

Financial Services (Miscellaneous Amendments) Bill 2012
Third Reading approved

1. Mr Braidwood to move:

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

The President: We come to our business this morning, the Third Reading of the Financial Services (Miscellaneous Amendments) Bill 2012.

Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

As described in the clauses reading, the Financial Services (Miscellaneous Amendments) Bill 2012 amends the Financial Services Act 2008 and the Collective Investment Schemes Act 2008, which together provide the Financial Supervision Commission's key regulatory powers.

In moving the Third Reading, I would like to thank Hon. Members for their support in taking the legislation forward this far.

The amendments proposed by the Bill address evolving international standards in financial regulation, including certain expectations of the International Monetary Fund, revise powers relating to lack of fitness and propriety, so as to improve customer protection, and reduce costs or administrative burdens for the FSC, its licenceholders and Government. In addition, the Bill improves consistency between the two Acts, as well as clarifying some existing provisions and increasing transparency.

These changes are important, as they will help ensure that the Island's financial services legislation remains clear and up to date. This is essential if the Isle of Man is to be assessed as compliant with international standards by the IMF assessors in their next inspection of the Isle of Man.

Other changes are important in assisting the Financial Supervision Commission to respond more readily to industry's needs and to enable it to improve protection for customers of its licence-holders.

Madam President, my hon. colleague in Council, Mr Butt, asked for more information about prohibitions, which I said I would provide at this Reading.

Prohibition powers will enable the FSC to prohibit any individual, whether vetted or not, from undertaking specified regulated activities if they are not fit and proper to do so. The extent of the prohibition can depend on the circumstances of the case. For example, if a bank cashier had been found guilty of theft, the FSC may decide to prohibit them from working in a cash-handling role in a deposit-taker or a *bureau de change*.

The FSC must give individuals 28 days' preliminary notice that it intends to prohibit them, to allow that person to make representations. The FSC must have regard to any such representations.

Prohibitions are not limited to a set period of time, but a prohibited person may apply to have their prohibition revoked or varied and they have the right to appeal against the refusal to revoke or vary a prohibition. The process for appeals is determined by the Tribunals Act 2006.

The prohibitions power is designed to enhance public protection and is equivalent to powers that already exist in the United Kingdom, Jersey and Guernsey.

Madam President, amendments were made in the other place to the definition of 'controller', and to the provision for transferring business from one deposit-taker to another.

A third amendment, to clause 9, was moved in the other place and was mentioned by two of my hon. colleagues at earlier Readings of this Bill in Council. This amendment sought to require the FSC to issue a warning of a warning, but as I explained previously, such an amendment would delay the FSC taking action against a licenceholder's controllers, directors or key persons about whom it has concerns.

Hon. Members may recall that the FSC's statutory obligation is to protect the customers of persons who carry on regulated activity, not to protect the individuals who run the licenceholders and about whom it has concerns.

Warning notices are usually issued following protracted communications with the recipients, and they are subject to an appeal process in cases where recipients feel the notices are unjustified.

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

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Yes, I am in support of this Bill, and I thank the hon. mover for his explanation and for moving it over the last few weeks.

I think the key to all this is that the amendments proposed by the Bill reflect evolving international standards in financial regulation. I think we always have to keep in mind the international aspects of the Island, the international competitiveness we need to maintain.

This Bill involves Government, the Treasury, the FSC and also consumers and investors. All the time, we are under the microscope from international regulators and there is always this balance between maintaining international standards and the practicalities of running a regulated business that requires to meet international standards whilst producing competitive products which will attract investors.

I notice that some of the conditions of this Bill allow some ease of complying with the regulations – some short-cutting, shall we say – which will help business, which will reduce some of the administration burden.

With that, I will be supporting the Bill, Madam President.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Just to give the Third Reading my support.

I appreciate the clarification of the warning of a warning, and perhaps the individuals or organisations out there which have concerns, if need be, can engage with Treasury officials in the future to discuss those again.

For now, I feel this is a good piece of legislation that supports the Isle of Man as an international jurisdiction, and I thank the proposer for the explanations. Thank you.

The President: The Hon. Member, Mr Lowey.

Mr Lowey: I would like to thank the Hon. Members who have spoken on this particular piece of legislation.

It is about public protection, it is about international perception, and where it has got to be fair to the public, equally the FSC have got to be fair to the individual concerned. This particular Bill, as explained by my hon. colleague, does that. It gives them the right to appeal, and to that extent the FSC has to justify its actions, and it has the right to appeal against the original... When they have been suspended from working, if they apply, they then have the right, if it is turned down again, to appeal. So I think the Bill is right; I think it is proper.

Mr Wild, I think, is quite right. In the Treasury, we regularly meet with the industry, and in the light of practice, if there are any hiccups, we then try to look at things, bearing in mind the framework which the mover and Treasury have set out, which is to meet international standards, which have evolved since 2009, but that is an ongoing situation.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

I do not think anyone will be voting against this Bill, but I would just point out that in clause 23, which refers to mediation and adjudication – and it is through the system which is operated by the Office of Fair Trading; being a member of that board – the fee, or the amount which could be reached, would be £150,000 as from 1st April this year. (**Mr Braidwood:** Last year.)

Of course, this is very much dependent on what the budget is that is provided by the Treasury to the Office of Fair Trading. The budget there, as everywhere else, is very tight at the present time, and it is just a note that, whereas I think the Office probably will have sufficient funds for the next year or so – perhaps two years – thereafter, if we are still in financial difficulties, that Office could also be in financial difficulties as well.

The President: The mover to reply.

Mr Braidwood: Thank you, Madam President.

I do thank the Members of Council who have supported the Bill at Third Reading.

I think it is essential, when Treasury propose Bills, that they are to meet, as Mr Lowey quite rightly said, international standards. Of course, this Bill was already amended in another place to take account of the change in the Basel Core Principles. Also, part of this Bill has been... Clauses 20 and 21 were in response to some of the IMF's comments on the grounds for dismissal of commissioners of the Financial Supervision Commission, and also the Financial Supervision Commission's mandate to promote financial stability.

So we have to, the Isle of Man, all the time, keep up to and meet international standards, and this Bill is one way forward to meet those commitments, Madam President.

I beg to move.

The President: The motion is that the Bill be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

In the absence of any other business from another place, Hon. Members, we will now adjourn until Tuesday, 5th February at 10.30 in this Chamber. Thank you.