



**LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH**

**P R O C E E D I N G S**

**D A A L T Y N**

**(HANSARD)**

**Douglas, Tuesday, 18th March 2008**

**Present:****The Hon. President of the Council (The Hon. N Q Cringle, OBE)**

The Attorney General (Mr W J H Corlett QC),  
 Mr D Butt, Mrs C M Christian, Mr E A Crowe, Mr A F Downie,  
 Mr E G Lowey, Mr J R Turner and Mr G H Waft,  
 with Mr J King, Clerk of the Council.

**Business transacted**

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*The Council sat in private at 1.08 p.m.*

## Legislative Council

*The Council met at 10.30 a.m.*

[MR PRESIDENT *in the Chair*]

### PRAYERS

*The Chaplain of the House of Keys*

### Welcome to new Members

**The President:** This morning, Hon. Members, we have no apologies for absence but, before we get under way with our formal sitting this morning, can I welcome back to Legislative Council, Mrs Christian, Mr Lowey and Mr Turner. (**Members:** Hear, hear.) All our old faces returned back to this side of the table, so congratulations on your election to this Legislative Council. I am pleased to see you joining us.

### Procedural Officers speaking before Council

**The President:** Hon. Members, the Financial Services Bill is for the First Reading.

Before we do go on to the First Reading, Hon. Members, could I just make the comment that you will remember that, on 26th February, when we were discussing legislation particularly in relation to our Standing Orders at that time, Mr Downie had commented that it would be helpful to invite the officials to speak, if in fact there were particular questions which Members wanted answering.

Hon. Members, in relation to the legislation which is now before us, if that becomes necessary, the procedure which I would propose to follow would be to tell the officials that, in fact, they are not appearing in front of a committee, it is not an interrogation; they would simply be asked to answer the questions. In fact, if they needed more time to answer the questions, that time would be given.

However, if at any time any of the officials are invited to address the assembly, remember that we are dealing with the *Hansard* recorded proceedings, so it would be helpful if you spoke up, because you are at some distance from the microphone, and also gave your name, please, at the start of the contribution.

So if we work on that premise, it may happen and it may not: we will see how Members deal with this, particularly.

## Orders of the Day

### Financial Services Bill First Reading approved

1. Mr Downie to move:

*That the Financial Services Bill be now read a first time.*

**The President:** So, the Financial Services Bill then, Mr Downie, First Reading.

**Mr Downie:** Thank you, Mr President, and thank you for your observations on those who have joined us to represent the various strands in the Government regime. We have with us today: Mrs Berry; Mrs Whitelegg; and David Oldfield. Mr Oldfield is from the Office of Fair Trading and the other two are from the Financial Supervision Commission.

To assist Members of Council, the reprinted Financial Services Bill, circulated to Members in advance of this First Reading, incorporates all the amendments made in the other House. The explanatory notes circulated for the information of Members have also been amended to reflect these changes. There may appear to Members to have been quite a large number of amendments to the Bill made in the other House, but they represent a fairly small number of separate issues. The amendments do not alter the principles behind or substantive content of the Bill.

However, before I explain the purpose of the Bill, it may assist Members if I give a brief explanation of the amendments and their effect.

Several of the amendments relate to the operation of the Tribunals Act 2006. These were required because the procedure under the Tribunals Act 2006 has only recently been clarified following production of the Green Bill. Accordingly, the Attorney General's Chambers were able to identify how this Bill and the Insurance Bill 2007, which is currently progressing through the branches, need to be drafted in order that appeal procedures under both Bills correctly reflect the relationship to the Tribunals Act.

The Collective Investment Schemes Bill 2008 was still at the drafting stage, when the need for these changes to the other Bills was identified, and it therefore contains the correct wording.

Clause 17 was amended in response to representations from the accountancy profession. This clause places an obligation on the auditor of a permitted person to report to the Commission contraventions of the Bill, the Rule Book, a condition on a licence or any discretion or requirement imposed by the Bill.

The most significant amendment corrects a defect, insofar as it was the intention to require the auditor of a permitted person to report a relevant contravention to the Commission only if the matter is likely to be of material significance, in relation to the Commission's functions. This is how the obligation on auditors is currently stated in the Banking Act 1998 and the Investment Business Acts 1991 to 1993. The concept of materiality therefore reflects the status quo.

The amendments to clauses 27 to 29 relate to the protection for innocent third parties who enter into agreements with unlicensed persons. This allows third parties to avoid their obligations under such an agreement, to get their money back and to be compensated for any loss incurred. These provisions were taken from the UK's Financial Services and Markets Act 2000 and because the legislative framework in the UK is not identical to that in the Isle of Man and the UK's Financial Services Authority does not regulate corporate and trust service providers, there were unintentional consequences in copying the UK's legislation.

This has been corrected to clarify that a person acting in contravention of the general prohibition – that is to say, without a licence – refers to unlicensed business and not to licenceholders acting in contravention of a condition on their licence. To avoid conflict with company and trust law, corporate and trust services have been excluded from these provisions.

A new clause was inserted at the beginning of part 8, which is now clause 43 in the reprinted Bill. This clause extends the Commission's powers so that it can take regulatory action if a licenceholder is found to have breached any other statutory provision. In doing so, the Commission would have to act within its remit and the Commission's functions and regulatory objectives are now clearly stated in part 1 of, and schedule 1 to, the Bill.

The Commission has a specific regulatory objective in respect of the reduction of financial crime in carrying out its regulatory functions. The Commission needs to be able to take account of matters which reflect upon the fitness and propriety of its licenceholders and, for example, in monitoring compliance with the Financial Action Task Force's 40 recommendations on money laundering and nine special recommendations on the financing of terrorism.

The Commission needs to be able to take regulatory action in respect of a breach of the Department of Home Affairs' Criminal Justice (Money Laundering) Code 2007, as well as a breach of the Commission's own anti-money laundering rules made under this Bill. This new clause will allow the Commission to take action for breaches of other statutory provisions that are relevant to its functions.

Other amendments were: to clarify the meaning of the regulatory objective of the reduction of financial crime by inserting the same definition as is currently in the Insurance Act 1986; to reinstate the power to make regulations to exempt persons from the prospectus requirements or to modify the requirements under the Companies Act 1931, which was inadvertently repealed by the Companies Act 2006, as it was not realised that this general regulation-making power was unrelated to the remainder of the part 12 of the 1931 Act, which was no longer required; to specify when a warning notice to a director, key person or controller of a permitted person will expire and to clarify that such a notice may be disclosed to that individual's employer or prospective employer; to require the Commission to review a suspension of a licence on a regular basis; to correct typographical errors and amendments identified by the Attorney General's Chambers in relation to the Legal Aid Act 1986, by making Legal Aid available subject to eligibility in respect of an appeal to the Financial Services Tribunal against a decision of the Commission and a consequential amendment to the Fair Trading Act 1996.

Mr President, further amendments standing in the name of Mr Crowe will be proposed when this Bill reaches its clauses stage. These are to correct clause 27 which was amended in the other House where, inadvertently, one of the cross references was missed.

The corrections to schedule 6 relate to the terminology used in the Bill which changed during the development of the Bill. In particular the expression 'banking' has now been replaced by the expression 'deposit taking', and this needs to be reflected in the consequential amendments to the other enactments contained in schedule 6.

The opportunity was also taken to trawl through all of the extant statutes of the Isle of Man to identify any further

consequential amendments where other enactments refer to banking and investment business.

Mr President, the purpose of the Financial Services Bill is to consolidate all of the Financial Supervision Commission's regulatory legislation, apart from that relating to collective investment schemes, into one Bill, whilst at the same time modernising the legislation and making it more user-friendly and transparent.

The Bill brings together the current regulatory provisions relating to banking, investment business, corporate service providers and trust service providers. It will thus provide a single reference point for businesses holding more than one type of licence.

The rules relating to collective investment schemes, which are currently contained in the Financial Supervision Act 1988, have been moved into a stand-alone Collective Investment Schemes Bill 2008, which is also on the Agenda for First Reading at this sitting of the Council. Therefore, for the future, there will be two pieces of legislation relating to the work of the Commission, the first being this Bill which provides for the regulation of the service providers and the second being the Collective Investments Bill which provides for the establishment and operation of collective investment schemes.

Although the Financial Services Bill is predominantly a consolidation of existing legislation relating to the regulation of the relevant service providers, it also seeks to standardise and, where necessary, improve the regulatory requirements across all the Commission's regulated sectors.

The Bill also addresses anomalies that have arisen as a result of regulation having evolved over a 25-year period for the banking investment business, corporate services and trust services sectors. Before issuing draft instructions for the Bill, the Financial Supervision Commission consulted with all the interested parties on the principles behind the proposals to review and consolidate the regulatory legislation. This was followed by the further consultation on the detailed proposals contained in the draft Bill. Those consulted including the Commission's licenceholders and their representative associations and professional bodies; the Insurance and Pensions Authority was consulted on particular issues, where its regulatory functions relate closely to those of the Commission; and the Office of Fair Trading was consulted and also undertook their own consultation in respect of the provisions in the Bill regarding the financial services mediation and arbitration scheme for which the OFT has specific responsibility.

The Green Bill took account of responses to all consultations. The Bill replaces in whole or in part the following Acts: the Financial Supervision Act 1988, with the exception of the provisions relating to collective investment schemes, which have been moved into the stand-alone Collective Investment Schemes Bill 2008 to be considered by Council later on in the Agenda; the Investment Business Acts 1991 to 1993; the Banking Act 1998; the Fiduciary Services Acts 2000 and 2005 which relate to the regulation of corporate and trust service providers; and the regulatory provisions of the Industrial and Building Societies Acts 1892 to 1986.

Mr President, as I have said before, this Bill is largely a consolidation and at this Reading of the Bill, I do not propose to reiterate the principles which mirror current legislation. I will instead draw Hon. Members' attention to the provisions that represent changes to the current legislation or are entirely

new. I will cover the consolidation of the current position in a more detailed outline of the clauses of the Bill at the Second Reading.

The most significant new features are as follows. Firstly, the Bill aims to increase transparency in respect of the Financial Supervision Commission's structure and remit, which is included for the first time in regulatory legislation. In addition, to stating the Commission's functions, part 1 of the Bill specifies regulatory objectives which the Commission must take account of and the principles it must have regard to, in discharging its functions. The Commission's functions are set out in schedule 1 to the Bill, with the exception of responsibility for investigations under the Insider Dealing Act 1998, which by amendment to that Act made by paragraph 29 of schedule 6 to the Bill, will transfer from the Treasury to the Commission the Commission's functions which reflect the current status quo, but are now more clearly stated and easily accessible.

The Commission's functions are the regulation and supervision of persons undertaking regulated activities which are financial services as described in clause 3. The categories of activities which are financial services are those which the Commission currently regulates, namely: deposit taking, which is currently referred to as banking; investment business; services to collective investment schemes; and corporate services and trust services, which currently are together referred to as fiduciary services.

In addition, clause 3 allows for the regulation of any service involving money transmission, which will allow the activities of money service providers and e-money businesses to be regulated for the very first time.

These categories of financial services activities are to be defined in detail and prescribed by subordinate legislation. Such an order would be made by the Treasury and require Tynwald approval. The Commission's functions also include: the oversight of directors and persons responsible for the management of companies which is a reference to the Commission's current responsibilities for petitioning the court for the disqualification of directors and other company officers; the operation of the Companies Registry; and the functions conferred on the Commission under the various Companies Acts and other Acts listed in schedule 1 to the Bill.

Although the Commission's functions reflect the status quo, for the first time the Commission will have statutory overarching regulatory objectives which it must have regard to, so far as is reasonably practical in carrying out its functions. These objectives are: securing an appropriate degree of protection for the customers of persons carrying on a regulated activity; reducing financial crime and supporting the Island's economy and its development as an international finance centre.

In addition, there will be a statutory requirement that the Commission must have regard to guiding principles in performing its functions. These principles include the desirability of co-operating with governments, regulators and other bodies outside the Island and implementing recognised international standards; safeguarding the Island's reputation; ensuring that regulation is proportionate to the benefits it may provide and using its resources in the most efficient and economical way.

Secondly, for the first time, the Commission will have statutory obligations to account for its actions to Tynwald. This formalises the Commission's current practice of

publishing an annual report. Whilst the Commission's regulatory objectives and the manner in which it should discharge its functions set the benchmarks against which the Commission's conduct can be measured, the Commission will be required to produce an annual report to Treasury which will be laid before Tynwald.

This report will include audited accounts and a summary of its proceedings and activities during the preceding year, with particular reference to its performance against the regulatory objectives, the manner of discharge of its functions in accordance with the guiding principles which I referred to before, the policies and strategies agreed by the Commission with Treasury and any other matter concerning the effectiveness and efficiency of its operation, as may be required by the Treasury.

Thirdly the Bill follows existing precedence by providing for certain matters to be covered in delegated legislation which, as currently, will require Tynwald approval. Examples of the delegated legislation include the Commission's power to make rules which under the current regulatory legislation are known as regulatory codes. There will be a single Rule Book applicable to all regulated sectors whereas currently each sector has its own regulatory codes. These rules govern how a regulated business is required to operate and the Bill specifies the topics which may be covered by such rules, including requirements relating to a licenceholder's systems and procedures; relationship with its customers; segregation of a client's money and client's assets from its own moneys and assets; financial resources and professional indemnity insurance; and, pursuant to the Commission's regulatory objective of the reduction of financial crime, requirements in respect of 'know your customer', in line with the Financial Action Task Force's 40 recommendations on anti-money laundering; and nine special recommendations on countenancing the financing of terrorism. This is relevant to the International Monetary Fund's forthcoming assessment of the Isle of Man's supervision and regulation of the financial sector.

I have already referred to the delegated legislation to be made under the Bill by the Treasury in respect of providing detailed definition of the regulated activities. The Regulated Activities Order and Exemption Regulations also require Tynwald's approval.

A further check on the Treasury's power to make regulated activities, orders and on the Commission's power to make rules for the operation of licenceholders' businesses is that the Bill imposes a statutory duty to consult before any such delegated legislation is made.

The Bill also includes provisions relating to the Financial Services Ombudsman Scheme which provides the mechanism for mediation and adjudication in financial services disputes, without having to go to court. The Financial Services Ombudsman Scheme is operated by the Office of Fair Trading.

The Office of Fair Trading's experience in operating the current scheme and issues raised in their consultation on the scheme, resulted in the following changes. The Bill provides that the Financial Services Ombudsman Scheme, which currently is only open to individuals, may be extended to bodies corporate. The Office of Fair Trading considers this flexibility desirable, to allow it to make such a change in the future, if it is deemed appropriate and if resources allow. Complaints will in future be required to be submitted in a specified form and the reasons for declining or discontinuing

mediation or arbitration will be made clearer. The aim is to prevent a waste of resources and abuse of the Scheme.

Other changes include introducing an additional level of scrutiny to the adjudication process by providing for either party to refer the adjudication decision to the senior adjudicator for review. This was considered appropriate as, although there is a right of appeal to the High Court, such an appeal may only be made on a point of law. The Bill allows the Office of Fair Trading, by regulation subject to Tynwald approval, to require financial service providers to notify their customers of the availability of the Financial Services Dispute Scheme and make it an offence not to comply with such regulations. The Bill allows the OFT to disclose information and establish communication gateways to the industry regulators and to other similar dispute resolution schemes.

Mr President, I beg to move the First Reading of the Financial Services Bill 2007.

**The President:** Mr Waft.

**Mr Waft:** I beg to second, Mr President.

This certainly is a Bill that pulls everything together and brings us up to date with regard to gateways and financial money laundering etc and, hopefully, it will be in place quite soon.

I am very supportive of this Bill and I recommend it to the Council.

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President.

I too support the Bill. It is principally to consolidate most of the existing financial services legislation and there are three parties involved in this: the regulatory authorities, the licenceholders and the customers. The legislation really is to achieve a balance that is equitable amongst all the various parties.

I was interested in schedule 1 which is very relevant, and I would just repeat the point Mr Downie has said: the FSC must consider safeguarding the reputation of the Island, the desirability of adopting recognised international standards, the need for regulations to be cost effective and proportionate, and use its resources efficiently and economically.

Just looking at schedule 1, paragraph 3, (g) and (h) to recognise – and I think this is very important:

(g) the international character of financial services and markets and the desirability of maintaining the competitive position of the Island;  
(h) the desirability of facilitating the development of the financial services industry'

which we all know has been very successful over the last 25 years and long may it continue.

**The President:** Mr Lowey.

**Mr Lowey:** I do not want to be a cloud in a nice blue sky, Mr President, but I do think that the Bill is important and I recognise the need and the role of the Financial Supervision Commission; but that should not blind us to the legislation that is before us. I do not think it is an answer to say 'well, it's consolidating most of the existing'.

I have heard some comments made by the mover of the Bill that do not in my view square up with what is

written down. Great play has been made of schedule 1 at the moment. Let us go to schedule 1 and look at it. I am just amazed really.

First:

'The Commission shall consist of not less than 7 qualified persons'.

Now, if anybody was reading that, they would think, 'Oh, they've got to be qualified: they've got to be accountants or bankers or somebody.' That does not mean that at all.

If we go to (6):

'A retiring Commissioner shall be eligible to be re-appointed if the Commissioner is otherwise qualified.'

I find that very hard to understand. Perhaps the mover can tell me what that means.

Then you will find at item (10):

'Section 3 and paragraphs 1, 2(3)(c) and 7 of Schedule 2 to the Statutory Boards Act 1987 do not apply to the Commission.'

And (11) is the important one:

'... a "qualified person" is a person who is not –'

Now there are only three that are not: a Member of Tynwald; a civil servant; or the Chief Executive. He is given an exclusive thing: you cannot be working for an employee of a Department or a Statutory Board, with the exception of the Chief Executive. Well, we all know about Edwards and we all know, in my view, and my position on that has been and is quite clear. I do not believe the Chief Executive should be serving as a member of the Commission.

However, can you tell me why a Member of Tynwald is excluded and a civil servant is excluded and yet immediately they retire, they can be appointed? The next day. It does not make sense to me.

If that is the existing rules that have been consolidated, I think it leaves a lot to be desired. And 'qualified': do you have to have any qualifications? The wording there is a clear indication that you have got to be qualified. It just means that if you are breathing, you have got two legs, you are qualified to be a member of the Commission. That is what that means. It does not give any sort of professional qualification at all.

Then I come to the Financial Supervision Commission and again a point that was made by my good friend Mr Crowe. He says there are three parties here and he mentioned individuals. I see very little consultation being done with individuals. I have to tell you, my experience of dealing with the FSC – and I must make this quite clear it is not recent – when I dealt with individuals... Banks on the Isle of Man advertise themselves as licensed to operate under the auspices of the FSC, it is a selling point for them and rightly so.

But if you go to the FSC with a problem with the bank, you try getting some satisfaction as an individual. No individuals, as far as I am concerned, have been consulted. If they are trying to say to me that the OFT has been the conduit for that consultation, I do not think that is acceptable, because I do believe that is what I would call 'in-house'. I know the Office of Fair Trading has a role to play in looking after the public interests but it is an 'in-house' one, and I do not think that is right.

So perhaps the mover can tell me what consultation has taken place with individuals, as customers.

I would also like to ask the mover of the Bill: he mentioned banking and deposit taking – it has been now changed to deposit taking from banking – but he failed to tell me what the difference is and why it is being changed. I think if we are changing something, then we should know why it is being changed. There may be a very sensible, simple answer.

Can I then come to what I would call another of my problems with this Bill? The mover of the Bill said, one of the new things is to make this improved transparency. Well, if you turn to clause 11, ‘Warning notices’:

‘The Commission may’

– so it is discretionary –

‘before making their direction under section...’

and then it goes on, let me draw your attention to clause 11(3):

‘A warning notice may (but need not) –’.

Now if that is not belt, braces and a piece of string, I do not know what is! Why the need to put in so many caveats? We start off by saying it is ‘may’ and then we say, ‘Commission, a warning notice may... but need not.’ Why? What...? If ever there is a built-in scenario being prepared here for the Commission to be able to do whatever it likes, it is this. We are writing primary legislation, so I want some explanation as to why that has been put in.

Can I then draw your attention, Mr President – and it was drawn to my attention earlier – and it has been drawn by the mover of the Bill, when he said clause 17 had been amended in another place, because they had been – perhaps I am using the wrong word here – ‘lobbied’ by the accountants. That is fair, it is legitimate, that is reasonable. That is what organisations are for. I have no qualms with it.

But if the auditor of a permitted, and I am quoting the opening lines of clause 17:

‘If the auditor of a permitted person becomes aware of any matter which is such as to give the auditor reasonable cause to believe that –’

and then it goes on to say what they are. What happens if the auditor does not declare it? Where is the penalty? I fail to see any penalty whatsoever in this Bill for the auditor, if he does not declare it.

You may say, normally he has got to declare something under the articles of his association. If that is the case, why have it in here? Are we pretending? It is a pretence. If there is no penalty for not doing something, then it is a meaningless gesture.

So those are a few of the things that I have got. I do not wish to appear to be negative on this. As I said at the start, I recognise how important the Financial Supervision is to the reputation, but is the FSC at the moment not open to direction by the Treasury – and rightly? I hope so. Therefore it is still open to direction by the Treasury, and the Treasury has always been accountable to Tynwald, so we have always had this accountability to Tynwald via the Treasury, who in fact can direct the Treasury so that is not a new thing, maybe putting it in statute but the principle has always been there.

I do keep to the last as I said, the only amendment I have at the moment – and I give warning to my good friend – is that I would seek to persuade the Council to remove the omission in schedule 1 for the Chief Executive to be eligible – but then, my good friend knows that anyway. But I will be taking that opportunity, if and when we get to the clauses.

So while it is important to bring legislation up to date and to legislate, but my own experience with the FSC, as for individuals, is it is not a body that is open to requests for assistance from individuals. It may be open to requests from the trade, the bankers, the people who actually work in the business of creating wealth, but it does not do anything and I think that is another misapprehension that the general public have with the FSC. The impression in the advertising is that it is there as a protector for the individual, unless you have got a problem – do not go to the FSC. That was my experience and I have to say, it is not recent, it has been a few years back and I do not think we need... And if we have not got that, then it should be a part of what I would call the FSC’s role to look after the interests of individuals who have complaints against financial institutions.

With that, Mr President, I –

**The President:** Hon. Member, Mr Butt.

**Mr Butt:** Thank you, Mr President.

I would start by welcoming this Bill as a consolidation of many Acts and regulations and rules. It becomes, in effect, a one-stop shop for the financial industry which is I believe needed. With the collective investment schemes, of course, it becomes a two-stop shop and I was wondering why, if the mover could actually explain why collective investment schemes were not included in this Bill, so that there was truly a one-stop shop. I presume there were practical reasons why that was not done.

My main concern about the Bill is the fact that this has arrived at the other place as a Bill and since then, there have been many amendments and additions. I wonder how sure are we that, when we finally complete our proceedings here, we will have the correct finished product. There seem to have been a lot of movement ‘on the hoof’ in effect, in the other place, and there are proposed amendments here as well I believe. So I am concerned that maybe this will not be final product and, as things change, this will need to be changed again. I am a bit disappointed with the Bill as it arrived at the other place was not the complete Bill, as it should have been.

**The President:** Mr Turner.

**Mr Turner:** Thank you, Mr President.

I too fully support the principle of this Bill. It is essential we have a good strong regulatory system in place for our international reputation and of course for the protection of the customers.

Like my hon. colleague Mr Lowey, I have a number of concerns which I would like the mover to address.

He mentioned in his opening address that the subordinate legislation would be subject to the approval of Tynwald. What I am homing in on is the Rule Book, I suppose, where I would imagine most of the meat is going to be contained.

Having searched through the Bill, I am not quite sure where the reference is that this Rule Book as defined is to be approved by Tynwald, so I would be interested in trying to identify where that approval is.

I also have concerns and we have in the Tynwald session raised concerns about the Chief Executive being a member of the Commission. I share the view with my hon. colleague Mr Lowey, that the Chief Executive should not be a member of the Commission, but should be there as a servant of the Commission to carry out the directions of the Commission. How you can be both is a questionable situation.

With regard to the powers that the Commission has with disqualification of directors, I do not think they exercise these powers as often as maybe they should. I know in the past when I have raised concerns about directors not concluding the affairs of companies and starting up new companies, leaving widespread debts. They have never seemed to be pursued by the FSC, and when bringing this matter to their attention there seems to be a complete lack of will to do anything about it. I have had everything from excuses of lack of resources to blaming other departments within the Commission and whose job it is.

So I would certainly like to see some active pursuing of directors who do not conclude the affairs of companies properly, and who are allowed to continually set up new companies. Certainly, they have got the power to disqualify these people: I would like to see them pursued more, when this Bill becomes law.

A concern that was raised to me by corporate service providers was that of liquidity requirements. I have discussed with a number of hon. colleagues as to quite where that is in the Bill, and we have so far been unable to identify it. Whether that is something that is coming in the following regulations, I would like clarified.

The liquidity requirement is how much cash reserve must be held in the business. Now smaller corporate service providers have raised concerns about this and the process on how the amount is calculated. So I would welcome a little bit more information on this from the mover, if possible, please, as it could possibly be putting a heavy burden on small corporate service providers who maybe do not have the same level of risk to the customers as other licensed service providers may have. I would like a bit of clarity on where that is in the Bill, as I have so far been unable to find it.

For the moment, Mr President, those are my queries at this stage. Thank you.

**The President:** For the moment!

**Mr Turner:** For the moment.

**The President:** Just out of interest, Hon. Members, and I will be quiet after this, reading through the Bill last evening, again it became almost interesting to me that I did not know what a 'person' was and then you realised of course that those of us who have been around a while know that a 'person' is someone interpreted in the 1976 Interpretation Act, but in fact if you look at clause 6, it says 'the applicant is a fit and proper person' and then it defines 'controller' or 'director' but nowhere in the interpretation of a clause of this particular Bill does it refer to a 'person' or to an 'applicant'.

It does actually refer to a 'permitted person' and 'permitted persons', I think, are in clauses 34 and 35. It just crossed my mind that maybe for ease of recognition, if nothing else, perhaps we should have in the interpretation clause of this particular measure, which is clause 48, a reference to 'person' as defined in the Interpretation Act. It would make it certainly a lot easier to follow and you would

not have to think that you have got to refer back.

Even in Mr Lowey's case, where he refers to schedule 1 this morning, if you read there:

'7 qualified persons appointed by the Treasury',

now that presumably is seven persons, not the interpretation given under 'applicant' and 'person' as referred to in clause 6, reference to the Interpretation Act 1976, which says that a person includes any body of persons, corporate or unincorporate. It is fine if you know that you can find 'person' in 1976, but maybe there are people now who cannot find 'person' in 1976.

Mr Downie.

**Mr Downie:** Right, Mr President.

First of all, I would like to thank Mr Waft for seconding the First Reading today. He is quite right, what the legislation is trying to do is pull everything together, try and make the legislation clearer to understand and if, at some time in the future, the customers, as Mr Lowey refers to, want to actually know how their money is regulated, there will be a much simpler way in which people who have a query or have an issue about how financial services are managed and regulated, at least they will have half a chance; they will not have to refer to all sorts of bits and pieces that have been with us for over 20 years.

I thank Mr Crowe for his support. He said that the Bill was pulling the various strands together, three parts together, and what is more important than anything else, in my view, it is putting the Isle of Man on a firm footing as far as legislation goes and we are safeguarding the reputation of the Island. That is of paramount importance.

Mr Lowey made reference to... He felt there was a cloud there, a cloud coming on. The 'qualified persons' was an issue that he queried. Now as I understand it, Members of Tynwald are particularly prohibited from being members of an organisation like the Financial Supervision Commission because it is contrary to international standards and you have to have this independence. It would be totally wrong to have political Members in there interfering. People with inside track, inside knowledge –

**Mr Lowey:** Today I am not a Member of Tynwald. Yesterday I was, today I am not. What is the difference?

**Mr Downie:** Well, it is a perception, and that is the top and bottom. I would think people who have longstanding connections with Tynwald are probably very well placed to serve on these particular organisations, because they know what the market requires, they know what the weaknesses are, the pitfalls are and so on. They do, over the years, pick an awful lot of knowledge up, but while they are sitting, it would be completely wrong in international terms for them to be sitting then. You need that independence.

**Mr Lowey:** It applies to chief executives

**The President:** Mr Lowey, we will discuss that later.

**Mr Downie:** If we want to go onto that, I think what you have got to realise is that probably the Chief Executive of this organisation I would think is one of the highest paid people in Government's employ. It is a very specialist position. If you

look at his counterparts around the world – and I can quote Hong Kong, all the areas which have top drawer financial regulatory bodies – they are all members of the board. So why put our board at a disadvantage?

We are paying this man for his outstanding knowledge of the industry and regulation and, in my view, he should be part of the board.

Now, I can understand, when you look at the background to this and when you look at boards whose chief executives have capital programmes and they have access to money and budgets, it is not the same in this particular organisation. The budget of the Financial Supervision Commission is quite closely monitored and regulated by the Treasury. If you make comparisons with other areas, they cannot go off on vast expenditure trips and spend huge amounts of taxpayers' money on capital schemes, because that is not possible in the Financial Supervision Commission.

So you have to accept that they are a regulatory body and they need all that expertise together and when the board sits or they are interviewing prospective licenceholders, they really need that advice there.

**Mr Lowey:** It does not stop them being in the room.

**Mr Downie:** Well, you are either a player in the game or you are not, and we will have to agree to disagree on this one, but I am sure we are not going to fall out over it.

The same reason why civil servants really cannot form part of the Commission, Government employees: there has to be that layer of independence, as it were, and I mean it is one of the IMF recommendations. The International Monetary Fund have said this is what we expect, and unless we have that separation and we do not have sitting politicians and civil servants on there, we cannot really tick the box. It is how we are viewed from people outside the system, as it were.

Mr Lowey went on to ask about this licence to operate and what consultation has been taken with the customers. I would say that, in this day and age, there are probably more customer groups and investment groups representing customers and investors than there have probably ever been. I know that part of the consultation period did include discussions with a lot of these people. We also have a financial services ombudsman and that is a person who can deal with issues that come along. You have already heard that the legislation now is going to be extended, so that people who have a problem with a provider will be able to take up the issue with the Office of Fair Trading, go into mediation and so on and I think that is a big help. That is to be welcomed.

Where we have moved away from 'banking' and gone on to alter the terminology to 'deposit taking' is that banking now covers such a broad spectrum. There are all sorts of places to go and get money. We have recently, in my time, introduced legislation to control money lenders and all types of other areas. So I think it is important that anybody who goes to an institution to borrow money or to deal with money should know that is properly regulated and by using the terminology 'deposit taking', you have virtually got them all. It has widened it all out and I think there is some comfort from the man in the street, the person we are trying to protect, by introducing that into the legislation.

Clause 11(3), warning notices – discretion for the FSC to give: there is a discretion regarding the remedial action. You can have a warning notice which may not require any

remedial action, but it may be relevant. It depends on the circumstances and there are lots of issues that come along, where the FSC will have to use their discretion.

**Mr Lowey:** Surely the word 'may' is discretionary anyway. You may or you may not.

**Mr Downie:** It is but I think it allows them to regulate properly and if an issue... It is better to have an issue brought to their attention that they have knowledge of, at least they have knowledge of it and they can take the appropriate action and then it is up to them how severe they want to be. If it is a silly mistake, they might just need to go in and slap their wrist. If it is more severe than that, they can use their discretion and come down much harder.

**Mr Lowey:** Through you, Mr President, I accept that, but the word 'may' gives them that discretion anyway. So I really want to know why you put something in, 'may' at the start and then 'may or may not'. Talk about repetition! You said before we wanted to simplify.

**The President:** Well, I think the point is made and Mr Downie is answering. Mr Downie.

**Mr Downie:** I would suggest that is the way the draftsman has drawn the legislation up. We see all these various styles here. I am a bit like yourself, I like to see it nailed in black and white, so you know where the line is drawn. Maybe we can get some more information for you on that particular issue for the next sitting.

I have just discovered here that there was a public consultation exercise carried out on the website and that was available to anyone interested in the money market and the operation of the FSC. So that is an additional piece to going out to normal consultation.

Clause 17: there was a point raised there about what if the auditor does not respond or there is a problem with the auditor? It is a bit like the companies legislation. If an auditor is not seen to be doing his duty, there is no reason why the Financial Supervision Commission could not refer him to his professional body – a bit like the legal profession. They have a governing body and there could be recriminations taken there. He could be suspended, or he could be fined, so it is another way of dealing with things.

You are obviously not happy!

**Mr Lowey:** Far from happy. Far from happy.

**Mr Downie:** Right. Mr Butt said that he welcomed the one-stop shop but he was not quite sure how it would all come about when the legislation was enacted and the regulations were drawn up. He was concerned about the number of amendments and whether or not there had been enough time put in preparing this Bill to make sure that it did not have too many changes.

The collective investment schemes are a product that is subject to legislative requirements, the Financial Services Bill deals with how fiduciaries operate and the separation of the Collective Investments Bill was at the instigation of the draftsmen and has been in fact very much welcomed by the industry. They see it as a much plainer and simpler piece of legislation for them and, of course, when the Rule Book comes out, instead of having all kinds of separate rule books,

we will probably have everything confined within the same book then, and everybody will know which areas reflect their particular type of regulated business. So it should be much clearer.

Mr Turner, a good strong regulatory system fit for today really. Protection of customers: he made reference to the Rule Book, is it to be approved by Tynwald? Well, I can tell him it will be approved by Tynwald. He agreed with Mr Lowey over the issue regarding the Chief Executive, that he should not be part of the Commission. I hope I have tried to explain that. I honestly think it is a very important point and when the Commission actually sits down or they go to see people like the IMF or some of the main finance regulating bodies worldwide, he needs to be there with his expertise.

I do think it is important. It does put us at a disadvantage, I think, both from his knowledge of the business and from perception. When you have all the other jurisdictions there with their chief executives I think you have just got to give way on this one and be guided, I think.

He also raised the issue about companies with widespread debts never seem to be pursued by the Financial Supervision Commission or have they got power to disqualify people? Well, they have got power to disqualify people and in fact there are a number of issues before the courts at the present time. You said you would like to see more being done: I think most of the work that they do deals with the regulation. What I am going to do is have some discussions about ways in which they may be able to do more in the future, because there is no doubt about it this piece of legislation is going to be helpful in dealing with those type of matters, where you have got people who are obviously not conducting their business in a proper way. A director's disqualification is not under the regulatory legislation and there is a new Company Officers Disqualification Bill currently being progressed, so that could come along any time. That might be the very vehicle to deal with the problems that the Hon. Member has been having.

There was also an issue raised about liquidity and whether we are putting a heavy burden on small businesses – that is referred to the corporate services providers. I am not 100 per cent certain about that, and I will get some more information on that particular issue and get back to you.

Finally, Mr President, you referred to the definition of a 'person' under clause 48. I am fairly easy about that, if you think it needs to be addressed, I am sure we can address it.

I do not think I have missed anybody out. Mr President, that is about it. I beg to move the Bill be read for a first time.

**The President:** Okay, Hon. Members, the motion that I put to Council is that the Financial Services Bill 2007 be read for a first time. Those in favour, Hon. Members, please say aye; against no. The ayes have it. The ayes have it.

**Financial Services Bill**  
**Standing Order 4.3(2) suspended**  
**to take Second Reading**

**The President:** Now, Mr Downie are you suggesting that we move on or – ?

**Mr Downie:** Second Reading, please, Mr President.

**The President:** Well, we need in that case to suspend Standing Orders.

**Mr Downie:** The suspension of Standing Orders – I wish to move then:

*That Standing Order 4.3(2) be suspended to the extent necessary to allow the Second Reading of the Financial Services Bill to be taken at this sitting.*

**Mr Waft:** I beg to second, Mr President.

**Mr Lowey:** I have no difficulty in supporting for the Second Reading. I have a little bit more difficulty in if we take in the clauses, which we tend to do at the Second Reading.

I think like my hon. friend, Mr Butt, this has been incorporated and we have got it just recently, the finished one. I notice it was on my birthday, so I should be in a good mood really, on the 12th! (*Laughter*) But I do think we really do need to make sure we have got it right. If this is going to be the bible and the one-stop shop then I think we should really have... We should not rush it: that is the point I am making.

I understand the need to get it in and I do not think the timetable disqualifies us from dealing with the clauses and the Third Reading at the same sitting.

So I would support the Second Reading being taken today, with the exclusion of the clauses.

**The President:** In that case, Hon. Members, what I will put to Council is that we suspend Standing Order 4.3(2) to enable the Second Reading to be taken. On our Order Paper, Hon. Members, we normally do move on to clauses stage, I think Mr Lowey is raising a flag against that, but we will cross that barrier when we come to it. I think we will just, at this stage, move for the Second Reading. Are we agreed, Hon. Members?

**Members:** Agreed.

**Financial Services Bill**  
**Second Reading approved**

**The President:** In that case, Mr Downie, we will move on to the Second Reading.

**Mr Downie:** Thank you, Mr President.

Could I just say that with the officers being present today this is an ideal opportunity to tease all these little areas out: it is a very technical Bill, as far as I am concerned. I will not be moving the clauses stage today.

I thank the Members for supporting the Second Reading. We will have a couple of weeks now: I think the next scheduled sitting is on 1st April, so that will give ample time. Either myself or the officers in the FSC will be available, if you have any further technical issues to raise or even if you are considering any amendments, by all means, let me know about it and I will try and assist wherever I can.

So, Mr President, as I said at the First Reading of the Financial Services Bill, to assist Members of the Council, the Bill has been reprinted to incorporate all the amendments made in the other place.

I remarked that the Bill is largely a consolidation of all the Financial Supervision Commission's current regulatory legislation, apart from that relating to collective investment schemes. I would confine my commentary on the Bill to the more significant changes it makes to the current legislation and the entirely new features it introduces.

I said that I would be covering the consolidation of the current position at Second Reading. I now propose to go in to more detail on the structure and content of the Bill. I will not, however, be giving a detailed explanation of each clause, as there will be the opportunity for careful clause by clause scrutiny at the clauses stage, and I thank you to agreeing to the suspension of Standing Orders.

The Bill is structured and its contents are as follows.

Part 1 identifies the Financial Supervision Commission as the regulator and sets out the Commission's regulatory objectives. It gives effect to schedule 1 to the Bill, which details: the constitution of the Commission; its functions; matters to be taken into consideration in performing those functions; the Treasury's power in respect of the Commission's policies and strategies; obligations on the Commission to report on its activities; and establishment of a complaints procedure.

As I noted at First Reading, the purpose of including part 1 of the Bill to describe the regulator and regulatory objectives is to increase transparency. This has been achieved by a clear statement of the Commission's constitution and functions and, for the first time setting statutory regulatory objectives and guiding principles in accordance with the Commission, it must discharge its functions. The Bill also places formal accountability obligations on the Commission.

Part 2 describes the activities that are regulated under the Bill and makes it an offence to carry on the activities without a licence. The system of licensing is established in chapter 3 of part 2 which also defines the expression, 'licenceholder'.

A regulated activity is a financial services activity of a specified kind and the categories of financial services are set out in clause 3(2), including: the current regulated activities of deposit taking, which under current legislation is referred to as banking; investment business; services to collective investment schemes; corporate services and trust services; but the collective expression 'fiduciaries' currently used for corporate and trust services is not used in the Bill.

In addition, a financial services activity also includes any services or activity involving money transmission, which will allow for the regulation of money service business and electronic money business. As indicated by the words of a specified kind, these categories of financial service activities may be defined in detail. The categories may be expanded by an order made by the Treasury.

Under clause 44(2), the Commission may exempt persons in respect of whom the Commission's regulatory regime would not apply from the requirement to hold a licence. Such a regulated activities order and the exemption regulations will require Tynwald's approval.

Part 3 deals with the fitness and propriety of persons carrying on regulated activities, certain key officers and the individuals who have control of regulated businesses

are also required to meet the Commission's fitness and propriety criteria.

The Commission may direct that an individual is not fit and proper to be appointed as a director or a key person or to act as a controller of a licenceholder and in respect of individuals already acting in such roles in relation to a licenceholder or exempt business. The Commission may direct that the individual must cease to act in that capacity.

The expression, 'permitted persons', is used in the Bill to mean licenceholders and persons who are exempt from the requirement to hold a licence and, although exempt persons are not subject to regulation, the Commission's powers do allow it to take action, if a key individual or controller of an exempt business is found to be not fit and proper.

The Commission also has power to issue a warning notice which may require the individual concerned to take remedial action. Such a warning notice may be preliminary to issuing a 'not fit and proper' direction, but also may be given in any other circumstances.

So just to reiterate there, that was an issue that Mr Lowey raised. I think that defines it a little bit clearer. The notice may be preliminary to issuing a 'not fit and proper', so you are putting them on notice that there is something likely to happen. But as I say, it depends entirely on what the circumstances are.

There is a right of appeal against the Commission decision in relation to 'not fit and proper' directions and warning notices.

Part 4 contains powers for the regulation and supervision of regulated businesses. Powers are included for the giving of directions, investigations, imposition of penalties and the making of regulatory rules. The Commission may also issue guidance in respect of the requirements of the Bill, any public document made under the Bill, its functions and regulatory objectives or any other matter.

The Commission may also issue public statements in certain circumstances, including where the Commissioners consider it to be in the public interest. It is mandatory for the Commission to issue a public statement in respect of a 'not fit and proper' direction.

Clause 15 gives effect to schedule 2 to the Bill. Schedule 2 details the Commission's powers of inspection and investigation, and these powers are the same as the powers under the current relevant legislation and are necessary in order for the Commission to perform its regulatory and enforcement functions.

This power includes one to inspect the books, accounts and documents and investigate the transactions of the current or former permitted person and to require information. The Commission may also seek information about the affairs of a customer of the permitted persons and of the associated companies.

Part 4 also enables the Commission to impose financial penalties on a permitted person who has contravened any provision of the Bill or any prohibition or requirement imposed under the Bill or if they have supplied false, inaccurate or misleading information to the Commission. The auditors of a permitted person must report to the Commission any matter which gives the auditor reasonable cause to believe that the permitted person may be in contravention of the Bill, the Rule Book, a condition on a licence or any direction or requirement the Commission has imposed on that person.

The Commission may make rules in respect of how a

licenceholder is expected to conduct its business and arrange its affairs in relation to engaging in any regulated activity. This is known as the Rule Book.

Schedule 3 gives more detail of the matters about which the Commission may make such rules. The Commission may take action for a breach in respect of a contravention of the Rule Book, but a third party does not have the right of action in respect of a licenceholder's contravention of any rule nor does it affect the validity of any transaction.

Part 5 contains special powers for the protection of the customers of regulated businesses. It enables the Commission to apply to the court for an injunction, to petition the court for the appointment of a receiver or business manager and to require a permitted person to provide a report by an accountant or other skilled professional on any matter relating to its affairs.

Part 6 deals with the financial services disputes scheme, compensation schemes and provides remedies for customers.

Schedule 4 to the Bill details the procedures and operation of the scheme operated by the Office of Fair Trading for the resolution of financial services disputes.

Part 6 of the Bill also provides for the establishment of schemes for compensating investors and depositors where persons who are or have been licenceholders are likely to be unable to satisfy civil liability claims.

The remedies available to third parties are contained in clauses 26 to 29 of part 6 of the Bill and these are: a third party who suffers loss as a result of the licenceholder breaching a condition of its licence may in certain circumstances sue that licenceholder; and a third party who enters into an agreement with an unlicensed person or who enters into an agreement as a result of something an unlicensed person says or does may avoid his obligations under that agreement, get his money back and be compensated for any loss suffered.

Part 7 provides for the publication by the Commission of information and places restrictions on the disclosure of information.

Schedule 5 to the Bill sets out the restrictions on the disclosure of information and prohibits persons who obtain information for the purposes of or in disregard of their functions under the Bill from disclosing such information without the consent of the person to whom it relates. Such information is termed, 'restricted information' and schedule 5 provides gateways to allow restricted information to be disclosed in certain circumstances.

Part 7 also includes the right to appeal against certain of the Commission's decisions and sets out the appeal procedure. Part 7 provides a statutory indemnity against liability for damages. The statutory indemnity applies to the Treasury, the Commission, the administrator or depositor or investor compensation scheme, a regulatory authority which is designated by regulations made by the Commission and the Office of Fair Trading or an adjudicator in respect of financial services disputes, provided that in performing their functions, they did not act in bad faith.

The Commissioner may enter into mutual assistance agreements with a regulatory authority which includes any authority, whether a governmental or private body, and whether established in the Island or elsewhere. Mutual assistance includes each authority assisting the other in the performance of its functions. The disclosure of customer information under the mutual assistance agreement must

be in accordance with the disclosure provisions in schedule 5 of the Bill.

Part 7 also provides for the keeping of registers of former and current licenceholders and of the classes of persons who are exempt from the requirement to hold a licence and a register of the 'not fit and proper' directions issued under clause 10. It is an offence to fraudulently induce a person to make a deposit or enter into an investment agreement by making a misleading, false or deceptive statement or forecast etc. It is an offence to falsify, conceal, destroy or dispose of relevant documents, to make false statements or provide false or misleading information to the Commission. The penalties for offences under the Bill are set out in clause 41.

Part 8 deals with general matters. It provides that the Commission may take regulatory action in request of a breach of any statutory provision. It gives the Commission and the Treasury power to make delegated legislation under the Bill in respect of certain matters including the Rule Book, the definition of the regulated activities, fees to be charged etc and sets out the Tynwald procedure for the approval of such delegated legislation.

Part 8 includes definitions of expressions used in the Bill, gives effect to schedules 6 and 7 to the Bill, which contain amendments and repeals of other Acts and to schedule 8 to the Bill which contains transitional and saving provisions.

Finally, part 8 gives the Bill its short title and allows for the bringing into operation of the provisions of the Bill and allows for modifications to be made to any provisions in the transitional arrangements.

Mr President, I beg to move:

*that the Financial Services Bill 2007 be now read a second time.*

**The President:** Mr Waft.

**Mr Waft:** I beg to second, Mr President.

**The President:** Mt Butt.

**Mr Butt:** Thank you, Mr President.

Just a technical question for the mover, while we have technicians present, regarding the Rule Book, which you say now has to be approved by Tynwald. I would presume that the rules might change quite often as things move on. I wonder what the relationship is between the Rule Book and the anti-money-laundering codes and guidance notes. Do they stay outside the Rule Book, where they can be changed more frequently, or are they part of the Rule Book? And if the Rule Book does change frequently, how is that? What is the mechanism for that, if it has to go to Tynwald each time?

Thank you, Mr President.

**The President:** Mrs Christian.

**Mrs Christian:** Yes, thank you.

Can I also ask about the Rule Book? The Hon. Member has indicated that the Rule Book will be subject to approval by Tynwald, but I wonder if he could say where, statutorily, that is required?

**Mr Turner:** That is what I was asking.

**Mrs Christian:** The Hon. Member of Council, Mr

Turner, asked the question, but the answer was not specific on that point. I would just like to endorse his point that it does not appear to be included in statute, unless it is hidden somewhere and we have not found it.

It is interesting to note in clause 18 that, in fact, even if we do have this Rule Book which is approved by Tynwald, the Commission may direct that the whole of the Rule Book or any of its provisions are not applicable to certain licenceholders so it is a rather flexible document or at least the Commission in primary legislation is given the powers to vary which bits of the Rule Book shall apply, which is an interesting concept.

I suppose there is... it is not quite a parallel but we do, from time to time, approve codes of practice in another place. They are not primary law but this perhaps is something similar. But it would be interesting to know and, if it is not provided for in statute, we might wish to consider whether it should be provided for, that it goes to Tynwald.

**The President:** Clause 45 puts the procedure back, in relation to laying before Tynwald. It is the reverse procedure: if Tynwald does not take action, well then it becomes approved.

Mr Crowe.

**Mr Crowe:** That is the very point I was going to make, Mr President.

**The President:** Mr Turner.

**Mr Turner:** Yes, thank you, Mr President.

Mrs Christian brought up the point I was wishing to bring up.

If I may go back to the role of the Chief Executive, the hon. mover did mention the importance that the Chief Executive attends the various conferences and events around the world –

**Mr Downie:** It will not be conferences and events.

**The President:** Continue, Mr Turner.

**Mr Turner:** Well, I think he understands what I am talking about, but I understood the Chief Executive is the officer with the expertise, the information and advice to the Commission. I just wonder how, if he is in a position of... in the day-to-day running of the Commission, he may well be providing or making the case for a decision. I just wonder how he can be involved in the day-to-day running of procedures and then sit as part of the jury, if you like. It would be rather like: the regulator is in a role like a police officer, I suppose is what a regulator is – it polices the industry – and then switches role to become part of the jury making an ultimate decision. I just wonder how those two can go together.

**Mr Lowey:** Wrong in principle.

**Mr Turner:** I agree, as my hon. colleague, Mr Lowey says, it is the principle here. I do not think it would exclude the Chief Executive as sitting as a part of the board as the *ex officio* adviser, and that is what I would come back to.

We got the impression from the hon. mover's response that we were somehow suggesting we were excluding him

from the proceedings, which is not the case. I know concerns were raised in another place about the position of Chief Executive on both the Commission and also on the Insurance Authority, as being in that, and possibly that may come up at another... when we look at that legislation.

I am supportive of this Bill and those are a couple of the points and the points I brought up at the First Reading I hope you can address, as we go through the latter stages of this.

**The President:** Mr Lowey.

**Mr Lowey:** Yes. I do not want to be repetitious. My hon. colleague knows where I come from. My hon. friend is absolutely right, Mr Turner, when he says the regulator, self-regulation... How can you be the regulator and then go on and regulate? It is wrong in principle.

It was said by Edwards it was wrong in principle, and forgetting the idea that we pay people a lot of money – that does not come into the equation, as far as I am concerned, whether we pay then a lot of money or not – and the idea that the Chief Executive... it would put the Isle of Man at a disadvantage, I cannot accept that any more than I am sure the Chancellor of the Exchequer, when he goes away to deal with FIM matters, that he has no advisors with him in the room at the same time. I am quite sure the FSC go on international forays into the Middle East, the Far East, wherever they are; I am quite sure the Attorney General accompanies the team and is advising them there in the negotiations.

So I do not buy into this, that you can dine à la carte: you can be in when it suits, and for international agreements, you should be out. I am not interested what Jersey does; quite candidly, I am not. What I do know is that we have been found wanting in the past and I think we should put our house in order. I do not believe in the principle that the people should be the chief executive and sitting on the board at one and the same time.

I know it is not a one... it never happens. What I believe is it should be right: we should be like Caesar's wife, whiter than white.

Can I come to the points that were made, and I want to stress them. I find very little action having been taken by the FSC over the years against people. I cannot believe that the Isle of Man is so well regulated that we do not have, somehow, people who go over the... When was the last time we saw somebody struck off? They are very few and far between. They are almost as rare as Halley's Comet, I would suggest! (*Laughter*) That cannot be right; it is not healthy.

I again would like to put a point of view forward for thought by the FSC: why is it that whenever we do have a problem with what I would call...? Do not get me wrong: I am not on a witch hunt against any organisation, but I will just use two to illustrate. Whether it is accountants or lawyers, we *take so long* to deal with it.

If there is an allegation – no more than that – a serious allegation, not a frivolous one, misappropriating funds and what-have-you – this is a suggestion: if we said that the person concerned must not practise any more until it is resolved, it would quicken the situation up. But we allow them to continue.

That, I think, is the point that was being made. Meanwhile, while we are discussing this, they are allowed to carry on doing whatever business they are doing. I do not think that is right and I think the public tend to feel that some action should be done, and now they cannot understand why. I

understand how very serious it is for an individual to get his livelihood taken away from him, but that does not happen in a whole variety of things. If there is a doctor who is accused of serious... He does not carry on practising until... They say, 'No more until we have proved that particular case.' So, in the running in the rules I think there should be, perhaps, a change of emphasis.

I welcome the idea, after 20 years, of re-looking at the Financial Supervision, the services, and I welcome the idea that we should amalgamate and have a one-stop shop if we can, but already today we have been told that it is not going to be a one-stop shop for the directors because it is going to come in, in another Bill later on, so already, as we are passing this as a one-stop shop and selling it as such, we know it does not deal with everything at all.

I understand that is life, no matter. What is ideal today, tomorrow will be slightly different. But I do think that the Bill is an attempt to do it. I do not accept, as I said before – and I am repeating myself, Mr President, when I say – that we need so many 'mays' and then 'may' or 'may not' all in the one clause, when you have given the permissiveness in the opening clause.

So I am sorry to underline it, but I really do feel that when we are writing legislation, it should be always simple to understand by the layman. If I was a layman reading that, and was told one of the prime things is that 'may' is permissive, then I look at all these 'mays' or 'may not's', I would be dizzy before I had got to subclause (4) of that particular Bill.

**The President:** Mr Attorney.

**The Attorney General:** Thank you, Mr President.

I would just like to restrict my comments, if I may, to the position of the Chief Executive. The hon. mover of the Bill has told Hon. Members here today that it is in accordance with international practice that a chief executive of a regulatory supervisory board, such as the FSC, can be a member of the Financial Supervision Commission, be a member of the board, and I would suggest that that is entirely right, in the circumstances which apply.

When one looks at the very wide powers, functions and responsibilities of the Commission, which are set out in this Bill – and we can see them there, particularly in schedule 1 – and when we recall that the members of the Commission personally have duties in respect of their positions on the Commission, I think that the members of the Commission actually receive a greater deal of comfort and support in their decision-making processes by having the Chief Executive on the board, on the Commission.

Of course, there may be those who would object. That is all very well and good, but surely there must be, occasionally, conflicts of interest and duty, and I think those have been raised this morning, and in particular in relation to the licensing of people, because we know, under clause 10 of the Bill, that it is for the Commission to decide whether a person is a fit and proper person to be appointed as a director, or to become a controller of a licenceholder and so on, and generally the Commission is responsible for licensing.

I hope that the officers from the FSC will correct me if I am wrong, but certainly, Mr President, that potential conflict was recognised some years ago, and I can certainly remember giving advice to the Commission that, insofar as licensing is concerned, the Chief Executive actually does not

sit as a member of the Commission and has no part to play in actually making the decision as to whether somebody is a fit and proper person. What he does do, and what I think is absolutely right, is that he makes a recommendation to the Commission, and it is for the Commission to decide on the actual application or not.

So what I would respectfully suggest, and hope might be of assistance to Hon. Members, is that when it comes to licensing, whether a person is fit and proper, the Chief Executive indeed should not be part of the decision-making process, and if he were to be a member of the Commission, he should absent himself from that part of the Commission's functions.

But in relation to all the other strategic and general functions of the Commission, it is absolutely right that the other members of the Commission should have the benefit of his experience and expertise. That would be my personal approach. That was the advice that I gave. I believe that that is entirely consistent with best practice, and indeed Human Rights provisions. I gave that advice some years ago and, as far as I am aware, it is still being adhered to, and I think it should be carried forward in this Bill.

**The President:** Mr Crowe. I know, Mr Lowey. Mr Crowe.

**Mr Crowe:** Thank you, Mr President.

Yes, thanking Mr Attorney for his comments, I was just going to comment on the UK Financial Services Authority – I am quoting from a document here –

'... is a world leader in setting the benchmark for sound regulatory practice. It is an independent non-governmental body, given statutory powers by the Financial Services and Markets Act 2000, and financed by the financial services industry. The Treasury appoints the FSA board, which currently consists of a chairman, a chief executive officer...'

And then it goes on. So the chief executive officer is on the UK Financial Services Authority. So we have an example that we have followed in the past, and I think we should continue with that.

**The President:** Mr Lowey.

**Mr Lowey:** Could I address, through you, Mr President, my learned Attorney's view?

I have no doubt at all that these people are decent, law-abiding and sensible people. You have to have public perception in mind, and I would have said that you cannot dine à la carte. You cannot be, one minute, a full director on the Commission, and then opt out when it comes to... and make a recommendation to your fellow... and expect the public perception not to say that you have not influenced your fellow directors. I think that flies in the face of any reasonable interpretation of...

I am sitting with you today, I am making a recommendation, but by the way, I am not... You make the decision, but I am a member for... I find that dining à la carte: in and out when it suits, to break the argument of principle which the learned Attorney has put forward. I think the public perception is that you cannot do both: you cannot be in and out. I believe principle has proved, in the Isle of Man, where we have had self-regulation, that it is wrong, and you cannot make them and then regulate for them.

Licensing is important, and I appreciate the point that the

learned Attorney has said, and I understand the efforts that have been taken by the individuals to distance themselves, but is it right? Quite candidly, on principle, it is not right. To coin a phrase from one of my good friends downstairs, who always says you are trying to make black white and white black – you know who I am referring to – that adds what I would call lustre to that argument. You really are trying to pretend that it can be achieved.

It can be achieved at one level. If it can be achieved at that level, it can be achieved in other levels too, and I do not think that is right. It is wrong at this end, and it is wrong at the top. I do not care how much you are paying the individual to do a specific job, however important that is, principle is principle, and that is wrong.

**The President:** Mr Turner.

**Mr Turner:** Yes, thank you, Mr President.

It seems then that the Chief Executive appears to have a full role. He either is a full Commissioner, or he is not. It appears that he is a full Commissioner, but then, when certain decisions are made – to use my hon. colleague's phrase – he opts out. I just wonder how, as a full Commissioner, you can do that. Could one of the other Commissioners decide to opt out of decisions, and so forth?

**Mr Downie:** Declare an interest. They can do; it is acceptable.

**Mr Turner:** So he has then opted out by virtue of declaring an interest in this. Is that what we are saying with licensing?

**Mr Lowey:** Worse than that: he's making recommendations.

**Mr Turner:** The other point I make is that the make-up of the Commission is subject to the approval of Tynwald, yet this is putting in that the Chief Executive will be automatic. So how then is the approval of the Commissioners subject to Tynwald approval?

It seems slightly contradictory that one part says that... I know it says he may be, but they have decided he will be, and yet the appointment of the Commission is subject to the approval of Tynwald. So we have potential conflict here of the legislation, and, as we know from past experience, one of these authorities did not get the approval of Tynwald. Where then would that leave the Chief Executive?

So I think it is important that these things are addressed. I still agree wholeheartedly with my colleague, Mr Lowey, that the Chief Executive should be on that board as the expert officer, and not as a Commissioner as such.

**The President:** Mr Attorney.

**The Attorney General:** Thank you, Mr President.

If I can just respond to the points raised by the Hon. Member, Mr Turner... But before I do, I recall that one point I did not raise in responding, I think, to Mr Lowey, was the concern of the Edwards Commission. The Edwards Review, as I recall it, was not over-anxious about the position of a chief executive; what the Edwards Commission was concerned about was whether or not a politician should be on the regulatory board –

**Mr Lowey:** It was the principle that he was enunciating.

**The Attorney General:** I think it is pretty clear – I would suggest it is pretty clear, at any rate – that politicians should not be members of regulatory boards.

But to go back to the very interesting point raised by the Hon. Member, Mr Turner, as I read schedule 1, at page 41 of the Bill, all the members of the Commission are indeed subject to the approval of Tynwald. What it is saying, though – what the schedule is saying in subclause (11) – is that you cannot be a member of the Commission if you are a Member of Tynwald, you are a civil servant, or you are an employee of a Department or Statutory Board, but it leaves open the possibility – and it is no more than a possibility – that the Chief Executive of the Commission can be a member of the Commission, but it is subject to Tynwald approval. That, I feel quite sure, is the correct interpretation of schedule 1.

So the Chief Executive does not have a reserved seat on the Commission; he still has to be subject to scrutiny by Tynwald, and all that the schedule is saying is that he is capable of being accounted.

**Mr Downie:** Mr President, can I just –

**The President:** I think you can actually reply, Mr Downie. I think we are ready to reply.

**Mr Downie:** If I can take things in reverse order, there has been a lot of discussion about the Chief Executive. Mr Turner was under the impression that a lot of the work that they did visiting was conferences and so on. A lot of the work that the Financial Supervision Commission has to deal with is with all of the main international governing bodies relating to finance. Whether it is the Financial Action Task Force, money laundering, the International Monetary Fund, you are talking about people at the highest level in the regulatory world – you cannot get any higher – and, as Hon. Members know, in September of this year there is going to be a visit to the Isle of Man from the IMF and the whole of our regulatory organisation will come under very severe scrutiny. It is a regular visit. They visit a number of jurisdictions and then they report on their findings.

It is interesting, some of these perceptions that have crept in about the Chief Executive. Perhaps some of you would be pleased to know that in the UK, the FSA, who are their regulatory body, and they hold themselves up as one of the best, not only is their chief executive a member of the Commission, but also they have seven other officers of the board who are all part of the Commission. So they have obviously considered this, and when the Commission discusses and reports, they want to be able to access the best possible advice.

Mr Lowey, in his usual way, went on to talk about the public perception and black and white. I agree with him, but you have got to realise that when decisions are being made about who gets a banking licence, or who is denied a banking licence, or who is dealt with under the disciplinary codes, I understand it is not normal for the Chief Executive to be there. He has an opportunity to make a recommendation, but when the decision is made, he, I understand, is not part of that decision process. That is made entirely by the Tynwald appointees. He has his tenpenn'orth, but that is the way the situation actually works.

Mr Turner mentioned the principles of good corporate governance, conflicts of interest. I think these have to be recognised and dealt with as and when appropriate. We are only quite a small jurisdiction and I would have said this person does play a very integral part, but at the end of the day, all we are being asked to do today is deal with the primary legislation. There is another process. If Tynwald does not want this person to be part of the Financial Supervision Commission, the ultimate responsibility, I suppose, rests with them.

So, as the Attorney General said, it is not clear cut by any chance. I honestly think that he does bring something to the table. Some of us will not agree, but you cannot deny that the person was appointed because of his expertise and his knowledge of the business, so whether we want to divorce ourselves from that, that is – (*Interjection by Mr Lowey*) Right, okay.

Let us go a bit further into some of the issues that were raised, then.

Mr Butt mentioned the Rule Book and what the Rule Book was going to contain, what would it be dealing with. My understanding is that the Rule Book will be changed quite frequently, it will be subject to a review, but the Anti-Money Laundering Code, which is under the Criminal Justice Act, will have some specific bearing. There could well be a separate code that deals with the anti-money laundering, which is annexed to the Rule Book. We would have to have all the anti-money laundering codes enshrined in the Rule Book, but these would be supplemented by the anti money laundering law rules guidance.

But, like all these other things, like tax and everything else that Treasury has to deal with, all of these are reviewed on a fairly regular basis, at least annually, and there will be various updates given. So if you want a little bit more information about the Rule Book, I can probably get that for the time that we are coming onto the clauses stages.

Mrs Christian asked a question about the Rule Book again – will it be a statutory requirement – and she mentioned clause 18, the Rule Book is not applicable to certain operations. I will do a bit more research on that, and I will try and come back to you with a more comprehensive answer, because I think that is important, because we are actually laying down the rules and regulations for the future, so we really want to know how that is applied.

We dealt with Mr Turner's issue about the role of the Chief Executive.

Mr Lowey, 'how can you be a regulator?' and he does not agree with the Chief Executive sitting on the board. We can give lots of other examples of where this is the case, and in much larger and more comprehensive jurisdictions than our own.

Mr Lowey said there was very little action taken by the FSC; when was the last time somebody was struck off? He said it takes a long time to do anything; we need to be able to suspend a licence. I think they have rules and regulations to be able to suspend licences, and these notices that they can issue, they can put people under notice and deal with it. So I think that is already covered.

He said it was not a one-stop shop and legislation is coming in in company law, but that is different from the regulatory legislation. The piece of legislation I referred to deals with directors of companies, which is different again and it is not part of what we are looking at today.

I am grateful to the Attorney General. He interpreted,

quite succinctly really, how I envisage the Chief Executive being part of the Commission, and he did say at the end of the day, it was up to Tynwald to make the decision. All we were doing, really, in the legislation was allowing this provision to be made. It is a decision in another place that will sign and seal it.

Also, he said – and this is worth expanding on – that the Chief Executive played no part in making the decision who gets a licence. That is absolutely right. As far as I am aware, they meet independently of him. He does have his recommendation, he has his say, but he does not have the final say. It is the Commission that has the final say, and that normally is not with the Chief Executive present. The same process applies to disciplinary matters when somebody is about to get their notice, or be chopped off the list.

Mr Crowe gave an example of the UK where the chief executive is part of the Commission, so there is custom and practice in other jurisdictions, and that is obviously endorsed by all the international financial agencies, like the IMF and FATF, and so on.

Mr Lowey said that there was this public perception you cannot do both and the principle is wrong. I have always been of the view that if you had a good person who did his job properly, he does not show bias, but at the same time it was acceptable for Tynwald, that is good enough for me, and I think that is the way we really have to look at this.

The Chief Executive does have a full role, but there are occasions when he has to opt out of certain things. Like any other member of the Financial Supervision Commission, if there is an issue that comes up that he has some inside knowledge of, or he has had some dealings with in the past, he has to declare his interest and withdraw or retire.

I hope I have dealt with all the queries. No?

**The President:** Mr Turner.

**Mr Turner:** Mr President, may I just ask a couple of questions?

The query was where was it laid down in the actual statute that the Rule Book must be approved?

**Mr Downie:** By Tynwald?

**Mr Turner:** Yes. That was one of the –

**The President:** Clause 45.

**Mr Downie:** Clause 45, yes.

**The President:** The reverse procedure. If it is laid before them, then Tynwald must take action, once it is referred.

**Mr Turner:** The other query is where is it laid down? Obviously, I fully understand the declaring an interest – that would apply to any member of the board – but you say specifically the Chief Executive does not get involved in licensing procedures and, to use your phrase, when people are going to get the chop, is that just an informal arrangement, or is that laid down somewhere? The present Chief Executive may well do that, but what is to stop a future Chief Executive saying, 'Well, I don't agree with those rules, they're not written down anywhere.' Where is that detailed, is the point.

**The President:** I do not think it is in the Act. I think it is in the advice which they operate under, which was given by Mr Attorney to the FSC many years ago. So they act under advice.

**Mr Lowey:** Self-regulation.

**Mr Downie:** Yes, there are licensing procedures, as agreed with the Attorney General, but also there is a new document, that we have all had sight of, about governance and how Government operates. I think some of the provisions in that code really apply to an organisation like the Financial Supervision Commission, but they do have their own licensing procedures.

**Mr Turner:** Given the importance of this role, would it not be better to have this clearly defined, rather than a code that is somewhere on a shelf? It surely should be in rather more an official capacity.

**Mr Lowey:** Do not forget, all of these decisions are open to challenge and there is an appeal process that follows this, so if somebody is not happy with the way that the issue has been handled, they can take it onto a higher level, if they wish. Correct, Mr Attorney?

**The President:** It is subject to appeal first to the FSC itself and ultimately to the High Court on a principle of law, I think.

Mr Turner, we are not dealing with the clauses stage, but if you are of a mind to write something into the Act that in fact the Chief Executive is constrained by whatever, well then you are perfectly at liberty so to do. Mr Downie, continue sir.

**Mr Downie:** I am advised, Mr President, the licensing policy is published and it is made clear to applicants what procedure applies. So it is there.

With that, Mr President, I beg to move that the Financial Services Bill 2007 be read for a second time.

**The President:** Hon. Members, I will formally put to Council that the Financial Services Bill be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### Procedural

**The President:** I think, Mr Downie, I probably led you up the garden path earlier this morning: before we sat, you did actually ask me whether we were sitting next week. In my enthusiasm I said no, we were not sitting next week, I thought it was the week after. In actual fact, because Easter is early, I am told that on the blue card we do not sit till 8th April, not the 1st April. In other words we are following the procedure where you get a two-week break, which coincides with the school holidays, I think. So in fact it will be 8th April when we will be coming back and not 1st – so I think I am probably guilty of leading you down that road, sir. Okay?

Having completed then the Second Reading of the Financial Services Bill, Hon. Members, I think we move on now on our Order Paper to Mrs Christian. In fact we,

although it is on our Order Paper as Mr Downie, the Insurance Bill is up for First Reading and that is in the hands of Mrs Christian who is still working out her blue card! (**Mrs Christian:** Yes, Mr President!)

Incidentally, Hon. Members, before Mrs Christian is ready, whilst we are waiting, we did have Mr Waft raise a query with the Clerk as to the Legislative Council forward work plan so that in fact we would have some sort of timescale of how these Bills would be fitting in. It has been 'in draft form' and I think it would be a useful piece for Members to have. I think the Clerk will see that it is submitted roundabout, so that Members have the format of which Bills will be coming forward in the progression of weeks left for us.

## Insurance Bill

### First Reading approved

2. Mrs Christian to move:

*That the Insurance Bill be now read a first time.*

**The President:** Mrs Christian, we will go on then to the Insurance Bill.

**Mrs Christian:** Yes, thank you, Mr President.

There are some echoes in this, Mr President, with the Financial Services Bill. Members will be aware that the insurance industry, if you like, has developed over the past 20 or so years and, over that period of time, there have been a number of measures approved by Tynwald. But it is considered by the Treasury and the IPA that the time has now come to have a consolidation of those particular pieces of legislation.

The Bill is promoted by the Treasury on behalf of the IPA and the purpose of the Bill is to consolidate the provisions of the Insurance Act 1986, the Insurance (Amendment) Act 1993, the Insurance (Amendment) Act 1995 and the Insurance (Amendment) Act 2004, together with the provisions of the Insurance Intermediary (General Business) Act 1996.

Apart from the consolidation, some minor amendments have been made to the legislation. This has been done in most cases to take account of evolving international standards, as they relate to insurance and in particular, insurance regulation and financial standards. There has been a consultation process with interested parties and the consultation exercise resulted in some minor amendments being made to the Bill.

The Bill is split into several parts, which I do not propose to outline in this First Reading stage, Mr President. It might be useful for Members to know that there have been actual changes made – major changes, rather than minor changes – to 12 elements of the Bill. When I say they are major, they are in many cases, matters which have been followed by custom and practice, but they are now being incorporated in a statutory form. For example, in section 18 there is the introduction of a provision for the appointment of an appointed actuary.

Now there have been no insurance businesses to my knowledge operating without actuaries, but there has never been a statutory requirement for such an appointment and those are the types of changes which are being introduced into this consolidated measure.

I beg to move the First Reading of the Insurance Bill, Mr President.

**Mr Downie:** I beg to second, Mr President, and reserve my remarks.

**The President:** Seconded by Mr Downie. Mr Lowey?

**Mr Lowey:** Yes, I have not given quite as much detailed consideration to this one as I did the Financial Services Bill! But there are echoes, of course there are. I think it ought to be said straight away that the success of the insurance thing has been not by accident, most by design. Some of us who were around when they first introduced the pensions, attracting the pension industry here, thought they were dreaming dreams, but I am glad that the dreams have become reality and it plays a major part in the financial life of the Isle of Man and that is to be welcomed.

This Bill obviously tries to bring them all together again. I think it is right that after 20-odd years, it should be reviewed.

I take it that 'Supervisor' means Chief Executive Officer? It gives him some powers which are quite draconian. It finally gives the Supervisor power to impose civil penalties. That is rather a rare thing. We do not have that power in the Financial Supervision Commission for the Financial Supervisor to impose financial powers, or do we?

Can I say, part 9, and it is one that I have picked up:

'Persons who suffer loss'

– this is the individual I presume now –

'as a contravention of the provisions of the Bill may sue for damages'.

Well, that is just stating the obvious, mover, because of course you can sue for damages – you can sue for damages now. That is not new.

What happens if people do not actually comply with the regulations? I have already hinted that the Supervisor can impose financial penalties, but one would assume that these people, if they did it on a major scale, would not sit here waiting to be penalised, they will have gone. Where is the power? Can we pursue them to other jurisdictions? Is there a power in the Bill to pursue them?

In other words, it is not a Pyrrhic victory, 'Oh, well if they come back, they'll be jumped on from a great height.' I do not see that anywhere in the Bill, where we can pursue them, other than within our own jurisdiction.

My fear is that because the business is so large now, the sums of money that we could be dealing with are rather large sums of money, and therefore, we have to be extremely careful. That is why I think it is a right move. Do not get me wrong: I am not saying that the Supervisor should not have the power to impose financial penalties, if he or she thinks it fit. As I see it, those are sensible proportions because of the size of the moneys that we are dealing with.

As I say, I will be supporting the Bill. I am not going to recite any of my objections to chief executives – and you can dress them up as Supervisors if you like! The same rule applies in my view, but I am not going to recite again the arguments that I have already done.

**The President:** Mr Butt.

**Mr Butt:** Thank you, sir.

I also support the Bill and I see, again, it is a consolidation of previous legislation which is to be welcomed.

But I have a fairly arcane query, something I could not understand: page 31, which is section 54 on the interpretation. At line 15, there is a definition of 'associate' and I am presuming it is there because it is preventing an associate doing something, which I cannot find in the main body of the Act. I have perhaps just missed it and the definition of 'associate' includes a lot of people, includes a fairly weird definition that:

'(a) the wife or husband or minor son, step-son, daughter or step-daughter of that person'

and then a list of other people. It looks as if it is trying to prevent somebody from doing something, but I just cannot find in the main body what that is referring to. I do not really need an answer today, but I just have not actually worked out what that is referring to.

If it is a family firm, it would look as if it actually stops the family operating as a business, if that is the case. I may have totally got the wrong end of the stick, but I would like some clarification on that at some future stage, please.

Thank you.

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President.

I too will be supporting this Bill which as others have said is largely a consolidation of existing legislation.

I was interested in the Chief Minister's report that we received recently that there are 17 life companies and 122 captives and 172 insurance companies in total, that produced over £10 billion in premiums last year and have a total in their life funds of over £37 billion. So the contribution in the way of business to the Isle of Man and employment is very major, so it is an industry we need to support. If this helps (a) the industry, and (b) the consumer, the policyholders, then I am all in support of it.

**The President:** Mr Turner.

**Mr Turner:** Thank you, Mr President.

I will be supporting this Bill. One thing I originally spoke to the Treasury Minister about is why we have two regulatory authorities both regulating financial related industries. I was told that originally there was a sole regulator, but they were split and there were various reasons for that.

I think it is a shame that these two – the previous piece of legislation we were reviewing this morning and this – were not an opportunity to maybe bring the two together to form one body; but I hear that is the ultimate intention, eventually, to bring the two bodies together as one. That is the will of the Treasury Minister, I am told.

Just with regard to the Chief Executive of this particular body, I notice that there are slightly different roles here and there are various references to the appointment of the Chief Executive. That is that the Authority shall appoint, the Authority consisting of three members. So do I take it that the actual appointed members by Treasury will be those who will then appoint the Chief Executive?

And then further on it says the Authority shall give the Chief Executive Officer such directions as to appear... This is on page 38, in schedule 1, for Members – so the Chief

Executive is going to be given directions. Obviously if this Chief Executive is a member of this board, then he will be effectively giving himself directions, or herself. I was just wondering quite how this system operates, when reading through, how this person is actually appointed.

It does not appear to be as organised as the appointment, as we read, in the Financial Supervision Commission. It appears that this Chief Executive has more of an officer role, yet possibly still could be part of the board. So I think that is something I would like to go into greater detail at a later stage of this Bill, but those are my comments. Thank you.

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President.

Just a little bit of history for Mr Turner's benefit. The life companies really came to the Island after the Exempt Insurance Companies Act 1981 was set up, which allowed gross rollup in the life funds. I joined Eagle Star in 1983 and there was a very small life presence on the Island at that time. It has grown phenomenally since then, because of the gross rollup, the ability to attract international business and because of the regulatory authorities and the tax and legislation that we have put into place.

But they are different animals, the insurance industry and the banking industry, and from the very start, the insurance industry regulation and the banking and corporate providers were seen as separate animals. They needed separate regulatory authorities and from those days, it has grown up and it still remains to that day. I do not think there is any will in either industry to bring it into one authority.

**The President:** Mr Waft.

**Mr Waft:** My point, Mr President, is just the way that we deal with Financial Bills. For instance, the Insurance Bill brings together the Acts of 1986, 1993, 1995, 1996 and we are geared to looking at the Financial Bills quite closely. We do bring them up to date on a regular basis and necessarily so; but I do hope it is not to the detriment of other Bills that might be lining up in the sidelines, waiting for a slot in the legislative program.

Thank you, Mr President.

**The President:** Mr Lowey.

**Mr Lowey:** Can I just say, in an ideal world, I think it would be right to have both the Financial Supervision and the Pensions in one body, but I remember the reasons why. There were clashed personalities too, and you can never get rid of that, where we mortals come into play, no matter what scheme of things!

Having said that, there is no doubt whatsoever that the two regulatory bodies we have separately are now performing well and producing the goods. I am a great believer in 'if it ain't broke, why fix it?'

At this moment in time, I would suggest that two regulatory authorities operating as they are will do for now but in the future, who knows, whether they will both come together? But it was, when we started the financial, it was in one body and I can recall the split. There were a few eyebrows raised then but it has worked out for the better for the Isle of Man. So I would say at the moment, we should keep them separate.

**The President:** Mr Downie.

**Mr Downie:** Thank you, Mr Downie.

I would just like to give my support to the Insurance Bill 2007. I would like to comment on whether or not we should have one piece of legislation to cover all these various activities. I, for one, would not support that particular view.

The insurance industry is very complex. It is chalk and cheese from banking. You have a captive market; you have all sorts of other areas which deal with life insurance; we are still having to deal with issues surrounding the old industrial life; the protection of people's rights for their insurance policies, property, assets like ships, boats, yachts, aeroplanes; and then there are other parts of this particular market that have been developed all the time. So as Mr Lowey said, they do work very well in separation, although there is a coming together – the coming together is actually with Treasury.

Treasury sits down on a regular basis with all of the people involved in the insurance sector. They have an Insurance Consultative Committee, the same as they have a Banking Consultative Committee and there are occasions when one piece of the business actually feeds off the other, but if you were to put them in a room and say, 'We're going to put you all under one piece of legislation, guys' – (**Mr Turner:** One body.) one body, which is the same thing really, because it is horses for courses.

The FSC needs people who have an extensive knowledge of the banking industry and the IPA. They need to have the in-depth product knowledge of all the things that the insurance industry provides and of course, all the remedies that come along if there is a problem. So it is very different.

But I appreciate the Hon. Members discussing it to see if it is possible, but I would think, knowing a lot of the individuals as I do, they would not have much of a stomach for being amalgamated under one body.

Thank you, Mr President.

**The President:** Hon. Members, I think it is interesting, I do not want to get hung up on it in any regard, but in the previous Bill before us, the Financial Services Bill, this morning, I commented about the 'person' and had to revert to the 1976 Interpretation Act. You will notice that in this particular Bill, in clause 6, it is quite deliberately drafted in the other manner, insofar as it says 'an applicant' and this is where I came in on the Financial Services Bill:

'An applicant shall be a company or a person or a class of persons specified in regulations.'

So it makes the distinction that an applicant can be a company, which it does not do easily in the Financial Services Bill. In fact, if you revert over then to page 31, which was Mr Butt's query, in relation to the associate, you will see there again, it is quite specific, where it says, 'any company of which that person is a director'. So the manner of drafting, I think, of the two Bills is not in line and makes it a little bit more difficult. Maybe it is only me, I do not know!

Mrs Christian.

**Mrs Christian:** Thank you, Mr President.

First of all, can I thank Members for their general support of the Bill and perhaps not dealing with matters in order, but just to say, with regard to the Hon. Member, Mr Waft's

concerns about whether consolidation of these Bills over 20 years – which is quite a wide period of time – is to the detriment of other Bills, I really think that is for Government to decide in determining which Bills are of more importance to the economic and social wellbeing of the Island. So whilst he may be right, in that this may be a fairly speedy updating and consolidation by comparison with some other legislation, I think that, given the importance of the financial services industries and the insurance element of the industries in the Island, it is important that we produce a document which is more user-friendly than having to refer to several statutory provisions.

Mr Crowe has given us a very useful rundown on the state of the insurance industry on the Island. It certainly has grown over the period that we are consolidating the legislation on, and plays a very useful part in the Island's economy at the moment.

The question has been asked about civil penalties. I will get more information about civil penalties with the concurrence with the Hon. Member for our further consideration of the Bill.

The Hon. Member, Mr Lowey, asked about part 9: what if people do not comply and they just up and run, and go to another jurisdiction? I will stand correction by the learned Attorney, but I do think that we have no authority in any other jurisdiction. I would say that insurance companies which are regulated in the Isle of Man are subject to a requirement for very regular reporting, and I should have anticipated that, where there were areas of concern developing, the IPA and the Supervisor, through the mechanism of the regulations that we are approving and so on, should have a fair degree of idea whether any concerns are developing and whether any action needs to be taken, in respect of any particular companies or businesses.

Again, I will come back on the question of 'associate' and which bit of the Bill that deals with, and your concerns, Mr Butt, about the definitions there, of who is an associate and why they cannot be involved in any particular way. I will expand on that next time.

The question about the regulation of the two elements of our financial services, the banks and the insurance companies, is one that has been debated over the years. I was Chairman of the IPA at a time when politicians were allowed to be involved, and at a time when there was an extremely strong concern that the insurance businesses should be controlled and monitored quite separately from the banks. As the Hon. Member, Mr Crowe, has indicated, there was a feeling that they are very different animals, and that they should have specific organisations looking at the way in which they are monitored and controlled, with a view to growing those businesses, particularly at that early stage. I think it was felt that the manner of regulation of banks was inappropriate to develop an insurance industry, which maybe at that time was subject to assessment by insurance people of the measures of risk, which might have been a little different from that which applied in the banking sector.

Whether or not the notion is we are advised by the Treasury to bring them together at some point, I would just suggest that it would be wise to consult all concerned, if that move is about to be undertaken.

Mr President, I hope that I have covered all the matters that have been raised and beg to move the First Reading of this Bill.

**The President:** Hon. Members, I formally put to Council that the Insurance Bill 2007 be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

## Collective Investment Schemes Bill

### First Reading approved

3. Mr Downie to move:

*That the Collective Investment Schemes Bill be now read a first time.*

**The President:** Perhaps, Mr Downie, we could move straight on to Item 3 on our Order Paper, the Collective Investment Schemes Bill, for First Reading again. I am conscious of the clock, sir.

**Mr Downie:** Yes, very good, Mr President.

I am pleased to introduce this Bill, which passed its Readings in the other House unanimously without division or significant debate.

This is an important Bill to support the Island's significant funds industry, which contributes to the Island's economic success. It is important that this industry is underpinned by a legislative framework which meets international standards and provides appropriate investor protection in a commercial and flexible manner.

The primary aim of this Bill is to ensure that the legislative framework for collective investment schemes is transparent, user-friendly and appropriate to the different types of the schemes that are established, promoted, managed or administered in or from the Island. To this end, the Bill creates a modern framework that supports the current profile of schemes operated on the Island and is structured to clearly set out requirements for different scheme types.

It should be noted that the majority of provisions are based upon the existing schemes provisions in the Financial Services Act 1988, often referred to as the 1988 Act, which are repealed by this Bill.

There are also some additional provisions appropriate to the new fund regime which was introduced in November 2007. This Bill brings the legislation in line with international standards and meets recommendations of the Treasury-sponsored Funds Review Group, which were published in March of last year.

In developing this Bill, the FSC has liaised closely with the bodies which represent the Island's funds industry. This informal liaison concluded with full public consultation on the draft Bill. The consultation was notified to all of the FSC's licenceholders, representative associations and professional bodies, as well as relevant Government Departments, and was also a news item on the FSC's website.

The most significant matter raised in the consultation was the need to structure the Bill in the most user-friendly way. This was felt to be particularly important when selling the Island's fund regime to international advisers.

As a result, the Bill was reorganised so that each of the different scheme types is contained in a separate schedule. This means that practitioners who are interested in only one scheme type do not have to wade through extraneous provisions.

A summary of matters raised in the consultation and proposed changes to the draft Bill were discussed with representatives of the Fund Managers' Association, the Funds Review Group and Isle of Man Law Society. All significant issues that arose from the consultation have been satisfactorily resolved.

To deal with the new provisions, the Bill consolidates the schemes framework that has been in place since 1988. However, since that time, the profile of the industry has changed significantly. The vast majority of schemes are not aimed at retail investors and are not subject to prescriptive regulatory requirements governing what the scheme can invest in or how it operates. This flexibility is a prerequisite for the non-retail schemes market that the industry is based upon.

Internationally, the regulatory focus for non-retail schemes is based upon full disclosure of risk to investors, ensuring only suitable investors are able to invest in the schemes, regulation of the functionaries acting for the scheme and ensuring the FSC has details of issues that may arise.

This Bill has provided the opportunity for the framework to be updated in line with international best practice, to ensure that the FSC receives timely information about schemes and has appropriate powers to intervene on behalf of investors, and to protect the Island's reputation where this is necessary. In particular, Hon. Members should note that managers and administrators of schemes will have to satisfy themselves about the reputation of other functionaries and the acceptability of the scheme's jurisdiction of constitution, if this is not in the Isle of Man, and that is referred to in clause 5.

Managers and administrators of authorised and international schemes will be required to notify the FSC about concerns over a scheme or parties to it.

Clause 6 will provide the FSC with an early warning system. The governing body of a scheme will be responsible for the accuracy of scheme documentation, in clause 7, and will have to ensure the authorised and international schemes have accounts which are audited in line with the prescribed regulations in clause 9.

A whistleblower obligation has been introduced to require auditors of schemes to disclose concerns identified by them in the course of their audit in clause 10.

The Bill also updates the Financial Supervision Commission's powers of intervention to ensure that a proportionate response can be given to issues that may arise.

Mr President, I beg to move the First Reading of the Collective Investment Schemes Bill 2008.

**The President:** Mr Waft.

**Mr Waft:** I beg to second and reserve my remarks.

**The President:** Mr Lowey.

**Mr Lowey:** Just very briefly, Mr President.

I think this Bill shows the width of the scope of business that we do in the Isle of Man. Why do people want to have collective investment schemes in the Isle of Man? There are two reasons. We have already heard the mover say it is not a retail business, you have got to know who you are selling it to etc. But there are two reasons why the Isle of Man has been proven to be successful and will continue to

prove successful, with the innovation of the industry: one is sound political climate, where we do not have big changes; and a sound professional base. We have got good lawyers, we have got good accountants and the base is there for them to do their business with confidence. That is what this Bill is about: building on confidence to allow the business to expand even further.

I noticed, if the Bill is worth having, it is just for clause 8, where it says clause 8 provides the clauses in the documentation of certain schemes which purport to exempt the scheme functionaries from liability for negligence are void. So I think that is a good one! It is worth having the Bill for that, if nothing else!

But it is much more important than that on the three things that I mentioned: confidence and a good sound professional base.

**The President:** I had fun yet again, Mr Downie, working out what a person was: we have got persons; permitted persons; authorised persons; and in fact in this particular measure, the Collective Investment Schemes Bill, the authorised person happens to be a licenceholder under the Financial Services Act. So in fact we change titles yet again, with reference to the three Bills which are before us this morning. Never mind.

Mr Downie, do you wish to reply, sir?

**Mr Downie:** Just to thank Mr Waft for seconding the Bill; and Mr Lowey for his support. In fact, I welcome his comment because he may be having a bit of a go sometimes, but it is always constructive. I think it is very good that we have this relationship where we can get all these issues out, we can discuss them and then it means that I have got nearly three weeks now to come back and convince him, (*Laughter*) if three weeks is long enough! I am sure I will put every effort into dealing with all the issues that he has raised today.

He is quite right: we have a very sound political climate in the Isle of Man, healthy dialogue and I think that shows now in the level and quality of the business that the Isle of Man is involved in.

I thank the Hon. Members for their support and look forward to seeing you here on 8th April.

**The President:** Yes, well finally, Hon. Members, can I for our record put to you that the Collective Investment Schemes Bill be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

#### **Tynwald Standards and Members' Interests Committee Statement by the President**

**The President:** That brings to a conclusion, Hon. Members, the legislation on our Order Paper. As Mr Downie says, our next sitting will be on April 8th.

However, Hon. Members, for our public record, under the Standing Orders of Tynwald Court, if I was to read from the schedule, 6.1:

'There shall be a Standing Committee of the Court on Standards and Members' Interests.'

And at 6.2:

'The Committee shall be chaired by the Speaker of the House of Keys, and composed of the Members of the Management and Members' Standards Committee of the Keys, and two Members of the Council elected by that Branch.'

Hon. Members, one of the Members of the Council on this Committee is Mr Waft; the other place is occupied by the former Lord Bishop, Graeme Knowles, until his departure last year and this place remained vacant, Hon. Members, up until 20th February this year.

Hon. Members will be aware that I became conscious of the fact that maybe this Tynwald Standards and Members Interests Committee would be called to sit. On that particular day, 20th February, Legislative Council were sitting in private and we did take the opportunity, Hon. Members, to make sure that in fact, if there was to be a sitting of the Tynwald Standards and Members' Interests Committee, we would have representation other than Mr Waft there.

So it was during that private sitting, when all eight elected Members, the Attorney General and I were present, that the Legislative Council elected Mr Butt. He was duly proposed and seconded and elected to fill that vacancy.

Hon. Members, I draw that to the attention on our public record this morning, so that in fact it is known that our Members for the Tynwald Standards and Members' Interests Committee are the Hon. Member, Mr Waft, and the Hon. Member, Mr Butt. Hon. Members, it is just really for confirmation of that fact.

Hon. Members, that draws to a conclusion the business before Legislative Council for today. As already indicated, we will next sit on April 8th, Hon. Members.

Briefly, can I have your attention for a very short private sitting, please.

*The Council sat in private at 1.08 p.m.*