

Financial Services (Miscellaneous Amendments) Bill 2012
Clauses considered

4.1. Mr Teare to move.

The Speaker: We turn now to Item 4, Bill for consideration of clauses: that is the Financial Services (Miscellaneous Amendments) Bill. I call on the Member in charge to move clause 1, Mr Teare.

Mr Teare: Thank you, Mr Speaker.

As outlined in the Second Reading, the Financial Services (Miscellaneous Amendments) Bill 2012 amends the Financial Services Act 2008 and the Collective Investment Schemes Act 2008. The Bill has 36 clauses in four parts, as well as a schedule.

Part 1 of the Bill is introductory, providing for the short title, commencement and interpretation in clauses 1 to 3.

Part 2 incorporates clauses 4 to 25 and the schedule. It makes amendments to the Financial Services Act 2008.

Part 3 incorporates clauses 26 to 34. It makes amendments to the Collective Investment Schemes Act 2008.

Part 4 incorporates clauses 35 and 36 and provides the closing provisions.

I will address each part of the Bill in turn.

Part 1, introductory: clause 1 provides for the short title of the Bill.

Mr Speaker, I beg to move that clause 1 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second and reserve my remarks.

The Speaker: I put the question that clause 1 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

Mr Teare: Clause 2 provides for the Bill's commencement. The Bill will come into operation on days specified in Orders made by the Treasury.

Mr Speaker, I beg to move that clause 2 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 2 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 3, sir.

Mr Teare: Clause 3 provides interpretation of abbreviations for the Collective Investment Schemes Act 2008 and the Financial Services Act 2008.

Mr Speaker, I beg to move that clause 3 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Teare: Thank you, Mr Speaker.

Clause 4 is the first clause of part 2, which amends the Financial Services Act 2008. Clause 4 introduces the amendment.

Mr Speaker, I beg to move that clause 4 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 4 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 5, Mr Teare.

Mr Teare: Thank you, Mr Speaker.

Clause 5 adds a new section 3A and a schedule to the Financial Services Act concerning permission to approve the transfer of business from one licensed deposit-taker to another. This change is in respect to a request from industry and will replace the current need for deposit-takers to seek specific Acts of Tynwald. Suitable safeguards to protect depositors' interests are introduced by the schedule.

I understand that the Hon. Member, Mr Henderson, will be moving an amendment to widen the scope of this clause so that it may include business of a deposit-taker, other than purely its deposit-taking.

Mr Speaker, I beg to move that clause 5 do stand part of the Bill.

The Speaker: Mr Watterson.

Mr Watterson: I beg to second, sir, and reserve my remarks.

The Speaker: Hon. Members, the Order Paper shows an amendment has been tabled to clause 5. Just for the information of the House, clause 5 and the schedule, which is on page 6 of the Order Paper... the schedule has amendments numbered 5 and 6. So clause 5, which is amendment 1, and amendments 5 and 6 all go together, and therefore I would invite the Member to move the propositions together so that they may be debated together. Then we shall vote on clause 5 separately.

Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder. I thank you for your indulgence in rounding the matters up together.

Vainstyr Loayreyder, following a recent request from industry, I propose amendments to the schedule of the Bill, which require a consequential amendment to clause 5.

The schedule currently allows for the transfer of deposit-taking business from one party to another. The amendments widen this power to allow for the transfer of a deposit-taker's other business as part of the business transfer scheme. Clause 5 inserts a new section 3A, which provides for the new schedule 1A to have effect. The amendment to clause 5 replaces the new section 3A so that its content reflects the material which will be contained in schedule 1A. By allowing the transfer to include a deposit-taker's other activities – for example, investment business – this will reduce costs for the industry. No increased risk is *[Inaudible]* because of the protection contained in paragraph 4 and requirements in the FSC's Rule Book. The first and second changes are contingent upon the third amendment, which is to the schedule.

Therefore, Mr Speaker, I beg to move the first of three amendments standing in my name on this topic:

Clause 5

On page 10 for lines 6 and 7 substitute –

'3A Transfer of business including deposit-taking

Schedule 1A (transfer of business including deposit-taking) has effect.'

I will move the other amendments formally when we reach the consideration of the schedule, as you have indicated, sir. I beg to move.

The Speaker: Mr Houghton.

Mr Houghton: I beg to second.

The Speaker: I put before the House the vote in respect of clause 5, to which there is an amendment in the name of Mr Henderson. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 6, Mr Teare.

Mr Teare: Thank you, Mr Speaker.

Clause 6 amends section 6 to impose an expressed requirement that key persons connected with an applicant for a licence should be fit and proper to act in that capacity. It also requires the FSC to have regard to the fitness of an applicant's employees and its associated persons when considering a licence application. This enhancement is designed to improve public protection.

Mr Speaker, I beg to move that clause 6 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 6 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7, Mr Teare.

Mr Teare: Thank you, Mr Speaker.

Clause 7 amends section 10, which relates to fitness and propriety. The clause renames a person who may appeal against a section 10 direction from an 'applicant' to an 'appellant'. Clause 7 also strengthens the obligation on a licenceholder not to appoint a person in contravention of such a direction in order to emphasise a licenceholder's responsibility to verify that its controllers, directors and key persons are fit and proper before they are appointed. There are consequential changes in clauses 8, 10 and 36.

Mr Speaker, I beg to move that clause 7 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: Mr Karran.

Mr Karran: Can I ask the Shirveishagh Tashtee moving the Bill are we going to actually put into the process, as far as the persons fit to be directors are good people... Is there going to be any sort of question raised about their ability to actually know what are actually supposed to be their duties as far as being directors is concerned?

The Speaker: Reply, sir.

Mr Teare: The Financial Supervision Commission will have reasons for having reservations about individuals and the fact that the Financial Supervision Commission is uncomfortable with an individual can, in certain circumstances, be made available to an applicant for a licence.

The Speaker: I put the question that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8, Mr Teare.

Mr Teare: Clause 8 details the circumstances relating to a new prohibitions power. This power will enable the Financial Supervision Commission to prohibit any individual from performing functions in relation to regulated activities where this is considered necessary for public protection purposes. The new sections 10A to 10D specify who may be subject to a prohibition, what functions the individual may be prevented from carrying on, the process that must be used to impose a prohibition, variation and revocation procedures, and the requirement to publish a list of prohibitions. Prohibitions may be applied to any individual, unlike a section 10 direction, which can only apply in respect of vetted roles. Appeals may be made in respect of prohibitions and there are also consequential amendments in clauses 10 and 13.

Mr Speaker, I beg to move that clause 8 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 8 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 9, Mr Teare.

Mr Teare: Clause 9 amends provisions relating to section 11 warning notices.
Firstly, it enables the Financial Supervision Commission to issue warning notices for former directors, controllers and key persons in respect of their actions when they held these roles.
Secondly, the clause makes it explicit that the Financial Supervision Commission may disclose a warning notice to a company of which a person is or may become an officer, so that the company will be aware of the FSC's concerns regarding that person.

Thirdly, the clause removes reference to 'remedial' in respect of any action that may be taken in response to a warning notice. This change will allow action to be specified which does not necessarily remedy a particular situation, as this is not always possible, but which may, for example, reduce the likelihood of a situation recurring.

In consequence of the new prohibition power in clause 8, the FSC may issue a warning notice before imposing a prohibition.

The terms 'notified person' and 'officer' are introduced for simplification purposes.
Mr Speaker, I beg to move that clause 9 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: Hon. Members, as you will see from the Order Paper, there is an amendment to clause 9 in the name of the Hon. Member for Rushen, Mr Skelly. That amendment to clause 9 in turn provides for the insertion of a new clause, which is amendment 3 on the Order Paper.

I invite Mr Skelly, in moving clause 9, for the convenience of the House... that we debate clause 9 and the new clause together. Mr Skelly.

Mr Skelly: Gura mie eu, Loayreyder.
I beg to move the amendment clause standing in my name:

Clause 9

On page 12 at the end of line 37 insert –

'(3) After subsection (1) insert –

“(1A) Before giving a warning notice, the Commission must give the intended recipient of the notice an opportunity to make representations in accordance with section 11A.”.

Renumber following subsections and adjust cross-references accordingly.

I wish to move these amendments in order to make section 11 consistent with the other relevant sections in the original Act, the Financial Services Act 2008, and to enshrine in legislation a process which is clearly compliant with natural justice. In fact, almost the entirety of my amendments is the procedure which the Commission itself has set out for the new regulatory sanction in section 10B of the Financial Services Bill. This procedure is compliant with natural justice, and I assume its omission from section 11 is simply an oversight. I believe it is important we address this oversight now, since I am aware that this section's compliance or not with natural justice will be tested next week during an appeal to be heard by the Financial Services Tribunal. Whatever the outcome of that appeal, we need to make sure that we are not open to such a challenge in the future and that the Commission benefits from a clear statutory process. These amendments will remove any ambiguity which inevitably gives rise to the possibilities of appeals and petitions of doleance. That, I am sure, we do not want.

There is a serious impact on recipients of warning notices under section 11, and those recipients must be told the case against them and given the opportunity to apply. This is the cornerstone of natural justice, and as a legislature we should not hesitate to include in the Bill a procedure which is clearly compliant with natural justice principles. That is what the Commission has done with section 10B and that is all I ask for section 11.

The consequences of a formal issue of a section 11 warning notice are severe and must not be underestimated. It is a formal sanction which states on record that the Commission has concerns about the fitness and propriety of the recipient. Having issued a section 11 warning notice, the Commission is able to disclose circumstances surrounding its recipient's employers, potential employers, as well as other regulators: hardly business friendly. If the procedure by which such a notice was issued is not watertight and not clearly compliant with natural justice, then we could be faced with appeals and possible petitions of dolence.

In summary, it is important to remember that the amendments I propose are simply mirroring the Commission's own wording in section 10B and reflect protections and rights afforded by natural justice. Lastly, it would not hinder or fetter the Commission in its enforcement role. Hon. Members, I seek your support with these amendments.

The Speaker: Mr Houghton.

Mr Houghton: Mr Speaker, I am very happy to second this proposed amendment from the Hon. Member, and I would like to compliment him for bringing it forward to this Hon. House. I feel that it has been well explained to the House, the purpose why the Hon. Member wishes to bring this. I do feel it provides very good governance to the Bill and I would recommend other Hon. Members support it.

The Speaker: Clause 9 and the amendment having been moved and seconded, the debate is now open to the floor on both issues.

Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

I rise to support the amendment in Mr Skelly's name. I think it is very sensible. It just makes it open and transparent and, I think, fair to everybody. I think he should be congratulated on spotting it and putting the amendment forward.

The Speaker: Mr Teare.

Mr Teare: Thank you for the opportunity, Mr Speaker.

I cannot support the Hon. Member's amendments. Whilst I appreciate his good intentions, I am concerned that if the amendment is accepted, it will extend the period for the process which the FSC has to go through. We have to bear in mind, too, that during that period there is the potential for investors – I should say new investors, or indeed existing investors – to enter into contractual arrangements with the organisation involved, and we need to move as expeditiously as possible, whilst respecting due process and also natural justice.

We are also aware that if there are concerns by the FSC over the probity, fit and properness of an individual, this is explained to the individual and they are given an opportunity. I will just go through it in a bit more depth, if I could claim your indulgence, sir.

Any matter that gives rise to a concern will most likely be identified by the Commission as part of its normal supervisory programme. Such concerns will be discussed with the licenceholder and the licenceholder will be asked to correct the problem. Any such issues would also be set out in the post-visit report. A copy of this report is given to the directors of the licenceholder. It is expected that licenceholders will take action to correct whatever deficiency or concern has been identified.

If the issue is not corrected promptly, or if it is particularly significant, a section 14 direction would be issued to the licenceholder. This would specify the action that the licenceholder should take to correct the deficiency. If the matter is not corrected, then the Commission may issue a section 11 warning notice to the directors to express concerns about the individuals' conduct. The warning notice may specify action that the Commission wishes the directors to take to correct the matter. Therefore, the warning notice would not be the first stage of a process. Several contacts would have been made with the licenceholder beforehand.

In circumstances where the licenceholder does not or will not address the problem, there are only two options open to the Financial Supervision Commission. The first of these is to take no further action at all and allow the licenceholder to continue to conduct its affairs in an unacceptable manner. Hon. Members will appreciate that this poses a potentially unacceptable risk to the Island's reputation in the event of an escalation of the problem.

The second option gives the Financial Supervision Commission the power to take action, such as issuing a direction under section 10 to an individual director or controller of the licenceholder. This has implications for the fitness and propriety of the individual concerned, but may also have knock-on implications for the licenceholder itself.

Alternative action can be taken under section 23, which gives the Financial Supervision Commission the power to appoint a reporting accountant or other relevant professional. The appointee will be given powers to investigate the conduct of the licenceholder.

I am sure that the Hon. Members will agree that neither the option to do nothing nor the heavy-handed one are optimal. The introduction of warning notices is a halfway house. It leaves the licenceholder in no doubt that the Financial Supervision Commission is serious about the action that is needed, but does not leave a permanent stain on the licenceholder's record or on that of its officers. Warning notices are not a matter of public record. They are also time bound and expire once the Financial Supervision Commission is satisfied that the matter has been resolved.

In limited circumstances, the existence of a warning notice in respect of a particular individual may be notified to others. This is likely to occur only in two circumstances, the first being where there is an inquiry from another regulator about that individual. This is not a new power. There are currently what are known as gateways that allow this to happen in clearly defined circumstances.

The second is where an individual seeks to leave a licenceholder rather than address the problem. The existence of a warning notice may then be notified to any prospective employer as part of a vetting process for key staff. Not to do this would place the prospective employer in a difficult position and one that is clearly not of their making. One must not lose sight of the fact that the Financial Supervision Commission's remit is to protect the customers of persons carrying on a regulated activity. It is not to protect the licenceholder.

Requiring the Financial Supervision Commission to issue a warning of a warning notice will create a farcical situation, in my opinion. The immediate losers here could well be the customers of the licenceholder. Ultimately, not allowing the Financial Supervision Commission to take appropriate and timely action will pose a threat to the good reputation of the Isle of Man itself.

Whilst the amendment is well intended, it will only run the risk of unduly extending the process, but I am sure that Hon. Members will appreciate that the Commission already adopts a flexible and proactive approach to areas of concern.

The Speaker: Any other Member wish to speak to the amendment or to the clause?
Mr Cannan, Hon. Member for Michael.

Mr Cannan: Thank you very much, Mr Speaker.

I think the Treasury Minister probably raises some valid points there. I can automatically see some serious flaws in having a 28-day notice period to an individual. I think the risks to the customer in that period are fairly clear. On the basis that this is moving towards a last-resort action for the FSC, I do not think giving 28 days' notice is going to particularly benefit anybody.

I think this is a private matter between the FSC and the institution and is not a public matter. It also ensures, I think, that the individual or individuals concerned are put in a position where they have to quickly and effectively address matters of concern, and whilst I can see the Hon. Member for Rushen's points, in terms of giving somebody equal opportunity – and I am firmly in favour of ensuring that people do not get treated overly harshly – I think the risks to the Island and to those members of the public who have moneys invested in that particular institution would be too great, and I think the Member would have to go a bit further to justify to me in particular why he feels that 28-day period would not add increased risk to the investors or to the reputation of the Island.

The Speaker: I call on the mover of the amendment to reply. Mr Skelly.

Mr Skelly: Gura mie eu, Loayreyder.

First of all, I thank Mr Houghton and Mrs Beecroft for their support in this amendment that I am trying to put forward. I also thank the Treasury Minister for his statement and reasoning.

I would just like to highlight that the FSC is a regulator – I recognise that fact. They do have a role in enforcement. I do believe also that this clause does not hinder that enforcement role.

I would also like to reiterate the statement that all I am asking here is to mirror the very same wording that is in section 10B, so it is literally following the Commission's wording in that respect; and also the point of the rights and protections of natural justice. That is what I am standing up for in this case and I ask Members to support that.

Lastly, Mr Cannan's point with regard to 28 days, is that reasonable? I think it is reasonable, personally, and if you are going to be dealing with appeals and petitions of dolence, it is going to be an awful lot longer, and I think we are going to be open to that if we do not accept this clause.

So, once more, I ask for Hon. Members' support. Gura mie eu.

The Speaker: Mr Teare, reply.

Mr Teare: Thank you, Mr Speaker.

I would just ask Members to consider carefully the potential implications of this amendment. I have great reservations about it. In financial matters, when we are dealing with the security of customers' funds and also the reputation of the Isle of Man, we need to be able to take timely action, and my view is that if this Hon. House is minded to accept the amendment put down by the Hon. Member for Rushen, it is going to run the risk of new deposits, new investments, being made by clients during that intervening period.

I do not feel that it is going to impact on natural justice. People will have the opportunity to liaise with the FSC, as they have already, to address areas of concern and be given an option to address those areas of concern. As my hon. colleague, the Member for Michael, has said, we need to deal with these issues to protect investors whilst recognising that those involved in the industry also have their rights, but they are given explanations by the FSC and the FSC does work with them to ensure that a positive solution is found to their areas of concern.

I would ask Hon. Members not to vote in favour of the amendment. Thank you.

The Speaker: I put the motion to the House that clause 9 be approved. To that clause, we have an amendment in the name of Mr Skelly. Those in favour of the amendment, please say aye; against, no. The noes have it.

A division was called for and electronic voting resulted as follows:

FOR

Mr Quirk
Mr Hall
Mr Karran
Mr Houghton
Mrs Beecroft
Mrs Cannell
Mr Skelly

AGAINST

Mr Ronan
Mr Crookall
Mr Anderson
Mr Bell
Mr Singer
Mr Quayle
Mr Teare
Mr Cannan
Mr Henderson
Mr Robertshaw
Mr Shimmin
Mr Corkish
Mr Cretney
Mr Watterson
Mr Gawne
The Speaker

The Speaker: With 7 votes for and 16 votes against, the amendment fails to carry.
I put clause 9 to the House. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 10, Mr Teare.

Mr Teare: Thank you, Mr Speaker.

Clause 10 amends section 13, concerning public statements, by clarifying the application of that section. It also involves a non-mandatory power to issue a public statement in respect of the new prohibition power and in respect of a section 10 direction. The change is the obligation to issue a public statement into a power to do so.

Mr Speaker, I beg to move that clause 10 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 10 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 11.

Mr Teare: Thank you, Mr Speaker.

Clause 11 adds to section 14 a new subsection that enables the FSC to vary or to revoke directions issued to permitted persons. The clause also requires that the FSC provides a statement of reasons for any variations it issues.

Mr Speaker, I beg to move that clause 11 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 11 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 12.

Mr Teare: Clause 12 makes it explicit that failure to comply with the Rule Book on reporting requirements may result in an action for breach under section 19.

Mr Speaker, I beg to move that clause 12 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 12 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 13.

Mr Teare: Clause 13 adds to section 20 injunction powers which may apply if a prohibition, as per clause 8, is likely to be breached. This replicates injunctive powers which exist in respect of breaches of various other requirements, including section 10 directions.

The clause also makes a change to recognise that clients of regulated businesses may be termed customers or investors. The change means that where customers have suffered loss etc due to a requirement being contravened, the High Court may order a remedy. At present, this only applies to investors who have suffered loss.

Mr Speaker, I beg to move that clause 13 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 13 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 14, please.

Mr Teare: Clause 14 specifies that if a permitted person breaches a requirement in section 23 to provide a specific report, the FSC may undertake an action for breach. Reports by accountants or other professionals on the business of a licenceholder are very occasionally required and the change will increase the public's protection against non-compliant licenceholders.

Mr Speaker, I beg to move that clause 14 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 14 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

Mr Teare: Clause 15 adds new appeal powers to section 32. These will enable affected persons to appeal against prohibitions, as per clause 8, and allow for appeals against variations to section 10 directions. For clarity, the current list of matters in respect of which an appeal may be made is replaced with a table.

Mr Speaker, I beg to move that clause 15 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 15 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 16.

Mr Teare: Clause 16 restructures the steps of the indemnity provisions of section 33 to make it clear that anyone carrying out functions for and on behalf of the FSC is covered by the FSC's statutory indemnity provisions unless their action is in bad faith. This amends the current wording, which links indemnity to exercising functions conferred by or under a specified enactment. The amendment also clarifies the indemnity position when the FSC carries out functions under powers delegated to it by other areas of Government, for example by the Treasury. The changes provide more certainty for officers etc of the FSC.

Mr Speaker, I beg to move that clause 16 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 16 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

Mr Teare: Clause 17 changes the heading for section 40 and adds to it provisions relating to clause 12 in respect of reporting requirements under the Rule Book. Clause 17 makes it an offence to fail to supply information as required, except where there is a reasonable excuse or legal professional privilege could be maintained.

I beg to move that clause 17 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 17 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 18.

Mr Teare: Thank you, Mr Speaker.

Clause 18 amends section 45 by extending the offences and penalties powers to contraventions of a licenceholder's obligation not to appoint a person in contravention of a section 10 direction, an individual's obligation not to perform a prohibited function, and a permitted person's obligation not to permit an individual to perform a prohibited function. The penalties under section 41 on summary conviction are a fine of up to £5,000, custody of up to six months, or both.

Mr Speaker, I beg to move that clause 18 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 18 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

Mr Teare: Clause 19 amends section 48, which comprises definitions. The first change, which is in connection with the Foundations Act 2011, expands the meaning of the term 'director' so as to include a member of the council of a foundation. Clause 19 also adds the imposition of a prohibition under section 10A to the definition of 'action for breach' so as to reflect the powers introduced by clause 8.

As mentioned at the Second Reading of this Bill, I understand that the Hon. Member, Mr Henderson, will be moving an amendment to this clause to revise the definition of 'controller', which is supported by the Treasury.

Mr Speaker, I beg to move that clause 19 do stand part of the Bill.

The Speaker: Mr Watterson.

Mr Watterson: I beg to second, sir, and reserve my remarks.

The Speaker: There is an amendment to clause 19 in the name of Mr Henderson. I call on him to so move.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

As a result of revised international standards on the supervision of banking groups and holding companies, I propose an amendment to clause 19 of the Bill.

As the Minister has mentioned, clause 19 amends section 48 of the Financial Services Act 2008, which comprises definitions. The amendment that I propose is to vary the definition of the term 'controller' such that it extends to companies and other persons who control licenceholders, instead of only to individuals. This change is necessary to address the revised Basel Core Principles for Effective Banking Supervision that were formerly published in September 2012. The revised principles expect regulators to supervise banking groups on a consolidated basis, including any non-financial entities in the group's structure. The FSC's powers do not

currently extend to non-financial parent companies of its licenceholders, but this amendment will provide it with powers to meet the new Basel Core Principles. It is expected that the IMF will assess the Isle of Man against these principles in its next assessment.

Vainstyr Loayreyder, I beg to move the amendment to clause 19 standing in my name:

Clause 19

Page 16, line 35 For subsection (2) substitute –

‘(2) In subsection (1) –

(a) in the definition of “controller”, in paragraphs (c) and (d) for “individual” substitute “person”; and

(b) in the definition of “director” at the end add –

“(e) in relation to a foundation within the meaning of the Foundations Act 2011, a member of the council of the foundation;”.’

The Speaker: Mr Houghton.

Mr Houghton: I beg to second, sir.

The Speaker: I put the amendment first: those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

Clause 19 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

Mr Teare: Thank you, Mr Speaker.

Clause 20 amends schedule 1.

In paragraph 1, the grounds on which an FSC commissioner may be removed from office are set out. This follows an observation by IMF assessors that Tynwald should be required to make public its reasons for removing a commissioner from office.

A revision to paragraph 3 requires that the FSC considers financial stability when discharging its functions. This change addresses an IMF comment that the FSC should have an explicit mandate to promote the stability of the financial system.

Paragraph 4 addresses a comment from the IMF that the boundaries of Treasury’s powers to specify policies and strategies to the FSC should be explicitly defined in legislation. This amendment clarifies the Treasury’s powers to issue guidance and directions to the FSC. In consequence, the heading of this paragraph is changed to reflect its content.

Mr Speaker, I beg to move that clause 20 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 20 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 21.

Mr Teare: Mr Speaker, clause 21 amends schedule 2.

In paragraph 1, the FSC’s powers are clarified and enhanced to reflect its existing role in approving and registering auditors of market traded companies who are known as recognised auditors. This clause adds a power for the FSC to inspect and investigate current and former recognised auditors in respect of their audits of market traded companies. The clause also adds definition of core terms that relate to this activity and a power for the Treasury to amend these definitions in a case of need.

Paragraph 2 addresses an IMF comment that the regulator should be able to view the perimeter of regulation regularly. The amendment will enhance the FSC’s powers to seek information from unregulated entities in order to help it detect and prevent abuse of the financial system.

Mr Speaker, I beg to move that clause 21 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 21 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 22.

Mr Teare: Clause 22 amends schedule 3 by replacing a requirement for certain matters to be specified in legislation, namely the Rule Book, by an ability for the FSC to specify requirements in such other manner as it thinks fit. The clause also requires the FSC to draw any non-legislative requirements to the attention of affected parties. The change is expected to assist licenceholders and the FSC.

Mr Speaker, I beg to move that clause 22 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 22 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 23.

Mr Teare: Clause 23 amends schedule 4, which relates to the Financial Services Ombudsman Scheme, as offered by the Isle of Man Office of Fair Trading. The changes vary the maximum levels of compensation that may be awarded by adjudicators and provide a power for the Treasury to vary the sum by order in future.

Mr Speaker, I beg to move that clause 23 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 23 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 24.

Mr Teare: Thank you, Mr Speaker.

Clause 24 adds to schedule 5 the two existing gateways that are currently shown in Orders made under the Financial Services Act. These gateways permit the transfer of information between the FSC and other organisations. Incorporating the gateways in the Act increases transparency and enables them to be found more easily, primarily by external reviewers. Consequential on this change, clause 36 revokes the existing Gateways Orders.

The clause also lists in a new subparagraph (2)(1A), the enactments to which one of these gateways relates, and provides in new subparagraph (2)(1B) that the Treasury may amend this list by order.

Mr Speaker, I beg to move that clause 24 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 24 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 25.

Mr Teare: Clause 25 amends terminology in various sections of the Financial Services Act from 'is in contravention of' to 'contravenes' for improved clarity. No change in meaning is intended by the change.

Mr Speaker, I beg to move that clause 25 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 25 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 26.

Mr Teare: Clause 26 is the first clause which deals with part 3, the amendment of the Collective Investment Schemes Act 2008. Clause 26 introduces the amendments and, as such, I beg to move that clause 26 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 26 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 27.

Mr Teare: Clause 27 amends the heading to part 5.
Mr Speaker, I beg to move that clause 27 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 27 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 28.

Mr Teare: Clause 28 amends section 11, which provides when the FSA may exercise its powers under part 5 – oversight and intervention – of the Act, and changes the section’s headings as a result. This change is a consequence of the new sections 11A to 11F, as described in clause 29.
Mr Speaker, I beg to move that clause 28 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 28 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 29.

Mr Teare: Clause 29 adds new sections 11A to 11F to the Act to address lack of fitness and propriety in members of collective investment schemes’ governing bodies. Specifically, the new sections add powers to issue directions that a person is not fit and proper, give warning notices and impose prohibitions on members of collective investment schemes’ governing bodies. These powers replicate those in or proposed for the Financial Services Act so as to ensure equal treatment for those who are subject to either of the Acts. The changes are designed to enhance public protection. Appeal powers are provided in respect of the FSC’s use of these new powers.

Mr Speaker, I beg to move that clause 29 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 29 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 30.

Mr Teare: Thank you, Mr Speaker.

Clause 30 introduces a power to impose civil penalties for failure to comply with legislative requirements. The new section 19A will enable the FSC to apply equivalent treatment to functionaries of schemes under this Act as to licenceholders under the Financial Services Act. Penalties may be imposed, for example, for failings relating to administering or managing collective investment schemes, and therefore this change is only expected to impact upon scheme administrators and scheme managers.

The Financial Services Commission is required to make regulations to detail the circumstances in which penalties may be imposed and the amounts payable. The penalties powers aim to deter poor management and administration and will be subject to appeal provisions under new powers in section 21.

Mr Speaker, I beg to move that clause 30 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 30 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 31.

Mr Teare: Clause 31 amends section 21 by adding powers to appeal against the FSC's decisions relating to the new fitness and propriety and civil penalties provisions in clauses 29 and 30. As in clause 15, which amends the Financial Services Act, for greater clarity, a tabular format will replace the current list of matters in respect of which an appeal may be made.

Mr Speaker, I beg to move that clause 31 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 31 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 32.

Mr Teare: Clause 32 adds a new section A24 relating to the form and content of information, which is in line with the change proposed to the Financial Services Act by clause 22. The amendment allows the Financial Supervision Commission to determine the form and content of any document or information to be submitted to it and the manner in which it is to be delivered. The FSC is required to draw such determinations to the attention of those likely to be affected by them.

Mr Speaker, I beg to move that clause 32 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 32 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 33.

Mr Teare: Clause 33 amends schedule 1, which relates to authorised schemes. The amendment will allow the FSC to vary the requirements for authorised schemes by order and reflects the power already in place for international schemes in schedule 2. The amendment mitigates the risk that the current lack of flexibility may hinder the future development of the authorised scheme industry in the Island.

Mr Speaker, I beg to move that clause 33 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 33 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 34.

Mr Teare: Clause 34 amends schedule 4, which relates to recognised schemes. The schedule currently requires the FSC to issue a notice in writing to require certain standard information from recognised schemes' governing bodies. The change will allow the FSC to make regulations to specify the standard information that governing bodies are required to publish to potential investors. Non-standard information will still be required by notices in writing from the FSC. The clause also clarifies that it is the jurisdiction in which a recognised scheme is authorised that is important, not where it is managed.

Mr Speaker, I beg to move that clause 34 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 34 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 35.

Mr Teare: Clause 35 makes a consequential amendment to the Companies Act 1931 in respect of the transfer of deposit-taking business provisions that are contained in clause 5 and in the schedule to this Bill.

Mr Speaker, I beg to move that clause 35 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 35 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 36.

Mr Teare: Clause 36 repeals section 35(2) of the Financial Services Act, which requires the FSC to keep a register of directions issued under section 10. The repeal is in consequence of the changes to the fitness and propriety provisions in clauses 7 and 8.

The clause also revokes the two Gateways Orders that are moved to the Financial Services Act by clause 24 and the Ombudsman Scheme Compensation Order that is made redundant by clause 23.

Mr Speaker, I beg to move that clause 36 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause –
Mr Karran, you wish to speak?

Mr Karran: Vainstyr Loayreyder, just could the Shirveishagh Tashtee clarify with the... It says in here about the Financial Services (Disputes) (Maximum Award of Compensation) Order. Has he got any figures of what is the Maximum Award of Compensation Order as far as this [*Inaudible*] is concerned?

The Speaker: Mr Teare.

Mr Teare: Thank you.

I am just speaking from memory now, and I will correct it if I am wrong, sir, but as I understand it, it is £150,000. An earlier clause in this Act deal with it, but also said that the maximum sum could be uprated by

changes in monetary value, I think was the exact expression there, so there is provision in future for the Treasury, by direction, to increase the amount in line with inflation.

The Speaker: I put the question that clause 36 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Finally, we turn to the schedule. Mr Teare.

Mr Teare: Thank you, Mr Speaker.

The schedule is enabled by clause 5. It contains the provisions relating to a transfer of business from one deposit-taker to another. The paragraphs describe the relevant transfer schemes, the application to transfer schemes of any compromises or arrangements in respect of sections 152 to 154 of the Companies Act 1931, how applications for transfer schemes may be made, how any requirements may be imposed on applications, who may be heard in respect of an application, and conditions that must be satisfied before the High Court may sanction a transfer scheme.

I understand that my colleague, the Hon. Member, Mr Henderson, will be moving an amendment to widen the scope of the schedule so that it may include business of a deposit-taker, other than purely its deposit-taking. This amendment has the support of the Treasury.

Mr Speaker, I beg to move that the schedule do stand part of the Bill.

The Speaker: Mr Watterson.

Mr Watterson: I beg to second, sir.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to formally move the two clauses to the schedule, as previously discussed at clause 5, which the House has already discussed and ostensibly voted upon. I beg to move, sir:

Schedule

On page 33 for the heading to schedule 1A to be inserted into the Financial Services Act 2008 substitute –
‘TRANSFER OF BUSINESS INCLUDING DEPOSIT-TAKING’

On page 33 for paragraph 1 of schedule 1A to be inserted into the Financial Services Act 2008 substitute –
‘1 Schemes transferring business including deposit-taking

For the purposes of this Schedule “a relevant transfer scheme” is a scheme under which –

- (a) the whole of part of the business carried on in or from within the Island by a licenceholder (“the transferor”) is to be transferred to another person (“the transferee”); and*
- (b) the whole or part of the business to be transferred comprises, or includes, deposit-taking.’*

The Speaker: Mr Houghton.

Mr Houghton: I beg to second, sir.

The Speaker: I put the amendment to the schedule first: those in favour of the amendment in the name of Mr Henderson, please say aye; against, no. The ayes have it. The ayes have it.

The schedule as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that now concludes the business of the House today.

May I remind Members of the House of Keys Standing Order Committee that there will be a meeting immediately after this sitting.

The House will now stand adjourned until the next sitting, which will take place at 10.30 a.m. on 20th November in Tynwald Court.