



LEGISLATION 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.

INTRODUCTION

The Act resulting from the Bill (called “this Act” in these notes, without implying that the Bill will necessarily pass) brings together general provisions about Acts, statutory documents and public documents. This Act will complement the Act resulting from the Interpretation Bill 2014 (the “Interpretation Act”).

This Act re-enacts and consolidates the Filing of Statutory Documents Act 1937, the Evidence Act 1965, the Evidence Act 1976, the Short Titles Act 1977, the Pre-Revestment Written Laws (Ascertainment) Act 1978, the Reprints Act 1981 (the “1981 Act”) and the Promulgation Act 1988 (the “1988 Act”).

However, this Act is more than just a modernised and consolidated redraft of those Acts. It contains other measures to help to codify, simplify and streamline the making, amendment and publication of legislation, 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 supplemented. Also, the drafting has been modernised.

The main purposes of this Act are to:

- (a) support, update and streamline procedures for managing Acts and statutory documents (collectively called “Manx legislation”);
- (b) improve the presentation of Manx legislation;
- (c) streamline procedures for making statutory documents;
- (d) make it easier to update and access Manx legislation; and
- (e) generally ensure Manx legislation is of the highest standard.

The broad divide between this Act and the new Interpretation Act (which would result from the companion Bill to the Bill for this Act), is that the Interpretation Act deals with interpretive and empowering provisions. This Act deals with the “machinery” of legislation (that is, its making, amendment, repeal and publication. The reason for 2 Acts is that the latter tends to be more of interest to drafters of

legislation and the legal community. However, this is a division of convenience only. As clause 4 states, both Acts need to be regarded as a “package”. To help users, important links between them 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 the sections 1 and 2, 80, 92 and 98(5) which will commence on day Royal Assent is announced to Tynwald. It is important to note that (as with the rest of this Act) the provisions about permitted reprint powers (clause 72 and Schedule 1) will not commence until so ordered by the Council of Ministers.
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 this 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 will tell them broadly what this Act does up front.

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 modern approach taken in clause 87(1) of general regulation-making powers for the purposes of this Act: such regulations are always subject to prior Tynwald approval.

It is important to note that the purposes set out in the clause (and particularly the last, that Manx legislation is of the highest standard) are only aspirational statements about what Tynwald intends to achieve. The text of this Act facilitates these outcomes, but cannot achieve them in itself as the construction of statutes is ultimately a matter for the judiciary.

4. *Clause 4* provides for this Act and the Interpretation Act to be read together. Both 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, judgments or warrants) (called “non-legislative public documents”). This clause provides that all such legislation and documents are taken as having been made on the basis that both Acts apply for them. This means they do not need to be positively applied to operate. However, this Act does not apply to Measures under the Church Legislation Procedure Act 1993. Furthermore, clauses 5 to 7 contain provision which is specific to this Act.
5. *Clause 5* provides that this Act is displaced by a contrary intention under the provision in question, which can be in whole or part. However, subsections

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

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

(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.

There are 2 exceptions to displacement by implication. Displacement of the automatic commencement of citation and commencement provisions (clause 18) and the general rule about who is the “maker” of public documents (clause 24) needs to be express.

6. *Clause 6* makes this Act subject to provisions of the European Communities (Isle of Man) Act 1973, which is concerned with the application of EU legislation.
7. *Clause 7* introduces Schedule 2, which sets out the definitions applicable to this Act.

PART 2 – ACTS

Division 1 - Announcement and promulgation

8. *Clause 8* provides that Part 2, Division 1 applies to any Act from when it receives Royal Assent. This follows the 1988 Act with clarification of one uncertainty in it, discussed below (see the commentary on *clause 12*).
9. *Clause 9* provides for announcement of Royal Assent to Tynwald.
10. *Clause 10* provides for an announcement certificate stating the announcement day.
11. *Clause 11* defines “promulgation”, namely the procedure surrounding promulgation as set out in the rest of Division 1.
12. *Clause 12* provides that an Act expires if not promulgated within 18 months. The 1988 Act was silent on the effect of that expiry. This clause clarifies that such expiry does not affect anything done under the expired Act and that any amended or repealed Act under it is revived.
13. *Clause 13* provides for what must happen before promulgation.
14. *Clause 14* provides for the promulgation procedure on Tynwald Hill.
15. *Clause 15* provides for a promulgation certificate.
16. *Clause 16* provides that in a reprint of an Act a statement about its announcement day or promulgation day is admissible as evidence of that day.

Division 2 - Commencement

17. *Clause 17* provides that an Act is “enacted” or “passed” and commences when it is announced to Tynwald and makes general provisions for the time of day an Act or provision commences.
18. *Clause 18* provides for an Act's citation and commencement provisions to commence automatically on its announcement day. There are 2 reasons for this. It enables the Act to be referred to as such. Secondly, it helps to shorten a commencement provision (which at present must normally refer to both the

citation provision and the commencement itself as exceptions from the power to appoint a day for commencement in order to ensure their immediate commencement).

19. *Clause 19* makes provision where an enactment is to commence on a day to be fixed by statutory document (an “appointed day order”). Different days can be fixed for different provisions. This saves the need for this power to be repeated in each individual Act.

Example:

The Hypothetical Act 2015 is expressed to commence on a day to be fixed by the Department by ADO. Any of the following arrangements for commencement would be possible:

1. *An ADO could fix a single day (for example, 5 June 2015) for the entire Act to commence;*
 2. *An ADO could fix a time on a single day (for example, 8 pm on 5 June 2015) for the entire Act to commence;*
 3. *An ADO could fix different days or times for the different provisions of the Act to commence (for example, Part 7, Part 9 and Schedule 4 commence on 5 June 2015, Part 11 commences at 5 pm on 30 June 2015, and the remaining provisions of the Act commence on 1 July 2015);*
 4. *An ADO could fix a single day (for example, 5 June 2015) or a time on a single day (for example, 8 pm on 5 June 2015) for the provisions of the Act not already commenced to come into operation.*
20. *Clause 20* provides that an amendment of an uncommenced Act does not commence the Act and that the amendment itself commences when that Act commences. This is just a clarification of what is considered to be the current law.
 21. *Clause 21* provides that the repeal of an Act’s commencement provision does not affect the Act's continuing operation. This will allow the removal by amendment of spent commencement provisions in existing Acts. Annotations to electronic reprints will record commencements.

Division 3 - Miscellaneous

22. *Clause 22* provides that all Acts must be judicially noticed as public Acts. The position at common law was that the courts took judicial notice of public Acts, but in the absence of a special provision, did not for private Acts. Some interpretation legislation, including the present Interpretation Act 1976 makes all Acts (whether public or private) matters of judicial notice. This clause maintains that position.
23. *Clause 23* provides that each provision of an Act has effect as a substantive enactment. This is a continuation of existing provisions which removed the need for formal words of enactment for each section, which was the traditional case for Parliamentary enactments before the 19th century. Now, words of enactment only appear at the beginning of each Act.

PART 3 - PUBLIC DOCUMENTS

Division 1 - Making and commencement

24. *Clause 24* provides for who is the “maker” of public documents and for their execution, by reference to existing Acts.
25. *Clause 25* provides for when a public document is made. If it has 2 or more makers, it is made when so made by the last of them.
26. *Clause 26* gives power for a public document to be commenced by notice. This will facilitate the drafting of public documents in cases in which the timing of the commencement has not been worked out. The clause has the safeguard that the commencement must be by a notice in the electronic gazette or in another way the responsible authority reasonably considers is sufficient to bring its purport to the notice of the public or those likely to be affected by it.
27. *Clause 27* provides that if a public document commences on a particular day, it commences at the start of that day, but, if it provides for a specific time on that day, it commences at that time.
28. *Clause 28* provides that an amendment of an uncommenced public document does not commence that document and that the amendment itself commences when the document commences.

Division 2 - Statutory documents: Tynwald procedures

29. *Clause 29* provides a definition of “Tynwald procedure” when accompanied by the words “approval required”, “affirmative”, “negative” or “laying only”, which expressions are elaborated in the following provisions of the Division.
30. *Clause 30* provides for the Tynwald procedure where the authorising legislation includes a reference to “Tynwald procedure – approval required”. The effect is that a statutory document to which the procedure applies cannot come into operation until it has been approved by Tynwald.

Purpose: simplification without significant change

This clause streamlines a number of very similar procedures under existing Acts into one with a defined expression. This will facilitate drafting and shorten Bills because applying the defined term will avoid the need to repeat details of the procedure in each and every instance in which it is to be used.

31. *Clause 31* provides for the “affirmative Tynwald procedure”, under which a statutory document must be laid and approved as soon as practicable after it is made: if Tynwald does not approve it at the sitting before which it is laid, or the following one, the document ceases to have effect.

Purpose: simplification, without significant change:

The purpose of the clause is to streamline the many very similar procedures under existing Acts into one, with a defined term as a name for easy reference (“affirmative” being the title they are usually given). The “affirmative Tynwald procedure” only applies if the Act uses those particular words or it states that this clause applies to the document.

Applying the defined term will avoid having to repeat details of the procedure in each and every instance in which it is to be used.

32. *Clause 32* provides for the “negative Tynwald procedure”, under which a statutory document must be laid before Tynwald after its making with power for Tynwald to disallow it.

Purpose: simplification, without significant change:

The purpose of the clause is to streamline the many very similar procedures under existing Acts into one, with a defined term as a name for easy reference (“negative” being the title they are usually given in other jurisdictions and also colloquially by users of legislation on the Island). Importantly, the clause has no effect on such existing procedures. The “negative Tynwald procedure” only applies if the Act uses those particular words or it states that the clause applies to the document. Applying the defined term will save having to repeat details of the procedure in each and every instance in which it is to be used.

Benefits compared with existing provisions:

The clause contains some clarifications which were not spelt out in existing provisions. Disallowance now acts expressly as if the disallowed document had been revoked. It revives any previous Manx legislation amended or repealed by the document. The revocation does not affect the application to the document of clause 58 (saving of operation of amended and repealed Manx legislation). Nor does it prevent the exercise of the same power under which the document was made to make another statutory document for the same or substantially the same matter.

33. *Clause 33* sets out the effect of statutory document ceasing to have effect under either of the two preceding clauses, thereby clarifying the position where an instrument is annulled or not approved. In essence the document is treated as having been revoked (at the expiry of the time for approval, or at the time of the resolution to annul, as the case requires) in a further exercise of the powers under which it was made: any Manx legislation revoked by the original document is treated as revived from that time. Subsection (2) makes it clear that apart from the rules in subsection (1) the revocation does not affect the operation of clause 58, nor prevent the making of a further statutory document dealing with the same or substantially the same subject-matter.
34. *Clause 34* explains what is meant by a Tynwald procedure of “laying only”, namely that the responsible authority must cause the statutory document to be laid before Tynwald as soon as practicable after it is made.
35. *Clause 35* enables Tynwald to resolve that, if a statutory document is subject to any of the procedures specified in clauses 30 to 34, Tynwald may resolve that it should be subject to another of those procedures. If Tynwald so resolves, the Council of Ministers may amend the enactment concerned accordingly. However, rules of court are specifically excluded from this provision, in order to avoid any perception of executive or legislative interference in the workings of the courts.

An example of the usefulness of this power is the amendment of the Building Control Act 1991 under clause 96(1) (which involves a change of procedure which has had to be affected by an amendment in a Bill). In future, such a change to the negative procedure, if desired, could be done by way of a Tynwald resolution and an order rather than requiring a change in a Bill.

36. *Clause 36* provides a default requirement for statutory documents to be laid before Tynwald as soon as practicable after they are made (unless they expire before the next sitting). This reflects existing practice to lay such documents (typically ADOs) for information. It avoids the need to say so in each Act.

Division 3 - Miscellaneous provision

37. *Clause 37* provides a mechanism for the correction of a statutory document which is still under active consideration by Tynwald. It permits a Minister to give notice to the President of Tynwald specifying the correction to be made in the document. But the notice must be given before the document's approval (in the case of a document to which section 31 or 32 applies) or before the time for its annulment expires (where section 32) applies and before the document has commenced. A correction notice may not be accepted unless the President is satisfied that (disregarding consequential changes) it does no more one of more of the following things —

- correct an incorrect citation or commencement date,
- correct an error of grammar, spelling or syntax,
- insert a missing commencement date or citation;
- correct an obviously incorrect cross-reference or a reference to the applicable Tynwald procedure for the document.

38. *Clause 38* provides for a presumption that a public document is validly made unless the contrary is proved. The purpose of this is to create greater certainty with public documents. It places the burden of proof on those alleging invalidity (for example, because of a failure to consult) to prove so. Many years may have passed since the making of the public document. Positive proof of consultation or other procedural requirements may be unnecessarily burdensome for those relying on the document.

PART 4 - ALL MANX LEGISLATION

Division 1 - Numbering, citation and distribution

39. *Clause 39* provides for the numbering of each Act by the Clerk of Tynwald, proposing a new system of "AT" (meaning "Act of Tynwald") numbers unique to Acts of Tynwald in place of chapter numbers. This is to align Acts with the concept of SD numbers used for statutory documents. The importance of provisions about identification (as well as notification and publication) of Manx legislation is discussed in the note for clause 42.
40. *Clause 40* provides for the Clerk of Tynwald to number each statutory document, starting with "SD". This is a reflection of existing practice.

41. *Clause 41* provides for the citation of Manx legislation.
42. *Clause 42* provides for the filing of Manx legislation in the General Registry and for certified copies to be provided to the Tynwald Library and the Attorney General. Apart from the supply of a copy to the Attorney General (which is needed for the electronic gazette), this is a reflection of existing practice.

Importance of the identification, notification and publication provisions:

Although these matters may superficially appear to be merely administrative, they are not. They enshrine in legislation that part of the rule of law and modern democratic government that requires laws to be put into effect by official proclamation before they can bind the citizenry (it being a fundamental tenet of the law that ignorance of it is no excuse). These matters reflect similar provisions for Parliamentary enactments and for statutory instruments in the United Kingdom.³

43. *Clause 43* obliges the Attorney General to make arrangements for the publication and sale of Manx legislation and for the Attorney General to arrange for the legislation to be published in an electronic gazette on a website approved by the Attorney General for that purpose. Publication requires notice of the passing of the legislation and either information as to how copies may be obtained or the text of the legislation. Such electronic gazettes are commonplace elsewhere in the Commonwealth. This will provide a single point on the Government website at which one can find out what laws have been made and when. Under the amendments to the Evidence Act 1871 under clause 97, a printout of the electronic gazette will be evidence of publication of the laws it shows.
44. *Clause 44* provides for a new general defence to contravening Manx legislation if it has not been published as required under Division 1 unless the prosecutor proves reasonable steps were taken to bring it to the notice of the public, persons likely to be affected by it or the defendant. The purpose of this defence is to bolster the aspect of the rule of law mentioned in the note for clause 42.⁴

Subsection (4) reiterates that the clause does not afford a defence merely because legislation has only been published electronically. Subsection (4) provides an exemption to the defence if the spirit of the publication requirement was nonetheless achieved. This is proved by showing that reasonable steps were taken on or before the day the alleged contravention happened to bring the purport of the legislation to the notice of the public, persons likely to be affected by the legislation or the defendant charged.

³ See, for example, section 2 (Documents printed under superintendence of Stationery Office receivable in evidence) of the Documentary Evidence Act 1882 of Parliament, sections 2 to 6 of the Statutory Instruments Act 1946 of Parliament and Part 3 (publication of Acts and Instruments) of the Interpretation and Legislative Reform (Scotland) Act 2010.

⁴ By way of comparison see section 3(2) of the Statutory Instruments Act 1946 of Parliament and section 41(3) of the Interpretation and Legislative Reform (Scotland) Act 2010.

Importantly, subsection (3) excludes existing offences from the scope of the non-publication defence. This is because existing offences will have been created without complying with the electronic publication requirements under clause 43.

Division 2 - Amendments: general

45. *Clause 45* provides that amending legislation is to be read as one with the legislation it amends. This is a re-enactment of the position under the 1976 Act: for this purpose amendments are “textual” rather than “referential”.

The distinction between the two approaches is that the textual style actually requires that words be omitted from the legislation amended and others inserted instead. The older referential style leaves the amended legislation intact but requires it to be read in different terms; that is, that an amendment is just a gloss on its predecessors and that they all need to be read together to know the law. The textual style is the modern approach. It is essential for single reprints of each piece of legislation so that the Statute book is easier to follow.⁵

46. *Clause 46* sets out default rules for where to insert amendments. The default rules reflect the predictive intuitive understanding by the reader (that is, the predictable numerical, alphanumeric or alphabetical position). The rationale is that the intuitive position should be the default rule and that only unusual (that is, not numerical, alphanumeric or alphabetical) needs to be spelt out.

The rules will mean that the text of location and action commands in amending legislation can be shortened, but without any impact on understanding by the reader.

Example:

Currently, to insert a new subsection (2A) in a section numbered 6, the location and action command is:

After section 6(2), insert – (2A) [text].

Clause 41 means that this can be shortened to:

Section 6, insert – (2A) [text].

47. *Clause 47* provides that an amendment to a provision is to be made wherever possible in the provision. For example, if there is a change of name it is made in all places in the provision where the old name occurs. This intuitive provision helps to simplify amending legislation. If an amendment is intended to be made globally within a provision, the clause will save the unnecessary repetition of spelling out each and every instance where the amendment applies or having to say “wherever occurring”.

Subsection (2) further helps to shorten the length of action commands by clarifying that it does not matter whether the omitted or substituted word is in upper or lower case or what font or type it is in. This means that the

⁵ See the criticism of the referential approach in *R v Eaton* (1881) 8 QBD 158 and *Knill v Towse* (1889) 24 QBD 186 at 195.

substitution takes effect regardless of whether the word is found in capitals in a heading or in italics or in normal font.

Update to reflect modern electronic practices:

The rationale for the shortening is that amendments are now drafted and incorporated electronically. If a global amendment to a provision is desired, there is no 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. There is a problem with the older approach that if a global amendment is intended, spelling out each and every instance leaves more potential for textual error if any are missed during the drafting process. In future the default position will be that specific instances are only spelt out if the intention is not to make a global amendment.

48. *Clause 48* provides for sensible, automatic consequential amendments, such as adjustments to punctuation, numbering or pronouns, or if legislation substitutes a reference to a person or body for another one. The purpose of the provision is to avoid cluttering amending Acts with consequential amendments that are purely mechanical.

The clause gives 4 examples which in practice will cover nearly all amendments of this type. The most important are consequential changes to conjunctives or disjunctives because of amendments to paragraphs (example 1) and the insertion of a number (1) if a subsection (2) is inserted and the body of the section is currently unnumbered (example 2).

It is important to note that the clause does not authorise the renumbering (rather than the numbering) of any provision. Renumbering is neither necessary nor consequential. Example 3 notes this specifically.

49. *Clause 49* clarifies that the relocation of a provision to a different place in the legislation or elsewhere in legislation does not change its meaning. This is probably the case, but the clause removes any argument.

Division 3 - Repeals and amendments

Subdivision 1 - General

50. *Clause 50* provides default rules for the time of day at which a repeal takes effect. It deals with an unwanted effect in the 1976 Act. If an Act being repealed is being remade on that day as well, under the clause the repeal takes effect at the start of the day. If not, the repeal takes effect at the end of the day. This prevents the need for special provisions in each case to prevent overlapping Acts applying for the same matter during that day.
51. *Clause 51* treats expired legislation as having been repealed. This removes any doubt that all of the provisions in this Act about repeals apply equally to Acts which have expired. This clarification is intended in particular for clause 57 (no revival if amendment or repeal repealed).

Subdivision 2 - Automatic repeal of spent amendments

52. *Clause 52* defines “amending legislation”. The effect of the definition is that the term that does not include provisions that have an on-going impact after the legislation has had its effect. However, savings, transitional and validating provisions are included. The reason for their inclusion in the term is that they are saved under clause 59.
53. *Clause 53* defines “amending provision” as a provision of Manx legislation the text of which provision only amends or repeals Manx legislation.
54. *Clause 54* provides for the repeal of all existing amending Acts and amending provisions, thereby clearing off the Statute book all amendments that have taken effect and are therefore now spent. However, for existing amending provisions, the repeal will not happen until after the relevant Act is promulgated or the provision commences (whichever is later).

The purpose of the clause is to save the time, cost and inconvenience of having to reprint unnecessary legislation because the amendments have already been made and incorporated in the legislation amended. There is no need to continue to reprint amending Acts which are spent and contain no provisions of on-going impact.

Continued access to repealed amending Acts and provisions:

It is important to note that the repeal of spent Manx legislation will not cause any detriment to access to that legislation. All Acts, whenever passed, will continue to be available as official printed texts as well as under previous reprints of repealed and superseded legislation produced since 1996 (the status of which is continued under clause 93).

They will always be available in the Tynwald Library and in the Attorney General’s Chambers (as well as in various private collections). As well, 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 53 includes a provision “to remove any doubt” that amending Acts and provisions must still be published and gazetted.

Since 1996 the full text of spent amending provisions has not appeared in reprints.⁶ This was because, once the amendments had been incorporated into the relevant Acts, doing so was a waste of time and money for the Attorney General’s Chambers, Juta Publishing and Blackhall Publishing because the amending text can be found in the amended statutes. Those reprints have over 100 “empty shells” of Acts. The repeal of spent amending provisions does not change the position. It simply rationalises the Island’s Statute book.

55. *Clause 55* provides for the automatic expiry of future amending legislation and provisions. The difference to clause 54 is that this will be an on-going provision for all new Manx legislation. The expiry will not happen until after the later of the commencement or the promulgation.

The clause gives the following examples of when it will and will not operate:

⁶ Although some include reprint notes identifying the provisions amended.

1. *Other than provisions about its citation and commencement, the only provisions of the Hypothetical Amendment Act 2015 are amending ones. The citation and commencement provisions commenced under section 18 (automatic commencement of citation and commencement provisions). The amending provisions commenced on a date fixed under an ADO, 12 April 2016. The Act automatically expires under this section on the day after all of its provisions have commenced, namely 13 April 2016.*
2. *The Example Act 2015 contains provisions for a new licensing scheme. It also amends several Acts and repeals others. Because it contains the scheme provisions, it is not amending legislation. Therefore, the Act does not automatically expire.*

Subdivision 3 - Operation of repeals and amendments

56. *Clause 56 provides that an automatic repeal (under Subdivision 2) has effect for all purposes. This is intended specifically as a clarification to remove any argument that clause 52 applies for such repeals.*
57. *Clause 57 clarifies the position and provides that an amendment or repeal operates once and for all and repealed legislation is not revived if the provision that repealed it is itself repealed. At common law, the repeal of an Act (and probably of an amendment) revived the repealed Act. Section 15 of the 1976 Act and its predecessors contained provisions intended to negate this rule.*
58. *Clause 58 ensures the amendment or repeal of Manx legislation does not affect anything done under it, or an existing immunity, liability, privilege, obligation, right or title acquired, accrued or incurred under it, a penalty incurred for an offence against the legislation or existing proceedings for those matters.*
59. *Clause 59 saves the continuing operation of repealed savings, transitional or validating provisions. This then enables amending Acts with such provisions to be repealed without changing the law.*

Currently, there are a great many such amending Acts (over 100) whose only provisions still operating are such provisions. Most are spent or will only continue to operate in very limited circumstances. Rather than incurring the time, cost and inconvenience of continuing to reprint such “rumps”, they will be repealed under the automatic repeal provisions.⁷ If useful, reprint notes about the ongoing effect of the provisions will be included in the relevant principal legislation. Clause 80 (notes to aid users) provides for such notes.

Division 4 - Default savings and transitional provisions

60. *Clause 60 sets the scene for when the default savings and transitional provisions under Division 4 apply for repeal and re-enactments, with or without change.*

The default provisions are subject to any specific savings and transitional provisions under the new legislation. So, for example, if a specific transitional

⁷ For continued access to repealed amending Acts and provisions see the note to clause 49.

provision lapses undecided applications under the old legislation, that lapsing will prevail over anything in Division 4.

61. *Clause 61* contains interpretative provisions for Division 4.
62. *Clause 62* transitions existing appointments for the rest of their old term.
63. *Clause 63* transitions existing securities, information, documents and other things under the old legislation to the corresponding provisions of the new legislation.
64. *Clause 64* transitions existing proceedings under the old legislation to the corresponding provisions of the new legislation
65. *Clause 65* preserves existing penalties and rights to enforce them, but subject to any mitigation or reduction of the corresponding penalty under the new legislation.
66. *Clause 66* provides that things done under the old legislation have the same effect and may be enforced under the new legislation.
67. *Clause 67* transitions general references in other legislation to the old legislation as a general reference to the new legislation. Subsections (2) and (3) contain new provisions that transition references to discontinued bodies to their successor under the new legislation and updates references to bodies that are continued but with changed names.
68. *Clause 68* makes transitional provision for specific references in other Manx legislation for things happening after the repeal to the corresponding provision of the new legislation. So, for example, if another piece of Manx legislation refers to a licence granted under a specific section of the old legislation and there is a corresponding licence under the new legislation, the reference is transitioned to the section of the new legislation under which such licences are granted. If there is no corresponding provision, subsection (3) saves the old provision to the extent needed to give the old provision legal effectiveness.

Division 5 - Miscellaneous

69. *Clause 69* is a clarification provision. It is sometimes argued that an amendment of a statutory document by an Act “entrenches” the amended provision so as to prevent it from being amended or repealed by a later statutory document. The clause removes such arguments.

PART 5 - REPRINTS

Division 1 - General

70. *Clause 70* gives the Attorney General power to authorise and publish versions of Manx legislation and other applied legislation and to authorise and publish corrections of errors. These publications are known as “reprints”.
71. *Clause 71* permits the Attorney General to delegate the Attorney General's powers to the Chief Legislative Drafter or any other appropriately qualified person in the Attorney General's Chambers.

72. *Clause 72* gives the Attorney General power to publish both hard copy and electronic reprints and to declare that such a reprint is an official reprint. This measure is a reflection of the near-universal movement away from hard copy reprints and the increasing practice of producing official electronic reprints. Electronic reprints have been produced for the Island's Statute book for some time. To remove any doubt about this practice clause 92(5) expressly authorises existing electronic reprints. The clause includes the safeguard that the Attorney General must ensure an electronic official reprint is in an approved format and can only be accessed at, or downloaded from, an approved website.
73. *Clause 73* affords an official reprint (either hard copy or electronic) authoritative status in court. For electronic official reprints. It will not be necessary to print out the whole document. A printout of a particular provision, together with the required declaration by the Attorney General under clause 72(2) and the notes required under section 79 (authorisation and reprint date notes) for the reprint will be enough. In the absence of evidence to the contrary, the reprint is admissible in evidence in any proceeding and is taken to be the text of the reprint or printout at the relevant reprint date.

Division 2 - What reprints must and may include

Subdivision 1 - Amendments

74. *Clause 74* provides that a reprint must show all of the reprinted legislation as in operation on a stated day, including all amendments to it that commenced on or before that day, though uncommenced amendments may be shown so long as they are differentiated (for example, by highlighting or italicising) and there is a note stating that they have not commenced.

Subdivision 2 - Reprint changes

75. *Clause 75* permits the making in reprints of certain minor, uncontroversial corrections and updates set out in Schedule 1.

Schedule 1 specifies the permitted changes as –

- The inclusion of section headings in Acts that only have marginal notes, although that is not to make the heading part of the text of the legislation.
- Formatting changes.
- Correcting punctuation, typographical and grammatical errors.
- Minor editorial changes.
- Consequential changes because of the effect of changes under “transfer of functions” orders (for example, Changes under such orders of the names of Departments or which Departments administer particular Acts). This will help to reduce considerably the length of the text of transfer of functions orders and the time it takes to draft them.

- Rearranging definitions to the correct order.
 - Metrication conversions.
76. *Clause 76* prevents reprints changes from being made unless the Attorney General has approved them. Before approving the Attorney General must consult the Clerk of Tynwald. Also, the change must not change the effect of the text or renumber or relocate any provision.
77. *Clause 77* provides that a reprint change has effect as if it had been made under an amending provision.

Subdivision 3 - Reprint notes

78. *Clause 78* requires an official reprint to include, before the text of the legislation reprinted, notes stating that the Attorney General has authorised the reprint as an official reprint and the reprint date.
79. *Clause 79* provides that a reprint must include endnotes giving details of amendments and corrections and changes at the end of the text.
80. *Clause 80* enables reprints to include other notes to help users. The notes do not have legal effect and must be shown in a way that differentiates them from the text of the reprint.

PART 6 - CONSOLIDATIONS OF ACTS

Division 1 - Legislation Consolidation Board

81. *Clause 81* establishes the Legislation Consolidation Board.
82. *Clause 82* provides that its functions are to draft consolidation Bills that combine or split Acts or relocate provisions between Acts or places in Acts.
83. *Clause 83* provides that the Board is to consist of the President of Tynwald (who chairs it), the Speaker, a member of the Council of Ministers, the Chief Secretary, the Attorney General and the chief legislative drafter or the drafter's delegate.

Division 2 - Drafting powers

84. *Clause 84* sets out the powers of the Board in producing consolidation Bills. A number of changes may be made that do not affect the meaning of legislation.
85. *Clause 85* provides that a consolidation must not change the existing legislation's effect, except minor amendments the Board considers are necessary or desirable to clarify Tynwald's intent in enacting the existing legislation or reconcile inconsistencies between its provisions.

Division 3 - Enactment procedures

86. *Clause 86* provides for the Board to certify to the Clerk of Tynwald that a Bill is a consolidation. Without such a certificate a Bill for a consolidation cannot be introduced.

87. *Clause 87* provides for an abridged Tynwald procedure for such Bills, once approved for introduction by the Council of Ministers. The Bill need not pass through any stages in the Branches of Tynwald so long as at least one sitting of Tynwald has passed since its introduction. If approved by Tynwald it is taken to have been passed by both the Keys and the Council. An amendment may be moved only with the leave of the President of Tynwald or if the Board has certified in writing that the amendment is necessary to correct an error.
88. *Clause 88* provides that if a consolidation is approved by Tynwald the Board must certify that the Bill is for a consolidation and that the Bill does not change the effect of existing legislation, any changes to the effect are minor or are wholly due to amendments moved by Tynwald. Once it has been so approved and certified, the Bill will proceed to the Governor for certification by His Excellency's Royal Assent Committee and His Excellency's tendering of advice to the Ministry of Justice for consideration of Royal Assent.

PART 7 - OTHER PROVISIONS

Division 1 - General

89. *Clause 89* empowers the Council of Ministers to delegate its powers to make public documents under this Act to the Chief Minister. 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.
90. *Clause 90* contains general regulation-making powers for the Council of Ministers for the purposes of the Act.

Ascertainment regulations:

Subsections (3) to (5) and (7) also provide for the Council of Ministers to make one-off "ascertainment" regulations for statutory documents so the public will know with certainty which ones are still in force. This is similar to what was done for pre-Revestment Acts under the Pre-Revestment Written Laws (Ascertainment) Act 1978. This is done by the regulations repealing all statutory documents except those in a stated list published on the website of the Attorney General's Chambers. Before making the list, the Attorney General is obliged to consult the Clerk of Tynwald and conduct all enquires the Attorney General considers are reasonably necessary to discover all existing statutory documents, and the list must contain the Attorney's certification that it is complete in the Attorney's view.

All regulations under this Act are to be subject to the affirmative Tynwald procedure.

Division 2 - Savings and transitionals

91. *Clause 91* converts newspaper publication requirements under existing Manx legislation for notices and other matters by Government authorities. Generally, they are changed to a publication in the electronic gazette instead. The purpose of this clause is to streamline Government publications in the gazette and to reduce the costs involved in full newspaper publications.

However, to safeguard the interests of those who may be affected, if appropriate, reasonable steps must also be taken to bring the matter to the attention of the public or persons likely to be affected. Examples are given of when such steps will be needed. The example of “reasonable steps” includes that of a newspaper publication under the existing requirement.

92. *Clause 92* makes provision for the effect of existing reprints and notes. It transitions to this Act those made under the 1981 Act and clarifies the status of notes inserted under that Act.

Doubts about the status of existing reprints:

The 1981 Act was made before electronic publication. Its language is not apt to include electronic reprints, so there is some doubt about whether electronic reprints made before this Act have any official or evidentiary value. Also, several reprint series of the Island’s Statutes from 1996 make no reference to the 1981 Act or any authorisations from the Attorney General. The Attorney General’s Chambers confirm that they were in fact made at the Attorney’s direction. Subsection (5) validates both those matters.

93. *Clause 92* applies the default savings and transitional provisions under Part 4, Division 4 to the Acts re-enacted. Three of the Acts that this Act repeals are not re-enacted (see the notes for clauses 95 and 96).

94. *Clause 93* is a declaratory provision for existing amendments and repeals. At common law, the repeal of an Act revived the repealed Act. However, there was no authority for revival of an “old version” of an Act if an amendment is repealed. Section 15 of the 1976 Act (“section 15”) and its predecessors contained provisions intended to negate the “revival” rule.

Some still argue that the drafting of section 15 is not specific enough to achieve its intended result for amendments and repeals.⁸ Clauses 57 (no revival if amendment or repeal repealed) and 58 (saving of operation of amended and repealed Manx legislation) re-enact section 15 in clearer terms. Previously, amending and repealing Acts have been repealed relying on section 15. This doubt has created a small question about what Acts are in force in the Island. However, the better view is that these contentions are wrong.

Clause 94 removes this doubt in favour of there never having been any revival for either amendments or repeals. The repealed 1865, 1949 and 1970 interpretation Acts all declared non-revival for repeals in unequivocal terms (compared with section 15).⁹ The more certain position of going back past 1865 is preferable. All limitation periods and all existing lifetimes in question have ended, so nobody can be adversely affected. Acts since 1865 and all reprints have been prepared on the basis of non-revival.

PART 8 - REPEALS AND AMENDMENTS

⁸ For an example of such doubt, see the one remaining provision in the Improvement of Livestock (Amendment) Act 1994.

⁹ See section 3 of the “Acts Shortening Act” 1865, replicated in the Acts Interpretation Act 1949 and in the Acts Interpretation Act 1970.

95. *Clause 95* repeals 9 Acts. As mentioned in the introduction, although this Act re-enacts 6 of them. The other 3 are spent save for some “rump” provisions. For one (the Improvement of Livestock (Amendment) Act 1994) its sole substantive provision is covered by clause 52 (no revival if amendment or repeal repealed). For the other 2, their remaining provisions are re-enacted or saved by amendments under clauses 97 and 98.¹⁰

Part 8 will automatically expire after promulgation of this Act, depending on when Part 8 commences.¹¹

96. *Clause 96* makes consequential amendments to 3 Acts that make cross references about the filing and distribution of Manx legislation to update them to the corresponding provisions of this Act.

97. *Clause 97* amends the Evidence Act 1871 as follows —

(a) it amends the evidentiary provision for Acts in section 17 to extend it to statutory documents as well to facilitate their proof in court;

(b) It inserts a new section 17A to give evidentiary value to the electronic gazette; and

(c) it re-enacts as a new section 19A, section 2 of the Evidence Act 1965¹² (penalty for false statement that document printed by authority).

(d) It inserts as a new section 50 transitional provisions for the previous exercise of reprint-type powers for applied legislation, which powers are now covered by reprint powers under this Act. With that insertion, the 1976 Act can be repealed as it will be covered by reprint powers in the future.

98. *Clause 98* amends the procedure for certain statutory documents under the Building Control Act 1991 to the affirmative Tynwald procedure (see subsection (6)). The clause also contains some amendments that are consequent upon other provisions of the Bill. In addition it also makes a number of minor corrections and adjustments to statutes of the type that might normally be found in a Statute Law Revision Bill. These are —

- the repeal of the Douglas Library Act 1938 which limited the Borough’s power to raise a rate for the provision of a library, which became otiose following the removal of the restriction on rating expenditure for libraries with the repeal of section 335 of the Local Government Consolidation Act 1916 (see subsection (1));
- minor amendments to the appeals procedure for objections to entries in the rating valuation list (see subsection (2));
- a replacement of a reference in the Civil Evidence Act 1973 to the county court, which is superseded in England and Wales by the newly

¹⁰ For continued access to repealed Acts and provisions see the note to clause 49.

¹¹ See clause 50 (automatic expiry of future amendments).

¹² Section 2 of 1965 Act is the only substantive provision left in that Act. Its re-enactment will allow the rest of that Act to be repealed.

constituted family court (see section 17 of, and Schedule 10 to the Crime and Courts Act 2013 (of Parliament)) (see subsection (3));

- provision about temporary registration of tourist premises where an appeal is pending against a refusal to register in accordance with the Tourist Act 1975 (see subsection (4));
- the deletion of a spent reference to the Advertisement Regulation Act 1925 in the Control of Advertising Act 1981 (see subsection (5));
- amendments in connection with the interaction of certain provisions with the Tribunals Act 2008 (see subsections (6) to (10); and
- amendments to that Act of 2008 to facilitate the removal of tribunal members and to provide for the appointment of members of tribunals to fill casual vacancies (see subsection (11)).