



**Isle of Man**

*Ellan Vannin*

**AT 19 of 2006**

**PUBLIC HEALTH (TOBACCO) ACT 2006**





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## PUBLIC HEALTH (TOBACCO) ACT 2006

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**Isle of Man***Ellan Vannin*

## **PUBLIC HEALTH (TOBACCO) ACT 2006**

*Received Royal Assent:* 16 October 2006  
*Passed:* 16 October 2006  
*Commenced:* See Endnote 11

**AN ACT** to control the advertising and promotion of tobacco products; to prohibit smoking in certain wholly or substantially enclosed places; and for connected purposes.

### **PART 1 – TOBACCO ADVERTISING AND CONTROL<sup>1</sup>**

#### **DIVISION 1 – TOBACCO ADVERTISING AND DISPLAY<sup>2</sup>**

#### **1 Prohibition of tobacco advertising**

[P2002/36/2]

- (1) A person who in the course of a business publishes a tobacco advertisement, or causes one to be published, in the Island is guilty of an offence.
- (2) A person who in the course of a business prints, devises or distributes in the Island a tobacco advertisement which is published in the Island, or causes such a tobacco advertisement to be so printed, devised or distributed, is guilty of an offence.
- (3) Distributing a tobacco advertisement includes transmitting it in electronic form, participating in doing so, and providing the means of transmission.
- (4) A service provider established in the Island who, in the course of providing information society services, does anything in an EEA State which, if done in the Island, would constitute an offence under subsection (1) or (2) is guilty of an offence.<sup>3</sup>
- (5) [Repealed]<sup>4</sup>

## 2 Advertising: newspapers, periodicals etc

[P2002/36/3]

If a newspaper, periodical or other publication (“the publication”) containing a tobacco advertisement is in the course of a business published in the Island —

- (a) any proprietor or editor of the publication is guilty of an offence,
- (b) any person who (directly or indirectly) procured the inclusion of the advertisement in the publication is guilty of an offence, and
- (c) any person who sells the publication, or offers it for sale, or otherwise makes it available to the public, is guilty of an offence.

## 2A Advertising: information society services

P2002/36/3A

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

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

(2) Where subsection (1) applies —

- (a) any proprietor of the information society service or any editor of the information contained in the information society service is guilty of an offence, and
- (b) any person who (directly or indirectly) procured the inclusion of the tobacco advertisement in the information contained in the information society service is guilty of an offence.<sup>5</sup>

## 3 Advertising: exclusions

[P2002/36/4]

(1) No offence is committed under section 1, 2 or 2A in relation to a tobacco advertisement —

- (a) if it is, or is contained in, a communication made in the course of a business which is part of the tobacco trade, and for the purposes of that trade, and directed solely at persons who —
  - (i) are engaged in, or employed by, a business which is also part of that trade, and
  - (ii) fall within subsection (2),  
in their capacity as such persons,
- (b) if it is, or is contained in, the communication made in reply to a particular request by an individual for information about a tobacco product,
- (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<sup>6</sup>
  - (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).<sup>7 8</sup>
- (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.<sup>9</sup>
- (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.<sup>10</sup>
- (2) A person falls within this subsection if that person —
- (a) is responsible for making decisions on behalf of the business referred to in subsection (1)(a)(i) about the purchase of tobacco products which are to be sold in the course of that business,
  - (b) occupies a position in the management structure of the business in question which is equivalent in seniority to, or of greater seniority than, that of any such person, or
  - (c) is the person who, or is a member of the board of directors or other body of persons (however described) which, is responsible for the conduct of the business in question.
- (3) The Cabinet Office may provide in regulations that no offence is committed under section 1 in relation to a tobacco advertisement which —
- (a) is in a place where tobacco products are offered for sale, and<sup>11</sup>
  - (b) complies with requirements specified in the regulations.<sup>12</sup>
- (4) The regulations may, in particular, provide for the meaning of “place” in subsection (3)(a).
- (5) The Schedule has effect in relation to the liability of information society service providers.<sup>13</sup>

#### 4 Advertising: defences

[P2002/36/5]

- (1) A person does not commit an offence under section 1, section 2(a) or (b) or section 2A(2), in connection with an advertisement whose purpose is to promote a tobacco product, if that person did not know, and had no reason to suspect, that the purpose of the advertisement was to promote a tobacco product.<sup>14</sup>
- (2) A person does not commit such an offence in connection with an advertisement whose effect is to promote a tobacco product if that person could not reasonably have foreseen that that would be the effect of the advertisement.
- (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)).<sup>15</sup>
- (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)).<sup>16</sup>
- (4) A person does not commit an offence under section 1(2) of distributing or causing the distribution of a tobacco advertisement, otherwise than as mentioned in section 1(3), if that person did not know, and had no reason to suspect, that what was distributed or caused to be distributed was, or contained, a tobacco advertisement.
- (5) In relation to a tobacco advertisement which is distributed as mentioned in section 1(3), a person does not commit an offence under section 1(2) of distributing it or causing its distribution if —
  - (a) that person was unaware that what was distributed or caused to be distributed was, or contained, a tobacco advertisement,
  - (b) having become aware of it, it was not reasonably practicable for that person to prevent its further distribution,
  - (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<sup>17</sup>
  - (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.<sup>18</sup>



- (5A) A person does not commit an offence under section 1(4) of distributing or causing the distribution of a tobacco advertisement if —
- (a) that person was unaware that what he or she distributed or caused to be distributed was, or contained, a tobacco advertisement, or
  - (b) having become aware of it, it was not reasonably practicable for that person to prevent its further distribution.<sup>19</sup>
- (6) A person does not commit an offence under section 2(c) if that person did not know, and had no reason to suspect, that the publication contained a tobacco advertisement.

#### **4A Prohibition of tobacco displays**

P2002/36/7A

- (1) A person who in the course of a business displays tobacco products, or causes tobacco products to be displayed, in a place in the Island is guilty of an offence.
- (2) The Cabinet Office may by regulations —
- (a) provide for the meaning of “place” in this section, and
  - (b) make provision for a display in a place which also amounts to an advertisement to be treated for the purposes of offences under this Act as an advertisement and not as a display and vice versa.<sup>20 21</sup>

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

P2002/36/7B

- (1) No offence is committed under section 4A if —
- (a) the tobacco products are displayed in the course of a business which is part of the tobacco trade,
  - (b) they are displayed for the purposes of that trade, and
  - (c) the display is accessible only to persons who are engaged in, or employed by, a business which is also part of that trade.
- (2) No offence is committed under section 4A if the display is a requested display to an individual aged 18 or over.
- (3) The Cabinet Office may provide in regulations that no offence is committed under section 4A if the display complies with requirements specified in the regulations.<sup>22</sup>
- (4) Subsections (5) and (7) apply where a person (“D”) is charged with an offence under section 4A in a case where the display is a requested display to an individual aged under 18.
- (5) Where D is charged by reason of D having displayed the tobacco product it is a defence that —
- (a) D believed that the individual was aged 18 or over, and

- (b) either —
  - (i) D had taken all reasonable steps to establish the individual's age, or
  - (ii) from the individual's appearance nobody could reasonably have suspected that the individual was aged under 18.
- (6) For the purposes of subsection (5), a person is treated as having taken all reasonable steps to establish an individual's age if —
  - (a) the person asked the individual for evidence of the individual's age, and
  - (b) the evidence would have convinced a reasonable person.
- (7) Where D is charged by reason of D having caused the display of the tobacco product it is a defence that D exercised all due diligence to avoid committing the offence.
- (8) In this section “a requested display” means a display to an individual following a particular request by the individual to purchase a tobacco product, or for information about a tobacco product.<sup>23</sup>

#### **4C Displays: prices of tobacco products**

P2002/36/7C

- (1) The Cabinet Office may by regulations make provision imposing requirements in relation to the display in a place in the Island in the course of a business of prices of tobacco products.<sup>24</sup>
- (2) A person who displays or causes to be displayed prices of tobacco products in breach of a requirement contained in the regulations is guilty of an offence.
- (3) The regulations may, in particular, provide for the meaning of “place” in this section.
- (4) The regulations may make provision for a display of prices in a place which also amounts to an advertisement to be treated for the purposes of offences under this Act as an advertisement and not as a display of prices and vice versa.<sup>25</sup>

#### **4D Displays on a website**

P2002/36/7D

- (1) The Cabinet Office may by regulations make provision imposing requirements in relation to the display in the Island in the course of a business of tobacco products or their prices on a website where tobacco products are offered for sale.<sup>26</sup>
- (2) A person who displays or causes to be displayed tobacco products or their prices in breach of a requirement contained in the regulations is guilty of an offence.

- (3) A service provider established in the Island is guilty of an offence if, in the course of providing information society services, the provider does anything in an EEA State which, if done in the Island, would constitute an offence under subsection (2).
- (4) Nothing in subsection (2) makes it an offence for a service provider established outside the Island to do anything in the course of providing information society services.
- (5) The regulations may make provision for a relevant display of tobacco products or their prices which also amounts to an advertisement to be treated for the purposes of offences under this Act as an advertisement and not as a display and vice versa.
- (6) In subsection (5) a “relevant display” means a display on a website where tobacco products are offered for sale.<sup>27</sup>

## 5 [Repealed]<sup>28</sup>

## 6 Prohibition of free distributions

[P2002/36/9]

- (1) A person is guilty of an offence if in the course of a business that person —
  - (a) gives any product or coupon away to the public in the Island, or
  - (b) causes or permits that to happen,and the purpose or effect of giving the product or coupon away is to promote a tobacco product.
- (1A) A service provider established in the Island is guilty of an offence if, in the course of providing information society services, the provider does anything in an EEA State which, if done in the Island, would constitute an offence under subsection (1).<sup>29</sup>
- (2) It does not matter whether the product or coupon accompanies something else, or is given away separately.
- (3) No offence is committed under subsection (1) if —
  - (a) the business referred to in subsection (1) is part of the tobacco trade,
  - (b) the product or coupon is given away for the purposes of that trade,
  - (c) each person to whom it is given —
    - (i) is engaged in, or employed by, a business which is also part of the tobacco trade, and
    - (ii) falls within subsection (4), and
  - (d) the product or coupon is given to each such person in that person’s capacity as such a person.
- (4) A person falls within this subsection if that person —

- (a) is responsible for making decisions on behalf of the business referred to in subsection (3)(c)(i) about the purchase of tobacco products which are to be sold in the course of that business,
  - (b) occupies a position in the management structure of the business in question which is equivalent in seniority to, or of greater seniority than, that of any such person, or
  - (c) is the person who, or is a member of the board of directors or other body of persons (however described) which, is responsible for the conduct of the business in question.
- (5) A person does not commit an offence under this section —
- (a) where it is alleged that the purpose of giving the product or coupon away was to promote a tobacco product, if that person did not know and had no reason to suspect that that was its purpose, or
  - (b) where it is alleged that the effect of giving the product or coupon away was to promote a tobacco product, if that person could not reasonably have foreseen that that would be its effect.
- (5A) Nothing in subsection (1) makes it an offence for a service provider established outside the Island to do anything in the course of providing information society services.<sup>30</sup>
- (6) “**Coupon**” means a document or other thing which (whether by itself or not) can be redeemed for a product or service or for cash or any other benefit.
- (7) The Cabinet Office may make regulations providing for this section to apply to making products or coupons available for a nominal sum or at a substantial discount as it applies to giving them away.<sup>31</sup>
- (8) If regulations under subsection (7) provide for this section to apply to making products or coupons available at a substantial discount, the regulations must provide for the meaning of “substantial discount”.
- (9) The regulations may provide that this section is to apply in that case with such modifications (if any) specified in the regulations as the Cabinet Office considers appropriate.<sup>32</sup>

## 7 Prohibition of sponsorship

[P2002/36/10]

- (1) A person who is party to a sponsorship agreement is guilty of an offence if the purpose or effect of anything done as a result of the agreement is to promote a tobacco product in the Island.
- (2) A sponsorship agreement is an agreement under which, in the course of a business, a party to it makes a contribution towards something, whether the contribution is in money or takes any other form (for example, the provision of services or of contributions in kind).

- (3) A person does not commit an offence under this section —
- (a) where it is alleged that the purpose of what was done as a result of the agreement was to promote a tobacco product in the Island, if that person did not know, and had no reason to suspect, that that was its purpose, or
  - (b) where it is alleged that the effect of what was done as a result of the agreement was to promote a tobacco product in the Island, if that person could not reasonably have foreseen that that would be its effect.
- (4) A person does not commit an offence under this section if that person did not know and had no reason to suspect that the contribution referred to in subsection (2) was made in the course of a business.

## 8 Brandsharing

[P2002/36/11]

- (1) The Cabinet Office may by regulations make provision prohibiting or restricting, in such circumstances and subject to such exceptions as may be specified in the regulations, the use —
- (a) in connection with any service or product (other than a tobacco product), of any name, emblem or other feature of a description specified in the regulations which is the same as, or similar to, a name, emblem or other feature so specified which is connected with a tobacco product, or
  - (b) in connection with any tobacco product, of any name, emblem or other feature of a description specified in the regulations which is the same as, or similar to, a name, emblem or other feature so specified which is connected with any service or product other than a tobacco product.<sup>33</sup>
- (2) Provision made by virtue of subsection (1) may prohibit or restrict only that use whose purpose is to promote a tobacco product, or whose effect is to do so.
- (3) If regulations under this section provide for a prohibition or restriction to be subject to an exception, the regulations may also make such provision as the Cabinet Office considers appropriate for a corresponding exception to have effect for the purposes of offences under section 1, 2, 2A, 4A, 4C, 4D, 6 or 7.<sup>34</sup>
- (4) A person who contravenes a prohibition or restriction contained in regulations made under this section is guilty of an offence.
- (5) A service provider established in the Island is guilty of an offence if, in the course of providing information society services, the provider does anything in an EEA State which, if done in the Island, would constitute an offence under subsection (4).<sup>35</sup>

- (6) Nothing in subsection (4) makes it an offence for a service provider established outside the Island to do anything in the course of providing information society services.<sup>36</sup>

#### DIVISION 2 – SALE FROM AUTOMATIC MACHINES<sup>37</sup>

### 8A Prohibition of the sale of tobacco from automatic machines

- (1) The sale of tobacco from an automatic machine is prohibited.
- (2) The person who controls, or is concerned with the management of, the premises where the automatic machine for the sale of tobacco is located is guilty of an offence.
- (3) It does not matter whether the automatic machine also sells other products.
- (4) In this section “premises” includes any place and any vehicle, vessel, hovercraft, stall or moveable structure.<sup>38</sup>

#### DIVISION 3 – ENFORCEMENT<sup>39</sup>

### 9 Enforcement

[P2002/36/13]

- (1) It is the duty of the Isle of Man Office of Fair Trading (“the OFT”) to enforce the provisions of this Part and regulations made under it.
- (2) The Cabinet Office may direct, in relation to cases of a particular description or a particular case, that any duty imposed on the OFT by subsection (1) shall be discharged by the Cabinet Office and not by the OFT.<sup>40</sup>
- (3) The Cabinet Office may take over the conduct of any proceedings instituted by another person under any provision of this Part or regulations made under it.<sup>41</sup>

### 10 Powers of entry, etc

[P2002/36/14]

- (1) An enforcement officer has the right, on producing, if so required, evidence of the officer’s authority –
- (a) at any reasonable hour to enter any premises, other than premises used only as a private dwelling house, which the officer considers it is necessary to enter for the purpose of the proper exercise of the officer’s functions under this Part,
- (b) to carry out on those premises such inspections and examinations as the officer considers necessary for that purpose,

- (c) where the officer considers it necessary for that purpose, to require the production of any book, document, data, record (in whatever form it is held) or product and inspect it, and take copies of or extracts from it,
  - (d) to take possession of any book, document, data, record (in whatever form it is held) or product which is on the premises and retain it for as long as the officer considers necessary for that purpose,
  - (e) to require any person to give the officer such information, or afford the officer such facilities and assistance, as the officer considers necessary for that purpose.<sup>42</sup>
- (2) An enforcement officer may make such purchases and secure the provision of such services as the officer considers necessary for the purpose of the proper exercise of the officer's functions under this Part.<sup>43</sup>
- (3) A person is not obliged by subsection (1) to answer any question or produce any document which that person would be entitled to refuse to answer or to produce in or for the purposes of proceedings in a court in the Island.
- (4) If a judge of the High Court is satisfied by any written complaint on oath that for the purpose of the proper exercise of the functions of the OFT under this Part there are reasonable grounds for entry into any premises, other than premises used only as a private dwelling house, and —
- (a) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier, or
  - (b) that an application for admission, or the giving of such notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await the return of the occupier,
- the judge of the High Court may by signed warrant, which shall continue in force until the end of the period of one month beginning with the date on which it is signed, authorise any enforcement officer to enter the premises, if need be by force.<sup>44</sup>
- (5) An enforcement officer entering any premises by virtue of subsection (1) or of a warrant under subsection (4) may enter those premises with such other persons and such equipment as the officer considers necessary.<sup>45</sup>
- (6) On leaving any premises which an enforcement officer is authorised to enter by a warrant under subsection (4), that officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as the officer found them.<sup>46</sup>
- (7) Where by virtue of subsection (1)(d) an enforcement officer takes possession of any item, the officer shall leave on the premises from which

the item was removed a statement giving particulars of what that officer has taken and stating that the officer has taken possession of it.<sup>47</sup>

- (8) Where a direction of the Cabinet Office has effect under section 9(2), this section and section 11 have effect, in relation to any case or case of a description specified in the direction, as if references to an enforcement officer were references to a person acting on behalf of the Cabinet Office.<sup>48</sup>
- (9) Where the Cabinet Office takes over any proceedings by virtue of section 9(3), this section and section 11 have effect, in relation to any case which is the subject of such proceedings, as if references to an enforcement officer were references to a person acting on behalf of the Cabinet Office.<sup>49</sup>

#### DIVISION 4 – GENERAL<sup>50</sup>

### 11 Obstruction, etc of officers

[P2002/36/15]

- (1) A person who –
- (a) intentionally obstructs an enforcement officer who is acting in the proper exercise of that officer's functions under this Part, or<sup>51</sup>
  - (b) without reasonable cause fails to comply with any requirement made of that person by such an officer who is so acting,
- is guilty of an offence.
- (2) A person who, in giving any information which is properly required of that person by an enforcement officer, makes a statement which is false in a material particular is guilty of an offence.<sup>52</sup>
- (3) A person does not commit an offence under subsection (2) if that person –
- (a) did not know the material particular was false, and
  - (b) had reasonable grounds to believe that it was true.
- (4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £1,000.<sup>53</sup>

### 12 Defences: burden of proof

[P2002/36/17]

- (1) This section applies where a person charged with an offence under this Part relies on a defence under any of sections 4(1) to (6), 4B(5) and (7), 6(5), 7(3) and (4) and 11(3).<sup>54</sup>
- (2) Where evidence is adduced which is sufficient to raise an issue with respect to that defence, the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.



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

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

- (a) on conviction on information, to custody for not more than 2 years, a fine, or both, or
- (b) on summary conviction, to custody for not more than 6 months, a fine not exceeding £5,000, or both.<sup>55</sup>

**13 Part 1: interpretation**

[P2002/36/1 and 21]

(1) In this Part —

“**authorised officer**” [Repealed]<sup>56</sup>

“**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);<sup>1 57</sup>

“**EEA State**” means a member State, Norway, Iceland or Liechtenstein;<sup>58</sup>

“**enforcement officer**” means a duly authorised officer of the OFT;<sup>59</sup>

“**information society services**” —

- (a) has the meaning set out in Article 2(a) of the e-commerce Directive<sup>2</sup>, 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”;<sup>60</sup>

“**member State**” has the same meaning as it has in the *European Communities (Isle of Man) Act 1973*;<sup>61</sup>

“**public**” means the public generally, any section of the public or individually selected members of the public;

“**purpose**” includes one of a number of purposes;

“**relevant territory**” means the Island and the EEA States;<sup>62</sup>

“**service provider**” means a person providing an information society service;<sup>63</sup>

<sup>1</sup> OJ L 178, 17.7.2000, p. 1-16

<sup>2</sup> 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 20<sup>th</sup> July 1998 (OJ L 217, 5.8.1998, p. 18-26))

**“tobacco advertisement”** means any advertisement —

- (a) whose purpose is to promote a tobacco product, or
- (b) whose effect is to do so, and

**“tobacco product”** means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.

(1A) For the purposes of this Part —

- (a) an establishment, in connection with an information society service, is the place at which the service provider effectively pursues an economic activity for an indefinite period,
- (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute that place as an establishment of the kind mentioned in paragraph (a),
- (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment where the service provider has the centre of his or her activities relating to the service,

and references to a person being established in any place must be construed accordingly.<sup>64</sup>

- (2) In this Part, references to publishing include any means of publishing and include, in particular, publishing by any electronic means, for example by means of the internet.

## **PART 2 – SMOKING: PROHIBITION AND CONTROL**

### **14 Offences of permitting others to smoke in no-smoking premises**

[S2005/13/1]

- (1) A person who, having the management or control of no-smoking premises, knowingly permits another to smoke there is guilty of an offence.
- (2) A person accused of an offence under this section is to be regarded as having knowingly permitted another to smoke in no-smoking premises if that person ought to have known that the other person was smoking there.
- (3) It is a defence for an accused charged with an offence under this section to prove —
  - (a) that the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence not to commit the offence; or

- (b) that there were no lawful and reasonably practicable means by which the accused could prevent the other person from smoking in the no-smoking premises.

## **15 Display of warning notices in and on no-smoking premises**

[S2005/13/3]

- (1) If notices are not conspicuously displayed –
  - (a) in, on or near no-smoking premises so as to be visible to and legible by persons in and persons approaching the premises; and
  - (b) stating –
    - (i) that the premises are no-smoking premises; and
    - (ii) that it is an offence to smoke there or knowingly to permit smoking there,the person having the management or control of the premises is guilty of an offence.
- (2) It is a defence for an accused charged with an offence under this section to prove that the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence not to commit the offence.
- (3) DEFA may, after consulting such persons as it considers appropriate, by regulations provide further as to the manner of display, form and content of the notices referred to in subsection (1) and that any such provision is to be treated, for the purposes of that subsection, as if incorporated in it.<sup>65</sup>

## **16 Offences of smoking in no-smoking premises**

[S2005/13/2]

- (1) A person who smokes in no-smoking premises is guilty of an offence.
- (2) It is a defence for an accused charged with an offence under this section to prove that the accused did not know, and could not reasonably be expected to have known, that the place in which it is alleged that the accused was smoking was no-smoking premises.

## **17 Proceeding for offences under sections 14 to 16**

[S2005/13/5]

- (1) Summary proceedings in pursuance of section 14, 15 or 16 may be commenced at any time within the period of 6 months from the date on which evidence sufficient in the opinion of DEFA to justify the proceedings comes to DEFA's knowledge.<sup>66</sup>
- (2) For the purposes of subsection (1), a certificate of DEFA as to the date on which the evidence in question came to DEFA's knowledge is conclusive evidence of the date on which it did so.<sup>67</sup>

## 18 Powers to enter and require identification

[S2005/13/7]

- (1) An authorised person may enter and search any no-smoking premises in order to ascertain whether an offence under section 14, 15 or 16 has been or is being committed there.<sup>68</sup>
- (1A) An authorised person exercising a power under this section must produce evidence of his or her authority on demand.<sup>69</sup>
- (2) A power under this section may be exercised, if need be, by force.
- (3) A person who —
  - (a) an authorised person reasonably believes —
    - (i) is committing or has committed an offence under section 14, 15 or 16; or
    - (ii) has information relating to such an offence; and<sup>70</sup>
  - (b) fails without reasonable excuse to supply the officer with the person's name and address on being so required by the officer,is guilty of an offence.

## 19 Crown application

- (1) This Part binds the Crown.
- (2) No contravention by the Crown of this Part or any regulations under it makes the Crown criminally liable.
- (3) Subsection (2) does not extend to persons in the public service of the Crown.

## 20 Meaning of “smoke” and “no-smoking premises”

[S2002/13/4]

- (1) In this Part, “**smoke**” means smoke tobacco, any substance or mixture which includes it or any other substance or mixture; and a person is to be taken as smoking if the person is holding or otherwise in possession or control of lit tobacco, of any lit substance or mixture which includes tobacco or of any other lit substance or mixture which is in a form or in a receptacle in which it can be smoked.
- (2) In this Part, “**no-smoking premises**” means such premises or such classes of premises, being premises of a kind mentioned in subsection (4), as are prescribed by regulations made by DEFA after consulting such persons as it considers appropriate on a draft of the regulations.<sup>71</sup>
- (3) Regulations under subsection (2) may prescribe premises or parts of premises or classes of premises or parts of premises which are excluded from the definition of “no-smoking premises”.

- (4) The kind of premises referred to in subsection (2) is premises which are wholly or substantially enclosed and —
- (a) to which the public or a section of the public has access;
  - (b) which are being used wholly or mainly as a place of work;
  - (c) which are being used by and for the purposes of a club or other unincorporated association;
  - (d) which are being used wholly or mainly for the provision of education or of health or care services; or
  - (e) to which persons under the age of 16 have access.<sup>72</sup>
- (5) In subsection (4)(b), the reference to work includes work undertaken for no financial advantage.
- (6) Regulations under subsection (2) may, for the purposes of that subsection, define or elaborate the meaning of any of the expressions —
- (a) “premises”;
  - (b) “wholly or substantially enclosed”;
  - (c) “the public”; and
  - (d) “has access”.
- (7) Regulations under subsection (2) may define or elaborate the meaning of “premises” —
- (a) by reference to the person or class of person who owns or occupies them;
  - (b) so as to include vehicles, vessels, trains and other means of transport (except aircraft), or such, or such classes, of them as are specified in the regulations.
- (8) DEFA may, by regulations, after consulting such persons as it considers appropriate on a draft of the regulations, modify subsection (4) so as —
- (a) to add a kind of premises to; or
  - (b) remove a kind of premises (but not the kind referred to in paragraph (a) of that subsection) from,
- those in that subsection.<sup>73</sup>
- (9) Regulations made by virtue of subsection (7)(b) may provide as to how the statement in a section 15(1)(b) notice is to be expressed in the case of each of the means of transport referred to in the regulations and that any such provision is to be treated, for the purposes of that section, as if incorporated in it.

## 20A Fixed penalties for offences under Part 2

2013/11/15

- (1) If an authorised person has reason to believe that a person has committed an offence under this Part, the authorised person may give that person a

notice (a “fixed penalty notice”) offering him or her the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

- (2) A fixed penalty notice must —
  - (a) identify the offence to which it relates, and
  - (b) give reasonable particulars of the circumstances alleged to constitute the offence.
- (3) A fixed penalty notice must also state —
  - (a) the amount of the fixed penalty,
  - (b) the period within which it may be paid,
  - (c) the person to whom and address at which payment may be made,
  - (d) the method or methods by which payment may be made,
  - (e) the consequences of not making payment before the end of the period for payment of the fixed penalty.
- (4) The amount of the fixed penalty is £50.
- (5) After consulting the Cabinet Office and the Department of Home Affairs, the amount of the fixed penalty may be varied by an order made by DEFA.<sup>74</sup>
- (6) The period for payment of the fixed penalty is 28 days beginning with the day on which the notice was given.
- (7) DEFA may extend the period for payment of the fixed penalty in any particular case if it considers it appropriate to do so, by giving notice to the recipient of the fixed penalty notice.
- (8) If a fixed penalty notice has been given, no proceedings for the offence for which it has been given may be commenced before the end of the period for payment of the fixed penalty.
- (9) No such proceedings may be commenced or continued if payment of the penalty is made before the end of the period for payment or is accepted by DEFA after the end of that period.
- (10) In proceedings for an offence under this Part, a certificate which —
  - (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of DEFA, and
  - (b) states that payment of the amount specified in the fixed penalty notice was or was not received by the expiry of the period within which that fixed penalty may be paid,is sufficient evidence of the facts stated.
- (11) Any sum received by DEFA under this section forms part of the General Revenue.

- (12) After consulting the Cabinet Office and the Department of Home Affairs, DEFA may by regulations —
- (a) provide that fixed penalty notices may not be given in such circumstances as may be prescribed,
  - (b) provide for the form of a fixed penalty notice,
  - (c) provide for the method or methods by which fixed penalties may be paid,
  - (d) modify subsection (6) so as to substitute a different period for that specified there,
  - (e) provide for the keeping of accounts, and the preparation and publication of statements of account relating to fixed penalties under this section.<sup>75 76</sup>

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

2013/11/16

- (1) DEFA must consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.
- (2) If a fixed penalty notice is withdrawn in accordance with subsection (1) —
  - (a) DEFA must give notice of the withdrawal to the person to whom the fixed penalty notice was given (“the recipient”),
  - (b) DEFA must repay any amount which has been paid under the fixed penalty notice, and
  - (c) no proceedings are to be commenced or continued against the recipient for the offence in question.<sup>77</sup>

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

A person guilty of an offence under this Part is liable on summary conviction to a fine not exceeding £5,000.<sup>78</sup>

## **PART 3 – GENERAL**

### **21 [Repealed]<sup>79</sup>**

### **22 Offences by bodies corporate, etc**

- (1) This section applies where an offence under this Act is committed by a body corporate and it is proved that the offence —
  - (a) was committed with the consent or connivance of an officer of the body, or
  - (b) was attributable to neglect on the part of an officer of the body.

- (2) The officer, as well as the body, is guilty of the offence.
- (2A) If this section applies section 20A (fixed penalties for offences under Part 2) applies to the officer as well as the body corporate.
- Payment of a fixed penalty by an officer under this subsection does not preclude prosecution of the body corporate (and vice versa).<sup>80</sup>
- (3) Where an individual is convicted of an offence under this Act by virtue of this section, that individual shall be liable to the penalty set out in the relevant provision.
- (4) In this section “officer” includes —
- (a) a director, manager or secretary,
  - (b) a person purporting to act as a director, manager or secretary,
  - (c) if the affairs of the body are managed by its members, a member, and
  - (d) in relation to a limited liability company constituted under the *Limited Liability Companies Act 1996*, a member, the company’s manager, or registered agent.

## 22A Power to amend Act

P2002/36/7

The Cabinet Office may by order amend any provision of this Act if it considers it appropriate to do so —

- (a) in consequence of any developments in technology relating to publishing or distributing by electronic means, or
- (b) for the purpose of making this Act correspond (subject to such modifications, exceptions or adaptations as it considers appropriate) with corresponding legislation from time to time operating in the United Kingdom.<sup>81</sup>

## 23 Public documents

- (1) Regulations under Part 1 must be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that they are to be annulled, they cease to have effect.
- (2) Regulations under Part 2 or an order under section 20A(5) or 22A must not come into operation unless approved by Tynwald.
- (3) Subsection (2) does not affect any public documents made under Part 2 before section 24 of the *Public Health (Tobacco) (Amendment) Act 2015* comes into operation.<sup>82</sup>



## 24 Financial

There shall be paid out of money provided by Tynwald any expenses of the Cabinet Office, DEFA or the OFT under this Act.<sup>83</sup>

## 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; and

“**DHSC**” [Repealed]<sup>84</sup>

“**the OFT**” means the Isle of Man Office of Fair Trading.<sup>85</sup>

## 26 Citation and commencement

- (1) This Act may be cited as the Public Health (Tobacco) Act 2006.
- (2) This Act shall come into force on such day as the Department may by order appoint and different days may be so appointed for different provisions and for different purposes.<sup>86</sup>



**SCHEDULE<sup>87</sup>**

[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.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

- 
- <sup>1</sup> Part heading substituted by Public Health (Tobacco) (Amendment) Act 2015 s 5.
- <sup>2</sup> Division heading inserted by Public Health (Tobacco) (Amendment) Act 2015 s 5.
- <sup>3</sup> Subs (4) substituted by Public Health (Tobacco) (Amendment) Act 2015 s 6.
- <sup>4</sup> Subs (5) repealed by Public Health (Tobacco) (Amendment) Act 2015 s 6.
- <sup>5</sup> S 2A inserted by Public Health (Tobacco) (Amendment) Act 2015 s 7.
- <sup>6</sup> Para (c) substituted by Public Health (Tobacco) (Amendment) Act 2015 s 8.
- <sup>7</sup> Para (d) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 8.
- <sup>8</sup> Subs (1) amended by Public Health (Tobacco) (Amendment) Act 2015 s 8.
- <sup>9</sup> Subs (1A) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 8.
- <sup>10</sup> Subs (1B) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 8.
- <sup>11</sup> Para (a) amended by Public Health (Tobacco) (Amendment) Act 2015 s 8.
- <sup>12</sup> Subs (3) amended by SD155/10 Sch 4, by SD2014/08, by Public Health (Tobacco) (Amendment) Act 2015 s 25 and by SD2020/0538.
- <sup>13</sup> Subs (5) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 8.
- <sup>14</sup> Subs (1) amended by Public Health (Tobacco) (Amendment) Act 2015 s 9.
- <sup>15</sup> Subs (3) substituted by Public Health (Tobacco) (Amendment) Act 2015 s 9.
- <sup>16</sup> Subs (3A) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 9.
- <sup>17</sup> Para (c) substituted by Public Health (Tobacco) (Amendment) Act 2015 s 9.
- <sup>18</sup> Para (d) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 9.
- <sup>19</sup> Subs (5A) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 9.
- <sup>20</sup> Subs (2) amended by SD2020/0538.
- <sup>21</sup> S 4A inserted by Public Health (Tobacco) (Amendment) Act 2015 s 10.
- <sup>22</sup> Subs (3) amended by SD2020/0538.

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- <sup>23</sup> S 4B inserted by Public Health (Tobacco) (Amendment) Act 2015 s 10.
- <sup>24</sup> Subs (1) amended by SD2020/0538
- <sup>25</sup> S 4C inserted by Public Health (Tobacco) (Amendment) Act 2015 s 10.
- <sup>26</sup> Subs (1) amended by SD2020/0538
- <sup>27</sup> S 4D inserted by Public Health (Tobacco) (Amendment) Act 2015 s 10.
- <sup>28</sup> S 5 repealed by Public Health (Tobacco) (Amendment) Act 2015 s 11.
- <sup>29</sup> Subs (1A) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 12.
- <sup>30</sup> Subs (5A) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 12.
- <sup>31</sup> Subs (7) amended by Public Health (Tobacco) (Amendment) Act 2015 s 25 and by SD2020/0538.
- <sup>32</sup> Subs (9) amended by Public Health (Tobacco) (Amendment) Act 2015 s 25 and by SD2020/0538.
- <sup>33</sup> Subs (1) amended by Public Health (Tobacco) (Amendment) Act 2015 s 25 and by SD2020/0538.
- <sup>34</sup> Subs (3) amended by Public Health (Tobacco) (Amendment) Act 2015 s 13 and s 25 and by SD2020/0538.
- <sup>35</sup> Subs (5) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 13.
- <sup>36</sup> Subs (6) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 13.
- <sup>37</sup> Division 2 heading inserted by Public Health (Tobacco) (Amendment) Act 2015 s 14.
- <sup>38</sup> S 8A inserted by Public Health (Tobacco) (Amendment) Act 2015 s 14.
- <sup>39</sup> Division 3 heading inserted by Public Health (Tobacco) (Amendment) Act 2015 s 14.
- <sup>40</sup> Subs (2) amended by Public Health (Tobacco) (Amendment) Act 2015 s 25 and by SD2020/0538.
- <sup>41</sup> Subs (3) amended by Public Health (Tobacco) (Amendment) Act 2015 s 25 and by SD2020/0538.
- <sup>42</sup> Subs (1) amended by Public Health (Tobacco) (Amendment) Act 2015 s 15 and s 18.
- <sup>43</sup> Subs (2) amended by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>44</sup> Subs (4) amended by Public Health (Tobacco) (Amendment) Act 2015 s 15 and s 18.
- <sup>45</sup> Subs (5) amended by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>46</sup> Subs (6) amended by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>47</sup> Subs (7) amended by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>48</sup> Subs (8) amended by Public Health (Tobacco) (Amendment) Act 2015 s 18 and s 25 and by SD2020/0538.
- <sup>49</sup> Subs (9) amended by Public Health (Tobacco) (Amendment) Act 2015 s 18 and s 25 and by SD2020/0538.
- <sup>50</sup> Division 4 heading inserted by Public Health (Tobacco) (Amendment) Act 2015 s 16.
- <sup>51</sup> Para (a) amended by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>52</sup> Subs (2) amended by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>53</sup> Subs (4) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 21.
- <sup>54</sup> Subs (1) amended by Public Health (Tobacco) (Amendment) Act 2015 s 17.
- <sup>55</sup> S 12A inserted by Public Health (Tobacco) (Amendment) Act 2015 s 21.
- <sup>56</sup> Definition of “authorised officer” repealed by Public Health (Tobacco) (Amendment) Act 2015 s 18.

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- <sup>57</sup> Definition of “the e-commerce Directive” inserted by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>58</sup> Definition of “EEA State” inserted by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>59</sup> Definition of “enforcement officer” inserted by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>60</sup> Definition of “information society services” inserted by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>61</sup> Definition of “member State” inserted by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>62</sup> Definition of “relevant territory” inserted by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>63</sup> Definition of “service provider” inserted by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>64</sup> Subs (1A) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 18.
- <sup>65</sup> Subs (3) amended by SD155/10 Sch 3 and by Public Health (Tobacco) (Amendment) Act 2015 s 25.
- <sup>66</sup> Subs (1) amended by SD155/10 Sch 3 and by Public Health (Tobacco) (Amendment) Act 2015 s 25.
- <sup>67</sup> Subs (2) amended by SD155/10 Sch 3 and by Public Health (Tobacco) (Amendment) Act 2015 s 25.
- <sup>68</sup> Subs (1) amended by SD155/10 Sch 3 and by Public Health (Tobacco) (Amendment) Act 2015 s 25.
- <sup>69</sup> Subs (1A) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 19.
- <sup>70</sup> Para (a) amended by Public Health (Tobacco) (Amendment) Act 2015 s 25.
- <sup>71</sup> Subs (2) amended by SD155/10 Sch 3 and by Public Health (Tobacco) (Amendment) Act 2015 s 25.
- <sup>72</sup> Para (e) inserted by SD2016/0006.
- <sup>73</sup> Subs (8) amended by SD155/10 Sch 3 and by Public Health (Tobacco) (Amendment) Act 2015 s 25.
- <sup>74</sup> Subs (5) amended by SD2020/0538.
- <sup>75</sup> Subs (12) amended by SD2020/0538.
- <sup>76</sup> S 20A inserted by Public Health (Tobacco) (Amendment) Act 2015 s 20.
- <sup>77</sup> S 20B inserted by Public Health (Tobacco) (Amendment) Act 2015 s 20.
- <sup>78</sup> S 20C inserted by Public Health (Tobacco) (Amendment) Act 2015 s 21.
- <sup>79</sup> S 21 repealed by Public Health (Tobacco) (Amendment) Act 2015 s 21.
- <sup>80</sup> Subs (2A) inserted by Public Health (Tobacco) (Amendment) Act 2015 s 22.
- <sup>81</sup> S 22A inserted by Public Health (Tobacco) (Amendment) Act 2015 s 23 and amended by SD2020/0538.
- <sup>82</sup> S 23 substituted by Public Health (Tobacco) (Amendment) Act 2015 s 24.
- <sup>83</sup> S 24 amended by SD2014/08, by Public Health (Tobacco) (Amendment) Act 2015 s 25 and by SD2020/0538.
- <sup>84</sup> Definition of “DHSC” repealed by SD2020/0538.
- <sup>85</sup> S 25 substituted by Public Health (Tobacco) (Amendment) Act 2015 s 25.
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<sup>86</sup> ADO (ss 1 to 13, 21 to 26 (except s 21(3)) 1/3/2007 (SD02/07); (ss 14 to 20, s 21(3)) 1/6/2007 (SD508/07).

<sup>87</sup> Schedule inserted by Public Health (Tobacco) (Amendment) Act 2015 s 8.