

Financial Services (Miscellaneous Amendments) Bill 2012
Second Reading approved

2. Mr Braidwood to move:

That the Financial Services (Miscellaneous Amendments) Bill 2012 be now read a second time.

The President: We move on to the Financial Services (Miscellaneous Amendments) Bill, Mr Braidwood to take the Second Reading.

Mr Braidwood: Thank you, Madam President.

The Financial Services (Miscellaneous Amendments) Bill 2012 makes important amendments to the Financial Services Act 2008 and the Collective Investment Schemes Act 2008, which together provide for the supervision and regulation of financial activities by the Financial Supervision Commission. In the rest of the response, I will say ‘the FSC’ to save time.

As mentioned at the First Reading, part 1 of the Bill is introductory. Part 2 amends the Financial Services Act 2008, in clauses 4 to 25. Part 3 amends the Collective Investment Schemes Act 2008 in clauses 26 to 34, and part 4 contains closing provisions in clauses 35 and 36. Of course, there is the schedule, which is in clause 5.

The amendments proposed by the Bill have a number of effects: they reflect evolving international standards in financial regulation; they revise powers relating to lack of fitness and propriety; they clarify existing provisions; they improve consistency between the two Acts; and they also reduce costs or administrative burdens. Some changes result from comments made by assessors at the International Monetary Fund (IMF), following their last visit to the Island, and include the introduction of explicit criteria for the dismissal of FSC board members, a requirement for the FSC to consider financial stability when making decisions, and a clarification of the Treasury’s powers to specify policies and strategies for the FSC.

Lastly, a power is provided for the FSC to review the perimeter of regulation. Some items are designed to reduce cost for industry or government and include a power for the FSC to facilitate the transfer of business that includes deposit-taking business and allowing some licenceholders’ reporting forms requirements to be specified outside legislation, if there is adequate notification to relevant parties.

The Bill also enables the FSC to charge civil penalties for non-compliance with the Collective Investment Schemes Act, which brings that Act into line with the Financial Services Act in terms of civil penalties power. All such penalties are available to the general revenue and not to the FSC.

In addition, the Bill includes clauses designed to increase consumer protection, such as enhanced powers to deal with the lack of fitness or propriety, a widening of matters which constitute action for breach. Action for breach may include public statements, licence revocation, penalties or other sanctions listed in the Act. The Bill also claims to clarify the FSC statutory indemnity provisions extend to those carrying out the FSC statutory functions, to clarify the FSC’s current role in overseeing certain auditors, in respect of particular audits and to increase consumer protection. New provisions also enable specific requirements for authorised and recognised collective investment schemes to be varied. These changes will enable the FSC to respond more promptly to the needs of the funds industry.

In addition, the Bill makes an amendment to the Financial Services Ombudsman Scheme compensation limit and incorporates two existing gateways into the Act, so that all existing gates will be in one place. The Bill also makes a consequential amendment to the Companies Act 1931 in respect of the new transfer of deposit taking provision. Importantly, new appeal provisions are added in respect of relevant new powers and the Bill reformats the current and new appeal provisions into a simpler format.

Madam President, amendments on three topics were moved and made in another place. One amendment widened the new provisions in clause 5 for transferring business from one deposit taker to another. The amendment was requested by industry for which it will reduce costs and it presents negligible risk to the Island, to depositors or investors.

The second amendment was to the definition of ‘controller’ in clause 19, to bring the FSC’s definition into line with that of adjacent jurisdictions. This amendment addressed a recent change to the Basel Core Principles, so as to meet international standards. The change will better enable the FSC to consider the fitness and propriety of those who are responsible for banks. It will thereby assist the FSC to improve protection of depositors.

An amendment to clause 9 was also proposed in the other place, but it did not succeed. This amendment was referred to by my hon. colleagues, Mr Downie and Mr Wild at the First Reading of this Bill. As I stated at the time, I will now address the queries raised. The amendment sought to require the FSC to tell a person 28 days in advance that the FSC plan to issue a warning notice under section 11 of the Financial Services Act – in other words, it sought to require the FSC to issue a warning of a warning. Such an amendment would create a

situation in which the FSC would be hampered in its ability to protect investors and depositors for 28 days after it became concerned about the fitness and propriety of licenceholders, controllers, directors, or key persons.

If the FSC is concerned about the conduct of those who run a licenceholder, it is appropriate and in accordance with its statutory obligations that it should act as quickly as possible to protect that business's clients. However, providing 28 days' notice of a warning would allow the business to continue with the actions that are causing the FSC concern. A warning notice should never be a surprise to a recipient, as it usually follows other, often protracted, communications with the notified person, which gives ample opportunity for that person to correct deficiencies before a warning notice is issued. Therefore, a recipient may be considered to have had considerably more than 28 days' notice before receiving a formal warning.

In addition, warning notices are already subject to an appeal process, which enables recipients to challenge their issuance.

Madam President, a requirement for the FSC to provide 28 days' warning before issuing a warning notice would increase risk for the customers or persons carrying on regulated activity. The FSC's statutory obligation is to protect those customers, not to protect the individuals who run its licenceholders and about whom it has concerns. Therefore, I do not believe it is appropriate for the FSC to issue a warning of a warning. The Bill has been subject to wide consultation and all comments received have been addressed. There is no indication that the Bill will place any additional administrative or financial burden on the regulated sectors or on Government.

Madam President, I beg to move that the Financial Services (Miscellaneous Amendments) Bill 2012 be read a second time.

The President: The Hon. Member, Mr Lowey.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President, and I would just like to thank the hon. mover for arranging to meet me to discuss some of the finer points on clause 5. Having had the benefit of some in-depth discussion, I am now satisfied with clause 5 and the way in which Treasury have clarified the situation regarding warning notices and I thank him for that.

The President: If no other Member wishes to speak, I do not think there is anything really for the mover to reply to; he has just had thanks extended. So the motion – Oh, Mr Wild, you do want to speak?

Mr Wild: I do apologise, thank you, Madam President.

Just to say thank you for the clarification in terms of clause 5. If I could just ask my hon. colleague, Mr Downie, will that satisfy the body or individual that raised the query with you?

The President: You have to address remarks through the chair to the mover. *(Laughter)*

Mr Wild: Oh, sorry!

Mr Braidwood: Madam President, I cannot speak on behalf of Mr Downie, but I think Mr Downie has already expressed his view that from what I can gather, he has not heard any more comments from the individual or the company, which initially raised these concerns with him. From what Mr Downie has already said, he is quite satisfied with the explanation that I have given with regard to the FSC, in that they normally meet the licenceholders anyway, and they express if they feel that there are problems, they will warn them verbally before even issuing a formal notice, which is a warning, so there is no point in giving a warning of a warning to allow 28 days.

The President: We can explore it further at the clauses stage, if you wish, sir.

The motion is that the Bill be read a second time. Those in favour, please say aye: against, no. The ayes have it. The ayes have it.

Financial Services (Miscellaneous Amendments) Bill 2012
Consideration of clauses commenced

The President: We move on to clauses. Clauses 1, 2 and 3, part 1.

Mr Braidwood: Thank you, Madam President.

Clause 1 provides for the short title of the Bill.

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

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

I beg to move that clauses 1, 2 and 3 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clauses 1, 2 and 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We move on to part 2, clauses 4 and 5.

Mr Braidwood: Thank you, Madam President.

The President: And the schedule, which is introduced by 5.

Mr Braidwood: Yes. Clause 4 introduces the amendments to the Financial Services Act 2008. Clause 5 adds a new section 3A and a schedule to the Financial Services Act to enable the Commission to approve the transfer of business from one licensed deposit taker to another. This change is in response to requests from industry and will replace the current need for deposit takers to seek specific Acts of Tynwald. Suitable safeguards to protect a depositor's interests are introduced by the schedule.

The heading to clause 5 was amended in the other place to reflect a change to the schedule, due to a late request from industry. The change widens the power to transfer deposit-taking business from one party to another, to a power to transfer business including deposit taking, allowing a transfer to include a deposit-taker's other activities, for example, investment business, which will reduce costs to industry.

Madam President, the schedule inserts schedule 1A to the Financial Services Act 2008 and contains provisions relating to the transfer of business from one deposit taker to another. The paragraphs describe: 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. No increased risk is anticipated because of the protection contained in paragraph 4 and requirements in the FSC's Rulebook.

I beg to move that clauses 4 and 5 and the schedule stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

My hon. colleague, Mr Wild, will recall sitting in the Public Gallery when the Lloyds TSB Bill... when there was a transfer of business from one body to another, and I assume this will now replace that need to go to court for separate primary legislation, so will simplify the transfer from one deposit taker to another.

The President: Does any other Member wish to speak? The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Only to say I suspect it will be welcomed by the financial sector.

The President: Mover to reply.

Mr Braidwood: Thank you, Madam President.

I thank Mr Crowe and Mr Wild for their contributions. Mr Crowe is quite correct in his interpretation. This will then stop anything like a Private Bill on behalf on one of the banks coming forward and of course will reduce their costs considerably in having to go through that procedure.

Mr Wild: Take all the fun out of it!

Mr Braidwood: I beg to move.

The President: The motion is that clauses 4 and 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

Mr Braidwood: Clause 6 amends section 6 to impose an express 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. The enhancement is designed to improve public protection.

Madam President, I beg to move clause 6 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

Mr Braidwood: 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 of a licenceholder not to appoint a person in contravention of such a direction, in order to emphasise the 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.

Madam President, I beg to move that clause 7 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is 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 Braidwood: Clause 8 details the circumstances relating to a new prohibitions power. This power will enable the FSC 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 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.

Madam President, I beg to move clause 8 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I just wonder if there is an end term to the prohibition – is it forever? Is it for life? If the person has failed his appeal initially, is there ever a time when they become a fit and proper person and can have the prohibition lifted and how do they do that?

The President: Mover to reply please.

Mr Braidwood: Of course, if there were a prohibition and that is via a published list for consumer protection, it is up to the individual to appeal. If that appeal is unsuccessful, then the prohibition is still there, so

he would then have to go again for an appeal to try to get that prohibition lifted. So, in actual fact, there is no time limit. He cannot say, in five years' time that prohibition will be lifted.

Mr Butt: I think the point was if he becomes a good character in later years, he is still prohibited if he has lost his appeal, there is no further appeal to get back onto the list.

Mr Lowey: The list is published from time to time and that person could then appeal again, that in the probing of these, he will have served his time. But it is not an automatic thing...

The President: Prohibition may not be for life, but –

Mr Butt: There is no end to this.

The President: It says 'state the terms of the prohibition' which may be a limited time.

Mr Braidwood: The prohibition can be tailored to specific cases and can be varied. So, as Mr Butt said, if it feels that the person who has a prohibition on at the present time, then comes in later life, fit and proper, then I presume that the prohibition then can be varied.

The President: The motion is, Hon. Members, that clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The aye has it. The aye has it! *(Laughter)*

Mr Downie: We have all been prohibited!

The President: Clause 9.

Mr Braidwood: Clause 9 amends provisions relating to section 11, warning notices. Firstly, it enables the FSC to issue warning notices to former directors, controllers and key persons in respect of their actions when they held these roles.

Secondly, the clause makes it explicit that the FSC may disclose a warning notice to a company at which a person is, or may become, an officer, so 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 must 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.

As I mentioned in the Second Reading, an amendment to clause 9 that was proposed in the other place sought to require the FSC to tell a person 28 days in advance that it planned to issue a warning notice. In other words, it sought to require the FSC to issue a warning of a warning. I explained in the Second Reading that such an amendment would hamper the FSC's ability to act promptly to protect the customers of persons carrying on regulated activity, which is its statutory obligation and it would therefore increase risk for those investors and depositors.

The FSC's role is not to protect the interests of licenceholders, controllers, directors, or key persons, but instead to protect the customers of persons carrying on regulated activity. However, providing 28 days' notice of a warning would enable such businesses to continue to undertake activities that are causing the FSC concern. If they so wish, recipients may challenge warning notices via an appeal to the Financial Services Tribunal. So there is already a mechanism in place, should they feel the warning is uncalled for.

Madam President, I beg to move that clause 9 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Wild.

Mr Wild: I can now ask for clarification in the appropriate manner. Could the mover explain to me what the motivation of the... There has obviously been either an individual or a business or a group of people trying to influence the clause, because it was moved in the other House and failed and my hon. colleague, Mr Downie, raised it. I wondered if you could explain to me what the concern was from this group of people to try and amend the legislation? What was worrying them, in terms of the way the clause has been written – if that makes

sense? Or if I have left it too late, I am more than happy to take it out of this particular debate and talk to the mover separately.

The President: Does any other Member wish to comment on the clause? If not, the mover to reply.

Mr Braidwood: I think one of the points of a warning notice is to seek correction of a problem and thereby trying to avoid the need for a more serious sanction, such as a section 10, which is not fit and proper. I think, what the company... I do not know who the company is who is involved with the appeal procedure, but I think I have already explained, they felt that they should have been given a warning of the warning, which is coming to them, but as I have previously explained, when the Financial Supervision Commission make an examination of a licenceholder anyway, if they feel that there are problems, they will tell them, they will issue verbal warnings before a written warning. So really, the licenceholder should take notice of the concerns of the Financial Supervision Commission and rectify that problem. If they do not, then the FSC will issue a warning notice and I think, what it was with the company who was involved –

The President: I think we need to be careful, Hon. Members, that we are not straying into anything that might be *sub judice* at the moment.

Mr Braidwood: I believe the appeal has been heard and the Appeals Tribunal issued the result, but I do not know if that is as yet public –

The President: If we can stick to process, Hon. Member, I think...

Mr Braidwood: I think, at the present time, that there is no point in giving them a warning of a warning – the 28 days between a notice being issued – that they will be getting a warning notice in 28 days, because if the FSC have concerns, they are trying to protect, not the licenceholder, but those depositors who are with the licenceholder.

Mr Wild: I thank you for your clarification.

The President: The motion is that clause 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 10.

Mr Braidwood: Clause 10 amends section 13 concerning public statements by clarifying the application of that section. It also adds a non-mandatory power to issue a public statement in respect of the new prohibition power, and in respect of a section 10 direction, it changes the obligation to issue a public statement into a power to do so.

Madam President, I beg to move that clause 10 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

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

Mr Braidwood: Clause 11 adds to section 14 a new subsection that enables the FSC to vary or revoke directions issued to permitted persons. The clause also requires that the FSC provides a statement of reasons for any variation it issues. Madam President, I beg to move that clause 11 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: Does anyone wish to speak? The motion is that clause 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 12.

Mr Braidwood: Thank you, Madam President.

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

I beg to move that clause 12 stands part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 13.

Mr Braidwood: Clause 13 adds to section 20 injunction powers which may apply if a prohibition under 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.

Madam President, I beg to move that clause 13 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 13 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 14.

Mr Braidwood: 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 licence holders.

Madam President, I beg to move that clause 14 stand part of the Bill.

The President: Do we have a seconder?

Mr Lowey: Beg your pardon, Madam, I beg to second and reserve my remarks.

The President: The motion is 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 Braidwood: Clause 15 adds new appeal powers to section 32. These will enable effective persons to appeal against prohibitions – through 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.

Madam President, I beg to move that clause 15 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Yes, purely for clarity, the table is for people who have a problem can go straight to the table and get the section that is applicable to their appeal, so it seems eminently practical.

The President: Mover to reply.

Mr Braidwood: I thank Mr Crowe for his observations.

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

Mr Braidwood: Clause 16 restructures the statutory indemnity provisions of section 33 to make it clear that anyone carrying out functions for or 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 exercise of 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 change provides more certainty for officers of the Financial Supervision Commission

Madam President, I beg to move that clause 16 stands part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Has this come about as an instance of an event happening or is it a defensive move taken in the event of possible action against a commission? I am talking about the statutory indemnity now, because the FSC presumably must employ outside bodies and as you said, the FSC acts on behalf of other bodies. So has there been an instance of a situation where this would have been beneficial to the FSC or is it a defensive move purely?

The President: Hon. Mr Downie.

Mr Downie: On a similar vein, Madam President, if there was a situation where someone did something that was not quite correct or gave the wrong information, obviously there are people in the Department who are civil servants who could be disciplined under that process, but for other people involving the Police or the Commission, is there a body who would review this situation or is the remedy only available if they go to the courts? Is there another process that can be followed, so that the person who is concerned about the decision that has been made does not have to take it all the way through the court at a great cost?

Do you know where I am coming from?

The President: The mover to reply.

Mr Braidwood: I think Madam President, Hon. Members are making more of this than there actually is, because really this is just a clarification of existing policy, rather than a new policy. It is just that sometimes the FSC is asked to undertake insider dealing investigations on behalf of the Treasury. So all we are doing really is clarifying this and anybody working on behalf of the FSC would have that indemnity, unless, as I said, they acted in bad faith.

So really it is only a clarification, more than anything else.

The President: The motion is, Hon. Members, that clause 16 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Perhaps we could take clauses 17 and 18 together, both dealing with offences.

Mr Braidwood: Certainly, Madam President.

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 was a reasonable excuse or legal professional privilege could be maintained.

Clause 18 amends section 41 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 the prohibited function.

The penalties under section 41 on summary conviction or a fine of up to £5,000, custody of up to six months or both.

Madam President, I beg to move that clauses 17 and 18 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is the clauses 17 and 18 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 19.

Mr Braidwood: Thank you, Madam President.

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.

A third change extends the definition of 'controller' to companies and other persons who control licenceholders, instead of only to individuals. The change was moved at clauses in the other place because revised Basel Core Principles for Effective Banking Supervision were introduced in September 2012. The revised principles relate to the supervision of banking groups and holding companies.

The FSC's powers do not currently extend to non-financial parent companies of its licenceholders, but this amendment will provide it with the necessary 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.

Madam President, I beg to move, that clause 19 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 19 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

Mr Braidwood: Thank you, Madam President.

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 the 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 explicit mandate to promote the stability of the financial system.

Paragraph 4 addresses a comment from the IMF that the boundaries of Treasury 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.

Madam President, I beg to move that clause 20 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

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

Clause 21.

Mr Braidwood: Thank you, Madam President.

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'. The 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 definitions of four terms that relate to this activity and a power for the Treasury to amend these definitions by order in case of need.

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

Madam President, I beg to move that clause 21 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 21 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, I think that is time at which we should adjourn. The adjournment will be until 2.30.

*The Council adjourned at 1.01 p.m.
and resumed its sitting at 2.30 p.m.*

Financial Services (Miscellaneous Amendments) Bill 2012 Consideration of clauses concluded

The President: We carry on at clause 22 of the Financial Services (Miscellaneous Amendments) Bill. I call Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

Clause 22 amends schedule 3 by placing the 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.

Madam President, I beg to move that 22 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is, Hon. Members, that clause 22 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 23.

Mr Braidwood: Thank you, Madam President.

Clause 23 amends schedule 4, which relates to the Financial Services Ombudsman Scheme, as operated 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 this sum by order in future.

Madam President, I beg to move that clause 23 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 23 do stand part of the Bill. Those in favour, please say; against, no. The ayes have it. The ayes have it.

Clause 24.

Mr Braidwood: Clause 24, Madam President, 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.

Madam President, I beg to move that clause 24 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 24 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 25.

Mr Braidwood: Clause 25, Madam President, 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.

Madam President, I beg to move that clause 25 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 25 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 3, clauses 26 and 27.

Mr Braidwood: Thank you, Madam President.

Clause 26 introduces the amendments to the Collective Investment Schemes Act 2008.

Clause 27 amends the heading to part 5.

Madam President, I beg to move that clauses 26 and 27 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clauses 26 and 27 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 28.

Mr Braidwood: Clause 28, Madam President, amends section 11, which provides when the FSC 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.

Madam President, I beg to move that clause 28 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 28 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 29.

Mr Braidwood: Clause 29, Madam President, 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.

Madam President, I beg to move that clause 29 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Would the Hon. Member give me a note of this type of governing body that you are describing in this particular clause?

The President: If no other Member has any query, the mover to reply.

Mr Braidwood: Thank you, Madam President.

The schemes' governing bodies are those who are in charge of the Collective Investment Scheme. I cannot give you a specific answer at the present time, but I will bring it back at the Third Reading, Madam President, if that is okay to the Hon. Member.

Mr Crowe: Just for clarification, is it the managers of the scheme, or is it the governing bodies, who are above the managers, who are like an institute?

Mr Braidwood: Sorry, Madam President, the governing bodies are like directors of a company.

Mr Crowe: So it is internal to that particular Collective Investment Scheme?

Mr Braidwood: Yes.

Mr Crowe: It is not like an institute above the –

Mr Braidwood: Sorry, I completely misunderstood, Madam President. Yes, it is not such as the governing body, say, of if it was accountants, where –

Mr Crowe: Yes, chartered accountants.

Mr Braidwood: The chartered accountants' governing body, no; it is the governing body of the Collective Investment Scheme, so the governing body is like the directors of a company.

Mr Crowe: Thank you, Madam President.

It was just to clarify that it was internal to the Collective Investment Scheme, not a governing body (**Mr Braidwood:** No.) that regulates the Collective...

Thank you, Hon. Member.

The President: The motion is, Hon. Members, that clause 29 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 30.

Mr Braidwood: Thank you, Madam President.

Clause 30 introduces a power to impose civil penalties for failure to comply with the legislative requirements.

The new section 19A will enable the FSC to apply equivalent treatment to... (**Mr Callister, Mr Crowe and the President:** Functionaries.) functionaries – I am getting a bit tongue-tied at the present time (*Interjection by Mr Lowey*) – of schemes under this Act (**Mr Butt:** Not catching, is it?) 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 FSC 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.

Madam President, I beg to move that clause 30 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is, Hon. Members, that clause 30 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 31.

Mr Braidwood: Thank you, Madam President.

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.

Madam President, I beg to move that clause 31 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Whilst the schedule and the tabular form of the appeal system is very useful, putting it into primary legislation will, in fact... May it inhibit future changes to this sort of legislation, if appeals are sought other than through the primary legislation? Is there some way secondary legislation could amend this particular schedule?

The President: The Member to reply.

Mr Braidwood: Thank you, Madam President.

As under the Financial Services Act, all it is, is doing it... This format is increasing the clarity of the Act. However, if it is in primary legislation, we would not be able to, because there is no enabling Order to alter that format of the Bill.

Mr Crowe: Thank you, Mr Braidwood.

The President: The motion is that clause 31 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 32.

Mr Braidwood: Thank you, Madam President.

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 FSC 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.

Madam President, I beg to move that clause 32 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Is this a way of allowing encrypted e-mails to be submitted as a form of documentation, or will it be application forms in paper only?

Is this to allow internet or e-mail submission of forms to help companies submit documents in a readily available form, even encrypted signatures etc?

Mr Braidwood: Madam President, this change really is to reduce the regulatory burden under the Act without compromising the FSC's oversight and supervision. Forms may be on paper or online.

Mr Crowe: Thank you.

The President: The motion is that clause 32 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 33.

Mr Braidwood: Thank you, Madam President.

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 schemes industry in the Island.

Madam President, I beg to move that clause 33 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Yes, I am very pleased to support this if it does improve the opportunities for the Fund Management Association, because they are up against a lot of competition from other jurisdictions, so any help to the fund managers will be beneficial to them and to the Island's growth in this area.

The President: The mover to comment, or reply.

Mr Braidwood: Thank you, Madam President.

I do thank the Hon. Member of Council, Mr Crowe, for his supportive comments.

I know that the fund industry, over the last few years, has actually reduced, and we hope, by amending schedule 1, this will help the development of the fund industry in the Island.

I beg to move.

The President: The motion is that clause 33 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 34.

Mr Braidwood: Thank you, Madam President.

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.

Madam President, I beg to move that clause 34 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 34 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 4, clauses 35 and 36.

Mr Braidwood: Thank you, Madam President.

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.

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.

Madam President, I beg to move that clauses 35 and 36 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clauses 35 and 36 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes consideration of clauses.

Council will now adjourn until 29th January. Council will now sit in private.