



HOUSE OF KEYS
Y Chiare as Feed

VOTES AND PROCEEDINGS
Reaghyssyn as daaltyn

Douglas
Tuesday 12th February 2008
at 10.00 am

PRESENT: Mr Speaker and twenty three Members.

1. QUESTIONS FOR ORAL ANSWER

Questions 1 - 10 answered orally.

Motion made –

That Standing Order 3.5.1(2) be suspended to permit the remaining Questions for oral answer to be taken at this sitting.

Mr Malarkey

Motion carried

Questions 11 - 12 answered orally.

2. BILLS FOR CONSIDERATION OF CLAUSES

2.1 Financial Services Bill

Mr Bell

Clause 1 & Schedule 1

That clause 1 & Schedule 1 stand part of the Bill

Amendments made

Page 40: in paragraph 1(3)(a), for “5 years” substitute “3 years”.

Mr Watterson

House divided
Amendment lost

Page 40: in paragraph 1(6), for “re-appointed” substitute “appointed for up to 9 years in total”.

Mr Watterson

House divided
Amendment lost

Page 40: in paragraph 1(11)(c), delete “but with the exception of the Chief Executive Officer of the Commission”.

Mr Watterson

House divided
Amendment lost

Page 41: in paragraph 2(2), delete subparagraphs (k) and (n), and re-number the subsequent subparagraphs accordingly.

Mr Braidwood

Amendment passed
Clause 1 & Schedule 1 as amended ordered to stand part

Clause 2

That clause 2 stand part of the Bill
Clause 2 ordered to stand part

Clause 3

That clause 3 stand part of the Bill
Clause 3 ordered to stand part

Clause 4

That clause 4 stand part of the Bill
Clause 4 ordered to stand part

Clause 5

That clause 5 stand part of the Bill
Clause 5 ordered to stand part

Clause 6

That clause 6 stand part of the Bill
Clause 6 ordered to stand part

Clause 7

That clause 7 stand part of the Bill
Clause 7 ordered to stand part

Clause 8

That clause 8 stand part of the Bill
Clause 8 ordered to stand part

Clause 9

That clause 9 stand part of the Bill

Amendment made

Page 6: line 31: after subsection (3) insert -

“(4) Where the Commission suspends a licence under subsection (1), it shall review the suspension on a regular basis.”.

Mr Watterson

Amendment passed

Clause 9 as amended ordered to stand part

Clause 10

That clause 10 stand part of the Bill

Amendment made

Page 7; lines 18 to 31: for subsection (4) substitute -

“(4) Subject to subsection (5), where a notice has been given under subsection (3), the direction shall take effect -

- (a) if no appeal under section 32 is made within the period prescribed for the purposes of such an appeal, on the expiry of that period; or
- (b) if there is an appeal under section 32 -
 - (i) where the applicant abandons the appeal, on the date of abandonment; or
 - (ii) where the decision of the Commission is confirmed, on the date of confirmation; or
 - (iii) where the decision of the Commission is varied, on such date as the Tribunal constituted under section 32 directs.”.

Mr Braidwood

Amendment passed

Clause 10 as amended ordered to stand part

Clause 11

That clause 11 stand part of the Bill

Amendments made

Page 9: line 10: after subsection (5) insert -

“(6) A warning notice issued under this section shall have effect -

- (a) for a period of up to 3 years from the date on which it is issued under subsection (1) and such period shall be specified in the notice; or

- (b) until such time as the Commission is content that any remedial action under subsection (3) has been completed to its satisfaction.
- (7) The Commission may disclose the circumstances surrounding a warning notice issued under subsection (1), to –
- (a) an employer who currently employs a person to whom such a notice has been issued; or
 - (b) a person who has received an employment application from a person to whom such a notice has been issued and who, if successful in the application, would be required to be a director, key person or controller of a permitted person,

provided that the warning notice is effective in accordance with subsection (6).”.

Mr Watterson

Amendments passed
Clause 11 as amended ordered to stand part

Clause 12

That clause 12 stand part of the Bill
Clause 12 ordered to stand part

Clause 13

That clause 13 stand part of the Bill
Clause 13 ordered to stand part

Clause 14

That clause 14 stand part of the Bill
Clause 14 ordered to stand part

Clause 15 & Schedule 2

That clause 15 & Schedule 2 stand part of the Bill

Amendment made

Page 46: in paragraph 2(2)(b)(iv), after “general meeting” insert “or a meeting of the board of directors”.

Mr Watterson

Amendment passed
Clause 15 & Schedule 2 as amended ordered to stand part

Clause 16

That clause 16 stand part of the Bill
Clause 16 ordered to stand part

Clause 17

That clause 17 stand part of the Bill

Amendments made

Page 12; lines 24 to 34, and page 13; lines 1 to 3: for subsection (1) substitute -

“(1) 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 -

- (a) the permitted person may be in contravention of —
 - (i) this Act;
 - (ii) the Rule Book;
 - (iii) any condition imposed by or under section 7, 8 or 43(3);
or
 - (iv) any direction or requirement imposed under this Act;
and
- (b) the matter is likely to be of material significance in relation to the Commission’s functions under this Act,

the auditor shall report such matter in writing to the Commission.”.

Page 13; line 7: after “Commission” insert “, whether or not in response to a request made by the Commission,”.

Mr Braidwood

Amendments passed

Clause 17 as amended ordered to stand part

Clause 18 & Schedule 3

That clause 18 & Schedule 3 stand part of the Bill

Amendment made

Page 13; line 27: for “statutory objectives” substitute “regulatory objectives”.

Mr Braidwood

Amendment passed

Clause 18 & Schedule 3 as amended ordered to stand part

Clause 19

That clause 19 stand part of the Bill

Clause 19 ordered to stand part

Clause 20

That clause 20 stand part of the Bill

Clause 20 ordered to stand part

Clause 21

That clause 21 stand part of the Bill
Clause 21 ordered to stand part

Clause 22

That clause 22 stand part of the Bill
Clause 22 ordered to stand part

Clause 23

That clause 23 stand part of the Bill

Amendments made

Page 18: lines 12 and 13: after “general meeting” insert “or meeting of the board of directors”.

Page 18: line 29: after “general meeting” insert “or meeting of the board of directors”.

Mr Watterson

Amendments passed

Clause 23 as amended ordered to stand part

Clause 24 & Schedule 4

That clause 24 & Schedule 4 stand part of the Bill
Clause 24 & Schedule 4 ordered to stand part

Clause 25

That clause 25 stand part of the Bill
Clause 25 ordered to stand part

Clause 26

That clause 26 stand part of the Bill
Clause 26 ordered to stand part

Clause 27

That clause 27 stand part of the Bill

Amendments made

Page 21; line 3: for “section 4(1)” substitute “section 4(1)(a)”.

Page 21; lines 13 and 14: for subsection (4) substitute –
“(4) This section does not apply if the regulated activity is a financial services activity within the meaning of section 3(2)(d) or (e).”.

Mr Braidwood

Amendments passed

Clause 27 as amended ordered to stand part

Clause 28

That clause 28 stand part of the Bill

Amendments made

Page 21; line 18: for “section 4(1)” substitute “section 4(1)(a)”.

Page 22; lines 1 and 2: for subsection (4) substitute –
“(4) This section does not apply if the regulated activity is a financial services activity within the meaning of section 3(2)(d) or (e).”.

Mr Braidwood

Amendments passed

Clause 28 as amended ordered to stand part

Clause 29

That clause 29 stand part of the Bill

Amendment made

Page 23; line 8: for “section 4(1)” substitute “section 4(1)(a)”.

Amendment passed

Clause 29 as amended ordered to stand part

Clause 30

That clause 30 stand part of the Bill

Clause 30 ordered to stand part

Clause 31 & Schedule 5

That clause 31 & Schedule 5 stand part of the Bill

Clause 31 & Schedule 5 ordered to stand part

Clause 32

That clause 32 stand part of the Bill

Amendment made

Pages 24 and 25: for clause 32 substitute –

“Appeals to the Financial Services Tribunal

32. (1) For the purposes of this Act there shall be a tribunal known as the Financial Services Tribunal (in this Act referred to as “the Tribunal”).

(2) The Tribunal shall consist of –

(a) a chairman appointed in accordance with the Tribunals Act 2006; and

(b) 2 members selected in accordance with regulations made under section 9(b) of the Tribunals Act 2006, from a panel appointed in accordance with that Act.

(3) Any person who is aggrieved by a decision of the Commission to –

- (a) issue a licence subject to conditions under section 7(1)(b);
- (b) refuse to issue a licence under section 7(1)(c);
- (c) make a licence subject to conditions or further conditions under section 8(1)(a);
- (d) vary or revoke any condition attached to a licence under section 8(1)(b);
- (e) suspend a licence under section 9(1);
- (f) revoke a licence under section 9(1);
- (g) issue a direction under section 10 ;
- (h) refuse to revoke a direction under section 10;
- (i) give a warning notice under section 11 or the terms of such a notice;
- (j) issue a direction under section 14(1);
- (k) impose a penalty under section 16,
- (l) withdraw an exemption in accordance with regulations under section 43(3)(b); or
- (m) issue a direction under paragraph 2 of Schedule 2;

may appeal, in accordance with rules made under section 8 of the Tribunals Act 2006, to the Tribunal.

- (4) On the determination of an appeal under this section the Tribunal shall confirm, vary or revoke the decision in question.
- (5) Any variation or revocation of a decision shall not affect the previous operation of that decision or anything duly done or suffered under it.
- (6) Without prejudice to subsection (7), any decision of the Tribunal on an appeal under this section shall be binding on the Commission and the applicant.
- (7) An appeal shall lie to the High Court, in accordance with rules of court, on a question of law from any decision of the Tribunal.”.

Mr Braidwood

Amendment passed
 Clause 32 as amended ordered to stand part

Clause 33

That clause 33 stand part of the Bill
 Clause 33 ordered to stand part

Clause 34

That clause 34 stand part of the Bill
 Clause 34 ordered to stand part

Clause 35

That clause 35 stand part of the Bill
Clause 35 ordered to stand part

Clause 36

That clause 36 stand part of the Bill
Clause 36 ordered to stand part

Clause 37

That clause 37 stand part of the Bill
Clause 37 ordered to stand part

Clause 38

That clause 38 stand part of the Bill
Clause 38 ordered to stand part

Clause 39

That clause 39 stand part of the Bill
Clause 39 ordered to stand part

Clause 40

That clause 40 stand part of the Bill
Clause 40 ordered to stand part

Clause 41

That clause 41 stand part of the Bill

Amendments made

Page 30: lines 11 to 14: for subsection (2) substitute –

- “(2) Any person who is in contravention of section 10(7) is guilty of an offence and is liable –
- (a) on summary conviction, to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;
- (b) on conviction on information to a fine or to custody for a term not exceeding 2 years, or to both.”.

Page 30: lines 29 to 33: for subsection (5) substitute –

- “(5) Any person who is guilty of an offence under paragraph 11(2) of Schedule 4 or paragraph 1(5) of Schedule 5 is liable –
- (a) on summary conviction, to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;

- (b) on conviction on information to a fine or to custody for a term not exceeding 2 years, or to both.”.

House divided
Amendments lost
Clause 41 ordered to stand part

Clause 42

That clause 42 stand part of the Bill
Clause 42 ordered to stand part

New clause

That new clause [A] be agreed in principle to go before clause 43 -

“Contravention of statutory provisions

[A]. If a licence holder is in contravention of any statutory provision (other than one contained in or under this Act) the Commission may exercise any power that is an action for a breach but with the exception of the powers to -

- (a) impose a penalty under section 16;
- (b) apply for an injunction or for restitution under section 20.”.

Mr Braidwood

New clause [A] agreed in principle

That new clause [A] stand part of the Bill

Mr Braidwood

New clause [A] ordered to stand part

Clause 43

That clause 43 stand part of the Bill
Clause 43 ordered to stand part

Clause 44

That clause 44 stand part of the Bill
Clause 44 ordered to stand part

Clause 45

That clause 45 stand part of the Bill
Clause 45 ordered to stand part

Clause 46

That clause 46 stand part of the Bill
Clause 46 ordered to stand part

Clause 47

That clause 47 stand part of the Bill

Amendment made

Page 35 insert the following new definitions in alphabetic order -

“crime” means any conduct which –

- (a) constitutes one or more criminal offences (whether under the law of the Island or of any country or territory outside the Island); or
- (b) is, or corresponds to, any conduct which, if it all took place in the Island, would constitute one or more criminal offences;”

“financial crime” includes any crime involving –

- (a) fraud or dishonesty;
- (b) misconduct in, or misuse of information relating to, a financial market; or
- (c) handling the proceeds of crime or funds connected with terrorism;”.

Mr Braidwood

House divided

Amendment passed

Clause 47 as amended ordered to stand part

Clause 48 & Schedule 6

That clause 48 & Schedule 6 stand part of the Bill

Amendments made

Page 61: after paragraph 6 insert —

“7. At the start of Part XIII, immediately before the cross-heading “Dispensations for Private Companies” insert —

“Exemptions from prospectus requirements

Exemptions from prospectus requirements

324A. (1) The Treasury may by regulations make provision for exemption from, or for the modification of,—

- (a) sections 34 to 40 of, and Schedules 3 to 5 to, this Act;
- (b) such other provisions of the Companies Acts 1931 to 2004 as relate to prospectuses and statements in lieu of prospectus,

in respect of such classes of companies or in such circumstances as may be specified in the regulations.

- (2) Regulations under this section shall not come into operation unless they are approved by Tynwald.
- (3) Subject to subsection (4), regulations made under section 324A of the Companies Act 1931, which were in operation prior to 17 October 2006, continue to have effect as if made under this section

- (4) Regulations referred to in subsection (3) may be amended or revoked in accordance with section 28 of the Interpretation Act 1976.
- (5) This section shall be deemed to have had effect from 17 October 2006.”.”.

Page 61: for paragraph 8 substitute –

“8. For section 65A(b) substitute –

“(b) a body which is incorporated under the law of the Island or any part of the United Kingdom and is licensed under section 7 of the Financial Services Act 2008 to act as a trust corporation.”.”.

Page 62: in paragraph 12, as originally numbered, in the substituted subsection (13), for “(review of Commission decisions)” substitute “(appeals to the Financial Services Tribunal)”.

Page 62: after paragraph 13, as originally numbered, insert —

“Legal Aid Act 1986 (c.23)

14. After paragraph 5B of Part I of Schedule 1 insert -

“5C. Proceedings before the Financial Services Tribunal on an appeal under section 32 of the Financial Services Act 2008, which shall be proceedings in a court for the purposes of this Act.”.”.

Page 64: after paragraph 28, as originally numbered, insert -

“29. After section 25(2)(a)(vi) insert -

(vii) the Financial Services Act 2008, or”.

Page 66: or paragraph 40, as originally numbered, substitute –

“40. After entry 6 of Part 2 of Schedule 2 insert –

“7. The Financial Services Tribunal established under section 32 of the Financial Services Act 2008.”.”.

and renumber the paragraphs.

Mr Braidwood

Amendments passed

Clause 48 & Schedule 6 as amended ordered to stand part

Clause 49 & Schedule 7

That clause 49 & Schedule 7 stand part of the Bill

Amendment made

Page 68: in the entry relating to the Tribunals Act 2006, in the third column (above the entry dealing with Schedule 3 to that Act) insert –

“In Part 2 of Schedule 2, entries 6(a), (b), (c) and (e).”.

Mr Braidwood

Amendment passed

Clause 49 & Schedule 7 as amended ordered to stand part

Clause 50 & Schedule 8

That clause 50 & Schedule 8 stand part of the Bill

House divided

Clause 50 & Schedule 8 ordered to stand part

Clause 51

That clause 51 stand part of the Bill

Clause 51 ordered to stand part

Clause 52

That clause 52 stand part of the Bill

Amendment made

Page 39; line 31: after paragraph (e) of subsection (3) insert –

“(f) make such provisions modifying the application of any provision of this enactment in such circumstances and for such purposes as are prescribed.”.

Mr Braidwood

Amendment passed

Clause 52 as amended ordered to stand part

2.2 Collective Investment Schemes Bill

Mr Bell

Clause 1

That clause 1 stand part of the Bill

Clause 1 ordered to stand part

Clause 2

That clause 2 stand part of the Bill

Clause 2 ordered to stand part

Clause 3

That clause 3 stand part of the Bill

Clause 3 ordered to stand part

Clause 4 & Schedules 1 to 4

That clause 4 & Schedules 1 to 4 stand part of the Bill
Clause 4 & Schedules 1 to 4 ordered to stand part

Clause 5

That clause 5 stand part of the Bill
Clause 5 ordered to stand part

Clause 6

That clause 6 stand part of the Bill
Clause 6 ordered to stand part

Clause 7

That clause 7 stand part of the Bill
Clause 7 ordered to stand part

Clause 8

That clause 8 stand part of the Bill
Clause 8 ordered to stand part

Clause 9

That clause 9 stand part of the Bill
Clause 9 ordered to stand part

Clause 10

That clause 10 stand part of the Bill
Clause 10 ordered to stand part

Clause 11

That clause 11 stand part of the Bill
Clause 11 ordered to stand part

Clause 12

That clause 12 stand part of the Bill
Clause 12 ordered to stand part

Clause 13

That clause 13 stand part of the Bill
Clause 13 ordered to stand part

Clause 14

That clause 14 stand part of the Bill
Clause 14 ordered to stand part

Clause 15

That clause 15 stand part of the Bill
Clause 15 ordered to stand part

Clause 16

That clause 16 stand part of the Bill
Clause 16 ordered to stand part

Clause 17

That clause 17 stand part of the Bill
Clause 17 ordered to stand part

Clause 18

That clause 18 stand part of the Bill
Clause 18 ordered to stand part

Clause 19

That clause 19 stand part of the Bill
Clause 19 ordered to stand part

Clause 20

That clause 20 stand part of the Bill
Clause 20 ordered to stand part

Clause 21

That clause 21 stand part of the Bill
Clause 21 ordered to stand part

Clause 22

That clause 22 stand part of the Bill
Clause 22 ordered to stand part

Clause 23

That clause 23 stand part of the Bill
Clause 23 ordered to stand part

Clause 24 & Schedule 5

That clause 24 & Schedule 5 stand part of the Bill
Clause 24 & Schedule 5 ordered to stand part

Clause 25

That clause 25 stand part of the Bill
Clause 25 ordered to stand part

Clause 26

That clause 26 stand part of the Bill
Clause 26 ordered to stand part

Clause 27 & Schedule 6

That clause 27 & Schedule 6 stand part of the Bill
Clause 27 & Schedule 6 ordered to stand part

Clause 28 & Schedule 7

That clause 28 & Schedule 7 stand part of the Bill
Clause 28 & Schedule 7 ordered to stand part

Clause 29 & Schedule 8

That clause 29 & Schedule 8 stand part of the Bill
Clause 29 & Schedule 8 ordered to stand part

Clause 30

That clause 30 stand part of the Bill
Clause 30 ordered to stand part

The House rose at 3.50 pm and adjourned to Tynwald Court on 19th February 2008 at
10.30 am in Douglas.

Malachy Cornwell-Kelly

Secretary of the House