

FINANCIAL SERVICES (COMPENSATION AND RESOLUTION SCHEMES) ACT 2015

Principal Act

Act. No. 1998-08	<i>Commencement of ss. 1 to 7, 8(1)(a), (2), 3(a), (c), (d), (g), (4), (5), (6)(b), (c) and (d), 9(1), 14, 16, 19(1), 20, 21(1), (2) and (3), 22, 23, 25, 26 and 28</i>	15.1.1998
	<i>Commencement of all other sections</i>	5.4.1999
	<i>Enactment</i>	5.1.1998

Amending enactments	Relevant current provisions	Commencement date
Act. 1999-08	ss. 6(5) and (6), 12(6) and Sch. 2	5.4.1999
1999-08	ss.2, 4(1)(a), (b) and (c), 4(2) and (3), 12(9), 13, 22(1), 22(1)(b), 22(2), 23 and 28	20.8.1999
2004-34	s.26	1.5.2004
2005-29	s.2(2)	26.5.2005
2009-27	ss. 2, 4(3A), (3B) & (3C), 10(2), 11(2), (4) & (5), 12(2A), (2B) & (10), 15(1), 24(2A), 26, 27 & Sch. 2	30.6.2009
“	s. 12(2)	9.12.2010 [♦]
LN. 2010/179	s. 12(2)	31.12.2010
Act. 2014-14	s. 10(2)(b)	1.11.2014
LN. 2015/101	Long title, ss. 1(1), 2 to 38, Schs. 1 to 3	29.6.2015
LN. 2016/143	ss. 2(1), (2), 3, 6, 7, 8, 10A, 16(1), (2), (4)-(10), 16A, 18(16), (16A), 20(5), 32(2), (4)(a), (6), 36(2), (3), 37-49, Sch. 1 & 2	7.7.2016 ¹
2016/257	Sch. 1	22.12.2016

[♦] LN. 2010/172

¹ Consequential amendments are made to the Act in respect of references to the Board, substituted to FSRCC

English sources:

None

EU Legislation/International Agreements involved:

Directive 78/660/EEC.

Directive 82/891/EEC

Directive 83/349/EEC

Directive 89/299/EEC

Directive 89/646/EEC

Directive 91/308/EEC

Directive 94/19/EC

Directive 2009/14/EC

Directive 2001/24/EC

Directive 2002/47/EC

Directive 2004/25/EC

Directive 2005/56/EC

Directive 2007/36/EC

Directive 2011/35/EU

Directive 2012/30/EU

Directive 2013/36/EU

Directive 2014/59/EU

Regulation (EU) No 1093/2010

Regulation (EU) No 648/2012

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AN ACT TO TRANSPOSE INTO THE LAW OF GIBRALTAR DIRECTIVE 2014/49/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 16 APRIL 2014 ON DEPOSIT GUARANTEE SCHEMES (RECAST) AND TO GIVE FURTHER EFFECT TO DIRECTIVE 2014/59/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 15 MAY 2014 ESTABLISHING A FRAMEWORK FOR THE RECOVERY AND RESOLUTION OF CREDIT INSTITUTIONS AND INVESTMENT FIRMS AND AMENDING COUNCIL DIRECTIVE 82/891/EEC, AND DIRECTIVES 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU AND 2013/36/EU, AND REGULATIONS (EU) NO 1093/2010 AND (EU) NO 648/2012, OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL.

PART 1 PRELIMINARY

Title and commencement.

1.(1) This Act may be cited as the Financial Services (Compensation and Resolution Schemes) Act 2015.

(2) This Act shall come into force on such day or days as the Government may appoint by notice in the Gazette and different days may be appointed for different purposes.

Interpretation.

2.(1) In this Act—

“BRR Directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council;

“Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

“covered deposit” means the part of an eligible deposit that does not exceed the coverage levels set out in section 24;

“CRD4 Directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending directive 2002/87/EC and repealing directives 2006/48/EC and 2006/49/EC

“deposit guarantee scheme” means a scheme of the kind in points (a), (b) or (c) of Article 1(2) of the DGS Directive and includes the Scheme;

“DGS Directive” means Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast);

“EEA State” means–

- (a) a Member State of the European Union; or
- (b) any other state which is a party to the European Economic Area Agreement;

“eligible deposit” has the meaning given in section 22;

“the FSC” means the Financial Services Commission established under the Financial Services Commission Act 2007;

“the FSRCC” has the meaning given in section 3(1);

“low-risk assets” means items within the first or second category of Table 1 of Article 336 of Capital Requirements Regulation or any assets which are considered to be similarly safe and liquid by the FSC or the FSRCC;

“MiFI Directive” means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC;

“micro, small or medium-sized enterprise” means a micro, small or medium-sized enterprise within the meaning of Article 2(1) of the Annex to European Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

“the Minister” (other than in references to the Minister of Finance) means the Minister with responsibility for financial services;

“Money Laundering Directive” means Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, as the same may be amended from time to time;

“the Recovery and Resolution Regulations” means the Financial Services (Recovery and Resolution) Regulations 2014;

“resolution financing arrangements” means the financing arrangements established under Part 4;

“the Scheme” means the deposit guarantee scheme established in Gibraltar under Part 3;

“Scheme participant” means a credit institution which is required under section 12(1) or 13(3) to participate in the Scheme;

“Solvency II Directive” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast);

“working day” means a day other than Saturday, Sunday or a public holiday.

(2) In this Act “the Authority” means the Gibraltar Resolution Authority within the meaning of regulation 5(1) of the Recovery and Resolution Regulations and, unless otherwise provided—

- (a) references to the Authority do not include—
 - (i) the FSC acting otherwise than in its capacity as the Gibraltar Resolution Authority; or
 - (ii) the FSRCC acting otherwise than in the exercise of the FSC’s functions in that capacity;
- (b) references to the FSC do not include the FSC acting in its capacity as the Gibraltar Resolution Authority; and
- (c) references to the FSRCC do not include the FSRCC exercising the FSC’s functions in that capacity.

PART 2
FINANCIAL SERVICES RESOLUTION AND COMPENSATION
COMMITTEE

Functions of the FSRCC.

3.(1) The Financial Services Resolution and Compensation Committee established by section 7B of the Financial Services Commission Act 2007 (“the FSRCC”) has the functions conferred upon it by or under this Act.

- (2) The FSRCC must establish sound and transparent practices for—
- (a) its governance in respect of the performance of its functions under this Act;
 - (b) the governance of the Scheme; and
 - (c) the governance of the resolution financing arrangements.

(3) Schedule 1 makes further provision about the powers and procedures of the FSRCC in the exercise of its functions under this Act.

Establishment of funds.

4.(1) The FSRCC must establish—

- (a) a fund called the Deposit Guarantee Fund;
- (b) a fund called the Resolution Financing Fund; and
- (c) an administration fund.

(2) The FSRCC must hold, manage and apply the funds in accordance with this Act and any other enactment.

Deposit Guarantee Fund.

5.(1) The Deposit Guarantee Fund is to consist of—

- (a) contributions levied on Scheme participants under Part 3;
- (b) money received as income or capital gain arising from any investments or other assets of the fund.
- (c) money borrowed by the FSRCC for the purposes of the Scheme;

- (d) money received by the FSRCC on any policy of insurance it takes out for the purposes of the Scheme;
- (e) money received from a liquidator or receiver of a Scheme participant in default;
- (f) any property and rights transferred under section 36(3) which the FSRCC designates as assets of the fund; and
- (g) any other money required to be paid into the fund or received by the FSRCC for the purposes of the Scheme.

(2) The FSRCC may invest any money which forms part of the fund provided that it does so in a low-risk and sufficiently diversified manner.

(3) The FSRCC may borrow money and take out insurance policies for the purposes of the Scheme.

(4) The fund may be applied for the following purposes—

- (a) payment of compensation under the Scheme;
- (b) repayment of money borrowed by the FSRCC and interest on any money so borrowed under subsection (3);
- (c) payment of premiums on insurance policies effected under subsection (3);
- (d) meeting liabilities transferred to the FSRCC under section 36(3), which the FSRCC designates as liabilities of the fund;
- (e) payment of any other money by the FSRCC for the purposes of the Scheme.

Resolution Financing Fund.

6.(1) The Resolution Financing Fund is to consist of—

- (a) any contributions to the resolution financing arrangements which are levied on or contributed by authorised institutions under Part 4;
- (b) money received as income or capital gain arising from any investments or other assets of the resolution financing arrangements;

- (c) money borrowed by the FSRCC for the purposes of the resolution financing arrangements;
- (d) money received by the FSRCC on any policy of insurance it takes out for the purposes of the resolution financing arrangements;
- (e) subject to regulations 39, 40, 42, 43, and 44 of the Recovery and Resolution Regulations, any amount received from an authorised institution under resolution or a bridge institution within the meaning of those Regulations;
- (f) any other money required to be paid into the fund or received by the FSRCC for the purposes of the resolution financing arrangements.

(2) The FSRCC may invest any money which forms part of the fund provided that it does so in a low-risk and sufficiently diversified manner.

(3) The FSRCC may borrow money and take out insurance policies for the purposes of the resolution financing arrangements.

(4) The fund may be applied for the following purposes—

- (a) making the resolution financing arrangements available to the Authority in accordance with the Recovery and Resolution Regulations;
- (b) repayment of money borrowed by the FSRCC and interest on any money so borrowed under subsection (3);
- (c) payment of premiums on insurance policies effected under subsection (3);
- (d) payment of any other money by the FSRCC for the purposes of the resolution financing arrangements.

Administration fund.

7.(1) The FSRCC may require—

- (a) Scheme participants to pay administrative fees to meet the costs of the FSRCC in administering the Scheme; and
- (b) authorised institutions to pay administrative fees to meet the costs of the FSRCC in administering the resolution financing arrangements.

(2) Any fee under subsection (1) is to be determined by the FSRCC and the costs which may be taken into account in doing so include the expenses of the members of the FSRCC.

(3) Any fee imposed under subsection (1) must be paid into the administration fund and used only for the purposes specified in that subsection and must not be counted towards the available financial means of the Scheme or the resolution financing arrangements.

(4) Sections 18(16A) and 41(10) (which provide for levy contributions from institutions which cease activities part way through a financial year) apply to a fee under this section as if it was a levy under Part 3 or 4 (as the case may be).

(5) Any fee payable under this section—

(a) is due within 30 days of the date when the invoice for the fee is issued; and

(b) may be enforced as a civil debt owed to the FSRCC.

(6) Failure to pay a fee payable under this section—

(a) by a Scheme participant, may be proceeded against under section 14, 15 or 16 as if it was a failure to comply with an obligation imposed under Part 3; or

(b) by an authorised institution, may be proceeded against under section 48 as if it was a failure to comply with an obligation imposed under Part 4.

8. *Omitted.*

Tax treatment.

9.(1) The income of the FSRCC is exempt from income tax and all other taxes, and any property of the FSRCC is exempt from all duties and rates levied by the Government of Gibraltar.

(2) For the purposes of the Income Tax Act 2010, a person may deduct as an allowable expense any money paid on a levy or other contribution requirement imposed by the FSRCC under this Act or any other enactment.

PART 3 DEPOSIT GUARANTEE SCHEME

Overview of Part 3.

10. This Part establishes a deposit guarantee scheme (“the Scheme”) in Gibraltar and gives effect to the DGS Directive.

Interpretation of Part 3.

10A. In this Part—

“available financial means” means cash, deposits and low-risk assets which can be liquidated within seven working days and includes payment commitments as provided for in section 19;

“branch” means a place of business in the EEA which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions;

“compensation date” means the date on which—

- (a) the FSRCC makes a determination under section 25; or
- (b) a judicial authority determines that deposits held by a Scheme participant are unavailable deposits such that the Scheme participant is in default;

“credit institution” means a credit institution within the meaning of point (1) of Article 4(1) of the Capital Requirements Regulation;

“deposit” means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed term deposit and a savings deposit, but excluding a credit balance where—

- (a) its existence can only be proven by a financial instrument (as defined in the MiFI Directive) unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which exists in an EEA State on 2 July 2014;
- (b) its principal is not repayable at par; or
- (c) its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party;

“depositor” means the holder or, in the case of a joint account, each of the holders, of a deposit;

“joint account” means an account opened in the name of two or more persons or over which two or more persons have rights that are exercised by means of the signature of one or more of those persons;

“target level” means the target level specified in section 18(2);

“unavailable deposit” means a deposit that is due and payable but has not been paid by a Scheme participant under the applicable legal or contractual conditions where either—

- (a) the FSRCC has made a determination under section 25; or
- (b) a judicial authority has made a ruling for reasons which are directly related to the Scheme participant’s financial circumstances and the ruling has had the effect of suspending the rights of depositors to make claims against it.

Competent authority and designated authority.

11.(1) For the purpose of the DGS Directive—

- (a) the FSC is the competent authority; and
- (b) the FSRCC is the designated authority.

(2) The competent authority and designated authority must cooperate with each other and with the European Banking Authority.

(3) When it notifies the European Banking Authority of an authorisation under Article 20(1) of the CRD4 Directive, the FSC must indicate that the credit institution concerned is a Scheme participant.

Participation in Scheme.

12.(1) A credit institution which is licensed under the Financial Service (Banking) Act must participate in the Scheme if it is—

- (a) incorporated in or formed under the law of Gibraltar; or
- (b) incorporated in or formed under the law of a non-EEA State and does not participate in a deposit guarantee scheme in that

State which offers protection equivalent to that offered by the Scheme.

(2) A credit institution authorised in an EEA State under Article 8 of the CRD4 Directive must not take deposits in Gibraltar unless it is a member of a deposit guarantee scheme in that EEA State which is recognised under Article 4(1) of the DGS Directive.

(3) The FSRCC must notify the FSC immediately if it becomes aware of any instance of a credit institution not complying with its obligations under this Part.

(4) Where the FSC receives notification in accordance with subsection (3), it must promptly take appropriate measures in co-operation with the FSRCC to ensure that the credit institution complies with its obligations which, in the case of a Scheme participant, may include any of the following—

- (a) imposing a penalty under section 14;
- (b) publishing a statement under section 15;
- (c) imposing conditions upon, suspending or revoking the Scheme participant's licence under section 16.

(5) If measures taken under subsection (4) fail to secure a Scheme participant's compliance, the FSRCC, with the consent of the FSC—

- (a) may give the Scheme participant not less than one month's notice of the FSRCC's intention to exclude it from the Scheme; and
- (b) must, if on the expiry of that notice period the Scheme participant has not complied with its obligations, exclude the Scheme participant.

(6) The Scheme must continue to cover deposits—

- (a) made with a Scheme participant before the expiry of the notice period of any notice given to the Scheme participant under subsection (5)(a); or
- (b) held by a Scheme participant on the date on which the Scheme participant is excluded from the Scheme.

Branches of third country institutions.

13.(1) The FSRCC must check that any branch established in Gibraltar by a third country institution has deposit protection equivalent to that prescribed by the DGS Directive.

(2) In performing a check under subsection (1), the FSRCC must at least check that depositors benefit from the same coverage level and scope of protection as provided for in the DGS Directive.

(3) If the FSRCC considers that the protection provided in respect of a branch of a third country institution is not equivalent then, subject to Article 47(1) of the CRD4 Directive, it may require the branch to be a Scheme participant.

(4) Each branch in Gibraltar of a third country institution which is not a member of a deposit guarantee scheme operating in an EEA State must provide all relevant information concerning its guarantee arrangements for the deposits of actual and intending depositors at that branch.

(5) The information referred to in subsection (4) must be made available in a clear and comprehensible form in English or the language that was agreed by the depositor and the credit institution when the account was opened.

(6) In this section “third country institution” means a credit institution which has its head office outside the European Economic Area.

Civil penalties.

14.(1) If the FSC considers that a credit institution has failed to comply with any obligation under this Part, it may impose a penalty on the credit institution.

(2) The maximum penalty that may be imposed under subsection (1) is an amount equivalent to level 5 on the standard scale.

(3) A penalty imposed under this section may be enforced as a civil debt owed to the FSC.

(4) The FSC, after deducting the costs of its compliance and enforcement activity in respect of the credit institution, must pay the proceeds of any penalty under this section to the FSRCC for the benefit of the Deposit Guarantee Fund.

Publication of default.

15.(1) If the FSC considers that a credit institution has failed to comply with any obligation under this Part, it may publish a statement specifying—

- (a) the nature of the default, and
- (b) the identity of the credit institution who has committed it.

(2) Publication under subsection (1) may take any form, or combination of forms, that the FSC thinks appropriate.

Restriction, suspension and revocation of licences.

16.(1) The FSC, if it considers that a credit institution has failed to comply with any obligation under this Part, may by decision notice under this section –

- (a) impose such conditions as it considers appropriate on the credit institution's licence;
- (b) suspend the credit institution's licence; or
- (c) revoke the credit institution's licence.

(2) A decision notice may provide for conditions under subsection (1)(a) or suspension under subsection (1)(b) to apply–

- (a) for a specified period not exceeding 12 months;
- (b) until the occurrence of a specified event; or
- (c) until the credit institution has complied with specified conditions.

(3) The FSC may, in particular, impose conditions under subsection (1)(a) so as to require the credit institution to take, or refrain from taking, specified action.

(4) Before taking action under this section the FSC must give the credit institution a warning notice—

- (a) stating the action proposed and the reasons for it;
- (b) giving the credit institution not less than 14 days to make representations; and
- (c) specifying a period within which the credit institution may decide whether to make oral representations.

(5) The period for making representations may be extended by the FSC.

(6) Subsection (4) does not apply if the FSC is satisfied that a warning notice—

- (a) cannot be given because of urgency;
- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action the FSC proposes to take; or
- (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

(7) Where the FSC has issued a warning notice (or, dispensed with the requirement to do so in accordance with subsection (6)), after considering any representations made in accordance with subsection (4), the FSC must issue—

- (a) a decision notice stating that the FSC will take the action specified in the warning notice;
- (b) a discontinuance notice stating that the FSC does not propose to take that action; or
- (c) a combined notice consisting of a decision notice stating that the FSC will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.

(8) A decision notice takes effect, and the specified action may be taken—

- (a) at the end of the period for bringing an appeal if no appeal is brought, or
- (b) when any appeal is finally determined or withdrawn;

but the FSC may apply to the Supreme Court for permission to take interim action under this section where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

(9) The FSC may at any time vary or withdraw—

- (a) conditions imposed under subsection (1)(a); or
- (b) a suspension imposed under subsection (1)(b).

(10) In this section “licence” means a licence to accept deposits granted under the Financial Services (Banking) Act.

Appeals.

16A.(1) A credit institution that is aggrieved by a decision of the FSC under section 14, 15 or 16 may appeal against that decision to the Supreme Court.

(2) An appeal must be brought within 28 days of the date of the decision notice.

FSRCC’s duties in respect of the Scheme.

17.(1) The FSRCC must administer the Scheme in accordance with this Part and the DGS Directive.

(2) The FSRCC must have in place–

- (a) adequate systems to determine the potential liabilities of the Scheme and ensure that the Scheme’s available financial means are proportionate to those liabilities; and
- (b) adequate alternative funding arrangements to enable it to obtain short-term funding to meet claims against the Scheme.

(3) The FSRCC must publish for depositors on its website all necessary information–

- (a) on the operation of the Scheme; and
- (b) on the process, eligibility, exclusions from protection and conditions for payment of compensation (including all information specified in the depositor information sheet).

(4) The FSRCC must perform stress tests of its systems relating to the payment of compensation in respect of eligible deposits at least once every three years and more frequently where it considers it appropriate.

(5) The first stress test under subsection (4) must take place by 3 July 2017.

(6) The FSRCC must use the information necessary to perform stress tests of its systems only for the performance of those tests and must not keep the information for longer than is necessary for that purpose.

(7) The FSRCC must ensure the confidentiality and the protection of the data pertaining to depositors' accounts. The processing of such data shall be carried out in accordance with Directive 95/46/EC.

(8) The FSRCC must correspond with a depositor in—

- (a) English;
- (b) an official language of the EEA State in which the covered deposit is located; or
- (c) where a credit institution operates directly in an EEA State without having established branches, in the language that was chosen by the depositor when the account was opened.

(9) The FSRCC must establish procedures to enable it, where appropriate, to share information and communicate effectively with other deposit guarantee schemes, their affiliated credit institutions and relevant competent authorities, designated authorities and other agencies in Gibraltar and other jurisdictions.

(10) The FSRCC must, by 31st March each year, inform the European Banking Authority of the amount of covered deposits in Gibraltar and of the amount of the available financial means of the Scheme on 31st December of the preceding year.

Scheme levy.

18.(1) The FSRCC must raise the Scheme's available financial means by imposing a levy on Scheme participants at least once in each year.

(2) By 3 July 2024, the Scheme's available financial means must reach the target level of 0.8% of the amount of covered deposits of Scheme participants.

(3) Subject to subsections (4) to (7), any levy imposed on Scheme participants under subsection (1) must be based on the amount of covered deposits incurred by, and the risk weighting (if any) of, the respective participant.

(4) The FSRCC may decide that a Scheme participant must pay a minimum levy irrespective of the amount of its covered deposits.

(5) The FSRCC may decide that Scheme participants who are members of an institutional protection scheme (within the meaning of Article 113(7) of the Capital Requirements Regulation) which is recognised by the FSRCC are to pay lower contributions to the Scheme.

(6) Subject to the approval of the FSC, the FSRCC may develop its own risk weighting methods for determining and calculating the risk-based contributions of Scheme participants and any such method—

- (a) must be proportional to the risk of the Scheme participants;
- (b) must take due account of the risk profiles of the various business models; and
- (c) may take account of the asset side of the balance sheet and risk indicators such as capital adequacy, asset quality and liquidity.

(7) A central body and all credit institutions permanently affiliated to it, as referred to in Article 10(1) of Capital Requirements Regulation, is to be subject to the risk weight determined on a consolidated basis for the central body and its affiliated institutions as a whole.

(8) If the Scheme's available financial means are insufficient to compensate depositors when deposits become unavailable, the FSRCC may require Scheme participants to pay extraordinary contributions.

(9) Any extraordinary contributions payable under subsection (8) must not exceed 0.5% of covered deposits per calendar year other than in exceptional circumstances and with the prior consent of the FSC.

(10) The FSC may defer, in whole or in part, a Scheme participant's obligation to pay extraordinary contributions under subsection (8) if payment would jeopardise the liquidity or solvency of the Scheme participant.

(11) A deferral under subsection (10) must not be granted for longer than six months but may be renewed at the request of the Scheme participant.

(12) Any contribution which is deferred under subsections (10) or (11) must be paid by the Scheme participant when doing so would no longer jeopardise its liquidity or solvency.

(13) If, after the Scheme's available financial means have reached the target level for the first time, they have been reduced to less than two-thirds of the target level, the FSRCC must impose regular levies on Scheme participants at a level that will allow the target level to be reached again within six years.

(14) If, before the date specified in subsection (2) the Scheme has made cumulative disbursements in excess of 0.8% of covered deposits, the FSRCC may extend that date by not more than four years.

(15) Any levy imposed under this section must take due account of the phase of the business cycle and the impact that procyclical contributions may have when setting annual contributions.

(16) Any levy payable under this section—

- (a) is due within 30 days of the date when the invoice for the levy is issued; and
- (b) may be enforced as a civil debt owed to the FSRCC.

(16A) If a Scheme participant ceases to carry on the activities of a credit institution part way through a financial year of the Scheme—

- (a) it will remain liable for any unpaid levies which the FSRCC has already made on the Scheme participant; and
- (b) the FSRCC may make further levies upon it (which may be before or after the Scheme participant has withdrawn or been excluded from the Scheme, but must be before it ceases to be an authorised credit institution) for the costs which it would have been liable to pay had the FSRCC made a levy on all Scheme participants in the financial year it ceased to carry on those activities.

(17) The FSRCC may enter into arrangements with the FSC for the FSC to collect the levy on behalf of the FSRCC and for that purpose any levy payable under this section may be enforced as if it was a debt due to the FSC.

(18) The FSRCC, with the approval of the European Commission, may authorise a minimum target level for the Scheme's available financial means which is lower than that specified in subsection (2) but not less than 0.5% of the amount of covered deposits of Scheme participants, where doing so is justified and the following conditions are met—

- (a) the reduction is based on the assumption that it is unlikely that a significant share of the Scheme's available financial means will be used for measures to protect covered depositors, other than under sections 32(2),(3) and (9); and
- (b) the banking sector in which Scheme participants operate is highly concentrated with a large quantity of assets held by a small number of credit institutions or banking groups, subject to supervision on a consolidated basis which, given their size,

are likely in the event of failure to be subject to resolution proceedings.

Payment commitments.

19.(1) Despite section 18(1), the available financial means to be taken into account in order to reach the target level specified in section 18(2) may include payment commitments by Scheme participants which are fully backed by collateral which—

- (a) consists of low-risk assets;
- (b) is unencumbered by any third party rights;
- (c) is at the disposal of, and earmarked for exclusive use by, the FSRCC for the purposes of the Scheme.

(2) Payment commitments under subsection (1) must not at any time constitute more than 30% (or such lower proportion as the FSRCC may determine) of the total amount of the Scheme's available financial means.

(3) Subsections (1) and (2) only apply until 1st March 2019 or such other date as, before that date, the Minister may by regulations specify.

Funds from other mandatory schemes.

20.(1) Despite section 18(1), the FSRCC may raise the Scheme's available financial means from existing schemes established in Gibraltar to which Scheme participants are required to make mandatory contributions for the purpose of covering the costs related to systemic risk, failure, and resolution of credit institutions.

(2) Subject to subsection (3), the Scheme is entitled to receive an amount equal to the amount of such contributions up to the target level specified in section 18(2) and those funds must be made available at the request of the FSRCC for use exclusively for the purposes provided for in section 32.

(3) Subsection (2) only applies if the FSC considers that the FSRCC is unable to raise extraordinary contributions from Scheme participants.

(4) Any sum paid to the Scheme under subsection (2) must be repaid by the FSRCC from contributions made by Scheme participants to the Scheme levy.

(5) Contributions to the resolution financing arrangements must not be counted towards the target level in section 18(2).

Transfer of Scheme levy funds.

21.(1) Subject to subsection (2), if a credit institution ceases to be a Scheme participant and joins a deposit guarantee scheme in an EEA State, the FSRCC must transfer the contributions paid by that credit institution to the available financial means of the Scheme during the 12 months preceding the end of participation to the relevant deposit guarantee scheme.

(2) Subsection (1) does not apply if the credit institution has been excluded from the Scheme under 12(5).

(3) If some of the activities of a Scheme participant are transferred to an EEA State and become subject to a deposit guarantee scheme in that State, the contributions paid by that Scheme participant during the 12 months preceding the transfer shall be transferred to the relevant scheme in proportion to the amount of covered deposits transferred.

Eligible deposits.

22.(1) A deposit is an eligible deposit only if it is held—

- (a) in Gibraltar by a Scheme participant; or
- (b) in an EEA State by a branch of a Scheme participant established in that EEA State.

(2) Each of the following is not an eligible deposit—

- (a) a deposit made by another credit institution on its own behalf or for its own account;
- (b) own funds as defined in point (118) of Article 4(1) of the Capital Requirements Regulation;
- (c) a deposit arising out of a transaction in connection with which there has been a criminal conviction for money laundering as defined in Article 1(2) of the Money Laundering Directive;
- (d) a deposit by a financial institution as defined in point (26) of Article 4(1) of the Capital Requirements Regulation;
- (e) a deposit by an investment firm as defined in the MiFI Directive;

- (f) a deposit, when it becomes unavailable, the holder of which has never been identified in accordance with Article 9(1) of the Money Laundering Directive;
- (g) a deposit by an insurance undertaking or a reinsurance undertaking as referred to in Article 13(1) to (6) of the Solvency II Directive;
- (h) a deposit by a collective investment undertaking;
- (i) a deposit by a pension or retirement fund (other than a deposit by a personal pension scheme or occupational pension scheme of a micro, small or medium-sized enterprise);
- (j) a deposit by a public authority;
- (k) a debt security issued by a credit institution and any liabilities arising out of own acceptances and promissory notes.

Marking of deposits.

23.(1) A Scheme participant must mark eligible deposits in a manner that allows for the immediate identification of those deposits.

(2) Where a depositor holds an account on behalf of one or more beneficiaries who are absolutely entitled to the sums in the account and which are or may be eligible deposits, a Scheme participant must mark the account in a manner that allows for the immediate identification of the account and the beneficiaries.

(3) A Scheme participant must—

- (a) at any time be able to provide the FSRCC with the aggregated amount of eligible deposits of every depositor; and
- (b) promptly provide that information to the FSRCC at its request.

(4) A Scheme participant must be able to provide the FSRCC with all information necessary to enable the FSRCC to prepare for the payment of compensation under this Part.

Coverage limits.

24.(1) Subject to subsections (2) and (3), in the event of deposits being unavailable, the maximum compensation payable under the Scheme for the aggregate eligible deposits of each depositor is EUR 100,000.

(2) The limit on the compensation payable in subsection (1) does not apply to deposits which comprise—

- (a) monies—
 - (i) deposited in preparation for the purchase of a private residential property (or an interest in a private residential property) by the depositor;
 - (ii) which represent the proceeds of sale of a private residential property (or an interest in a private residential property) of the depositor; or
 - (iii) which represent the proceeds of an equity release by the depositor in a private residential property;
- (b) sums paid to the depositor in respect of—
 - (i) benefits payable under an insurance policy;
 - (ii) a claim for compensation for personal (including criminal) injury;
 - (iii) public benefits paid in respect of a disability or incapacity;
 - (iv) a claim for compensation for wrongful conviction;
 - (v) a claim for compensation for unfair dismissal;
 - (vi) their redundancy (whether voluntary or compulsory);
 - (vii) their marriage or civil partnership;
 - (viii) their divorce or dissolution of their civil partnership; or
 - (ix) benefits payable on retirement;
- (c) sums paid to the depositor in respect of—
 - (i) benefits payable on death;
 - (ii) a claim for compensation in respect of a person's death; or
 - (iii) a legacy or other distribution from the estate of a deceased person;

- (d) sums held in an account on behalf of the personal representatives of a deceased person for the purpose of realising and administering the deceased's estate; or
 - (e) sums paid in accordance with the law of Gibraltar for some other social purpose which is linked to the marriage, civil partnership, divorce, dissolution of civil partnership, retirement, incapacity, death of an individual, or to the buying or selling of a depositor's only or main residence.
- (3) Subsection (2) only applies for a period of six months from the later of—
- (a) the first date on which a deposit of a kind specified in subsection (2) is credited to a depositor's account; or
 - (b) the first date on which the sum deposited becomes legally transferable to the depositor.

Determination that deposit is unavailable.

25.(1) The FSRCC must make a determination that a deposit is unavailable if—

- (a) it is satisfied that, under the applicable legal or contractual conditions, a Scheme participant has failed to repay a deposit which is due and payable and,
- (b) it appears to the FSRCC that, for reasons which are directly related to the Scheme participant's financial circumstances, it is unable for the time being to repay the deposit and has no current prospect of being able to do so.

(2) A deposit is also unavailable if a judicial authority has made a ruling for reasons which are directly related to the Scheme participant's financial circumstances and the ruling has had the effect of suspending the rights of depositors to make claims against it.

(3) The FSRCC must notify the relevant Scheme participant in writing of any determination under subsection (1) or ruling under subsection (2).

(4) Notice under subsection (3) must be given as soon as reasonably practicable and in any event before the end of five working days beginning with the day on which the determination was made or the FSRCC was notified of the ruling.

Calculating the repayable amount.

26.(1) Any compensation payable is to be calculated by reference to eligible deposits held on the compensation date.

(2) The limit provided for in section 24 applies to the aggregate eligible deposits placed by a depositor with the same Scheme participant, irrespective of the number of accounts, the currency, or the location within the EEA (and in calculating the aggregate eligible deposits of a depositor any liabilities of the depositor against the Scheme participant must not be taken into account).

(3) The share of each depositor of a joint account is to be considered separately in calculating the limits provided for in section 24 and, in the absence of contrary provision, the joint account is to be divided equally among the depositors.

(4) Deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, must be aggregated and treated as if made by a single depositor for the purpose of calculating the limits provided for in section 24.

(5) Where a depositor is not absolutely entitled to the sums held in an account but the person who is absolutely entitled has been identified or is identifiable before the compensation date, that person is to be treated as the depositor for the purpose of calculating the amount of compensation payable.

(6) Where several persons are absolutely entitled to a beneficial interest in a deposit, the share of each under the arrangements subject to which the deposit is managed must be taken into account in calculating the amount of compensation payable to each of them.

(7) Subject to section 24(1), the compensation payable must include reimbursement of any interest on an eligible deposit which has accrued but has not been credited at the compensation date.

(8) Where regulations made under subsection (9) so provide, a deposit which is for a social purpose and in respect of which a third party has given a guarantee that complies with State aid rules is not to be taken into account when aggregating the deposits held by the same depositor with the same Scheme participant for the purpose of subsection (2).

(9) The Minister may by regulations prescribe the categories of deposit for a social purpose to which subsection (8) applies.

(10) The amount of compensation payable under a third party guarantee in respect of a deposit to which subsection (8) applies must not exceed the maximum amount specified in section 24(1).

Repayment.

27.(1) The FSRCC must ensure that any compensation payable under this Part is available within seven working days of the compensation date.

(2) Subject to subsection (5), any compensation payable must be made available without it being necessary for a request to be made to the FSRCC.

(3) Until 31 December 2023, subsection (1) is to apply as if the reference to “seven working days” was a reference to—

- (a) “20 working days” from the date this section comes into force until 31 December 2018;
- (b) “15 working days” from 1 January 2019 until 31 December 2020; and
- (c) “10 working days” from 1 January 2021 until 31 December 2023.

(4) In respect of a deposit to which section 26(5) or (6) applies, subsection (1) is to apply as if the reference to “seven working days” was a reference to “three months”.

(5) Until 31 December 2023, if the FSRCC cannot make the compensation payable available within seven working days it must ensure that, upon request, within five working days depositors have access to an appropriate amount of their covered deposits to cover the cost of living (“the appropriate amount”).

(6) The FSRCC must only grant a depositor access to the appropriate amount based upon data held by the FSRCC or provided to it by the relevant Scheme participant.

(7) The appropriate amount, if paid to a depositor, must be deducted from the compensation payable to the depositor as calculated under section 26.

(8) Repayment under subsections (1) to (7) may be deferred where—

- (a) it is uncertain whether a person is entitled to receive any compensation or the deposit is subject to legal dispute;

- (b) the deposit is subject to restrictive measures imposed by a national government or international body;
- (c) without limiting subsection (10), there has been no transaction relating to the deposit within the last 24 months (the account is dormant);
- (d) the amount to be repaid is deemed to be part of a deposit to which section 24(2) and (3) applies; or
- (e) the amount to be repaid is to be paid by the deposit guarantee scheme of an EEA State under Article 14(2) of the DGS Directive.

(9) Where a depositor or any person entitled to or interested in sums held in an account has been charged with an offence arising out of or in relation to money laundering as defined in Article 1(2) of the Money Laundering Directive, the FSRCC may suspend any payment relating to the depositor or person concerned pending the judgment of the court.

(10) The FSRCC is not required to make any repayment under subsection (1) where there has been no transaction relating to the deposit in the 24 months before the compensation date and the value of the deposit is lower than the administrative costs that would be incurred by the FSRCC in making a repayment.

(11) A depositor whose deposits were not repaid or acknowledged within the time limits specified in subsections (1) or (4) must submit a claim for compensation in respect of an eligible deposit within the prescribed period.

(12) In subsection (11), the “prescribed period” means within one year of the compensation date or such other period as the Minister may by regulations prescribe.

Currency.

28.(1) Subject to subsection (3), the FSRCC must make compensation payments in respect of eligible deposits in sterling.

(2) Where the account in which the eligible deposit was held was maintained in a currency other than sterling, the FSRCC must use the exchange rate applying on the compensation date.

(3) Where the FSRCC is instructing the operator of a deposit guarantee scheme in an EEA State to make a payment on the FSRCC’s behalf under Article 14(2) of the DGS Directive, the FSRCC must instruct the relevant operator to make the payment in the currency of that EEA State.

Claims against the FSRCC.

29.(1) The FSRCC must ensure that a person who is or may be affected by a decision of the FSRCC in relation to compensation has an opportunity to make representations to the FSRCC in respect of that decision before it becomes final.

(2) The FSRCC must, if requested to do so by a depositor, give reasons for any decision not to pay compensation to that depositor.

(3) Any compensation which a depositor is entitled to receive from the Scheme and which is not paid in accordance with section 27 may be recovered as a debt due to the depositor.

Subrogation.

30.(1) The FSRCC may determine that the payment of compensation has the effect that the FSRCC –

- (a) is immediately and automatically subrogated to all or any part of the rights and claims of the compensation recipient against the Scheme participant or any third party in respect of or arising out of the compensation recipient's deposits being unavailable; and
- (b) has the right to bring legal or any other proceedings in its own name or in the name of, and on behalf of, the compensation recipient against the relevant Scheme participant or any third party.

(2) Where the FSRCC makes payments in the context of resolution proceedings, including the application of resolution tools or the exercise of resolution powers under section 32, the rights and claims conferred on the FSRCC include the right of recovery against the relevant credit institution for an amount equal to those payments.

(3) A claim under subsection (2) ranks at the same level as covered deposits in insolvency proceedings.

Depositor information.

31.(1) Scheme participants must make available to depositors (and potential depositors) information about–

- (a) its participation in the Scheme; and

- (b) the exclusions from protection which apply to the Scheme.
- (2) Depositors must—
 - (a) be provided with the information referred to in subsection (1) before entering into a deposit-taking contract; and
 - (b) acknowledge receipt of that information in depositor information sheet the form set out in Schedule 3.
- (3) Depositors must be provided with confirmation that their deposits are eligible deposits in their statements of account which must—
 - (a) be provided at least annually; and
 - (b) be accompanied by the depositor information sheet in Schedule 3 which must identify the currency or repayment and include a reference to the Scheme's website.
- (4) The information in subsection (1) must be provided in—
 - (a) English;
 - (b) the language that was agreed by the depositor and the Scheme participant when the account was opened;
 - (c) an official language of the EEA State in which the branch is established.
- (5) In the case of a merger, conversion of subsidiaries into branches or similar operations, depositors must be informed at least one month before the operation takes legal effect unless the FSC allows a shorter deadline on the grounds of commercial secrecy or financial stability.
- (6) Following notification of the merger, conversion or similar operation, depositors must be given a three-month period to withdraw or transfer to another credit institution, without incurring any penalty, their eligible deposits including all accrued interest and benefits in so far as they exceed the coverage level in section 24 at the time of the operation.
- (7) If a Scheme participant withdraws or is excluded from the Scheme, it must inform its depositors within one month of such withdrawal or exclusion.
- (8) If a depositor uses internet banking, the information required to be disclosed under this Part may be communicated by electronic means but, where the depositor so requests, it must be communicated on paper.

(9) A Scheme participant that operates under different trademarks must inform depositors clearly that the coverage levels specified in section 24 apply to the aggregated deposits that the depositor holds with the Scheme participant.

(10) The information required under subsection (9) must be included in the depositor information sheet in Schedule 3.

(11) In any advertising or promotional materials a Scheme participant must not provide any information about the Scheme other than—

- (a) a factual statement as to whether the product being advertised or promoted is or is not covered by the Scheme;
- (b) a factual description of the functioning of the Scheme; and
- (c) any further factual information which the Scheme participant is required by law to include.

(12) Credit institutions must ensure that depositors are informed about any deposits or categories of deposits or other instruments which will cease to be covered by a deposit guarantee scheme from 3 July 2015.

Use of Scheme funds.

32.(1) The FSRCC must primarily use the Scheme's available financial means to compensate depositors in accordance with the Scheme.

(2) The Scheme's available financial means must be used in order to finance the resolution of credit institutions in accordance with regulation 108 of the Recovery and Resolution Regulations.

(3) The Authority, after consulting the FSRCC, must determine any amount which must be provided under subsection (2).

(4) The FSRCC may use the Scheme's available financial means for alternative measures in order to prevent a Scheme participant from failing provided that all of the following conditions are met—

- (a) the Authority has not taken any resolution action under regulation 34 of the Resolution and Recovery Regulations;
- (b) the FSRCC has appropriate systems and procedures in place for selecting and implementing alternative measures and monitoring affiliated risks;

- (c) the costs of the measures do not exceed the costs of fulfilling the FSRCC's mandatory obligations under this Part;
- (d) the FSRCC's use of alternative measures is linked to conditions imposed on the Scheme participant that is being supported, involving at least more stringent risk monitoring and greater verification rights for the FSRCC;
- (e) the FSRCC's use of alternative measures is linked to commitments by the Scheme participant being supported with a view to securing access to covered deposits;
- (f) the ability of Scheme participants to pay extraordinary contributions under subsection (7) has been assessed and confirmed by the FSC.

(5) The FSRCC must consult the Authority and the FSC on the measures and the conditions imposed on the Scheme participant.

(6) Alternative measures under subsection (4) must not be applied where the FSC, after consulting the Authority, considers the conditions for resolution action under regulation 29(1) of the Recovery and Resolution Regulations to be met.

(7) If the Scheme's available financial means are used under subsection (4), Scheme participants must immediately provide the FSRCC with the means used for alternative measures, where necessary in the form of extraordinary contributions, where—

- (a) the need to reimburse depositors arises and the available financial means of the Scheme amount to less than two-thirds of the target level;
- (b) the available financial means fall below 25% of the target level.

(8) Until the Scheme's available financial means reach the target level for the first time, subsections (7)(a) and (b) apply as if the reference to two-thirds or 25% of the target level were references to two-thirds or 25% of the financial means which were available immediately before the Scheme's available financial means were used for alternative measures under subsection (4).

(9) The FSRCC may use the Scheme's available financial means to preserve the access of depositors to covered deposits, including transfer of assets and liabilities and deposit book transfer, in the context of insolvency proceedings, provided that the costs borne by the Scheme do not exceed the

net amount of compensating covered depositors of the Scheme participant concerned.

Payments on behalf of schemes in EEA States.

33.(1) The FSRCC must pay compensation to a person in accordance with the instructions of a deposit guarantee scheme in an EEA State if–

- (a) the person has placed a deposit with a credit institution that is a member of that deposit guarantee scheme, through a branch of that credit institution established in Gibraltar;
- (b) a payment of compensation is due to that person in respect of that deposit as a result of a determination or ruling referred to in point (8)(a) or (b) of Article 2(1) of the DGS Directive; and
- (c) the deposit guarantee scheme has–
 - (i) instructed the FSRCC to make the payment; and
 - (ii) provided the FSRCC with funds to cover that payment and any costs incurred by the FSRCC in fulfilling those instructions.

(2) If the FSRCC is required to pay compensation on behalf of a deposit guarantee scheme under subsection (1), the FSRCC must inform the depositors concerned that the relevant credit institution is in default and of their right to compensation on behalf of that scheme and the FSRCC may receive correspondence from those depositors on behalf of that scheme.

(3) Anything done or omitted by the FSRCC in accordance with this section is to be treated for the purposes of paragraph 11 of Schedule 1 as done or omitted in the discharge, or purported discharge, of the FSRCC's functions.

Loans to and from other schemes.

34.(1) Subject to subsection (2), the FSRCC may lend funds forming part of the Deposit Guarantee Fund to a deposit guarantee scheme ("borrowing scheme") in an EEA State.

(2) A loan under subsection (1) may only be made if the following conditions are met–

- (a) the borrowing scheme is not able to fulfil its obligations to pay compensation under the DGS Directive because of a lack of

available financial means as referred to in Article 10 of that Directive;

- (b) the borrowing scheme has made recourse to extraordinary contributions referred in Article 10(8) of the DGS Directive;
- (c) the borrowing scheme undertakes the legal commitment that the borrowed funds will be used in order to pay claims under Article 9(1) of the DGS Directive;
- (d) the borrowing scheme is not currently subject to an obligation to repay a loan to any other deposit guarantee scheme under Article 12 of the DGS Directive;
- (e) the borrowing scheme states the amount of money requested;
- (f) the total amount lent does not exceed 0.5% of covered deposits of the borrowing scheme;
- (g) the borrowing scheme informs the European Banking Authority without delay and states the amount of money requested and the reasons why the conditions set out in paragraphs (a) to (f) are fulfilled.

(3) A loan under subsection (1) must be subject to the following conditions–

- (a) the borrowing scheme must repay the loan within five years, may repay the loan in annual instalments and interest is due only at the time of repayment;
- (b) the interest rate set must be at least equivalent to the marginal lending facility rate of the European Central Bank during the credit period;
- (c) the Scheme must inform the European Banking Authority of the initial interest rate and the duration of the loan.

(4) Where the FSRCC borrows funds from another deposit guarantee scheme it must ensure that the contributions levied from Scheme participants are sufficient to reimburse the amount borrowed and to re-establish the target level as soon as possible.

Cooperation within the EEA.

35.(1) Subject to the restriction in Article 4 of the DGS Directive, the FSRCC must exchange information referred to under Articles 4(7), (8) and

(10) of that Directive with the managers of deposit guarantee schemes in EEA States or, if different, the designated authorities which supervise such schemes.

(2) If a credit institution intends to transfer from one deposit guarantee scheme to another in accordance with the DGS Directive, it must give at least six months' notice of its intention to do so and during that period, it remains under the obligation to contribute both ex-ante and ex-post financing to the original deposit guarantee scheme in accordance with Article 10 of the DGS Directive.

(3) In order to facilitate effective co-operation, the FSRCC must have written co-operation agreements in place with deposit guarantee schemes managers in EEA States or, if different, the designated authorities which supervise such schemes.

(4) The FSRCC must notify the European Banking Authority of the content of any agreement under subsection (3).

Transitional and transfer provisions.

36.(1) A deposit or other instrument which—

- (a) has an initial maturity date;
- (b) was paid in or issued before 2 July 2014; and
- (c) would otherwise cease to be covered (in whole or part) by a deposit guarantee scheme following the transposition of the DGS Directive into the law of Gibraltar,

is to be covered by the Scheme until the initial maturity date of the deposit or instrument.

(2) On the day that the Financial Services (Recovery and Resolution) (Amendment) Regulations 2016 come into operation, the property, rights and liabilities of the bodies in subsection (3) are to transfer to and vest in the FSRCC.

(3) The bodies are—

- (a) the Financial Services Compensation Board (FSCB); and,
- (b) the Gibraltar Deposit Guarantee Board, to the extent that any of its property, rights and liabilities are not already vested in the FSCB.

(4) Subsections (2) and (3) apply subject to any directions of the Minister.

PART 4

RESOLUTION FINANCING ARRANGEMENTS

Overview of Part 4.

37. This Part establishes resolution financing arrangements in accordance with Part 7 of the Recovery and Resolution Regulations (“the financing arrangements”) for the purpose of ensuring the effective application by the Authority of the resolution tools and powers provided by those regulations, which give effect in Gibraltar to the BRR Directive.

Interpretation of Part 4.

38. In this Part—

“authorised institution” means—

- (a) a credit institution licensed in Gibraltar;
- (b) an investment firm licensed in Gibraltar; or
- (c) a branch in Gibraltar of an authorised third country institution;

“available financial means” means cash, deposits and low-risk assets which can be liquidated within seven working days and includes payment commitments as provided for in section 42;

“branch” means a place of business in the EEA which forms a legally dependent part of a credit institution or investment firm and which carries out directly all or some of the transactions inherent in the business of credit institutions or investment firms;

“credit institution” means a credit institution within the meaning of point (1) of Article 4(1) of the Capital Requirements Regulation other than an entity referred to in Article 2(5) of the CRD4 Directive;

“EEA financing arrangement” means a resolution financing arrangement established within the EEA under the BRR Directive and includes the financing arrangements;

“the financing arrangements” has the meaning given in section 37;

“investment firm” has the same meaning as in the Recovery and Resolution Regulations;

“target level” means the target level specified in section 41(2);

“third country institution” has the same meaning as in the Recovery and Resolution Regulations.

Administration and use of financing arrangements.

39.(1) The FSRCC is responsible for administering the financing arrangements established under this Part.

(2) The Authority is designated under regulation 99(2) of the Recovery and Resolution Regulations as the public authority that may trigger the use of the financing arrangements.

(3) Subject to the Recovery and Resolution Regulations or any other law, the FSRCC must hold, manage and apply in accordance with section 6 any funds which form part of the financing arrangements.

(4) The FSRCC must ensure that the financing arrangements have adequate financial resources and for that purpose may, in particular—

- (a) impose the levy provided for in section 41(1) with a view to reaching the target level specified in section 41(2);
- (b) where the contributions specified in paragraph (a) are insufficient, raise extraordinary contributions in accordance with section 43(1);
- (c) contract borrowings and other forms of support in accordance with section 44; and
- (d) make provision by reference to the Scheme.

(5) The FSRCC must—

- (a) establish appropriate accounting and reporting arrangements to ensure that contributions to the financing arrangements are paid correctly and in full; and
- (b) take appropriate steps to verify that contributions have been so paid and to prevent evasion, avoidance and abuse.

(6) In applying this section, the FSRCC must have regard to any delegated acts adopted by the European Commission under Article 103(8) of the BRR Directive.

Authority's use of financing arrangements.

40. The financing arrangements may be used by the Authority only—
- (a) in accordance with—
 - (i) the resolution objectives in regulation 33 of the Recovery and Resolution Regulations; and
 - (ii) the general principles in regulation 36 of those Regulations; and
 - (b) to the extent and for the purposes provided for in—
 - (i) regulation 100 of those Regulations; or
 - (ii) this Part.

Financing arrangements levy.

41.(1) The FSRCC must raise the financing arrangements' available financial means by imposing a levy on authorised institutions at least once in each year.

(2) By 31st December 2024 the financing arrangements' available financial means must reach the target level of 1% of the amount of covered deposits of all authorised institutions.

(3) Until 31st December 2024 contributions levied under subsection (1) must be spread out in time as evenly as possible until the target level is reached.

(4) If, after 31st December 2024 the available financial means diminish below the target level, the FSRCC must impose a levy under subsection (1) until the target level is reached.

(5) If, after the target level has been reached for the first time the available financial means have subsequently been reduced to less than two thirds of the target level, the FSRCC must impose a levy under subsection (1), contributions to which are set at a level which allows for the target level to be reached within six years.

(6) In setting any levy under this section the FSRCC must take due account of the phase of the business cycle and the impact procyclical contributions may have on the financial position of authorised institutions.

(7) Subject to subsection (8), any levy imposed on authorised institutions under subsection (1) must be based on the amount of its liabilities (excluding own funds) less covered deposits as a proportion of the aggregate liabilities (excluding own funds) less covered deposits of all authorised institutions.

(8) Levy contributions must be adjusted in proportion to the risk profile of the authorised institution concerned, having regard to any delegated acts adopted by the European Commission under Article 103(7) of the BRR Directive.

(9) Any levy payable under this section—

- (a) is due within 30 days of the date when the invoice for the levy is issued; and
- (b) may be enforced as a civil debt owed to the FSRCC.

(10) If an authorised institution ceases to carry on the activities of such an institution part way through a financial year of the financing arrangements—

- (a) it will remain liable for any unpaid levies which the FSRCC has already made on the institution; and
- (b) the FSRCC may make further levies upon it (which must be before it ceases to be an authorised institution) for the costs which it would have been liable to pay had the FSRCC made a levy on all authorised institutions in the financial year it ceased to carry on those activities.

(11) The FSRCC may enter into arrangements with the FSC for the FSC to collect the levy on behalf of the FSRCC and for that purpose any levy payable under this section may be enforced as if it was a civil debt owed to the FSC.

Payment commitments.

42.(1) The available financial means to be taken into account in order to reach the target level specified in section 41(2) may include payment commitments by authorised institutions which are fully backed by collateral which—

- (a) consist of low-risk assets;
- (b) are unencumbered by any third party rights;

- (c) are at the disposal of, and earmarked for exclusive use by, the Authority for the purposes specified in regulation 100(1) and (2) of the Recovery and Resolution Regulations.

(2) Payment commitments under subsection (1) must not at any time constitute more than 30% (or such lower proportion as the FSRCC may determine) of the total amount of the financing arrangements' available financial means.

(3) Subsections (1) and (2) only apply until 1st March 2019 or such other date as, before that date, the Minister may by regulations specify.

Extraordinary contributions.

43.(1) If the financing arrangements' available financial means are insufficient to cover the losses, costs or other expenses incurred by their use, the FSRCC may require authorised institutions to pay extraordinary contributions to cover the additional amounts.

(2) Any extraordinary contributions payable under subsection (1) must—

- (a) be allocated among institutions in accordance with section 41(7) and (8); and
- (b) not exceed three times the annual amount of contributions determined in accordance with section 41.

(3) The Authority may require the FSRCC to defer, in whole or part, an authorised institution's obligation to pay extraordinary contributions under subsection (1) if the Authority considers that payment would jeopardise the liquidity or solvency of the institution.

(4) A deferral under subsection (3) must not be granted for longer than six months but may be renewed at the request of the institution.

(5) Any contribution which is deferred under subsections (3) or (4) must be paid by the institution when doing so would no longer jeopardise its liquidity or solvency.

(6) In applying this section, the FSRCC must have regard to any delegated acts adopted by the European Commission under Article 104(4) of the BRR Directive.

(7) Sections 41(9) and (10) apply to contributions under this section.

Alternative funding.

44. The FSRCC may contract borrowings or other forms of support from institutions, financial institutions or other third parties in the event that—

- (a) the amounts raised in accordance with section 41(1) are insufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, and
- (b) the extraordinary contributions provided for in section 43(1) are not immediately accessible or sufficient.

Borrowing between financing arrangements.

45.(1) The FSRCC may make a request to borrow from another EEA financing arrangement in the event that—

- (a) the amounts raised under section 41(1) are insufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements;
- (b) the extraordinary contributions provided for in section 43(1) are not immediately accessible; and
- (c) the alternative funding means provided for in section 44 are not immediately accessible on reasonable terms.

(2) The FSRCC may lend funds forming part of the Resolution Financing Fund to another EEA financing arrangement if the circumstances specified in subsection (1) apply to that EEA financing arrangement.

(3) Where the FSRCC receives a request under subsection (2), it must decide with due urgency whether to lend funds to the EEA financing arrangement which has made the request.

(4) Before reaching a decision under subsection (3), the FSRCC must obtain the consent of the Ministry of Finance.

(5) The rate of interest, repayment period and other terms and conditions of any loan must be agreed between the borrowing EEA financing arrangement and every other EEA financing arrangement which has decided to participate in that loan.

(6) The loan of each participating EEA financing arrangement must have the same interest rate, repayment period and other terms and conditions, unless every participating EEA financing arrangement agrees otherwise.

(7) The amount lent by each participating EEA financing arrangement must be in proportion to the amount of covered deposits in its jurisdiction as a proportion of the aggregate of the covered deposits in the jurisdictions of all participating EEA financing arrangements.

(8) Those rates of contribution may vary upon agreement of every participating EEA financing arrangement.

(9) Any loan by the FSRCC under this section to another EEA financing arrangement which is outstanding is to be treated as an asset of the financing arrangements and may be counted towards the target level in section 41(2).

(10) In this section “jurisdiction” means—

(a) the EEA State in which a participating EEA financing arrangement is established; or

(b) in the case of the financing arrangements, Gibraltar.

Group resolution.

46.(1) The FSRCC must establish procedures to enable the financing arrangements to be able to effect its contribution to the financing of any group resolution under regulation 106 of the Recovery and Resolution Regulations.

(2) The FSRCC must consult the Authority before establishing any procedures under subsection (1).

FSRCC’s power to require information.

47.(1) The FSRCC may by notice require an authorised institution—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced to the FSRCC—

(a) before the end of such reasonable period as may be specified;

(b) in the form or manner specified; and

- (c) subject to such verification or authentication as may be specified.

(3) This section applies only to information and documents that the FSRCC may reasonably require in connection with the exercise of its functions under this Part.

(4) In this section “specified” means specified in a notice under subsection (1).

Suspension and revocation of authorisation.

48.(1) The FSC, if it considers that an authorised institution has failed to comply with any obligation under this Part, may by decision notice under this section—

- (a) suspend the authorised institution’s authorisation; or
- (b) revoke the authorised institution’s authorisation.

(2) A decision notice may provide for suspension under subsection (1)(a) to apply—

- (a) for a specified period not exceeding 12 months;
- (b) until the occurrence of a specified event; or
- (c) until the authorised institution has complied with specified conditions.

(3) Before taking action under this section the FSC must give the authorised institution a warning notice—

- (a) stating the action proposed and the reasons for it;
- (b) giving the authorised institution not less than 14 days to make representations; and
- (c) specifying a period within which the authorised institution may decide whether to make oral representations.

(4) The period for making representations may be extended by the FSC.

(5) Subsection (3) does not apply if the FSC is satisfied that a warning notice—

- (a) cannot be given because of urgency;

- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action the FSC proposes to take; or
- (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

(6) Where the FSC has issued a warning notice (or, dispensed with the requirement to do so in accordance with subsection (5)), after considering any representations made in accordance with subsection (3), the FSC must issue—

- (a) a decision notice stating that the FSC will take the action specified in the warning notice;
- (b) a discontinuance notice stating that the FSC does not propose to take that action; or
- (c) a combined notice consisting of a decision notice stating that the FSC will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.

(7) A decision notice takes effect, and the specified action may be taken—

- (a) at the end of the period for bringing an appeal if no appeal is brought, or
- (b) when any appeal is finally determined or withdrawn;

but the FSC may apply to the Supreme Court for permission to take action under this section where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

(8) The FSC may at any time vary or withdraw a suspension imposed under subsection (1)(a).

(9) In this section “authorisation” means an authorisation granted under the Financial Services (Markets in Financial Instruments) Act 2006 or an authorisation or licence granted under the Financial Services (Banking) Act.

Appeal.

49.(1) The authorised institution on which a decision notice under section 48 is served may appeal to the Supreme Court.

(2) An appeal must be brought within the period of 28 days beginning with the date of the decision notice.

SCHEDULE 1

Financial Services Resolution and Compensation Committee

FSRCC's Powers

- 1.(1) The FSRCC may do anything which appears to it—
 - (a) to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions under this Act; or
 - (b) to be conducive to the exercise of those functions.
- (2) In accordance with (and without limiting) sub-paragraph (1), under this Act the FSRCC may, in its own name—
 - (a) acquire, hold, manage and dispose of property;
 - (b) enter into contracts;
 - (c) sue and be sued; and
 - (d) do anything reasonably necessary or expedient for, or incidental to, any of those matters.
- (3) Any contract entered into by the FSRCC must be signed on its behalf by at least one authorised person.
- (4) For the purposes of sub-paragraph (3) “authorised person” means a person who is authorised by resolution of the FSRCC to sign a contract on the FSRCC’s behalf and such a resolution may only provide—
 - (a) general authority or authority in a particular case to a member of the FSRCC; or
 - (b) authority in a particular case to a member of the FSRCC staff seconded in accordance with paragraph 2.

Staffing arrangements.

- 2.(1) The FSRCC may enter arrangements with the FSC for employees of the FSC to be seconded to, and form the staff of, the FSRCC.
- (2) An employee may be seconded for such period and on such terms as may be agreed between the FSRCC and the FSC.

Procedure and meetings.

- 3.(1) The FSRCC may determine its own procedures.
- (2) The quorum at any meeting of the FSRCC is five members.
- (3) Sub-paragraph (2) applies subject to paragraph 1(8) of Schedule 2 to the Financial Services Commission Act 2007 (which makes transitional arrangements in respect of the FSRCC).

Accounts and audit.

- 4.(1) The FSRCC must, in respect of its functions under this Act—
- (a) keep proper accounts and accounting records; and
- (b) prepare in respect of each financial year a statement of accounts.
- (2) The FSRCC must arrange for its annual accounts to be audited.
- (3) The FSRCC must send a copy of the audited accounts promptly to the FSC and the Minister.
- (4) The FSRCC must comply with any directions of the Minister in relation to the matters in sub-paragraphs (1) to (3).

Reports.

- 5.(1) As soon as practicable after the end of each financial year, the FSRCC must prepare a report—
- (a) providing information on the exercise of its functions under this Act during that year, including its activities in respect of—
- (i) the Scheme; and
- (ii) the resolution financing arrangements;
- (b) containing any other information that the Minister requires, and
- (c) including a copy of the statement of accounts for that year.
- (2) The FSRCC must—
- (a) send a copy of the report to the FSC and to the Minister, and
- (b) publish the report.

- (3) The Minister must lay a copy of the report before Parliament.
- (4) The FSRCC may publish such other reports and information on matters relevant to its functions under this Act as it considers appropriate.

Financial year.

6. The FSRCCs first financial year under this Act begins on the day when section 3(1) comes into operation and ends on 31st March 2017 and subsequent financial years begin on 1st April and end on 31st March in each year.

Exemption from liability in damages.

7.(1) The FSRCC, any person who is a member of the FSRCC or any member of its staff is not liable in damages for anything done or omitted in the exercise or purported exercise of the functions of the FSRCC under this Act or any other law.

(2) Sub-paragraph (1) does not apply if it is shown that the act or omission was in bad faith.

SCHEDULE 2

Omitted

SCHEDULE 3

Depositor Information Sheet

Basic information about the protection of your eligible deposit	
Eligible deposits in [insert name of credit institution] are protected by:	The Gibraltar Deposit Guarantee Scheme ¹
Limit of protection:	€100,000 per depositor per credit institution or the currency equivalent at the time of disbursement ² The following trading names are part of [insert name of credit institution]: [insert all trading names under which the credit institution operates]
If you have more eligible deposits at the same credit institution:	All your eligible deposits at the same credit institution are 'aggregated' and the total is subject to the limit of €100,000 or currency equivalent ²
If you have a joint account with other person(s):	The limit of €100,000 or currency equivalent applies to each depositor separately ³
Reimbursement period in case of credit institution's failure:	Between 7 and 20 working days ⁴
Currency of reimbursement:	Pound sterling or, for branches operating in an EEA State, the currency of that State.
Contact:	[insert postal address, email address and telephone number of the FSRCC]
More information:	[insert website of the FSRCC]
Acknowledgement of receipt by the depositor:	

Additional information [insert as appropriate]

¹**Scheme responsible for the protection of your deposit**

Your eligible deposit is covered by a statutory deposit guarantee scheme. The Gibraltar Deposit Guarantee Scheme is defined in the Financial Services (Compensation and Resolution Schemes) Act 2015. If insolvency of your credit institution should occur, your eligible deposits would in any case be repaid up to €100,000 (or the currency equivalent at the time of disbursement) by the Deposit Guarantee Scheme.

²**General limit of protection.**

If a covered deposit is unavailable because a credit institution is unable to meet its financial obligations, depositors are repaid by a Deposit Guarantee Scheme. This repayment covers at maximum €100,000 (or the currency equivalent at the time of disbursement) per credit institution. This means that all eligible deposits at the same credit institution are added up in order to determine the coverage level. If, for instance a depositor holds a savings account with €90,000 and a current account with €20,000, he or she will only be repaid €100,000 (or currency equivalent).

[Insert where applicable] This method will also be applied if a credit institution operates under different trading names. The [insert name of the account-holding credit institution] also trades under [insert all other trademarks of the same credit institution]. This means that all deposits with one or more of these trading names are in total covered up to €100,000 (or the currency equivalent).

In some cases eligible deposits which are categorised as ‘temporary high balances’ are protected above €100,000 (or the currency equivalent) for six months after the amount has been credited or from the moment when such eligible deposits become legally transferable. These are eligible deposits connected with certain events, including:

- (a) certain transactions relating to the depositor’s current or prospective only or main residence or dwelling;
- (b) a death, or the depositor’s marriage or civil partnership, divorce, retirement, dismissal, redundancy or invalidity;
- (c) the payment to the depositor of insurance benefits or compensation for criminal injuries or wrongful conviction.

³**Limit of protection for joint accounts**

In case of joint accounts, the limit of €100,000 (or currency equivalent) applies to each depositor.

However, eligible deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a

similar nature, without legal personality, are aggregated and treated as if made by a single depositor for the purpose of calculating the limit of €100,000 (or currency equivalent).

⁴Reimbursement

The responsible deposit guarantee scheme is the Gibraltar Deposit Guarantee Scheme, [insert the Scheme's postal address, email address and telephone number] It will repay your eligible deposits (up to €100,000, or currency equivalent) within 20 working days until 31st December 2018; within 15 working days from 1st January 2019 until 31st December 2020; within 10 working days from 1st January 2021 to 31st December 2023; and within 7 working days from 1st January 2024 onwards, save where specific exceptions apply.

Where the Deposit Guarantee Scheme cannot make the repayable amount available within 7 working days, it will, from 1st June 2016 until 31st December 2023, ensure that you have access to an appropriate amount of your covered deposits to cover the cost of living (in the case of a depositor who is an individual) or to cover necessary business expenses (in the case of a depositor which is not an individual or a large company) within 5 working days of a request. Again, there are specific exceptions to this obligation.

In the case of a depositor which is a large company, where the Gibraltar Deposit Guarantee Scheme cannot make the repayable amount available within 7 working days, it will, from 3rd July 2015 until 1st December 2016, ensure that you have access to your covered deposits within fifteen working days of a request containing sufficient information to enable it to make a payment, save where specific exceptions apply.

If you have not been repaid within these deadlines, you should contact the Deposit Guarantee Scheme since the time to claim reimbursement may be barred after a certain time limit. Further information can be obtained under [insert the Scheme's website address].

Other important information

In general, all retail depositors and businesses are covered by deposit guarantee schemes. Exceptions for certain deposits are stated on the website of the responsible deposit guarantee scheme. Your credit institution will also inform you on request whether certain products are covered or not. If deposits are eligible, the credit institution must also confirm this on the statement of account.”.

Consequential amendments

3.(1) The Financial Services (Capital Requirements Directive IV) Regulations 2013 are amended as follows.

(2) In regulation 21 (notification of authorisation and withdrawal of authorisation) after subregulation (3) insert–

“(4) a notification given in accordance with subregulation (1) must contain a statement to the effect that the credit institution concerned is a member of the deposit guarantee scheme established under the Financial Services (Compensation and Resolution Schemes) Act 2015.”