



Vapour Products Bill 2023

A **Bill** to make provision controlling the sale of vapour products to persons under the age of 18 and to control the advertising and promotion of such products; and for connected purposes.

Part 1 - Introductory

1 Short title

The short title to this Act is the Vapour Products Act 2023.

2 Commencement

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

Part 2 - Vapour Products

3. Meaning of “vapour product”

[ASP2016/14/1] and drafting

(1) In this Act a “vapour product” is—

- (a) a device which is intended to enable the inhalation of nicotine-containing vapour by an individual,
- (b) a device which is intended to enable the inhalation of other vapour by an individual but is intended to resemble and be operated in a similar way to a device within paragraph (a),
- (c) an item which is intended to form part of a device within paragraph (a) or (b),
- (d) a substance which is intended to be vaporised by a device within paragraph (a) or (b) (and any item containing such a substance).

(2) The following are not vapour products—

- (a) a tobacco product;
- (b) a smoking related product;
- (c) a medicinal product;
- (d) a medical device.

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

- (4) “Smoking related product” includes –
- (a) cigarette papers,
 - (b) cigarette tubes,
 - (c) cigarette filters,
 - (d) apparatus for making cigarettes,
 - (e) cigarette holders,
 - (f) pipes for smoking tobacco products, and
 - (g) such other things as the Department may by regulations prescribe.
- (5) “Medicinal product” has the same meaning as that set out in the *Medicines Act 2003*;
- (6) “Medical device” means –
- (a) any instrument, apparatus, appliance, software, material or other article, whether used alone or in combination, together with any accessories, including the software intended by its manufacturer to be used specifically for diagnosis or therapeutic purposes or both and necessary for its proper application; and
 - (b) is registered with the Medical Healthcare and Research Agency (an executive agency of the United Kingdom’s Department of Health and Social Care) as

required by the Medical Devices Regulations 2002¹ as amended from time to time and any successor in title thereto.

- (7) A medical device includes devices intended to administer a medicinal product or which incorporate as an integral part a substance which, if used separately, would be a medicinal product and which is liable to act upon the body with action ancillary to that of the device.
- (8) The Department may by regulations amend this section.
- (9) Before making regulations under this section, the Department must consult the Department for Health and Social Care and the representatives of such other persons as it considers are likely to be affected by such regulations.

Part 3 - Sale and display of vapour products

4 Sale of vapour products to persons under 18

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

¹ SI 2002 No. 618, as amended.

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

5 Purchase of vapour products by agent

A person who buys or attempts to buy a vapour product on behalf of a person under the age of 18 commits an offence.

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

6 Sale of vapour products by persons under 18

- (1) A responsible person who allows a vapour product to be sold by a person under the age of 18 commits an offence.

Maximum penalty (summary) – a fine of level 2 on the standard scale.

- (2) “Responsible person” means the person who controls, or is concerned with the management of, the premises where the sale takes place.

7 Importation of vapour products

- (1) A person under the age of 18 who imports a vapour product commits an offence.

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

- (2) A person who acts as an agent for person under the age of 18 in the importation of a vapour product commits an offence.

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

- (3) A person who, with a view to selling a vapour product to a person referred to in subsection (1) or (2), imports such a product commits an offence.

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

- (4) A vapour product imported in breach of this section is to be treated as contraband for the purposes of the *Post Office Act 1993* and section 16 of that Act applies subject to subsection (3).
- (5) For the purposes of this section, references to “Treasury” in section 16(2) and (3) of the *Post Office Act 1993* shall be read as references to the OFT.

8 Display of warning statements

- (1) A person who carries on a vapour product business must display a notice in in any premises where that business is carried on.
- (2) The notice must contain the following statement—

“It is illegal to sell vapour products to anyone under the age of 18”.
- (3) The notice must be displayed in a prominent position in the premises where the statement is readily visible to persons at the point of sale of vapour products.
- (4) A person who fails, without reasonable excuse, to comply with subsection (1) commits an offence.

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

- (5) The OFT may by regulations –
 - (a) prescribe the dimensions of the notice and the size of the statement to be displayed on it;
 - (b) alter the wording of the statement.

9 Online sale or supply: display of warning icon

- (1) A person who carries on a vapour product business and in the course of doing so offers for sale such products via an online facility must ensure that a warning icon is displayed at the relevant point.
- (2) The warning icon must contain the following statement –

“ It is illegal to sell or supply vapour products to anyone under the age of 18 ”.
- (3) A person who fails, without reasonable excuse, to comply with subsection (1) commits an offence.

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

- (4) The Department may by regulations –
 - (a) prescribe the dimensions of the warning icon to be displayed in accordance with this section and the size of the statement to be displayed on it;
 - (b) alter the wording of the statement.

- (5) “Online facility” means a website, social media service, computer programme or software application by means of which an order for a vapour product can be placed online which is operated by or on behalf of one or more vapour product businesses.
- (6) “Relevant point” is whichever of the following occurs first in the ordering process of an online facility –
- (a) the point at which a vapour product may be selected;
 - (b) the point at which a vapour product may be ordered;
- but, where the point at which a vapour product may be selected is the same as that at which it may be ordered, the relevant point is that point.

10 Sale of unpackaged vapour products

[P1991/23/7] and drafting

- (1) A person carrying on a vapour products business who sells such products to any person other than in their original package commits an offence.

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

- (2) “Original package” means the package in which the vapour product was supplied for the purpose of retail sale by the manufacturer, wholesaler or importer.
- (3) “Package” means any box, carton or other container.

11 Prohibition of the sale of vapour products from automatic machines

- (1) The sale of vapour products from an automatic machine is prohibited.
- (2) The person who controls, or is concerned with the management of, the premises where such a machine is located is guilty of an offence.

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

- (4) It does not matter whether the automatic machine also sells other products.
- (5) “Automatic machine” –
 - (a) means a machine through which vapour products may be sold whether or not upon payment by coin, note or token, and
 - (b) includes a machine where the obtaining of a vapour product requires the manipulation of a hanging claw or grabber, and for these purposes it matters not whether such manipulation results in the obtaining of the product.

12 Prohibition of vapour products displays etc.

- (1) A person who in the course of business displays or causes to be displayed vapour products in a place where vapour products are offered for sale commits an offence.

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

- (2) Subsection (1) does not apply to the display of vapour products in a secure cabinet.

- (3) The Department may, by regulations, prescribe any requirements in respect of the display of vapour products and such regulations may provide that a person does not commit an offence under this section if the display complies with any requirements prescribed in such regulations.

13 Vapour products displays: exclusions

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

- (1) No offence is committed under section 12 if —
- (a) the vapour products are displayed in the course of a business which is part of the vapour products 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 12 if the display —
- (a) occurs in the course of an activity referred to in paragraph (2) being actively carried out in the ordinary course of a vapour products business,
 - (b) is solely as a consequence of that activity being carried out, and
 - (c) lasts no longer than is necessary in order to allow that activity to be carried out.

- (3) Those activities are —
- (a) assessing stock levels for the purposes of stock control;
 - (b) restocking;
 - (c) employee training;
 - (d) cleaning, maintenance or refurbishment of the secure cabinet.
- (4) No offence is committed under section 12 by a display of vapour products outside a secure cabinet during restocking if —
- (a) the products are only displayed in the course of being placed in the cabinet;
and
 - (b) the display lasts for no longer than is necessary to place the products in the cabinet.

14 Offences by bodies corporate etc.

- (1) Where—
- (a) an offence under a provision of this Act has been committed by a relevant body, and
 - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual, or

- (ii) an individual purporting to act in the capacity of a relevant individual,

that individual, as well as the relevant body, commits the offence.

- (2) Where subsection (1) applies both the body and the individual are liable to the penalty specified in the provision in question.

- (3) “Relevant body” means—

- (a) a body corporate,
- (b) a partnership, and
- (c) an unincorporated association other than a partnership

- (4) “Relevant individual” means—

- (a) in relation to a body corporate (other than a limited liability partnership)—
 - (i) a director, manager, secretary or other similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a limited liability partnership, a member,
- (c) in relation to any other partnership, a partner, and
- (d) in relation to an unincorporated association other than a partnership referred to in paragraph (c), a person who is concerned in the management or control of the association.

15 Age verification policy

- (1) A person commits an offence if they—
- (a) carry on a vapour product business, and
 - (b) fail to operate an age verification policy in respect of premises at which the person carries on that business.

Maximum penalty (summary) – a fine of level 2 on the standard scale.

- (2) Subsection (1) does not apply to premises from which—
- (a) vapour products are, in pursuance of a sale, despatched for delivery to different premises, and
 - (b) no other vapour product business is carried on from those premises.
- (3) An “age verification policy” is a policy that steps are to be taken to establish the age of a person attempting to buy a vapour product on the premises (the “customer”) if it appears to the person selling or supplying such a product that the customer may be under the age of 18 (or such older age as may be specified in the policy).
- (4) The Department may by regulations amend the age specified in subsection (3).
- (5) The OFT may publish guidance on matters relating to age verification policies, including, in particular, guidance about—
- (a) steps that should be taken to establish a customer's age,

- (b) documents that may be shown to the person selling a vapour product as evidence of a customer's age,
 - (c) training that should be undertaken by the person selling the vapour product,
 - (d) the form and content of notices that should be displayed in the premises,
 - (e) the form and content of records that should be maintained in relation to an age verification policy.
- (6) A person who carries on a vapour product business must have regard to guidance published under subsection (5) when operating an age verification policy.

Part 4 - Enforcement & related matters

16 Isle of Man Office of Fair Trading

[P2002/36/13]

- (1) The OFT shall enforce the provisions of this Act.
- (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 Act.

(4) The following provisions of the *Consumer Protection (Trade Descriptions) Act 1970* apply in relation to the enforcement of this Act by the OFT as they apply in relation to the enforcement of that Act —

- (a) section 27 (power to make test purchases),
- (b) section 28 (power to enter premises and inspect and seize goods and documents),
- (c) section 29 (obstruction of inspectors), and
- (d) section 33 (compensation for loss, etc. of goods seized under section 28),

and in the application of those sections for the purposes of this section, references in those sections to “an inspector” shall be read as including a person authorised in writing by the OFT for the purpose.

[17 Prohibition notices and notices to warn

[P1971/38/12]

The following provisions of the *Consumer Protection Act 1991* apply in relation to the enforcement of this Act by the OFT as they apply for the purposes of that Act —

- (a) section 11 and Schedule 2 (prohibition notices and notices to warn),
- (b) section 14 (forfeiture), and
- (c) section 28 (power of customs officer to detain goods).]

18 IoM Constabulary

- (1) A constable shall enforce this Act and any regulations made under it.
- (2) A constable may (without warrant) stop and detain a person-
 - (a) seen or found committing, or
 - (b) reasonably suspected of being engaged in committing,an offence under this Act.
- (3) It shall be the duty of a constable to seize any vapour product in the possession of any person apparently under the age of 18 found with such a product in any street or public place.
- (4) Any vapour product so seized shall be disposed of in such manner as the Chief Constable may direct.

19 Institution of proceedings

- (1) The OFT, the Chief Constable, the Department and the Attorney General may institute proceedings for any offence under this Act.
- (2) The persons referred to in subsection (1) may appear by any officer duly authorised in that behalf.

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 4 (sale to u/18), 6 (sale by u/18) 9, 10(warning statements) and 12 (prohibition of displays).

21 Defence: reasonable belief

- (1) It is a defence to a charge in proceedings against a person (P) that—
 - (a) P 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 valid Manx or UK driving licence,
- (c) a European Union photocard driving licence, or
- (d) such other document, or a document of such description, as may be prescribed in regulations made by the Department.

22 Defence: parent or guardian

It is a defence for a person charged with an offence under section 4 to prove that they are a parent or guardian of the person to whom the vapour product was sold [or supplied] and that the sale [or supply] took place in private.

23 Defences: regulations

- (1) The Department may, by regulations –
 - (a) amend sections 20, 21 and 22;
 - (b) prescribe further defences to all or any of the offences under this Act.
- (2) Before making regulations under this section, the Department must consult the Department for Health and Social Care and the representatives of such other persons as it considers are likely to be affected by such regulations.

24 Defences: burden of proof

- (1) This section applies where a person charged with an offence under this Act relies on a defence under this Part.
- (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.

25 Charging offences

- (1) Where a person (P) is charged with committing any of the offences under in this Act in respect of two or more persons, the same summons may charge the offence in respect of all or any of them.
- (2) Where a summons charges an offence or offences (whether they are the same or different offences) in respect of two or more persons, P shall not, if convicted, be liable to a separate penalty in respect of each offence.
- (3) Where subsection (2) applies P shall be liable to the highest of the penalties applicable to offences for which P is convicted.

Part 5 - Other

26 Application to the Island of United Kingdom legislation.

- (1) The Department may by regulations apply to the Island, subject to exceptions, adaptations and modifications, any United Kingdom legislation which relates to the sale or supply of vapour products (however defined or referred to) (the applied legislation).
- (2) The applied legislation becomes part of the law of the Island.
- (3) [Regulations under subsection (1) (the Manx application regulations) must set out, in full, the applied legislation incorporating the exceptions, adaptations and modifications ([which may be] suitably identified) subject to which it so applied.]
- (4) [Where, after the commencement of the Manx application regulations, the applied legislation is modified, those modifications may be applied to the Island by modifying the Manx application regulations (and without the need to set out in full the applied legislation as subsequently amended)].
- (5) Regulations under subsection (1) may include provision repealing or amending any provision of an enactment (other than this Act) which is inconsistent with, or is unnecessary or requires modification in consequence of, the regulations or any of the applied legislation.
- (6) “United Kingdom legislation” means —
 - (a) an Act of —
 - (i) Parliament (of Westminster),

- (ii) the Scottish Parliament,
 - (iii) the Welsh Parliament (Senedd Cymru), and
 - (iv) the Northern Ireland Assembly, and
- (b) any legislation made under such an Act.
- (7) Before making regulations under this section the Department must consult the Department of Health and Social Care and representatives of such persons as it considers are likely to be affected by such regulations.

27 [Regulations: age verification

- (1) The Department may, by regulations, make provision in respect of an age verification policy.
- (2) For these purposes, an age verification policy is a policy that steps are to be taken to establish the age of a person attempting to buy a vapour product on the premises (the “customer”) if it appears to the person selling or supplying such a product that the customer may be under the age of 18 (or such older age as may be specified in the policy).
- (3) Without limiting subsection (1), regulations may —
 - (a) provide that a failure to operate such a policy is an offence and specify the penalty for failure to do so;
 - (b) specify premises which are exempt from the policy;

- (c) specify the steps that should be taken to establish a customer's age,
- (d) specify the documents that may be shown to the person selling a vapour product as evidence of a customer's age,
- (e) specify the training that should be undertaken by the person selling the vapour product,
- (f) specify the form and content of notices that should be displayed in the premises,
- (g) specify the form and content of records that should be maintained in relation to an age verification policy.

28 Regulations: additional

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

29 Tynwald procedure

- (1) An order under section 2 and regulations under sections 8 and 9 are subject to section 34 of the *Legislation Act 2015* (laying only).
- (2) All other regulations under this Act are subject to section 30 of the *Legislation Act 2015* (approval required).

30 Interpretation

(1) In this Act —

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

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

“**premises**” includes any place and any vehicle or moveable structure other than one of a prescribed description and, for this purpose —

- (a) “vehicle” includes any aircraft or ship, boat or other water-going vessel, other than one of a prescribed description; and
- (b) “prescribed” means prescribed in regulations made by the Department;

“**secure cabinet**” means a locked display cabinet which is accessible only by the person carrying on a vapour product business and their employees; and

“**vapour product business**” means a business involving the sale of vapour products by retail (whether or not other products are sold in the course of that business).

In this Act references to “sale”, “sell” and “sold” include —

- (a) “supply” and “supplied” as appropriate, and
- (b) an offer to do any of those things.