Part:”. However, the Schedule of definitions for the whole Act contains the following definition: “a” see section 50. The definition of “a” applies to the entire Act (compare with example 2).*

30. *Clause 30* provides that definitions apply except to the extent the context or subject matter otherwise indicates or requires. The purpose of the provision is to affirm the usual approach taken by the courts that words always need to be read in context. Even though a word is defined, interpreting it is not just a matter of copying in the definition in replacement of the term and ignoring everything else around it. Viscount Simonds has noted the fallacy of the latter of approach: it is like reading the passage of a novel out of context.¹⁰

31. *Clause 31* provides that definitions extend to other parts of speech, grammatical forms of, and derivations from or associated terms with, a defined term and have corresponding meanings.

Extension to clarify derivations are covered by definitions:

The inclusion of derivations and associated terms is an innovation. They were not dealt with under the 1976 Act. Previously, the application of definitions to derivations and associated terms was unclear. The clause removes this uncertainty so that the starting point will be that a definition will so apply, depending on the context.

¹⁰ *Attorney General v Prince Ernest Augustus of Hanover* [1957] AC 436 at 461.

32. *Clause 32* provides that a reference to the reigning Sovereign at the time Manx legislation commences is a reference to the Sovereign for the time being and his or her predecessors and his or her heirs and successors.
33. *Clause 33* provides that words indicating a gender include other genders. This was in the 1976 Act.
34. *Clause 34* provides that words in the singular includes the plural and *vice versa*. This presumption is heavily relied on by drafters of legislation and legal writers. The clause has a similar universality to that of clause 33. It overcomes the verbiage that would result if the clarification were necessary. Like clause 30, this presumption is still subject to the context.

The Privy Council has stated the principle to be applied as follows:

... the mere fact that the reading of words in a section suggests an emphasis on singularity as opposed to plurality is not enough to exclude plurality. Words in the singular will include the plural unless the contrary intention appears. But in considering whether a contrary intention appears there need be no confinement of attention to any one particular section of an Act. It must be appropriate to consider the section in its setting in the legislation and furthermore to consider the substance and tenor of the legislation as a whole.¹¹

35. *Clause 35* deals with words referring to persons generally that do not use the actual word “person” but are commonly understood as being a reference to persons, either natural or incorporated. Examples are: “anyone else”, “party” or “someone else”. The clause raises a presumption that such words include bodies corporate as well as individuals.

The purpose of the clause is to simplify legislation by avoiding the need to specifically spell out “and bodies corporate” in each instance. The more common scenario by far is that bodies corporate are meant to be included.

Like clauses 30 and 34, this presumption is still subject to the context. So, for example, if the legislation in question is about something that only a natural person can physically do and cannot be done by a body corporate through its officers or representatives, this will weigh against the presumption. Also, if the only penalty for an offence is imprisonment, this will weigh against the presumption as bodies corporate cannot be imprisoned.

36. *Clause 36* provides that if “may” is used for a function, it means that the performance of the function is discretionary. This is merely declaratory of the position at common law. It means that if, for example, a court is being given power to grant certain relief, if “may” is used then the power is not obligatory and that court has the discretion to grant the relief as it sees fit.
37. *Clause 37* deals with “shall” in the same context. Unlike “must”, “shall” is inherently ambiguous on its own.¹² That word depends on analysis of its

¹¹ *Blue Metal Industries Ltd v Dilley* [1970] AC 827 at 846.

¹² Under the Oxford English Dictionary, “shall” has 4 possible meanings. Which one applies depends entirely on the context in which the word is used. For the problems with “shall”, the use of “may” and “shall” and the preference for “may” (for discretions) and “must” (for obligations) rather than “shall”, see the discussion in Thornton at 103-4.

context to discern which of its 4 possible meanings it was meant to have. The clause avoids this problem by setting the basic rule that, in the context of a function, “shall” has an obligatory meaning.

38. *Clause 38* is an interpretative provision for common names to facilitate their use in legislation (rather than just by scientific names) in cases in which the common name by itself is sufficiently clear.
39. *Clause 39* defines the meaning of “commencement” for Manx legislation or parts of Manx legislation (that is when it comes into operation). This means that expressions such as “when this section comes into operation” can be shortened, but with the same meaning. Note, however, that the general machinery provisions for how and when Manx legislation commences are contained in the Legislation Act, Part 2, Division 2 (for Acts) and Part 3, Division 3 (for statutory documents).
40. *Clause 40* provides that a reference to repealed legislation is a reference to that legislation as it was in operation immediately before it was repealed. However, for legislation applied from the UK it is a reference to the legislation as it was in force when the provision applying it commenced.

The purpose of the clause is largely to facilitate cross-references to repealed provisions by “keeping them alive” for that purpose, subject to any relevant transition under the default savings and transitional provisions in the Legislation Act (see Part 4, Division 4 of that Act).

Subdivision 2 – References

41. *Clause 41* provides that a reference to a provision of Manx legislation is to everything included within that provision, including the start and end of the provision (relying on the presumption in clause 34 that “provision” includes the plural).

Purpose:

The clause is intended largely as a clarifying aid for amending legislation. It provides for the intuitive result. In doing so, it saves repetition and clarification (for example, by having to say in each case “inclusive” or spelling out each and every instance amended within the same provision or a series of provisions).

It will be relied on in conjunction with clause 41 of the Legislation Act (which provides that a specified amendment must be made wherever possible). So, for example, if in a Schedule amendment, the word “dog” is intended to replace “cat” globally (i.e. in each and every instance) in a series of sections numbered 10 to 20 that run over 2 Parts, that will be able to be done by saying: ‘In sections 10 to 20, for “dog” substitute “cat”’. Sections 10 and 20 will be covered. It will not matter that there is a Part heading in between and each individual occurrence will not need to be laboriously spelt out. Also, if “dog” appears in the intervening Part heading, the amendment would be effective for it without the need to spell out the heading.

Update to reflect modern electronic practices:

The rationale for the shortening is that amendments have long since been drafted and “fed in” electronically. If a global amendment to a provision is desired, there is no longer any need to spell out to the person preparing the relevant reprint each and every instance in the command location. Provisions being amended are now searched electronically during both of these stages.

Further, doing so may leave the reader confused about whether or not a global change is intended. Also, if a global amendment is intended, spelling out each and every instance leaves potential for textual error if any are missed during the drafting process. The default position will be that specific instances are only spelt out if the intention is *not* to make a global amendment.

42. *Clause 42* provides for default rules for identifying references to provisions or part of a provision. The default position is the intuitive one. Its purpose is to shorten Manx legislation by removing the need for explanatory references (for example, by having to repeat “of this Act” if a Part etc. is mentioned or “of this section” if a subsection is mentioned). Also, if the default position is intended, including such references only serves to distract the reader.

Subdivision 3 – Other general aids

43. *Clause 43* preserves the existing position by providing that Manx legislation applies to the entire Island. Its purpose is to avoid lengthening legislation by having to spell this out. Application of legislation to the entire Island is the norm rather than the exception. Like the other interpretative provisions, this can be displaced by express words (for example, if a particular provision is expressed to only apply to the Borough of Douglas).
44. *Clause 44* provides that Manx legislation continues to have effect and may be applied from time to time as each occasion requires (called “always speaking”). This almost universal provision means that the starting point is that the meaning of words in Manx legislation is ambulatory, according to their current meaning from time to time, rather than just when the Act was enacted.

Purpose:

The approach of the courts before such provisions was that words were to be construed according to their natural meaning as at the date of enactment. This rule used to cause problems with terms used in older legislation (for instance in cases in when things mentioned had been superseded by new technology and other changes). The test developed by the courts on the “always speaking” statutory change to this is: Would the legislature, in the particular context, have intended to include the activity or thing (for example, a video or DVD in a reference to “motion picture”) had it known about it.¹³ *Clause 44* is intended to operate on this basis.

45. *Clause 45* provides that changes in drafting practices are not of themselves to suggest that a different meaning is intended. The purpose of this provision is to facilitate modern plain English drafting without inadvertently changing its

¹³*R v Ireland* [1998] AC, 147 at 158 per Lord Steyn.

substantive effect by updating older forms of legislative expression or updating legislative structure.

This is particularly important for amendments to older Acts. The problem addressed is that courts in interpreting legislation have generally felt compelled to find that just because different words are used, the legislature must have intended a different meaning. Without the clause, an assumption of consistency presents an obstacle for the inclusion of modern legislative expression or structure in older Acts without replacing the Act.

Subsection (2) sets the starting point that if different words express the same idea, they must not be regarded as different only because different words are used or the provisions are structured differently. An example is:

A definition section for an older Act has the old form of expression for definitions: "A" has the meaning assigned to it in accordance with section B. An amending Act inserts a new Part with a definition section for the new Part which uses the current drafting practice formulation: "'C" see section D' (relying on the definition of "see" under Part 1 of the Schedule to this Act). Unless there is something in the context to the contrary of provisions in which the defined terms are used, a court must not regard "meaning assigned to in accordance with" and "see" as having different meanings.

Subsection (5) provides that regard must be had to the context and history in deciding whether ideas are different. If different words are used in a provision as enacted that will be a factor for them having a different meaning (but not necessarily so). If different words are used in a provision as originally enacted and the provision as later amended, that fact will be a factor in favour of them having the same meaning if the words express the same idea. The older the original enactment the stronger this factor will be.

The following are examples for how subsection (5) will be of use:

1. *Current drafting practice prefers the shortest possible connecting phrase that correctly communicates intended meaning. "For" and "about" are preferred to "in connection with", "with respect to" and "in relation to". If a 19th century Act uses "with respect to" in one provision and a modern amendment that inserted another provision uses "for" in an analogous context, there will nonetheless be a strong presumption that a different meaning was not intended (subject always to the context dictating otherwise).*
2. *Because of the inherent ambiguity of "shall",¹⁴ current drafting practice is to prefer "must" if an obligation is intended (rather than depend on the "fix" under clause 37). If a 19th century Act uses "shall" in the context of an obligation in one provision and a modern amendment that inserted another provision uses "must" in the same sort of context, there will be a strong presumption that a different meaning was not intended.*

Division 3 – Distance and time

46. *Clause 46* provides that distance is to be measured in a straight line on a horizontal plane.
47. *Clause 47* makes provision for references (in any document) to Tynwald Day or the special sitting of Tynwald Court to cover when the sitting is to take place in a particular year and any day to which the Court may be adjourned.

¹⁴ See the discussion in the note for clause 36.

48. *Clause 48* provides rules for working out periods of time generally, which are the same in operation as those under the 1976 Act. However, subsection (6), which is reflective of the case law, has been included to remove doubt. It provides that a reference to a number of days between 2 events does not include the days when the events happen. An example of how subsection (6) works is:

A provision about an application requires it to be served on certain interested parties before 2 working days before the day it is to be decided (the “return date”). If the return date is a Friday, that day and the day the application is served are not counted in working out the 2 days. For service to be valid, the application must be served on or before the Tuesday before the return date.

49. *Clause 49* provides for the exclusion of non-working days for certain requirements to do something on or within a certain period of time, which has the same operation as under the 1976 Act.
50. *Clause 50* provides that if something must or may be done but no time is provided for doing it, the thing must or may be done as soon as reasonably possible and as often as needed. This is to the same effect as the 1976 Act.
51. *Clause 51* provides that if an act must be done, the obligation continues even if the time for doing it has passed. This new provision prevents an argument that once the deadline for an obligation has been reached, the obligation ceases and therefore, for example, any offence for contravening the obligation no longer applies.

Division 4 – Offences and penalties

52. *Clause 52* provides that if an offence is created by a provision of Manx legislation it is only an offence if committed after the provision commences. The same rule applies to any increase in penalty. This reiterates the common law presumption against retrospective operation.
53. *Clause 53* provides for the charging of continuing offences, which is facilitated by the starting point under clause 51 that offences with a “deadline” do not cease merely because the deadline has passed.
54. *Clause 54* makes provision for the liability of officers of bodies corporate. This is a common provision in most principal Acts, although there are variations. Its purpose is to streamline provisions by enabling principal Acts to rely on the standard offence. Importantly, under clause 52 and transitional clause 97, this rule is not retrospective. It will only apply for things that happen on or after commencement.
55. *Clause 55* provides for the application of a standard scale of fines for offences which are dealt with summarily. It also confers power on the Council of Ministers, by order subject to Tynwald approval, to increase the standard scale to reflect any change in the value of money since the Act came into operation or the last order under the clause (if later). It standardises all levels of fine (other than daily ones) except where a maximum of more than £5,000 is already prescribed when this Act comes into operation.

56. *Clause 56* enables a shorthand reference to a penalty to be used in future legislation by use of the words “maximum penalty” followed by a stated penalty.

The clause also clarifies 2 things. Firstly, if no amount is stated for the fine, there is no limit on the amount of the fine that may be imposed. Secondly, if more than one penalty is stated and they are joined by “and” or “or”, the word means the penalties may be imposed cumulatively or alternatively no matter which of those words are used. The clause gives a detailed example of how it will operate, largely for the benefit of those drafting statutory documents.

57. *Clause 57* is an interpretative provision for when the maximum penalty is accompanied by the words “(on information)” or “(summary)”.

Clauses 56 and 57 will improve the quality of Manx legislation in 2 ways. Firstly, the shorthand reference will be shorter and easier to follow, whilst still conveying the same information. Secondly, it will encourage the placement of penalties directly below the relevant offences rather than relying on general penalty provisions.

General penalty provisions are inherently undesirable because they are often located far away from the relevant offence and difficult to find quickly. Also, they tend to discourage consideration of adequacy of penalties when legislation is amended. As Thornton has stated about this shorthand approach compared with general penalty provisions: “A measure of repetition is a small price to pay for the advantage resulting from presenting simply and unambiguously the penalty imposed in respect of an offence as part of the offence section ... ”.¹⁵

Division 5 – Service of documents

58. *Clause 58* provides that Division 5 applies if a document is authorised or required to be “served” if no particular manner of service is provided for. Subsection (1) clarifies that so long as the provision in question is speaking of service of a document, the form of words used does not matter (e.g. it may use “serve”, “deliver”, “give”, “send” or another word of a similar effect). Subsection (2) clarifies that the methods of service permitted under Division 5 do not detract from permitted methods of service under other Acts.

59. *Clause 59* explains how service may be effected upon individuals; that is, personally, by post or by leaving the documents with a certain category of individual at the individual’s usual or last known place of abode or business.

60. *Clause 60* makes similar provision for bodies corporate and for an association of persons, whether or not it is incorporated or has legal personality.

61. *Clause 61* makes provision for electronic service, which was not covered by the 1976 Act.

The key element of this permitted mode is the safeguard of prior written agreement, which can be manifested digitally. Typically, the agreement will

¹⁵ Thornton, at 356.

be by email. The example to subsection (1) gives a common scenario of the operation of the clause in which a Department's electronic form for a particular purpose includes an "electronic tick in the box" to indicate such agreement.

Reason for inclusion:

The clause is included to reflect changes in technology and commercial practice since 1976.

The Electronic Transactions Act 2000 does not cover the now common practice of electronic service "by message and hyperlink", discussed below.¹⁶ It was therefore considered desirable to include a specific provision in the Act with the rest of the service provisions. Clause 58(2) clarifies that this Division does not detract from the 2000 Act (*inter alia*).

New provision for service by message and hyperlink:

Clause 61(2) to (5) provides for electronic service by "message and hyperlink" once there is an agreed mode (most typically, email), to reflect modern practice. A document can be served by an email message that the document is available for viewing on a hyperlinked electronic address. The document is taken to be served if it was at the hyperlinked address when the message was sent and for a period after the sending time that was, in all the circumstances, reasonable to allow the recipient to open the hyperlink and read or copy the document.

Importantly, service by message and hyperlink applies whether or not the recipient actually opened the hyperlink. This is analogous to the long-established common law "postal rule", articulated in subsection (1)(b). If service by post is permitted or agreed, so long as the letter enclosing the document is correctly posted it does not matter that the recipient did not physically receive the letter or never bothered to open the envelope. Like the postal rule, the policy is to give certainty to transactions once electronic service has been agreed.¹⁷

Service by message and hyperlink facilitates current practice whereby "electronic accounts" are established for all documents concerning a person's transaction with the other person or entity involved. It avoids the need to have to send each document individually. So long as the requisite message is sent, that will be enough. These provisions are equally capable of applying for commercial and non-commercial transactions outside Government so long as the tests for them to apply are satisfied.

Subsection (5) facilitates the proof of message and hyperlink service by providing for evidentiary certificates in proceedings to which such service is relevant. This will avoid the burden of the person relying on the service of having to call their IT personnel responsible to give evidence of the systems.

¹⁶ See section 3 of that Act (attribution of electronic communications).

¹⁷ For an explanation for the rationale for the postal rule, see *Household Fire and Carriage Accident Insurance Co Ltd v Grant* (1879) 4 Ex D 216, at 223-4 per Thesiger LJ.

The certificate is not conclusive, but merely creates an evidentiary burden on the alleged recipient to prove otherwise.

62. *Clause 62* provides for service on an unknown owner, lessee or occupier.
63. *Clause 63* provides for service by post, as does the 1976 Act. The clause also provides for service by registered post. To avoid the vagaries of “the ordinary course of post”, service by registered post in the Island for delivery at a place in the Island or the United Kingdom, is taken to happen 48 hours after it was sent under the relevant scheme under the Post Office Act 1993.

Division 6 – Statutory forms

64. *Clause 64* provides that the Division applies if Manx legislation authorises or requires a form to be approved or prescribed.
65. *Clause 65* provides that a statutory form may be made for any matter under or relating to it even though a form is not mentioned in the relevant provision of the legislation. This then sanctions a form to be made for the matter without any specific form-making power, subject always to the context. The overall purpose is to allow things of a detailed or administrative nature to be dealt with administratively by an appropriate form. The power is still always subject to any contrary intention in the legislation and the form itself cannot supplant what the legislation requires. The example given for this power is:

Section 23 of the X Act provides for a person to apply for registration but does not mention the form to be used for the application. The X Act does not empower the Department administering the X Act to make forms for that Act. However, clause 65 itself authorises that Department to make a statutory form for the application.

66. *Clause 66* provides for the extent to which the forms need to be completed or complied with. The clause clarifies that the requirements for an approved form are obligatory, but that substantial compliance is sufficient. *Clause 66(2)* gives examples of the types of things a form can require including a general requirement to give stated documents or information. However, *clause 66(3)* has the safeguard that the requirement is not obligatory to the extent such information is not reasonably necessary because it is irrelevant for any purpose of the form. Examples are:

- 1 *A person need not comply with a requirement of a statutory form to include personal information (for example, marital status) irrelevant to a purpose for which the form is required.*
- 2 *A person need not comply with a requirement of an approved form that has some relevance to a purpose for which the form is required, but intrudes to an unreasonable extent on personal privacy.*

Subsection (4) clarifies that if the empowering law requires a form for an application or other purpose, the purpose is not achieved if the form is not completed as required under *clause 66*. Example:

The application form mentioned in the example to clause 65 requires verification by a statutory declaration. There is no application at all if the declaration is not made. The Department will be entitled to refuse to receive or consider a purported application that does not have the declaration.

Division 7 – Public documents

67. *Clause 67* provides that words and expressions used in a public document have the same meanings as they have under the legislation under which the public document is made.
68. *Clause 68* provides that references to “Act” or “the Act” in a public document without mentioning a particular Act means the Act under which the public document is made. A reference in the public document to “these Regulations” or “this Order” etc. includes any public document made under it. This will help to shorten statutory documents.

PART 5 – FUNCTIONS AND POWERS

Division 1 – General

69. *Clause 69* makes general provision about the exercise of functions and powers. The main purpose is to provide for commonly understood fall back positions to obviate the need for legislative drafters to include them in every case. Under the clause, a power to do something includes the power to do anything else reasonably necessary for, or incidental to, doing the act or thing. These are only general powers. They are supplemented by additional powers and provisions in the rest of this Part.
70. *Clause 70* makes it clear that a power to make a decision includes a power to reverse or change it, applying the same procedure. Although this is probably the position at common law, the specific inclusion of such a power for public documents in section 28 of the 1976 Act (re-enacted under clause 93) led to doubt. The clause removes this uncertainty.
71. *Clause 71* makes provision for the exercise of powers between the making and commencement of Manx legislation. The powers can be exercised as if the legislation had commenced, but do have effect until the legislation commences or a later specified day. Section 27 of the 1976 Act (following an English precedent) made similar provision, but the complexity of the drafting of both the Manx and the English provisions was such that the powers were not often relied on.

Purpose:

This clause will facilitate smooth implementation of administrative matters for the things provided for under the legislation rather than having to wait for its commencement for anything to be done. Typical examples of such powers are powers to make regulations or appoint members of a newly established body under a new principal Act. The regulations can be made and members appointed, ready to start right from when the new Act commences.

Division 2 – The Executive

72. *Clause 72* provides a delegation power for the Governor’s functions under a Manx enactment or Tynwald resolution, other than for the power to make a public document.
73. *Clause 73* provides for the signing of orders etc. by the Governor.

74. *Clause 74* is an evidentiary provision. An authority, direction or public document purporting to be made by the Governor in Council or the Council of Ministers is taken to be so if it is signed by the Chief Secretary.
75. *Clause 75* gives a power to the Council of Ministers to amend Acts of Tynwald as a consequence of a UK Parliamentary enactment applied to the Island. Its purpose is to allow the Island's Statute book to be updated for such consequential changes without the need for the drafting and passage of a Manx Bill. The order making the amendments cannot be made without prior Tynwald approval.

Division 3 – Appointment powers

76. *Clause 76* facilitates the making of an appointment by name or office.
77. *Clause 77* facilitates the making of acting appointments of public officers other than judicial officers during a vacancy in an appointment or if an appointee is not able to perform the functions of the office (for example, because of illness or absence from the Island). Under paragraph 2 of the Schedule, "judicial officer" means a judge, High Bailiff, justice of the peace or a member of a tribunal. Judicial officers are excluded because such a power would offend against Article 6 of the European Convention on Human Rights by bringing into question the status of a judicial officer as an "independent and impartial tribunal" (see the decision in *Starrs v. Ruxton* [2000] Scots Law Times 42 (High Court of Justiciary of Scotland)).
78. *Clause 78* enables the Public Service Commission (for public service appointments) or the Chief Minister or another authorised Minister (for other appointments) to provide for an alternative appointor to make acting appointments (other than of judicial officers). If the Public Service Commission Act 2014 has not come into operation when the clause does, references in it to the Public Services Commission are to be read as references to the Civil Service Commission.
79. *Clause 79* provides the starting point that a power of appointment includes the power to decide the terms and conditions and includes other incidental powers. The main purpose is to provide for commonly understood fall back positions to obviate the need for legislative drafters to include them in every case.
80. *Clause 80* gives a general power of delegation to deputies to obviate the need for legislative drafters to include such a power in every case. The power applies if, under Manx legislation or a Tynwald resolution, functions are conferred on a Minister or a public officer other than a judicial officer.

The power has 2 safeguards. Firstly, unlike the 1976 Act equivalent, the deputy must be appropriately qualified to perform the functions. Secondly, the person who appointed the Minister or public officer must approve the delegation. The second limb does not apply however for the Chief Minister or another Minister (who are appointed by the Governor).

Division 4 – General fee power

Division 4 is, with one update, a modernised re-enactment of the 1989 Act.

81. *Clause 81* gives power to the Treasury or another Department or a Statutory Board to levy fees and duties (called the “general fee power”).
82. *Clause 82* sets out the matters for which the general fee power may be exercised, which reflect the 1989 Act.
83. *Clause 83* requires the power to be exercised only with the Treasury’s concurrence.
84. *Clause 84* makes provision about access to information about fees and duties prescribed under the general fee power. The 1989 Act provision required a copy or extract from the provisions imposing such fees to be “displayed” in every office or place where the fees or duties are charged. To update the practice and to avoid an overly onerous burden on agencies, this requirement has been changed to only require that the provisions imposing the fees made available at such places and on the Government website or another website that the responsible authority considers appropriate.
85. *Clause 85* makes the fees and duties receivable under *clause 84* part of the General Revenue.

Division 5 – Powers for public documents

86. *Clause 86* defines “matter” for the Division, which avoids repetition of the things included in that term.
87. *Clause 87* sets out the additional powers implied by a power to make a public document. The main purpose is to provide for commonly understood fall back positions to obviate the need for legislative drafters to include them in every case.

This includes the power to provide for anything required or permitted or necessary or convenient or incidental for the power or to carrying out or give effect to the empowering legislation. The example given is that an amending statutory document may make consequential amendments to other statutory documents under different authorising laws.

Clarification that specific powers do not automatically limit general ones:

Clause 87 also has an important clarifying provision that specific powers do not of themselves limit general powers. Previously, there was concern that such limitations were implied, so “without limiting the generality” provisions were often included. Unless the context in a particular case dictates otherwise, such statements are unnecessary. So, for example, in this Act, the general power under *clause 98(1)* to make regulations for the purposes of this Act is not limited by the specific transitional regulation-making powers under *clause 98(2)*.

88. *Clause 88* provides for public documents to apply generally or differentially. The main purpose is to provide for commonly understood fall back positions to obviate the need for legislative drafters to include such powers in every case. Section 26 of the 1976 Act made similar provision in part, but the complexity of its drafting was such that the powers were not often relied on

and specific powers like clause 88 tended to be included in individual Acts out of an abundance of caution.

89. *Clause 89* enables a public document to make provision by applying UK legislation, EU instruments and other legislation or documents. This is a new provision, but such powers are common in individual Acts. Its purpose is to help to shorten Manx legislation by avoiding the need to repeat provisions that are otherwise commonly understood or available (typically other laws or EU instruments).

A common example for a statutory document might be to incorporate with adaptations a “standard” set of provisions from a suitable Manx enactment setting up rights of appeal against administrative decisions and the procedure for such appeals.

As stated in the note for clause 7, there is an exception for this Act applying for the interpretation of applied provisions. Parliamentary enactments applied by Manx legislation must be interpreted under relevant Parliamentary enactments about interpretation. This exception only applies for Manx legislation and not non-legislative public documents (clause 7(4)).

Power to choose which version applies:

The clause gives power to choose the point in time at which the applied document is to operate; that is, on its making, at a stated time or as in operation from time to time. This choice is an important power for the relevant agency to be able to decide whether it wants a particular version to apply or as it applies from time to time. If the latter is chosen, it will then avoid the burden of the need to amend the applying public document every time the applied document is amended. Subsection (3) has the safeguard that if no time is chosen, the applied provisions apply as they were in operation on the making of the public document.

90. *Clause 90* provides that a public document may make provision relating to land or waters by reference to a particular map, plan or register. To ensure public access to things in these cases, the responsible authority must ensure they are available free of charge for inspection at its principal office during normal office hours and for public viewing on the Government website or another appropriate website.
91. *Clause 91* provides that a power to prescribe a fee includes power to prescribe a fee as the amount that the responsible authority considers is reasonable and that is no more than the actual cost of doing the thing (using those words or words to that effect). This will avoid the need for the regular updates of fees for which the cost component is readily ascertainable (for example, of copying and posting documents).
92. *Clause 92* is a re-enactment of section 5 of the 1989 Act. If a government authority is authorised but not required to perform a service and no fee is prescribed the authority may charge a reasonable amount for performing the service. It means that charges for Government services must either be

prescribed (and therefore subject to Tynwald scrutiny) or, failing that, must be reasonable.

93. *Clause 93* provides that the power to make a public document includes the power to amend or repeal it. This is a re-enactment (with amendments) of section 28 of the 1976 Act.

Additional power of Council of Ministers to repeal:

Typically, the same conditions for making apply for the amendment or repeals (clause 93(2)) However, subsection (3) permits the Council of Ministers, after consulting the Legislation Consolidation Board under the Legislation Act, to repeal without complying with the conditions. This power will be exercised where it is felt that the conditions for making (for example, consultation) are not relevant. The reason for the exception is that most powers are drafted with a view to making the document, not repealing it. Conditions for making may not always be appropriate for repealing. In the opinion of the mover of the Bill, the Council of Ministers is the appropriate body to make this decision.

Power to combine repeals:

Subsection (4) permits repealing orders to apply for instruments made under different Acts. The purpose of this provision is primarily to avoid a multiplicity of instruments that serve no purpose.

This section (when enacted) will be of particular benefit in the context of consolidations of statutory documents if the consolidation does not change their effect. They can be repealed and replaced without the need to comply with conditions (as the law is only being re-made, not changed). Only one instrument will be needed to repeal them.

94. *Clause 94* provides that an act done under a public document is taken to have been done under the authorising legislation for that public document. The main purpose of this provision is to dispel arguments that Acts and their statutory documents are separate in terms of function. So, for example, if an Act empowers a statutory document to grant licences for particular things, a reference in another Act to a licence under the first Act will include a licence granted under such a statutory document.

Division 6 – Miscellaneous

95. *Clause 95* provides that a person must produce a document reproducing material kept on a computer in a form capable of being understood by the authority to which it is required to be produced, and to facilitate the examination of the computer.

There is no equivalent in the 1976 Act, although many individual Acts since have enacted provisions to this effect. It is now typical that business records are kept on computers. The clause has therefore become necessary for the effective exercise of such production powers.

96. *Clause 96* provides that if an act or thing is required to be done by more than 2 persons, a majority of them may do it. This is the usual position.

PART 6 – OTHER PROVISIONS

Division 1 – General

97. *Clause 97* empowers the Council of Ministers to delegate its powers under this Act to certain persons. Public document-making powers are delegable to the Chief Minister. Appointment powers are delegable to any Minister or to appropriately qualified employees of the Public Services Commission, to be established by the Act resulting from the Public Services Commission Bill, and, before that time, to civil servants. Such delegations are under the Council's supervision. They can be limited to particular things, conditions can be imposed and are revocable at any time.
98. *Clause 98* confers general regulation-making powers for the purposes of this Act on the Council of Ministers, a Department or Statutory Board. However, under the clause, a Department or Statutory Board may only make regulations for Manx legislation it administers. All such regulations are subject to prior Tynwald approval.

Division 2 – Savings and transitionals

99. *Clause 99(1)* applies this Act to existing legislation and documents. However, this Act does not affect the operation of the 1976 Act for something that happened before the commencement of the resulting Act (see subsection (2) of the clause). There are also three further exceptions to this rule (set out in subsection (4)) –
- (a) clause 14 (references in Manx enactments to EU instruments), because that section is a restatement of section 1B of the 1976 Act, which section only commenced on 18 October 2011;
 - (b) clauses 53 (continuing offences) and 54 (liability of officers of bodies corporate) (this is to avoid creating retrospective criminal liability, which would offend against Article 7(1) of the European Convention on Human Rights); and
 - (c) section 39 of the Legislation Act (defence if Manx legislation not published) if the statutory document concerned was in operation before the commencement (this defence is new, and so ought not apply to things that happened before the commencement if the law in question was properly made and promulgated etc. according to the law at the time).
100. *Clause 100* is a declaratory provision about the effect of marginal notes in existing reprints. Under section 8 of the 1976 Act, marginal notes did not form part of an Act. However, previously, they were relocated in reprints as section headings. This was for 2 reasons. Firstly, it was not practicable to prepare reprints with marginal notes. Secondly, modern drafting practice generally uses section headings in preference to marginal notes. Under clause 23, section headings are part of the text of Manx legislation. The clause clarifies that such relocations have never had the effect of changing the law.
101. *Clause 101* applies the default savings and transitional provisions under Part 4, Division 4 of the Legislation Act for the 3 Acts this Act repeals.

102. *Clause 102* continues in operation existing orders under 1989 Act as if they had been made in exercise of the general fee power under this Act. It also clarifies that if an order had previously been approved under the 1989 Act, it does not need re-approval under this Act.
103. *Clause 103* updates references to “enactment”. For existing Acts, such updates are done specifically under Part 7.

The reason for the apparent “double up” with clause 107 is that the clause is a “catch-all” provision for “Bills and Acts in progress” that cannot be covered by specific amendments under clause 107. Also, clause 103 covers such references in documents generally (including public documents). To avoid the unintended consequences that a global change would have for all such documents, the clause only applies so far as the context permits.

PART 7 – AMENDMENTS

104. *Clause 104* repeals the Acts replaced by this Act.
105. *Clause 105* repeals specific provisions which become redundant as a result of the passing of this Act.
106. *Clause 105* makes consequential amendments to Acts that cross refer to the 1976 Act and the 1989 Act to update references to those Acts and certain terms to those defined under this Act.
107. *Clause 106* makes specific updates, where appropriate, of references in existing Acts to “statutory provision” and “enactment” to “Manx legislation” and “Manx enactment” which is clearer. For discussion of the reason for the change in terminology, see the note to clause 10.
108. *Clause 107* makes minor amendments to other Acts to remove provisions that will become redundant because of this Act.

Continued access to repealed amending Acts and provisions:

109. It is important to note that the repeal of spent Manx legislation and provisions such as Part 7 will not cause any detriment to access to that legislation. All Acts, whenever passed, will continue to be available in existing hard copy annual volumes as well as under previous reprints of repealed and superseded legislation produced since 1996 (the status of which is continued under clause 99).

They will always be available in the Tynwald Library and in the Attorney General’s Chambers (as well as in various private collections). In addition, all original Acts since 2000 will continue to be available electronically on the Government website (which can be viewed free of charge at the Tynwald Library and at other public libraries). Clause 38 of the Legislation Act includes a provision expressly designed to remove any doubt that amending Acts and provisions still must be published and gazetted.

Since reprints were first produced in 1996, the full text of spent amending provisions has not appeared in reprints.¹⁸ This was because once the amendments had been incorporated in the relevant Acts doing so was a waste of time and money for Attorney General's Chambers, Juta Publishing and Blackhall Publishing. However, those reprints have over 100 "empty shells" of Acts that now say nothing, and do nothing save confuse the reader. To find the text of such provisions, one needs to go back to the sources mentioned in the above 2 paragraphs anyway. The repeal of spent amending provisions therefore, in reality, changes nothing. It just rationalises the current position by removing confusing "empty shells" from the Island's Statute book.

¹⁸ Some do, however, include reprint notes identifying the provisions amended.

Table of Derivations

Provision as enacted	Derivation
s 4	1976/20/2
s 7	1976/20/1A
s 10	1976/20/3(1) & 9(1)
s 13	1976/20/1B
s 14	1976/20/3 (part)
s 21	1976/20/8 (part)
s 28	1976/20/31
s 31	P1978/30/10
s 32	1976/20/35(1)
s 33	1976/20/35(2)
s 35	1976/20/34
s 36	1976/20/34
s 37	1976/20/33
s 40	1976/20/9(2)
s 41	1976/20/9(3)-(8)
s 42	1976/20/5
s 43	1976/20/30
s 45	P1976/20/39
s 46	1883/V p 209/2
s 47	1976/20/36(a)
s 48	1976/20/36(b) & (c)
s 49	1976/20/38
s 56	1976/20/41(part)
s 57	1976/20/41(2)
s 58	1976/20/41(2)(d)
s 60	1976/20/41(2)(e)
s 61	1976/20/41(1)
s 64	1976/20/42
s 65	1976/20/25
s 67	1976/20/26(1)-(3)

s 69	1976/20/27
s 70	1976/20/23
s 71	1976/20/24
s 72	1976/20/24A
s 74	1976/20/19
s 75	1976/20/20
s 76	1976/20/20
s 77	1976/20/22 (part)
s 78	1976/20/21 (part)
s 79	1989/12/1(1)-(3) & 2
s 80	1989/12/Sch
s 81	1989/12/1(3A)
s 82	1989/12/3
s 83	1989/12/4
s 84	1976/20/26(part)
s 85	1976/20/26(3)
s 86	1976/20/26(4)
s 90	1989/12/5
s 91	1976/20/28
s 94	1976/20/40
Schedule, Part 1	1976/20/3 (part)