

Financial Services (Investment and Fiduciary Services)  
**FINANCIAL SERVICES (MORTGAGE CREDIT) REGULATIONS**  
2016

**1989-47**

**Subsidiary**  
**2016/055**

Subsidiary Legislation made under ss. 5, 7 and 53 of the Financial Services (Investment and Fiduciary Services) Act, as read with section 23(g)(i) of the Interpretation and General Clauses Act and upon the Government by sections 23(g)(ii) and 27 of that Act.

**FINANCIAL SERVICES (MORTGAGE CREDIT)  
REGULATIONS 2016**

**(LN. 2016/055)**

*Commencement*                      **21.3.2016**

Amending enactments	Relevant current provisions	Commencement date
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**Transposing:**

Directive 2008/48/EC

Directive 2013/36/EU

Directive 2014/17/EU

Regulation (EU) No 1093/2010

**EU Legislation/International Agreements involved:**

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*In exercise of the powers conferred upon the Minister by sections 5, 7 and 53 of the Financial Services (Investment and Fiduciary Services) Act, as read with section 23(g)(i) of the Interpretation and General Clauses Act and upon the Government by sections 23(g)(ii) and 27 of that Act and of all other enabling powers, and in order to transpose Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, the Minister and the Government have made the following Regulations—*

**PART 1  
PRELIMINARY AND INTERPRETATION**

**Title and commencement.**

1.(1) These Regulations may be cited as the Financial Services (Mortgage Credit) Regulations 2016.

(2) These Regulations come into operation on 21 March 2016.

**Interpretation.**

2. In these Regulations—

“ancillary service” means a service offered to a consumer in conjunction with a mortgage credit agreement;

“annual percentage rate of charge” and “APRC” mean the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit (including, where applicable, the costs referred to in regulation 29(2) which equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the mortgage creditor and the consumer;

“appointed representative” has the meaning given in regulation 11(2);

“borrowing rate” means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;

“bridging loan” means a credit agreement either of no fixed duration or which is due to be repaid within 12 months, used by the consumer as a temporary financing solution while transitioning to another financial arrangement for the immovable property;

“competent authority” means–

- (a) in Gibraltar, the FSC; and
- (b) in an EEA State, an authority designated in that State under Article 5 of the Mortgage Credit Directive;

“consumer” means an individual acting for purposes which are outside that individual’s trade, business or profession;

“Consumer Credit Directive” means Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC;

“contingent liability or guarantee” means a mortgage credit agreement which acts as a guarantee to another separate but ancillary transaction, and where the capital secured against an immovable property is only drawn down if an event specified in the agreement occurs;

“credit institution” means a credit institution as defined in point 1 of Article 4(1) of 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;

“creditworthiness assessment” means the evaluation of the prospect for the debt obligation resulting from a mortgage credit agreement to be met;

“durable medium” means paper or an instrument which enables a consumer to store information addressed personally to the consumer in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

“EBA” means the European Supervisory Authority (European Banking Authority) established under Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC;

“EEA State” means–

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

“exclusively-tied credit intermediary” has the meaning given in regulation 10(2);

“FSC” means the Financial Services Commission established under section 3 of the Financial Services Commission Act 2007;

“foreign currency loan” means a mortgage credit agreement where the credit is—

- (a) denominated in a currency other than that in which the consumer receives the income or holds the assets from which the credit is to be repaid; or
- (b) denominated in a currency other than that of the EEA State or Gibraltar in which the consumer is resident;

“group” means a group of mortgage creditors which are to be consolidated for the purposes of drawing up consolidated accounts, as defined in Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings;

“home State” means—

- (a) where a mortgage creditor or mortgage credit intermediary is an individual, the EEA State or Gibraltar in which his or her head office is situated;
- (b) where a mortgage creditor or mortgage credit intermediary is a legal person, the EEA State or Gibraltar in which—
  - (i) its registered office is situated or,
  - (ii) if under its national law it has no registered office, its head office is situated;

“host State” means the EEA State or Gibraltar, other than its home State, in which a mortgage creditor or mortgage credit intermediary has a branch or provides services;

“the Minister” means the Minister with responsibility for financial services;

“mortgage advisory services” (referred to as advisory services in the Mortgage Credit Directive) means the provision of personal recommendations to a consumer in respect of one or more transactions relating to mortgage credit agreements but does not include recommendations provided in the context of managing existing debt (but only in Gibraltar)–

- (a) by an insolvency practitioner (within the meaning of the Insolvency Practitioner Regulations 2014); or
- (b) as part of a public or voluntary debt advisory service which does not operate on a commercial basis;

“mortgage credit activity” has the meaning given in regulation 7(2);

“mortgage credit agreement” (referred to as a credit agreement in the Mortgage Credit Directive) has the meaning given in regulation 3(2);

“Mortgage Credit Directive” means Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, as the same may be amended from time to time;

“mortgage credit intermediary” means a person who in the course of that person’s trade, business or profession, for remuneration (whether in pecuniary form or any other agreed form of financial consideration) performs one or more mortgage intermediation activities and, in doing so, is not–

- (a) acting as a mortgage creditor; or
- (b) merely introducing, either directly or indirectly, a consumer to a mortgage creditor or mortgage credit intermediary;

“mortgage creditor” (referred to as a creditor in the Mortgage Credit Directive) means a person who, in the course of that person’s trade, business or profession, grants or promises to grant credit falling within the scope of regulation 3;

“mortgage intermediation activities” means any one or more of the following activities–



- (a) presenting or offering mortgage credit agreements to consumers;
- (b) assisting consumers by undertaking preparatory work or other pre-contractual administration in respect of mortgage credit agreements other than as referred to in paragraph (a); or
- (c) concluding mortgage credit agreements with consumers on behalf of a mortgage creditor;

“non-credit institution” has the meaning given in regulation 8(2);

“the Principal Act” means the Financial Services (Investment and Fiduciary Services) Act;

“shared equity credit agreement” means a credit agreement where the capital repayable is based on a contractually set percentage of the value of the immovable property at the time of the capital repayment or repayments;

“staff” means an individual—

- (a) working for a mortgage creditor or mortgage credit intermediary who is directly engaged in the activities covered by these Regulations or who has contact with consumers in the course of activities covered by these Regulations;
- (b) working for an appointed representative who has contact with consumers in the course of activities covered by these Regulations;
- (c) directly managing or supervising an individual to whom paragraph (a) or (b) applies;

“tied credit intermediary” means a mortgage credit intermediary who acts on behalf of and under the full and unconditional responsibility of—

- (a) only one mortgage creditor;
- (b) only one group; or
- (c) a number of mortgage creditors or groups which does not represent the majority of the market;

“total amount of credit” means the ceiling or the total sums made available under a credit agreement;

“total amount payable by the consumer” means the sum of the total amount of the credit and the total cost of the credit to the consumer;

“total cost of the credit to the consumer” means the total cost of the credit to the consumer as defined in point (g) of Article 3 of the Consumer Credit Directive, including the cost of any property valuation which is necessary to obtain the credit but excluding–

- (a) any registration fee for the transfer of ownership of the immovable property; and
- (b) any charge payable by the consumer for non-compliance with the commitments laid down in the mortgage credit agreement;

**Mortgage credit agreements.**

3.(1) These Regulations apply to mortgage credit agreements.

(2) In these Regulations a “mortgage credit agreement” means a credit agreement by which a mortgage creditor grants or promises to grant to a consumer a credit in the form of a deferred payment, loan or other similar financial accommodation and which–

- (a) is secured by either–
  - (i) a mortgage (or other comparable security commonly used within the EEA) on residential immovable property; or
  - (ii) a right related to residential immovable property; or
- (b) is for the purpose of acquiring or retaining property rights in land or in an existing or projected building.

(3) These Regulations do not apply to–

- (a) equity release credit agreements where the mortgage creditor–
  - (i) contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the future sale of a residential immovable property or a right relating to residential immovable property; and
  - (ii) will not seek repayment of the credit until the consumer dies or leaves the property to move into long-term care, unless the consumer breaches a contractual obligation

which allows the mortgage creditor to terminate the credit agreement;

- (b) credit agreements where the credit is granted by an employer to its employees as a secondary activity where such a credit agreement is offered free of interest or at an APRC lower than those prevailing on the market and not offered to the public generally;
- (c) credit agreements where the credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the credit;
- (d) credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month;
- (e) credit agreements which are the outcome of a settlement reached in court or before another statutory authority;
- (f) credit agreements which relate to the deferred payment, free of charge, of an existing debt and do not fall within the scope of sub-regulation (2)(a).

**Designation of competent authority.**

4. The FSC is designated as the competent authority empowered to ensure the application and enforcement of these Regulations and the Mortgage Credit Directive.

**Confidentiality.**

5.(1) The FSC, its employees and former employees and any auditors and experts instructed by the FSC are bound by the obligation of professional secrecy.

(2) A person must not disclose any confidential information in contravention of sub-regulation (1).

(3) Sub-regulation (1) is not contravened if confidential information is disclosed—

- (a) in summary or aggregate form;
- (b) in accordance with—
  - (i) any other provision of these Regulations;

- (ii) section 3 or 4 of the Financial Services (Information Gathering and Co-operation) Act 2013; or
- (iii) any law of Gibraltar concerning the disclosure of information for the purpose of criminal proceedings; or
- (c) for the purpose of the exchange or transmission of information by the FSC in accordance with the law of Gibraltar or European Union law.

## **PART 2 FINANCIAL EDUCATION**

### **Financial education of consumers.**

6.(1) The FSC must promote measures to support the education of consumers in relation to responsible borrowing and debt management, in particular in relation to mortgage credit agreements.

(2) Without limiting sub-regulation (1), the FSC must take steps to encourage the provision of—

- (a) clear and general information on the credit granting process in order to guide consumers and, in particular, those obtaining mortgage credit for the first time; and
- (b) appropriate guidance on mortgage credit to consumers by consumer organisations and relevant public bodies.

## **PART 3 CONTROLLED MORTGAGE CREDIT ACTIVITY**

### **Restriction on mortgage credit activity.**

7.(1) Mortgage credit activity is a controlled activity for the purposes of the Principal Act and, subject to these Regulations, the Principal Act applies to mortgage credit activity as it does to any other controlled activity.

(2) In these Regulations “mortgage credit activity” means—

- (a) acting as a mortgage creditor;
- (b) acting as a mortgage credit intermediary; or
- (c) providing mortgage advisory services.

(3) A person must not carry on, or purport to carry any mortgage credit activity in or from Gibraltar other than in accordance with—

- (a) a licence granted under section 8 of the Principal Act (a “section 8 licence”); and
- (b) these Regulations and any provision in or made under the Principal Act.

(4) Sub-regulation (3)(a) does not apply to—

- (a) a person who is authorised by the competent authority in an EEA State to pursue mortgage credit activity and who is pursuing that activity in Gibraltar either by the establishment of a branch or under the freedom to provide services;
- (b) an exclusively-tied credit intermediary when acting as such, who is exempt from the need to be licensed by virtue of regulation 10(3); or
- (c) an appointed representative, when acting as such, who is exempt from the need to be licensed by virtue of regulation 11(3);
- (d) a credit institution which is licensed or authorised in accordance with section 7 of the Financial Services (Banking) Act, but only when acting as a mortgage creditor and not when carrying on any other mortgage credit activity.

(5) A person to whom sub-regulation (4) applies must comply with sub-regulation (3)(b) when undertaking any mortgage credit activity in or from Gibraltar.

(6) Mortgage advisory services may only be provided by—

- (a) a mortgage creditor;
- (b) a mortgage credit intermediary; or
- (c) an appointed representative.

(7) Schedule 1 makes consequential amendments to the Principal Act and regulations made under it, and modifies the application to mortgage credit activity of certain provisions made under that Act.

**Non-credit institutions.**

8.(1) A non-credit institution established in Gibraltar may only act as a mortgage creditor in or from Gibraltar under a section 8 licence.

(2) In these Regulations “non-credit institution” means a mortgage creditor that is not a credit institution.

(3) Without limiting the Principal Act, the FSC must not grant a section 8 licence to a non-credit institution unless the FSC is satisfied that—

- (a) the applicant will at all times hold professional indemnity insurance (or some other comparable guarantee against liability arising from professional negligence) equal to not less than 5% of its mortgage book, subject to minimum cover of £1,000,000 applying to each claim and in aggregate £1,500,000 per year for all claims;
- (b) the applicant will at all times be able to meet its liabilities as they fall due and will—
  - (i) maintain adequate liquidity; and
  - (ii) meet the financial resource requirement;
- (c) the applicant will at all times comply with—
  - (i) the large exposure requirement; and
  - (ii) any concentration risk direction given by the FSC under sub-regulation (10); and
- (d) the applicant and any relevant individual—
  - (i) is of good repute; and
  - (ii) possesses the appropriate level of knowledge and competence in relation to mortgage credit agreements, taking account of the principles set out in Schedule 4.

(4) In sub-regulation (3)—

“adequate liquidity” means liquidity of resources which is adequate, both as to its amount and quality, to ensure that there is no significant risk that the institution cannot meet its liabilities as they fall due;

“the financial resource requirement” means whichever is the higher of—

- (a) £100,000 plus a sum equal to any excess payable under its professional indemnity insurance; or
- (b) the sum of—
  - (i) its credit risk capital requirement;
  - (ii) 1% of its total assets, total undrawn commitments and total unreleased amounts under mortgage credit agreements less its intangible assets plus any loan entered into, securitisation position originated or fund position entered into by the institution; and
  - (iii) a sum equal to any excess payable under its professional indemnity insurance; and

“relevant individual” means, in any case where the applicant is not an individual—

- (a) an individual who is a member of the board of a non-credit institution established as a legal person; or
- (b) an individual performing equivalent tasks within a non-credit institution which is a legal person but does not have a board.

(5) For the purposes of sub-regulation (4)(b)(i), the credit risk capital requirement of a non-credit institution is 8% of the total of its risk-weighted exposure amount for exposures that—

- (a) are within an exposure class in sub-regulation (6);
- (b) are on its balance sheet;
- (c) derive from a loan entered into, securitisation position originated or fund position entered into by the institution on or after 21 March 2016; and
- (d) have not been deducted from its financial resources in accordance with sub-regulation (8)

and for the purposes of this regulation—

“credit quality step” means the risk weights under the standardised approach to credit risk set out Chapter 2 of Title II of Part 3 of Regulation (EU) No 575/2013;

“exposures” has the same meaning as in Article 389 of that Regulation;

“fund” means an alternative investment fund or collective investment scheme;

“risk weighted exposure amount” means the amount of the on-balance sheet exposure value multiplied by the risk weight associated with the credit quality step with which the credit assessment of that exposure value is associated; and

“securitisation” and “securitisation position” have the same the meaning as in points (61) and (62) respectively of Article 4(1) of Regulation (EU) No 575/2013.

(6) A non-credit institution must assign each of its exposures to one of the following classes—

- (a) loans or contingent loans secured on real property;
- (b) other loans;
- (c) securitisation positions;
- (d) exposures in the form of funds; or
- (e) past due items.

(7) The exposure value of an asset or liability held on the balance sheet of a non-credit institution must be its balance sheet value.

(8) The following items must be deducted from a non-credit institution’s financial resources—

- (a) investments in own shares;
- (b) intangible assets (being the full balance sheet value of goodwill, capitalised development costs, brand names, trademarks and similar rights and licences);
- (c) interim net losses (but only in relation to the period following the date on which the financial resources are computed); and
- (d) any other items that the FSC may direct.

(9) In sub-regulation (3)(c)(i), the “large exposure requirement” means the requirement that a non-credit institution must—



- (a) not be exposed to a large exposure or connected large exposures which exceed 25% of its total asset book; and
- (b) report any large exposure to the FSC in accordance with its directions;

and for this purpose “large exposure” means any exposure of a non-credit institution to a customer or group of connected customers the value of which equals or exceeds 10% of the non-credit institution’s total asset book.

(10) In determining whether an applicant or relevant individual is of good repute the matters which the FSC may take into account include whether the applicant or relevant individual—

- (a) has been convicted of any offence involving fraud or dishonesty, or any indictable offence (and for this purpose “offence” includes any act or omission which would have been an offence if it had taken place in Gibraltar); or
- (b) is an undischarged bankrupt.

(11) The FSC must publish any criteria that it adopts for the purpose of determining whether the staff of non-credit institutions meet the requirements in sub-regulation (3)(d).

(12) The Minister may, by regulations, amend sub-regulations (3) to (9).

(13) A non-credit institution which is granted a section 8 licence in respect of mortgage credit activity must at all times comply with the requirements set out in sub-regulations (3) to (9) and must submit to the FSC, in the form and at the intervals that the FSC may direct—

- (a) returns in respect of the non-credit institution’s financial resourcing and liquidity; and
- (b) such other information as the FSC may require.

(14) For the purpose of mitigating concentration risk, the FSC may direct that a non-credit institution must not grant mortgage credit in respect of more than a specified proportion of residential properties within the same building, development or estate.

(15) A concentration risk direction under sub-regulation (14) may—

- (a) apply to all non-credit institutions or one or more specified non-credit institutions; and

- (b) specify the proportion by reference to a specified number or percentage of residential properties within a building, development or estate.

**Licensing of mortgage credit intermediaries.**

9.(1) Without limiting the Principal Act, the FSC must not grant a section 8 licence to a mortgage credit intermediary unless it is satisfied that—

- (a) the applicant will at all times hold professional indemnity insurance (or some other comparable guarantee against liability arising from professional negligence) subject to minimum cover of—
  - (i) £1,000,000 applying to each claim and in aggregate £1,500,000 per year for all claims; or
  - (ii) £1,500,000 applying to each claim and in aggregate £2,000,000 per year for all claims if the mortgage credit intermediary provides mortgage advisory services
- (b) the applicant will at all times be able to meet its liabilities as they fall due and will maintain financial resources of not less than—
  - (i) three months' operating expenses or £15,000 (whichever is the higher); and
  - (ii) a sum equal to any excess payable under its professional indemnity insurance;
- (c) the applicant and any relevant individual—
  - (i) is of good repute; and
  - (ii) possesses the appropriate level of knowledge and competence in relation to mortgage credit agreements, taking account of the principles set out in Schedule 4.

(2) In the case of a tied credit intermediary, the insurance (or comparable guarantee) required under sub-regulation (1)(a) may be provided by the mortgage creditor for which the mortgage credit intermediary is empowered to act.

(3) In sub-regulation (1) a “relevant individual” means, in any case where the applicant is not an individual—

- (a) an individual who is a member of the board of a mortgage credit intermediary established as a legal person; or
- (b) an individual performing equivalent tasks within a mortgage credit intermediary which is a legal person but does not have a board.

(4) In determining whether an applicant or relevant individual is of good repute the matters which the FSC may take into account include whether the applicant or relevant individual—

- (a) has been convicted of any offence involving fraud or dishonesty, or any indictable offence (and for this purpose “offence” includes any act or omission which would have been an offence if it had taken place in Gibraltar); or
- (b) is an undischarged bankrupt.

(5) The FSC must publish any criteria that it adopts for the purpose of determining whether the staff of mortgage credit intermediaries or mortgage creditors meet the requirements in sub-regulation (1)(c).

(6) The FSC must ensure that a mortgage credit intermediary—

- (a) which is a legal person has both its head office and registered office (if any) in Gibraltar or the same EEA State; or
- (b) which is not a legal person, or is a legal person but has no registered office, both has its head office and carries on its main business in Gibraltar or the same EEA State.

**Exclusively-tied credit intermediaries.**

10.(1) A mortgage creditor may appoint exclusively-tied credit intermediaries.

(2) In these Regulations “exclusively-tied credit intermediary” means a tied credit intermediary who acts on behalf of and under the full and unconditional responsibility of only one mortgage creditor.

(3) An exclusively-tied credit intermediary is exempt from the requirement to hold a section 8 licence if the exclusively-tied credit intermediary is—

- (a) only carrying on mortgage credit activity for a mortgage creditor which has accepted, in writing, full and unconditional responsibility for the exclusively-tied credit intermediary; and

- (b) registered as an exclusively-tied credit intermediary in accordance with regulation 12.
- (4) A mortgage creditor's written acceptance of responsibility under sub-regulation (3)(a) must be in the form that the FSC may direct.
- (5) A mortgage creditor is fully and unconditionally responsible for any act or omission on the part of an exclusively-tied credit intermediary that is acting on the mortgage creditor's behalf in relation to any matter covered by these Regulations or a provision in or made under the Principal Act.
- (6) An exclusively-tied credit intermediary must comply at all times with the requirements set out in regulation 9(1) and a mortgage creditor must ensure that its exclusively-tied credit intermediaries comply with those requirements.
- (7) Without limiting regulations 13, 16 and 17, a mortgage creditor must—
- (a) monitor the activities of its exclusively-tied credit intermediaries, in order to ensure that they comply fully with these Regulations and any provision in or made under the Principal Act; and
  - (b) in particular, monitor the compliance of its exclusively-tied credit intermediaries with the knowledge and competence requirements under these Regulations which apply to those exclusively-tied credit intermediaries and their staff.
- (8) In determining whether an exclusively-tied credit intermediary has complied with these Regulations or any provision in or made under the Principal Act, anything which an exclusively-tied credit intermediary has done or omitted in respect of business for which a mortgage creditor ("the principal") has accepted responsibility is to be treated as having been done or omitted by the principal.
- (9) Nothing in sub-regulation (8) is to cause the knowledge or intention of an exclusively-tied credit intermediary to be attributed to the principal for the purpose of determining whether the principal has committed an offence, unless in all the circumstances it is reasonable for them to be attributed to the principal.

**Appointed representatives.**

11.(1) A mortgage credit intermediary may appoint appointed representatives.

(2) In these Regulations “appointed representative” means a person who performs mortgage intermediation activities or mortgage advisory services on behalf and under the full and unconditional responsibility of only one mortgage credit intermediary.

(3) An appointed representative is exempt from the requirement to hold a section 8 licence if the appointed representative is—

- (a) only carrying on mortgage credit activity for a mortgage credit intermediary which has accepted, in writing, full and unconditional responsibility for the appointed representative; and
- (b) registered as an appointed representative in accordance with regulation 12.

(4) A mortgage credit intermediary’s written acceptance of responsibility under sub-regulation (3)(a) must be in the form that the FSC may direct.

(5) Subject to sub-regulation (6), a mortgage credit intermediary is fully and unconditionally responsible for any act or omission on the part of an appointed representative acting on behalf of the mortgage credit intermediary in relation to any matter covered by these Regulations or a provision in or made under the Principal Act.

(6) A mortgage creditor is fully and unconditionally responsible for any act or omission on the part of an appointed representative who is—

- (a) appointed by an exclusively-tied credit intermediary who only acts on behalf of and under the full and unconditional responsibility of the mortgage creditor; and
- (b) acting on behalf of that exclusively-tied credit intermediary in relation to any matter covered by these Regulations or a provision in or made under the Principal Act.

(7) An appointed representative must comply at all times with the requirements set out in regulation 9(1)(a) and (c) and a mortgage credit intermediary must ensure that its appointed representatives comply with those requirements, but the required professional indemnity insurance (or comparable guarantee) may be provided by the mortgage credit intermediary for which the appointed representative is empowered to act.

(8) Without limiting regulations 13, 16 and 17, a mortgage credit intermediary must—

- (a) monitor the activities of its appointed representatives, in order to ensure that they comply fully with these Regulations and any provision in or made under the Principal Act; and
- (b) in particular, monitor the compliance of its appointed representatives with the knowledge and competence requirements under these Regulations which apply to those appointed representatives and their staff.

(9) In determining whether an appointed representative has complied with these Regulations or any provision in or made under the Principal Act, anything which an appointed representative has done or omitted in respect of business for which a mortgage credit intermediary or mortgage creditor (“the principal”) has accepted responsibility is to be treated as having been done or omitted by the principal.

(10) Nothing in sub-regulation (9) is to cause the knowledge or intention of an appointed representative to be attributed to the principal for the purpose of determining whether the principal has committed an offence, unless in all the circumstances it is reasonable for them to be attributed to the principal.

(11) An appointed representative registered in Gibraltar may only perform mortgage intermediation activities or provide mortgage advisory services in Gibraltar and in those EEA States where appointed representatives are permitted to operate.

**Register of mortgage credit intermediaries and appointed representatives.**

12.(1) The FSC must establish and maintain a register of—

- (a) mortgage credit intermediaries; and
- (b) appointed representatives.

(2) The FSC must admit a person to the register if—

- (a) the person holds a section 8 licence which permits that person to act as a mortgage credit intermediary; or
- (b) an application is made in accordance with sub-regulation (3), and the FSC is satisfied that the person named in that application—

- (i) will at all times meet the requirements set out in regulation 9(1) and meets the other requirements for registration as an exclusively-tied credit intermediary; or
  - (ii) will at all times meet the requirements set out in regulation 9(1)(a) and (c) and meets the other requirements for registration as an appointed representative.
- (3) An application for registration under sub-regulation (2)(b)–
  - (a) may only be made by the mortgage creditor or mortgage credit intermediary (“the principal”) that proposes to appoint the person named in the application as–
    - (i) an exclusively-tied credit intermediary; or
    - (ii) an appointed representative; and
  - (b) must–
    - (i) be made in the form and manner that the FSC may direct; and
    - (ii) contain or be supported by any information that the FSC may require for the purpose of determining the application.
- (4) If the FSC admits a person to the register under sub-regulation (2)(b)(i) or (ii), it must give written notice of its decision to the principal and that person.
- (5) If the FSC refuses to admit a person to the register under sub-regulation (2)(b)(i) or (ii), it must give written notice of that decision to the principal and that person, and the principal may make representation to the FSC or appeal against that decision under sections 44 and 45 of the Principal Act as if a decision under this sub-regulation was a decision specified in section 44(1) of that Act.
- (6) The register must contain the following information in respect of each mortgage credit intermediary–
  - (a) the names of the persons within the management who are responsible for the mortgage intermediation activities or mortgage advisory services;
  - (b) the names of the individuals who exercise a client-facing function in respect of mortgage intermediation activities or mortgage advisory services;

- (c) the EEA States in which the mortgage credit intermediary conducts business under the rules on the freedom of establishment or on the freedom to provide services and of which the mortgage credit intermediary has informed the FSC in accordance with regulation 15;
- (d) whether or not the mortgage credit intermediary is tied; and
- (e) the mortgage creditor on whose behalf the exclusively tied credit intermediary acts.

(7) The register must contain the following information in respect of each appointed representative—

- (a) the names of the persons within the management who are responsible for the mortgage intermediation activities or mortgage advisory services;
- (b) the names of the individuals who exercise a client-facing function in respect of mortgage intermediation activities or mortgage advisory services;
- (c) the EEA States in which the appointed representative conducts business;
- (e) the mortgage credit intermediary or, in the case of an appointed representative of a tied credit intermediary, the mortgage creditor on whose behalf the appointed representative acts.

(8) The FSC must—

- (a) ensure that the register is kept up to date and made available online for consultation by the public; and
- (b) act as the single information point for public access to the information in the register.

(9) The requirement to be registered under this regulation does not apply to a credit institution which is licensed or authorised in accordance with section 7 of the Financial Services (Banking) Act.

**Supervision of mortgage credit intermediaries and appointed representatives.**

13.(1) The FSC must supervise compliance with the Regulations and any provisions of or made under the Principal Act by—



- (a) mortgage credit intermediaries which are licensed or registered in Gibraltar; and
  - (b) appointed representatives which are registered in Gibraltar;
- (2) Subject to sub-regulation (3), the FSC may supervise a tied credit intermediary–
- (a) directly; or
  - (b) as part of the supervision of the mortgage creditor for which the tied credit intermediary acts, if the mortgage creditor is a credit institution which is licensed or authorised in accordance with section 7 of the Financial Services (Banking) Act.
- (3) The FSC must supervise directly a tied credit intermediary which is licensed or registered in Gibraltar but provides services in an EEA State.
- (4) The FSC may supervise an appointed representative–
- (a) directly; or
  - (b) as part of the supervision of the mortgage credit intermediary for which the appointed representative acts.

**Revocation of licence or registration.**

14.(1) Without limiting the Principal Act, if any condition in sub-regulation (2) is met the FSC may revoke–

- (a) a mortgage credit intermediary's licence or registration; or
  - (b) an appointed representative's registration.
- (2) The conditions are that the mortgage credit intermediary or appointed representative–
- (a) expressly renounces the licence or registration or has not carried out mortgage intermediation activities or provided mortgage advisory services in the preceding six months;
  - (b) has obtained the licence or registration through false or misleading statements or any other irregular means;
  - (c) no longer fulfils the requirements under which the licence or registration was granted;

- (d) falls within any of the cases specified in section 11(2) of the principal Act;
  - (e) has seriously or systematically infringed any provision of these Regulations or in or made under the principal Act governing the operating conditions for mortgage credit intermediaries.
- (3) Where a licence or registration is revoked by the FSC, it must–
- (a) notify the host States' competent authorities of such revocation as soon as possible and at the latest within 14 days, by any appropriate means; and
  - (b) ensure that the person's entry is removed from the register without undue delay.

**Mortgage credit intermediaries: freedom of establishment and freedom to provide services.**

15.(1) Subject to sub-paragraphs (2) and (3), a licence or other authorisation to act as a mortgage credit intermediary–

- (a) granted by the FSC in accordance with these Regulations is valid for all EEA States; or
- (b) granted by the competent authority in an EEA State is valid in Gibraltar.

(2) Sub-regulation (1) only applies where the activity which the mortgage credit intermediary intends to carry out in the host State is covered by the licence or other authorisation granted in the home State.

(3) A mortgage credit intermediary may only provide its services in relation to mortgage credit agreements offered by non-credit institutions to consumers in those EEA States where non-credit institutions are permitted to offer such agreements to consumers.

(4) A mortgage credit intermediary whose home State is Gibraltar that intends to carry out business for the first time in one or more EEA States under the freedom to provide services or by establishing a branch must inform the FSC.

(5) Within one month of being informed under sub-regulation (4) the FSC must–

- (a) notify the competent authorities of the host States concerned of–
  - (i) the mortgage credit intermediary's intention;
  - (ii) the mortgage creditors to which the mortgage credit intermediary is tied; and
  - (iii) whether those mortgage creditors take full and unconditional responsibility for the mortgage credit intermediary's activities; and
- (b) at the same time inform the mortgage credit intermediary concerned of that notification.

(6) A mortgage credit intermediary may start business in an EEA State one month after the date on which it is informed by the FSC of the notification referred to in sub-regulation (5)(b).

(7) Where the FSC receives a notification under Article 32 of the Mortgage Credit Directive in respect of a mortgage credit intermediary whose home State is in an EEA State, the FSC must–

- (a) prepare to supervise the mortgage credit intermediary in accordance with regulations 13, 16 and 17; and,
- (b) if necessary, inform the mortgage credit intermediary (either before it commences activities in Gibraltar or within two months of receiving the notification) of the conditions under which, in respect of matters not harmonised in European Union law, its activities are to be carried out in Gibraltar.

**Supervision of EEA branches in Gibraltar.**

16.(1) The FSC must ensure that any services provided by a branch in Gibraltar of a mortgage credit intermediary authorised in an EEA State complies with–

- (a) regulations 18 and 19;
- (b) regulations 21 to 23;
- (c) regulations 25 to 29; and
- (d) regulations 32, 34 and 43.

(2) The FSC may–

- (a) examine the arrangements of a branch to which sub-regulation (1) applies; and
  - (b) request that changes are made to those arrangements in order to ensure that—
    - (i) the branch fulfils its responsibilities under the provisions specified in sub-regulation (1); and
    - (ii) the FSC is able to enforce the branch's obligations under regulation 20 with respect to the services provided by the branch.
- (3) Where the FSC ascertains that a mortgage credit intermediary to which sub-regulation (1) applies is in breach of any provision referred to in that sub-regulation, the FSC must direct the mortgage credit intermediary concerned to cease and, where necessary, rectify that breach.
- (4) If the mortgage credit intermediary concerned fails to comply with a direction under sub-regulation (3), the FSC must—
- (a) take appropriate steps to ensure that the mortgage credit intermediary concerned ceases and, where necessary, rectifies the breach concerned; and
  - (b) inform the competent authority in the mortgage credit intermediary's home State of the action which the FSC has taken.
- (5) If, despite the action taken by the FSC, the mortgage credit intermediary concerned persists in breaching a provision referred to in sub-regulation (1), the FSC, after informing the competent authority in the mortgage credit intermediary's home State may take appropriate action—
- (a) to prevent or to penalise further irregularities; and
  - (b) in so far as necessary, to prevent the mortgage credit intermediary from initiating any further transactions within Gibraltar.
- (6) If the FSC takes any action under sub-regulation (5), it must without undue delay inform the European Commission.
- (7) Where the home State competent authority disagrees with the action taken by the FSC, it may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

**Reporting of breaches to home State authority.**

17.(1) The FSC must notify the competent authority in a mortgage credit intermediary's home State (the "home State authority") if the FSC has clear and demonstrable grounds for concluding that—

- (a) a mortgage credit intermediary acting in Gibraltar under the freedom to provide services is in breach of any obligations under these Regulations or the Mortgage Credit Directive; or
- (b) a mortgage credit intermediary which has a branch in Gibraltar is in breach of any obligation under these Regulations or the Mortgage Credit Directive other than one specified in regulation 16(1).

(2) The FSC may take the action under sub-regulation (3) if, after giving the home State authority notice under sub-regulation (1) and, at the same, providing that authority with the findings of the FSC in support of that notice—

- (a) the home State authority fails to take any action within one month of receiving; or
- (b) despite the action taken by the home State authority, a mortgage credit intermediary persists in acting in a manner that is prejudicial to the interests of consumers in Gibraltar or the orderly functioning of the markets.

(3) The FSC, having informed the home State authority—

- (a) may take all appropriate action needed to protect consumers and ensure the proper functioning of the markets, including by preventing the offending mortgage credit intermediary from initiating any further transactions in Gibraltar;
- (b) must, without undue delay inform the European Commission and the EBA of any such action; and
- (c) may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No. 1093/2010.

(4) Where a mortgage credit intermediary authorised in an EEA State has a branch in Gibraltar, the home State authority, in the exercise of its responsibilities and after having informed the FSC, may carry out on-site inspections in that branch.

**PART 4****CONDITIONS APPLICABLE TO MORTGAGE CREDITORS,  
MORTGAGE CREDIT INTERMEDIARIES AND APPOINTED  
REPRESENTATIVES****Conduct of business obligations.**

18.(1) A mortgage creditor, mortgage credit intermediary or appointed representative must act honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumer.

(2) The obligation under sub-regulation (1) applies when–

- (a) manufacturing credit products;
- (b) granting or intermediating on credit;
- (c) providing mortgage advisory services;
- (d) providing ancillary services; or
- (e) executing a mortgage credit agreement.

(3) When the granting or intermediating on credit or providing of mortgage advisory services and, where appropriate, providing ancillary services the activities shall be based on–

- (a) information about the consumer's circumstances;
- (b) any specific requirement made known by a consumer;
- (c) reasonable assumptions about risks to the consumer's situation over the mortgage credit agreement's term; and
- (d) in the case of mortgage advisory services, the information specified in regulation 34(4)(a).

**Obligation to provide information without charge.**

19. Any information that is provided to consumers in compliance with these Regulations must be provided without charge to the consumer.

**Remuneration arrangements.**

20.(1) A mortgage creditor must not remunerate its staff or mortgage credit intermediaries in a manner that impedes compliance with regulation 18.

(2) A mortgage credit intermediary must not remunerate its staff or appointed representatives in a manner that impedes compliance with regulation 18.

(3) A mortgage creditor, when establishing and applying its remuneration policy for staff who are responsible for the assessment of creditworthiness, must ensure that the policy is–

- (a) consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the mortgage creditor; and
- (b) in line with the business strategy, objectives, values and long-term interests of the mortgage creditor, and incorporates measures to avoid conflicts of interest, in particular by providing that remuneration is not contingent on the number or proportion of applications accepted.

(4) A mortgage creditor must apply the principles in sub-regulation (3)(a) and (b) in a manner and to the extent that is appropriate to its size, its internal organisation and the nature, scope and complexity of its activities.

(5) A mortgage creditor, mortgage credit intermediary or appointed representative must ensure that the remuneration structure for any of its staff who are involved in providing mortgage advisory services does not prejudice their ability to act in the consumer's best interest and, in particular, is not contingent on sales targets.

**Knowledge and competence requirements.**

21.(1) Mortgage creditors, mortgage credit intermediaries and appointed representatives must ensure that their staff possess and maintain an appropriate level of knowledge and competence in relation to–

- (a) the manufacturing, offering or granting of mortgage credit agreements;
- (b) the carrying out of mortgage intermediation activities;
- (c) the provision of mortgage advisory services; and
- (d) ancillary services (where the conclusion of a mortgage credit agreement includes any ancillary service).

(2) Subject to sub-regulation (3), the FSC must establish, in accordance with the principles set out in Schedule 4, minimum knowledge and

competence requirements for the staff of mortgage creditors, mortgage credit intermediaries, and appointed representatives.

(3) Where a mortgage creditor or mortgage credit intermediary provides its services in Gibraltar—

- (a) through a branch, the FSC is responsible for establishing the minimum knowledge and competence requirements applicable to the staff of that branch;
- (b) under the freedom to provide services—
  - (i) the home State is responsible for establishing the minimum knowledge and competence requirements applicable to the staff (in accordance with Annex III of the Mortgage Credit Directive); but
  - (ii) the FSC may establish the minimum knowledge and competence requirements which are applicable in respect of paragraphs 1(b), (c), (e) and (f) of Schedule 4.

(4) For the purpose of supervising mortgage creditors', mortgage credit intermediaries' and appointed representatives' compliance with sub-regulation (1), the FSC may require them to provide the FSC with any evidence that the FSC considers necessary.

(5) The FSC, in order to ensure that the minimum knowledge and competence requirements are effectively supervised and enforced in respect of mortgage creditors and mortgage credit intermediaries providing their services under the freedom to provide services—

- (a) must cooperate closely with the competent authorities in EEA States; and
- (b) may delegate tasks and responsibilities to any of them or perform on their behalf any tasks and responsibilities which they delegate to the FSC.

#### **PART 5**

#### **INFORMATION AND PRACTICES PRELIMINARY TO CONCLUDING MORTGAGE CREDIT AGREEMENT**

#### **Advertising and marketing: general provisions.**

22.(1) Any advertising and marketing communications concerning mortgage credit agreements—



- (a) must be fair, clear and not misleading; and
- (b) must not contain any wording that may create false expectations for a consumer regarding the availability or cost of credit.

(2) This regulation and regulation 23 apply without limiting Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

**Advertising: standard information.**

23.(1) Any advertising concerning mortgage credit agreements which indicates an interest rate or any figures relating to the cost of the credit to the consumer must include the standard information in sub-regulation (2).

(2) The standard information must specify, in a clear, concise and prominent way—

- (a) the identity of the mortgage creditor or, where applicable, the mortgage credit intermediary or appointed representative;
- (b) where applicable, that the mortgage credit agreement will be secured by a mortgage (or other comparable security commonly used within the EEA) on residential immovable property or by a right related to residential immovable property;
- (c) the borrowing rate, indicating whether this is fixed, variable or a combination of both, together with particulars of any charges included in the total cost of the credit to the consumer;
- (d) the total amount of credit;
- (e) the APRC, which must be included in the advertisement at least as prominently as any interest rate;
- (f) where applicable—
  - (i) the duration of the mortgage credit agreement;
  - (ii) the number of instalments;

(iii) the amount of the instalments;

(iv) the total amount payable by the consumer; and

(g) where applicable, a warning regarding the fact that possible fluctuations of the exchange rate could affect the amount payable by the consumer.

(3) The information in paragraphs (c) to (f) of sub-regulation (2), including the APRC must be specified by means of a representative example which is adhered to throughout and, for this purpose, an example is not a representative example unless the mortgage creditor reasonably expects that at least 51% of consumers who respond to and enter into a mortgage credit agreement based upon the promotion to which the example relates would be charged the APRC specified or less.

(4) Where in order to obtain the credit or to obtain it on the terms and conditions marketed—

(a) the conclusion of a contract regarding an ancillary service (in particular, insurance) is compulsory; and

(b) the cost of that service cannot be determined in advance,

the obligation to enter into that contract must be stated in a clear, concise and prominent way together with the APRC.

(5) The information required by sub-regulations (2) and (4) must be easily legible or clearly audible, depending upon the medium used for advertising.

### **Bundling and tying practices.**

24.(1) In Gibraltar—

(a) bundling practice is permitted; but

(b) subject to sub-regulations (3) to (6), tying practice is prohibited.

(2) In this regulation—

“bundling practice” means offering or selling a mortgage credit agreement in a package with other distinct financial products or services where the mortgage credit agreement is also made available to consumers separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services; and

“tying practice” means offering or selling a mortgage credit agreement in a package with other distinct financial products or services where the mortgage credit agreement is not made available to consumers separately.

(3) A mortgage creditor may, in connection with a mortgage credit agreement, require a consumer or a family member or close relation of the consumer to—

- (a) open or maintain a payment or a savings account, where the only purpose of such an account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit, or to provide additional security for the mortgage creditor in the event of default;
- (b) purchase or keep an investment product or private pension product which primarily offers the investor an income in retirement but serves also to provide additional security for the mortgage creditor in the event of default or to accumulate capital to repay the credit, to service the credit or to pool resources to obtain the credit;
- (c) conclude a separate mortgage credit agreement in conjunction with a shared-equity mortgage credit agreement to obtain the credit.

(4) A mortgage creditor may engage in tying practice if the mortgage creditor can demonstrate to the FSC that the tied products or categories of product offered, on terms and conditions similar to each other, which are not made available separately, result in a clear benefit to the consumers taking due account of the availability and prices of the relevant products offered on the market.

(5) Sub-regulation (4) only applies to products which are marketed after 20 March 2014.

(6) A mortgage creditor may require a consumer to hold a relevant insurance policy in relation to a mortgage credit agreement but only if the mortgage creditor is willing to accept—

- (a) a policy proposed by the mortgage creditor (which may or may not also be from a supplier preferred by the mortgage creditor);  
or

- (b) a policy provided by another supplier which has a level of guarantee equivalent to the policy proposed by the mortgage creditor.

**General information.**

25.(1) Clear and comprehensible general information about mortgage credit agreements must be made available to consumers at all times on a durable medium or in electronic form, by–

- (a) mortgage creditors or, where applicable, their tied credit intermediaries or appointed representatives; and
- (b) mortgage credit intermediaries that are not tied credit intermediaries.

(2) The general information provided must include at least the following–

- (a) the identity and the geographical address of the issuer of the information;
- (b) the purposes for which the credit may be used;
- (c) the forms of security, including, where applicable, the possibility for it to be located in an EEA State;
- (d) the possible duration of the mortgage credit agreements;
- (e) the types of available borrowing rate, indicating whether they are fixed, variable or both, with a short description of the characteristics of a fixed and variable rate, including related implications for the consumer;
- (f) where foreign currency loans are available, an indication of the foreign currency or currencies, including an explanation of the implications for the consumer where the credit is denominated in a foreign currency;
- (g) a representative example of the total amount of credit, the total cost of the credit to the consumer, the total amount payable by the consumer and the APRC;
- (h) an indication of possible further costs, not included in the total cost of the credit to the consumer, to be paid in connection with a mortgage credit agreement;

- (i) the range of different options available for reimbursing the credit to the mortgage creditor, including the number, frequency and amount of the regular repayment instalments;
- (j) where applicable, a clear and concise statement that compliance with the terms and conditions of the mortgage credit agreement does not guarantee repayment of the total amount of credit under the mortgage credit agreement;
- (k) a description of the conditions directly relating to early repayment;
- (l) whether a valuation of the property is necessary and, where applicable, who is responsible for ensuring that the valuation is carried out, and whether any related costs arise for the consumer;
- (m) an indication of the ancillary services the consumer is obliged to acquire in order to obtain the credit or to obtain it on the terms and conditions marketed and, where applicable, a clarification that the ancillary services may be purchased from a provider that is not the mortgage creditor; and
- (n) a general warning concerning the possible consequences of non-compliance with the commitments linked to the mortgage credit agreement.

(3) The FSC may, by direction, require mortgage creditors to include any other warning which the FSC considers to be relevant in Gibraltar (and in that event the FSC must comply with Article 13(2) of the Mortgage Credit Directive).

**Pre-contractual information.**

26.(1) A mortgage creditor and, where applicable, any mortgage credit intermediary or appointed representative, must provide a consumer with the personalised information needed to compare the credits available on the market, assess their implications and make an informed decision on whether to conclude a mortgage credit agreement—

- (a) without undue delay after the consumer has provided the necessary information on the consumer's needs, financial situation and preferences in accordance with regulation 32; and
- (b) in good time before the consumer is bound by any mortgage credit agreement or offer.

(2) The personalised information referred to in sub-regulation (1) must be provided on a durable medium by means of the ESIS as set out in Schedule 3, before an offer binding on the mortgage creditor is provided to the consumer.

(3) When an offer binding on a mortgage creditor is provided to a consumer, it must be provided on a durable medium and accompanied by–

- (a) a copy of the draft mortgage credit agreement; and
- (b) an ESIS where the characteristics of the offer are different from the information contained in any ESIS previously provided.

(4) When an offer binding on a mortgage creditor is provided to a consumer, the consumer has a reflection period of seven days from the date on which the offer is received by the consumer in which to compare it to other offers, assess their implications and make an informed decision on whether to accept the offer and–

- (a) the offer is binding on the mortgage creditor for the duration of the reflection period; and
- (b) the consumer may accept the offer at any time during the reflection period.

(5) Where the borrowing rate or other costs applicable to an offer are determined on the basis of the selling of underlying bonds or other long-term funding instruments, the borrowing rate or other costs may vary from that stated in the offer in accordance with the value of the underlying bond or other long-term funding instrument.

(6) A mortgage creditor and, where applicable, a mortgage credit intermediary or appointed representative who has provided an ESIS to a consumer–

- (a) is to be regarded as having satisfied the requirements of Article 3(1) of the Distance Marketing Directive (which requires disclosure of information about a supplier); but
- (b) is to be regarded as having satisfied the requirements of Article 5(1) of that Directive (which requires disclosure in good time before a consumer is bound by an offer or contract) only if the ESIS was provided to the consumer prior to the conclusion of the contract to which it relates.

(7) An ESIS must conform with Schedule 3 and any other information which a mortgage creditor, mortgage credit intermediary or appointed representative wishes to or must under any law provide to a consumer must be provided in a separate document.

(8) In the case of voice telephony communications under Article 3(3) of the Distance Marketing Directive, in order to comply with the requirement in point (b) of that Article (the provision of a description of the main characteristics of a financial service) the information provided must include at least the items referred to under headings 3 to 6 in Part 1 of Schedule 3.

(9) In sub-regulations (6) and (8) the “Distance Marketing Directive” means Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC.

**Information requirements: intermediaries and appointed representatives.**

27.(1) A mortgage credit intermediary or appointed representative must, in good time before carrying out any mortgage intermediation activities, provide the consumer with at least the following information on a durable medium—

- (a) the identity and the geographical address of the mortgage credit intermediary;
- (b) the register in which the mortgage credit intermediary or appointed representative has been included, the registration number, where applicable, and the means for verifying such registration;
- (c) whether the mortgage credit intermediary is tied to or works exclusively for one or more mortgage creditors and, if so, the names of the mortgage creditors for which it is acting (and the mortgage credit intermediary may state that it is independent where it meets the requirements of regulation 34(4)(e));
- (d) whether the mortgage credit intermediary offers mortgage advisory services;
- (e) the fee, where applicable, payable by the consumer to the mortgage credit intermediary for its services or where this is not possible, the method for calculating the fee;

- (f) the procedures allowing consumers or other interested parties to register complaints internally about mortgage credit intermediaries and, where appropriate, the means by which recourse to out-of-court complaint and redress procedures can be sought;
- (g) where applicable, the existence and where known the amount of commissions or other inducements, payable by the mortgage creditor or third parties to the mortgage credit intermediary for their services in relation to the mortgage credit agreement.

(2) Where the amount of any commission or other inducement is not known when a disclosure is made under sub-regulation (1)(g), the mortgage credit intermediary must inform the consumer that the actual amount will be disclosed at a later stage in the ESIS.

(3) Mortgage credit intermediaries who are not tied but who receive commission from one or more mortgage creditors must—

- (a) inform a consumer of the right to request information on the variation in levels of commission payable by the different mortgage creditors providing the mortgage credit agreements being offered to the consumer; and
- (b) at the consumer's request, provide that information.

(4) Where a mortgage credit intermediary charges a fee to the consumer and additionally receives commission from the mortgage creditor or a third party, the mortgage credit intermediary must explain to the consumer whether or not the commission will be offset against the fee, either in part or in full.

(5) Any fee payable by a consumer to a mortgage credit intermediary for its services must be communicated to the mortgage creditor by the mortgage credit intermediary for the purpose of calculating of the APRC.

(6) In addition to the other disclosures required by this regulation, a mortgage credit intermediary must ensure that its appointed representative, when contacting or before dealing with any consumer, disclose to the consumer—

- (a) the capacity in which the appointed representative is acting;
- (b) the mortgage credit intermediary that the appointed representative is representing.

**Adequate explanations.**



28.(1) Mortgage creditors and, where applicable, mortgage credit intermediaries or appointed representatives must provide adequate explanations to consumers in respect of proposed mortgage credit agreements and any ancillary services, in order to enable the consumer to assess whether the proposed mortgage credit agreements and ancillary services are adapted to the consumer's needs and financial situation.

(2) The explanations must, where applicable, include in particular—

- (a) the pre-contractual information to be provided in accordance with—
  - (i) regulation 26, in the case of mortgage creditors;
  - (ii) regulations 26 and 27, in the case of mortgage credit intermediaries or appointed representatives;
- (b) the essential characteristics of the products proposed;
- (c) the specific effects the products proposed may have on the consumer, including the consequences of default in payment by the consumer; and
- (d) where ancillary services are bundled with a mortgage credit agreement, whether each component of the bundle can be terminated separately and the implications for the consumer of doing so.

(3) A mortgage creditor or (with the consent of the mortgage creditor) a mortgage credit intermediary or appointed representative may adapt the extent of any explanation provided under this regulation and the manner in which it is provided, to take account of the circumstances of—

- (a) the situation in which the mortgage credit agreement is offered;
- (b) the consumer to whom it is offered; and
- (c) the nature of the credit offered.

**PART 6**  
**ANNUAL PERCENTAGE RATE OF CHARGE**

**Calculation of the APRC.**

29.(1) The APRC must be calculated—

- (a) in accordance with the mathematical formula set out in Schedule 2; and
- (b) where applicable, using the additional assumptions set out in that Schedule.

(2) Where the opening or maintaining of an account is obligatory in order to obtain credit or to obtain it on the terms and conditions marketed, the total cost of credit to the consumer must include—

- (a) the costs of opening and maintaining an account of that type;
- (b) the cost of using any means of payment for transactions and drawdowns on that account; and
- (c) any other costs relating to payment transactions in respect of that account.

(3) The calculation of the APRC must be based on the assumptions that—

- (a) the mortgage credit agreement is to remain valid for the period agreed; and
- (b) the mortgage creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the mortgage credit agreement.

(4) In the case of mortgage credit agreements containing provisions allowing variations in the borrowing rate and, where applicable, in the charges contained in the APRC but unquantifiable at the time of calculation, the APRC must be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the level set at the conclusion of the contract.

(5) For mortgage credit agreements for which a fixed borrowing rate is agreed in relation to an initial period of at least five years, at the end of which a negotiation on the borrowing rate takes place to agree on a new fixed rate for a further material period, the calculation of the additional, illustrative APRC disclosed in the ESIS must cover only the initial fixed rate period and must be based on the assumption that, at the end of the fixed borrowing rate period, the capital outstanding is repaid.

(6) Where a mortgage credit agreement allows for variations in the borrowing rate, the consumer must be informed of the possible impacts of variations on the amounts payable and on the APRC by means of—

- (a) an ESIS which contains an additional APRC illustrating the possible risks linked to a significant increase in the borrowing rate; and
  - (b) where the borrowing rate is not capped, an accompanying warning which highlights that the total cost of the credit to the consumer, shown by the APRC, may change.
- (7) Sub-regulation (6) does not apply to mortgage credit agreements where—
- (a) the borrowing rate is fixed for an initial period of at least five years;
  - (b) at the end of the initial period a negotiation on the borrowing rate will take place in order to agree on a new fixed rate for a further material period; and
  - (c) in respect of that new fixed rate an additional, illustrative APRC is provided for in the ESIS relating to that mortgage credit agreement.

## **PART 7 CREDITWORTHINESS ASSESSMENT**

### **Obligation to assess creditworthiness.**

30.(1) Before concluding a mortgage credit agreement, a mortgage creditor must make a thorough assessment of the consumer's creditworthiness, which must take appropriate account of factors relevant to verifying the consumer's prospects of meeting obligations under the mortgage credit agreement.

- (2) Mortgage creditors must establish appropriate procedures for—
- (a) conducting creditworthiness assessments under sub-regulation (1); and
  - (b) recording and maintaining a record of the outcome of each creditworthiness assessment it conducts and the information on which it is based.
- (3) A creditworthiness assessment must not rely predominantly on—
- (a) the value of the residential immovable property exceeding the amount of the credit; or

- (b) except where the purpose of the mortgage credit agreement is to construct or renovate the property, the assumption that the residential immovable property will increase in value.

(4) Subject to sub-regulation (5), a mortgage creditor who concludes a mortgage credit agreement with a consumer must not cancel or alter that agreement to the detriment of the consumer on the grounds that the assessment of creditworthiness was incorrectly conducted.

(5) Sub-regulation (4) does not apply in any case where it is shown that, contrary to regulation 32, the consumer knowingly withheld or falsified information of material relevance to the assessment of the consumer's creditworthiness.

(6) A mortgage creditor must—

- (a) only make credit available to a consumer where the result of a creditworthiness assessment indicates that the consumer is likely to meet the obligations resulting from the mortgage credit agreement and in the manner required under that agreement; and
- (b) only grant a significant increase in the total amount of credit under the mortgage credit agreement after re-assessing the consumer's creditworthiness based upon updated information, unless that additional credit was envisaged and included in the original creditworthiness assessment.

(7) A mortgage creditor must—

- (a) inform a consumer in advance, in accordance with section 10 of the Data Protection Act 2004, that a database is to be consulted for the purposes of assessing the consumer's creditworthiness;
- (b) inform the consumer without delay if the consumer's credit application is rejected; and
- (c) where the rejection is based upon the result of a database consultation, inform the consumer—
  - (i) that the decision is based upon the automated processing of data;
  - (ii) of the particulars of the database consulted; and
  - (iii) of the result of that consultation.

(8) This regulation applies without limiting the Data Protection Act 2004.

**Property valuation.**

31.(1) The valuation of residential immovable property for mortgage lending purposes in Gibraltar must be undertaken in accordance with—

- (a) the professional standards for valuation published from time to time by the Royal Institution of Chartered Surveyors; or
- (b) any other valuation standards that the FSC may direct.

(2) A mortgage creditor must—

- (a) ensure that the standards specified in or under sub-regulation (1) are applied when the mortgage creditor conducts a property valuation; and
- (b) take reasonable steps to ensure that those standards are applied by any third party who conducts a property valuation on behalf of the mortgage creditor.

(3) A mortgage creditor must ensure that any person conducting property valuation for mortgage lending purposes is able to provide an impartial and objective valuation by being—

- (a) professionally competent; and
- (b) sufficiently independent from the credit underwriting process.

(4) Any property valuation for mortgage lending purposes must be documented on a durable medium, a copy of which must be kept by the mortgage creditor.

**Disclosure and verification of consumer information.**

32.(1) The assessment of creditworthiness under regulation 30 must be carried out on the basis of information on a consumer's income and expenses and other financial and economic circumstances which is—

- (a) necessary, sufficient and proportionate;
- (b) obtained by the mortgage creditor from relevant internal or external sources, including—
  - (i) the consumer; and

(ii) information provided to any mortgage credit intermediary or appointed representative during the credit application process; and

(c) appropriately verified including, when necessary, by reference to independently verifiable documentation.

(2) A mortgage credit intermediary or appointed representative must accurately submit the necessary information obtained from a consumer to the relevant mortgage creditor to enable a creditworthiness assessment to be carried out.

(3) A mortgage creditor must specify at the pre-contractual phase, in a clear and straightforward way—

(a) the information and independently verifiable evidence that a consumer must provide; and

(b) the timeframe in which the consumer must provide it.

(4) The information and evidence specified by a mortgage creditor under sub-regulation (3) must be proportionate and limited to what is necessary to conduct a proper creditworthiness assessment, but a mortgage creditor may seek clarification of any information or evidence received in accordance with that sub-regulation where doing so is necessary to enable the consumer's creditworthiness to be assessed.

(5) A mortgage creditor may not terminate a mortgage credit agreement on the grounds that the information provided by the consumer before the conclusion of the mortgage credit agreement was incomplete, except where it can be demonstrated that the consumer knowingly withheld or falsified the information.

(6) A mortgage creditor, mortgage credit intermediary or appointed representative must warn a consumer (and that warning may be provided in a standardised format)—

(a) about the need for the consumer, in response to a request made under sub-regulation (3) and (4), to provide complete and correct information and evidence to enable the mortgage creditor to conduct a proper creditworthiness assessment; and

(b) that credit cannot be granted if the mortgage creditor is unable to assess the consumer's creditworthiness because the consumer has not provided the information and evidence required.

(7) This regulation applies without limiting the Data Protection Act 2004 and, in particular, section 6 of that Act.

**PART 8  
DATABASE ACCESS**

**Database access.**

33.(1) The owner or operator of a database in Gibraltar used for assessing the creditworthiness of consumers and for the sole purpose of monitoring consumers' compliance with the credit obligations over the life of the mortgage credit agreement must allow access to that database, on a non-discriminatory basis, to mortgage creditors from Gibraltar or any EEA State.

(2) Sub-regulation (1) applies to databases which are operated by private credit bureaux or credit reference agencies and to public registers.

(3) This regulation applies without limiting the Data Protection Act 2004.

**PART 9  
MORTGAGE ADVISORY SERVICES**

**Standards for mortgage advisory services.**

34.(1) A mortgage creditor, mortgage credit intermediary or appointed representative must inform a consumer explicitly whether mortgage advisory services are being or can be provided to the consumer in respect of a specified transaction.

(2) A mortgage creditor, mortgage credit intermediary or appointed representative, before providing or contracting to provide any mortgage advisory services, must provide the consumer with the following information on a durable medium—

- (a) so that the consumer can understand the basis on which it is made, whether the recommendation will be based upon considering—
  - (i) only their own product range in accordance with sub-regulation (4)(b); or
  - (ii) a wide range of products from across the market in accordance with sub-regulation (4)(c); and

- (b) where applicable, the fee payable by the consumer for the mortgage advisory services or, where the amount cannot be ascertained at the time of disclosure, the method used for its calculation.

(3) The information in sub-regulation (2) may be provided to the consumer in the form of additional pre-contractual information.

(4) In addition to the requirements of regulations 18 and 21, where mortgage advisory services are provided to consumers—

- (a) a mortgage creditor, mortgage credit intermediary or appointed representative must—

- (i) obtain the necessary information regarding a consumer's personal and financial situation, preferences and objectives so as to enable the recommendation of suitable mortgage credit agreements;
- (ii) ensure that any information obtained under paragraph (i) is up to date at the time it is assessed for the purpose of making a recommendation; and
- (iii) take into account reasonable assumptions as to risks to the consumer's situation over the term of the proposed mortgage credit agreement;

- (b) a mortgage creditor, tied credit intermediary or appointed representative of a tied credit intermediary must—

- (i) consider a sufficiently large number of mortgage credit agreements in their product range; and
- (ii) from among those mortgage credit agreements recommend one or more which are suitable for the consumer's needs, financial situation and personal circumstances;

- (c) a mortgage credit intermediary which is not a tied credit intermediary or an appointed representative of such a mortgage credit intermediary must—

- (i) consider a sufficiently large number of mortgage credit agreements which are available on the market; and
- (ii) from among those mortgage credit agreements recommend one or more which are suitable for the consumer's needs, financial situation and personal circumstances;



- (d) a mortgage creditor, mortgage credit intermediary or appointed representative must act in the best interests of the consumer by—
  - (i) informing themselves about the consumer’s needs and circumstances; and
  - (ii) recommending suitable mortgage credit agreements in accordance with paragraphs (a), (b) and (c); and
  - (iii) providing the consumer with a record on a durable medium of any recommendation provided; and
- (e) a mortgage creditor, mortgage credit intermediary or appointed representative must not use the description “independent advice” or “independent advisor” in connection with providing mortgage advisory services unless the mortgage creditor, mortgage credit intermediary or appointed representative—
  - (i) considers a sufficiently large number of mortgage credit agreements available on the market; and
  - (ii) where the number of mortgage creditors considered under sub-paragraph (i) is less than a majority of the market, is not remunerated for those mortgage advisory services by one or more of those mortgage creditors.

(5) Mortgage creditors, mortgage credit intermediaries and appointed representatives must warn a consumer when, considering the consumer’s financial situation, a mortgage credit agreement may induce a specific risk for the consumer.

(6) This regulation applies without limiting any obligation of a mortgage creditor, mortgage credit intermediary or appointed representative under regulation 28 to provide an adequate explanation to a consumer about a mortgage credit agreement or ancillary service.

## PART 10

### FOREIGN CURRENCY AND VARIABLE RATE LOANS

#### Foreign currency loans.

35.(1) Where a mortgage credit agreement relates to a foreign currency loan, at the time the mortgage credit agreement is concluded the mortgage creditor must warn the consumer of the exchange rate risks to which the consumer is exposed by borrowing in a foreign currency.

(2) A mortgage creditor must warn a consumer who has a foreign currency loan on a regular basis (on a durable medium) if, as a result of a change in the exchange rate between Sterling and the currency of the mortgage credit agreement since it was concluded, the regular instalments payable by the consumer or the value of the total amount which remains outstanding varies by more than 20%.

(3) A warning under sub-regulation (2) must inform the consumer of any increase in the total amount payable by the consumer under the mortgage credit agreement.

(4) The arrangements which apply to a consumer under this regulation must be disclosed to the consumer in—

- (a) the mortgage credit agreement; and
- (b) the ESIS which relates to that agreement;

and, if the agreement contains no provision limiting the risk to which the consumer is exposed by an exchange rate fluctuation of less than 20%, the ESIS must include an illustrative example of the impact of a 20% fluctuation in the exchange rate.

#### **Variable rate credit.**

36. A mortgage creditor must ensure that, where any mortgage credit agreement is a variable rate credit—

- (a) any indices or reference rates used to calculate the borrowing rate are clear, accessible, objective and verifiable by the parties to the mortgage credit agreement (and are made available upon request to the FSC); and
- (b) historical records of indices for calculating the borrowing rates are maintained either by the providers of those indices or the mortgage creditor.

### **PART 11**

#### **SOUND EXECUTION OF MORTGAGE CREDIT AGREEMENTS AND RELATED RIGHTS**

#### **Early repayment.**

37.(1) Subject to sub-regulation (2), a consumer has a right to discharge the consumer's obligations under a mortgage credit agreement (either fully or partially) prior to its expiry and, in that event, the consumer is entitled to a

reduction in the total cost of the credit to the consumer, such reduction consisting of the interest and the costs for the remaining duration of the contract.

(2) If early repayment would occur during a period for which the borrowing rate under a mortgage credit agreement is fixed, a consumer may only exercise the right under sub-regulation (1) where the mortgage creditor is satisfied that the consumer's circumstances have been adversely affected by an event (such as bereavement, divorce, or loss of employment) which was reasonably unforeseeable when the consumer entered into the mortgage credit agreement.

(3) Where a consumer discharges obligations under a mortgage credit agreement in accordance with sub-regulation (1), the mortgage creditor is entitled to fair and objective compensation for the costs directly linked to early repayment but any such compensation—

- (a) must be justified;
- (b) must not exceed the financial loss incurred by the mortgage creditor; and
- (c) must not amount to the imposition of a sanction on the consumer.

(4) Where a mortgage creditor receives a request from a consumer to discharge the consumer's obligations under a mortgage credit agreement prior to its expiry, the mortgage creditor must without delay provide the consumer (on a durable medium) with the information necessary to consider whether to pursue that request and the information must, at the least—

- (a) quantify the implications for the consumer of discharging those obligations prior to the expiry of the mortgage credit agreement; and
- (b) clearly set out any the assumptions used (which must be reasonable and justifiable) in quantifying those implications.

**Flexible and reliable markets.**

38.(1) A mortgage creditor must keep appropriate records concerning—

- (a) the types of immovable property accepted by the mortgage creditor as security; and
- (b) the related mortgage underwriting policies used by the mortgage creditor.

(2) The FSC must undertake appropriate statistical monitoring of the residential property market in Gibraltar, including for market surveillance purposes.

**Information about borrowing rate changes.**

39.(1) A mortgage creditor must inform a consumer, on a durable medium, of any change in the borrowing rate under a mortgage credit agreement before the change takes effect and the information provided must at least state—

- (a) the amount of the payments to be made after the new borrowing rate takes effect; and,
- (b) where the number or frequency of the payments is to change, particulars of those changes.

(2) The parties to a mortgage credit agreement may agree in that agreement that the information referred to in sub-regulation (1) is to be given to the consumer periodically where—

- (a) the change in the borrowing rate is correlated with a change in a reference rate;
- (b) the new reference rate is made publicly available by appropriate means;
- (c) information concerning the new reference rate is kept available in the premises of the mortgage creditor; and
- (d) the new reference rate is communicated personally to the consumer together with the amount of new periodic instalments.

(3) Where changes in the borrowing rate are determined by way of auction on the capital markets, the mortgage creditor must, in good time before the auction, inform the consumer on a durable medium of the upcoming procedure and provide an indication of how the borrowing rate could be affected.

**Arrears and repossession or foreclosure.**

40.(1) A mortgage creditor must exercise reasonable forbearance before commencing possession or foreclosure proceedings in respect of any residential immoveable property which is the security for a mortgage credit agreement.

(2) Any charges which a mortgage creditor may be permitted to impose on a consumer arising from the consumers' default under a mortgage credit agreement must be no greater than is necessary to compensate the mortgage creditor for costs it has incurred as a result of the default.

(3) Nothing in the sub-regulation (2) prohibits the parties to a mortgage credit agreement from expressly agreeing that return or transfer to the mortgage creditor of the security or proceeds from the sale of the security is sufficient to repay the credit.

(4) Where the court grants a mortgage creditor possession of any residential immovable property, unless the court directs otherwise the mortgage creditor must—

- (a) sell the property as soon as possible; and
- (b) obtain the best price that might reasonably be paid, taking account of factors such as market conditions and the continuing increase in the amount owed by the consumer.

(5) As soon as practicable after the sale, the mortgage creditor must take reasonable steps—

- (a) where the proceeds of sale are less than the amount due under the mortgage credit agreement, to inform the consumer on a durable medium—
  - (i) of the amount of the shortfall; and
  - (ii) whether and, if so, how the mortgage creditor intends to seek to recover the shortfall; or
- (b) where the proceeds of sale are more than the amount due under the mortgage credit agreement—
  - (i) to inform the consumer on a durable medium of the amount of the surplus; and
  - (ii) to pay it to the consumer (but subject to the rights of the holder of any other mortgage or charge on the property).

## PART 12

### COOPERATION WITH OTHER COMPETENT AUTHORITIES

#### Obligation to cooperate.

41.(1) The FSC must–

- (a) cooperate with the competent authorities in EEA States whenever doing so is necessary for the purpose of–
  - (i) carrying out their respective duties under the Mortgage Credit Directive, or
  - (ii) making use of their respective powers under that Directive or the law of Gibraltar;
- (b) render assistance to the competent authorities in EEA States, in particular, by exchanging information and cooperating in any investigation or supervisory activities.

(2) The FSC–

- (a) may request from the competent authority in an EEA State any information which the FSC needs for the purposes of carrying out its duties under these Regulations or the Mortgage Credit Directive; and
- (b) must without undue delay supply to the competent authority in an EEA State any information it requests for the purposes of carrying out its duties under that Directive.

(3) When the FSC exchanges any information with another competent authority under these Regulations, either of them may indicate at the time that the information must not be disclosed without their express agreement and, in that event–

- (a) the information is to be exchanged solely for the purposes which they have agreed; and
- (b) the information may only be transmitted to another person or body (and solely for the agreed purposes) by the competent authority which received it–
  - (i) with the express agreement of the competent authority which disclosed it; or
  - (ii) in duly justified circumstances of which the disclosing competent authority must be informed immediately.

(4) The FSC may refuse to act upon a request made to it under sub-regulation (1) or (2) where–

- (a) it has received information to the effect that acting upon the request may adversely affect the sovereignty, security or public policy of Gibraltar;
- (b) judicial proceedings have already been initiated in Gibraltar in respect of the same actions and persons; or
- (c) final judgement has already been delivered in in Gibraltar in respect of the same actions and persons;

and in the event of such a refusal, the competent authority shall notify the requesting competent authority accordingly, providing as detailed information as possible.

(5) Where a request for cooperation or the exchange of information made by the FSC to another competent authority has been rejected or not been acted upon within a reasonable time, the FSC may refer the matter to the EBA, requesting its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

### **PART 13 FINAL PROVISIONS**

#### **Offences and penalty fees.**

42.(1) A person who carries on, or purports to carry any mortgage credit activity in contravention of regulation 7(3) is guilty of an offence.

(2) Sections 49 to 52 of the Principal Act apply to an offence under sub-regulation (1) as they apply to an offence under that Act.

(3) A person who contravenes any provision of these Regulations is liable to a penalty fee under the Financial Services (Penalty Fees) Regulations 1993.

#### **Enforcement and sanctions.**

43.(1) The FSC's powers under or by virtue of the Principal Act extend to enforcing the provisions of these Regulations; and this sub-regulation applies without limiting those powers or any provision of these Regulations.

(2) Without limiting any other power, where the FSC is satisfied that a contravention of these Regulations has occurred, it may be take the actions specified in sub-regulations (3) to (5).

(3) The FSC may publish a statement specifying—

- (a) the nature of the contravention; and
- (b) the identity of the person who has committed it.

(4) Publication under sub-regulation (3) may take any form, or combination of forms, that the FSC thinks appropriate.

(5) The FSC may vary the terms and conditions of a person's section 8 licence by imposing limitations or restrictions upon it for a specified period, which must not exceed 12 months.

(6) Sections 44 and 45 of the Principal Act apply to any action taken by the FSC under sub-regulations (3) to (5) as if it was a decision specified in section 44(1) of that Act.

(7) The FSC may disclose to the public any measure that is taken in respect of a contravention of these Regulations, unless doing so would—

- (a) seriously jeopardise the financial markets; or
- (b) cause disproportionate damage to the parties involved.

#### **Dispute resolution.**

44. The Financial Services Ombudsman Act 2016 applies to disputes arising under these Regulations as it applies to a financial service dispute arising under a relevant Act.

#### **Imperative nature of rights.**

45.(1) A consumer may not waive any right conferred upon the consumer by these Regulations.

(2) A term contained in any mortgage credit agreement or other contract is void if, and to the extent that—

- (a) it is inconsistent with a provision for the protection of the consumer contained in these Regulations; or
- (b) it purports in certain circumstances to impose a duty or liability on the consumer which differs from or is in addition to any duty or liability of the consumer which is specified by these Regulations to apply in those circumstances.

#### **Transitional provisions.**



46.(1) These Regulations do not apply to a mortgage credit agreement which was entered into before 21 March 2016.

(2) A person who was performing mortgage intermediation activities in Gibraltar before 20 March 2016 but who has not been authorised as a mortgage credit intermediary in accordance with these Regulations may continue to perform those activities in Gibraltar in accordance with regulation 7(3)(b) until 21 March 2017.

(3) Sub-regulation (2) only authorises a mortgage credit intermediary to perform mortgage intermediation activities in Gibraltar.

(4) A mortgage creditor, mortgage credit intermediary or appointed representative who was performing mortgage credit activities before 20 March 2014 must comply with the requirements of regulation 21 by 21 March 2017.

## SCHEDULE 1

## CONSEQUENTIAL AMENDMENTS AND MODIFICATIONS

**Financial Services (Investment and Fiduciary Services) Act.**

1.(1) The Principal Act is amended as follows.

(2) In Schedule 3, at the end of that Schedule, insert–

**“7. Mortgage credit activity.**

Carrying on by way of business, in or from Gibraltar, any of the following activities, which constitute mortgage credit activity within the meaning of the Financial Services (Mortgage Credit) Regulations 2016–

- (a) acting as a mortgage creditor;
- (b) acting as a mortgage credit intermediary; or
- (c) providing mortgage advisory services.”.

(3) In Schedule 4, at the end of Part I, insert–

“(i) a person who, in respect of mortgage credit activity within the meaning of the Financial Services (Mortgage Credit) Regulations 2016, is by virtue of regulation 7(4) of those regulations exempt from the need to hold a licence granted under section 8.”.

**Financial Services (Licensing) Regulations, 1991.**

2.(1) The Financial Services (Licensing) Regulations, 1991 are amended as follows.

(2) In Schedule 1, at the end of that Schedule, insert–

“Mortgage credit activity (Paragraph 7, Schedule 3 to the Act).	XV(a)	Mortgage Creditor
	XV(b)	Mortgage Credit Intermediary
	XV(c)	Mortgage Advisory Services Provider”.

**Financial Services (Penalty Fees) Regulations, 1993.**

3.(1) The Financial Services (Penalty Fees) Regulations, 1993 are amended as follows.

(2) In the Schedule, at the end of that Schedule insert–

“Financial Services (Mortgage Credit) Regulations 2016

All regulations, other than regulation 5	Failure to comply with the provisions of the regulations	Level 5”.
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**Financial Services (Consumer Credit) Act 2011.**

4.(1) The Financial Services (Consumer Credit) Act 2011 is amended as follows.

(2) In section 4, after subsection (4) insert–

“(5) Despite subsection (2)(c) this Act applies to unsecured credit agreements the purpose of which is the renovation of a residential immovable property involving a total amount of credit above Euro 75 000.”.

**Financial Services (Capital Requirements Directive IV) Regulations 2013.**

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

(2) After regulation 56 insert–

**“Investigations by European Parliament.**

56A. Regulations 55 and 56 are without prejudice to the powers of investigation conferred upon the European Parliament under Article 226 of the Treaty on the Functioning of the European Union.”.

**Disapplication of Regulations.**

6.(1) The following Regulations made under the Principal Act do not apply to mortgage credit activity–

(a) the Financial Services (Advertisements) Regulations, 1991;

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**Financial Services (Investment and Fiduciary Services)**

**FINANCIAL SERVICES (MORTGAGE CREDIT) REGULATIONS**

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**2016**

**Subsidiary  
2016/055**

- (b) the Financial Services (Conduct of Business) Regulations, 1991; and
  - (c) the Financial Services (Unsolicited Calls) Regulations, 1991.
- (2) The Minister may, by regulations, amend the list in subparagraph (1)

SCHEDULE 2

CALCULATION OF THE ANNUAL PERCENTAGE RATE OF  
CHARGE (APRC)

**I. Basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other.**

The basic equation, which establishes the annual percentage rate of charge (APRC), equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other hand, i.e.—

$$\sum_{k=1}^m C_k(1+X)^{-t_k} = \sum_{l=1}^{m'} D_l(1+X)^{-S_l}$$

where—

$X$  is the APRC;

$m$  is the number of the last drawdown

$k$  is the number of a drawdown, thus  $1 \leq k \leq m$ ;

$C_k$  is the amount of drawdown  $k$ ;

$t_k$  is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus  $t_1 = 0$ ;

$m'$  is the number of the last repayment or payment of charges;

$l$  is the number of a repayment or payment of charges;

$D_l$  is the amount of a repayment or payment of charges;

$S_l$  is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

**Remarks:**

- (a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.

- (b) The starting date shall be that of the first drawdown.
- (c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30,41666 days (i.e. 365/12) regardless of whether or not it is a leap year.

Where intervals between dates used in the calculations cannot be expressed as a whole number of weeks, months or years, the intervals shall be expressed as a whole number of one of those periods in combination with a number of days. Where using days—

- (i) every day shall be counted, including weekends and holidays;
  - (ii) equal periods and then days shall be counted backwards to the date of the initial drawdown;
  - (iii) the length of the period of days shall be obtained excluding the first day and including the last day and shall be expressed in years by dividing this period by the number of days (365 or 366 days) of the complete year counted backwards from the last day to the same day of the previous year.
- (d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at the preceding decimal place shall be increased by one.
  - (e) The equation can be rewritten using a single sum and the concept of flows ( $A_k$ ), which will be positive or negative, in other words either paid or received during periods  $1$  to  $n$ , expressed in years, i.e.:

$$S = \sum_{k=1}^n A_k (1 + X)^{-tk},$$

$S$  being the present balance of flows. If the aim is to maintain the equivalence of flows, the value will be zero.

**II. Additional assumptions for the calculation of the APRC.**

- (a) If a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall be deemed to be drawn down immediately and in full.
- (b) If a credit agreement provides different ways of drawdown with different charges or borrowing rates, the total amount of credit shall be deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of credit agreement.
- (c) If a credit agreement gives the consumer freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time, the amount of credit shall be deemed to be drawn down on the earliest date provided for in the credit agreement and in accordance with those drawdown limits.
- (d) If different borrowing rates and charges are offered for a limited period or amount, the highest borrowing rate and charges shall be deemed to be the borrowing rate and charges for the whole duration of the credit agreement.
- (e) For credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator or internal reference rate the calculation of the APRC shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculation of the APRC, based on the value of the agreed indicator or internal reference rate at that time, but is not less than the fixed borrowing rate.
- (f) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be EUR 170,000. In the case of credit agreements - other than contingent liabilities or guarantees - the purpose of which is not to acquire or retain a right in immovable property or land, overdrafts, deferred debit cards or credit cards this ceiling is assumed to be EUR 1,500.
- (g) In the case of credit agreements other than overdrafts, bridging loans, shared equity credit agreements, contingent liabilities or guarantees and open-ended credit agreements as referred to in the assumptions set out in points (i), (j), (k), (l) and (m)–

- (i) if the date or amount of a repayment of capital to be made by the consumer cannot be ascertained, it shall be assumed that the repayment is made at the earliest date provided for in the credit agreement and is for the lowest amount for which the credit agreement provides;
  - (ii) if the interval between the date of initial drawdown and the date of the first payment to be made by the consumer cannot be ascertained, it shall be assumed to be the shortest interval.
- (h) Where the date or amount of a payment to be made by the consumer cannot be ascertained on the basis of the credit agreement or the assumptions set out in points (g), (i), (j), (k), (l) and (m) it shall be assumed that the payment is made in accordance with the dates and conditions required by the creditor and, when these are unknown—
- (i) interest charges are paid together with the repayments of the capital;
  - (ii) non-interest charges expressed as a single sum are paid at the date of the conclusion of the credit agreement;
  - (iii) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital, and if the amount of such payments is not known they shall be assumed to be equal amounts;
  - (iv) the final payment clears the balance of capital, interest and other charges, if any.
- (i) In the case of an overdraft facility, the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the overdraft facility is not known, the APRC shall be calculated on the assumption that the duration of the credit is three months.
- (j) In the case of a bridging loan, the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the credit agreement is not known the APRC shall be calculated on the assumption that the duration of the credit is 12 months.



- (k) In the case of an open ended credit agreement, other than an overdraft facility and bridging loan, it shall be assumed that—
  - (i) for credit agreements, the purpose of which is to acquire or retain rights in immovable property the credit is provided for a period of 20 years starting from the date of the initial drawdown, and that the final payment made by the consumer clears the balance of capital, interest and other charges, if any; in the case of credit agreements the purpose of which is not to acquire or retain rights in immovable property or which are drawn down by deferred debit cards or credit cards, this period shall be of one year;
  - (ii) the capital is repaid by the consumer in equal monthly payments, commencing one month after the date of the initial drawdown. However, in cases where the capital must be repaid only in full, in a single payment, within each payment period, successive drawdowns and repayments of the entire capital by the consumer shall be assumed to occur over the period of one year. Interest and other charges shall be applied in accordance with those drawdowns and repayments of capital and as provided for in the credit agreement.

For the purposes of this point, an open-ended credit agreement is a credit agreement without fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.

- (l) In the case of contingent liabilities or guarantees, the total amount of credit shall be deemed to be drawn down in full as a single amount at the earlier of—
  - (i) the latest draw down date permitted under the credit agreement being the potential source of the contingent liability or guarantee; or
  - (ii) in the case of a rolling credit agreement at the end of the initial period prior to the rollover of the agreement.
- (m) In the case of shared equity credit agreements—
  - (i) the payments by consumers shall be deemed to occur at the latest date or dates permitted under the credit agreement;

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- (ii) percentage increases in value of the immovable property which secures the shared equity credit agreement, and the rate of any inflation index referred to in the agreement, shall be assumed to be a percentage equal to the higher of the current central bank target inflation rate or the level of inflation in the Member State where the immovable property is located at the time of conclusion of the credit agreement or 0% if those percentages are negative.

**SCHEDULE 3**

**EUROPEAN STANDARDISED INFORMATION SHEET (ESIS)**

**PART 1**

<b>(Introductory text)</b>
<p>This document was produced for [name of consumer] on [current date].</p> <p>This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.</p> <p>The information below remains valid until [validity date], (where applicable) apart from the interest rate and other costs. After that date, it may change in line with market conditions.</p> <p>(Where applicable) This document does not constitute an obligation for [name of mortgage creditor] to grant you a loan.</p>
<b>1. Lender</b>
<p>[Name]</p> <p>[Telephone number]</p> <p>[Geographical address]</p> <p>(Optional) [E-mail address]</p> <p>(Optional) [Fax number]</p> <p>(Optional) [Web address]</p> <p>(Optional) [Contact person/point]</p> <p>(Where applicable information as to whether mortgage advisory services are being provided:)</p> <p>[We recommend, having assessed your needs and circumstances, that you take out this mortgage.][We are not recommending a particular mortgage for you. However, based on your answers to some questions, we are giving you</p>

information about this mortgage so that you can make your own choice.]

## 2. (Where applicable) Mortgage credit intermediary

[Name]

[Telephone number]

[Geographical address]

[E-mail address] (Optional)

[Fax number] (Optional)

[Web address] (Optional)

[Contact person/point] (Optional)

(Where applicable [information as to whether mortgage advisory services are being provided]) [(We recommend, having assessed your needs and circumstances, that you take out this mortgage./We are not recommending a particular mortgage for you. However, based on your answers to some questions, we are giving you information about this mortgage so that you can make your own choice.)]

[Remuneration]

## 3. Main features of the loan

Amount and currency of the loan to be granted:  
[value][currency]

(Where applicable) This loan is not in [national currency of the borrower].

(Where applicable) The value of your loan in [national currency of the borrower] could change.

(Where applicable) For example, if the value of [national currency of the borrower] fell by 20 % relative to [credit currency], the value of your loan would increase to [insert

amount in national currency of the borrower]. However, it could be more than this if the value of [national currency of the borrower] falls by more than 20%.

(Where applicable) The maximum value of your loan will be [insert amount in national currency of the borrower]. (Where applicable) You will receive a warning if the credit amount reaches [insert amount in national currency of the borrower]. (Where applicable) You will have the opportunity to [insert right to renegotiate foreign currency loan or right to convert loan into [relevant currency] and conditions].

Duration of the loan: [duration]

[Type of loan]

[Type of applicable interest rate]

Total amount to be reimbursed (repaid):

This means that you will pay back [amount] for every [unit of the currency] borrowed.

(Where applicable) [This/Part of this] is an interest-only loan. You will still owe [insert amount of loan on an interest- only basis] at the end of the mortgage term.

(Where applicable) Value of the property assumed to prepare this information sheet: [insert amount]

(Where applicable) Maximum available loan amount relative to the value of the property [insert ratio] or Minimum value of the property required to borrow the illustrated amount [insert amount]

(Where applicable) [Security]

#### **4. Interest rate and other costs**

The annual percentage rate of charge (APRC) is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers.

The APRC applicable to your loan is [APRC].

It comprises:

Interest rate [value in percentage or, where applicable, indication of a reference rate and percentage value of mortgage creditor's spread]

[Other components of the APRC]

Costs to be paid on a one-off basis

(Where applicable) You will need to pay a fee to register the mortgage. [Insert amount of fee where known or basis for calculation.]

Costs to be paid regularly

(Where applicable) This APRC is calculated using assumptions regarding the interest rate.

(Where applicable) Because [part of] your loan is a variable interest rate loan, the actual APRC could be different from this APRC if the interest rate for your loan changes. For example, if the interest rate rose to [scenario as described in Part 2], the APRC could increase to [insert illustrative APRC corresponding to the scenario].

(Where applicable) Please note that this APRC is calculated on the basis that the interest rate remains at the level fixed for the initial period throughout the duration of the contract.

(Where applicable) The following costs are not known to the lender and are therefore not included in the APRC: [Costs]

(Where applicable) You will need to pay a fee to register the mortgage.

Please make sure that you are aware of all other taxes and costs associated with your loan.

#### **5. Frequency and number of payments**

Repayment frequency: [frequency]

Number of payments: [number]

#### **6. Amount of each instalment**

[Amount] [currency]

Your income may change. Please consider whether you will still be able to afford your [frequency] repayment instalments if your income falls.

(Where applicable) Because [this/part of this] is an interest-only loan you will need to make separate arrangements to repay the [insert amount of loan on an interest-only basis] you will owe at the end of the mortgage term. Remember to add any extra payments you will need to make to the instalment amount shown here.

(Where applicable) The interest rate on [part of] this loan can change. This means the amount of your instalments could increase or decrease. For example, if the interest rate rose to [scenario as described in Part 2] your payments could increase to [insert instalment amount corresponding to the scenario].

(Where applicable) The value of the amount you have to pay in [national currency of the borrower] each [frequency of instalment] could change. (Where applicable) Your payments could increase to [insert maximum amount in national currency of the borrower] each [insert period]. (Where applicable) For example, if the value of [national currency of the borrower] fell by 20 % relative to [credit currency] you would have to pay an extra [insert amount in national currency of the borrower] each [insert period]. Your payments could increase by more than this.

(Where applicable) The exchange rate used for converting your repayment in [credit currency] to [national currency of the borrower] will be the rate published by [name of institution publishing exchange rate] on [date] or will be calculated on [date] using [insert name of benchmark or method of calculation].

(Where applicable) [Details on tied savings products, deferred-interest loans]

#### **7. (Where applicable) Illustrative repayment table**

This table shows the amount to be paid every [frequency].

The instalments (column [relevant no.]) are the sum of interest to be paid (column [relevant no.]), where applicable, capital paid (column [relevant no.]) and, where applicable, other costs (column [relevant no.]). (Where applicable) The costs in the other costs column relate to [list of costs]. Outstanding capital (column [relevant no.]) is the amount of the loan that remains to be reimbursed (repaid) after each instalment.

[Table]

#### **8. Additional obligations**

The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document.

[Obligations]

(Where applicable) Please note that the lending conditions described in this document (including the interest rate) may change if these obligations are not complied with.

(Where applicable) Please note the possible consequences of terminating at a later stage any of the ancillary services relating to the loan:

[Consequences]

#### **9. Early repayment**

You have the possibility to (the right to) repay this loan early, either fully or partially.

(Where applicable) [Conditions]

(Where applicable) Exit charge (Early repayment charge): [insert amount or, where not possible, the method of



calculation]

(Where applicable) Should you decide to repay this loan early, please contact us to ascertain the exact level of the exit charge (early repayment charge) at that moment.

#### **10. Flexible features**

(Where applicable) [Information on portability/subrogation]  
You have the possibility to (the right to) transfer this loan to another [lender][or] [property]. [Insert conditions]

(Where applicable) You do not have the possibility to (the right to) transfer this loan to another [lender] [or] [property].

(Where applicable) Additional features: [insert explanation of additional features listed in Part 2 and, optionally, any other features offered by the lender as part of the mortgage credit agreement not referred to in previous sections].

#### **11. Other rights of the borrower**

You have [length of reflection period] after [point in time when the reflection period begins] to reflect before committing yourself to taking out this loan.

#### **12. Complaints**

If you have a complaint please contact [insert internal contact point and source of information on procedure].

(Where applicable) Maximum time for handling the complaint [period of time]

(Where applicable) [If we do not resolve the complaint to your satisfaction internally,] you can also contact: [insert name of external body for out-of-court complaints and redress] (Where applicable) or you can contact FIN-NET for details of the equivalent body in your own country.

#### **13. Non-compliance with the commitments linked to the loan: consequences for the borrower**

[Types of non-compliance]

[Financial and/or legal consequences]

Should you encounter difficulties in making your [frequency] payments, please contact us straight away to explore possible solutions.

(Where applicable) As a last resort, your home may be repossessed if you do not keep up with payments.

(Where applicable)

#### **14. Additional information**

(Where applicable) [Indication of the law applicable to the credit contract].

(Where the lender intends to use a language different from the language of the ESIS) Information and contractual terms will be supplied in [language]. With your consent, we intend to communicate in [language/s] during the duration of the mortgage credit agreement.

[Insert statement on right to be provided with or offered, as applicable, a draft mortgage credit agreement]

#### **15. Supervisor**

This lender is supervised by [Name(s), and web address(es) of supervisory authority/ies]

(Where applicable) This mortgage credit intermediary is supervised by [Name and web address of supervisory authority].

## **PART 2**

### **INSTRUCTIONS TO COMPLETE THE ESIS**

In completing the ESIS, at least the following instructions must be followed.

Where a mortgage credit agreement is divided into more than one part, the mortgage creditor must set out the required ESIS content in respect of each part.

The sections referred to are sections in the ESIS.

Where the form includes the following words and phrases in round brackets, the mortgage creditor may use that word or phrase instead of the one immediately before it–

- (a) “repaid” (in sections 3 and 7, and in section 3 of this Part 2);
- (b) “right to” (in sections 9 and 10);
- (c) “early repayment charge” (in section 9);

**Introductory text.**

(1) The validity date must be properly highlighted. For the purpose of this section, the ‘validity date’ means the length of time the information, e.g. the borrowing rate, contained in the ESIS will remain unchanged and will apply should the mortgage creditor decide to grant the credit within this period of time. Where the determination of the applicable borrowing rate and other costs depends on the results of the selling of underlying bonds, the eventual borrowing rate and other costs may be different from those stated. In those circumstances only, it must be stipulated that the validity date does not apply to the borrowing rate and other costs by adding the words: ‘apart from the interest rate and other costs’.

**1. Lender.**

(1) Name, telephone number, and geographical address of the mortgage creditor must refer to the contact information that the consumer may use for future correspondence.

(2) Information on the e-mail address, fax number, web address and contact person/point is optional.

(3) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the mortgage creditor must indicate, where applicable, the name and geographical address of its representative in the Member State of residence of the consumer. Indication of the telephone number, e-mail address and web address of the representative of the credit provider is optional.

(4) Where Section 2 is not applicable, the mortgage creditor must inform the consumer whether mortgage advisory services are being provided and on what basis using the wording in Part 1.

## **2. Mortgage credit intermediary (where applicable).**

Where the product information is being provided to the consumer by a mortgage credit intermediary, that intermediary must include the following information:

(1) Name, telephone number and geographical address of the mortgage credit intermediary must refer to the contact information that the consumer may use for future correspondence.

(2) Information on the e-mail address, fax number, web address and contact person/point is optional.

(3) The mortgage credit intermediary must inform the consumer whether mortgage advisory services are being provided and on what basis using the wording in Part 1.

(4) An explanation of how the mortgage credit intermediary is being remunerated. Where it is receiving commission from a mortgage creditor, the amount and, where different from the name in Section 1, the name of the mortgage creditor must be provided. Where the amount of remuneration is not known at the time when the ESIS is provided, the mortgage credit intermediary must provide a range of representative examples.

(5) In the event that a mortgage creditor provides a consumer with a binding offer and the characteristics of the offer are different from the information in the ESIS previously provided by the mortgage credit intermediary, if the mortgage credit intermediary confirms to the mortgage creditor that the revised transaction can proceed, the mortgage creditor may complete section 2 and update the wording to say “[Name of mortgage credit intermediary] recommends.../ [Name of mortgage credit intermediary] is not recommending...” instead of “We recommend.../ We are not recommending”.

## **3. Main features of the loan.**

(1) This section must clearly explain the main characteristics of the credit, including the value and currency and the potential risks associated with the borrowing rate, including the ones referred to in point (8), and amortisation structure.

(2) Where the credit currency is different from the national currency of the consumer, the mortgage creditor must indicate that the consumer will receive a regular warning at least when the exchange rate fluctuates by more than 20 %, where applicable the right to convert the currency of the mortgage credit agreement or to the possibility to renegotiate the conditions and any other arrangements available to the consumer to limit their exposure to exchange rate risk. Where there is a provision in the mortgage credit agreement to limit the exchange rate risk, the mortgage creditor must indicate the maximum amount the consumer could have to pay back. Where there is no provision in the mortgage credit agreement to limit the exchange rate risk to which the consumer is exposed to a fluctuation in the exchange rate of less than 20 %, the mortgage creditor must indicate an illustration of the effect of a 20 % fall in the value of consumer's national currency relative to the credit currency on the value of the credit.

(3) The duration of the credit must be expressed in years or months, whichever is the most relevant. Where the duration of the credit can vary during the lifetime of the contract, the mortgage creditor must explain when and under which conditions this can occur. Where the credit is open-ended, for example, for a secured credit card, the mortgage creditor must clearly state that fact.

(4) The type of credit must be clearly indicated (e.g. mortgage credit, home loan, secured credit card). The description of the type of credit must clearly indicate how the capital and the interest must be reimbursed during the life of the credit (i.e. the amortisation structure), specifying clearly whether the mortgage credit agreement is on capital repayment or interest-only basis, or a mixture of the two.

(5) Where all or part of the credit is an interest-only credit, a statement clearly indicating that fact must be inserted prominently at the end of this section using the wording in Part 1.

(6) This section must explain whether the borrowing rate is fixed or variable and, where applicable, the periods during which it will remain fixed; the frequency of subsequent revisions and the existence of limits to the borrowing rate variability, such as caps or floors.

The formula used to revise the borrowing rate and its different components (e.g. reference rate, interest rate spread) must be explained. The mortgage creditor must indicate, e.g. by means of a web address, where further information on the indices or rates used in the formula can be found, e.g. Euribor or central bank reference rate.

(7) If different borrowing rates apply in different circumstances, the information must be provided on all applicable rates.

(8) The ‘total amount to be reimbursed (repaid)’ corresponds to the total amount payable by the consumer. It must be shown as the sum of the credit amount and the total cost of the credit to the consumer. Where the borrowing rate is not fixed for the duration of the contract, it must be highlighted that this amount is illustrative and may vary in particular in relation with the variation in the borrowing rate.

(9) Where the credit will be secured by a mortgage on the immovable property or another comparable security or by a right related to immovable property, the mortgage creditor must draw the consumer’s attention to this. Where applicable the mortgage creditor must indicate the assumed value of the immovable property or other security used for the purpose of preparing this information sheet.

In order for the mortgage creditor to comply with the principle of ‘clear, fair and not misleading’, where the assumed value is not a value provided by the consumer, the valuation must be a reasonable assessment based on all the facts available at the time.

(10) The mortgage creditor must indicate, where applicable, either–

- (a) ‘maximum available loan amount relative to the value of the property’, indicating the loan-to-value ratio. This ratio is to be accompanied by an example in absolute terms of the maximum amount that can be borrowed for a given property value; or
- (b) the ‘minimum value of the property required by the mortgage creditor to lend the illustrated amount’.

(11) Where credits are multi-part credits (e.g. concurrently part fixed rate, part variable rate), this must be reflected in the indication of the type of credit and the required information must be given for each part of the credit.

(12) The amount of loan to be granted is–

- (a) in cases where, on the basis of the information obtained from the consumer, before providing the ESIS it is clear that the consumer would not be eligible to borrow the amount he requested, an estimate of the amount that the consumer could borrow based on the information obtained from the consumer. This does not require information to be obtained from the consumer before providing an ESIS to ascertain the amount the consumer is eligible to borrow, instead, this means that the mortgage creditor does not have to provide the consumer with an ESIS for an amount he knows the consumer would not be eligible for, based on whatever information it has obtained from the consumer before providing the ESIS; or

- (b) where it is known that the loan will be released in instalments, for example, in the case of a self-build mortgage—
  - (i) where the lender has made a binding offer for the full amount, the total amount of the loan required and not the amount of the initial instalment;
  - (ii) where the lender has made a binding offer for an initial amount, the initial amount; and
  - (iii) where the lender's binding offer for an initial amount has been replaced by a binding offer for a larger amount, the larger amount.

#### **4. Interest rate and other costs.**

(1) The reference to 'interest rate' corresponds to the borrowing rate or rates.

(2) The borrowing rate must be mentioned as a percentage value. Where the borrowing rate is variable and based on a reference rate the mortgage creditor may indicate the borrowing rate by stating a reference rate and a percentage value of mortgage creditor's spread. The mortgage creditor must however indicate the value of the reference rate valid on the day of issuing the ESIS.

Where the borrowing rate is variable the information must include: (a) the assumptions used to calculate the APRC; (b) where relevant, the applicable caps and floors and (c) a warning that the variability could affect the actual level of the APRC. In order to attract the consumer's attention the font size used for the warning must be bigger and must figure prominently in the main body of the ESIS. The warning must be accompanied by an illustrative example on the APRC.

Where there is a cap on the borrowing rate, the example must assume that the borrowing rate rises at the earliest possible opportunity to the highest level foreseen in the mortgage credit agreement. Where there is no cap the example must illustrate the APRC at the highest borrowing rate in at least the last 20 years, or where the underlying data for the calculation of the borrowing rate is available for a period of less than 20 years the longest period for which such data is available, based on the highest value of any external reference rate used in calculating the borrowing rate where applicable or the highest value of a benchmark rate specified by a competent authority or EBA where the mortgage creditor does not use an external reference rate. Such requirement must not apply to mortgage credit agreements where the borrowing rate is fixed for a material initial period of

several years and may then be fixed for a further period following negotiation between the mortgage creditor and the consumer.

For mortgage credit agreements where the borrowing rate is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the mortgage creditor and the consumer, the information must include a warning that the APRC is calculated on the basis of the borrowing rate for the initial period. The warning must be accompanied by an additional, illustrative APRC calculated in accordance with Article 17(5). Where credits are multi-part credits (e.g. concurrently part fixed rate, part variable rate), the information must be given for each part of the credit. Where credits are multi-part credits, the mortgage creditor must calculate and provide the additional illustrative APRC once in respect of the entire mortgage credit agreement.

(3) The benchmark rate is the difference in percentage points between the Bank of England's base rate on the date the ESIS is issued and the highest value of the Bank of England's base rate over at least the last 20 years, added to the borrowing rate shown in the ESIS.

When more than one interest rate applies during the term of the mortgage credit agreement, for example, because there is an initial fixed or discounted interest rate period, the mortgage creditor must calculate the benchmark rate by reference to the reversionary borrowing rate shown in the ESIS.

When calculating the benchmark rate, the mortgage creditor may–

- (a) calculate the last 20 years from up to three months prior to the date the ESIS is issued; and
- (b) extend the period for calculating the benchmark rate beyond the last 20 years to any period longer than 20 years.

In the event of a scenario in column (1) in the table immediately below, the mortgage creditor must calculate the illustrative example of the APRC (the additional APRC) in accordance with column (2) of the table.

<b>(1) Scenario</b>	<b>(2) Calculation of additional APRC</b>
Mortgage with an interest-rate cap	<p><b>NB: A mortgage creditor's standard variable rate is not to be used as an external reference rate (ERR)</b></p> <p>Calculate the APRC based on the borrowing rate rising at the</p>



	earliest possible opportunity to the level of the cap.
Where the product is not linked to an ERR	Use the benchmark rate.
Mortgage creditor uses an ERR and has 20 years of data relating to the margin applied by the mortgage creditor	Use the highest ERR in the previous 20 years, and apply the highest margin over that or lowest margin under it, to produce the highest additional APRC.
Mortgage creditor uses an ERR and has less than 20 years of data relating to the margin applied by the mortgage creditor	Use the highest ERR in the previous 20 years, and apply the highest margin over that or lowest margin under it, used in the period of data available, to produce the highest additional APRC.
Mortgage creditor comprises a group which contains separate legal entities or comprises distinct product brands and has 20 years of data relating to the margin applied by that legal entity or product brand. It may have similar products across entities or brands within the same group or company with different margins above or below the ERR	Use the highest ERR in the previous 20 years with respect to the pricing approach for the specific legal entity or product brand and apply the highest margin over that or lowest margin under it to produce the highest additional APRC.
Mortgage creditor comprises a group which contains separate legal entities or comprises distinct product brands and has less than 20 years of data relating to the margin applied by that legal entity or product brand. It may have similar products across entities or brands within the same group or company with different margins above or below the ERR.	Use the highest ERR in the previous 20 years with respect to the pricing approach for the specific legal entity or product brand and apply the highest margin over that or lowest margin under it used in the period of data available to produce the highest additional APRC.

Mortgage creditor has previously purchased a brand that uses an ERR and has 20 years of data relating to the margin applied by the mortgage creditor for the same product	Where the purchaser is carrying on new lending under the purchased brand - same as above, using previous mortgage creditor's data where relevant and where it may be reasonably obtained.
Mortgage creditor has previously purchased a brand that uses an ERR and has less than 20 years of data relating to the margin applied by the mortgage creditor for the same product	Where the purchaser is carrying on new lending under the purchased brand - same as above, using previous mortgage creditor's data, where relevant and where it may be reasonably obtained. Otherwise, use the benchmark rate.
Mortgage creditor has different ERR calculation methods that apply over time (e.g., 0.5% over Bank of England rate for the first two years and then 2% over Bank of England rate for the rest of the mortgage lifetime).	Calculate using the method which produces the highest additional APRC.
Mortgage creditor has different methods that apply to different proportions of the principal (e.g., ERR + x% applies to 50% principal and SVR applies to the other 50%)	Calculate using the ERR where applicable and the benchmark rate, where applicable, and use both to calculate the additional APRC.
Mortgage creditor uses an ERR where its basis has changed in the past 20 years	Consider whether there was an equivalent predecessor ERR and use the ERR (and its equivalent predecessor(s), if any) provided that it (or they) have existed at least 20 years, otherwise use the benchmark rate.
Mortgage creditor has an ERR calculation method that applies for a fixed period of time after which the lender's standard variable rate applies (e.g.,	Calculate using the method which produces the highest additional APRC.

0.5% over Bank of England rate for the first two years and then the lender's standard variable rate applies for the rest of the mortgage lifetime).	
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(4) In the section on 'other components of the APRC' all the other costs contained in the APRC must be listed, including one-off costs such as administration fees, and regular costs, such as annual administration fees. The mortgage creditor must list each of the costs by category (costs to be paid on a one-off basis, costs to be paid regularly and included in the instalments, costs to be paid regularly but not included in the instalments), indicating their amount, to whom they are to be paid and when. This does not have to include costs incurred for breaches of contractual obligations. Where the amount is not known, the mortgage creditor must provide an indication of the amount if possible, or if not possible, how the amount will be calculated and specify that the amount provided is indicative only. Where certain costs are not included in the APRC because they are unknown to the mortgage creditor, this must be highlighted.

Where the consumer has informed the mortgage creditor of one or more components of his preferred credit, such as the duration of the mortgage credit agreement and the total amount of credit, the mortgage creditor must, where possible, use those components; if a mortgage credit agreement provides different ways of drawdown with different charges or borrowing rates and the mortgage creditor uses the assumptions set out in Schedule 2 to these Regulations, it must indicate that other drawdown mechanisms for this type of mortgage credit agreement may result in a higher APRC. Where the conditions for drawdown are used for calculating the APRC, the mortgage creditor must highlight the charges associated with other drawdown mechanisms that are not necessarily the ones used in calculating the APRC.

(5) Where a fee is payable for registration of the mortgage or comparable security that must be disclosed in this section with the amount, where known, or where this is not possible the basis for determining the amount. Where the fees are known and included in the APRC the existence and amount of the fee must be listed under 'Costs to be paid on a one-off basis'. Where the fees are not known to the mortgage creditor and therefore not included in the APRC the existence of the fee must be clearly mentioned in the list of costs which are not known to the mortgage creditor. In either case the standardised wording in Part 1 must be used under the appropriate heading.

## **5. Frequency and number of payments.**

(1) Where payments are to be made on a regular basis, the frequency of payments must be indicated (e.g. monthly). Where the frequency of payments will be irregular, this must be clearly explained to the consumer.

(2) The number of payments indicated must cover the whole duration of the credit.

#### **6. Amount of each instalment**

(1) The credit currency and currency and amount of the instalments must be clearly indicated.

(2) Where the amount of the instalments may change during the life of the credit, the mortgage creditor must specify the period during which that initial instalment amount will remain unchanged and when and how frequently afterwards it will change.

(3) Where all or part of the credit is an interest-only credit, a statement clearly indicating that fact, must be inserted prominently at the end of this section using the wording in Part 1.

If there is a requirement for the consumer to take out a tied savings product as a condition for being granted an interest-only credit secured by a mortgage or another comparable security, the amount and frequency of any payments for this product must be provided.

(4) Where the borrowing rate is variable the information must include a statement indicating that fact, using the wording in Part 1 and an illustration of a maximum instalment amount. Where there is a cap, the illustration must show the amount of the instalments if the borrowing rate rises to the level of the cap. Where there is no cap, the worst case scenario must illustrate the level of instalments at the highest borrowing rate in the last 20 years, or where the underlying data for the calculation of the borrowing rate is available for a period of less than 20 years the longest period for which such data is available, based on the highest value of any external reference rate used in calculating the borrowing rate where applicable, or the highest value of a benchmark rate specified by—

- (i) point 3 of section 4 in this Part 2;
- (ii) another competent authority; or
- (iii) the European Banking Authority,

where the mortgage creditor does not use an external reference rate.

The requirement to provide an illustrative example must not apply to mortgage credit agreements where the borrowing rate is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the mortgage creditor and the consumer. Where credits are multi-part credits (e.g. concurrently part fixed rate, part variable rate), the information must be given for each part of the credit, and in total.

(5) (Where applicable) Where the credit currency is different from the consumer's national currency or where the credit is indexed to a currency which is different from the consumer's national currency, the mortgage creditor must include a numerical example clearly showing how changes to the relevant exchange rate may affect the amount of the instalments using the wording in Part 1. That example must be based on a 20 % reduction in the value of the consumer's national currency together with a prominent statement that the instalments could increase by more than the amount assumed in that example. Where there is a cap which limits that increase to less than 20 %, the maximum value of the payments in the consumer's currency must be given instead and the statement on the possibility of further increases omitted.

(6) Where the credit is fully or partly a variable rate credit and point 3 applies, the illustration in point 5 must be given on the basis of the instalment amount referred to in point 1.

(7) Where the currency used for the payment of instalments is different from the credit currency or where the amount of each instalment expressed in the consumer's national currency depends on the corresponding amount in a different currency, this section must indicate the date at which the applicable exchange rate is calculated and either the exchange rate or the basis on which it will be calculated and the frequency of their adjustment. Where applicable such indication must include the name of institution publishing the exchange rate.

(8) Where the credit is a deferred-interest credit under which interest due is not fully repaid by the instalments and is added to the total amount of credit outstanding, there must be an explanation of: how and when deferred interest is added to the credit as a cash amount; and what the implications are for the consumer in terms of their remaining debt.

## **7. Illustrative repayment table.**

(1) This section must be included where the credit is a deferred interest credit under which interest due is not fully repaid by the instalments and is added to the total amount of credit outstanding or where the borrowing rate is fixed for the duration of the mortgage credit agreement.

Where the consumer has the right to receive a revised amortisation table, this must be indicated along with the conditions under which the consumer has that right.

(2) The table to be included in this section must contain the following columns: 'repayment schedule' (e.g. month 1, month 2, month 3), 'amount of the instalment', 'interest to be paid per instalment', 'other costs included in the instalment' (where relevant), 'capital repaid per instalment' and 'outstanding capital after each instalment'.

(3) For the first repayment year the information must be given for each instalment and a subtotal must be indicated for each of the columns at the end of that first year. For the following years, the detail can be provided on an annual basis. An overall total row must be added at the end of the table and must provide the total amounts for each column. The total cost of the credit paid by the consumer (i.e. the overall sum of the 'amount of the instalment' column) must be clearly highlighted and presented as such.

(4) Where the borrowing rate is subject to revision and the amount of the instalment after each revision is unknown, the mortgage creditor may indicate in the amortisation table the same instalment amount for the whole credit duration. In such a case, the mortgage creditor must draw that fact to the attention of the consumer by visually differentiating the amounts which are known from the hypothetical ones (e.g. using a different font, borders or shading). In addition, a clearly legible text must explain for which periods the amounts represented in the table may vary and why.

#### **8. Additional obligations.**

(1) The mortgage creditor must refer in this section to obligations such as the obligation to insure the immovable property, to purchase life insurance, to have a salary paid into an account with the mortgage creditor or to buy any other product or service. For each obligation, the mortgage creditor must specify towards whom and by when the obligation needs to be fulfilled.

(2) The mortgage creditor must specify the duration of the obligation, e.g. until the end of the mortgage credit agreement. The mortgage creditor must specify for each obligation any costs to be paid by the consumer, which are not included in the APRC.

(3) The mortgage creditor must state whether it is compulsory for the consumer to hold any ancillary services to obtain the credit on the stated terms, and if so whether the consumer is obliged to purchase them from the mortgage creditor's preferred supplier or whether they may be purchased from a provider of consumer's choice. Where such possibility is conditional

on the ancillary services meeting certain minimum characteristics, such characteristics must be described in this section.

Where the mortgage credit agreement is bundled with other products the mortgage creditor must state the key features of those other products and clearly state whether the consumer has a right to terminate the mortgage credit agreement or the bundled products separately, the conditions for and implications of doing so, and, where applicable, of the possible consequences of terminating the ancillary services required in connection with the mortgage credit agreement.

### **9. Early repayment.**

(1) The mortgage creditor must indicate under what conditions the consumer can repay the credit early, either fully or partially.

(2) In the section on exit charges the mortgage creditor must draw the consumer's attention to any exit charge or other costs payable on early repayment in order to compensate the mortgage creditor and where possible indicate their amount. In cases where the amount of compensation would depend on different factors, such as the amount repaid or the prevailing interest rate at the moment of the early repayment, the mortgage creditor must indicate how the compensation will be calculated and provide the maximum amount that the charge might be, or where this is not possible, an illustrative example in order to demonstrate to the consumer the level of compensation under different possible scenarios.

(3) The mortgage creditor may make the following changes to the wording in this section—

- (a) replace the word “possibility” with “right” (shown in round brackets) i.e. “You have the right to repay this loan early, either fully or partially”;
- (b) replace the words “Exit charge” and “exit charge” with “Early repayment charge” or “early repayment charge” (shown in round brackets).

### **10. Flexible features.**

(1) Where applicable, the mortgage creditor must explain the possibility to and conditions for transferring the credit to another mortgage creditor or immovable property.

The mortgage creditor may replace “possibility to” with the “the right to” (shown in round brackets).

(2) (Where appropriate) Additional features: Where the product contains any of the features listed in point 5, this section must list these features and provide a brief explanation of: the circumstances in which the consumer can use the feature; any conditions attached to the feature; if the feature being part of the credit secured by a mortgage or comparable security means that the consumer loses any statutory or other protections usually associated with the feature; and the firm providing the feature (if not the mortgage creditor).

(3) If the feature contains any additional credit, then this section must explain to the consumer: the total amount of credit (including the credit secured by the mortgage or comparable security); whether the additional credit is secured or not; the relevant borrowing rates; and whether it is regulated or not. Such additional credit amount must either be included in the original creditworthiness assessment or, if it is not, this section must make clear that the availability of the additional amount is dependent on a further assessment of the consumer's ability to repay.

(4) If the feature involves a savings vehicle, the relevant interest rate must be explained.

(5) The possible additional features are: 'Overpayments/Underpayments' [paying more or less than the instalment ordinarily required by the amortisation structure]; 'Payment holidays' [periods where the consumer is not required to make payments]; 'Borrow back' [ability for the consumer to borrow again funds already drawn down and repaid]; 'Additional borrowing available without further approval'; 'Additional secured or unsecured borrowing' [in accordance with point 3 above]; 'Credit card'; 'Linked current account'; and 'Linked savings account'.

(6) The mortgage creditor may include any other features offered by the mortgage creditor as part of the mortgage credit agreement not mentioned in previous sections.

#### **11. Other rights of the borrower.**

(1) The mortgage creditor must clearly specify the consumer's reflection period and where applicable other rights such as, portability (including subrogation) that exist, specify the conditions to which this/these right(s) is subject, the procedure that the consumer will need to follow in order to exercise this/these right(s), inter alia, the address to which the notification of withdrawal must be sent, and the corresponding fees (where applicable).

(2) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the consumer must be informed of the existence or absence of a right of withdrawal.



**12. Complaints.**

(1) This Section must indicate the internal contact point [name of the relevant department] and a means of contacting them to complain [Geographical address] or [Telephone number] or [Contact person:] [contact details] and a link to the complaints procedure on the relevant page of a website or similar information source.

(2) It must indicate the name of the relevant external body for out-of-court complaints and redress (i.e. Financial Services Ombudsman) and that customers should seek to resolve a complaint using the firm's internal complaint procedure before referring a complaint to the Financial Services Ombudsman, using the wording in Part 1.

(3) In the case of mortgage credit agreements with a consumer who is resident in another Member State, the mortgage creditor must refer to the existence of FIN-NET ([http://ec.europa.eu/internal\\_market/fin-net/](http://ec.europa.eu/internal_market/fin-net/)).

**13. Non-compliance with the commitments linked to the credit: consequences for the borrower.**

(1) Where non-observance of any of the consumer's obligations linked to the credit may have financial or legal consequences for the consumer, the mortgage creditor must describe in this section the different main cases (e.g. late payments/ default, failure to respect the obligations set out in Section 8 'Additional obligations') and indicate where further information could be obtained.

(2) For each of those cases, the mortgage creditor must specify, in clear, easy comprehensible terms, the sanctions or consequences to which they may give rise. Reference to serious consequences must be highlighted.

The disclosure required by (1) relates to "main cases", rather than every case.

The mortgage creditor may provide detail relating to the (2) in the terms and conditions of the mortgage credit agreement.

(3) Where the immovable property used to secure the credit may be returned or transferred to the mortgage creditor, if the consumer does not comply with the obligations, this section must include a statement indicating that fact, using the wording in Part 1.

**14. Additional information.**

(1) In the case of distance marketing, this section will include any clause stipulating the law applicable to the mortgage credit agreement or the competent court.

(2) Where the mortgage creditor intends to communicate with the consumer during the life of the contract in a language different from the language of the ESIS that fact must be included and the language of communication named. This is without prejudice to point (g) of point 3 of paragraph 1 of Article 3 of Directive 2002/65/EC.

(3) The mortgage creditor or mortgage credit intermediary must state the consumer's right to be provided with or offered, as applicable, a copy of the draft mortgage credit agreement at least once an offer binding on the mortgage creditor has been made.

**15. Supervisor.**

(1) The relevant authority or authorities for the supervision of the pre-contractual stage of lending must be indicated.

**SCHEDULE 4**

**MINIMUM KNOWLEDGE AND COMPETENCE REQUIREMENTS**

1. The minimum knowledge and competence requirements for mortgage creditors', mortgage credit intermediaries' and appointed representatives' staff referred to in regulation 21 and for persons involved in the management of mortgage credit intermediaries or appointed representatives referred to in regulations 9(1)(c)(ii), 10(7)(b) and 11(8)(b) need to include at least—

- (a) appropriate knowledge of credit products within the scope of regulation 3 and the ancillary services typically offered with them;
- (b) appropriate knowledge of the laws related to the mortgage credit agreements for consumers, in particular consumer protection;
- (c) appropriate knowledge and understanding of the immovable property purchasing process;
- (d) appropriate knowledge of security valuation;
- (e) appropriate knowledge of organisation and functioning of land registers;
- (f) appropriate knowledge of the market in Gibraltar;
- (g) appropriate knowledge of business ethics standards;
- (h) appropriate knowledge of the consumer's creditworthiness assessment process or where applicable, competence in assessing consumers' creditworthiness;
- (i) appropriate level of financial and economic competency.

2. When establishing minimum knowledge and competence requirements, the FSC may differentiate between the levels and types of requirements applicable to the staff of mortgage creditors, the staff of mortgage credit intermediaries or appointed representatives and the management of mortgage credit intermediaries or appointed representatives.

3. Subject to paragraph 4, the FSC may determine the appropriate level of knowledge and competence on the basis of—

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- (a) professional qualifications; or
- (b) relevant professional experience (which may be defined as a minimum number of years working in areas related to the origination, distribution or intermediation of credit products).

4. After 21 March 2019, any determination of appropriate level of knowledge and competence must not be based solely on relevant professional experience.