

7.2. Beneficial Ownership Bill 2017 – Clauses considered

Mr Cannan to move.

The Speaker: We turn now to the Beneficial Ownership Bill 2017. I call on Mr Cannan to move.

Mr Cannan: Mr Speaker, turning straight to clause 1.

Clause 1 is purely formal and gives the short title to the Act which will result from this Bill.

Mr Speaker, I beg to move that clause 1 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker. I beg to second.

The Speaker: The question is that clause 1 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 2, Mr Cannan.

Mr Cannan: Clause 2 provides for the Act's commencement. The Act will come into operation on such day or days as the Treasury may by order appoint.

I beg to move that clause 2 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you, I beg to second and reserve my remarks.

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

Clause 3, Mr Cannan.

Mr Cannan: Clause 3 sets out the Bill's main interpretive definitions, including those of 'external intelligence or law enforcement agency' and 'permitted purpose'. The clause also defines 'registrable beneficial owner' which is a key concept in the Bill. It is only registrable beneficial owners whose required details have to be submitted onto the central Database.

In addition, the clause allows the Treasury by order to amend four definitions, those of: beneficial ownership sharing agreement; external intelligence or law enforcement agency; permitted purpose; and registrable beneficial owner including the percentage referred to within that definition. Any order made under this clause must not come into operation without Tynwald approval.

I beg to move that clause 3 stand part of the Bill.

The Speaker: Mr Shimmins.

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

The Speaker: The question is that clause 3 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 4, Mr Cannan.

Mr Cannan: Clause 4 sets out the meaning of 'beneficial owner'. The approach in the Bill has been to adopt a broad, workmanlike definition of beneficial ownership based on the Exchange of

Notes with the UK and drawing upon other international definitions. The Treasury can revise the meaning of beneficial owner by order, subject to Tynwald approval.

The definition is intentionally broad. It seeks to capture all of those individuals, natural persons, who hold any defined interest – however small and through whatever means – in the legal entity concerned, or who are able to exercise control by whatever means of the entity concerned. It is essential that all such beneficial owners are identified at the outset so that those individuals who are registrable beneficial owners can be determined.

The Hon. Member for Ramsey raised a number of points at Second Reading regarding the Bill's approach to the definition of beneficial ownership. In particular, the Hon. Member was concerned that we had not followed the certainty in the UK's legislation and he highlighted the consequent importance of the guidance that may be issued by the FSA under this clause.

It is important to highlight the scope of the FSA's guidance-making powers: it can only issue guidance in relation to certain definitions. Whilst these definitions are important within the context of the Bill, the Bill does not give the FSA the vires to rewrite or overwrite the primary legislation. It is ultimately for this Court to lay down the vires and powers that may be needed to give effect to this Bill.

It is the case that we have taken a different path to the UK, but this has been done deliberately to provide as much flexibility as possible. The Isle of Man is a finance centre which differs in many ways from the UK in terms of the ownership and management structure of legal entities. There are other mechanisms in the Bill – powers for Treasury to make regulations which can exempt entities from the Bill's provisions and by order to amend definitions – which, when considered with the ability to issue guidance, will help address the Hon. Member's concerns.

For example, at the Second Reading the Hon. Member raised the scenario of creditors in a liquidation being exempt from registration in the UK, but apparently not so in the Isle of Man. The guidance will make it clear that although control by other means than pure shareholding may be relevant in a number of circumstances, there are a number of roles and relationships which would not in practice mean the person being considered to be exercising significant influence or control for the purposes of the Bill. This would include the position of a liquidator.

The guidance will also deal with some of the other scenarios which the Hon. Member raised, including in relation to the discretionary trusts and ownership that has vesting rights attached to it. Finally on these legitimate concerns, Mr Speaker, the Hon. Member also highlighted the UK exemption for individual limited partners in limited partnerships. This matter is under active consideration and will also be addressed in guidance or through secondary legislation should it be deemed necessary to do so.

I beg to move that clause 4 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: Mr Hooper, to move your amendment.

Amendment

On page 16, line 37, insert –

«(7) Before it issues guidance or revised guidance under subsections (4) or (6), the Authority must consult with such persons and bodies as it considers are likely to be affected by it.

(8) Guidance or revised guidance issued under subsections (4) or (6) must be laid before Tynwald.».

Renumber the succeeding subsections and cross reference on page 17, line 4 accordingly.

Mr Hooper: Thank you, Mr Speaker.

I was intending to ask if I could move each of those individual lines as separate amendments actually, but I will not have to seeing as the Treasury Minister has helpfully tabled an amendment to my amendment which will deal with that issue, I suppose.

Firstly, this amendment relates solely to the guidance which is to be issued regarding the definition of a beneficial owner. My view is that this guidance is going to be a lot more comprehensive than is usual for guidance issued by the FSA. The UK PSC register, which is their equivalent to our beneficial ownership register, details in the Act itself the criteria under which you will be classified as a beneficial owner – it details the requirements and the exceptions. And even then alongside this quite detailed approach there are over 150 pages of additional guidance to explain these detailed clauses to people who may be affected.

Our Bill has a single paragraph to achieve the same ends – a broad, workmanlike definition. So the guidance which is going to be issued is in my view taking the place of the statutory provisions that exist in the UK and that would otherwise exist in our Bill. The Treasury Minister has commented that the FSA cannot override the Bill when issuing guidance, but actually it does not have to because the definition is so broad in our Bill that it gives the FSA great leeway when drafting the guidance – which I appreciate and it is fine – but that does essentially bypass the legislative process. And because of the very broad definition of beneficial owner included in the Bill, it means the Bill just cannot function without guidance. There is no way this Bill is a functional Bill until that guidance is issued. The guidance therefore has to be viewed as an integral part of the Bill. So there should be a statutory provision, a statutory requirement, to consult on that guidance as if it were part of the Bill itself solely because the guidance is, in my view, taking the place of the legislation.

I do not believe there should be a statutory requirement to consult on all guidance that is issued by the FSA, but in this specific case because of the specific circumstances that I have just outlined I believe there is a very strong case for requiring that we put down in statute that the FSA goes out and consults. I appreciate the very tight timescales that we are working with and I do not believe that this consultation would need to slow down the process at all. The FSA could be out consulting right now, in parallel with the Bill going through Tynwald, because it is only one specific definition which they need to consult on, which they would need to clarify, which the guidance is going to address, and that definition is set down in the Exchange of Notes and is not going to change. There is no way this House or the other House – Legislative Council – are going to make any changes to that provision, so the FSA could be consulting right now in parallel with this Bill going through Keys.

It is also completely up to the FSA as to how they consult. The amendment only requires consultation with such persons and bodies as the FSA considers are likely to be affected by the Bill, and so there is a great deal of flexibility there as to how the FSA actually approaches consultation. So I think consulting on this essential part of the Bill, without which the Bill just does not work, is in my view completely essential and it should be set down as a statutory requirement. I hope Hon. Members will support this sensible amendment and actually will just reject the Treasury Minister's amended amendment here.

The second part of the amendment is actually very straightforward. It simply requires any guidance the FSA does eventually issue to be laid before Tynwald. It is an additional provision and it does not impact on any of the other requirements in the Bill – it does not impact on the issuing of orders or anything else under that section, and the rationale again is exactly the same rationale. This particular guidance is absolutely integral to the Bill and it should be laid before Tynwald to be brought before Members just to provide some level of parliamentary oversight.

Mr Speaker, I beg to move.

The Speaker: Ms Edge.

Ms Edge: Mr Speaker, I beg to second.

The Speaker: Members will have had circulated to them in the last few moments an amendment to the amendment to clause 4 in the name of Mr Cannan. Such amendments to an amendment can be moved to the House without notice, but with the leave of the House. Is the House content that the amendment be received? *(It was agreed.)*

In which case I call on Mr Cannan to move his amendment to the amendment.

Mr Cannan: Thank you, Mr Speaker.

I have brought forward an amendment to the amendment by Mr Hooper:

Amendment to Mr Hooper's amendment

Omit '(7) Before it issues guidance or revised guidance under subsections (4) or (6), the Authority must consult with such persons and bodies as it considers are likely to be affected by it' and renumber the remaining subsection as «(7)».

We do accept and agree with Mr Hooper, and are happy that the guidance in these circumstances is laid before Tynwald. What this amendment does is ask the House of Keys to support the removal of 'On page 16, line 37 ...' insertion of point (7).

The Treasury cannot support this amendment which requires statutory consultation on the guidance. Not only is there a significant danger that if such a process happens it disintegrates into a huge timely exercise that means our commitments are not met, but it does leave the Financial Services Authority completely exposed both on that front and to possibly having set itself a dangerous precedent going forward into the future.

The Financial Services Authority offers guidance on a whole range of matters to industry. It is not a hugely unexpected move for the FSA to be required to offer guidance in terms of legislation of this nature. I would ask the Hon. House to accept that in order for us to meet our commitments that you support the omission of that particular part of Mr Hooper's amendment; but that we do support his requirement that the guidance is laid before Tynwald – that will enable and ensure that Hon. Members do get a proper sight of the guidance that has been given to industry in these circumstances.

The Speaker: Hon. Member for Douglas North, Mr Peake.

Mr Peake: Thank you, Mr Speaker. I beg to second Mr Cannan's amendment.

The Speaker: Mr Thomas.

Mr Thomas: Thank you very much, Mr Speaker. I think there might be a few general points that might be helpful to the House.

The first one is about separation of powers, really. In the other two Bills that I am involved with today, that is very important. We have to treat courts and tribunals and the regulators differently from what we talk regular social policy and regular financial policy which are entirely on the side of the separation of powers function.

The second point is that oftentimes we are talking about flexibility, and regulatory flexibility being a good thing in the Isle of Man – that is often part of our sales pitch. That relies on actually working with regulators and industry being able to work with regulators, and with regulators being able to be more flexible. In other words for 30 years, ever since financial regulation has been around in its modern form, this debate about the extent to which you lay things down in statute and which you put things in guidance has been around. And I want to strongly support Mr Cannan's amendment of the amendment because we do not want to be messing with those 30-year-old debates in an *ad hoc* way like this.

Finally, this is not only part of domestic consideration of the separation of powers and the way that the regulator is treated by this House and by Tynwald more generally; this is all about how we are perceived with some important international partners.

So with that, I want to strongly support the amendment in the name of Mr Cannan to the amendment as tabled.

The Speaker: If no other Member wishes to speak, I call Mr Cannan first to respond to the amendment to the amendment, if you so wish at this point?

Well, Mr Hooper to respond to your amendment, sir.

Mr Hooper: Just briefly, thank you, Mr Speaker.

Mr Cannan is obviously concerned that this would disintegrate into a very timely exercise of consultation. I think I have already addressed that that is a straw man essentially, it does not have to be a timely consultation at all. The FSA could do it very flexibly, as they please. All we are asking here is that they are actually *required* to consult. They could and, in my view, *should* already be out there engaging with whoever is going to be affected by this Bill, doing that process.

I appreciate the comments that have been made by both Hon. Members regarding potentially setting a precedent and the separation of powers between the legislative and the regulator, but in my view this particular set of guidance in this instance is not really guidance, this *is* legislation – we are asking the FSA to essentially fill in the blanks that are missing in our Bill. And so in this instance I think there is a very strong case to say we should be requiring that we treat this particular set of guidance the same way we would treat regulations or legislation, otherwise.

Other than that, thank you, Mr Speaker.

The Speaker: Mr Cannan to respond to the clause.

Mr Cannan: Mr Speaker, the situation is as I described and I retain a strong recommendation to the House that you support the amendment to the amendment. The FSA, by the nature of the business that it conducts, will consult, with industry anyway – regularly consult with industry – and similarly will be consulting with industry about the guidance for this Bill; and I can confirm that guidance is being drafted now and it will be shared with industry.

So on that basis, I hope that you will support the amendment to the amendment and support clause 4 as amended.

The Speaker: Hon. Members, we turn to the vote and I put to you first Mr Cannan's amendment to the amendment. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and electronic voting resulted as follows:

FOR

Dr Allinson
Mr Ashford
Mr Baker
Mrs Beecroft
Miss Bettison
Mr Boot
Mr Cannan
Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Moorhouse
Mr Peake
Mr Quayle
Mr Robertshaw

AGAINST

Mrs Caine
Mr Callister
Ms Edge
Mr Hooper
Mr Perkins

Mr Shimmins
Mr Skelly
Mr Speaker
Mr Thomas

The Speaker: There are 18 votes for, 5 votes against: the ayes have it.

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

I put to you clause 4 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, Mr Cannan.

Mr Cannan: Clause 5 establishes the scope of the Bill by prescribing the legal entities to which it applies.

In order to fulfil our obligation under the Exchange of Notes to capture the 'widest possible range of corporate and legal entities incorporated in the Isle of Man', the Bill covers a company to which the Companies Acts 1931 to 2004 apply; and a company to which the Companies Act 2006 applies.

The Bill also covers a limited liability company to which the Limited Liability Companies Act 1996 applies; a limited partnership to which section 48B of the Partnership Act 1909 applies – that is, limited partnerships with legal personality – and a foundation, within the meaning of the Foundations Act 2011.

The clause also sets out the entities which, by virtue of the foregoing, might be deemed to fall under its scope, but will not. This short list includes entities which are listed on a stock or investment exchange recognised by the Treasury. Under the Companies (Beneficial Ownership) Act 2012, the Treasury already publishes a list of recognised exchanges for a similar purpose. This list will be reviewed and re-published with any necessary modifications.

The clause allows the Treasury, by order and with the approval of Tynwald, to add to, remove or otherwise revise the list of legal entities to which the Act applies. This order-making power is important to what follows.

During the Second Reading debate, the Hon. Member for Ramsey, Mr Hooper, raised the issue of collective investment schemes and there is an amendment tabled in his name to exempt such schemes from the scope of the Bill.

The Hon. Member is of course correct: the consultation version of the Bill exempted those schemes from the scope of the Act. However, the consultation period also provided an opportunity for further internal reflection on the Bill and, as a result, the decision was made to include collective investment schemes within its scope. I am afraid this is the nature of attempting to deal with highly complex financial structures when faced with a diversity of views. There will inevitably be some chopping and changing and revision of views.

Treasury remains of the view that collective investment schemes, as a whole, do not and should not, receive the benefit of an exemption from the Bill's requirements. Reduced to their core, collective investment schemes are simply Isle of Man companies – or trusts, but that falls outside the scope of this Bill – whose purpose is to invest capital to seek return for their investors. The Exchange of Notes does not carve out collective investment schemes and nor, in the main, does the UK's regime.

Notwithstanding our stated position for collective investment schemes as a whole, we are aware of an issue within anti-money laundering and countering the financing of terrorism (AML/CFT) legislation that is particularly problematic for some collective investment schemes which could then have a similar impact in this Bill.

That issue relates to the problems some schemes are encountering when they have large 'regulated' institutional investors, such as pension funds or other collective investment schemes, as their investors, and they rely on the regulated institutional investor for customer due diligence (CDD). In certain limited circumstances we are aware that the underlying beneficial ownership information is not readily available from these institutions' investors.

While a concession was built into the AML/CFT Code to alleviate this issue – commonly known as the ‘Acting on Behalf of Concession’ – we understand that certain schemes continue to have difficulties even in complying with this concession.

Therefore, as noted, in spite of this concession, the requirements of the Beneficial Ownership Bill could produce problems similar to those mentioned above for certain collective investment schemes which have regulated institutional investors. We therefore recognise the need to address these problems alongside addressing the similar AML/CFT issues.

That being said, I must stress that there has been no decision to provide a broad sweeping exemption from the requirements of the AML/CFT Code and it would be equally inappropriate to provide that same sort of broad sweeping exemption in this Bill.

The Isle of Man has various categories of scheme type along a spectrum that starts at typically retail and moves to typically institutional; for many of the schemes, meeting the requirements of this Bill is seen to be achievable, therefore. There is one scheme type in particular that was designed to be used by institutional investors, the Specialist Fund, and it therefore may be appropriate, upon further consultation, for institutional schemes of this nature to benefit from an exemption.

The exact details of the boundaries of that exemption, and the conditions which will be applied will require further research, and therefore the Treasury will commit to using its powers in clause 5 of the Bill to produce an order to provide for an appropriate exemption to deal with the situation facing collective investment schemes with institutional investors.

I beg to move that clause 5 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

Having discussed this particular clause with the Minister at some length and listening to the commitment he has just made today, I am satisfied that the potential issue with regard to the AML/CFT legislation that I feared would be compounded in this Bill is going to be addressed by regulations, and as such I do not propose to move this amendment today, Mr Speaker.

Thank you.

The Speaker: Right, not moving the amendment. Thank you.

Mr Robertshaw, Hon. Member for Douglas East.

Mr Robertshaw: Thank you, Mr Speaker.

I rise to my feet just to get clarification. I did actually notify the Treasury Minister last night of this question.

The first part of this clause deals with those companies that sit inside, i.e. 1931 to 2004 and 2006 companies. Part two deals with those companies sitting outside which are registered on recognised stock exchanges.

Where I could not read through this to get clarity in my own mind was a company that was, say, a 1931 company that was not on the stock exchange but was a plc and dealt with its share exchanges through matched bargains; where does a company like that actually sit? It is a 1931 company so therefore it should be in, but it is not on a stock exchange.

If the Treasury Minister could help me with that I would be grateful.

The Speaker: If no other Member wishes to speak, I call on the Minister to reply.

Mr Cannan: Thank you, Mr Speaker.

To try to alleviate the Hon. Member's questions, I can tell him that the Bill follows the model of the Companies Beneficial Ownership Act 2012 in respect of 1931 companies which do not receive the services of a regulated entity. The 2012 Act requires these companies to appoint a nominated officer, and the main additional requirement above that Act is the requirement to submit the beneficial ownership information onto the database.

Like the 2012 Act, the legal owner has to ascertain the required details of the beneficial owner and these required details do go a bit further than what was needed under the 2012 Act. For example, they must state the nature and extent expressed as a percentage of the interest in the legal entity. The nominated officer appointed under the 2012 Act can transition over to be a nominated officer under this Bill and all entities will have to complete a statement of compliance with their annual return countersigned by the nominated officer.

The requirement to submit beneficial ownership online is clearly laid out, but if the company is unlisted then it will not be exempt even though it is formed as a public company, because it is not subject to the correspondence disclosure requirements of the listing exchange which forms the basis of that listed company exemption.

As with all –

Mr Robertshaw: Will the Minister give way?

Mr Cannan: Absolutely.

Mr Robertshaw: I am a bit confused here because a company not sitting on an exchange but being subject to beneficial ownership notification would find itself in some difficulty if, for example, none of the 500, 600, 1,000 members achieved *de facto* control identity, and therefore were not deemed to be beneficial owners.

I am just confused here.

The Speaker: Minister, continue.

Mr Cannan: I think I am going to have to get some clarification on the technicalities behind that, Mr Speaker, which I am going to endeavour to do so. What I propose to do is that I will clarify that for the Hon. House at Third Reading stage –

Mr Robertshaw: Thank you. That will be fine.

Mr Cannan: – and if the Hon. Member is happy with that –

Mr Robertshaw: I am happy with that.

Mr Cannan: – then I will come back.

The Speaker: The question is that clause 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6, Mr Cannan.

Mr Cannan: Clause 6 creates, for all entities covered by the Bill, the requirement to have a nominated officer. The officer must be either a natural person resident in the Island or the holder of a licence issued under section 7 of the Financial Services Act 2008 which permits the holder to carry on the regulated activity of providing corporate services.

A legal entity can have more than one nominated officer where their functions and liabilities under the Bill are joint and several.

As Hon. Members know, the requirement to have a nominated officer has been opposed by sections of industry, primarily on the grounds of it being, in their view, an unnecessary administrative burden and a position not replicated in other jurisdictions.

The Government's overriding policy objective has been to ensure that there is a single point of responsibility for compliance with the core spine of the Bill — submitting beneficial ownership to the central register. The position of nominated officer, which was established in the 2012 Beneficial Ownership Act, was viewed as the most appropriate way of achieving this objective.

Although those in the regulated sector, such as trust and corporate service providers, were exempted from the 2012 Act, a comparison with this Bill does not easily read across to the current situation because this Bill goes further than the 2012 Act. The 2012 Act required entities to obtain and maintain beneficial ownership information. Exemptions were made from the whole of the 2012 Act, not just parts of it, because entities had existing beneficial ownership obligations under the AML/CFT Code through which they effectively reached the same point as the 2012 Act. No entities have alternative obligations outside the requirements of this Bill for submitting beneficial ownership information onto a central database.

The Bill's savings provision seeks to simplify the process for appointment of a nominated officer. They allow nominated officers appointed under the 2012 Act and registered agents under, for example, the 2006 Companies Act to automatically become nominated officers under this Bill, subject to the legal entity recording the nominated officer's written consent of their agreement to continue in post.

I beg to move that clause 6 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

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

Clause 7, Mr Cannan.

Mr Cannan: Clause 7 requires entities to appoint a nominated officer and notify the Department of Economic Development of the appointment within one month of the section coming into force. However, under clause 45, those entities which make use of the savings provision in relation to the appointment of a nominated officer do not have to give notice of appointment.

In order to keep the information up to date, entities must give notice to the Department of Economic Development within one month of a change in the details of their record of a nominated officer, a change in the officer and the subsequent appointment of a nominated officer. In all cases, the notice must specify the date on which the appointment or any change was made.

The Department of Economic Development has the power to charge a fee to legal entities who fail to comply with the timeframes in this clause. It is intended that the Department will look to introduce a late filing fee, similar to existing arrangements for other returns. However, any such fee would require Tynwald approval before it is introduced.

A legal entity which fails to comply with this section commits an offence.

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

The Speaker: Mr Shimmins.

Mr Shimmins: I beg to second.

The Speaker: The question is that clause 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8, Mr Cannan.

Mr Cannan: Clause 8 requires all entities to keep a record of their nominated officer, including written confirmation of the officer's consent to the appointment.

In the case of a nominated officer who is a natural person, the officer's name and home address on the Island must be recorded. For nominated officers who have legal personality, but are not natural persons, a record must be kept of the officer's corporate firm or name and the officer's registered office or place of business in the Island.

A legal entity which fails to comply with this section commits an offence.

I beg to move that clause 8 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second.

The Speaker: The question is that clause 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Mr Cannan.

Mr Cannan: Clause 9 imposes a duty on legal owners, shareholders in a basic company structure, to ascertain the beneficial owner of their interest in the legal entity.

If a legal owner receives a written notice from a nominated officer, they must respond within one month with the required details of each beneficial owner of their interest, accompanied by relevant verifying information.

Following post-consultation discussions with industry, the clause was amended to remove the express requirement to obtain the required details of all beneficial owners, regardless of their size of interest. In making the change, the intention is that in many circumstances nominated officers who have obligations under the AML/CFT Code will now be able to rely upon the work that they must already have undertaken to satisfy the Bill's requirements in relation to non-registrable beneficial ownership. A nominated officer would not need to send a notice to a legal owner if they are satisfied that the beneficial owner is non-registrable.

The requirements in respect of nominated officers who do not have obligations under the AML/CFT Code remain unchanged; the Bill is the mechanism to ascertain the required details of the beneficial owner and in all cases the required details of all registrable beneficial owners are needed for submission onto the database.

A legal owner who fails to comply with this section commits an offence, although it is a defence to show that they took reasonable steps to avoid the commissioning of an offence. It is also an offence if a legal owner recklessly or knowingly makes a false, deceptive or misleading statement to a nominated officer.

The Department of Economic Development may make regulations to further provide for the giving of notices and the Treasury, subject to Tynwald approval, can by order amend the specified timeframe.

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

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker. I beg to second.

The Speaker: The question is that clause 9 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10, Mr Cannan.

Mr Cannan: Clause 10 places obligations on persons in the chain between the legal owner and the beneficial owner, and on the beneficial owner themselves, to assist the legal owner to fulfil their obligations to ascertain the beneficial owner of their interest.

This obligation is relevant given that ownership can be traced through any number of persons or arrangements of any description.

Failure to comply with this section is an offence, although, as with clause 9, it is a defence to show that the person took reasonable steps to avoid the commissioning of an offence.

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

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: The question is that clause 10 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11, Mr Cannan.

Mr Cannan: Clause 11 sets out the details in respect of each beneficial owner that are required to be submitted onto the central database.

There is an amendment tabled to this clause by the Hon. Member for Ramsey, Mr Hooper, to remove the gender, occupation and place of birth from the required details of beneficial owners. Having considered this matter further, the Treasury will be supporting this amendment.

This clause allows for the Treasury, by order and with the approval of Tynwald, to amend the required details. In supporting the amendment, I do so with one proviso: if circumstances change in the future, the Treasury may have to move such an order to amend the required details.

In the meantime, I would like to thank the Hon. Member for allowing Treasury to think again on this point and urge fellow Members to support the amendment.

I beg to move that clause 11 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: I call on the Hon. Member for Ramsey, Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

This amendment relates primarily to the individual's right to privacy. The Bill, as drafted, requires the companies record on the register certain information about the beneficial owners, which is reasonable, but the draft Bill does ask for information such as gender, place of birth and occupation, which this amendment proposes to remove.

As currently drafted, the requirements of the Bill go beyond the requirements of the fourth anti-money laundering directive and the Data Protection Act does set out that information recorded needs to be adequate, relevant and limited to what is necessary.

So, as I have said before, the UK can identify an individual with less information without knowing the individual's gender, place of birth or occupation. So I do not understand why it is necessary that we record this information.

On top of this, I am not sure how much something like occupation really adds when trying to identify someone. If Members have ever looked at directors' occupations recorded at the Companies Registry, they will see what I mean: inventor, author, entrepreneur, director – not particularly useful when trying to identify somebody, I would suggest.

I fully appreciate why they are in the draft, having been included in their *pro forma* attached to the Exchange of Notes, but in my view, again that is just a *pro forma*, not a requirement of the document itself; and if it does turn out that further down the line the UK come back and insist that we need to collect people's gender, their occupation and their place of birth then, as the Treasury Minister has already outlined, we should be open to changing the law by way of regulation further down the line. But let's start from a position of comparability with the UK and not be hoovering up information that is not really needed.

Mr Speaker, I beg to move:

Amendments to clause 11

On page 22, omit lines 31 to 33.

Renumber the succeeding subparagraphs accordingly.

The Speaker: Hon. Member, Ms Edge.

Ms Edge: Mr Speaker, I beg to second.

The Speaker: If no other Member wishes to speak I will call on the Treasury Minister if he wishes to reply to the amendment. In which case, then I put to you first the amendments in the name of Mr Hooper. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I put to you clause 11 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12, Mr Cannan.

Mr Cannan: Clause 12 provides that where a legal owner is required to give notice to a nominated officer of the required details of the beneficial owner of their interest, they must also give notice to the nominated officer if they know or have reasonable cause to believe that a change in the required details has occurred.

Notice has to be given within one month of the legal owner learning of the change or when they first have reasonable cause to believe that the change has occurred. The notice must detail the changes and be accompanied by information from a reliable and independent source which verifies them.

A legal owner who fails to comply with this section commits an offence.

I beg to move clause 12 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second.

The Speaker: The question is that clause 12 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

Mr Cannan: Clause 13 prescribes obligations on the nominated officer in respect of the preservation of required details and information.

Nominated officers must ensure that all required details and the information which verifies them are maintained and preserved. The required details must be maintained so as to be capable of

disclosing the beneficial ownership of the legal entity at any time. The details and verifying information must be preserved for a minimum of five years from the end of the period to which the information relates and longer if there is an ongoing investigation. In the event of an entity ceasing to exist, the person who was nominated officer immediately before must comply with the requirements of this section.

The five-year retention period in the clause coincides with the current standard under the AML/CFT Code. It should be noted that there are other international standards, both set and evolving, which may be relevant to the length of time for which records need to be preserved in the future.

Failure by a nominated officer to comply with this section is an offence.

I beg to move clause 13 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second.

The Speaker: The question is that clause 13 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14, Mr Cannan.

Mr Cannan: Clause 14 provides for further consequences for legal owners of the failure to disclose beneficial ownership.

The consequences become relevant if a nominated officer is of the opinion that a legal owner has, without reasonable excuse, failed to provide relevant details or changes thereto or has made a misleading statement.

Once notified by a nominated officer, the entity must serve notice on the legal owner and the beneficial owner of their interest to inform them that a notice has been received and that action might be taken. The recipient has 14 days to make representations to the entity which must be considered by the entity.

After due consideration, the legal entity may take such action as it thinks fit in respect of the legal owner's interest in the entity. The actions are specified in the clause and include, for example, limiting voting rights.

If it takes any action, the legal entity must inform the Financial Services Authority within two weeks of so doing. The legal owner can appeal to the High Court.

I beg to move clause 14 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 14 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

Mr Cannan: Clause 15 provides for the disclosure of beneficial ownership information by a nominated officer where they receive a notice from one or more competent authority. This clause is adapted from the Companies (Beneficial Ownership) Act 2012.

The provision relates to information which is not on the central database; for example, in relation to non-registrable beneficial ownership information as well as supporting information in relation to all beneficial owners.

Competent authorities must state in the notice what information is required and that it is required for a permitted purpose. If the notice relates to a registrable beneficial owner, a nominated officer has seven days to reply to a notice. In all other cases, the response time is 30 days.

If a nominated officer fails to comply with this section they commit an offence.

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

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second.

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

Clause 16, Mr Cannan.

Mr Cannan: Clause 16 places restrictions on the further disclosure of information provided by a nominated officer to competent authorities via a notice.

Information cannot be further disclosed except for a permitted purpose; it can be used by the recipient as evidence in criminal, civil and regulatory proceedings.

I beg to move that clause 16 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

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

Clause 17, Mr Cannan.

Mr Cannan: Clause 17 applies specifically to disclosure of information obtained from a nominated officer by the Financial Intelligence Unit (FIU) when responding to requests from an external intelligence or law enforcement agency.

In such circumstances, disclosure is permitted if it is made in response to a request made by a relevant agency in the furtherance of the agency's functions and in a manner required by the Financial Intelligence Unit.

As the disclosure of beneficial ownership information by the Financial Intelligence Unit under this Bill is in addition to its statutory functions as laid out in the Financial Intelligence Unit Act 2016, the section of the Act that deals with restrictions on disclosure needs to be dis-applied by this clause.

I beg to move that clause 17 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

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

Clause 18, Mr Cannan.

Mr Cannan: Clause 18 makes it an offence for a person who knows or suspects that a notice has been issued under clause 15 and who discloses to any person information or any other matter connected to the issue of the notice which may prejudice any criminal, civil or regulatory investigations or proceedings.

Within defined parameters, disclosure by an advocate or legal adviser is not an offence and it is a defence to prove that a person did not know or suspect that the disclosure was likely to be prejudicial.

I beg to move that clause 18 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 18 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 19, Mr Cannan.

Mr Cannan: Clause 19 creates the Isle of Man Database of Beneficial Ownership information, with a duty on the Department of Economic Development to establish and maintain it and for the database to contain the required details and any changes thereto of all registrable beneficial owners.

During the Second Reading debate, the Hon. Member for Onchan, Mr Callister, asked how many offshore jurisdictions currently have a central database of beneficial ownership information.

We understand that Jersey and Bermuda already have central registers. Like the Isle of Man, the other Overseas Territories and Crown Dependencies that have financial centres will all have one by end of June this year, in accordance with their own Exchanges of Notes with the UK.

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

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

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

Clause 20, Mr Cannan.

Mr Cannan: Clause 20 provides that a nominated officer must take all reasonable steps necessary to ascertain whether a legal entity has a registrable beneficial owner. Under the clause, the nominated officer must submit the required details of the registrable beneficial owner, details of any relevant changes, and, where the legal entity has no beneficial owner, a statement to confirm that fact.

The Exchange of Notes requires the database to hold adequate, accurate and current beneficial ownership information. Clause 20 sets out the timeframes for the submission of information onto the database. For those entities already in existence when the Act comes into force, the information must be submitted in the first instance either by the date on which the entity's next annual return falls due following the nominated officer receiving the required details from the legal owner or by 30th June 2018, whichever is the earlier.

As some nominated officers may not be able to align the first submission of information to the date on which the annual return is due because of the time required to meet obligations elsewhere in the Bill, submission of the information must be as soon as reasonably practical. The clause also sets out the timeframe for submission of relevant changes and covers circumstances for legal entities which come into existence after this clause comes into operation.

There are offences in this clause for nominated officers and for other persons for failure to comply with its provisions. Given the central importance of submitting beneficial ownership information this clause also contains an obligation to rectify in instances where information has not been submitted and prosecution proceedings commenced.

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

The Speaker: Mr Shimmins.

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

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

Clause 21, Mr Cannan.

Mr Cannan: Clause 21 allows nominated officers, where the beneficial owner consents, to submit required details of beneficial owners other than the registerable beneficial owners on to the database. The provision aims to provide flexibility in circumstances where, for their own reasons, beneficial owners are content to have their details submitted on to the database, even though the Bill does not require them to be.

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

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second.

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

Clause 22.

Mr Cannan: Clause 22 requires beneficial ownership information to be submitted online, mirroring similar provisions in the Income Tax Act 1970. The default position under the Bill is the submission of registrable beneficial ownership online through the Government website. The Government Technology Service (GTS) is working with partners to design and build the necessary system and work in this regard is at an advanced stage.

There is a provision for entities to apply to the Department of Economic Development for an exemption from this requirement and it is an offence to fail to comply unless an exemption is granted. There is also an appeal mechanism against any resultant decision by the Department of Economic Development.

I beg to move that clause 22 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second.

The Speaker: Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

I am standing up now with regard to clause 22 and I am not quite sure I know to handle this because effectively I am also pointing at other clauses. But what I am really trying to say here is that this is an important Bill and it is important that it goes through within a given timescale. But I suppose my cautionary note here is, as I said when we dealt with the Equality Act in clauses 51 and 128, that we are very mindful of the impact of these things on really small companies, SMEs. And I am not really necessarily looking for a clear or substantial answer today but just acknowledgement on the part of Treasury that they are fully cognisant of the importance of making the translation of these things simple for really small companies.

Turning specifically then to clause 22 there is a specific requirement to put it online here but later on we will hear that clause 43 and Schedule 4 require that the annual return must be online but not yet, and so there is a disparity between dealing with beneficial ownership and the annual return. The beneficial ownership has to be absolute; there is no 'but not yet'.

In terms of the annual return issue in clause 43 and Schedule 4, it says, 'yes you have to but not yet', and then Schedule 3 links a statement on the revised annual return, effectively saying that companies must state the links – it links the beneficial statement of compliance on the annual return.

So, all I am asking at this particular stage of the Treasury Minister is absolute reassurances that we are going to keep this *really* simple for small companies. I recognise that an annual return through the Company Registry is an open document and can be seen whereas the beneficial ownership list will be limited in its access but I would hope that the conclusion of all this is that there is a similar process for really small companies to have to deal with both annual returns and beneficial ownership in a very simple way, not complicating in any shape or form the necessity to have an increasing range of submissions just simply in order that we comply with these very important international issues.

With that, Mr Speaker, I will take my seat and I hope that the Treasury Minister can give me appropriate reassurances.

The Speaker: Minister to reply.

Mr Cannan: Thank you, Mr Speaker.

I accept the Hon. Member's point. The Bill itself does build in some flexibility into how this database is dealt with by companies and builds in that flexibility. In fact under clause 20, the clause that I have just been through, actually dictates how that flexibility is enforced.

I can commit to him that the Department of Economic Development will do all that it can, the Registry will do all it can to assist small companies. And once we are through the first 12 months of this Bill it will become progressively easier to populate the Register and to stay on top of it and it should really just be a simple mechanism for small local businesses just to simply ensure that their annual return is completed and then alongside that the required information on beneficial ownership with that return.

So it will get progressively easier. I understand what the Hon. Member is saying and I can tell him that we will, and the Department of Economic Development will, and the Companies Registry will work with small companies to make sure that this transition is done efficiently and effectively to help them and to avoid any unnecessary bureaucracy where possible for them.

The Speaker: The question is that clause 22 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 23, Mr Cannan.

Mr Cannan: Clause 23 specifies that access to the database and that further disclosure of information obtained from it is only permissible in accordance with Part 3 of the Bill.

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

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second.

The Speaker: The question is that clause 23 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 24.

Mr Cannan: Clause 24 establishes the power for the Department of Economic Development to allow access to the database by such means and in such manner as it determines. The Department of Economic Development (DED) can by regulations make further provision about access to the database other than in relation to the persons or bodies who may access it. Access in this regard is controlled by the Treasury under clause 26.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: I presume the Hon. Member was begging to move, but that is clause 24. If no other Member wishes to speak, then I put the question that clause 24 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 25.

Mr Cannan: Clause 25 confirms that the Department of Economic Development is not liable for the accuracy of information submitted on to the database. There is a requirement for legal entities to include on their annual returns a statement that all the information submitted for entry on the database is up to date and correct.

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

The Speaker: Mr Shimmins.

Mr Shimmins: I beg to second.

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

Clause 26, Mr Cannan.

Mr Cannan: Clause 26 sets out the parameters for persons who may access the database both in terms of who can access it and for what purpose. In addition to the competent authorities listed in clause 15 who are able to access the database for a permitted purpose a small number of other persons or bodies also have access, albeit mostly on a more restricted basis. Tight control over the database is crucial to reassure beneficial owners whose details are contained within it.

I beg to move that clause 26 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 26 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 27, Mr Cannan.

Mr Cannan: Clause 27 specifies the restrictions on further disclosure of information accessed from the database. The exact nature of the restrictions differs slightly depending upon the purpose for which access is permitted.

Information accessed by a competent authority must not be further disclosed except for a permitted purpose and in the case of the Financial Intelligence Unit disclosure also has to be in accordance with clause 28. For all competent authorities information disclosed might be used by the

recipient in criminal, civil or regulator proceedings. For the Department of Economic Development and the Gambling Supervision Commission the information cannot be further disclosed, except for the limited purposes for which they accessed the database. A person who fails to comply with this section commits an offence.

I beg to move that clause 27 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 27 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 28.

Mr Cannan: Clause 28 permits the disclosure of information from the database by the Financial Intelligence Unit when responding to external requests from intelligence and law enforcement agencies with which we have a beneficial ownership sharing agreement. To be clear, this is just the UK at the moment.

It is through this clause that the sharing agreements in the Exchange of Notes can be put into effect with the Financial Intelligence Unit required to respond to requests from such agencies in furtherance of the agencies functions within the timeframe set out in the notes; 24 hours typically and within one hour in urgent cases.

Section 25 of the Financial Intelligence Unit Act 2016, which deals with further restrictions on disclosure, does not apply to information disclosed under this clause.

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

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 28 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 29.

Mr Cannan: Clause 29 creates provision in respect of tipping off resulting from access to the database. Accordingly, a person commits an offence if they know or suspect that information on the database has been or is going to be accessed and they disclose prejudicial information connected with such access. Within defined parameters disclosure by an advocate or a legal advisor is not an offence and it is a defence to prove that a person did not know or suspect that the disclosure was likely to be prejudicial.

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

The Speaker: Mr Shimmins.

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

The Speaker: The question is that clause 29 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 30 and Schedule 1, Mr Cannan.

Mr Cannan: Clause 30 confers the oversight functions of the FSA. Schedule 1 sets out additional powers, for example, in respect of inspections and investigations in requests for information. The Financial Services Authority will be responsible for assessing compliance with the Act by relevant persons, including a nominated officer and a legal entity.

The Hon. Member for Ramsey, Mr Hooper, raised concerns during the Second Reading debate about the new powers which the Bill creates for the Financial Services Authority. It is important to recall that the oversight role for the Financial Services Authority is required by the Exchange of Notes with the UK and it is something which we have had to introduce with the new regime. It is also the case that the Bill confers powers on the Financial Services Authority only in relation to compliance with this Act. It creates no additional powers under any other piece of legislation, some of which provides the Financial Services Authority with more powers than conferred by this Bill.

Importantly, the Bill provides the Financial Services Authority with flexibility in its oversight role. It is the case that if satisfied certain criteria have been met the Financial Services Authority has the power to charge civil penalties and in more serious cases to report offences to the Attorney General's Chambers for potential prosecution.

However, the existence of these powers should be seen in context. For example, there are areas where compliance with this Bill would cover similar ground to compliance with the AML and CFT codes. The FSA has indicated that it will take a similar, pragmatic approach to dealing with the oversight of this Act as it does with the oversight of that code. Where possible, depending upon the seriousness of any breach, and taking a risk based approach the Financial Services Authority will seek to focus on remedial actions to assist relevant persons in complying with their obligations under the Bill.

I beg to move that clause 30 and Schedule 1 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 30 and Schedule 1 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 31, Mr Cannan.

Mr Cannan: Clause 31 provides for an entity to be struck off a relevant register if there is a reasonable cause to believe that it has failed or is failing to comply with the obligations under the Act. The striking off provision is included as a backstop power and it should be viewed as such, particularly in the context of the Bill's other offences and penalties.

Schedule 2 sets out the necessary legislative amendments required to facilitate this clause.

I beg to move that clause 31 and Schedule 2 stand part of the Bill.

The Speaker: Mr Shimmins.

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

The Speaker: Mr Robertshaw.

Mr Robertshaw: Mr Speaker, could the Treasury Minister reassure us that that particular clause would be used as an absolute last stop, backstop process, rather than being seen as a big stick. I would like to hear him reassure us again on that one.

The Speaker: The mover to reply.

Mr Cannan: Thank you, Mr Speaker.

Striking off is an absolute backstop provision only to be used when all other sanctions have been fully explored. Various issues would have to be taken into consideration before there was any strike off including other matters such as national insurance and income tax debts, for example. And there are provisions in the Bill for the retention of beneficial ownership information and verifying details in the event of an entity being struck off. But primarily – absolutely – this is a last resort for the Authority to take in the event of a very serious breach occurring.

Mr Robertshaw: Thank you.

The Speaker: The question is that clause 31 and Schedule 2 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 32, Mr Cannan.

Mr Cannan: Clause 32 provides the legal authority for the Treasury, Department of Economic Development and the Financial Services Authority to make regulations under the Act. The Treasury is able to make regulations for the general efficiency of the Act which could provide for the exemption of certain bodies from the effect of specified provisions. Prior to making any regulations the Treasury must consult with the Financial Services Authority and the Department of Economic Development.

This clause allows for regulations for example, to permit a person to exercise discretion in respect of any matters specified in the regulations and require compliance with standards or the adoption of practices recommended or specified from time-to-time. All regulations under this clause require Tynwald approval.

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

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 32 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 33, Mr Cannan.

Mr Cannan: Clause 33 permits the Department of Economic Development to set fees in respect of the legal entities requirements to notify the Department of the appointment of a nominated officer and in respect of the nominated officers' obligations to submit beneficial ownership information.

It is anticipated that fees charged under this clause will operate in a similar manner to the current late filing fees charged by the Companies Registry. An order to introduce fees requires Tynwald approval.

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

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 33 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 34, Mr Cannan.

Mr Cannan: Clause 34 creates an appeals route to the Financial Services Tribunal against decisions made by the Department of Economic Development in respect of whether a nominated officer is exempt from the requirement to submit beneficial ownership information online. The Tribunal can also hear appeals against the imposition of civil penalties by the Isle of Man Financial Services Authority. A decision of the Tribunal is binding, although a further appeal lies to the High Court as a point of law.

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

The Speaker: Mr Shimmins.

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

The Speaker: The question is that clause 34 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 35, Mr Cannan.

Mr Cannan: Clause 35 provides for offences by legal entities other than natural persons. Accordingly, if an offence is committed by a legal entity and it is proved that one of its officers was complicit the officer as well as the entity is guilty of the offence and is liable to the penalty provided for the offence.

I beg to move that clause 35 stand part of the Bill.

The Speaker: Mr Shimmins.

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

The Speaker: The question is that clause 35 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 36.

Mr Cannan: Clause 36 specifies that a requirement imposed under this Bill has effect despite any obligations as to confidentiality or other restrictions on the disclosure of information imposed by statute, contract or otherwise. Therefore a disclosure made or the sharing of information in accordance with the Bill does not breach any obligations of confidence or any other restriction on access or disclosure of the accessed information subject to the Data Protection Act 2002.

I beg to move that clause 36 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 36 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 37, Mr Cannan.

Mr Cannan: Clause 37 provides that the Data Protection Act 2002 is not affected by this Bill so nothing in this Bill authorises a disclosure in contravention of that Act of personal data which is not exempt from its provisions.

I beg to move that clause 37 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 37 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 38, Mr Cannan.

Mr Cannan: Clause 38 makes explicit that the existing exemption under the Freedom of Information Act 2015 for information the disclosure of which is restricted by law applies to information prohibited from disclosure under this Bill. The effect of this clause is that applications will not be able to obtain information from the database via a Freedom of Information request to the Department of Economic Development.

I beg to move that clause 38 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 38 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 39, Mr Cannan.

Mr Cannan: Clause 39 provides that nothing in the Act compels the production or divulgence by an advocate or other legal adviser of an item subject to legal privilege but an advocate or legal adviser may be required to give the name and address of any client.

I beg to move that clause 39 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 39 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 40, Mr Cannan.

Mr Cannan: This clause ensures that the operation of this Act does not limit or otherwise restrict any other statutory provision concerning beneficial ownership and sets out some examples thereof.

I beg to move that clause 40 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 40 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 41, Mr Cannan.

Mr Cannan: Clause 41 provides that the operation of a power or duty in this Bill to disclose information does not affect the operation of any other power or duty to disclose information which exists in this Bill or any other enactment or any restrictions on such disclosure.

I beg to move that clause 41 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 41 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 42 and Schedule 3, Mr Cannan.

Mr Cannan: Clause 42 requires that legal entities must include a statement of compliance in annual returns. The statement must confirm that the legal entity and its nominated officer have each complied with their respective obligations. The required details in respect of any registerable ownerships have been submitted and all information submitted is up to date and correct. Because the statement is solely in relation to obligations under this Act it must be countersigned by the nominated officer.

Schedule 3 sets out the necessary legislative amendments to facilitate the statement of compliance in annual returns as required by the clause. I beg to move that clause 42 and Schedule 3 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 42 and Schedule 3 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 43, Mr Cannan.

Mr Cannan: Clause 43 provides for the online submission of annual returns for companies. Unfortunately the online filing of annual returns is not yet feasible and work to enable its future delivery will commence in earnest once the central database of beneficial ownership has been established. To be clear, this clause will not be brought into force until the technology is in place to facilitate it.

Schedule 4 sets out the necessary legislative amendments and will be brought into force alongside clause 43.

I beg to move that clause 43 and Schedule 4 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 43 and Schedule 4 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 44, Mr Cannan.

Mr Cannan: Clause 44 makes two consequential amendments to the Financial Services Act 2008. The clause extends the remit of the Financial Services Tribunal to cover appeals under this Bill further to clause 34 and adds this Bill to the list of other Acts which confer functions on the Financial Services Authority.

As noted earlier, the only additional powers granted to the Financial Services Authority by this Bill are in relation to the oversight of this Bill.

I beg to move that clause 44 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 44 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 45, Mr Cannan.

Mr Cannan: Clause 45 provides for the continuation of appointment subject to the written consent of the officer of nominated officers under the Companies (Beneficial Ownership) Act 2012. It also provides for a similar position in respect of registered agents under the Companies Act 2006 and associated Acts. A nominated officer who carries their appointment through to this new Act must comply with the Act as if they were appointed under it.

I beg to move that clause 45 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second and reserve my remarks.

The Speaker: The question is that clause 45 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 46, Mr Cannan.

Mr Cannan: Clause 46 repeals the Companies (Beneficial Ownership) Act 2012 and the Companies (Beneficial Ownership) (Exemptions) Order 2013.

I beg to move that clause 46 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you. I beg to second.

The Speaker: The question is that clause 46 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Well, Hon. Members in reward for a good mornings work you can have an early lunch and we will commence the consideration of the Equality Bill at 2.30 p.m. until which time the House stands adjourned.

The House adjourned at 12.57 p.m. and resumed at 2.30 p.m.