



Isle of Man

Ellan Vannin

**FINANCIAL SERVICES (MISCELLANEOUS
AMENDMENTS) BILL 2012**

FINANCIAL SERVICES (MISCELLANEOUS AMENDMENTS) BILL 2012

Explanatory Memorandum

1. This Bill is promoted by the Treasury.
2. *Clauses 1 to 3* respectively provide for the short title of the resulting Act, its commencement and for the interpretation of terms used in it.
3. *Clause 4* introduces amendments to the Financial Services Act 2008 (“FSA 2008”).
4. *Clause 5* inserts section 3A into FSA 2008. This provides that the new Schedule 1A, (which is contained in the Schedule to the Bill) should have effect.
5. *Clause 6* extends the range of information to which the Commission must have regard, in assessing whether an applicant is a fit and proper person to hold a licence, to include information about those associated with the licenceholder and those proposed to be employed by it.
6. *Clause 7* makes minor amendments to section 10, changing the heading to the section, correcting a typographical error in the original Act and making it clear that a licenceholder must not employ a prohibited person.
7. *Clause 8* inserts sections 10A to 10D which make fresh provision about the imposition of a prohibition, its variation and discharge, and the maintenance of a register of prohibited persons.
8. *Clause 9* makes a consequential amendment to section 11 to permit the giving of a warning notice before the imposition of a prohibition. It also permits such a warning to be given to a person who has been a key person, director or controller of a licenceholder (as well as to one who is currently such a person).
9. *Clause 10* clarifies section 13 (public statements) in relation to the circumstances in which making a public statement may be made by the Commission. These will include the imposition of a prohibition under the new section 10A.
10. *Clause 11* amends section 14 (directions) to make it clear that the Commission may vary or revoke a direction. If it varies a direction it must give reasons for doing so.
11. *Clause 12* makes minor amendments to section 19 (which contains supplementary provisions in connection with the Rule Book) to make it clear that the Commission may take action for a breach for non-compliance with a requirement imposed in accordance with, as well as a requirement imposed by, the Rule Book.

12. *Clause 13* amends section 20 to permit the Commission to seek an injunction if it appears that a person is likely to breach a prohibition under section 10A.
13. *Clause 14* amends section 23 (appointment of reporting accountants, etc) to add non-compliance with a notice served under subsection (1) to the grounds upon which action for a breach may be instituted.
14. *Clause 15* adds to the list of cases in which an appeal lies to the Financial Services Tribunal and in consequence replaces section 32(3) in its entirety.
15. *Clause 16* restructures section 33 (statutory indemnity) to clarify its effect.
16. *Clause 17* amends section 40, making it an offence for a person to fail, without reasonable excuse, to furnish information required by the Commission under FSA 2008.
17. *Clause 18* amends section 41 to add to the list of penalties those for offences under sections 10 and 10A.
18. *Clause 19* amends section 48 (interpretation) to expand the definition of “director” to include a member of the council of a foundation under the Foundations Act 2011 and to expand the definition of “action for a breach” so as to include the imposition of a prohibition under section 10A.
19. *Clause 20* amends Schedule 1 which deals with the constitution, powers and functions of the Financial Supervision Commission. It restricts Tynwald’s power to remove a Commissioner so that one of a series of specific grounds must be satisfied, and the ground on which removal is proposed must be identified in the motion for removal. It expands the factors to which the Commission must have regard in making its decision to include the stability of the Island’s financial system. It also restricts the Treasury’s powers to set policies and strategies for the Commission to matters of general guidance.
20. *Clause 21* amends Schedule 2 so as to extend the powers of inspection to cover the records and transactions of a recognised auditor (but only insofar as the person is acting as a recognised auditor). It also makes it clear that those powers extend to persons who have been permitted persons or recognised auditors as well as those who are.
21. *Clause 22* makes minor amendments to Schedule 3 so as to permit the Rule Book to confer discretion on the Commission in respect of the furnishing of information and the production of documents.
22. *Clause 23* makes drafting amendments to Schedule 4 (mediation and adjudication by the Office of Fair Trading) about the increasing level of compensation that may be awarded in relation to a financial services dispute.
23. *Clause 24* restructures the provisions on the disclosure of information to ensure that the Commission may disclose information to the Office of Fair Trading for the purposes of their statutory functions and to ensure that list of enactments which it inserts can be kept up to date.

24. *Clause 25* makes minor drafting amendments to simplify references to contravention.
25. *Clause 26* introduces the amendments (contained in *clauses 27 to 34*) to the Collective Investment Schemes Act 2008.
26. *Clauses 27 and 28* respectively amend the heading to Part 5 and section 11 of that Act in consequence of the amendments made by clause 29.
27. *Clause 29* inserts new sections 11A to 11F which correspond to the amended section 10 and sections 10A to 10D of FSA 2008 (see clauses 8 and 9 above).
28. *Clause 30* empowers the Commission to impose a civil penalty upon a relevant person who has contravened the Act, or a requirement imposed under it, or given false information in response to such a requirement.
29. *Clause 31* restructures the provisions of section 21 (appeals against Commission decisions) in consequence of the insertion of sections 11A to 11F.
30. *Clause 32* is a minor deregulatory amendment which removes the need for regulations to prescribe the form and content of documents. These will instead be determined by the Commission, who must communicate the content of determinations to those affected by them in such manner as appears appropriate.
31. *Clause 33* amends Schedule 1 to permit the provisions of paragraph 2 about authorisation orders to be amended in future by order of the Treasury.
32. *Clause 34* amends Schedule 4 which concerns “recognised schemes”, that is collective investment schemes managed in, authorised under the law of a designated country or territory outside the Island. Its effect is to authorise the making of regulations requiring information to be provided by the managers of such schemes in any relevant communication with those likely to invest in them.
33. *Clauses 35 and 36* contain the Bill’s closing provisions which make amendments, repeals and revocations consequential on the other provisions.
34. The Bill is not expected to have any significant effect on public revenue, expenditure or personnel. As the amendments are principally clarifications, there are expected to be negligible additional costs to Government and for industry there may be some reductions in costs.
35. In the view of the member moving the Bill, Mr Teare, its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



Ellan Vannin

FINANCIAL SERVICES (MISCELLANEOUS AMENDMENTS) BILL 2012

Index

Section	Page
PART 1 – INTRODUCTORY	9
1 Short title	9
2 Commencement	9
3 Interpretation.....	9
PART 2 – AMENDMENT OF FSA 2008	10
4 Amendment of FSA2008.....	10
5 Transfers of deposit-taking business: section 3A inserted.....	10
6 Circumstances where a licence will not be issued: section 6 amended	10
7 Section 10 amended	10
8 Prohibition: sections 10A to 10D inserted	10
9 Warning notices: section 11 amended	12
10 Public statements about contraventions: section 13 amended	13
11 Directions: section 14 amended	14
12 The Rule Book – supplementary provisions: section 19 amended	14
13 Injunctions, etc: section 20 amended.....	14
14 Appointment of reporting accountants etc: section 23 amended	15
15 Appeals to the Financial Services Tribunal: section 32 amended.....	15
16 Statutory indemnity: section 33 amended.....	15
17 Offences in connection with information: section 40 amended	16
18 Offences: section 41(2) amended	16
19 Interpretation: section 48 amended.....	16
20 Financial Supervision Commission: Schedule 1 amended	17
21 Inspection and investigation: Schedule 2 amended.....	18
22 Content of Rule Book: Schedule 3, paragraph 1 amended	20
23 Mediation and adjudication: Schedule 4 amended.....	20
24 Disclosure of information: Schedule 5, paragraph 2 amended	21
25 References to contravention amended.....	22
PART 3 – AMENDMENT OF CISA 2008	22
26 Amendment of CISA 2008	22

27	Heading to Part 5 substituted.....	22
28	When Commission may exercise Pt 5 powers: section 11 amended.....	22
29	Sections 11A to 11F inserted	23
30	Section 19A inserted.....	27
31	Appeals against Commission decisions: section 21 amended	28
32	Determinations about information: section A24 inserted	30
33	Authorised schemes: Schedule 1, paragraph 2 amended.....	30
34	Information about recognised schemes: Schedule 4 amended	30
PART 4 – CLOSING PROVISIONS		31
<hr/>		
35	Consequential amendments	31
36	Repeal and revocations.....	31
SCHEDULE		33
<hr/>		
SCHEDULE TO BE INSERTED AS SCHEDULE 1A TO FSA 2008		33



Ellan Vannin

FINANCIAL SERVICES (MISCELLANEOUS AMENDMENTS) BILL 2012

1 **A BILL** to amend the Financial Services Act 2008 and the Collective Investment
2 Schemes Act 2008; and for connected purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

3 **PART 1 – INTRODUCTORY**

4 **1 Short title**

5 The short title of this Act is the Financial Services (Miscellaneous Amendments)
6 Act 2012 .

7 **2 Commencement**

- 8 (1) This Act, other than section 1 and this section, comes into operation on
9 such day or days as may be specified by order made by the Treasury.
- 10 (2) An order under subsection (1) may include such consequential,
11 incidental, supplementary, transitional and transitory provisions as
12 appear to the Treasury to be necessary or expedient in connection with
13 the partial operation of this Act.

14 **3 Interpretation**

15 In this Act—

16 “**CISA 2008**” means the Collective Investment Schemes Act 2008¹; and

17 “**FSA 2008**” means the Financial Services Act 2008².

¹ c.7

² c.8

³ c.4



PART 2 — AMENDMENT OF FSA 2008**4 Amendment of FSA2008**

FSA 2008 is amended as follows.

5 Transfers of deposit-taking business: section 3A inserted

After section 3 insert—

“3A Transfers of deposit-taking business

 | Schedule 1A (transfers of deposit-taking business) has effect.”.

6 Circumstances where a licence will not be issued: section 6 amended

(1) Section 6 is amended as follows.

(2) In subsection (1)(c) at the end add “to act as such”.

(3) In subsection (2)—

(a) after paragraph (b) omit “and”; and

(b) at the end add—

 | “and

(d) any other persons employed or to be employed by the applicant, or associated with the applicant for the purposes of its business.”.

7 Section 10 amended

(1) Section 10 is amended as follows.

(2) For the heading substitute—

“Persons unfit to be directors, controllers or key persons”.

(3) In subsection (4)(b)(i) for “applicant” substitute “appellant”.

(4) In subsection (8) for “It shall be the duty of a licenceholder to take reasonable care not to” substitute “A licenceholder must not”.

8 Prohibition: sections 10A to 10D inserted

After section 10 insert—

“10A Prohibitions

(1) The Commission may impose a prohibition if it appears to the Commission that an individual is not a fit and proper person to

- 1 perform one or more functions in relation to a regulated activity
 2 carried on, or proposed to be carried on, by a permitted person.
- 3 (2) Before imposing a prohibition, the Commission must give the
 4 individual whom it proposes to prohibit an opportunity to make
 5 representations in accordance with section 10B.
- 6 (3) A prohibition may prevent an individual from performing, either
 7 in relation to a particular permitted person, a specified class of
 8 permitted person, or generally—
- 9 (a) any function;
 10 (b) a specified function; or
 11 (c) a function of a specified class.
- 12 (4) A prohibition may relate to—
- 13 (a) any regulated activity;
 14 (b) a regulated activity specified in the prohibition; or
 15 (c) a regulated activity of a specified class.
- 16 (5) An individual commits an offence if he or she performs, or agrees
 17 to perform, a function which he or she is prohibited from
 18 performing.
- 19 (6) A permitted person commits an offence if without reasonable
 20 excuse the permitted person permits an individual to perform a
 21 function which the individual has been prohibited from
 22 performing.
- 23 (7) A prohibition operates subject to subsections (8) to (10).
- 24 (8) Notice of a prohibition must be served upon the individual
 25 prohibited, either personally or by registered post to the
 26 individual's last known address.
- 27 (9) Once it has been served a prohibition comes into operation on—
- 28 (a) the expiry of time for appealing against it under section 32;
 29 or
 30 (b) if an appeal is brought within that time, on the
 31 determination or withdrawal of that appeal.
- 32 This subsection is subject to subsection (10).
- 33 (10) Section 10(5) applies to a prohibition as it applies to a direction
 34 under that section.
- 35 (11) A notice of prohibition must —
- 36 (a) state the terms of the prohibition;
 37 (b) state the reasons for imposing the prohibition; and
 38 (c) give particulars of the right of appeal under section 32.

10B Prohibition procedure

- (1) If the Commission proposes to impose a prohibition under section 10A, it must give written notice to that effect (a “preliminary notice”) to the individual whom it proposes to prohibit.
- (2) The preliminary notice must—
- (a) state that the Commission proposes to impose a prohibition;
 - (b) state the terms of the proposed prohibition;
 - (c) state the grounds for imposing the prohibition;
 - (d) state that within 28 days the individual proposed to be prohibited may make representations to the Commission in such manner as the Commission may specify in the preliminary notice; and
 - (e) give particulars of the right of appeal under section 32 that would be exercisable if the Commission imposed the prohibition.
- (3) The Commission must have regard to any representations made in accordance with subsection (2)(d) before imposing a prohibition.

10C Prohibitions: variation and revocation

- (1) On the application of a prohibited person, the Commission may vary or revoke a prohibition.
- (2) The Commission must give the prohibited person a statement of its reasons for any decision it makes on an application under subsection (1).

10D List of prohibitions

- (1) The Commission must maintain and publish a list of prohibitions.
- (2) The list must specify the individual prohibited and the functions, or descriptions of functions to which the prohibition applies.”.

9 Warning notices: section 11 amended

- (1) Section 11 is amended as follows.
- (2) In subsection (1) —
- (a) after paragraph (a) omit “or” and insert —
 - “(aa) before imposing a prohibition under section 10A(1); or”;
 - and
 - (b) in the words following paragraph (b) after “under this section to a” insert “person who is or has been a”.

- 1 (3) In subsection (3)—
- 2 (a) in paragraphs (a) and (b) omit “remedial”;
- 3 (b) at the end of paragraph (a) omit “or”;
- 4 (c) at the end of paragraph (b) insert “; or”;
- 5 (d) after that paragraph insert—
- 6 | “(c) specify action that the relevant person must take and the
- 7 | time within which it must be taken.”.
- 8 (4) In subsection (4)—
- 9 (a) after “section 10(2),” insert “or imposing a prohibition under
- 10 section 10A,”; and
- 11 (b) omit “remedial”.
- 12 (5) In subsection (5)(a) after “section 10” insert “or 10A”.
- 13 (6) In subsection (6)(b) omit “remedial”.
- 14 (7) In subsection (7) —
- 15 (a) in the opening words omit “issued under subsection (1)”;
- 16 (b) in paragraphs (a) and (b) for “a person to whom such a notice has
- 17 been issued” substitute “a notified person”;
- 18 (c) at the end of paragraph (a) omit “or”;
- 19 (d) at the end of paragraph (b) insert “; or”; and
- 20 (e) after that paragraph insert—
- 21 | “(c) a company of which a notified person is, or is likely to
- 22 | become an officer.”;
- 23 and
- 24 (f) omit the proviso (at the end of the subsection).
- 25 (8) At the end of the section add—
- 26 | “(8) In subsection (7)—
- 27 | “notified person” means a person to whom a notice under subsection (1)
- 28 | has been given that is still effective in accordance with subsection
- 29 | (6); and
- 30 | “officer” means an officer of a company for the purposes of the Company
- 31 | Officers (Disqualification) Act 2009³ (see section 1(2) of that Act).”.

32 10 Public statements about contraventions: section 13 amended

- 33 (1) Section 13 is amended as follows.
- 34 (2) In subsection (1) for everything after “believe that” substitute—
- 35 | “the person is contravening, or has contravened—

³ c.4

- 1 (a) any provision of, or made under, this Act; or
 2 (b) any condition, requirement or prohibition imposed, or any
 3 direction given, under or by virtue of this Act.”.

4 (3) For subsection (3) substitute—

5 “(3) If the Commission has made, varied or revoked a direction under
 6 section 10(1) or (2) or a prohibition under section 10A, the
 7 Commission may issue a public statement containing—

- 8 (a) such information about the person subject to the direction
 9 or prohibition as it believes appropriate in the
 10 circumstances; and
 11 (b) such other information as it believes desirable in the public
 12 interest about the reasons for —
 13 (i) giving the direction or imposing the prohibition; or
 14 (ii) varying or revoking the direction or prohibition.”.

15 (4) In subsection (7)—

- 16 (a) after “section 10(1) or (2)” insert “or a prohibition under section
 17 10A”“;
 18 (b) after “on which the direction” insert “or prohibition”; and
 19 (c) omit “in accordance with section 10(4)”.

20 11 Directions: section 14 amended

21 After section 14(2) insert—

22 “(2A) The Commission may revoke or vary any directions under
 23 subsection (2) and the requirement in that subsection to give a
 24 statement of reasons applies to a variation as it applies to the issue
 25 of a direction.”.

26 12 The Rule Book – supplementary provisions: section 19 amended

27 (1) Section 19 is amended as follows.

28 (2) For subsection (1) substitute—

29 “(1) If a licenceholder contravenes a requirement imposed by, or in
 30 accordance with, the Rule Book (“a relevant requirement”), the
 31 Commission may undertake action for a breach.”.

32 (3) In subsection (2) for “the Rule Book” substitute “a relevant requirement”.

33 13 Injunctions, etc: section 20 amended

34 (1) Section 20 is amended as follows.

35 (2) In subsection (1)(a)—

- 36 (a) at the end of sub-paragraph (iv) omit “or”; and

- 1 (b) after that sub-paragraph insert —
 2 | “(v) any prohibition under section 10A; or”
 3 (3) In subsection (2)(b) after “investors” insert “or customers”.

4 **14 Appointment of reporting accountants etc: section 23 amended**

5 At the end of section 23 add —

- 6 | “(10) If a permitted person is in breach of a notice under subsection (1)
 7 the Commission may undertake such action for a breach as is
 8 appropriate.”

9 **15 Appeals to the Financial Services Tribunal: section 32 amended**

10 For section 32(3) substitute —

- 11 | “(3) A person aggrieved may appeal, in accordance with rules made
 12 under section 8 of the *Tribunals Act 2006*, against any decision of
 13 the Commission specified in column 1 of the Table below which is
 14 made under the provision specified in column 2.

Decision	Provision
The issue of a licence subject to conditions	Section 7(1)(b)
The refusal to issue a licence	Section 7(1)(c)
The imposition of conditions, or further conditions upon a licence	Section 8(1)(a)
The variation or revocation of, or refusal to vary any condition attached to a licence	Section 8(1)(b)
The suspension of a licence	Section 9(1)
The revocation of a licence	Section 9(1)
The issue or variation of, or refusal to vary or revoke a direction	Section 10
The imposition of a prohibition	Section 10A
The variation or refusal to vary a prohibition	Section 10C
The refusal to revoke a prohibition	Section 10C
The giving of a warning notice, or the terms of such a notice	Section 11
The issue or variation of, or refusal to vary or revoke, a direction	Section 14
The imposition of a penalty	Section 16
The withdrawal of an exemption	Regulations under section 44(3)(b)
The issue of a direction	Paragraph 2 of Schedule 2”

15 **16 Statutory indemnity: section 33 amended**

- 16 (1) Section 33 is amended as follows.
 17 (2) In subsection (1) after “omitted to be done — ” insert —

1 | “(aa) in the exercise or purported exercise of the Commission’s
2 | functions;”.

3 | (3) For subsection (2) substitute—

4 | “(2) None of the persons listed in subsection (2A) shall be liable in
5 | damages for, or in respect of, any act or omission unless the act or
6 | omission is shown to have been in bad faith.

7 | (2A) The persons are —

- 8 | (a) the Commission;
9 | (b) any member, officer or employee of the Commission;
10 | (c) a designated body;
11 | (d) any officer, member or employee of a designated body;
12 | (e) any other person acting on behalf of the Commission or a
13 | designated body;
14 | (f) any person acting pursuant to any authority conferred by
15 | the Commission or a designated body.”.

16 | (4) In subsection (4), in the definition of “designated body”, omit paragraph
17 | (b).

18 | **17 Offences in connection with information: section 40 amended**

19 | (1) Section 40 is amended as follows.

20 | (2) Renumber the existing text as subsection (1).

21 | (3) After subsection (1) add—

22 | “(2) A person who, without reasonable excuse, fails to furnish
23 | information which that person is required to furnish to the
24 | Commission under this Act, is guilty of an offence.

25 | (3) Nothing in this Act requires a person to furnish information to the
26 | Commission in respect of which a claim to legal professional
27 | privilege could be maintained by that person in proceedings
28 | before a court.”.

29 | (4) The heading to the section accordingly becomes “**Offences in connection
30 | with information**”.

31 | **18 Offences: section 41(2) amended**

32 | In section 41(2) after “10(7)” insert “or (8) or section 10A(5) or (6)”.

33 | **19 Interpretation: section 48 amended**

34 | (1) Section 48 is amended as follows.

35 | (2) In subsection (1) in the definition of “director” at the end add—

1 “(e) in relation to a foundation within the meaning of the
2 Foundations Act 2011⁴, a member of the council of the
3 foundation;”.

4 (3) In subsection (3) after paragraph (b) insert—

5 “(ba) the imposition of a prohibition under section 10A;”.

6 **20 Financial Supervision Commission: Schedule 1 amended**

7 (1) Schedule 1 is amended as follows.

8 (2) In paragraph 1—

9 (a) at the end of sub-paragraph (4) add “if one of the grounds
10 specified in sub-paragraph (4A) is satisfied.”; and

11 (b) after that sub-paragraph insert—

12 “(4A) The grounds are that the Commissioner—

13 (a) has been absent from meetings of the Commission, without
14 permission, for a period of 3 months;

15 (b) is incapacitated either mentally or physically, from
16 carrying out the Commissioner’s functions;

17 (c) has been declared bankrupt (whether in the Island or
18 elsewhere) or entered into an arrangement with his or her
19 creditors; or

20 (d) is otherwise unfit or unable to discharge the functions of a
21 Commissioner.

22 (4B) The proposal for a resolution of Tynwald under sub-paragraph (4)
23 must specify which of the grounds in sub-paragraph (4A)
24 applies.”.

25 (3) In paragraph 3, at the end add—

26 “(i) the impact of its decisions on the stability of the financial
27 system of the Island.”.

28 (4) In paragraph 4—

29 (a) for sub-paragraphs (1) and (2) substitute—

30 “(1) After consulting the Commission, the Treasury may give the
31 Commission—

32 (a) written guidance of a general character; and

33 (b) written directions of a general character concerning the
34 policies to be followed by the Commission in relation to
35 the development of and supervision of regulated activities
36 in the Island and the manner in which the Commission is
37 to carry out any of its functions.

⁴ AT 17 of 2011.

- 1 (2) In carrying out its functions the Commission must—
- 2 (a) take into account any guidance under sub-paragraph
- 3 (1)(a); and
- 4 (b) comply with any directions given under sub-paragraph
- 5 (1)(b).
- 6 (2A) Any guidance or direction given under this paragraph—
- 7 (a) may be given only in the public interest, and not to
- 8 influence particular cases;
- 9 (b) must not prejudice the operational independence of the
- 10 Commission by specifying the manner in which the
- 11 Commission must carry out its functions; and
- 12 (c) must be published as soon as reasonably practicable (but
- 13 may come into operation as soon as it is given).
- 14 (2B) The Treasury may by order amend paragraph 2 or 3 to such extent
- 15 as is necessary to secure consistency with any guidance or
- 16 direction given under sub-paragraph (1).”.

17 (5) The heading to paragraph 4 accordingly becomes—

18 **“Treasury directions and guidance”.**

19 **21 Inspection and investigation: Schedule 2 amended**

- 20 (1) Schedule 2 is amended as follows.
- 21 (2) In paragraph 1—
- 22 (a) at the end of sub-paragraph (1)(a) omit “or”;
- 23 (b) after sub-paragraph (1)(b) insert—
- 24 “; or
- 25 (c) a recognised auditor (but only insofar as concerns the audit
- 26 of market traded companies).”;
- 27 (c) for sub-paragraph (6) substitute—
- 28 “(6) The powers provided by this paragraph may be exercised in
- 29 relation to a former permitted person or a former recognised
- 30 auditor, but only in respect of, or in connection with such
- 31 transactions, matters or circumstances as occurred or existed
- 32 when that person was a permitted person or a recognised
- 33 auditor.”;
- 34 (d) in sub-paragraph (7) for the words from “who is” to the end
- 35 substitute—
- 36 “whom the Commission reasonably suspect of—
- 37 (a) carrying on a regulated activity when not a permitted
- 38 person; or

- 1 (b) auditing accounts that are required to be audited by a
2 recognised auditor when not a recognised auditor.”.
- 3 (e) at the end add—
- 4 “(9) For the purposes of this paragraph —
- 5 “exempt company” means —
- 6 (a) a company which is an issuer exclusively of debt securities
7 admitted to trading on a regulated market, the
8 denomination per unit of which is at least €50,000 (or the
9 equivalent at the date of issue denominated in another
10 currency); or
- 11 (b) an open-ended investment company defined in section 26
12 of the *Collective Investment Schemes Act 2008*;
- 13 “incorporated in the Island” in relation to a company means —
- 14 (a) incorporated, formed and registered or capable of being
15 wound up under the *Companies Act 1931*;
- 16 (b) companies incorporated or continued under the *Companies*
17 *Act 2006*; or
- 18 (c) formed under the *Limited Liability Companies Act 1996*;
- 19 “market traded company” means a company incorporated in the Island,
20 the transferable securities of which are admitted to trading on a
21 regulated market, except where that company is an exempt
22 company;
- 23 “recognised auditor” “means an auditor that is entered on the register
24 kept under section 14G of the *Companies Act 1982*.
- 25 (10) The Treasury may amend sub-paragraph (9) by order if it appears
26 to it to be appropriate to do so.”.
- 27 (3) In paragraph 2 —
- 28 (a) for sub-paragraph (1) substitute—
- 29 “(1) The Commission may request any person whom it reasonably
30 believes may hold information that it reasonably requires for the
31 performance of its functions under this Act to provide that
32 information.”;
- 33 (b) in sub-paragraph (3)—
- 34 (i) at the beginning insert—
- 35 “If it has made a request of a permitted person, former permitted
36 person, recognised auditor or former recognised auditor”;
- 37 and
- 38 (ii) for “any permitted person or former permitted person”
39 substitute “that person”; and

(c) in sub-paragraph (6) for the words from “of carrying on” to the end of the sub-paragraph substitute—

“—

- (a) of carrying on, or having carried on a regulated activity when not a permitted person;
- (b) of auditing or of having audited accounts required to be audited by a recognised auditor when not a recognised auditor.”.

22 Content of Rule Book: Schedule 3, paragraph 1 amended

- (1) Paragraph 1 of Schedule 3 is amended as follows.
- (2) Renumber the existing text as sub-paragraph (1) of that paragraph.
- (3) In sub-paragraph (1)(u) and (w) omit “in the Rule Book”.
- (4) After that sub-paragraph add—
 - “(2) For the sake of clarity “specified” (without more) in sub-paragraph (1) means specified by the Commission in such manner as it thinks fit.
 - (3) Where the Commission specifies any requirement otherwise than in the Rule Book it must take reasonable steps to draw the requirement to the attention of those likely to be affected by it.”.

23 Mediation and adjudication: Schedule 4 amended

- (1) Schedule 4 is amended as follows.
- (2) In paragraph 6—
 - (a) in sub-paragraph (2)(b) for “£150,000” substitute “the applicable amount”; and
 - (b) after that sub-paragraph insert—
 - “(2A) In sub-paragraph (2) “the applicable amount” is —
 - (a) in respect of an act or omission occurring on or after the date of the coming into operation of this Schedule but before 1 April 2012, £100,000; and
 - (b) in respect of an act or omission occurring on or after 1 April 2012, £150,000.”.
- (3) For paragraph 10(3) substitute—
 - “(3) If it appears to the Treasury expedient to do so having regard to any change in the value of money, the Treasury may by order amend paragraph 6(2A).

1 An order under this sub-paragraph may include any transitional
 2 or consequential provision that appears to the Treasury to be
 3 necessary or expedient.”.

4 **24 Disclosure of information: Schedule 5, paragraph 2 amended**

5 (1) Paragraph 2 of Schedule 5 is amended as follows.

6 (2) In sub-paragraph (1) —

7 (a) in paragraph (n) for “their functions” substitute “their respective
 8 functions”;

9 (b) after paragraph (n) insert —

10 “(na) for the purpose of enabling or assisting the Isle of Man
 11 Office of Fair Trading to discharge its functions under the
 12 enactments listed in sub-paragraph (1A);”;

13 (c) at the end add —

14 “(s) for the purpose of enabling or assisting the Collector of
 15 Customs and Excise to discharge the Collector’s functions
 16 under enactments relating to customs and excise or in
 17 relation to any assigned matter (as defined in section 184 of
 18 the Customs and Excise Management Act 1986⁵).”.

19 (3) After sub-paragraph (1) insert —

20 “(1A) The enactments referred to in sub-paragraph (1)(na) are —

21 (a) the Auctions Act 1985⁶;

22 (b) the Chapmen’s Act 1971⁷;

23 (c) the Consumer Protection Act 1991⁸;

24 (d) the Consumer Protection (Trade Descriptions) Act 1970⁹;

25 (e) the Fair Trading Act 1996¹⁰;

26 (f) the Moneylenders Act 1991¹¹;

27 (g) the Non-Resident Traders Act 1983¹²;

28 (h) the Timeshare Act 1996¹³;

29 (i) the Trade Marks Act 1994 (of Parliament)¹⁴;

30 (j) the Unsolicited Goods and Services (Isle of Man) Act
 31 1974¹⁵; and

⁵ c.34

⁶ c.26

⁷ c.9

⁸ c.11

⁹ XXI, p. 482

¹⁰ c.15

¹¹ c.6

¹² c.26

¹³ c.7

¹⁴ c.26

(k) the Video Recordings Act 1995¹⁶.

(1B) The Treasury may by order amend the list in sub-paragraph (1A).”.

25 References to contravention amended

- (1) In the provisions specified in subsection (2) for “is in contravention of” substitute “contravenes”.
- (2) The provisions are—
 - section 7(6);
 - section 8(4);
 - section 14(3);
 - section 41(1) and (2);
 - section 43;
 - section 44(4);
 - Schedule 2, paragraph 2(4).
- (3) In Schedule 4, paragraph 11(2) for “acts in contravention of” substitute “contravenes”.

PART 3 — AMENDMENT OF CISA 2008

26 Amendment of CISA 2008

CISA 2008 is amended as follows.

27 Heading to Part 5 substituted

For the heading to Part 5 substitute “OVERSIGHT AND INTERVENTION”.

28 When Commission may exercise Pt 5 powers: section 11 amended

- (1) Section 11 is amended as follows.
- (2) In the words preceding paragraph (a) for “make a direction under section 12 or an appointment under section 13” substitute “exercise its powers under this Part”.
- (3) In paragraph (a) for “under section 12 or 13” substitute “under this Part”.
- (4) The heading of the section accordingly becomes—

¹⁵ c.5

¹⁶ c.19

1 **“When Commission may exercise powers under this Part”.**

2 **29 Sections 11A to 11F inserted**

3 After section 11 insert—

4 **“11A Persons unfit to be members of governing body**

- 5 (1) If, on reasonable grounds, it appears to the Commission that a
6 person is not a fit and proper person to be a member of the
7 governing body of a scheme the Commission may direct that such
8 person must not, without the written consent of the Commission,
9 be appointed a member of the governing body of a scheme.
- 10 (2) If, on reasonable grounds, it appears to the Commission that any
11 person who is a member of the governing body of a scheme is not
12 a fit and proper person to continue as such, the Commission may
13 direct that such person must not, without the written consent of
14 the Commission, continue as a member of the governing body of
15 that scheme.
- 16 (3) The Commission must give written notice to the person concerned
17 of any decision to give a direction under this section together with
18 a statement of the reasons for the decision.
- 19 (4) Subject to subsection (5), if a notice has been given under
20 subsection (3), the direction takes effect—
- 21 (a) if no appeal under section 21 is made within the period
22 prescribed for the purposes of such an appeal, on the
23 expiry of that period; or
- 24 (b) if there is an appeal under section 21—
- 25 (i) where the appellant abandons the appeal, on the
26 date of abandonment;
- 27 (ii) where the decision of the Commission is confirmed,
28 on the date of confirmation; or
- 29 (iii) where the decision of the Commission is varied, on
30 such date as the Tribunal constituted under section
31 21 directs.
- 32 (5) If the Commission is of the opinion that a direction should have
33 immediate effect, the notice under subsection (3) must contain a
34 statement to that effect together with the reasons for that opinion,
35 and the direction has effect on the giving of the notice.
- 36 (6) Any direction or consent by the Commission under subsection (1)
37 or (2) may be—
- 38 (a) given subject to conditions;
- 39 (b) varied from time to time; and

(c) revoked at any time,
and the Commission must give written notice to the person concerned of any decision to exercise the powers in this subsection.

(7) A person must not be a member of the governing body of a scheme in contravention of a direction under this section.

(8) The persons constituting the governing body of a scheme must not —

(a) appoint a person in contravention of a direction under subsection (1); or

(b) continue the appointment of a person in contravention of a direction under subsection (2).

11B Prohibitions

(1) The Commission may impose a prohibition if it appears to the Commission that an individual is not a fit and proper person to be a member of the governing body of a scheme.

(2) Before imposing a prohibition, the Commission must give the individual whom it proposes to prohibit an opportunity to make representations in accordance with section 11C.

(3) A prohibition may prevent an individual from being a member of the governing body of—

(a) a scheme specified in the prohibition;

(b) a scheme of a description so specified; or

(c) any scheme.

(4) An individual commits an offence if he or she contravenes a prohibition.

(5) The appointment of an individual in contravention of a prohibition is invalid for all purposes.

(6) A prohibition operates subject to subsections (7) to (9).

(7) Notice of a prohibition must be served upon the individual prohibited, either personally or by registered post to the individual's last known address.

(8) Once it has been served a prohibition comes into operation on—

(a) the expiry of time for appealing against it under section 21;
or

(b) if an appeal is brought within that time, on the determination or withdrawal of that appeal.

This subsection is subject to subsection (9).

- 1 (9) Section 11A(5) applies to a prohibition as it applies to a direction
2 under that section.
- 3 (10) A notice of prohibition must —
- 4 (a) state the terms of the prohibition;
- 5 (b) state the reasons for imposing the prohibition; and
- 6 (c) give particulars of the right of appeal under section 21.

7 **11C Prohibition procedure**

- 8 (1) If the Commission proposes to impose a prohibition under section
9 11B, it must give written notice to that effect (a “preliminary
10 notice”) on the individual whom it proposes to prohibit.
- 11 (2) The preliminary notice must—
- 12 (a) state that the Commission proposes to impose a
13 prohibition;
- 14 (b) state the terms of the proposed prohibition;
- 15 (c) state the grounds for imposing the prohibition;
- 16 (d) state that within 28 days the individual proposed to be
17 prohibited may make representations to the Commission
18 in such manner as the Commission may specify in the
19 preliminary notice; and
- 20 (e) give particulars of the right of appeal under section 21 that
21 would be exercisable if the Commission imposed the
22 prohibition.
- 23 (3) The Commission must have regard to any representations made
24 in accordance with subsection (2)(d) before imposing a
25 prohibition.

26 **11D Prohibitions: variation**

- 27 (1) On the application of a prohibited person, the Commission may
28 revoke or vary the terms of a prohibition.
- 29 (2) The Commission must give the prohibited person a statement of
30 its reasons for any decision it makes on an application under
31 subsection (1).

32 **11E List of prohibitions**

- 33 (1) The Commission must maintain and publish a list of prohibitions.
- 34 (2) The list must specify the individual prohibited and the scheme,
35 schemes, or class or classes of schemes in respect of which the
36 prohibition applies.

11F Warning notices

- (1) The Commission may—
- (a) before making a direction under section 11A(2);
 - (b) before imposing a prohibition under section 11B; or
 - (c) in any other circumstances that the Commission considers it appropriate to do so,
- give a written warning notice under this section to a person who is or who it is proposed should become a member of the governing body of a scheme.
- (2) A warning notice under this section is a notice that the Commission has grounds to believe that such activities or circumstances as are specified in the notice are prejudicial to the relevant person's fitness and propriety and must be accompanied by a statement of the reasons for giving the notice.
- (3) A warning notice may (but need not)—
- (a) propose that the relevant person take such action as is specified in the notice;
 - (b) request the relevant person to propose action; or
 - (c) specify action that the relevant person must take and the time within which it must be taken.
- (4) If a warning notice has been given under this section, the Commission must, before making a direction under section 11A(2) or imposing a prohibition under section 11B(1), take into account any action taken by the relevant person in response to the warning notice.
- (5) The giving of a warning notice under this section —
- (a) does not limit the powers of the Commission under section 11A or 11B; and
 - (b) is not required before the Commission may exercise those powers.
- (6) A warning notice issued under this section shall have effect —
- (a) for a period of up to 3 years from the date on which it is issued under subsection (1) and such period shall be specified in the notice; or
 - (b) until such time as the Commission is content that any action under subsection (3) has been completed to its satisfaction.
- (7) The Commission may disclose the circumstances surrounding a warning notice issued under subsection (1), to—
- (a) an employer who currently employs a notified person;

- 1 (b) a person who has received an employment application
 2 from a notified person and who, if successful in the
 3 application, would be required to be a director, key person
 4 or controller of a permitted person,
 5 (c) a company of which a notified person is, or is likely to
 6 become an officer; or
 7 (d) a scheme of the governing body of which the notified
 8 person is or may become a member.

9 provided that the warning notice is effective in accordance with
 10 subsection (6).

- 11 (8) In subsection (7)—
 12 “notified person” means a person to whom a notice under subsection (1)
 13 has been given that is still effective under subsection(6); and
 14 “officer” means an officer of a company for the purposes of the Company
 15 Officers (Disqualification) Act 2009¹⁷” (see section 1(2) of that
 16 Act).”.

17 **30 Section 19A inserted**

18 After section 19 insert—

19 **“19A Civil penalties**

- 20 | (1) If the Commission is satisfied that a relevant person—
 21 | (a) has contravened any provision of this Act;
 22 | (b) has contravened any prohibition or requirement imposed
 23 | under this Act; or
 24 | (c) in purported compliance with any such requirement, has
 25 | furnished the Commission with false, inaccurate or
 26 | misleading information,
 27 | it may require the relevant person to pay a penalty in respect of
 28 | the contravention.
 29 | (2) The Commission must give written notice to the relevant person
 30 | concerned of any decision under subsection (1), together with a
 31 | statement of the reasons for the decision.
 32 | (3) The Commission may not in respect of any such contravention—
 33 | (a) both require a person to pay a penalty under this section
 34 | and revoke a licence issued under section 7 of the Financial
 35 | Services Act 2008 to carry on a regulated activity; or

¹⁷ c.4

(b) require a person to pay a penalty under this section if criminal proceedings have been commenced in respect of the contravention.

(4) When setting the amount of a financial penalty, the Commission must have regard to regulations under subsection (5).

(5) The Commission must make such regulations as are necessary to give effect to this section with respect to—

- (a) the imposition of financial penalties under it; and
- (b) the amount of those penalties.

(6) Any amount received as a penalty under this section is to be paid into and form part of the General Revenue of the Island.

(7) In relation to a scheme, for the purposes of this section each of the following is a relevant person—

- (a) the administrator;
- (b) the asset manager;
- (c) the custodian;
- (d) a fiduciary custodian of the scheme's property;
- (e) the investment adviser;
- (f) the manager;
- (g) the promoter;
- (h) a trustee of the property of a unit trust scheme; and
- (i) a person of a description prescribed by regulations.”.

31 Appeals against Commission decisions: section 21 amended

(1) Section 21 is amended as follows.

(2) For subsections (2) and (3) substitute—

“(2) The Tribunal is to consist of a chairman and 2 members appointed under the *Tribunals Act 2006*¹⁸.

(3) A person aggrieved may appeal, in accordance with rules made under section 8 of the *Tribunals Act 2006*, against any of the decisions specified in column 1 of the Table below under the provision specified in column 2.

Decision	Provision
Direction that person must not be appointed or continue a member of a governing body	Section 11A(1) or (2)
Refusal to grant consent that a person be a member of governing body of scheme	Section 11A(2)

¹⁸ c.1.

Refusal to revoke, or to vary, a direction	Section 11A(6)
Imposition of a prohibition	Section 11B(1)
Refusal to revoke or vary a prohibition	Section 11D(1)
Variation of a prohibition in terms other than those sought by the applicant	Section 11D(1)
Giving a warning notice	Section 11F(1)
Making a direction	Section 12(1)
Withdrawal of, variation of, or refusal to withdraw or vary, a direction	Section 12(5)
Appointing a person to advise, or assume control of the affairs of, the scheme	Section 13(1)
Terminating, or refusing to terminate an appointment referred to in the preceding entry on an application	Section 13(8)
Imposing a civil penalty	Section 19A
Refusing to make an authorisation order	Paragraph 2(1) of Schedule 1
Making an authorisation order subject to conditions	Paragraph 2(2)(b) of Schedule 1
Refusing to approve alterations to a scheme or a change in the governing body (or a person comprising the governing body) or in the manager, trustee or fiduciary custodian of the scheme	Paragraph 3(4) of Schedule 1
Revoking an authorisation order	Paragraph 4(1) of Schedule 1
Refusing to revoke an authorisation order	Paragraph 4(4) of Schedule 1
Refusing to agree a manager engaging in other activities	Paragraph 5(2) of Schedule 1
Refusing to approve a proposal	Paragraph 2(13) of Schedule 2
Refusing to approve alterations to a scheme or a change in the governing body (or any person comprising the governing body) or in the manager, trustee or fiduciary custodian of the scheme	Paragraph 3(3) of Schedule 2
Refusing to recognise a scheme	Paragraph 1(4) of Schedule 4
Refusing to make a recognition order	Paragraph 2(1) of Schedule 4
Refusing to approve alterations to a scheme or a change in the governing body (or any person comprising the governing body) or in the manager, trustee or fiduciary custodian of the scheme	Paragraph 3(2) of Schedule 4
Direction that a scheme cease to be recognised	Paragraph 4(1) of Schedule 4
Revocation of a recognition order	Paragraph 4(1) of Schedule 4
Refusal to direct that a scheme cease to be recognised or to revoke a recognition order	Paragraph 4(4) of Schedule 4.”

32 Determinations about information: section A24 inserted

(1) In Chapter III before section 24 insert —

“A24 Form and content of documents and information

- (1) The Commission may determine —
- (a) the form and content of any document or information to be delivered to the Commission; and
 - (b) the manner in which documents and information are to be delivered.
- (2) The Commission must take such steps as appear to it to be reasonable to draw determinations under this section to the attention of those likely to be affected by them.
- (3) The power in subsection (1) is not limited by any other provision of this Act under which the Commission may prescribe —
- (a) the form or content of a document or of any information, or
 - (b) the manner in which it is to be delivered.”.

(2) The heading to Chapter III accordingly becomes —

“Subordinate legislation etc.”.

33 Authorised schemes: Schedule 1, paragraph 2 amended

At the end of paragraph 2 of Schedule 1 add —

- “(15) The Commission may amend this paragraph by order.
- (16) An order under sub-paragraph (15) may include such consequential, incidental, supplemental or transitional provisions as appear to the Commission to be necessary or expedient in consequence of amendments made to this paragraph (including consequential amendments to other provisions of this Act).”.

34 Information about recognised schemes: Schedule 4 amended

- (1) Schedule 4 is amended as follows.
- (2) In paragraph 1(1) omit “managed in and”.
- (3) In paragraph 2(1)(a) and (b) for “managed” (in each place it occurs) substitute “authorised”.
- (4) In paragraph 5—
- (a) after sub-paragraph (1) insert—

- 1 “(1A) Regulations may prescribe information which all recognised
2 schemes, or all recognised schemes of a particular description,
3 must give in any relevant communication.”;
- 4 (b) in sub-paragraph (2) for the words following “the notice in”
5 substitute “any relevant communication”;
- 6 (c) after sub-paragraph (2) add—
- 7 “(3) In this paragraph “relevant communication” means any
8 advertisement or other document or communication—
- 9 (a) naming the scheme; and
10 (b) relating to the promotion of the scheme,
11 which is issued, or caused to be issued, in the Island by the
12 governing body.”.

13 PART 4 — CLOSING PROVISIONS

14 35 Consequential amendments

15 After section 152(1A) of the *Companies Act 1931* (which concerns court
16 procedure on compromise or restructuring involving an insurer) insert—

- 17 “(1B) Schedule 1A to the Financial Services Act 2008 makes provision
18 about transfers of deposit-taking business, including those
19 involving a compromise or restructuring to which this section
20 applies.”.

21 36 Repeal and revocations

- 22 (1) Section 35(2) of FSA 2008 is repealed.
- 23 (2) The Financial Services (Gateways) Order 2009¹⁹, the Financial Services
24 (Gateways) (Amendment) Order 2010²⁰ and the Financial Services
25 (Disputes) (Maximum Award of Compensation) Order 2012²¹ are
26 revoked.
- 27
28

¹⁹ SD 95/09

²⁰ SD 78/10

²¹ SD 219/12

SCHEDULE

(Section 5)

SCHEDULE TO BE INSERTED AS SCHEDULE 1A TO FSA 2008

“SCHEDULE 1A

(Section 3A)

TRANSFER OF DEPOSIT-TAKING BUSINESS

1 Schemes transferring deposit-taking business

For the purposes of this Schedule “a **relevant transfer scheme**” is a scheme under which the whole or part of the deposit-taking business carried on in or from within the Island by a licenceholder (the “**transferor**”) is to be transferred to another person (the “**transferee**”).

2 Compromise forming part of relevant scheme

If a relevant transfer scheme involves a compromise or arrangement to which section 152 of the Companies Act 1931²² applies, that section and sections 153 and 154 of that Act (which concern arrangements and reconstructions) apply to the scheme, but without limiting the provisions of this Schedule.

3 Application for order sanctioning relevant transfer scheme

- (1) An application may be made to the High Court for an order sanctioning a relevant transfer scheme.
- (2) The application may be made by the transferor, the transferee, or both.

4 Requirements in connection with applications

- (1) The Commission may by regulations impose requirements in connection with applications (whether they are to be met by transferors or transferees) under paragraph 3.
- (2) The High Court may not determine an application under that paragraph if the requirements imposed under sub-paragraph (1) have not been met.

²² XIII p. 235

5 Right to participate in proceedings

On an application under paragraph 2, the following are also entitled to be heard—

- (a) the Commission, and
- (b) any person (including an employee of the transferor or of the transferee) who alleges that he or she would be adversely affected by the carrying out of the scheme.

6 Sanction of the court for relevant transfer schemes

- (1) This paragraph sets out conditions which must be satisfied (in addition to any imposed under paragraph 3) before the High Court may make an order under this section sanctioning a relevant transfer scheme.
- (2) The High Court must be satisfied that the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred (or will have it before the scheme takes effect).
- (3) The High Court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.”

IN THE KEYS

**FINANCIAL SERVICES (MISCELLANEOUS
AMENDMENTS) BILL 2012**

A BILL to amend the Financial Services Act 2008 and the Collective Investment Schemes Act 2008; and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MR TEARE

JUNE 2011