

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4277 of 7 July, 2016

LEGAL NOTICE NO. 143 OF 2016.

FINANCIAL SERVICES (BANKING) ACT

**FINANCIAL SERVICES (MARKETS IN FINANCIAL
INSTRUMENTS) ACT 2006**

INTERPRETATION AND GENERAL CLAUSES ACT

**FINANCIAL SERVICES (RECOVERY AND RESOLUTION)
(AMENDMENT) REGULATIONS 2016**

In exercise of the powers conferred upon the Minister by section 79 of the Financial Services (Banking) Act and section 62 of the Financial Services (Markets in Financial Instruments) Act 2006, as read with section 23(g)(i) of the Interpretation and General Clauses Act and upon the Government by section 23(g)(ii) of that Act and of all other enabling powers, and in order to give further effect to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council and to Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast), the Minister and the Government have made the following Regulations—

**PART 1
PRELIMINARY**

Title.

1. These Regulations may be cited as the Financial Services (Recovery and Resolution) (Amendment) Regulations 2016.

Commencement.

2. These Regulations come into force on the day of publication in the Gazette.

Overview.

3. These Regulations give further effect to the Bank Recovery and Resolution Directive (2014/59/EU) and the Deposit Guarantee Scheme Directive (2014/49/EU).

PART 2
AMENDMENT OF FINANCIAL SERVICES (RECOVERY AND
RESOLUTION) REGULATIONS 2014

Amendment of 2014 Regulations.

4.(1) The Financial Services (Recovery and Resolution) Regulations 2014 are amended as follows.

(2) In regulation 3—

- (a) in sub-regulation (1)(e), for “outside Gibraltar” substitute “outside the European Union”, and
- (b) in sub-regulation (2), for “the first sub-paragraph” substitute “sub-regulation (1)”.

(3) In regulation 4—

- (a) in sub-regulation (1), in the definition of “write-down and conversion powers”, for “points (e) to (i) of regulation 65(1) and (2)” substitute “regulation 65(1) and (2)(e) to (i)”; and
- (b) after sub-regulation (4) insert—

“(5) These Regulations apply to the European Economic Area as they apply to the European Union, and references to the European Union shall be construed accordingly.”.

(4) In regulation 5—

- (a) for sub-regulation (1) substitute—

“5.(1) The FSC is designated as the resolution authority to apply the resolution tools and exercise the resolution powers; and in these Regulations a reference to the Gibraltar Resolution Authority is a reference to—

- (a) the FSC exercising its resolution functions in accordance with these Regulations and section 7A of the Financial Services Commission Act 2007; or
 - (b) the FSC’s Financial Services Resolution and Compensation Committee exercising those functions in accordance with that section.”;
- (b) in sub-regulation (2) for “The authorities” substitute “Subject to section 7C of the Financial Services Commission Act 2007 (which requires the FSC to ensure that its resolution functions and other functions are operationally independent) the authorities”;
- (c) after sub-regulation (2) insert—

“(2A) In these Regulations, other than in sub-regulations (1) and (2)—

- (a) references to the FSC do not (unless otherwise provided) include the FSC acting in its capacity as the Gibraltar Resolution Authority; and
 - (b) references to the Gibraltar Resolution Authority do not include—
 - (i) the FSC acting otherwise than in its capacity as the Gibraltar Resolution Authority; or
 - (ii) the Financial Services Resolution and Compensation Committee acting otherwise than in that capacity.”.
- (5) In regulation 6—

- (a) in sub-regulation (1) for “Regulations under the principal Acts must” substitute “The FSC and the Gibraltar Resolution Authority must”;
 - (b) in sub-regulation (4) for “Regulations under the principal Acts shall make provision for ensuring that where” substitute “Where”;
and
 - (c) in sub-regulation (5) for “Regulations by virtue of sub-regulation (1) shall ensure that the” substitute “The”.
- (6) In regulation 7, omit sub-regulation (9).
- (7) In regulation 8(1) for “regulation 7(1) and (2) and Article 9(1), (2) and (3)” substitute “regulations 7 and 9”.
- (8) In regulation 13(1)(b) for “the FSC” substitute “it”.
- (9) In regulation 14(12) for “Regulations” substitute “Directive”.
- (10) In regulation 15(26) for “Regulations” substitute “Directive”.
- (11) In regulation 15(30) for “Regulations” substitute “Directive”.
- (12) In regulation 18(9) for “Regulations” substitute “Directive”.
- (13) In regulation 19(8)(i) for “Article 1(1)” substitute “regulation 3(1)”.
- (14) In regulation 20(25) for “Regulations” substitute “Directive”.
- (15) In regulation 71(5) for “Article” substitute “regulation”.
- (16) For regulation 31(23) substitute—
- “(23) The costs of a temporary administrator shall be expenses of the institution.”.
- (17) In regulation 74(1)—
- (a) omit “, in accordance with any relevant regulations under the principal Acts,”; and

- (b) in paragraph (a), after “management body” insert “(whether under the Articles of Association or under a provision of the Companies Act 2014)”.
- (18) In regulation 84(1) for “regulation Article” substitute “regulation”.
- (19) In regulation 91(5) for “Article” substitute “regulation”.
- (20) In regulation 99—
 - (a) for sub-regulation (1) substitute—

“(1) In these Regulations “the financing arrangements” means the resolution financing arrangements established under Part 4 of the Financial Services (Compensation and Resolution Schemes) Act 2015.”;
 - (b) in sub-regulation (4)(d), omit “or the Investor Compensation Scheme”.
- (21) In regulation 100(1) omit “established in accordance with regulation 99”.
- (22) In regulation 101(1) after “under these Regulations” insert “or any other law”.
- (23) In regulation 102—
 - (a) in sub-regulation (1) for “regulations under the principal Acts” substitute “the financing arrangements”, and
 - (b) in sub-regulations (6), (7) and (8) for “Regulations under the principal Acts” substitute “The financing arrangements”.
- (24) In regulation 103(1) for “regulations under the principal Acts” substitute “the financing arrangements”.
- (25) In regulation 105—
 - (a) in sub-regulation (1)—
 - (i) for “Financing arrangements in Gibraltar” substitute “The financing arrangements”; and

- (ii) for “within Gibraltar” substitute “within the European Union”;
- (b) in sub-regulation (2)—
 - (i) for “Financing arrangements in Gibraltar” substitute “The financing arrangements”; and
 - (ii) for “other financing arrangements in Gibraltar” substitute “other financing arrangements within the European Union”;
- (c) in sub-regulation (3), for “sub-regulation (1), each of the other financing arrangements in Gibraltar” substitute “sub-regulation (2), the financing arrangements”;
- (d) for sub-regulation (10) substitute—

“(10) Any loan by the financing arrangements under this regulation to another financing arrangement within the European Union which is outstanding is to be treated as an asset of the financing arrangements and may be counted towards the target level in regulation 101.”.
- (26) In regulation 106(7)—
 - (a) for “Regulations under the principal Acts” substitute “The financing arrangements”; and
 - (b) for “each national financing arrangement” substitute “it”.
- (27) In Part 8, in the heading for “PENALTIES” substitute “ENFORCEMENT AND PENALTIES”.
- (28) For regulation 109 substitute—

“Introductory

General duty.

109. The FSC and the Gibraltar Resolution Authority must—

- (a) each take all available steps to ensure that the provisions of these Regulations are complied with;
- (b) cooperate closely with each other to ensure that penalties and other measures under this Part produce the desired result; and
- (c) coordinate their actions with other authorities when dealing with cross-border cases.

FSC's powers.

109A. (1) The FSC's powers under the Acts specified in sub-regulation (2) shall extend to supervising and enforcing compliance with these Regulations.

(2) Those Acts are—

- (a) the Financial Services (Banking) Act, in respect of institutions licensed or authorised under that Act; and
- (b) the Financial Services (Markets in Financial Instruments) Act 2006, in respect of investment firms authorised under that Act.

(3) This regulation applies—

- (a) without limiting any other provision of these Regulations; and
- (b) subject to sub-regulation (4), without restricting the powers set out in those Acts.

(4) A failure to comply with a provision of these Regulations does not, of itself, constitute sufficient grounds for the FSC to exercise the power to—

- (a) cancel a licence under Part VIII of the Financial Services (Banking) Act; or
- (b) withdraw an authorisation under section 8 of the Financial Services (Markets in Financial Instruments) Act 2006.”

(29) For regulation 110 substitute—

“Specified defaults and available actions.

110.(1) For the purposes of these Regulations “default” means—

- (a) failure to draw up, maintain and update recovery plans and group recovery plans, contrary to regulation 7 or 9;
- (b) failure to notify an intention to provide group financial support to the competent authority, contrary to regulation 27;
- (c) failure to provide all the information necessary for the development of resolution plans, contrary to regulation 13;
- (d) failure of the management body of an institution or of an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) to notify the competent authority when the institution or entity is failing or likely to fail, contrary to regulation 83(1).

(2) The actions specified in this Part may be taken where the FSC or the Gibraltar Resolution Authority is satisfied that a default has occurred.”.

(30) For regulation 111 substitute—

“Enforcement action for defaults

Publication of default.

111.(1) The FSC or the Gibraltar Resolution Authority may publish a statement specifying—

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

(2) Publication under this regulation may take any form, or combination of forms, that the FSC or the Gibraltar Resolution Authority thinks appropriate.

Cease and desist order.

111A. The FSC or the Gibraltar Resolution Authority may order a person—

- (a) to cease any conduct which constitutes a default, and
- (b) to desist from any repetition of that conduct.

Prohibition order.

111B.(1) The FSC or the Gibraltar Resolution Authority may by order (“a prohibition order”) prohibit a specified member of the management of an institution, or of an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) or any other individual who is responsible for a default from exercising functions in the institution or entity.

(2) A prohibition order must specify—

- (a) the period for which it applies (which must not exceed 12 months), and
- (b) the functions which it prohibits.

Civil penalties.

111C.(1) The FSC or the Gibraltar Resolution Authority may by order impose a penalty.

(2) Where the benefit derived from the default can be determined, the FSC or the Gibraltar Resolution Authority may impose a penalty of an amount not exceeding twice the amount of the benefit.

(3) In the case of a legal person, the FSC or the Gibraltar Resolution Authority may impose a penalty not exceeding 10% of the total annual net turnover of that legal person in the preceding business year.

(4) Where the legal person is a subsidiary of a parent undertaking, the relevant turnover for the purposes of sub-regulation (3) is

turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year.

(5) In the case of an individual, the FSC or the Gibraltar Resolution Authority may impose a penalty not exceeding an amount which represented the corresponding value to EUR 5,000,000 as at 2 July 2014.

(6) A penalty imposed under this regulation may be enforced in the same manner as if it were a civil debt owed to the FSC or the Gibraltar Resolution Authority.”.

(31) In regulation 112, for “under regulation 110 and of the status of that appeal and outcome thereof” substitute “under this Part and of the status and outcome of any appeal against such a penalty”.

(32) After regulation 113 insert—

“Action against individuals.

113A.(1) In deciding whether to take action against an individual under this Part the FSC or the Gibraltar Resolution Authority must consider whether the individual has been guilty of misconduct, within the meaning of this regulation.

(2) An individual is guilty of misconduct if any of conditions A to C is met in relation to the individual.

(3) Condition A is that—

- (a) the individual has at any time committed a default; and
- (b) at that time the individual was a director, manager or employee of a relevant institution.

(4) Condition B is that—

- (a) the individual has at any time been knowingly concerned in a default by a relevant institution, and
- (b) at that time the individual was a director, manager or employee of the relevant institution.

(5) Condition C is that—

- (a) the individual has at any time been a senior manager of a relevant institution,
- (b) there has at that time been (or continued to be) a default by the relevant institution, and
- (c) the senior manager was at that time responsible for the management of any of the relevant institution's activities in relation to which the default occurred.

(6) But a person ("P") is not guilty of misconduct by virtue of sub-regulation (5) if P satisfies the FSC or the Gibraltar Resolution Authority that P had taken such steps as an individual in P's position could reasonably be expected to take to avoid the default occurring (or continuing).

(7) In this regulation "relevant institution" means an entity to which these Regulations apply.

Procedure

Warning notices.

113B.(1) Before taking action in respect of a person under this Part the FSC or the Gibraltar Resolution Authority must give the person a warning notice, stating the action proposed and the reasons for it.

(2) But sub-regulation (1) does not apply if the FSC or the Gibraltar Resolution Authority is satisfied that a warning notice—

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

(3) A warning notice—

- (a) must give the recipient not less than 14 days to make representations, and
 - (b) must specify a period within which the recipient may decide whether to make oral representations.
- (4) The period for making representations may be extended by the FSC or the Gibraltar Resolution Authority.

Decision notices.

113C.(1) This regulation applies where the FSC or the Gibraltar Resolution Authority has—

- (a) issued a warning notice, or
 - (b) dispensed with the requirement to give a warning notice in accordance with regulation 113B(2).
- (2) After considering any representations made in accordance with regulation 113B the FSC or the Gibraltar Resolution Authority must issue—
- (a) a decision notice stating that the FSC or the Gibraltar Resolution Authority will take the action specified in the warning notice,
 - (b) a discontinuance notice stating that the FSC or the Gibraltar Resolution Authority does not propose to take that action, or
 - (c) a combined notice consisting of a decision notice stating that the FSC or the Gibraltar Resolution Authority will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.
- (3) A decision notice takes effect, and the specified action may be taken—
- (a) at the end of the period for bringing an appeal if no appeal is brought, or
 - (b) when any appeal is finally determined or withdrawn.

Appeal.

113D.(1) The person on whom a decision notice is served may appeal to the Supreme Court.

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

Interim orders.

113E. The FSC or the Gibraltar Resolution Authority may apply to the Supreme Court for permission to take action under this Part where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

Publication of enforcement action.

113F.(1) This regulation applies where—

- (a) the FSC or the Gibraltar Resolution Authority has taken action under this Part; or
- (b) the FSC has taken action under Part 4 of the Financial Services (Compensation and Resolution Schemes) Act 2015.

(2) The FSC or the Gibraltar Resolution Authority must publish on their official website details of any action taken in respect of a person under this Part or under Part 4 of the Financial Services (Compensation and Resolution Schemes) Act 2015, without undue delay after that person is informed of that action.

(3) The FSC or the Gibraltar Resolution Authority must publish details on an anonymous basis, in a manner in accordance with any other law, in any of the following circumstances—

- (a) where the action is taken in respect of a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
- (b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;

- (c) where publication would cause, insofar as it can be determined, disproportionate damage to the institution, entity or individual involved.
 - (4) Alternatively, where the circumstances referred to in sub-regulation (3) are likely to cease within a reasonable period of time, publication under sub-regulation (2) may be postponed for such a period of time.
 - (5) Sub-regulation (2) does not apply while an appeal could be brought or is pending.
 - (6) Despite sub-regulation (5), the FSC or the Gibraltar Resolution Authority may apply to the Supreme Court for permission to publish a decision notice pending an appeal or the outcome of an appeal; and following publication under this sub-regulation the FSC or the Gibraltar Resolution Authority must, without undue delay, also publish on their website information on the appeal status and outcome thereof.
 - (7) The FSC or the Gibraltar Resolution Authority must ensure that information published remains on its website for at least five years.
 - (8) Personal data shall be retained on the website of the FSC or the Gibraltar Resolution Authority only for the period necessary, in accordance with the applicable data protection rules.”.
- (33) After regulation 113F insert—

**“PART 8A
MODIFICATION OF STATUTORY POWERS**

Gibraltar Resolution Authority

113G.(1) The Gibraltar Resolution Authority shall have the powers conferred by—

- (a) sections 60, 60A and 61 of the Financial Services (Banking) Act; and
- (b) regulations 54, 55 and 56 of the Financial Services (Markets in Financial Instruments) Regulations 2007.

(2) For the purposes of sub-regulation (1)(a), a reference in the Financial Services (Banking) Act to—

- (a) an authorised officer is a reference to the Gibraltar Resolution Authority;
- (b) functions under the Act is a reference to these Regulations;
- (c) the Commissioner is a reference to the Gibraltar Resolution Authority;
- (d) the purposes specified in section 61(1) include the purposes of these Regulations; and
- (e) the businesses and institutions specified in section 61(1) includes a reference to any entity to which these Regulations apply.

(3) For the purposes of sub-regulation (1)(b), a reference in the Financial Services (Markets in Financial Instruments) Regulations 2007 to—

- (a) an authorised officer is a reference to the Gibraltar Resolution Authority,
- (b) supervisory functions is a reference to functions under these Regulations,
- (c) the purposes specified in regulation 56(1) include the purposes of these Regulations, and
- (d) relevant persons specified in regulation 53(b) includes a reference to any entity to which these Regulations apply.”.

PART 3
AMENDMENT OF FINANCIAL SERVICES COMMISSION ACT
2007

Amendment of 2007 Act.

5.(1) The Financial Services Commission Act 2007 is amended as follows.

(2) In section 2—

- (a) in the definition of “Committee”, after “section 12(1)” insert “but does not include the FSRCC”;
- (b) after the definition of “financial services business” insert—

““the FSRCC” means the Financial Services Resolution and Compensation Committee established under section 7B;”;

and
- (c) after the definition of “prescribed” insert—

““resolution functions” has the meaning given in section 7A(2);”.

(3) After section 7 insert—

“Commission as resolution authority.

7A.(1) The Commission is designated as the Gibraltar Resolution Authority, to carry out the functions and duties of the resolution authority under the Financial Services (Recovery and Resolution) Regulations 2014 and the Bank Recovery and Resolution Directive (2014/59/EU).

(2) Subject to subsection (3), the Commission’s functions as the Gibraltar Resolution Authority (its “resolution functions”) are to be exercised by the Commission acting through the FSRCC.

(3) The Commission may exercise its resolution functions other than in accordance with subsection (2) in circumstances where, in the opinion of the Commission—

- (a) it would be more appropriate for the Commission to exercise those functions; or
- (b) in particular (and without limiting paragraph (a)) it would be inappropriate for the FSRCC to do so because of a conflict between the FSRCC’s interests in the discharge of—
 - (i) the resolution functions; and

- (ii) its functions under the Financial Services (Compensation and Resolution Schemes) Act 2015.

(4) The costs incurred by the Commission and the FSRCC in discharging the resolution functions are to be met from fees of such amount as the Minister may by regulations prescribe and payable by institutions established in Gibraltar; and for this purpose “institution” has the same meaning as in the Financial Services (Recovery and Resolution) Regulations 2014.

Resolution and Compensation Committee.

7B.(1) There is to be a statutory committee of the Commission known as the Financial Services Resolution and Compensation Committee.

(2) The functions of the FSRCC are —

- (a) the exercise of the Commission’s resolution functions in accordance with section 7A(2); and
- (b) those conferred under section 3(1) of the Financial Services (Compensation and Resolution Schemes) Act 2015.

(3) Schedule 2 makes further provision about the membership, powers and procedures of the FSRCC.

Operational independence.

7C.(1) The Commission must make adequate structural arrangements to ensure that—

- (a) its resolution functions and supervisory functions are operationally independent of one another;
- (b) conflicts of interest are avoided between its resolution functions and supervisory functions; and
- (c) staff involved in performing its resolution functions are separate from and subject to separate reporting lines from

those involved in performing its supervisory or other functions.

(2) Without limiting subsection (1), as part of those arrangements the Commission must establish a Resolution and Compensation Unit which is staffed by Commission employees who report to the FSRCC and are operationally independent from those employees who are not involved in performing its resolution functions.

(3) The functions of the Resolution and Compensation Unit are—

- (a) to support and advise the FSRCC in the discharge of its functions;
- (b) to act as the secretariat of the FSRCC; and
- (c) to perform such other functions as the FSRCC may require.

(4) The Commission must prepare and issue—

- (a) a statement of its arrangements under subsections (1) and (2); and
- (b) a revised statement, if there is any material change to those arrangements.

References to resolution authority.

7D. References in any other law to—

- (a) the Commission do not (unless otherwise provided) include the Commission acting in its capacity as the Gibraltar Resolution Authority; or
- (b) the Gibraltar Resolution Authority do not include the Commission or the FSRCC acting otherwise than in the capacity of the Gibraltar Resolution Authority.”.

(4) In section 12—

- (a) in subsection (1), in paragraph (b) after “management” insert “, but such a Committee may not discharge any function of the FSRCC”;

(b) after subsection (5) insert—

“(6) Subsections (2) to (5) do not apply to the FSRCC.”.

(5) In section 14—

(a) in subsection (1), in paragraph (a) for “under” substitute “under this Act or”;

(b) in subsection (2), for “under” substitute “under this Act or”;

(c) in subsection (3), for “under” substitute “under this Act or”.

(6) In section 16, after subsection (1) insert—

“(1A) Any statement of accounts prepared under subsection (1) shall include a separate account of the Commission’s income and expenditure in its capacity as the Gibraltar Resolution Authority.”.

(7) In the Schedule, in the heading for “SCHEDULE” substitute “SCHEDULE 1”.

(8) After the Schedule insert—

“SCHEDULE 2

Financial Services Resolution and Compensation Committee

Membership.

1.(1) Subject to sub-paragraph (7), the Financial Services Resolution and Compensation Committee (the “FSRCC”) is to comprise—

(a) not more than six members appointed by the Minister on the recommendation of the Commission; and

(b) the Chief Executive (without further appointment).

(2) The Minister is to appoint one of the appointed members as the Chair of the FSRCC.

(3) The Minister must appoint as members only persons who the Minister considers to have skills and expertise relevant to the functions of the FSRCC.

(4) A member holds and vacates office in accordance with terms and conditions determined by the Commission with the approval of the Minister (which may include arrangements for the payment of remuneration, allowances and expenses).

(5) A member may resign by written notice to the Minister and the Commission.

(6) The Minister may reappoint as a member a person who is (or has been) a member.

(7) The first members of the FSRCC (the “first members”), in addition to the Chief Executive, are to be—

- (a) the Financial Secretary; and
- (b) one other person appointed by the Minister on such terms as the Minister may determine.

(8) For so long as the FSRCC only comprises the first members and the Chief Executive, the quorum at any meeting of the FSRCC is all three members.

(9) The first members—

- (a) are to serve as members until—
 - (i) 30th September 2016; or
 - (ii) if sooner, the date upon which the Minister certifies that the first six members have been appointed under sub-paragraph (1)(a); and
- (b) are eligible for re-appointment under sub-paragraph (1)(a).

Removal of members.

2. The Minister may remove a member of the FSRCC who—

- (a) is incapacitated;
- (b) is bankrupt or makes an arrangement with creditors;
- (c) has been convicted of an indictable offence; or
- (d) is otherwise unfit or unable to discharge the functions of a member.

Procedure and meetings.

- 3.(1) The FSRCC may determine its own procedures.
- (2) Subject to paragraph 1(8), the quorum at any meeting of the FSRCC is any five members.

General powers.

- 4. The FSRCC may do anything which appears to it—
 - (a) to be necessary or expedient for the purposes of, or in connection with, its exercise of its functions; or
 - (b) to be conducive to the exercise of those functions.

Reports.

- 5.(1) As soon as practicable after the end of each financial year, the FSRCC must prepare a report providing information on its exercise of the Commission's resolution functions during that year.
- (2) The FSRCC must send a copy of the report to the Commission and the Minister."

**PART 4
AMENDMENT OF FINANCIAL SERVICES (COMPENSATION AND
RESOLUTION SCHEMES) ACT 2015**

Amendment of 2015 Act.

6.(1) The Financial Services (Compensation and Resolution Schemes) Act 2015 is amended as follows.

(2) In section 2—

- (a) omit the definition of “the Authority”;
- (b) omit the definition of “available financial means”;
- (c) omit the definition of “the Banking Resolution and Recovery Directive”;
- (d) omit the definition of “branch”;
- (e) omit the definition of “the Board”;
- (f) before the definition of “Capital Requirements Regulation” insert—

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

- (g) omit the definition of “compensation date”;
- (h) omit the definition of “credit institution”;
- (i) omit the definition of “deposit”;
- (j) omit the definition of “depositor”;
- (k) after the definition of “the FSC” insert—

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

- (l) omit the definition of “joint account”;
- (m) for the definition of “resolution financing arrangements” substitute—

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

- (n) omit the definition of “target level”;
- (o) omit the definition of “unavailable deposit”; and
- (p) after the definition of “working day” insert—

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

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

(3) In Part 2—

- (a) in the heading, for “FINANCIAL SERVICES COMPENSATION BOARD” substitute “FINANCIAL SERVICES RESOLUTION AND COMPENSATION COMMITTEE”;
- (b) for section 3 substitute—

“Functions of the FSRCC.

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

(2) The FSRCC must establish sound and transparent practices for—

- (a) its governance in respect of the performance of its functions under this Act;
- (b) the governance of the Scheme; and
- (c) the governance of the resolution financing arrangements.

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

(4) For section 6 substitute—

“Resolution Financing Fund.

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

- (a) any contributions to the resolution financing arrangements which are levied on or contributed by authorised institutions under Part 4;
- (b) money received as income or capital gain arising from any investments or other assets of the resolution financing arrangements;
- (c) money borrowed by the FSRCC for the purposes of the resolution financing arrangements;
- (d) money received by the FSRCC on any policy of insurance it takes out for the purposes of the resolution financing arrangements;
- (e) subject to regulations 39, 40, 42, 43, and 44 of the Recovery and Resolution Regulations, any amount received from an authorised institution under resolution or a bridge institution within the meaning of those Regulations;
- (f) any other money required to be paid into the fund or received by the FSRCC for the purposes of the resolution financing arrangements.

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

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

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

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

(5) For section 7 substitute—

“Administration fund.

7.(1) The FSRCC may require—

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

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

(3) Any fee imposed under subsection (1) must be paid into the administration fund and used only for the purposes specified in that

subsection and must not be counted towards the available financial means of the Scheme or the resolution financing arrangements.

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

(5) Any fee payable under this section—

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

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

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

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

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

(6) Omit section 8.

(7) After section 10 insert—

“Interpretation of Part 3.

10A. In this Part—

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

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

“compensation date” means the date on which—

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

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

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

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

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

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

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

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

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

(8) In section 16—

- (a) in subsection (1) for “by notice under subsection (4)” substitute “by decision notice under this section”;
- (b) in subsection (2) for “notice under subsection (4)” substitute “decision notice”;
- (c) for subsections (4) to (8) substitute—

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

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

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

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

- (a) cannot be given because of urgency;
- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action the FSC proposes to take; or

- (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

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

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

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

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

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

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

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

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

(9) After section 16 insert—

“Appeals.

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

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

(10) In section 18, for subsection (16) substitute—

“(16) Any levy payable under this section—

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

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

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

(11) In section 20, for subsection (5) substitute—

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

(12) In section 32—

- (a) in subsection (2) for “Article 109 of the Banking Resolution and Recovery Directive” substitute “regulation 108 of the Recovery and Resolution Regulations”;

(b) in subsection (4), for sub-paragraph (a) substitute—

“(a) the Authority has not taken any resolution action under regulation 34 of the Resolution and Recovery Regulations;”;

(c) in subsection (6), for “Article 27(1) of the Banking Resolution and Recovery Directive” substitute “regulation 29(1) of the Recovery and Resolution Regulations”.

(13) In section 36, for subsections (2) and (3) substitute—

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

(3) The bodies are—

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

(14) For sections 37 and 38 substitute—

“Overview of Part 4.

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

Interpretation of Part 4.

38. In this Part—

“authorised institution” means—

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

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

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

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

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

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

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

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

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

Administration and use of financing arrangements.

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

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

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

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

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

(5) The FSRCC must—

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

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

Authority's use of financing arrangements.

40. The financing arrangements may be used by the Authority only—

- (a) in accordance with—

- (i) the resolution objectives in regulation 33 of the Recovery and Resolution Regulations; and
 - (ii) the general principles in regulation 36 of those Regulations; and
- (b) to the extent and for the purposes provided for in—
- (i) regulation 100 of those Regulations; or
 - (ii) this Part.

Financing arrangements levy.

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

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

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

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

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

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

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

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

(9) Any levy payable under this section—

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

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

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

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

Payment commitments.

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

- (a) consist of low-risk assets;
- (b) are unencumbered by any third party rights;
- (c) are at the disposal of, and earmarked for exclusive use by, the Authority for the purposes specified in regulation 100(1) and (2) of the Recovery and Resolution Regulations.

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

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

Extraordinary contributions.

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

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

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

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

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

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

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

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

Alternative funding.

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

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

Borrowing between financing arrangements.

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

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

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

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

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

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

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

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

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

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

(10) In this section “jurisdiction” means—

- (a) the EEA State in which a participating EEA financing arrangement is established; or
- (b) in the case of the financing arrangements, Gibraltar.

Group resolution.

46.(1) The FSRCC must establish procedures to enable the financing arrangements to be able to effect its contribution to the

financing of any group resolution under regulation 106 of the Recovery and Resolution Regulations.

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

FSRCC's power to require information.

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

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

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

- (a) before the end of such reasonable period as may be specified;
- (b) in the form or manner specified; and
- (c) subject to such verification or authentication as may be specified.

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

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

Suspension and revocation of authorisation.

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

- (a) suspend the authorised institution's authorisation; or

- (b) revoke the authorised institution's authorisation.
- (2) A decision notice may provide for suspension under subsection (1)(a) to apply—
- (a) for a specified period not exceeding 12 months;
 - (b) until the occurrence of a specified event; or
 - (c) until the authorised institution has complied with specified conditions.
- (3) Before taking action under this section the FSC must give the authorised institution a warning notice—
- (a) stating the action proposed and the reasons for it;
 - (b) giving the authorised institution not less than 14 days to make representations; and
 - (c) specifying a period within which the authorised institution may decide whether to make oral representations.
- (4) The period for making representations may be extended by the FSC.
- (5) Subsection (3) does not apply if the FSC is satisfied that a warning notice—
- (a) cannot be given because of urgency;
 - (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action the FSC proposes to take; or
 - (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.
- (6) Where the FSC has issued a warning notice (or, dispensed with the requirement to do so in accordance with subsection (5)), after considering any representations made in accordance with subsection (3), the FSC must issue—

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

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

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

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

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

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

Appeal.

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

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

(15) For Schedule 1 substitute—

“SCHEDULE 1

Financial Services Resolution and Compensation Committee

FSRCC's Powers

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

Staffing arrangements.

2.(1) The FSRCC may enter arrangements with the FSC for employees of the FSC to be seconded to, and form the staff of, the FSRCC.

(2) An employee may be seconded for such period and on such terms as may be agreed between the FSRCC and the FSC.

Procedure and meetings.

3.(1) The FSRCC may determine its own procedures.

(2) The quorum at any meeting of the FSRCC is five members.

(3) Sub-paragraph (2) applies subject to paragraph 1(8) of Schedule 2 to the Financial Services Commission Act 2007 (which makes transitional arrangements in respect of the FSRCC).

Accounts and audit.

4.(1) The FSRCC must, in respect of its functions under this Act—

- (a) keep proper accounts and accounting records; and
- (b) prepare in respect of each financial year a statement of accounts.

(2) The FSRCC must arrange for its annual accounts to be audited.

(3) The FSRCC must send a copy of the audited accounts promptly to the FSC and the Minister.

(4) The FSRCC must comply with any directions of the Minister in relation to the matters in sub-paragraphs (1) to (3).

Reports.

5.(1) As soon as practicable after the end of each financial year, the FSRCC must prepare a report—

- (a) providing information on the exercise of its functions under this Act during that year, including its activities in respect of—

- (i) the Scheme; and
 - (ii) the resolution financing arrangements;
- (b) containing any other information that the Minister requires, and
- (c) including a copy of the statement of accounts for that year.
- (2) The FSRCC must—
- (a) send a copy of the report to the FSC and to the Minister, and
 - (b) publish the report.
- (3) The Minister must lay a copy of the report before Parliament.
- (4) The FSRCC may publish such other reports and information on matters relevant to its functions under this Act as it considers appropriate.

Financial year.

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

Exemption from liability in damages.

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

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

(16) Omit Schedule 2.

(17) The following consequential amendments are made to the Act in respect of references to the Board—

- (a) in section 2, in the definition of “low risk assets” for “Board” substitute “FSRCC”;
- (b) in section 4—
 - (i) in subsection (1), for “Board” substitute “FSRCC”;
 - (ii) in subsection (2), for “Board” substitute “FSRCC”;
- (c) in section 5—
 - (i) in subsection (1), in each of the four places where it occurs, for “Board” substitute “FSRCC”;
 - (ii) in subsection (2), for “Board” substitute “FSRCC”;
 - (iii) in subsection (3), for “Board” substitute “FSRCC”;
 - (iv) in subsection (4), in each of the four places where it occurs, for “Board” substitute “FSRCC”;
- (d) in section 6—
 - (i) in subsection (1), for “Board” substitute “FSRCC”;
 - (ii) in subsection (2), for “Board” substitute “FSRCC”;
- (e) in section 9—
 - (i) in subsection (1), in both places where it occurs, for “Board” substitute “FSRCC”;
 - (ii) in subsection (2), for “Board” substitute “FSRCC”;
- (f) in section 11(1)(b), for “Board” substitute “FSRCC”;
- (g) in section 12—
 - (i) in subsection (3), for “Board” substitute “FSRCC”;

- (ii) in subsection (4), for “Board” substitute “FSRCC”;
- (iii) in subsection (5), for “Board” substitute “FSRCC”;
- (iv) in subsection (5)(a), for “Board’s” substitute “FSRCC’s”;
- (h) in section 13—
 - (i) in subsection (1), for “Board” substitute “FSRCC”;
 - (ii) in subsection (2), for “Board” substitute “FSRCC”;
 - (iii) in subsection (3), for “Board” substitute “FSRCC”;
- (i) in section 14(4), for “Board” substitute “FSRCC”;
- (j) in section 17—
 - (i) in the heading, for “Board’s” substitute “FSRCC’s”;
 - (ii) in subsection (1), for “Board” substitute “FSRCC”;
 - (iii) in subsection (2), for “Board” substitute “FSRCC”;
 - (iv) in subsection (3), for “Board” substitute “FSRCC”;
 - (v) in subsection (4), for “Board” substitute “FSRCC”;
 - (vi) in subsection (6), for “Board” substitute “FSRCC”;
 - (vii) in subsection (7), for “Board” substitute “FSRCC”;
 - (viii) in subsection (8), for “Board” substitute “FSRCC”;
 - (ix) in subsection (9), for “Board” substitute “FSRCC”;
 - (x) in subsection (10), for “Board” substitute “FSRCC”;
- (k) in section 18—
 - (i) in subsection (1), for “Board” substitute “FSRCC”;
 - (ii) in subsection (4), for “Board” substitute “FSRCC”;

- (iii) in subsection (5), in both places where it occurs, for “Board” substitute “FSRCC”;
- (iv) in subsection (6), for “Board” substitute “FSRCC”;
- (v) in subsection (8), for “Board” substitute “FSRCC”;
- (vi) in subsection (13), for “Board” substitute “FSRCC”;
- (vii) in subsection (14), for “Board” substitute “FSRCC”;
- (viii) in subsection (17), in both places where it occurs, for “Board” substitute “FSRCC”;
- (ix) in subsection (18), for “Board” substitute “FSRCC”;
- (l) in section 19—
 - (i) in subsection (1)(c), for “Board” substitute “FSRCC”;
 - (i) in subsection (2), for “Board” substitute “FSRCC”;
- (m) in section 20—
 - (i) in subsection (1), for “Board” substitute “FSRCC”;
 - (ii) in subsection (2), for “Board” substitute “FSRCC”;
 - (iii) in subsection (3), for “Board” substitute “FSRCC”;
 - (iv) in subsection (4), for “Board” substitute “FSRCC”;
- (n) in section 21(1), for “Board” substitute “FSRCC”;
- (o) in section 23—
 - (i) in subsection (3)(a), for “Board” substitute “FSRCC”;
 - (ii) in subsection (3)(b), for “Board” substitute “FSRCC”;
 - (iii) in subsection (4), in both places where it occurs, for “Board” substitute “FSRCC”;

- (p) in section 25—
 - (i) in subsection (1), in both places where it occurs, for “Board” substitute “FSRCC”;
 - (ii) in subsection (3), for “Board” substitute “FSRCC”;
 - (iii) in subsection (4), for “Board” substitute “FSRCC”;
- (q) in section 27—
 - (i) in subsection (1), for “Board” substitute “FSRCC”;
 - (ii) in subsection (2), for “Board” substitute “FSRCC”;
 - (iii) in subsection (5), for “Board” substitute “FSRCC”;
 - (iv) in subsection (6), in both places where it occurs, for “Board” substitute “FSRCC”;
 - (v) in subsection (9), for “Board” substitute “FSRCC”;
 - (vi) in subsection (10), in both places where it occurs, for “Board” substitute “FSRCC”;
- (r) in section 28—
 - (i) in subsection (1), for “Board” substitute “FSRCC”;
 - (ii) in subsection (2), for “Board” substitute “FSRCC”;
 - (iii) in subsection (3)—
 - (aa) in both places where it occurs, for “Board” substitute “FSRCC”; and
 - (bb) for “Board’s” substitute “FSRCC’s”;
- (s) in section 29—
 - (i) in the heading, for “Board” substitute “FSRCC”;

- (ii) in subsection (1), in each of the three places where it occurs, for “Board” substitute “FSRCC”;
- (iii) in subsection (2), for “Board” substitute “FSRCC”;
- (t) in section 30—
 - (i) in subsection (1), in both places where it occurs, for “Board” substitute “FSRCC”;
 - (ii) in subsection (2), in both places where it occurs, for “Board” substitute “FSRCC”;
- (u) in section 32—
 - (i) in subsection (1), for “Board” substitute “FSRCC”;
 - (ii) in subsection (3), for “Board” substitute “FSRCC”;
 - (iii) in subsection (4)—
 - (aa) in each of the three places where it occurs, for “Board” substitute “FSRCC”; and
 - (bb) in each of the three places where it occurs, for “Board’s” substitute “FSRCC’s”;
 - (iv) in subsection (5), for “Board” substitute “FSRCC”;
 - (v) in subsection (7), for “Board” substitute “FSRCC”;
 - (vi) in subsection (9), for “Board” substitute “FSRCC”;
- (v) in section 33—
 - (i) in subsection (1), in each of the four places where it occurs, for “Board” substitute “FSRCC”;
 - (ii) in subsection (2), in each of the three places where it occurs, for “Board” substitute “FSRCC”;
 - (iii) in subsection (3)—

- (aa) for “Board” substitute “FSRCC”; and
 - (bb) for “Board’s” substitute “FSRCC’s”;
- (w) in section 34—
- (i) in subsection (1), for “Board” substitute “FSRCC”;
 - (ii) in subsection (4), for “Board” substitute “FSRCC”;
- (x) in section 35—
- (i) in subsection (1), for “Board” substitute “FSRCC”;
 - (ii) in subsection (3), for “Board” substitute “FSRCC”;
 - (iii) in subsection (4), for “Board” substitute “FSRCC”;
- (y) in schedule 3, in both places where it occurs, for “Board” substitute “FSRCC”.

**PART 5
CONSEQUENTIAL AMENDMENTS**

Financial Services (Banking) Act.

7.(1) The Financial Services (Banking) Act is amended as follows.

(2) In section 59—

- (a) the existing text becomes subsection (1); and
- (b) at the end insert—

“(2) References in this Part to functions under this Act are modified by regulation 113G of the Financial Services (Recovery and Resolution) Regulations 2014.”.

(3) In section 60, after subsection (8) insert—

“(9) This section is modified by regulation 113G of the Financial Services (Recovery and Resolution) Regulations 2014.”.

(4) In section 60A, after subsection (5) insert—

“(6) This section is modified by regulation 113G of the Financial Services (Recovery and Resolution) Regulations 2014.”.

(5) In section 61, after subsection (3) insert—

“(4) This section is modified by regulation 113G of the Financial Services (Recovery and Resolution) Regulations 2014.”.

Financial Services (Markets in Financial Instruments) Regulations 2007.

8.(1) The Financial Services (Markets in Financial Instruments) Regulations 2007 are amended as follows.

(2) In regulation 53—

- (a) the existing text becomes sub-regulation (1), and
- (b) at the end insert—

“(2) References in this Part to functions are modified by regulation 113G of the Financial Services (Recovery and Resolution) Regulations 2014.”.

(3) In regulation 54, after sub-regulation (8) insert—

“(9) This regulation is modified by regulation 113G of the Financial Services (Recovery and Resolution) Regulations 2014.”.

(4) In regulation 55, after sub-regulation (4) insert—

“(5) This regulation is modified by regulation 113G of the Financial Services (Recovery and Resolution) Regulations 2014.”.

(5) In regulation 56, after sub-regulation (3) insert—

“(4) This regulation is modified by regulation 113G of the Financial Services (Recovery and Resolution) Regulations 2014.”.

Financial Services (Information Gathering and Co-operation) Act 2013.

9.(1) The Financial Services (Information Gathering and Co-operation) Act 2013 is amended as follows.

(2) In section 2—

- (a) the existing text becomes subsection (1), and
- (b) at the end insert—

“(2) The Gibraltar Resolution Authority is not an “Authority” within the meaning of this Act.”.

(3) In Schedule 1 —

- (a) after the entry for the Gibraltar Regulatory Authority insert “The Gibraltar Resolution Authority;”;
- (b) for “The Gibraltar Deposit Guarantee Board” substitute “The Financial Services Resolution and Compensation Committee”.

Companies Act 2014.

10. After section 478 of the Companies Act 2014 (power to enforce orders) insert—

“Financial services: recovery and resolution

Exercise of powers and rights during resolution period.

478A.(1) A power exercisable by a company under this Act may be exercised by the Commission or the Gibraltar Resolution Authority in the circumstances specified in regulation 74(1) of the Financial Services (Recovery and Resolution) Regulations 2014 (exercise of the resolution powers).

(2) Any reference in this Act to voting rights is subject to regulation 74(3) of those Regulations (voting rights not exercisable during resolution period).”.

Dated 7th July, 2016.

A J ISOLA,
Minister with responsibility for financial services,
and for the Government.

EXPLANATORY MEMORANDUM

These Regulations give further effect to the Bank Recovery and Resolution Directive (2014/59/EU) and the Deposit Guarantee Schemes Directive (2014/49/EU) by amending the Financial Services Commission Act 2007, the Financial Services (Recovery and Resolution) Regulations 2014, and the Financial Services (Compensation and Resolution Schemes) Act 2015.

