

CHAPTER No. 19

**PUBLIC HEALTH (TOBACCO)
ACT 2006**

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PUBLIC HEALTH (TOBACCO) ACT 2006

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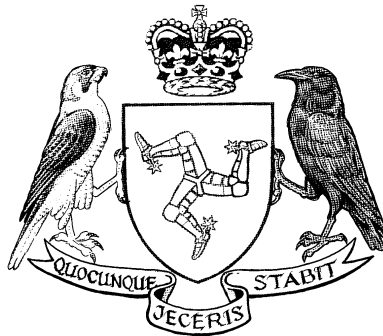
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Isle of Man } Signed in Tynwald: 16th October 2006
 in Wit } Received Royal Assent: 16th October 2006
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AN ACT

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

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and 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 (that is to say):—

PART 1

CONTROL OF TOBACCO ADVERTISING

1. (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.

Prohibition
of tobacco
advertising

P2002/36/2

(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) It is not an offence under subsection (1) for a person who does not carry on business in the Island to publish or cause to

be published a tobacco advertisement by means of a website which is accessed in the Island.

(5) In a case to which subsection (4) applies, devising the advertisement or causing it to be devised is not an offence under subsection (2).

Advertising:
newspapers,
periodicals etc

P2002/36/3

2. 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.

Advertising :
exclusions

P2002/36/4

3. (1) No offence is committed under section 1 or 2 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, or
- (c) if it is contained in a publication (other than an in-flight magazine) whose principal market is not the Island, or if it is contained in any internet version of such a publication.

(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 Department of Health and Social Security (“the Department”) may provide in regulations that no offence is committed under section 1 in relation to a tobacco advertisement which —

- (a) is in a place or on a website where tobacco products are offered for sale, and
- (b) complies with requirements specified in the regulations.

(4) The regulations may, in particular, provide for the meaning of “place” in subsection (3)(a).

4. (1) A person does not commit an offence under section 1 or section 2(a) or (b), 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.

Advertising :
defences

P2002/36/5

(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 section 1(2) or 2(a) or (b) if that person did not know, and had no reason to suspect, that the tobacco advertisement would be published in the Island.

(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, or
- (c) that person did not carry on business in the Island at the relevant time.

(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.

Displays
P2002/36/8

5. (1) A person who in the course of a business displays or causes to be displayed tobacco products or their prices in a place or on a website where tobacco products are offered for sale is guilty of an offence if the display does not comply with such requirements (if any) as may be specified by the Department in regulations.

(2) It is not an offence under subsection (1) for a person who does not carry on business in the Island to display or cause to be displayed tobacco products or their prices by means of a website which is accessed in the Island.

(3) The regulations may, in particular, provide for the meaning of “place” in subsection (1).

(4) The regulations must make provision for a display which also amounts to an advertisement to be treated for the purpose of offences under this Part —

- (a) as an advertisement and not as a display, or
- (b) as a display and not as an advertisement.

Prohibition of
free
distributions

6. (1) A person is guilty of an offence if in the course of a business that person —

P2002/36/9

- (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.

(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.

(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 Department 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.

(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 Department considers appropriate.

Prohibition of
sponsorship
P2002/36/10

7. (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. (1) The Department 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 —

Brandsharing
P2002/36/11

(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.

(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 Department considers appropriate for a corresponding exception to have effect for the purposes of offences under section 1, 2, 5, 6 or 7.

(4) A person who contravenes a prohibition or restriction contained in regulations made under this section is guilty of an offence.

9. (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.

Enforcement
P2002/36/13

(2) The Department 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 Department and not by the OFT.

(3) The Department may take over the conduct of any proceedings instituted by another person under any provision of this Part or regulations made under it.

10. (1) An authorised officer has the right, on producing, if so required, the officer’s written authority —

Powers of
entry, etc

(a) at any reasonable hour to enter any premises, other than premises used only as a private dwelling house, which

P2002/36/14

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.

(2) An authorised 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.

(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 Deemster 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 Deemster 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 authorised officer to enter the premises, if need be by force.

(5) An authorised 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.

(6) On leaving any premises which an authorised 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.

(7) Where by virtue of subsection (1)(d) an authorised 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.

(8) Where a direction of the Department 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 authorised officer were references to a person acting on behalf of the Department.

(9) Where the Department 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 authorised officer were references to a person acting on behalf of the Department.

11. (1) A person who —

Obstruction,
etc of officers

(a) intentionally obstructs an authorised officer who is acting in the proper exercise of that officer's functions under this Part, or

P2002/36/15

(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 authorised officer, makes a statement which is false in a material particular is guilty of an offence.

(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.

Defences:
burden of
proof

P2002/36/17

12. (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), 6(5), 7(3) and (4) and 11(3).

(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.

Part 1 :
interpretation

P2002/36/1
& 21

13. (1) In this Part —

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

“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;

“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.

(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

Offence of
permitting
others to
smoke in no-
smoking
premises

S2005/13/1

14. (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. (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

Display of warning notices in and on no-smoking premises

S2005/13/3

(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) The Department of Local Government and the Environment (“the DLGE”) 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.

16. (1) A person who smokes in no-smoking premises is guilty of an offence.

Offence of smoking in no-smoking premises

S2005/13/2

(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.

Proceeding
for offences
under sections
14 to 16
S2005/13/5

17. (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 DLGE to justify the proceedings comes to the DLGE's knowledge.

(2) For the purposes of subsection (1), a certificate of the DLGE as to the date on which the evidence in question came to the DLGE's knowledge is conclusive evidence of the date on which it did so.

Powers to
enter and
require
identification
S2005/13/7

18. (1) An environmental health officer of the DLGE 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.

(2) A power under this section may be exercised, if need be, by force.

(3) A person who —

(a) an environmental health officer 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

(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.

Crown
application

19. (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.

Meaning of
"smoke" and
"no-smoking
premises"
S2005/13/4

20. (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 the DLGE after consulting such persons as it considers appropriate on a draft of the regulations.

(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; or
- (d) which are being used wholly or mainly for the provision of education or of health or care services.

(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) The DLGE 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.

(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.

PART 3

GENERAL

Penalties

21. (1) A person guilty of an offence under section 11(1) is liable on summary conviction to a fine not exceeding £1,000.

(2) A person guilty of an offence under or by virtue of any other provision of Part 1 is liable —

- (a) on summary conviction to custody for a term not exceeding 6 months, or a fine not exceeding £5,000, or both, or
- (b) on conviction on information to custody for a term not exceeding 2 years, or a fine, or both.

(3) A person guilty of an offence under Part 2 is liable on summary conviction to a fine not exceeding £5,000.

Offences by
bodies
corporate, etc.

22. (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.

(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. [c.19]
- 23.** A public document under this Act shall be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the public document is laid or at the next following sitting resolves that it shall be annulled, it shall cease to have effect. Public documents
- 24.** There shall be paid out of money provided by Tynwald any expenses of the Department, the DLGE or the OFT under this Act. Financial
- 25.** (1) In this Act — Interpretation
- “the Department” means the Department of Health and Social Security;
 - “the DLGE” means the Department of Local Government and the Environment;
 - “the OFT” means the Isle of Man Office of Fair Trading.
- 26.** (1) This Act may be cited as the Public Health (Tobacco) Act 2006. Citation and commencement
- (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.