
**PUBLIC HEALTH (TOBACCO) (AMENDMENT) BILL
2015**

Explanatory Memorandum

1. This Bill is promoted by the Department of Health and Social Care.
2. The Bill amends the Public Health (Tobacco) Act 2006 (the “2006 Act”).
3. *Clause 1* gives the resulting Act its short title and *clause 2* provides for its commencement to be by a day or days appointed by the Department of Health and Social Care. An appointed day order may include consequential, incidental, transitional and saving provisions.
4. *Clause 3(1)* provides for the resulting Act to expire on the day after its promulgation or on the day after the last provision is brought into operation.
5. *Clause 4* introduces the amendments to the 2006 Act.
6. *Clause 5* substitutes the heading to Part 1 and creates Division 1 (tobacco advertising) of that Part.
7. *Clauses 6 to 9* (and the *Schedule*) mirror the effect of Directive 2003/33/EC of the European Parliament and Council of 26th May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products. These provisions achieve this aim by amending the 2006 Act to include provision about information society services. In doing so, these amendments also give effect to Directive 2000/31/EC (“the e-commerce Directive”).
8. *Clause 10* inserts new sections 4A to 4D (prohibition of tobacco displays etc.), the effect of which is as follows.
9. New section 4A (prohibition of tobacco displays) makes it an offence for a person, in the course of a business, to display tobacco products, or cause tobacco products to be displayed, in a place in the Island.
10. New section 4B (tobacco displays: exclusions and defence) provides for a number of exclusions from the new section 4A prohibition on tobacco displays.
11. New section 4C (displays: prices of tobacco products) gives the Department of Health and Social Care power by regulations to impose requirements in relation to the display of prices of tobacco products and makes such display an offence.
12. New section 4D (displays on a website) makes it an offence —
 - a. to display, or cause to be displayed, tobacco products or their prices on a website in breach of any requirements imposed by regulations, except where this is in the course of providing information society services by a service provider established outside the Island;

- b. for a service provider established in the Island to do something in an EEA State which, if done in the Island, would constitute an offence under subsection (2).
13. *Clause 11* repeals section 5 (displays).
 14. *Clauses 12 and 13* amend section 6 (prohibition of free distribution) and section 8 (brandsharing) to give effect to the e-commerce Directive.
 15. *Clause 14* creates Division 2 (sale from automatic machines) and Division 3 (enforcement) of Part 1. The provision also inserts a new section 8A (in Division 2) which prohibits the sale of tobacco from an automatic machine.
 16. *Clause 15* makes a minor amendment to improve the wording in section 10(1).
 17. *Clause 16* creates Division 4 (general) of Part 1.
 18. *Clause 17* makes consequential amendments to section 12.
 19. *Clause 18* amends the list of definitions in section 13 and makes provision about information society services.
 20. *Clause 19* amends section 18 by requiring an authorised person exercising powers under that section to produce evidence of his or her authority on demand.
 21. *Clause 20* inserts new sections 20A and 20B (fixed penalties for offences under Part 2). New section 20A empowers an authorised person to issue fixed penalty notices in respect of offences under Part 2 and new section 20B deals with their withdrawal.
 22. *Clause 21* repeals section 21 (penalties) and relocates the penalties accordingly.
 23. *Clause 22* amends section 22 by inserting a new subsection (2A) which provides that payment of a fixed penalty issued under new section 20A by an officer does not preclude prosecution of the body corporate (and *vice versa*).
 24. *Clause 23* inserts a new section 22A which enables the Department of Health and Social Care to amend the 2006 Act by order —
 - a. in consequence of developments in technology relating to publishing or distributing by electronic means; or
 - b. for the purpose of making the 2006 Act correspond with legislation operating in the United Kingdom.
 25. *Clause 24* substitutes section 23 (public documents). The effect of the substitution is to require regulations under Part 2 and orders under new sections 20A(5) and 22A to be subject to Tynwald approval.
 26. *Clause 25* substitutes section 25 (interpretation). The purpose of the substitution is to insert a new definition of “authorised person”, to tidy up the definition of “DEFA” and to define “DHSC” (as opposed to “the Department”). The clause also substitutes section 26. The effect of the substitution is to omit subsection (2) since it refers to “the Department” (which is no longer defined) and it is a spent provision.

27. The Bill is expected to be cost-neutral and revenue-neutral to Government. It will however involve additional costs for business and may reduce profits.
28. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



Ellan Vannin

PUBLIC HEALTH (TOBACCO) (AMENDMENT) BILL 2015

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Ellan Vannin

PUBLIC HEALTH (TOBACCO) (AMENDMENT) BILL 2015

1 A **BILL** to amend the Public Health (Tobacco) Act 2006.

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

2 **1 Short title**

3 The short title of this Act is the Public Health (Tobacco) (Amendment) Act 2015.

4 **2 Commencement**

5 (1) This Act (other than this section and section 1) comes into operation on
6 such day or days as the Department of Health and Social Care by order
7 appoints and different days may be appointed for different provisions
8 and for different purposes.

9 (2) An order under subsection (1) may make such consequential, incidental,
10 transitional and saving provisions as the Department of Health and
11 Social Care considers necessary or expedient.

12 **3 Expiry**

13 (1) This Act expires —

14 (a) on the day after its promulgation if all of its provisions are in
15 operation on its promulgation; or

16 (b) otherwise, on the day after the last provision is brought into
17 operation.

18 (2) The expiry does not —

19 (a) revive the *Public Health (Tobacco) Act 2006* as it operated before the
20 amendments made by this Act commenced;

21 (b) revive anything not in operation or existing when those
22 amendments commenced; or

23 (c) affect the continuing operation of the amendments.

1 **4 Amendment of the Public Health (Tobacco) Act 2006**

2 The *Public Health (Tobacco) Act 2006* is amended in accordance with sections 5 to
3 25.

4 **5 Part 1 heading substituted – control of tobacco advertising**

5 For the Part heading before section 1 substitute –

6 **“PART 1 – TOBACCO ADVERTISING AND CONTROL**

7 **DIVISION 1 – TOBACCO ADVERTISING AND DISPLAY”.**

8 **6 Section 1 amended – prohibition of tobacco advertising**

9 SI 2006/2369 reg2(2)

10 In section 1, for subsections (4) and (5) substitute –

11 “(4) A service provider established in the Island who, in the course of
12 providing information society services, does anything in an EEA
13 State which, if done in the Island, would constitute an offence
14 under subsection (1) or (2) is guilty of an offence.”.

15 **7 New section 2A – advertising: information society services**

16 SI 2006/2369 reg3

17 After section 2 insert –

18 **“2A Advertising: information society services**

19 P2002/36/3A

20 (1) This subsection applies where by means of an information society
21 service, provided in the course of a business, a tobacco
22 advertisement is published –

23 (a) in the Island, or
24 (b) in an EEA State, by a service provider established in the
25 Island.

26 (2) Where subsection (1) applies –

27 (a) any proprietor of the information society service or any
28 editor of the information contained in the information
29 society service is guilty of an offence, and

30 (b) any person who (directly or indirectly) procured the
31 inclusion of the tobacco advertisement in the information
32 contained in the information society service is guilty of an
33 offence.”.

8 Section 3 amended and Schedule inserted – advertising and information society services

SI 2006/2369 reg4(2)-(7)

(1) Section 3 is amended in accordance with subsections (2) to (5).

(2) In subsection (1) –

(a) for “section 1 or 2” substitute “section 1, 2 or 2A”;

(b) at the end of paragraph (b) omit “or”; and

(c) for paragraph (c) substitute –

“(c) if it is contained in a publication (other than an in-flight magazine) –

(i) which is printed outside the relevant territory, and

(ii) whose principal market is not one or more of the relevant territories (or any part of a relevant territory), or

(d) if it is published by means of an information society service by a person who does not carry on business in the relevant territory and it is not intended to be accessed principally by persons in one or more relevant territories (or any part of a relevant territory).”.

(3) After subsection (1) insert –

“(1A) Subsection (1)(b) applies to a communication made by means of an information society service only if the request was made –

(a) by means of an information society service which does not advertise any tobacco product to persons –

(i) who have not made such a request, or

(ii) who have not initiated a process by which a tobacco product may be purchased by means of that service, or

(b) without using an information society service.

(1B) The supply of information to an individual is not a tobacco advertisement if –

(a) an information society service provides a means by which tobacco products may be purchased which includes the provision of information about a tobacco product, and

(b) the information becomes available only after the individual has initiated the process of making the purchase.”.

(4) In subsection (3)(a) omit “or on a website”.

(5) At the end insert –

“(5) The Schedule has effect in relation to the liability of information society service providers.”

(6) Accordingly, insert the Schedule set out in the Schedule to this Act.

9 Section 4 amended – advertising: defences

SI 2006/2369 reg5(2)-(6)

(1) Section 4 is amended as follows.

(2) In subsection (1) for “section 1 or section 2(a) or (b)” substitute “section 1, section 2(a) or (b) or section 2A(2)”.

(3) For subsection (3) substitute –

“(3) A person does not commit an offence under the following provisions if that person did not know, and had no reason to suspect, that the tobacco advertisement would be published in the Island –

(a) section 1(2),

(b) section 2(a) or (b), or

(c) section 2A(2) (by virtue of section 2A(1)(a)).”.

(4) After subsection (3) insert –

“(3A) A person does not commit an offence under the following provisions if that person did not know, and had no reason to suspect, that the tobacco advertisement would be published in an EEA State –

(a) section 1(4), or

(b) section 2A(2) (by virtue of section 2A(1)(b)).”.

(5) In subsection (5) –

(a) at the end of paragraph (b) omit “or”;

(b) for paragraph (c) substitute –

“(c) in relation to transmission by means of information society services, that person did not carry on business in the relevant territory at the relevant time, or

(d) in relation to transmission by any other means of electronic transmission, that person did not carry on business in the Island at the relevant time.”.

(6) After subsection (5) insert –

“(5A) A person does not commit an offence under section 1(4) of distributing or causing the distribution of a tobacco advertisement if –

- 1 (a) that person was unaware that what he or she distributed or
 2 caused to be distributed was, or contained, a tobacco
 3 advertisement, or
 4 (b) having become aware of it, it was not reasonably
 5 practicable for that person to prevent its further
 6 distribution.”.

7 **10 New sections 4A to 4D – prohibition of tobacco displays etc.**

8 P2009/21/21

9 After section 4 insert —

10 **“4A Prohibition of tobacco displays**

11 P2002/36/7A

- 12 (1) A person who in the course of a business displays tobacco
 13 products, or causes tobacco products to be displayed, in a place in
 14 the Island is guilty of an offence.
 15 (2) DHSC may by regulations —
 16 (a) provide for the meaning of “place” in this section, and
 17 (b) make provision for a display in a place which also amounts
 18 to an advertisement to be treated for the purposes of
 19 offences under this Act as an advertisement and not as a
 20 display and *vice versa*.

21 **4B Tobacco displays: exclusions and defence**

22 P2002/36/7B

- 23 (1) No offence is committed under section 4A if —
 24 (a) the tobacco products are displayed in the course of a
 25 business which is part of the tobacco trade,
 26 (b) they are displayed for the purposes of that trade, and
 27 (c) the display is accessible only to persons who are engaged
 28 in, or employed by, a business which is also part of that
 29 trade.
 30 (2) No offence is committed under section 4A if the display is a
 31 requested display to an individual aged 18 or over.
 32 (3) DHSC may provide in regulations that no offence is committed
 33 under section 4A if the display complies with requirements
 34 specified in the regulations.
 35 (4) Subsections (5) and (7) apply where a person (“D”) is charged
 36 with an offence under section 4A in a case where the display is a
 37 requested display to an individual aged under 18.

- 1 (5) Where D is charged by reason of D having displayed the tobacco
2 product it is a defence that —
- 3 (a) D believed that the individual was aged 18 or over, and
4 (b) either —
- 5 (i) D had taken all reasonable steps to establish the
6 individual's age, or
7 (ii) from the individual's appearance nobody could
8 reasonably have suspected that the individual was
9 aged under 18.
- 10 (6) For the purposes of subsection (5), a person is treated as having
11 taken all reasonable steps to establish an individual's age if —
- 12 (a) the person asked the individual for evidence of the
13 individual's age, and
14 (b) the evidence would have convinced a reasonable person.
- 15 (7) Where D is charged by reason of D having caused the display of
16 the tobacco product it is a defence that D exercised all due
17 diligence to avoid committing the offence.
- 18 (8) In this section “a requested display” means a display to an
19 individual following a particular request by the individual to
20 purchase a tobacco product, or for information about a tobacco
21 product.

22 4C Displays: prices of tobacco products

23 P2002/36/7C

- 24 (1) DHSC may by regulations make provision imposing requirements
25 in relation to the display in a place in the Island in the course of a
26 business of prices of tobacco products.
- 27 (2) A person who displays or causes to be displayed prices of tobacco
28 products in breach of a requirement contained in the regulations
29 is guilty of an offence.
- 30 (3) The regulations may, in particular, provide for the meaning of
31 “place” in this section.
- 32 (4) The regulations may make provision for a display of prices in a
33 place which also amounts to an advertisement to be treated for
34 the purposes of offences under this Act as an advertisement and
35 not as a display of prices and *vice versa*.

36 4D Displays on a website

37 P2002/36/7D

- 38 (1) DHSC may by regulations make provision imposing requirements
39 in relation to the display in the Island in the course of a business

- 1 of tobacco products or their prices on a website where tobacco
2 products are offered for sale.
- 3 (2) A person who displays or causes to be displayed tobacco products
4 or their prices in breach of a requirement contained in the
5 regulations is guilty of an offence.
- 6 (3) A service provider established in the Island is guilty of an offence
7 if, in the course of providing information society services, the
8 provider does anything in an EEA State which, if done in the
9 Island, would constitute an offence under subsection (2).
- 10 (4) Nothing in subsection (2) makes it an offence for a service
11 provider established outside the Island to do anything in the
12 course of providing information society services.
- 13 (5) The regulations may make provision for a relevant display of
14 tobacco products or their prices which also amounts to an
15 advertisement to be treated for the purposes of offences under
16 this Act as an advertisement and not as a display and *vice versa*.
- 17 (6) In subsection (5) a “relevant display” means a display on a
18 website where tobacco products are offered for sale.”

19 **11 Section 5 repealed – displays**

20 Section 5 is repealed.

21 **12 Section 6 amended – prohibition of free distributions**

22 P2009/21/Sch4 para5(2)&(3)

- 23 (1) Section 6 is amended as follows.
- 24 (2) After subsection (1) insert –
- 25 “(1A) A service provider established in the Island is guilty of an offence
26 if, in the course of providing information society services, the
27 provider does anything in an EEA State which, if done in the
28 Island, would constitute an offence under subsection (1).”
- 29 (3) After subsection (5) insert –
- 30 “(5A) Nothing in subsection (1) makes it an offence for a service
31 provider established outside the Island to do anything in the
32 course of providing information society services.”

33 **13 Section 8 amended – brandsharing**

34 P2009/21/Sch4 para6

- 35 (1) Section 8 is amended as follows.
- 36 (2) In subsection (3) for “section 1, 2, 5, 6 or 7” substitute “section 1, 2, 2A,
37 4A, 4C, 4D, 6 or 7”.

1 (3) After subsection (4) insert —

2 “(5) A service provider established in the Island is guilty of an offence
3 if, in the course of providing information society services, the
4 provider does anything in an EEA State which, if done in the
5 Island, would constitute an offence under subsection (4).

6 (6) Nothing in subsection (4) makes it an offence for a service
7 provider established outside the Island to do anything in the
8 course of providing information society services.”

9 **14 New section 8A inserted – prohibition of the sale of tobacco from**
10 **automatic machines**

11 After section 8 insert —

12 “DIVISION 2 – SALE FROM AUTOMATIC MACHINES

13 **8A Prohibition of the sale of tobacco from automatic machines**

14 (1) The sale of tobacco from an automatic machine is prohibited.

15 (2) The person who controls, or is concerned with the management
16 of, the premises where the automatic machine for the sale of
17 tobacco is located is guilty of an offence.

18 (3) It does not matter whether the automatic machine also sells other
19 products.

20 (4) In this section “premises” includes any place and any vehicle,
21 vessel, hovercraft, stall or moveable structure.

22 DIVISION 3 – ENFORCEMENT”.

23 **15 Section 10 amended – powers of entry, etc**

24 (1) Section 10 is amended as follows

25 (2) In subsection (1) for “the officer’s written authority” substitute “evidence
26 of the officer’s authority”.

27 (3) In subsection (4) for “Deemster” in both places substitute “judge of the
28 High Court”.

29 **16 New Division created – general**

30 After section 10 insert —

“DIVISION 4 – GENERAL”.

17 Section 12 amended – defences: burden of proof

P2009/21/Sch4 para10

In section 12(1) for “sections 4(1) to (6), 6(5), 7(3) and (4) and 11(3)” substitute “sections 4(1) to (6), 4B(5) and (7), 6(5), 7(3) and (4) and 11(3)”.

18 Section 13 amended and consequential amendments – Part 1: interpretation

SI 2006/2369 reg8

(1) Section 13 is amended in accordance with subsections (2) and (3).

(2) In subsection (1) –

(a) omit the definition of “authorised officer”; and

(b) insert the following definitions in the appropriate place in the alphabetical list –

“**the e-commerce Directive**” means Directive 2000/31/EC of the European Parliament and of the Council of 8th June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

“**EEA State**” means a member State, Norway, Iceland or Liechtenstein;

“**enforcement officer**” means a duly authorised officer of the OFT;

“**information society services**” –

(a) has the meaning set out in Article 2(a) of the e-commerce Directive², and

(b) is summarised in recital 17 of that Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“**member State**” has the same meaning as it has in the *European Communities (Isle of Man) Act 1973*;

“**relevant territory**” means the Island and the EEA States;

¹ OJ L 178, 17.7.2000, p. 1-16

² Article 2(a) refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22nd June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998, p. 37-48) (as amended by Directive 98/48/EC of 20th July 1998 (OJ L 217, 5.8.1998, p. 18-26))

1 | “**service provider**” means a person providing an information society
2 | service;”.

3 | (3) After subsection (1) insert —

4 | “(1A) For the purposes of this Part —

5 | (a) an establishment, in connection with an information
6 | society service, is the place at which the service provider
7 | effectively pursues an economic activity for an indefinite
8 | period,

9 | (b) the presence or use in a particular place of equipment or
10 | other technical means of providing an information society
11 | service does not, of itself, constitute that place as an
12 | establishment of the kind mentioned in paragraph (a),

13 | (c) where it cannot be determined from which of a number of
14 | establishments a given information society service is
15 | provided, that service is to be regarded as provided from
16 | the establishment where the service provider has the centre
17 | of his or her activities relating to the service,

18 | and references to a person being established in any place must be
19 | construed accordingly.”.

20 | (4) Consequent on subsection (2)(a), in sections 10 and 11 for “authorised
21 | officer” (wherever occurring) substitute “enforcement officer”.

22 | 19 Section 18 amended – powers to enter and require identification

23 | In section 18, after subsection (1) insert —

24 | “(1A) An authorised person exercising a power under this section must
25 | produce evidence of his or her authority on demand.”.

26 | 20 New sections 20A and 20B – fixed penalties for offences under Part 2

27 | After section 20 (and before the heading to Part 3) insert —

28 | “20A Fixed penalties for offences under Part 2

29 | 2013/11/15

30 | (1) If an authorised person has reason to believe that a person has
31 | committed an offence under this Part, the authorised person may
32 | give that person a notice (a “fixed penalty notice”) offering him or
33 | her the opportunity of discharging any liability to conviction for
34 | that offence by payment of a fixed penalty.

35 | (2) A fixed penalty notice must —

36 | (a) identify the offence to which it relates, and

- 1 (b) give reasonable particulars of the circumstances alleged to
2 constitute the offence.
- 3 (3) A fixed penalty notice must also state —
4 (a) the amount of the fixed penalty,
5 (b) the period within which it may be paid,
6 (c) the person to whom and address at which payment may be
7 made,
8 (d) the method or methods by which payment may be made,
9 (e) the consequences of not making payment before the end of
10 the period for payment of the fixed penalty.
- 11 (4) The amount of the fixed penalty is £50.
- 12 (5) After consulting DHSC and the Department of Home Affairs, the
13 amount of the fixed penalty may be varied by an order made by
14 DEFA.
- 15 (6) The period for payment of the fixed penalty is 28 days beginning
16 with the day on which the notice was given.
- 17 (7) DEFA may extend the period for payment of the fixed penalty in
18 any particular case if it considers it appropriate to do so, by giving
19 notice to the recipient of the fixed penalty notice.
- 20 (8) If a fixed penalty notice has been given, no proceedings for the
21 offence for which it has been given may be commenced before the
22 end of the period for payment of the fixed penalty.
- 23 (9) No such proceedings may be commenced or continued if payment
24 of the penalty is made before the end of the period for payment or
25 is accepted by DEFA after the end of that period.
- 26 (10) In proceedings for an offence under this Part, a certificate
27 which —
28 (a) purports to be signed by or on behalf of a person having
29 responsibility for the financial affairs of DEFA, and
30 (b) states that payment of the amount specified in the fixed
31 penalty notice was or was not received by the expiry of the
32 period within which that fixed penalty may be paid,
33 is sufficient evidence of the facts stated.
- 34 (11) Any sum received by DEFA under this section forms part of the
35 General Revenue.
- 36 (12) After consulting DHSC and the Department of Home Affairs,
37 DEFA may by regulations —
38 (a) provide that fixed penalty notices may not be given in such
39 circumstances as may be prescribed,

- 1 (b) provide for the form of a fixed penalty notice,
 2 (c) provide for the method or methods by which fixed
 3 penalties may be paid,
 4 (d) modify subsection (6) so as to substitute a different period
 5 for that specified there,
 6 (e) provide for the keeping of accounts, and the preparation
 7 and publication of statements of account relating to fixed
 8 penalties under this section.

9 **20B Withdrawal of fixed penalty notice**

10 2013/11/16

- 11 (1) DEFA must consider any representations made by or on behalf of
 12 the recipient of a fixed penalty notice and decide in all the
 13 circumstances whether to withdraw the notice.
 14 (2) If a fixed penalty notice is withdrawn in accordance with
 15 subsection (1) –
 16 (a) DEFA must give notice of the withdrawal to the person to
 17 whom the fixed penalty notice was given (“the recipient”),
 18 (b) DEFA must repay any amount which has been paid under
 19 the fixed penalty notice, and
 20 (c) no proceedings are to be commenced or continued against
 21 the recipient for the offence in question.”

22 **21 Section 21 repealed and consequential amendments – penalties**

- 23 (1) Section 21 is repealed and the penalties in that section are relocated in
 24 accordance with the following provisions of this section.
 25 (2) After section 11(3) insert –
 26 “(4) A person guilty of an offence under subsection (1) is liable on
 27 summary conviction to a fine not exceeding £1,000.”.
 28 (3) After section 12 insert –

29 **“12A Penalties for offences under Part 1**

30 A person guilty of an offence under or by virtue of any provision of this
 31 Part, other than section 11(1), is liable –

- 32 (a) on conviction on information, to custody for not more than
 33 2 years, a fine, or both, or
 34 (b) on summary conviction, to custody for not more than 6
 35 months, a fine not exceeding £5,000, or both.”.

1 (4) After new section 20B³ (and before the heading to Part 3) insert —

2 **“20C Penalties for offences under Part 2**

3 A person guilty of an offence under this Part is liable on summary
4 conviction to a fine not exceeding £5,000.”.

5 **22 Section 22 amended – offences by bodies corporate, etc**

6 After section 22(2) insert —

7 “(2A) If this section applies section 20A (fixed penalties for offences
8 under Part 2) applies to the officer as well as the body corporate.

9 Payment of a fixed penalty by an officer under this subsection
10 does not preclude prosecution of the body corporate (and vice
11 versa).”.

12 **23 New section 22A – order making power to amend Act**

13 After section 22 insert —

14 **“22A Power to amend Act**

15 P2002/36/7

16 DHSC may by order amend any provision of this Act if it considers it
17 appropriate to do so —

- 18 (a) in consequence of any developments in technology relating
19 to publishing or distributing by electronic means, or
20 (b) for the purpose of making this Act correspond (subject to
21 such modifications, exceptions or adaptations as it
22 considers appropriate) with corresponding legislation from
23 time to time operating in the United Kingdom.”.

24 **24 Section 23 substituted – public documents**

25 For section 23 substitute —

26 **“23 Public documents**

- 27 (1) Regulations under Part 1 must be laid before Tynwald as soon as
28 practicable after they are made, and if Tynwald at the sitting at
29 which the regulations are laid or at the next following sitting
30 resolves that they are to be annulled, they cease to have effect.
31 (2) Regulations under Part 2 or an order under section 20A(5) or 22A
32 must not come into operation unless approved by Tynwald.

³ Section 20B is inserted by section 20 of this Act

- (3) Subsection (2) does not affect any public documents made under Part 2 before section 24 of the *Public Health (Tobacco) (Amendment) Act 2014* comes into operation.”.

25 Section 25 substituted and consequential amendments – interpretation

- (1) For section 25 substitute –

“25 Interpretation

In this Act –

“**authorised person**” means a person authorised by DEFA for –

- (a) the purposes of this Act,
- (b) any provision of this Act, or
- (c) any provision having effect under this Act;

“**DEFA**” means the Department of Environment, Food and Agriculture;

“**DHSC**” means the Department of Health and Social Care; and

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

- (2) In consequence of the substitution made by subsection (1) –
- (a) in section 3(3) for “The Department of Health and Social Care (“the Department”)” substitute “DHSC”;
 - (b) in section 5(1) for “the Department” substitute “DHSC”;
 - (c) in section 6 –
 - (i) in subsection (7) for “The Department” substitute “DHSC”;
 - and
 - (ii) in subsection (9) for “the Department” substitute “DHSC”;
 - (d) in section 8 –
 - (i) in subsection (1) for “The Department” substitute “DHSC”;
 - and
 - (ii) in subsection (3) for “the Department” substitute “DHSC”;
 - (e) in section 9 –
 - (i) in subsection (2) for “the Department” substitute “DHSC”;
 - and
 - (ii) in subsections (2) and (3) for “The Department” substitute “DHSC”;
 - (f) in section 10(8) and (9) for “the Department” (wherever occurring) substitute “DHSC”;
 - (g) in section 15(3) for “The Department of Environment, Food and Agriculture (“the DEFA”)” substitute “DEFA”;
 - (h) in section 17 –

- 1 (i) for “the DEFA’s” (wherever occurring) substitute
2 “DEFA’s”; and
- 3 (ii) in subsection (2) for “the DEFA” substitute “DEFA”;
- 4 (i) in section 18 —
- 5 (i) in subsection (1) for “environmental health officer of the
6 DEFA” substitute “authorised person”; and
- 7 (ii) in subsection (3)(a) for “environmental health officer”
8 substitute “authorised person”;
- 9 (j) in section 20 —
- 10 (i) in subsection (2) for “the DEFA” substitute “DEFA”; and
- 11 (ii) in subsection (8) for “The DEFA” substitute “DEFA”; and
- 12 (k) in section 24 for “the Department, the DEFA” substitute “DHSC,
13 DEFA”.
- 14

SCHEDULE

NEW SCHEDULE – INFORMATION SOCIETY SERVICE PROVIDERS

“SCHEDULE

[Section 3(5)]

INFORMATION SOCIETY SERVICE PROVIDERS

P2002/36/Sch

1 Interpretation

In this Schedule —

“**recipient of the service**” means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible, and

“**relevant offence**” is an offence under section 1, 2A, 4D, 6 or 8.

2 Exceptions for mere conduits

(1) A service provider is not capable of being guilty of a relevant offence in respect of anything done in the course of providing so much of an information society service as consists in —

(a) the provision of access to a communication network, or

(b) the transmission in a communication network of information provided by a recipient of the service,

if the transmission condition is satisfied.

(2) The transmission condition is that the service provider does not —

(a) initiate the transmission,

(b) select the recipient of the transmission, or

(c) select or modify the information contained in the transmission.

(3) Sub-paragraph (1)(b) does not apply if the information is information to which paragraph 3 applies.

(4) For the purposes of this paragraph, the provision of access to a communication network and the transmission of information in the network includes automatic, intermediate and transient storage of information for the purpose of carrying out the transmission in the network.

(5) Sub-paragraph (4) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

3 Exception for caching

- (1) This paragraph applies to information which —
- (a) is provided by a recipient of an information society service, and
 - (b) is the subject of automatic, intermediate and temporary storage which is solely for the purpose of making the onward transmission of the information to other recipients of the service at their request more efficient.
- (2) A service provider is not capable of being guilty of a relevant offence in respect of anything done in the course of providing so much of an information society service as consists in the transmission in a communication network of information to which this paragraph applies if —
- (a) the service provider does not modify the information,
 - (b) the service provider complies with any conditions attached to having access to the information,
 - (c) in a case to which sub-paragraph (3) applies, the service provider expeditiously removes the information or disables access to it.
- (3) This sub-paragraph applies if the service provider obtains actual knowledge that —
- (a) the information at the initial source of the transmission has been removed from the network, or
 - (b) access to it has been disabled.

4 Exception for hosting

- (1) A service provider is not capable of being guilty of a relevant offence in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service if —
- (a) the service provider did not know when the information was provided that it contained offending material, or
 - (b) upon obtaining actual knowledge that the information contained offending material, the service provider expeditiously removed the information or disabled access to it.
- (2) Offending material is material the storage of which would constitute a relevant offence.”.

IN THE KEYS

**PUBLIC HEALTH (TOBACCO) (AMENDMENT) BILL
2015**

A BILL to amend the Public
Health (Tobacco) Act 2006.

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

MR QUAYLE

MARCH 2015