

## 5. Bill for Third Reading

### Public Health (Tobacco) (Amendment) Bill 2015

**The Speaker:** Item 5, Bill for Third Reading: the Public Health (Tobacco) (Amendment) Bill.  
I call on the mover, the Hon. Member for Middle, Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

Hon. Members, I am pleased to be able to move the Third Reading of the Public Health (Tobacco) (Amendment) Bill for the Department of Health and Social Care and thank Members for their contributions through the previous stages of the Bill.

The main aim of the Bill is to extend the provisions of part 1 of the Public Health (Tobacco) Act 2006 by extending the bans on tobacco advertising, severely restricting the display of tobacco products and by banning the sale of tobacco products from vending machines.

In line with the Isle of Man Tobacco Strategy, the Department of Health and Social Care is keen to reduce the burden of ill-health caused by tobacco use and is committed to providing a public health incentive to existing consumers to reduce their consumption. The Department also wants to do everything possible to shield people, and particularly young people, from the influence of tobacco product advertisements and displays and easy access to cigarettes. Additional controls have already been established in the United Kingdom and two public consultations have shown that the majority of people support similar controls for the Isle of Man.

The Department has also identified a need to do more to protect people from second-hand smoke, so in conjunction with the Department of Home Affairs and the Department of Environment, Food and Agriculture, and with the support of the Council of Ministers, amendments have also been included in the Bill to provide for fixed penalties to be imposed for smoking-related offences as an alternative to court action.

Mr Speaker, it was pleasing to note that during the previous readings of this Bill the Members of this House were supportive of the proposals contained within it, so I do not intend to spend much time going over old ground. However, some questions were asked by my hon. colleagues and I would like to take the opportunity to summarise some of the issues contained within the now 26 clauses and the schedule of the Bill.

Clause 2 allows for sections of the Act to be brought into operation using Appointed Day Orders. It is the Department's intention to make an Appointed Day Order at the earliest possible juncture after Royal Assent is announced, so that new regulations, which contain the detail about how the new controls will be enforced, can be made as soon as possible thereafter. Discussions which are planned with local tobacco retailers about the regulations will also include further discussions about the proposed six-month grace period which the Department is intending to give to allow retailers to install the necessary displays etc.

Clauses 6 to 9 contain the first of numerous amendments which update the 2006 Act to bring the Isle of Man into line with European Union directives relating to information society services in these clauses. This means amending section 1 of the Act and adding a new section 2A to ban tobacco advertising on the internet by an Island-based service provider. It is recognised that offences relating to advertising on the internet will be difficult to enforce, as the Island simply does not have the expert technical and legal resources to do so. However, it is anticipated that most reputable service providers will adhere to the law, whereas they might be less inclined to abide by a voluntary code of practice, so the potential for abuse in this area is considerably reduced.

Clauses 8 and 9 add further exclusions and defences to sections 3 and 4 of the Act in respect of advertising offences as a consequence of the new information society services legislation.

During the clauses stage of this Bill the Member for Onchan suggested that there should be an option for the Department to introduce regulations to add further exceptions in this section and in other sections. However, as the UK equivalent legislation does not include such options and it is

difficult to see what other exceptions there might be, it was felt that this would simply be a case of providing for the making of regulations just for the sake of it, without having any intention of actually making any.

Clause 8 also gives effect to a new schedule relating to the liability of information society service providers in respect of conduits of access to a communication network and the transmission of catching – that is the storage of information prior to onward transmission – and hosting.

Clauses 10 and 11 replace the existing section 5 with four new sections dealing with tobacco displays and tobacco prices.

The new section 4A creates the offences of displaying tobacco products in the course of business on the Island.

The new section 4B creates exclusions and defences with regard to the offence of displaying tobacco products. These mostly relate to displays within the tobacco trade and displays to under-18-year-olds. Section 4B also allows the Department of Health and Social Care to make regulations to provide that no offence is committed if a display complies with specified requirements.

The new section 4C allows the Department to make regulations to impose requirements in relation to the display of prices and makes it an offence to breach these requirements.

Regulations are currently in train in respect of both sections 4C and 4B and will be the subject of discussions with local tobacco retailers in due course.

In response to a question from the Hon. Member for Ramsey, Mr Singer, during the clauses stage of this Bill, I may have given the impression that price lists were being completely banned. In actual fact, the intention is to bring in regulations to control the way in which tobacco price lists are displayed, and this will obviously be discussed with the retailers.

The new section 4D allows the Department to make regulations to impose requirements relating to displays on websites and makes it an offence to breach those requirements. Section 4D is in line with the UK government legislation. There are currently no regulations in the UK, so there is no intention to have any here either.

Clauses 12 and 13 simply amend sections 6 and 8 of the Act, which deal with the prohibition of free distributions and brand sharing in respect of information society services.

Clause 14 creates the new offence of selling tobacco from a vending machine.

Clause 15 makes two wording changes in section 10 of the Act in respect of the production of evidence of authority by enforcement officers and to allow appeals to be heard by the High Bailiff or the Deputy High Bailiff under this section.

Clause 17 simply updates the reference in section 12 to add the new defences in this Bill to those which may be satisfied if there is sufficient evidence to raise an issue.

Clause 18 makes necessary amendments to the interpretation of part 1 of the Act in section 13 as a consequence of the other amendments in this Bill and to tidy up certain wording abnormalities.

At the clauses stage of this Bill, Mr Singer, Hon. Member for Ramsey, queried the use of the word 'or' as opposed to 'and' in the definition of 'EEA state' as 'a member State, Norway, Iceland or Liechtenstein'. Legal advice has now been received and I can confirm that the definition as printed and taken forward is correct as written.

**Mr Singer:** Pleased about that.

**Mr Quayle:** Clause 19 simply amends the wording in section 18 of the Act, which deals with the powers of entry, so that part 2 of the Act is in line with a similar provision in section 10 of part 1 of the Act.

Clause 20 of the Bill inserts new provisions to allow an authorised person to offer a person who they believe has committed an offence the option of accepting a fixed-penalty notice and paying a fixed penalty of £50 instead of going to court. This provision was included in the Bill at the request of the Department of Home Affairs and the Department of Environment, Food and Agriculture and with the support of the Council of Ministers. It will be for the Department of

Environment, Food and Agriculture to make any regulations relating to fixed-penalty notices. In the meantime, all offences, including any new offences which DEFA might introduce, can continue to be dealt with through the courts.

Clause 21 of the Bill repeals section 21 of the Act and relocates various penalties contained within it to relevant parts of the Act to which they refer. This is as a consequence of a request from DEFA for an amendment to require regulations which they are responsible for to acquire Tynwald approval.

Clause 22 corrects an omission for the original Act to clarify that offences relating to a corporate body apply to an officer of a body corporate as well, and to confirm that payment of a fixed penalty by an officer does not preclude prosecution of the body corporate and vice versa.

Clause 23 also corrects an omission from the original Act by inserting a new provision to allow the Department of Health and Social Care to amend the Act by order as a consequence of developments in technology or for the purpose of making the Act correspond with the equivalent United Kingdom legislation. It would seem that this was a deliberate omission from the original Act, but after taking legal advice it was decided that it will now serve a useful purpose to help the Isle of Man to keep up to date with the United Kingdom, particularly in relation to the fast-moving developments in electronic technology.

Clause 24 amends section 23 of the Act to require regulations made by DEFA under part 2 of the Act to be approved by Tynwald.

Clause 25 substitutes the existing section 25 with a new section which provides some new interpretation for the Act.

Clause 26: this additional clause 26, introduced by my colleague, the Hon. Member for Onchan, Mr Quirk, during consideration of clauses, consisted entirely of amendments to the Children and Young Persons Act 1966 to remove references to vending machines as a consequence of the new offence in clause 14.

Mr Speaker, I beg to move that the Public Health (Tobacco) (Amendment) Bill be read for the third time.

**The Speaker:** Hon. Member for Onchan, Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker.

I welcome this Bill coming forward and draw Members' attention to the initiatives too for... I am not a smoker and as far as I am concerned – it is my gambit to this particular Bill here... is really...

There has been many a person who has died of smoking-related diseases and I have seen people suffer and I welcome the initiative that is put in this particular Bill too, where smoking will be banned in cars, fixed penalties will be given out there; because at the end of the day I want to see us having a healthy Island, those children having a healthy future. And those parents who do smoke in front of children in confined spaces... I have no sympathy with those parents at all. They are putting their children at risk and that is my personal take on this particular Bill but I welcome it coming forward.

**The Speaker:** Mr Karran, Hon. Member for Onchan.

**Mr Karran:** Vainstyr Loayreyder, as a person who actually brought in, when it was against the advice of the Members responsible many years ago, raising the age of the selling of cigarettes to 18, I have to say that I can support part of this Bill.

I can support the part of this Bill about the banning of machines... they are there. I can sympathise with issues such as stopping them being displayed in shops, especially... just like I fought for years to try to have a separate area with a separate till for the sale of alcohol and getting it away from where the shop till was, I can support that. I can totally support the issue that if there is a child in a car then as a responsible adult, never mind parent, you should not be smoking in a car. I have got no problem with that, but I find myself at odds with this Bill.

Before I go on to that, I do take it, just for *Hansard*... because if it goes to court the Member will be not telling us that we are going to have to rip down old vintage cigarette adverts, the likes of the ones out at Groudle Glen railway; they will be exempt from this legislation and they will be, fair enough, seen as something antiquated and not of relevance as far as any advertising is concerned or in a museum or wherever – there will be no issue as far as liability.

Vainstyr Loayreyder, one of things that I am concerned about is that I believe that maybe we are going too far as far, putting it into primary legislation. Primary legislation needs, through the royal prerogative, the British government's approval if we want to change that.

I am disappointed that what we should have been looking for is secondary legislation on the issues as far as computers, as far as advertising is concerned and the likes, simply because then we would have had the opportunity, if we find ourselves in the opportunity that it might be in the interests of the Island to be more flexible on that subject with more dire situations.

As one of the few Members in this House who has actually been in here when there has not been any money to be able to throw away, we are going to need to be looking at every aspect as far as that issue is concerned. My resolve has not changed from the time that I raised the age from 16 to 18 for shops to sell, but I believe... and I cannot believe that the Department of Economic Development is allowing itself to be put into such a straitjacket, as far as the obvious opportunities that could have taken place if there is a ban in Europe.

One of the things that this Island has had in the past is the fact that we have been that little bit different... has been where you are marketing many things as far as the Island is concerned. We have only got to look from our colonial past, Vainstyr Loayreyder. We have the TT, and the TT came about because they could not close the roads off in the UK without an Act of Parliament but they could do it here because he was basically a feudal lord and this House could do very little about it. I am concerned – I am talking about the Governor now – the way it was –

**The Speaker:** Could we come back to the subject matter, Hon. Member.

**Mr Karran:** Vainstyr Loayreyder, I am talking about the economics of the opportunities that could have been there so that we could actually maybe be looking at other things as far as that is concerned. This House has been in the luxury for the last –

**The Speaker:** Hon. Member, we are not debating other things, we are debating specifically the Public Health (Tobacco) Bill. (**A Member:** Hear, hear.) Could we stick to that subject?

**Mr Karran:** Vainstyr Loayreyder, I am giving the reasons why I am not going to be voting for this Bill and that is the reason why I am not going to be voting for this Bill; because I believe that on the issues of the machines, on the issues of children in cars, on the issues of having the displays in shops – I can agree with that because a person who is trying to get off cigarettes... I have no problem with that. I just feel that it should have been much more flexibly written out as far as the draft concerning this legislation is concerned, and I think that that is where we have gone wrong.

I am as resolute as anyone else in this House as far as the fundamental issues of changes that are in this Bill, but I just feel that you are tying yourselves up where I do not think you might have the luxury in the future as far as the opportunities that could come to the Island as far as promotion, as far as sporting events and the thing outside the blanket ban in the United Kingdom and the EU.

**The Speaker:** Hon. Member for Glenfaba, Mr Anderson.

**Mr Anderson:** Thank you, Mr Speaker.

I rise to wholeheartedly support the legislation being introduced by the Minister here today and its intentions, and congratulate the Department in bringing it forward.

I am disappointed with the comments of the last speaker and I hope this House will unanimously support this Reading of this Bill.

**The Speaker:** Hon. Member for Ramsey, Mr Singer.

**Mr Singer:** I was not going to speak but I have never heard such a speech as that one from Mr Karran – that he supports it but he does not support it because he wants flexibility. What does he want flexibility...? Either you agree that cigarette sales, whilst they are not banned... but people should be protected and young people particularly should be protected. What is this flexibility for? He talks about sports events. Do we want sports events here that are going to allow the promotion of smoking? Of course we do not.

Then he talks about separation from Europe... and different from Europe. If Europe support this and we support it then I support Europe on this particular thing. I do not think we should just make ourselves different for the sake of being different (**A Member:** Hear, hear.) and I think that there is no flexibility as far as I am concerned on this particular matter.

I think I congratulate the Department for going ahead with this. I would have liked to see them go ahead with it earlier, but I congratulate the Minister. The Minister has in the last 12 months brought various items to this House which have been very important. He promised to bring them to help the health of the people of this Island and he is doing that and I congratulate the Department, and I hope that Members will reject this ridiculous Liberal Vannin policy of saying let's have more flexibility. There is no flexibility.

**The Speaker:** Hon. Member for Douglas South, Mrs Beecroft.

**Mrs Beecroft:** Thank you, Mr Speaker.

Just to clarify it actually is not a Liberal Vannin policy at all. It is Mr Karran speaking his personal view, so I do not know where you got the idea it was Liberal Vannin policy (*Interjection by Mr Singer*) because it is not printed anywhere, it has never been discussed or said it was.

**Mr Singer:** You don't work together then?

**Mrs Beecroft:** We usually do agree, Mr Karran and I, but on this occasion we do not. I agree that there should not be the flexibility that our principles should be compromised in the future should our economic circumstances warrant it. I do not think principles should be put to one side because we need the money. I can understand where Mr Karran is coming from and I can see his point of view, but I do not agree with it. I gave my support to the Bill at the beginning and I will continue to support it.

**The Speaker:** I call on the mover to reply. Minister, Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker, and may I thank my seconder, the Hon. Member for Onchan, Mr Quirk, and all the officers who have been working on this Bill.

Firstly, moving on to Mr Karran's comments, he was mainly supportive of the Bill but again was at odds with the Bill, and I think it boiled down to the potential of missed capital from the advertising of products. I suppose that is something that my Department cannot support – his viewpoint. We have discussed this in the Council of Ministers. We are fully supportive of this legislation and, yes, it may cost the Island some advertising – is his viewpoint – but I think the whole world is totally against the advertising of tobacco paraphernalia.

I would like to support Mr Anderson, who has obviously worked on this in his time too whilst in the Department.

I would like to thank Mr Singer for his kind words, and again he discussed his opposition to the Hon. Member for Onchan, Mr Karran's viewpoint, which I share.

And I thank Mrs Beecroft, the Hon. Member for Douglas South for stating her support of this Bill. Without further ado, I beg to move.

**The Speaker:** Hon. Members, I put the question that the Public Health (Amendment) Bill be read for the third time. Those in favour, please say aye; against, no. The ayes have it.

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

<b>FOR</b>	<b>AGAINST</b>
Mr Anderson	Mr Karran
Mrs Beecroft	
Mr Cregeen	
Mr Gawne	
Mr Hall	
Mr Houghton	
Mr Malarkey	
Mr Peake	
Mr Quayle	
Mr Quirk	
Mr Robertshaw	
Mr Singer	
Mr Skelly	
The Speaker	

**The Speaker:** There are 14 votes for, 1 against. The motion therefore carries.

Hon. Members, that concludes the business of the House today. The House will now stand adjourned until the next sitting, which will take place at 10.30 a.m. on Tuesday, 16th June in Tynwald Court.