NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NUMBER: 1144 [NW1377E]

DATE OF PUBLICATION: 17 MAY 2013

1144. Mr T D Harris (DA) to ask the Minister of Finance:

(1) Did the Financial Services Board commission an independent regulatory impact assessment before the introduction of the Financial Advisory and Intermediary Services Act, Act 37 of 2002 (FAIS); if not, why not; if so,

(2) will the National Treasury make it available;

(3) has the Financial Services Board commissioned a new independent regulatory impact assessment or any similar study to confirm the validity of regulatory impact assessment that was done before the introduction of the FAIS; if not, why not; if so,

(4) will the National Treasury make it available;

(5) has he found that fewer insurance policies lapsed and termination rates of insurance policies decreased since the introduction of this Act; if not, why not?

NW1377E

REPLY:

I hope that the Honourable Member is not arguing for light-touch regulations for the financial sector when posing this question, which refers to a period that is more than ten years ago. The global trend today is to tighten financial regulations, and not lessen them. The FAIS legislation is designed to protect customers of financial services, and as indicated in the 2011 policy shift towards a twin peaks system of regulation (refer to the 2011 publication “A safer financial sector to serve South Africa better”), there is a need for tougher licensing and fit and proper criteria to apply to all financial services providers, and to take adequate steps to prevent theft of deposits, reckless lending, money laundering and other financial crimes. Further, by adhering to internationally accepted standards and obligations, our financial institutions are able to conduct business with other financial institutions based in countries that we deal with via trade or financial transactions.

Many of the responsible persons in the FSB ten years ago are no longer with in the FSB today, so FSB staff have had to draw from their records in 2001-02 to provide specific responses. I would also like to draw the Honourable Member’s attention to my reply to a similar question PQ 1790 of 2012 (copy attached).

(1) No, the FSB did not commission an independent regulatory impact assessment before the introduction of the FAIS Act, but did commission Genesis Analytics (a private provider, and not an independent institution) to conduct a cost-benefit analysis of the proposed FAIS legislation in September 2001 prior to the enactment of the legislation in 2002. This study was made available to the Parliamentary Portfolio Committee at the time, and concluded that the benefits of the legislation would outweigh the costs of its implementation by a ratio of three to one.

(2) The cost-benefit analysis conducted by Genesis Analytics was made available to parliament at the time, and a presentation of its findings was made to the Parliamentary Portfolio Committee on Finance, on 23 January 2002, prior to the adoption of the legislation by Parliament. I am happy to arrange for a copy of the study to be made available to the Honourable Member.

(3) No, the Financial Services Board has not conducted an impact assessment of the FAIS legislation since its enactment, given the pending shift to tighter regulations following the 2008 global financial crisis. However, the impact of the Act can to some degree be assessed by considering the extent of the oversight on providers of financial services. For this purpose annual reports are submitted to Parliament by the Financial Services Board as well as by the FAIS Ombud established in terms of the Act, which reports on the number of financial service providers authorised in terms of the Act, the number of regulatory interventions by the Financial Services Board and the number of cases considered by the FAIS Ombud. The following Table reflects some of the regulatory actions that have been taken against providers of financial services since the Act came into operation in September 2004:

Type of action	**Number of actions taken**
Withdrawal of licence	3 724
Suspension of licence	6 266
Decline of licence application	2 120
Debarment of individuals by FSB	3 480
Debarment of representatives by financial services providers	387

The regulatory actions referred to in the Table above resulted in the removal of persons who are not fit and proper from the financial services industry.

(4) Not applicable.

(5) This question is not appropriate in order to determine the impact of the Act as various factors, outside the scope of the Act, could contribute to the number of policies being lapsed or surrendered eg. the economic cycle, new generation products that replace older policies, social factors etc. It must further be borne in mind that the main purpose of the Act is “to regulate the rendering of financial advisory and intermediary services to clients…” and not to regulate the decisions of consumers of financial services and products either in acquiring such services or products, or to dispose of or terminate such services or products.

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 1790 [NW2181E]
DATE OF PUBLICATION: 27 JULY 2012

1790. Mr I O Davidson (DA) to ask the Minister of Finance:

(1) Whether his department has conducted a comprehensive actual cost analysis for the (a) establishment and (b) administration of all aspects of the Financial Advisory and Intermediary Services (FAIS) Act, Act 37 of 2002, to date; if not, why not; if so, what are the costs since the adoption of FAIS with reference to (i) the office of the FAIS Ombud, (ii) all salaries paid to (aa) FAIS and (bb) Ombud staff, (iii) rentals paid, (iv) travel and entertainment, (v) legal fees paid to (aaa) lawyers, (bbb) court costs, (ccc) all appeal board costs and (ddd) settlements and (iv) all other costs incurred;

(2) whether his department conducted cost estimates incurred by the private sector since the adoption of FAIS, including all (a) compliance officers, (b) reports of submissions, (c) training of personnel, (d) training courses, (e) study time, (f) travel, (g) examination fees and (h) all other costs complying therewith; if not, why not; if so, what are the relevant details;

(3) what are the expected future annual costs for the next five financial years for the (a) public and (b) private sector?

NW2181E

REPLY:

(1)(a) and (b): No, because it is not possible to fully and meaningfully assess the costs or benefits from all aspects of the FAIS Act since its establishment in 2002. The global financial crisis has shown as well as recent revelations by US and UK regulators around LIBOR and money laundering that there is a need to regulate all financial institutions that operate in our country, from both a prudential and market conduct perspective, and ensure that they take adequate steps to prevent money laundering and other financial crimes. I refer the Honourable Member to our 2011 publication “A safer financial sector to serve South Africa better”, which outlines our approach to regulating the financial sector.

Some of the reasons for regulations emanate from international obligations. The costs of not following international obligations can be enormous, as it could cut off our financial institutions from conducting business with other financial institutions based in countries that we deal with via trade or financial transactions. There are significant benefits requiring financial institutions and providers to be fit and proper, and to be subjected to the enforcement mechanisms in terms of the Act.

(ii) (aa), (iii), (iv), (v) (aaa), (bbb), (ccc) and (ddd) and (iv) With regard to more direct costs of the functioning of the FAIS Ombud, the Honourable Member should note that the only reliable information that any entity can provide is from its audited financial statements and in terms of the breakdowns reported in such audited statements. There is no point in providing financial information that has not been audited, particularly if it is outdated information that may be ten years old and the accounting officers at that time are no longer available. The FSB estimates the cost for the FAIS division of the FSB at just under R665 million up to the end of 31 March 2011, extracted from the audited financial years, and broken down per year as follows:

Funds spent by FSB on FAIS	
Financial Year	R
2002/03	21 565 642
2003/04	26 170 175
2004/05	31 622 326

Funds spent by FSB on FAIS	
Financial Year	R
2005/06	49 571 539
2006/07	46 788 395
2007/08	76 227 620
2008/09	121 863 306
2009/10	146 162 368
2010/11	145 003 272
Total	664 974 643

The coming audited financial statements for the 2011/12 financial year (to be tabled later this month) is R156 976 271, so the above total will come to just under R822 million as at 31 March 2012.

The FSB has also provided the following information pertaining to the cost of the FAIS Ombud since its inception, drawn largely from their published annual reports:

Expenditure of the Office of the FAIS Ombud		
Financial Year	R	
		Notes
2002/2003	572 374	1
2003/2004	3 604 037	1
2004/2005	5 358 678	2
2005/2006	9 365 086	2
2006/2007	11 208 036	2
2007/2008	14 269 598	2
2008/2009	19 187 042	2
2009/2010	21 426 994	2
2010/2011	22 408 037	2
2011/2012	25 958 092	3
Total	133 357 974	

Notes:

1. As per the 2003/2004 published annual report of the FSB under the item "FAIS Ombud's loan account"

2. Extracted from the published annual reports of the Office of the FAIS Ombud

3. As per the 2011/12 annual report of the FAIS Ombud, which will be tabled shortly.

With regard to the further breakdowns you require, you are welcome to check whether such information is provided in these audited financial statements. The Financial Services Board will be willing to provide the audited financial statements to you, should you not be able to secure the annual reports from Parliament. In addition, the FSB will also clarify any other information contained in the reports.

(2) and (3): As noted above, it is not possible to provide such costs or benefits as it affects individual financial companies or providers of financial services. The National Treasury does continually assess whether any specific costs are economically justified, where this is brought to the attention of the National Treasury by any affected financial institution, or by a representative body of financial institutions. For example, we are currently engaging with the Banking Association of SA, on how to make specific improvements to the functioning of the Banks Act.