

5.1. Designated Businesses (Registration and Oversight) Bill 2014 – Clauses considered

Mr Teare to move.

The Speaker: We turn to Item 5, Bills for consideration of clauses.

We deal with the Designated Businesses (Registration and Oversight) Bill 2014 and I call on the mover, the Hon. Member for Ayre, Mr Teare.

Mr Teare: Thank you, Mr Speaker.

As outlined in the Second Reading, the Designated Businesses (Registration and Oversight) Bill 2014 seeks to provide the Financial Supervision Commission with new powers and duties relating to anti-money-laundering and countering the financing of terrorism. For ease, I will use the term 'AML'.

The Bill has 37 clauses and 4 parts, as well as 3 schedules.

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

Clause 4 defines 'Designated Businesses'; clause 5 details the FSC's functions under the Bill; and clause 6 enables the FSC to delegate certain functions to any person it considers appropriate. It is envisaged that the FSC will *only* delegate the powers of special inspection, and *only* to certain professional bodies.

Part 2 makes it an offence for a person to carry on a designated business in or from the Island unless the person is registered, acts in accordance with the registration and complies with the AML legislation. Registration, which may be subject to conditions, remains effective until a person is de-registered or the registration is revoked. When assessing if a person is fit and proper for registration the FSC will only consider their integrity and matters relating to AML legislation.

Part 3 contains three divisions: Division 1 requires registered persons to submit an annual return and fee for each year of registration. It empowers the FSC to carry out on-site inspections and investigations and to gather information from registered persons and those suspected of carrying on investigative business. The division contains offences for failure to comply, and for falsification or destruction of records.

Division 2 requires the registered person to ensure that information held by the FSC is correct; it restricts the disclosure of sensitive or restricted information relating to registered persons; it protects claims of legal professional privilege; it requires auditors to report prescribed matters to the FSC; and it requires the FSC to maintain a register of registered persons.

Division 3 relates to action and enforcement: it empowers the FSC to make reports of its findings and to require remedial action is undertaken. It also empowers the FSC to issue directions, public statements and civil penalties. It enables the FSC, where necessary, to apply to the High Court for injunctions and other remedial orders.

Part 4 contains supplementary provisions relating to advice and guidance. It provides for reviews of the FSC's decisions by the Financial Services Tribunal. It also empowers the FSC to make orders that prescribe matters under the Bill and contains transitional provisions.

Schedule 1 relates to clause 4. It defines designated businesses and contains exemptions from registration.

Schedule 2 relates to clause 22 and specifies the permitted reasons for disclosing sensitive or restricted information.

Schedule 3 makes consequential amendments to the Financial Services Act 2008, the Insurance Act 2008 and the Proceeds of Crime Act 2008.

Mr Speaker, I will now address each part of the Bill in turn.

Part 1, 'Introductory'. Clause 1 provides the short title of the Bill.

I beg to move that clause 1 stands part of the Bill.

The Speaker: Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second.

The Speaker: I put the question. Clause 1: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, sir.

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Mr Teare: Thank you, sir.

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

Mr Speaker, I beg to move that clause 2 stands 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. Clause 2: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mr Teare: Thank you, sir.

Clause 3 provides general definitions to the Bill. It also defines the legislation that is included in the concept of 'AML legislation' and 'relevant Act', which may be amended by subordinate legislation.

Mr Speaker, I beg to move that clause 3 stands 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. Clause 3: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Teare: Thank you, Mr Speaker.

Clause 4 provides a definition for 'designated businesses' by reference to schedule 1 which may be amended by subordinate legislation.

Mr Speaker, I beg to move that clause 4 stands 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. Clause 4: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Teare: Thank you, sir.

Clause 5 sets out the functions of the FSC under the Bill, which are to assess compliance with AML legislation by designated businesses and investigate potential breaches of that legislation which may give rise to criminal liability.

Mr Speaker, I beg to move that clause 5 stands 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. Clause 5: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 6, sir.

Mr Teare: Thank you, sir.

Clause 6 provides for the FSC to delegate certain functions under the Bill to any persons it considers appropriate. It also provides for how such delegation will operate.

Mr Speaker, I beg to move that clause 6 stands 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. Clause 6: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

Mr Teare: Thank you, sir.

I will now turn to part 2, 'Registration'.

Clause 7 makes it an offence to carry on a designated business in or from the Island unless the business is registered, acts in accordance with their registration and complies with the AML legislation. The clause defines 'carrying on a designated business'.

Mr Speaker, I beg to move that clause 7 stands 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: Hon. Member, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

Just if the Minister could clarify my understanding of this, because it is a bit complicated. It looks to me like this clause, particularly 7(2)(b), includes any self-employed person who carries out work in another country in accordance with their laws, statutes, and obligations. The Commission will then be required to regulate where and potentially to inspect records. You will also be required to assess compliance with Isle of Man legislation on work carried out in a place where Isle of Man legislation has no jurisdiction.

I am just wondering if he can clarify that in this area, please.

The Speaker: The mover to reply, Mr Teare.

Mr Teare: This is to protect the good name of the Isle of Man and, in effect, to deal with any allegations of money-laundering so that we can follow the trail. That is my understanding of it; if it is any different I will come back at the Third Reading stage.

The Speaker: I put the question. Clause 7: those in favour, say aye; against, no. The ayes have it.
The ayes have it.
Clause 8, please.

Mr Teare: Thank you, sir.

Clause 8 requires that a person who intends to carry on a designated business must apply to the FSC to be registered unless they are exempted from that requirement. The clause enables the FSC to specify the format for applications and for accompanying information. Applicants may be required to provide additional information and they must notify the FSC of any alteration or inaccuracy in any information supplied which may materially affect the application. Applications may be withdrawn.

Mr Speaker, I beg to move that clause 8 stands 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. Clause 8: those in favour, say aye; against, no. The ayes have it.
The ayes have it.
Clause 9.

Mr Teare: Thank you, sir.

Clause 9 requires that, on application, the FSC must either register the applicant with or without conditions, or refuse the application if the FSC is not satisfied that the applicant, or a specified person of the applicant, is fit and proper or the application is not made in accordance with clause 8, 'Application for registration'.

The clause details circumstances when an applicant may not be fit and proper person and enables the FSC to publish guidance setting out the criteria which will normally apply when assessing whether to refuse registration or to attach conditions to any registration.

The FSC must inform the applicant of its decision and, if registration is refused, it must give written reasons for the refusal. Registration remains effective until revoked under clause 11 or until a person is de-registered under clause 12. The person may appeal to the Financial Services Tribunal against the FSC's refusal to register.

Mr Speaker, I beg to move that clause 9 stands 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: The Hon. Member, Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

Can I just ask the Minister regarding a person who is not a 'fit and proper person'? I assume that the Financial Supervision Commission will hold a register, but that particular person will not be on the register until the appeal has taken place?

The Speaker: Mr Teare.

Mr Teare: Thank you, sir.

The Hon. Member who has just resumed his seat, his assumption is correct. Really, what I would say is that the definition of a fit and proper person for this legislation is narrower than in other legislation in respect of the regulation of the Financial Services Industry.

The Speaker: I put the question. Clause 9: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Teare: Clause 10 enables the FSC to attach conditions to any registration and to amend or revoke any such condition or to attach new conditions. The FSC must give the registered person notice of, and reasons for, attaching a condition or changing a condition.

That person may appeal to the Financial Services Tribunal regarding any conditions on his registration.

Mr Speaker, I beg to move that clause 10 stands 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: Clause 10: those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 11.

Mr Teare: Clause 11 details the circumstances when the FSC may revoke a registration and permits an appeal to the Financial Services Tribunal against revocation. When a registration is revoked, the FSC must notify the registered person in writing, giving reasons for the decision and must, as soon as practicable, take appropriate steps to notify the public.

Where the decision to revoke is based on the registered person's failure to comply with AML legislation, the FSC may refer the matter to the Attorney General for potential proceedings under the AML legislation.

Mr Speaker, I beg to move that clause 11 stands 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: The Hon. Member, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker

I just wonder, in respect of this: I have scanned through the Bill and I cannot find any provision within the Bill overall, or within this clause, in respect of an appeal mechanism.

There is a series of criteria to be considered in coming to the decision as to whether or not revocation of a registration should take place, but I cannot find anywhere, or in this particular clause, any kind of rights of appeal.

Obviously, if they have not complied with (1)(d) – although I note that in clause 11(4) that the Attorney General, in fact, can be called upon to make a judgment as to whether or not they have failed with those requirements... but I just wonder if the Minister can guide us that there are provisions for an appeal to be made in this area.

The Speaker: Hon. Member, Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

Mine is fairly simple: I just wondered whether the Minister can confirm what that notification to the public would be? Is it electronically, or is it going to be in a newspaper?

The Speaker: Mr Teare to reply.

Mr Teare: Thank you.

In terms of appeal, yes there is an appeal process for this variance of the conditions.

And – sorry, I... (**Mr Quirk:** Notification.) Notification that there will be a register is on the (**A Member:** Electronic.) FSC's website.

Just to give more clarity to the appeal process: there is an appeal clause coming later, in clause 33, which we still have to move on to.

So that is the process contained in there; and, yes, it will be on the Department's website.

The Speaker: I put the question. Clause 11: those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 12.

Mr Teare: Thank you, sir.

Clause 12 enables the FSC to de-register a person if the person ceases to carry on any designated business and requests to be removed from the register, or if the FSC is satisfied that the person no longer needs to be registered. An appeal may be made to the Financial Services Tribunal against de-registration.

Mr Speaker, I beg to move that clause 12 stands 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. Clause 12: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 13 please.

Mr Teare: Thank you, sir.

We are now moving on to part 3, 'Oversight', and the first division in part 3 is 'Returns, inspections and investigation.'

Clause 13 requires a registered person to submit an annual return in the form prescribed by the FSC, and an annual fee as prescribed.

Mr Speaker, I beg to move that clause 13 stands 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. Member, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

I just wonder if the Minister has any indication of what the fees are likely to be?

I am just concerned about our smaller local companies: they are getting more and more legislation to comply with and it is costing more to be a *small* company doing business on the Isle of Man, which is why we are seeing more and more large companies – so there are fewer entities and fewer smaller local businesses.

I am just concerned that there is going to be an additional burden both as requirements for complying with the law, which has cost for businesses the same as it does for Government, and then an annual fee... if some sort of indication could be given?

Thank you.

The Speaker: Mr Quirk.

Mr Quirk: Mr Speaker, I am just asking the Treasury Minister regarding the annual returns: if the annual return date is the date when a failure occurs, is there any discretion or does it become an automatic failure?

The Speaker: The mover to reply.

Mr Teare: In terms of the question asked by the Hon. Member for South Douglas, it is a very relevant one.

This is not intended to be a money-making exercise and the fees will be set according to the size of the organisation which is seeking to be registered; so the fees will not be disproportionate.

I do acknowledge that there has been consolidation within the financial services sector because of the compliance costs: that is not something that we have imposed, it has been part of the reaction to the mood in the international environment, where we have to comply with the FATCA regulations as well, which do increase the compliance costs.

We think that the fee will be approximately £150 for a sole trader; and, as I said, that is not the profit-making side of it, as it were.

The Hon. Member for Onchan, Mr Quirk, asked about an annual return. The annual return should really be submitted on time. These requirements will be set out in guidance notes but, if they are not submitted on time, I envisage... and I would encourage the FSC to adopt a similar attitude to the Companies Registry and impose a penalty for those who do not file a return on time.

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.

Mr Teare: Thank you, sir.

Clause 14 empowers the FSC to undertake inspections and investigations at a registered person's premises to assess the extent to which that person meets the requirements of the Bill, the AML legislation and the registered person's own compliance procedures.

The FSC has powers of entry and access to investigate a registered person's transactions, inspect its books, accounts and documents, and take copies of the same. These powers may also be exercised in relation to an unregistered person who is suspected of carrying on designated business.

Mr Speaker, I beg to move that clause 14 stands 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. Clause 14: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

Mr Teare: Thank you, sir.

Clause 15 empowers the FSC to request any person who it believes may hold information relevant to its functions under the Bill to provide that information. The FSC may then issue a direction under clause 26 to ensure such information is provided.

A statement in response to such a direction may not be used in evidence against the person in any criminal proceedings, except proceedings alleging contravention of clause 22(1).

These powers may also be exercised in relation to an unregistered person who is suspected of carrying on designated business.

Mr Speaker, I beg to move that clause 15 stands 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: Clause 15: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 16.

Mr Teare: Thank you, sir.

Clause 16 enables the FSC to seek the written authorisation of a justice of the peace to investigate the affairs of any person as far as it is relevant to assessing a designated business's compliance with AML legislation.

The powers enables the FSC to require a person to answer questions or provide information relating to the investigation, or produce and explain documents or copies of documents which are relevant to the investigation. The FSC may copy or take possession of all such documents for as long as it considers necessary.

A statement in response to the requirement under this clause may not be used in evidence in any criminal proceedings, except proceedings alleging contravention of clauses 18(2)(a) or clause 22(2).

Mr Speaker, I beg to move that clause 16 stands 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: Clause 16: I put the question. Those in favour, say aye; against, no. The ayes have it.
The ayes have it.

Clause 17.

Mr Teare: Thank you, sir.

Clause 17 enables the FSC to take a warrant from a judge where a person has failed to provide documentation required under clause 16. The warrant would authorise a named individual to enter and search premises, and to preserve or take possession of any documents specified in the warrant or other documents that appear to contain evidence relating to any offence.

A person executing a warrant must be accompanied by a constable.

Mr Speaker, I beg to move that clause 17 stands 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. Member, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

Mr Speaker, I have certain concerns around this particular clause which I would welcome the opportunity rising to my feet will give the Treasury Minister the opportunity to, either now or later, respond to my concerns.

Paragraph (1):

‘Where, on information on oath laid by the Commission, a judge is satisfied, in relation to any documents, that there are reasonable grounds for believing — ‘

And then, later on in paragraphs (2) and (3) there is a very significant opportunity for the FSC to remove a whole swathe of data and documentation from a business – it would seem to me sufficient to close that business down. And, at that stage, that business is actually innocent of any charge or any criminal activity.

It just seems to me that, incorrectly interpreted, this clause could be used in a swingeing and oppressive way.

Whether the Treasury Minister wants to respond now or perhaps later on at Third Reading stage, I would welcome some reassurance that my anxieties here are misplaced.

The Speaker: Hon. Member, Mr Quirk.

Mr Quirk: Thank you Mr Speaker.

I am just wondering, in a similar vein I suppose really, when a warrant is actually issued – and I do not know an example yet of a business which would be based in a domestic dwelling as such, not in an office or a big corporate building. But, just in case it was annexed to a domestic dwelling... if that warrant was issued then would there be powers to lift all domestic computers – a trawling exercise?

I give that as a little preamble to, maybe, if a credit union ever exists and operates from a domestic dwelling in the countryside somewhere: would that be still considered as the business property, and still be able to take the information from that domestic dwelling?

The Speaker: The mover to reply, Mr Teare.

Mr Teare: My colleague, the Hon. Member for East Douglas, Mr Robertshaw, has quite rightly pointed out that interpretation of this clause in one way may lead to an oppressive and unreasonable action.

I would like to reassure Hon. Members that that is not the case. What we want to do is to take whatever information is deemed to be relevant and you will see in the clause 12 that it does say 'or to copy' information and take it away. So it would not be the intention by the back door, as it were, to close a business down; but, as the Hon. Member has rightly pointed out, you are innocent until proven guilty before a court of law.

Domestic computers: basically, the Hon. Member for Onchan, Mr Quirk, has raised this as a possibility. The fact is, as I said, in the answer to Mr Robertshaw's question the FSC has to act reasonably and proportionately; and also, technically, a personal computer which is being used for business should be registered with the Data Protection Registrar anyway. So there might be something else that might come up there too.

So, with that, sir, I would like to move that clause.

The Speaker: I put the motion. Clause 17: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 18.

Mr Teare: Clause 18 provides for offences in connection with inspections and investigations. This includes when a person falsifies, conceals, destroys or disposes of information which they know or suspect is relevant to an investigation. An offence may be punishable with a fine of up to £5,000 or custody up to 2 years.

Mr Speaker, I beg to move that clause 18 stands 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. Clause 18: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

Mr Teare: Thank you, sir.

With this section we move onto division 2. The relevant heading is 'Information'. Clause 19 requires a registered person to notify the FSC within a specified period of any change in the information provided under clause 8 and, if that person has ceased to carry on a designated business.

Mr Speaker, I beg to move that clause 19 stands 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: Mr Quirk.

Mr Quirk: Just one minor thing, if I can, Mr Speaker.

If a business is to cease or is to close how does that come about? Is that publicised as well, by the paper or an electronic version, so that the public know the person is not taking in any money anymore?

The Speaker: Mr Teare.

Mr Teare: My understanding is that the person would have that information, that notification, taken off the FSC's website so, in other words, it will be public information and it will be readily accessible.

The Speaker: I put the question, clause 19. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

Mr Teare: Thank you, sir.

Clause 20 provides for offences in connection with: failing to notify any change of the information provided under clause 8, submitting a false or misleading statement and failing to provide required information to the FSC without reasonable excuse. An offence may be punishable with a fine of up to £5,000 or custody for up to two years.

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: Clause 20. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 21.

Mr Teare: Clause 21 clarifies that a person is not obliged to disclose any information subject to legal privilege within the meaning of section 13 of the Police Powers and Procedures Act 1998.

Mr Speaker, I beg to move that clause 21 stands 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: Clause 21. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 22.

Mr Teare: Thank you, sir.

Clause 22 restricts the disclosure of information relating to the business or affairs of any person unless the person to whom it relates has consented or the disclosure falls within the exceptions contained in schedule 2. Key terms in the clause are defined.

Any person contravening this clause is guilty of an offence, which may be punishable with a fine of up to £5,000 or custody of up to two years.

Mr Speaker, I beg to move that clause 22 stands 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 Quirk.

Mr Quirk: One minor thing, if I can, to the Minister.

I notice the fines in the Bill running forward... which is a good Bill and it is only £5,000, when I have seen other Bills in the past which are very draconian, like £20,000. I just wonder why, in this particular Bill, when in my account it would be a really serious offence, we are only using £5,000 as a, not a stick to beat somebody but as a deterrent for the future?

The Speaker: Mr Teare.

Mr Teare: We are basically dealing with small entities here and the fine or the penalties have to be proportionate to the activities. Also I think if you are taking, or the potential is to take, away somebody's liberty for two years, that is a fairly draconian step.

I certainly agree with the £5,000 fine. On first view it does appear to be small but it is the two years enjoying Her Majesty's hospitality, I would suggest, that is the real deterrent.

A Member: Paid for!

The Speaker: I put the question, clause 22. Those in favour, say aye; against, no. The ayes have it.
The ayes have it.
Clause 23.

Mr Teare: Clause 23 requires auditors to report any prescribed matter to the FSC, which they become aware of whilst discharging their functions. The FSC may prescribe such matters after consultation with Treasury, the Department of Home Affairs and bodies representing the interests of auditors in the Island.

Mr Speaker, I beg to move that clause 23 stands 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 clause 23. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 24.

Mr Teare: Thank you, sir.

Clause 24 requires the FSC to keep and publish on its website a register of registered persons. This must include: the name of the registered person, a description of the designated business and the principal address in the Island from which the designated business is carrying on.

The register may contain details of formally registered persons for up to one year after that person ceased to be registered. Copies of the published information may be offered for sale at a reasonable charge.

Mr Speaker, I beg to move that clause 24 stands 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 Quirk.

Mr Quirk: Thank you, Mr Speaker.

I just wondered: the charges at reasonable prices – I suppose, at the end of the day, if it is publicised on the website you could probably lift it off for nothing?

The Speaker: Mrs Beecroft.

Mrs Beecroft: No, it was a similar query.

The Speaker: Mr Teare.

Mr Teare: It is very similar to other information which is published by Government. On the website, the access is there and you can glean the information, but if you want it in printed format there is a charge for that service.

With that, sir, I beg to move clause 24.

The Speaker: Clause 24. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 25.

Mr Teare: Clause 25 is the start of a third division, 'Action and Enforcement'.

Clause 25 enables the FSC to issue reports of its findings from on-site inspections under clause 14(1).

Reports may specify: failures to comply with AML legislation or designated businesses' own AML procedures, action to be taken and timescales for taking such action.

If a registered person fails to take the necessary action within the timescale indicated, the FSC may issue a direction under clause 26 to require the action to be undertaken within a further timescale.

Mr Speaker, I beg to move that clause 25 stands 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 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 empowers the FSC to issue directions to a registered person requiring action to be taken in respect of a designated business.

A direction may be to suspend or discontinue a designated business, either in whole or in part. Alternatively, a direction may require a report on any matter that the FSC considers appropriate by a person with relevant skills.

Any direction may be varied or revoked under this clause and reasons must be specified for issuing or varying any direction. An appeal may be made to the Financial Services Tribunal regarding a direction.

Mr Speaker, I beg to move that clause 26 stands 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 Quirk.

Mr Quirk: I am sure the Minister said 27 not 26...

Mrs Cannell: No, he said 26.

Mr Quirk: Yes. It is okay. We are talking about 27.

The Speaker: Nothing to reply to.

The question is put, clause 26. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 27.

Mr Teare: Clause 27 empowers the FSC to issue public statements regarding: the issue of a direction under clause 26; any contravention of a prohibition under clause 7, a condition under clause 10, a direction under clause 26 or the AML legislation.

The FSC may also issue a public statement concerning a person it considers is carrying on a designated business, if it appears to the FSC to be in the public interest to do so. If the statement identifies any person, registered or otherwise, the FSC must notify that person in advance, unless, in the case of a non-registered person, it is not practical to do so.

The notice must, unless it involves a disclosure of confidential information, include a copy of the statement, the reasons for its issuance, the date of issue, details of the appeals process and, if it is issued before the required notice period has elapsed, the reason for doing so.

Mr Speaker, I beg to move that clause 27 stands 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: Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

I am just wondering why the Minister and his team has looked to say that the Commission 'may' issue a public statement and not say the Commission 'shall' issue a public statement, because if we are informing people about concerns it should be done on the positive and not the negative?

The Speaker: Reply, sir.

Mr Teare: I think it is important, sir, that the regulatory authorities do retain their discretion and if you put 'shall' in there they would not have any discretion.

Going back to a comment I made earlier, the reaction has to be proportionate and there may be circumstances when the FSC would prefer to work with an organisation rather than to press the nuclear button, as it were.

With that, sir, I beg to move that clause 27 stands part of this Bill.

The Speaker: I put the question, clause 27. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 28.

Mr Teare: Clause 28 requires one month's notice to be given before a public statement is issued, unless each person identified in the statement agrees to earlier publication or the FSC determines that earlier publication is in the public interest and outweighs any detriment to the persons identified in the statement. However, if an appeal be made and the tribunal orders that the statement must not be issued before a specified date or event, the FSC must adhere by the statement.

Mr Speaker, I beg to move that clause 28 stands 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 Quirk.

Mr Quirk: Just on the timescale of the tribunals to be set up, because if a business is wanting to exist, if there is a cloud over them I just wonder what the times would be to instigate a tribunal?

The Speaker: Mr Teare.

Mr Teare: This actually relates to the appeals process and it is very similar to other appeals processes that the FSC has. The time that the tribunal would take to review the appeal is out of the control of the FSC. That is at the direction of the tribunal, but these things do tend to get moved along fairly quickly because we do realise that there is a downside here.

With that, sir, I beg to move that clause 28 stands part of the Bill.

The Speaker: I put the question, clause 28. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 29, Mr Teare.

Mr Teare: Clause 29 enables the FSC to apply to the court for an injunction where it is likely that the person will contravene or continue or repeat a contravention of a clause 7 prohibition, a condition of registration, clause 19 regarding information, a direction or the AML legislation. Where the court is satisfied that steps could be taken to remedy the contravention, it may order steps to do so.

Mr Speaker, I beg to move that clause 29 stands 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, clause 29. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 30.

Mr Teare: Thank you, sir.

Clause 30 empowers the FSC to issue civil proceedings to a person in breach of the clause 7 prohibition. A penalty may also be issued if a registered person has failed to comply with a condition under clause 10 or a direction under clause 26, to submit the annual return, to pay the annual fee or give the required notice for supply of information under clause 19(b).

The FSC may make other provisions for penalties and the circumstances in which they may be imposed. However, a penalty may not be imposed if the FSC revokes or intends to revoke the registration, or if criminal proceedings have commenced in respect of the convention.

Penalties are payable to the general revenue of the Island and the FSC must give notice of a proposed penalty. An appeal may be made to the Financial Services Tribunal regarding a penalty.

Mr Speaker, I beg to move that clause 30 stands 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, clause 30. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 31.

Mr Teare: Thank you, sir.

Part 4, 'Supplementary'. Clause 31 enables the FSC to provide information and advice on the functions of the FSC under the Bill or any other matter which appears to be desirable. The FSC may publish the information or advice and offer copies for sale at a reasonable price.

Mr Speaker, I beg to move that clause 31 stands 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: Clause 31. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 32.

Mr Teare: Clause 32 enables the FSC to issue guidance for the purpose of establishing sound principles for compliance with the Bill and the AML legislation. The FSC may issue different guidance in respect of different types of designated business and may indicate which guidance applies to which designated business.

A failure to follow the guidance does not render any person liable to proceedings nor invalidate any transaction. However, the guidance is admissible in proceedings and non-compliance with the guidance or with a code issued under the AML legislation may assist in determining whether a person's conduct contravenes this Bill.

The guidance must be published and copies may be sold to the public at a reasonable price.

Mr Speaker, I beg to move that clause 32 stands 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: Mr Quirk.

Mr Quirk: Just a minor one, Mr Speaker. Because we are saying ‘reasonable prices’ – it is like a shop – I just wonder what the Minister’s view is of a ‘reasonable price’?

The Speaker: Mr Teare.

Mr Teare: I could say, tongue in cheek, sir, it depends whether you are buying or whether you are selling, but, no, this is intended to be (*Interjection by Mr Quirk*) to recover the costs of printing and distribution. It is just an enabling clause anyway. It is there just in case it needs to be used.

With that, sir, I beg to move that clause 32 stands part of the Bill.

The Speaker: I put the question, clause 32. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 33.

Mr Teare: Clause 33, sir, provides that in certain specified circumstances an agreed person may appeal to the Financial Services Tribunal on the grounds that the FSC’s decisions were unreasonable in a particular case.

The specified circumstances are: refusing to register a person under clause 9, attaching or amending conditions of registration under clause 10, revoking a person’s registration under clause 11, de-registering a person under clause 12, issuing a direction or refusing to revoke or vary a direction under clause 26, issuing a public statement under clause 27 and imposing a civil penalty under clause 30.

A decision of the tribunal is binding on the FSC and the applicant, except where it relates to a previous operation. An appeal may be made to the court on a question of law, relating to any decision of the tribunal.

Mr Speaker, I beg to move that clause 33 stands 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: Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker.

Yes, clause 33, in respect of appeals, covers any decision really of the Commission that was thought to be unreasonable, having regard to all the circumstances of that particular case, but I am just wondering, in subsection (c) it deals with the revocation of the person’s registration under section 11(1), which was the matter that I asked the Minister about earlier; but then when you turn the page, subsection (3), when it talks about:

‘(3) Any variation or revocation of a decision does not affect the previous operation of that decision or anything duly done or suffered under it’.

I am taking that to cover the likeliness of a person receiving a revocation, thinking it unreasonable – in effect, the business has been closed down, so nothing is happening because the licence has been revoked; a decision is made that the revocation of the registration stands and a case is brought through the appeal mechanisms, to say this is totally unreasonable, in view of all the circumstances, and that person wins that, so the revocation is lifted by the Commission and the business is reinstated.

At some point during the course of all of that, the business will have lost custom – it may well have lost money – so I am wondering if subsection (3) is, in fact, to cover that, because the wording I am uncertain about, because it talks about:

‘Any variation or revocation of a decision does not affect the previous operation of that decision...’

– the previous operation of that decision –

‘... or anything duly done or suffered under it’.

So I would like some further explanation from the Minister in respect of the meaning of that. Is it as I think it is, which is to prevent somebody from taking a case and saying, ‘Look, I want compensation. I’ve lost my business. My licence was revoked for x amount of time. I’ve lost important clients etc.’? Because the only other provision here is under subsection (5), where it says:

‘An appeal lies to the Court, in accordance with rules of court on a question of law from any decision of the Tribunal.’

To me that reads: it is on a question of law so it will be on the interpretation of the law that the Commission in the Act that this will become and whether or not the court agrees with that or that of the person taking the case. So it seems to me only a question of law is considered by the court, not the question of the unreasonableness following an appeal for the Commission to continue to want to revoke the licence of the individual. So a little bit more clarity, I would appreciate, please.

The Speaker: Mr Teare.

Mr Teare: The theme going through this legislation where there is a final appeal is that there is an appeal on the point of law, so this is consistent with what has been done before, and that is similar to some of the other legislation we have in respect of FSC matters as well.

The facts are dealt with by the tribunal and then if the tribunal has misdirected itself on a point of law, then that would proceed to the courts to be determined by the court.

The tribunals would be held swiftly and any revocations would be a last resort – any revocations of a person’s registration under this legislation.

What we have to do really is to protect the underlying customers here, so the clause to which the Hon. Member has referred, in effect, deals with the existing customers. But what I will do is some more research and I will come back at the Third Reading, if I may? I will ask for a full and better briefing when it comes to the Third Reading. So I will certainly deal with that.

With that, Mr Speaker, I beg to move that clause 33 stands part of the Bill.

The Speaker: I put the question, clause 33. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 34.

Mr Teare: Clause 34 provides that where an offence is committed by a body corporate and the offence was committed with the consent or connivance of an officer of that body or was attributable to an officer’s neglect, the officer and the body are both guilty of the offence.

The clause clarifies that where an individual is convicted of an offence under the Bill, that individual is liable to the penalty provided for the offence.

Mr Speaker, I beg to move that clause 34 stands 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: Clause 34. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 35.

Mr Teare: Clause 35 enables the FSC to prescribe, by order, any matter that may be prescribed under this Bill. Orders must be laid before Tynwald as soon as practicable after they are made and, if not approved, cease to have effect. The FSC is obliged to consult various parties before making any order.

Mr Speaker, I beg to move that clause 35 stands 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: Clause 35. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 36.

Mr Teare: Thank you, sir.

Clause 36 clarifies that no offence is committed under clause 7 by a person who carried on a designated business immediately before the clause came into effect.

Transitional provisions enable a person who applies for registration within six months of clause 7 coming into operation to continue to carry on a designated business until the application is finally determined, including any potential appeal, or is withdrawn.

Mr Speaker, I beg to move that clause 36 stands 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: Clause 36. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 37.

Mr Teare: Thank you, sir.

Clause 37 refers to schedule 3 which contains minor inconsequential amendments to the Financial Services Act 2008, the Insurance Act 2008 and the Proceeds of Crime Act 2008.

Mr Speaker, I beg to move that clause 37 stands 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: Clause 37. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Teare.

Mr Teare: Sir, we have not moved the various schedules to the Bill.

The Speaker: The schedules were moved, in effect, when we accepted clauses 4 and 22, so I do not expect them to be separately moved.

Mr Teare: Yes, as long as you are content, sir.

The Speaker: I am. Thank you very much.

Hon. Members, that concludes the business of the House today. The House will now stand adjourned until the next sitting, which will take place at 10 o'clock on 3rd February in this Chamber.