

## 1. Designated Businesses (Registration and Oversight) Bill 2014 – Second Reading approved

Mr Braidwood to move:

*That the Designated Businesses (Registration and Oversight) Bill 2014 be read a second time.*

**The President:** So, we turn now to the Designated Businesses (Registration and Oversight) Bill, for Second Reading. I call on the Hon. Member, Mr Braidwood.

**Mr Braidwood:** Thank you, Madam President.

Madam President, the Designated Businesses (Registration and Oversight) Bill 2014 seeks to provide the Financial Supervision Commission with new powers and duties relating to the oversight of compliance with anti-money laundering and countering the finance of terrorism legislation by designated businesses, in order to address deficiencies identified by assessors of the International Monetary Fund in 2008, which resulted in the Island being rated partially compliant with the Financial Action Task Force recommendations 22 and 23.

MONEYVAL is due to assess the Island in 2016 and therefore the implementation of this Bill is critical to enable the Island to demonstrate its compliance with international standards and prevent an adverse rating in MONEYVAL's report. Designated businesses are already subject to the AML/CFT legislation, but to date little or no oversight of compliance with that legislation has taken place.

The effect of this Bill is to place responsibility for that oversight with the FSC. It should be noted that responsibility for designated businesses' core activities will remain with the relevant professional bodies. The Bill has been the subject of wide consultation and all comments received, which related mainly to how the Bill will be implemented and what fees would be charged, have been addressed.

The Bill will place some additional administrative burdens on designated businesses, such as the submission of annual returns. In addition, designated businesses will be required to pay a registration fee to the FSC, which is expected to be in the region of £250 to £500. An annual fee will also be payable, either to the FSC or, where oversight is delegated to a professional body, to that body.

The Bill makes consequential amendments to the Financial Services Act 2008, and the Insurance Act 2008, in respect of the registration and oversight regime and to address some deficiencies identified in recent enforcement cases. The Bill also makes a specific amendment to the Proceeds of Crime Act 2008, to enable the three Island regulators, the FSC, the Insurance and Pensions Authority and the Gambling Supervision Commission as well as the Office of Fair Trading to take civil proceedings in relation to the assessment of a person's, fitness and propriety. Madam President, my hon. colleague in Council, Mr Downie, will be moving two amendments to the Bill at clauses. The first addresses a definitional issue and the second corrects a drafting error in a consequential amendment to the Financial Services Act 2008.

Madam President, I beg to move that the Designated Businesses (Registration and Oversight) Bill 2014 be now read a second time.

**Mr Crowe:** Madam President, I beg to second, and reserve my remarks.

**The President:** 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.

We turn now to clauses.

## **Designated Businesses (Registration and Oversight) Bill 2014 – Clauses considered**

**Mr Braidwood:** Thank you, Madam President.

Madam President, 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. The Bill has 37 clauses in four parts, as well as three schedules.

Madam President, clause 1 provides for the short title of the Bill.

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

**Mr Crowe:** I beg to second Madam President, and reserve my remarks.

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

Clause 2.

**Mr Braidwood:** Thank you, Madam President.

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

Madam President, I beg to move that clause 2 stands part of the Bill.

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 2, stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

**Mr Braidwood:** Thank you, Madam President.

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

Madam President, I beg to move that clause 3 stands part of the Bill.

**Mr Crowe:** I beg to second and reserve my remarks, Madam President.

**The President:** The Hon. Member, Mr Downie

**Mr Downie:** Thank you, Madam President.

As a result of the Interpretation Bill currently progressing through the other place, I propose an amendment to clause 3 of this Designated Businesses (Registration and Oversight) Bill 2014.

This Bill seeks to ensure that the Financial Supervision Commission is able to oversee how certain businesses and professions or designated businesses comply with the Island's anti-money laundering and countering the financing of terrorism legislation. Many of these designated businesses will be unincorporated associations. In the Interpretation Act 1976, person includes unincorporated associations. However, under the Interpretation Bill, 'person' does not extend to such associations. As the Interpretation Bill is likely to receive Royal Assent before the Designated Businesses (Registration and Oversight) Bill 2014, it is important to include a definition of 'person' which continues to include unincorporated associations. This change is necessary so that unincorporated associations can register under the Bill, rather than have each individual having to register in their own right.

Madam President, I beg to move the amendment to clause 3 standing in my name:

*Amendment to clause 3*

*Page 11, after line 23 insert —*

*““person” includes any body of persons, whether incorporated or unincorporated, as well as an individual;”.*

**Mr Butt:** I beg to second, Madam President.

**The President:** Thank you.

I have put first the amendment, Hon. Members. Those in favour of the amendment in the name of Mr Downie, please say aye; against, no. The ayes have it. The ayes have it.

I now put the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4 and schedule 1.

**Mr Braidwood:** Thank you, Madam President.

Clause 4 provides the definition for ‘designated businesses’ by reference to schedule 1, which may be amended by subordinate legislation. This is so that it can keep track with any new types of business that may, in the future, be brought within the scope of AML/CFT legislation.

Madam President, I beg to move that clause 4 and schedule 1 stand part of the Bill.

**Mr Crowe:** I beg to second and reserve my remarks, Madam President.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you.

Two queries for the mover, if I may? The consultation with all the businesses listed in this schedule, including estate agents: can you give any feedback as to how they received this? They now do regulator and pay fees.

Secondly, the term ‘lawyer’ is used. Now, as far as I know in the Isle of Man, the word ‘lawyer’ is never used. It is always ‘advocate’. I think it is the Advocates Act that actually regulates advocates. So I wonder why the word ‘lawyer’ is used, rather than ‘advocate’, because that is not a Manx term.

Thank you, Madam President.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

My question relates to the schedule, paragraph (1)(h). It says:

*‘the business of dealing in goods or services of any description (including dealing as an auctioneer) whenever a transaction or series of linked transactions involves accepting a total cash payment (in any currency) that is equivalent to at least €15,000.’*

I just wondered how that impacts on retail, because in theory, any product or service could be purchased using cash. So, reading this, would it be the moment they accept a transaction, they then have to register? I am just not clear on whether that is the purpose of that particular paragraph, because if so, it is a bit open-ended, that they can, in fact, then regulate just about anybody. (**A Member:** Car dealers.) Yes, car dealers was one I had in mind, and there are other such larger items that people... I know there are still quite a lot of people actually pay cash these days.

**The President:** The Hon. Member, Mr Coleman.

**Mr Coleman:** Thank you, Madam President.

I wonder if I could just ask the mover if there is a definition anywhere of the 'series of linked transactions'. Does that have to be within a certain time frame? What is the definition of a linked transaction?

Thank you.

**The President:** The Hon. Member, Mr Wild.

**Mr Wild:** Thank you. Madam President.

I would just like to ask my hon. colleague, again, what was the reaction of the participants in the consultation that forms schedule 1? I would merely comment on the fact that I would say that a transaction involving cash nowadays is unusual, because of the fact that you have got electronic payments and you would not be carrying that sort of amount around in your back pocket.

**Mr Turner:** You would be surprised. *(Laughter)*

**A Member:** Mr Turner does. *(Laughter and interjections)*

**The President:** The mover to reply.

**Mr Braidwood:** Thank you, Madam President.

Madam President, there was wide consultation. In actual fact, it was extended. It was for eight weeks, and then it was extended for another four weeks, with as many bodies as possible, which were as you can see in schedule 1, where these businesses have to be registered. So there was extensive consultation.

On the question of 'lawyer' and 'advocate', I think it depends on the interpretation. I think, Madam President, we have been putting legislation through which says 'judge', and of course, in the Isle of Man, it is always 'Deemster'. So, through the interpretation of 'judge', it is interpreted as 'Deemster'. So, I presume that 'lawyer' again through the interpretation will be 'advocate'.

On the question of Mr Turner and the €15,000, I think my hon. colleague in Council, Mr Butt, mentioned such as car traders, where somebody could go and purchase a vehicle and then go down the road and resell it to another person. And, of course, that is like laundering the money.

Also, I think, as well, with cash payments are already covered by the anti-money laundering legislation, because if you go to any bank, post office and you try to put money in, you are only allowed to put in up to a certain level. If you go over more, you are then asked where you got this money from, and there is investigation that way.

Mr Coleman mentioned a series of linked transactions. I am just looking if there is anything which I am passed here...

My own presumption on the series of linked transactions is the same as if you are purchasing something and then you are trying to sell it to another car dealer, and then it goes down the chain of trying to launder the money. So, I hope that explanation, in my response to the queries, is satisfactory to such as Mr Coleman.

The linked transactions are also defined, Madam President, in the anti-money laundering legislation already available. And lawyers, it is because it needs to cover UK solicitors as well. So, the definition covers notaries, advocates and foreign lawyers.

So with that, Madam President, I would like to move clause 4 and schedule 1 stand part of the Bill.

**The President:** The motion is that clause 4 and schedule 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

**Mr Braidwood:** Thank you, Madam President.

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

Madam President, I beg to move that clause 5 stands part of the Bill.

**Mr Crowe:** I beg to second, Madam President and reserve my remarks.

**The President:** The motion is that clause 5 do 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:** Thank you, Madam President.

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.

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

**Mr Crowe:** I beg to second, Madam President and reserve my remarks.

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

Clause 7.

**Mr Braidwood:** Thank you, Madam President.

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

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

**Mr Crowe:** I beg to second, and can I just mention at this point, at the First Reading I did mention crypto currencies, which seems to be a growth industry in the Isle of Man and I know the hon. mover mentioned that it would be taken as secondary legislation in Tynwald. Perhaps, for the record, he could just confirm how this would be implemented in secondary legislation if that is available, Madam President.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Yes, thank you, Madam President.

In this section, I am interested in subsection (2), where it says:

'A person is treated as carrying on a designated business – ...

(b) from the Island if the person is – ...

(vii) an individual resident ... and carries on a designated business outside the Island.'

So, if somebody has got a business somewhere else, but they live here, then is this saying that they have to then be registered under this because, I mean, are we able to do that? Where a resident has registered somewhere else or operates somewhere else, how really can that be pursued and enforced?

**A Member:** It doesn't cover.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you, Madam President.

I was going to ask a similar question, but in the list of those in the schedule, there will be some businesses out there who do not know about this legislation and perhaps have not registered. Will there be any form of amnesty to actually give them time to register, or what are the Commission going to do to try to capture them and find out who is out there to let them become registered? Because at the moment as soon as this becomes law, they will be committing an offence.

**Mr Braidwood:** Six months.

**The President:** The mover to reply.

**Mr Braidwood:** Thank you, Madam President.

In response to Mr Crowe, I did give an explanation at the First Reading. A number of businesses, for example, virtual currency businesses are not included in schedule 4 to the Proceeds of Crime Act 2008 and are therefore not currently subject to the AML/CFT legislation. Although amendments are being drafted to include these as soon as possible after the Bill receives Royal Assent and subject to the approval of Tynwald, schedule 1 to the Bill will be amended by order to include these additional businesses. (**Mr Crowe:** Thank you.) So I did check on that when Mr Crowe raised it, Madam President.

In response to Mr Turner, it is only businesses which are from the Isle of Man which have to be registered. If you are resident in the Isle of Man, but have a business which is from the UK, this Bill does not apply to it.

And in regard to Mr Butt, they have six months to register. So if the Act is brought in and a person is carrying on a designated business, they have six months to register with the FSC.

**The President:** Yes, Mr Turner.

**Mr Turner:** Can I come back? Madam President, thank you.

I am just a little bit confused about you saying that the Member says it does not cover it, but it says here, 'an individual resident in the Island and carries on a designated business outside the Island'.

**Mr Braidwood:** Yes, then he is covered. If the business is registered in the Isle of Man and he is doing work outside of the Island, he is registered. If the business was in the UK, it is the other way. He does not have to. The Bill does not apply.

**The President:** Thank you for that clarification.

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:** Thank you, Madam President.

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 applications. Applications may be withdrawn.

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

**Mr Crowe:** I beg to second and reserve my remarks, Madam President.

**The President:** The Hon. Member, Mr Wild.

**Mr Wild:** Thank you, Madam President.

May I just ask my hon. colleague, Mr Braidwood, is there any feel for the volumes of registration that will come through, in terms of numbers and resource needed to actually manage the process?

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you.

May I just go back to the six months again? I cannot see anything in the Bill which gives six months' leeway – maybe I am wrong – so it is important that it goes on the record that is this what the Commission are planning to do, to give a six months' leeway. I think that it is important that it is recorded.

**Mr Braidwood:** Yes. It is a transitional period and they will have six months to apply from when the Bill becomes law.

**Mr Butt:** It is not in the Bill itself.

**Mr Braidwood:** Madam President, I have read it to you in the Bill and I am trying to think what clause – (*Interjection by Mr Butt*) It is clause 36, Madam President, which provides transitional provisions and it says it enables 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.

**Mr Butt:** Thank you, apologies, I did miss that. Thank you.

**The President:** The mover jumped in. Did anybody else wish to speak before we move on?

**Mr Braidwood:** Sorry, it was with Mr Butt, who wanted a clarification on the previous clause, Madam President.

**The President:** Yes, yes, okay. The motion is that clause 8. do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**Mr Braidwood:** There is only one clarification, Madam President. I think Mr Wild –

**The President:** I have already taken the clause, sir.

**Mr Braidwood:** Right, sorry.

**The President:** Clause 9.

**Mr Braidwood:** Clause 9 requires that on application the FSC must either register an 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 where an applicant may not be a fit and proper person and enables the FSC to publish guidance setting out the criteria. It 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 deregistered under clause 12. A person may appeal to the Financial Services Tribunal, against the FSC's refusal to register it.

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

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**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:** Thank you, Madam President.

Clause 10 enables the FSC to attach conditions to any registration and to amend or revoke any such conditions, or to attach new conditions. The FSC must give the registered person notice of, and reasons for, attaching a condition or changing a condition. A person may appeal to the Financial Services Tribunal regarding any conditions on its registration.

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

**Mr Crowe:** I beg to second, Madam President, 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:** Thank you, Madam President.

Clause 11 details the circumstances when the FSC may revoke registration and permit 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 a registered person's failure to comply with AML/CFT legislation, the FSC may refer the matter to the Attorney General for potential proceedings under the AML/CFT legislation.

Madam President, I beg to move that clause 11 stands part of the Bill.

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

As with lots of legislation that comes through, it is designed for a certain purpose. Can we have the mover's assurance that we are not going to see the regulator use this as a sledgehammer to crack a nut? We have seen in other anti-terrorism legislation being used for things by local councils, spying on people, what they are putting in wheelie bins and things. If you take that principle, you are looking at prosecuting firms for non-compliance. Can we have assurance that there is a scale of non-compliance and we will not be seeing silly prosecutions over minor matters and that this is used for the intention that it is set out for, when it comes to referring matters for proceedings.

**The President:** The mover to reply.

**Mr Braidwood:** Thank you, Madam President.

I think, Madam President, this was raised by Mr Turner at the First Reading and I assured him that we have had robust talks with the FSC and, as I have already said, there was wide public

consultation. In actual fact, because of this Bill, it is a lot narrower now with the AML/CFT legislation and, of course, a lot of the oversight will be delegated to their own bodies, such as with the accountants, such as with the lawyers. That came through, Madam President, on clause 6, where the FSC intends to delegate the power of inspection, such as to the Law Society, the Institute of Chartered Accountants in England and Wales, the Association of Chartered Certified Accountants, the Institute of Financial Accountants and the Institute of Certified Bookkeepers with regard to possible delegation of inspection powers. So, this is going to be a light touch of the FSC, Madam President.

I beg to move.

**The President:** 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 enables the FSC to deregister a person if the person has ceased to carry on any designated businesses 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 deregistration.

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

**Mr Crowe:** I beg to second, Madam President, 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.

Part 3, clause 13.

**Mr Braidwood:** Thank you, Madam President.

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

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

**Mr Crowe:** I beg to second and reserve my remarks, Madam President.

**The President:** The Hon. Member, Mr Wild.

**Mr Wild:** Thank you, Madam President.

If I could ask the Hon. Member of Council, Mr Braidwood whether he can give me the reassurance that the Commission is adequately resourced for this additional work, please.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Yes, it is just a comment really. Of course, we have seen, certainly this administration, with any excuse to raise fees and here is another one. It is, of course, an extra bureaucracy that businesses are going to have to cope with. I just wondered whether the mover could explain whether there are similar processes for these returns and fees and what other jurisdictions operate this regime, and if he could maybe explain that?

Thank you.

**The President:** The mover to reply.

**Mr Braidwood:** Thank You, Madam President.

It will be proportional, the fees. The FSC are resourced: they will be able to cope with all the work, which will be going on with their oversight within the own resources, at the present time. I mentioned, at the First Reading, that the annual fee will be up to £1,000, but it will be graded. (**Mr Wild:** Thank you, you.)

And in response to Mr Turner, in other jurisdictions, we are applying this because this is one of the reasons we are bringing it in because of the Financial Action Task Force and with the IMF report and with MONEYVAL coming in in 2016. But fees, yes, Jersey and Guernsey operate as does the UK, but we are a lot cheaper, Madam President, than those other jurisdictions.

**Mr Corkish:** Value for money.

**Mr Braidwood:** I beg to move, Madam President.

**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:** Thank You, Madam President.

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/CFT 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.

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

**Mr Crowe:** I beg to second and reserve my remarks, Madam President.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

Where it says about inspecting the books, accounts and documents, this is section 14(2), it talks about the 'transactions of a registered person'. Now, the registered person, obviously, from earlier on is the entity, the business or the individual. Does that extend, where it says here the transactions of the registered person, to their personal transactions and documents? In other words, the registered person in the definition is the entity carrying on the business, but if there was a suspicion that that person, in a private capacity may be involved in something, do the powers extend to the private affairs of that person, if it is an individual?

**The President:** The mover to reply.

**Mr Braidwood:** Thank you, Madam President.

In response to Mr Turner, the transactions which are on the carrying on of the registered business... however, if, Madam President, the transactions of the registered business will be looked at under the AML, but on private transactions, if it is not relevant to any anti-money laundering legislation, then they cannot look at private transactions.

**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:** Thank you, Madam President.

Clause 15 empowers the FSC to request any person, which it believes may hold information relevant to its functions under the Bill to provide that information. The FSA 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.

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

**Mr Crowe:** I beg to second Madam President, and reserve my remarks.

**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.

Clause 16.

**Mr Braidwood:** Thank you, Madam President.

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 of a designated business compliance with AML/CFT legislation. The powers enable the FSC to require a person to, answer questions or provide information relating to the investigation or produce and explain documents 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 and response to a 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).

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

**Mr Crowe:** I beg to second Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you, Madam President.

Reading this, it would appear that the only way that the Commission can obtain information is via an order from a justice of the peace. Does that mean then that if they ask for information, and they refuse to give it, if they have to go to a justice of the peace or can they ask for information and it can be given without requiring to go through that route?

**The President:** The mover to reply.

**Mr Braidwood:** They can request the information from the person who is running the designated business. If they refuse to give that information, then they can go to the justice of the peace, and if then they cannot get, and then we are coming onto the next clause, if they fail to provide the documentation, then they can actually go to the judge and get a warrant and be accompanied by a constable.

**Mr Butt:** Just to clarify, Madam President – they can ask for it and be given it; they do not have to go to the justice of the peace every time?

**Mr Braidwood:** No, they can just ask for it and be given it.

**Mr Butt:** Thank you.

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

Clause 17.

**Mr Braidwood:** Thank you, Madam President.

Clause 17 enables the FSC to seek 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 document 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.

Madam President, I beg to move that clause 17 stands part of the Bill.

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

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

Clause 18.

**Mr Braidwood:** Thank you, Madam President.

Clause 18 provides for offences in connection with inspections and investigations. This includes where 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 for up to two years.

Madam President, I beg to move that clause 18 stands part of the Bill.

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 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 requires a registered person to notify the FSC within a specified period of any change in the information provided under clause 8, and that person has ceased to carry on a designated business.

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

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**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 provides for offences in connection with; failing to notify any change in the information provided under clause 8; submitting false or misleading information; making 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.

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

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 20 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 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.

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

**Mr Crowe:** I beg to second, Madam President, 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.

Clause 22 and schedule 2.

**Mr Braidwood:** Thank you, Madam President.

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 for up to two years.

Madam President, I beg to move that clause 22 and schedule 2 stand part of the Bill.

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 22 and schedule 2 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 requires the auditors of designated businesses, if any, to report any proscribed matters to the FSC, which they become aware of, while discharging their functions. The FSC may proscribe such matters by order, after consultation with Treasury, the Department of Home Affairs and bodies representing the interests of auditors in the Island.

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

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

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

Clause 24.

**Mr Braidwood:** Thank you, Madam President.

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

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

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Just out of interest, Madam President, I just wondered why this particular register by the regulator needs to be a public register. Is there any particular reason for that? Just a query.

**The President:** The mover to reply.

**Mr Braidwood:** Thank you, Madam President.

Madam President, if we look at schedule 1, on which are designated businesses, if you wanted an external accountant or whatever, at least you could look on the website and see that this person is registered and the FSC has oversight.

I beg to move, Madam President.

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

Clause 25.

**Mr Braidwood:** Thank you, Madam President.

Clause 25 enables the FSC to issue reports of its findings from on-site inspections under clause 14(1). Reports may specify of failures to comply with AML/CFT legislation or designated businesses own AML/CFT procedures, actions 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.

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

**Mr Crowe:** I beg to second, Madam President, 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.

Clause 26.

**Mr Braidwood:** Thank you, Madam President.

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.

Madam President, I beg to move that clause 26 stands part of the Bill.

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you.

The mover may not be able to answer this today, but are these directions similarly imposed upon the corporate service providers and other persons registered with the Commission? Is this a similar process to those?

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

How is this going to work with foreign companies that are registered here? Is it really going to be effective, because, obviously, foreign companies, although on the F register, quite often they can be operated from elsewhere, and is the direction actually going to hold any water? Can it be ignored?

**The President:** The mover to reply.

**Mr Braidwood:** Thank you, Madam President.

In response to Mr Butt, who says where directions are given to corporate service providers or trust service providers: yes, directions are given to them. They come under the oversight totally of the FSC.

In regard to Mr Turner, directions will give a designated business if it is operated from the Isle of Man, directions will be given. If the directions are not complied with, then enforcement will take place, which I have already mentioned in some of the previous clauses. They have to be, if business is being from the Isle of Man and direction is not complied with, enforcement will be taken.

I beg to move, Madam President.

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

Clause 27.

**Mr Braidwood:** Thank you, Madam President.

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/CFT legislation.

The FSC may also issue a public statement concerning a person it considers is carrying on 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 practicable 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 so doing.

Madam President, I beg to move that clause 27 stands part of the Bill.

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 27 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 28.

**Mr Braidwood:** Thank you, Madam President.

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 that the public interest outweighs any detriment to the persons identified in the statement. However, if an appeal is made and the Tribunal orders that this statement must not be issued before a specific date or event, the FSC must abide by this order.

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

**Mr Crowe:** I beg to second, Madam President, 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:** Thank you, Madam President.

Clause 29 enables the FSC to apply to the court for an injunction, where it is likely that a 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/CFT legislation. Where the court is satisfied that steps could be taken to remedy the contravention, it may order a person to take steps to do so.

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

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 29 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 empowers the FSC to issue civil penalties 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 the condition under clause 10 or a direction under clause 26, to submit the annual return, to pay the annual fee or to 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 contravention. 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.

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

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

It is just a query really here about, well, it is more the process than the penalties. One of things that always concerns me when we bring legislation through is the extra bureaucracy that goes onto the person or in this case the businesses. I just wonder whether a lot of this will be able to be done electronically by web interfaces maybe, so that businesses can make their returns online rather than filling out endless forms to comply with all of this. Obviously if it is done electronically, like most things are these days then will there be automatic reminders going out that these returns are due because the whole idea of this is that the Commission want people to comply and really the Commission has a role in making the process as easy as possible. So, if there were this mechanism then there will be the least chance of people, while they are busy running their businesses, forgetting to file returns and other things.

**The President:** The mover to reply.

**Mr Braidwood:** Thank you, Madam President.

Madam President, I think that everything that Government does now, it tries to make it easier for businesses, for submitting National Insurance, for submitting Income Tax, because it is a lot easier

and is far more efficient and it is far more efficient for businesses as well, Madam President. The FSC would like as much online as possible, so to save bureaucracy, which I know Mr Turner is against, Madam President. So, yes everything will be done to cut down on bureaucracy and forms.

I beg to move, Madam President.

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

Part 4, clause 31.

**Mr Braidwood:** Thank you, Madam President.

Clause 31 enables the FSC to provide information and advice on the functions of the FSC under the Bill, or on 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.

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

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**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 enables the FSC to issue guidance for the purpose of establishing sound principles for compliance with the Bill and the AML/CFT legislation. The FSC may issue different guidance in respect of different types of designated businesses 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 the code issued under the AML/CFT 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.

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

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 32 do stand 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 provides that in specified circumstances, an aggrieved 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 relation to any decision of the tribunal.

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

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**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 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.

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

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

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

Clause 35.

**Mr Braidwood:** Thank you, Madam President.

Clause 35 enables the FSC to proscribe by order any matter that may be proscribed 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.

Madam President, I beg to move that clause 35 stands part of the Bill.

**Mr Crowe:** I beg to second and reserve my remarks, Madam President.

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

Clause 36.

**Mr Braidwood:** Thank you, Madam President.

Clause 36 provides transitional provisions. It clarifies that no offences committed under clause 7 by a person who carried on a designated business immediately before the clause came into operation. Furthermore, it enables 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.

Madam President, I beg to move that clause 36 stands part of the Bill.

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 36 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 37 and schedule 3.

**Mr Braidwood:** Thank you, Madam President.

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

Madam President, I beg to move that clause 37 and schedule 3 stands part of the Bill.

**Mr Crowe:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Downie.

**Mr Downie:** Thank you, Madam President.

As a result of a drafting error in the Bill, I propose an amendment to paragraph 1 of schedule 3 to the Bill:

*Amendment to paragraph 1 of schedule 3*

*Page 42, for sub-paragraph (9) substitute —*

*(9) For paragraph 3(1) of Schedule 2 substitute —*

*'(1) If, on an application made by the Commission, a justice of the peace is satisfied that there is good reason to do so for either or both of the following purposes —*

*(a) investigating the affairs, or any aspect of the affairs, of any person so far as it is relevant to any regulated activity that the person is or was carrying on, or appears to be or to have been carrying on;*

*(b) assessing compliance with AML/CFT legislation so far as it is relevant to any regulated activity that the person is or was carrying on, or appears to be or to have been carrying on, the justice may by written instrument authorise the Commission to exercise the powers under this paragraph which powers are not otherwise exercisable.'*

Schedule 3 details minor and consequential amendments to other pieces of legislation. The amendment in paragraph 1(9), in schedule 3 to the Bill, needs to extend the final Financial Supervision Commission's investigation powers in paragraph 3(1) of schedule 2 to the Financial Services Act 2008, which relate to regulated activities, so that they also include the assessment of compliance with AML/CFT legislation, so far as it is relevant to any regulated activity.

However, the drafted amendment, erroneously, replaced the Financial Supervision Commission's investigation powers, relating to regulated activity, only with powers relating to the assessment of compliance with the AML/CFT legislation. It is crucial, therefore, that this error be corrected in order that the Financial Supervision Commission may continue to undertake its core function of oversight of regulated activity.

Madam President, I beg to move the amendments to paragraph 1 of schedule 3 to the Bill standing in my name.

**Mr Braidwood:** I beg to second, Madam President.

**The President:** The motion is that clause 37 and schedule 3 do stand part of the Bill. To that we have the amendment in the name of Mr Downie, which I shall now put. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

I now put the clause and the schedule as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.