

VAPING PRODUCTS BILL 2023

Explanatory Memorandum

1. This Bill is promoted by Ms K. Lord-Brennan MHK.
2. *Clauses 1 and 2* contain, respectively, the short title of, and the commencement provisions for, the resulting Act.
3. *Clause 3* defines a “vaping product” by reference to 4 elements and sets out what does not fall within the definition.
4. *Clause 4* provides that the Department (Cabinet Office) must make regulations prescribing the manufacturing standards to be met by a vaping product and makes it an offence to deal in such products.
5. *Clause 5* makes it an offence to sell a vaping product to a person under the age of 18.
6. *Clause 6* makes it an offence for a person over the age of 18 who acts as an agent of a person under that age to buy or attempt to buy a vaping product for that person.
7. *Clause 7* makes it an offence for a responsible person to allow a person under 18 to sell a vaping product without their consent or approval it also makes it offence for a responsible person to allow a person under the age of 18 to sell a vaping product to any person where the sale takes place on specialised vaping premises.
8. *Clause 8* provides offences in respect of the importation of vaping products.
9. *Clause 9* requires a warning statement to be displayed by a person selling vaping products to the effect that it is illegal to sell such products to a person under 18.
10. *Clause 10* is requires a warning icon in the same terms as in clause 9 to be displayed in connection with on-line sales of vaping products.
11. *Clause 11* makes it an offence to sell vaping products other than in their original packaging.
12. *Clause 12* prohibits the sale of vaping products from an automatic vending machine.
13. *Clause 13* prohibits the display, advertising and promotion of vaping products in the course of a business.
14. *Clauses 14 and 15* exclude displays in wholesale premises and specialist vaping premises (respectively) from the prohibition in clause 13.
15. *Clause 16* provides for offences by legal entities.
16. *Clause 17* deals with the sale and import of vaping products under coercion. It makes it an offence for a person to coerce another to do such things.

17. *Clause 18* provides for the Isle of Man Office of Fair Trading to enforce the Act.
18. *Clause 19* deals with the Isle of Man Constabulary's powers under the Act, including search and seizure.
19. *Clause 20* provides for a defence of due diligence in respect of specified offences.
20. *Clause 21* provides for a defence of reasonable belief in respect of a person's age.
21. *Clause 22* provides a defence of coercion in respect of specified offences.
22. *Clause 23* enables the Department (Cabinet Office) to make regulations providing further defences to breaches of the Act.
23. *Clause 24* provides that regulations under the Act may also make consequential, incidental, supplementary, transitional and transitory provision.
24. *Clause 25* specifies the Tynwald procedure for subordinate legislation made under the Act.
25. *Clause 26* defines terms used in the Act and provides that references to "sale/sell/sold" include "supply and supplied" or an offer to do any of those things.
26. 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.
27. The resulting Act is not expected to have any financial or human resource implications.



Ellan Vannin

VAPING PRODUCTS BILL 2023

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VAPING PRODUCTS BILL 2023

- 1 **A BILL** to make provision in respect of the manufacture of vaping products, the
 2 composition of vaping liquids and the sale, importation, advertising and
 3 promotion of such products; and for connected purposes.

BE IT ENACTED by the King’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:—

4 **PART 1 – INTRODUCTORY**

5 **1 Short title**

6 The short title of this Act is the Vaping Products Act 2023.

7 **2 Commencement**

- 8 (1) This Act comes into operation on a day or days the Cabinet Office may by
 9 order appoint.
- 10 (2) An order under subsection (1) may include such consequential, incidental,
 11 supplementary, transitional and transitory provision as the Cabinet Office
 12 considers necessary or expedient.

13 **PART 2: VAPING PRODUCTS**

14 **3 Meaning of “vaping product”**

15 [ASP2010/3/1] and drafting

- 16 (1) In this Act a “vaping product” is —
- 17 (a) a device which is intended to enable the inhalation of nicotine-
 18 containing vapour by an individual;
- 19 (b) a device which is intended to enable the inhalation of other vapour
 20 by an individual but is intended to resemble and be operated in a
 21 similar way to a device within paragraph (a);

- 1 (c) an item (such as a cartridge or mechanical or electrical component)
2 which is intended to form part of a device within paragraph (a) or
3 (b);
- 4 (d) a substance which is intended to be vaporised by a device within
5 paragraph (a) or (b) (and any item containing such a substance).
- 6 (2) For the purposes of this Act, a vaping product includes a product which
7 can (or is intended to) be used only once as well as one which can (or is
8 intended to) be used more than once.
- 9 (3) The following are not vaping products —
- 10 (a) a tobacco product;
- 11 (b) a smoking related product;
- 12 (c) a medicinal product;
- 13 (d) a medical device;
- 14 (e) a battery.
- 15 (4) “Tobacco product” has the meaning given in the *Public Health (Tobacco)*
16 *Act 2006*.
- 17 (5) “Smoking related product” includes —
- 18 (a) cigarette papers;
- 19 (b) cigarette tubes;
- 20 (c) cigarette filters;
- 21 (d) apparatus for making cigarettes;
- 22 (e) cigarette holders;
- 23 (f) pipes for smoking tobacco products.
- 24 (6) “Medicinal product” has the meaning given in the *Medicines Act 2003*.
- 25 (7) “Medical device” means a device —
- 26 (a) within the meaning given in the Medical Devices Regulations 2002
27 (of the Westminster Parliament (S.I. 2002/618)) as amended, or
28 superseded, from time to time and which would, if it were subject
29 to those Regulations, comply with them; and
- 30 (b) which is registered with the Medicines and Healthcare products
31 Regulatory Agency (an executive agency of the Department of
32 Health and Social Care (UK)).
- 33 (8) The Department may make regulations in respect of this section.
- 34 (9) Without limiting subsection (8), such regulations may amend subsections
35 (3) to (7).
- 36 (10) Before making regulations under this section, the Department must
37 consult —
- 38 (a) the Department of Health and Social Care;

- 1 (b) the Director of Public Health; and
2 (c) such other persons or their representatives as it considers are likely
3 to be affected by such regulations.

4 PART 3: MANUFACTURE OF VAPING PRODUCTS

5 4 Manufacture etc. of vaping products

- 6 (1) A person who —
7 (a) manufactures;
8 (b) places on the market;
9 (c) imports;
10 (d) exports;
11 (e) sells or provides free of charge,
12 a vaping product which does not meet prescribed standards relating to its
13 manufacture commits an offence.
14 Maximum penalty (summary) - a fine not exceeding level 5 on the
15 standard scale, custody for a term not exceeding 6 months, or both.
16 (2) The Department must make regulations prescribing those standards and
17 specifying any defences in respect of a breach of them.
18 (3) Without limiting subsection (1), regulations made by the Department
19 under this section may also make provision in respect of —
20 (a) the composition of liquids to be used in vaping products including
21 the concentration of chemicals used therein;
22 (b) the use of flavourings in vaping substances and products;
23 (c) the packaging and labelling of vaping products including the use
24 and wording of warning labels and the use and content of
25 illustrations and pictures;
26 (d) other information to be provided with, or on, vaping products;
27 (e) the testing and inspection of vaping products;
28 (f) the summary trial of breaches of regulations made under this
29 section with such breaches to be punished by —
30 (i) a fine not exceeding level 5 on the standard scale;
31 (ii) custody for a term not exceeding 6 months; or
32 (iii) both;
33 (g) defences in respect of any breach of regulations made under this
34 subsection.
35 (4) Before making regulations under this section, the Department
36 must consult —

- 1 (a) the Department of Health and Social Care;
- 2 (b) such other Departments and Statutory Boards as it considers
- 3 appropriate; and
- 4 (c) the Director of Public Health.

5 **PART 4: SALE, DISPLAY AND IMPORT OF VAPING**

6 **PRODUCTS**

7 **5 Sale of vaping products to persons under 18**

- 8 (1) A person who sells a vaping product to a person under the age of 18
- 9 commits an offence.

10 Maximum penalty (summary) – a fine of level 4 on the standard scale.

- 11 (2) A person who sells a vaping product to an agent (or a person reasonably
- 12 believed to be an agent) of a person under the age of 18 commits an
- 13 offence.

14 Maximum penalty (summary) – a fine of level 4 on the standard scale.

15 **6 Purchase of vaping products by agent**

16 A person who has attained the age of 18 who buys or attempts to buy a vaping

17 product on behalf of a person under that age commits an offence.

18 Maximum penalty (summary) – a fine of level 4 on the standard scale.

19 **7 Sale of vaping products by persons under 18**

- 20 (1) In the case of a sale taking place on specialist vaping premises, a
- 21 responsible person commits an offence if a relevant person sells a vaping
- 22 product to any person.

23 Maximum penalty (summary) – a fine of level 3 on the standard scale.

- 24 (2) In the case of a sale taking place on any other premises, a responsible
- 25 person commits an offence if a relevant person sells a vaping product
- 26 without the approval or consent of –

27 (a) the responsible person; or

28 (b) an authorised person.

29 Maximum penalty (summary) – a fine of level 4 on the standard scale.

- 30 (3) Approval or consent must be obtained in respect of each sale.

31 (4) “Responsible person” means a person who has attained the age of 18 and

32 who owns, occupies, controls, or is otherwise concerned with the

33 management of, the premises where the sale takes place.

- 1 (5) “Authorised person” is a person who has attained the age of 18 and who
2 is authorised by the responsible person to act on the responsible person’s
3 behalf in respect of the premises where the sale takes place.
- 4 (6) “Relevant person” is a person under the age of 18 who is under the control
5 of a responsible or authorised person.
- 6 (7) A relevant person is under the control of a responsible or authorised
7 person if they work for or under the direction of that responsible or
8 authorised person (whether on a permanent, temporary or occasional
9 basis) whether they are paid or not.

10 8 Importation of vaping products

- 11 (1) A person who has attained the age of 16 but not 18 who imports a vaping
12 product, commits an offence.
13 Maximum penalty (summary) – a fine of level 1 on the standard scale.
- 14 (2) A person who –
15 (a) has attained the age of 18; and
16 (b) acts, or is reasonably believed to act, as an agent for a person under
17 that age in the importation of a vaping product,
18 commits an offence.
19 Maximum penalty (summary) – a fine of level 4 on the standard scale.
- 20 (3) Section 16 of the *Post Office Act 1993* applies to a vaping product imported
21 in breach of this section but as if references to “Treasury” in that section
22 were references to the OFT.

23 9 Display of warning statements

- 24 (1) A person who carries on a vaping product business must display in any
25 premises where that business is carried on a notice containing the
26 following statement –
27 “It is illegal to sell or supply vaping products to anyone under the age of
28 18”.
- 29 (2) The notice must be displayed in a prominent position in the premises
30 where the statement is readily visible to persons at the point of sale of
31 vaping products.
- 32 (3) A person who fails, without reasonable excuse, to comply with subsection
33 (1) or subsection (2) commits an offence.
34 Maximum penalty (summary) – a fine of level 4 on the standard scale.
- 35 (4) The OFT may, by regulations –

- 1 (a) prescribe the dimensions of the notice to be displayed in
2 accordance with this section and the size of the statement to be
3 displayed on it;
- 4 (b) amend subsection (1) to alter the wording of the statement.

5 **10 Online sale: display of warning icon**

- 6 (1) A person who carries on a vaping product business and in the course of
7 doing so offers vaping products for sale via an online facility must ensure
8 that a warning icon is displayed at the relevant point.
- 9 (2) The warning icon must contain the following statement —
10 “It is illegal to sell or supply vaping products to anyone under the age of
11 18”.
- 12 (3) A person who fails, without reasonable excuse, to comply with subsection
13 (1) or (2) commits an offence.
14 Maximum penalty (summary) – a fine of level 4 on the standard scale.
- 15 (4) The OFT may, by regulations, —
16 (a) prescribe the dimensions of the warning icon to be displayed in
17 accordance with this section and the size of the statement to be
18 displayed on it;
19 (b) amend subsection (2) to alter the wording of the statement.
- 20 (5) “Online facility” means a website, social media service, computer
21 programme or software application by means of which an order for a
22 vaping product can be placed online which is operated by or on behalf of
23 one or more vaping product businesses.
- 24 (6) “Relevant point” is whichever of the following occurs first in the ordering
25 process of an online facility —
26 (a) the point at which a vaping product may be selected;
27 (b) the point at which the order for a vaping product may be placed,
28 but, where the point at which a vaping product may be selected is the same
29 as that at which it may be ordered, the relevant point is that point.

30 **11 Sale of unpackaged vaping products**

31 [P1991/23/7] and drafting

- 32 (1) A person carrying on a vaping product business who sells such products
33 other than in their original package commits an offence.
34 Maximum penalty (summary) – a fine of level 3 on the standard scale.
- 35 (2) “Original package” means the package in which the vaping product was
36 supplied for the purpose of retail sale by the manufacturer, wholesaler or
37 importer.

- 1 (3) “Package” means any box, carton or other container.

2 **12 Prohibition of the sale of vaping products from automatic machines**

- 3 (1) The sale for payment of any kind of a vaping product from an automatic
4 machine is prohibited.
- 5 (2) The person who controls, or is concerned with the management of, the
6 premises where a machine which sells such products is located commits
7 an offence.
- 8 Maximum penalty (summary) - custody for 6 months, a fine of level 4 on
9 the standard scale, or both.
- 10 (3) It does not matter whether the automatic machine also sells other
11 products.

12 **13 Prohibition of vaping products displays etc.**

- 13 (1) A person who in the course of business displays or causes to be displayed
14 vaping products at a place where such products are offered for sale
15 commits an offence.
- 16 Maximum penalty (summary) – a fine of level 3 on the standard scale.
- 17 (2) A person who in the course of business advertises or promotes, or causes
18 to be advertised or promoted, vaping products at a place where such
19 products are offered for sale commits an offence.
- 20 Maximum penalty (summary) – a fine of level 3 on the standard scale.
- 21 (3) For the purposes of this section, a “vaping product” also includes the
22 packaging for such a product.
- 23 (4) The Department may, by regulations –
- 24 (a) prescribe any requirements in respect of the display, promotion
25 and advertising of vaping products;
- 26 (b) provide that a person does not commit an offence under this section
27 if the display, promotion or advertising complies with any such
28 requirements.

29 **14 Vaping products displays - wholesale businesses: exclusions**

30 [P2002/36/5 and 7B and drafting]

31 No offence is committed under section 13 if –

- 32 (a) the vaping products are displayed in the course of a wholesale
33 business which is part of the vaping products trade;
- 34 (b) they are displayed for the purposes of that trade, and
- 35 (c) the display is accessible only to persons who are engaged in, or
36 employed by, a business which is also part of that trade.

15 Vaping products displays – specialist premises: exclusions

- (1) No offence is committed under section 13 if the display, promotion or advertising of vaping products takes place in the course of a business taking place in specialist vaping premises.
- (2) “Specialist vaping premises” means premises, or a part of premises –
- (a) selling (whether exclusively or otherwise) vaping products by retail where more than one half of those sales derive from the sale of such products; and
 - (b) to which persons under the age of 18 are not permitted entry.
- (3) For these purposes “sales” shall be measured by sale price –
- (a) during the most recent period of 12 months for which accounts are available; or
 - (b) during the period for which the premises has been established if established for less than 12 months.
- (4) The Department may, by regulations, amend subsection (3)(a).

16 Sale and import etc of vaping products under coercion

- (1) A person who coerces, persuades, encourages, assists or otherwise deceives a person under the age of 18 to –
- (a) purchase, import or otherwise obtain a vaping product; or
 - (b) sell a vaping product to a person under the age of 18,
- commits an offence.
- Maximum penalty (summary) – a fine of level 4 on the standard scale.
- (2) “Coercion” includes (but is not limited to) force and threats (whether or not relating to violence).

17 Offences by legal entities

- (1) Subsection (2) applies if –
- (a) an offence under this Act is committed by a legal entity; and
 - (b) it is proved that an officer of the legal entity authorised, permitted, participated in, or failed to take all reasonable steps to prevent, the commission of the offence.
- (2) The officer, as well as the legal entity, is guilty of the offence and is liable to the penalty provided for the offence.
- (3) “Legal entity” means a body corporate, a partnership and an unincorporated body.
- (4) “Officer” includes –
- (a) a director, secretary, partner, or other similar officer;

- 1 (b) a person purporting to act as a director, secretary, partner or other
2 similar officer;
- 3 (c) if the affairs of the legal entity are managed by its members or
4 council members, a member or council member;
- 5 (d) if the legal entity has a registered agent (within the meaning of the
6 *Companies Act 2006*, the *Limited Liability Companies Act 1996* or the
7 *Foundations Act 2011*), the registered agent.
- 8 (5) The Department may, by regulations, amend subsections (3) and (4).

9 **PART 5: ENFORCEMENT & RELATED MATTERS**

10 **18 Isle of Man Office of Fair Trading**

11 [P2002/36/13 and drafting]

- 12 (1) The OFT shall enforce the provisions of this Act.
- 13 (2) The Department may direct, in relation to cases of a particular description
14 or a particular case, that any duty imposed on the OFT by subsection (1)
15 shall be discharged by the Department and not by the OFT.
- 16 (3) The following provisions of the *Consumer Protection (Trade Descriptions)*
17 *Act 1970* apply in relation to the enforcement of this Act by the OFT as they
18 apply in relation to the enforcement of that Act –
- 19 (a) section 27 (power to make test purchases);
- 20 (b) section 28 (power to enter premises and inspect and seize goods
21 and documents);
- 22 (c) section 29 (obstruction of authorised officers); and
- 23 (d) section 33 (compensation for loss, etc. of goods seized under section
24 28),
- 25 and in the application of those sections for the purpose of the enforcement
26 of this Act by the OFT, references in them to “an authorised officer” shall
27 be read as including a person authorised in writing by the OFT for that
28 purpose.

29 **19 Isle of Man Constabulary**

- 30 (1) This section applies where a constable has reasonable grounds to believe
31 that a person in any public place is –
- 32 (a) under the age of 18; and
- 33 (b) in possession of a vaping product.
- 34 (2) This section also applies where a constable has reasonable grounds to
35 believe that any other person in any public place –
- 36 (a) is in possession of a vaping product; and

(b) has committed, or is likely to commit, an offence under this Act.

(3) Where a constable reasonably believes that subsection (1) or subsection (2) applies the constable may, for the purposes of the subsection, stop, detain and search the person referred to in it.

(4) A constable may seize any vaping product in the possession of a person to whom this section applies.

(5) Any vaping product so seized may be disposed of in such manner as the Chief Constable may direct.

(6) “Public place” means —

(a) any highway; and

(b) any place to which the public or a section of the public have access —

(i) as of right, or by virtue of any express or implied permission; and

(ii) on payment or otherwise.

20 Defence of due diligence for certain offences

(1) It is a defence for a person charged with an offence to which this section applies to prove that they (or any employee or agent of theirs) took all reasonable precautions and exercised all due diligence to prevent the offence being committed.

(2) This section applies to an offence under sections 5, 7, 9, 10, 11 and 13.

21 Defence: reasonable belief

(1) It is a defence to a charge in proceedings against a person (P) that —

(a) P reasonably believed the person under the age of 18 (“the customer”) to be aged 18 or over, and

(b) P had taken reasonable steps to establish the customer's age.

(2) For the purposes of subsection (1)(b), P is to be treated as having taken reasonable steps to establish the customer's age if and only if —

(a) P was shown any of the documents mentioned in subsection (3); and

(b) that document would have convinced a reasonable person as to the customer's age.

(3) The documents referred to in subsection (2)(a) are —

(a) a passport;

(b) a Manx or UK driving licence;

(c) a European Union photo-card driving licence; or

- 1 (d) such other document, or a document of such description, as may be
2 prescribed in regulations made by the Department.

3 **22 Defence: Coercion**

4 It is a defence for a person charged with an offence under section 5, 8 or 16 to
5 prove that they were coerced into committing that offence.

6 **23 Defences: regulations**

7 (1) The Department may, by regulations, prescribe further defences to all or
8 any of the offences under this Act.

9 (2) Before making regulations under this section, the Department must
10 consult the Department of Health and Social Care, the Director of Public
11 Health and such other persons or their representatives as it considers are
12 likely to be affected by such regulations.

13 **PART 6: OTHER**

14 **24 Regulations: additional**

15 Regulations under this Act may include such consequential, incidental,
16 supplementary, transitional and transitory provision as the Department or, as
17 appropriate, the OFT considers necessary or expedient.

18 **25 Tynwald procedure**

19 (1) An order under section 2 and regulations under sections 9 and 10 are
20 subject to section 34 of the *Legislation Act 2015* (laying only).

21 (2) All other regulations under this Act are subject to section 30 of the
22 *Legislation Act 2015* (approval required).

23 **26 Interpretation**

24 (1) In this Act —

25 “**course of business**” includes the following activities —

- 26 (a) assessing stock levels for the purposes of stock control;
27 (b) restocking;
28 (c) employee training;

29 “**Department**” means the Cabinet Office;

30 “**Director of Public Health**” means the person nominated under section 1 of the
31 *Local Government Act 1985*;

32 “**importation**” means importation from any place outside of the Island;

- 1 “OFT” means the Isle of Man Office of Fair Trading;
- 2 “premises” includes any place and any vehicle or moveable structure other than
3 one of a prescribed description;
- 4 “prescribed” means prescribed by regulations;
- 5 “specialist vaping premises” has the meaning given in section 15;
- 6 “vaping product business” means a business involving the sale of vaping
7 products by retail (whether or not other products are sold in the course of
8 that business);
- 9 “vehicle” includes any aircraft or ship, boat or other water-going vessel, other
10 than one of a prescribed description;
- 11 (2) In this Act references to “sale”, “sell” and “sold” include —
- 12 (a) “supply” and “supplied” as appropriate, and
- 13 (b) an offer to do any of those things.

IN THE COUNCIL

VAPING PRODUCTS BILL 2023

A **BILL** to make provision in respect of the manufacture of vaping products, the composition of vaping liquids and the sale, importation, advertising and promotion of such products; and for connected purposes.

Leave to introduce given by the Council on June 2023.

MS LORD-BRENNAN

JUNE 2023