

Subsidiary Legislation made under ss.6(1), 24(3)(v), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1) and 627 of, and paragraph 6 of Schedule 10.

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**LN.2020/024**

*Commencement*

**15.1.2020**

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*In exercise of the powers conferred upon the Minister under sections 6(1), 24(3)(v), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1) and 627 of, and paragraph 6 of Schedule 10 to the Financial Services Act 2019, 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 by all other enabling powers, the Minister and the Government have made these Regulations.*

**PART 1  
PRELIMINARY**

**Title.**

1. These Regulations may be cited as the Financial Services (Mortgage Credit) Regulations 2020.

**Commencement.**

2. These Regulations come into operation on the day of publication.

**Interpretation.**

3.(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Financial Services Act 2019;

“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 28(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” 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;

“auditor”, in relation to a mortgage credit provider, means the person for the time being appointed by the mortgage credit provider to be its auditor for the purpose of the Act and these Regulations;

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“authorised credit institution” means a credit institution—

- (a) which has a Part 7 permission; or
- (b) which is authorised under Article 8 of the Capital Requirements Directive by its home state regulator and has exercised its EEA right under Part 2 of Schedule 10 to the Act;

“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 GFSC;
- (b) in an EEA State, an authority designated in that State under Article 5 of the Mortgage Credit Directive;

“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;

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

“exclusively-tied mortgage credit intermediary” means a tied mortgage credit intermediary who acts on behalf of and under the full and unconditional responsibility of only one mortgage creditor;

“financial year”, in relation to a mortgage credit provider, means—

- (a) the period beginning with the day on which the mortgage credit provider begins to carry on mortgage credit activity and ending with the date as at which it prepares its first annual balance sheet; and
- (b) each subsequent period beginning with the day following the day as at which the mortgage credit provider’s annual balance sheet is prepared for the purposes of

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these Regulations and ending with the day as at which the mortgage credit provider's next annual balance sheet is so prepared;

“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 the Accounting Directive;

“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;

“home State regulator” means the competent authority of an EEA State in relation to the mortgage credit provider concerned;

“money” includes any form of money, whether represented by a cheque, other payable order or otherwise;

“mortgage advisory services” means the advisory services in connection with mortgage credit specified in paragraph 120 of Schedule 2 to the Act, but subject to the exclusions in paragraph 124 of that Schedule;

“mortgage credit activity” means—

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

“mortgage credit agreement” as a credit agreement specified in paragraph 117 of Schedule 2 to the Act;

“mortgage credit intermediary” means as a person with Part 7 permission to conduct the regulated activity specified in paragraph 119 of Schedule 2 to the Act;

“mortgage creditor” means as a person with Part 7 permission to carry out the regulated activity specified in paragraph 118 of Schedule 2 to the Act, subject to the exclusion in paragraph 122 of that Schedule;

“mortgage credit provider” means a person with a Part 7 permission to carry on a mortgage credit activity;

“non-credit institution” means a mortgage creditor that is not a credit institution;

“Part 7 permission” means permission under Part 7 of the Act;

“the Register” means the register which is established and maintained by the GFSC in accordance with Part 4 of the Act and, in relation to—

- (a) non-credit institutions and mortgage credit intermediaries, regulation 9; and
- (b) exclusively-tied mortgage credit intermediaries and appointed representatives, regulation 14;

“shared equity credit agreement” means a mortgage 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;

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- (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 mortgage 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;

“the Unfair Commercial Practices Directive” means 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, as amended from time to time.

(2) In these Regulations any reference to a balance sheet or to a profit and loss account includes any notes to the financial statement in question giving information which is required by any provision of these Regulations and required or allowed by that provision to be given in a note to the regulated firm’s financial statements.

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(3) Without limiting the application of section 21 of the Interpretation and General Clauses Act, any expression used in these Regulations which is used in Schedule 2 to the Act has the same meaning as it has for the purposes of that Schedule.

**PART 2  
MORTGAGE CREDIT ACTIVITY**

**Application.**

4.(1) This Part includes provisions which supplement the threshold conditions as they apply to mortgage credit providers.

(2) In giving or varying a Part 7 permission to an applicant to undertake a mortgage credit activity, the GFSC must ensure that the applicant meets, and will continue to meet, the threshold conditions.

(3) A mortgage credit provider which has Part 7 permission must at all times comply with the threshold conditions and these Regulations.

*Non-credit institutions*

**Non-credit institution: conditions for grant of permission.**

5.(1) An applicant for a Part 7 permission as a non-credit institution must satisfy the GFSC that the applicant meets, or will meet, the conditions set out in regulation 6.

(2) The application submitted by the applicant must contain or be accompanied by any other information that the GFSC reasonably requires from the applicant to enable it to determine the application.

**Conditions relating to financial resources, liquidity and good repute.**

6.(1) The GFSC must be 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—

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- (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 GFSC under sub-regulation (12); 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 3.
- (2) In sub-regulation (1)–

“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;

“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–

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- (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.

(3) For the purposes of paragraph (b)(i) of the definition of “financial resource requirement” in sub-regulation (2), 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 (4);
- (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 (6);

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 the Capital Requirements Regulation;

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

“fund” means an AIF or a collective investment scheme within the meaning of Part 18 of the Act;

“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 Article 4.1(61) and (62) respectively of the Capital Requirements Regulation.

(4) 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;

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- (b) other loans;
- (c) securitisation positions;
- (d) exposures in the form of funds; or
- (e) past due items.

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

(6) 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 GFSC may direct.

(7) In sub-regulation (1)(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 GFSC 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.

(8) In determining whether an applicant or relevant individual is of good repute the matters which the GFSC 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

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(b) is an undischarged bankrupt.

(9) The GFSC 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 (1)(d).

(10) A non-credit institution that has a Part 7 permission in respect of mortgage credit activity must at all times comply with the requirements set out in sub-regulations (1) to (9) and must submit to the GFSC, in the form and at the intervals that the GFSC may direct—

(a) returns in respect of the non-credit institution’s financial resourcing and liquidity; and

(b) such other information as the GFSC may require.

(11) For the purpose of mitigating concentration risk, the GFSC 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.

(12) A concentration risk direction under sub-regulation (11) 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.

*Mortgage credit intermediaries*

**Mortgage credit intermediary: conditions for grant of permission.**

7.(1) An applicant for a Part 7 permission as a mortgage credit intermediary must satisfy the GFSC that the applicant meets, or will meet, the conditions set out in regulation 8.

(2) The application submitted by the applicant must contain or be accompanied by any other information that the GFSC reasonably requires from the applicant to enable it to determine the application.

**Conditions relating to financial resources, liquidity and good repute.**

8.(1) The GFSC must be satisfied that—

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- (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 3.

(2) In the case of a tied mortgage 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.

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(4) In determining whether an applicant or relevant individual is of good repute, the matters which the GFSC 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.

*Register entries for mortgage credit providers with a Part 7 permission*

**Register entries: non-credit institutions and mortgage credit intermediaries.**

9.(1) This regulation makes provision as to the contents of the Register in connection with the registration of—

- (a) non-credit institutions; and
- (b) mortgage credit intermediaries.

(2) The Register must contain such information as the GFSC considers appropriate and must include, at least, a list of mortgage credit providers.

(3) The Register must identify the mortgage credit activity to which a mortgage credit provider’s Part 7 permission relates.

(4) The Register must include details of any variation or cancellation of a mortgage credit provider’s Part 7 permission.

(5) If it appears to the GFSC that a person in respect of whom there is an entry in the Register has ceased to be eligible for registration, the GFSC may remove the entry from the Register.

(6) In respect of each mortgage credit intermediary with a Part 7 permission the Register must contain the following information—

- (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;

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- (c) the EEA States in which the mortgage credit intermediary conducts business under the freedom of establishment or the freedom to provide services and of which the mortgage credit intermediary has informed the GFSC in accordance with regulation 69;
- (d) whether or not the mortgage credit intermediary is tied; and
- (e) the mortgage creditor on whose behalf the mortgage credit intermediary acts.

*Exclusively-tied mortgage credit intermediaries*

**Exclusively-tied mortgage credit intermediaries.**

10.(1) A mortgage creditor may appoint an exclusively-tied mortgage credit intermediary for the purposes of—

- (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);
- (c) concluding mortgage agreements with consumers on behalf of the principal.

(2) A mortgage creditor is fully and unconditionally responsible for any act or omission on the part of an exclusively-tied mortgage 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 Act.

(3) An exclusively-tied mortgage credit intermediary must comply at all times with the requirements set out in regulation 8(1) and a mortgage creditor must ensure that its exclusively-tied mortgage credit intermediaries comply with those requirements.

(4) Without limiting regulations 15, 66 and 67, a mortgage creditor must—

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

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(5) In determining whether an exclusively-tied mortgage credit intermediary has complied with these Regulations or any provision in or made under the Act, anything which an exclusively-tied mortgage 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.

(6) Nothing in sub-regulation (5) is to cause the knowledge or intention of an exclusively-tied mortgage 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.

**Exemption from general prohibition.**

11.(1) An exclusively-tied mortgage credit intermediary is exempt from the general prohibition in respect of the regulated activity of acting as a mortgage credit intermediary if–

- (a) the mortgage creditor for whom the intermediary acts accepts full and unconditional responsibility in writing for any act or omission of the intermediary when carrying out activities on behalf of the mortgage creditor;
- (b) the intermediary is registered as an exclusively tied mortgage credit intermediary in accordance with regulation 14; and
- (c) the requirements of regulations 10, 14, 15 and 26 are met.

(2) A mortgage creditor’s written acceptance of responsibility under sub-regulation (3)(a) must be in the form that the GFSC may direct.

*Appointed representatives*

**Appointed representatives.**

12.(1) A mortgage credit intermediary may appoint an appointed representative for the purpose of–

- (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);
- (c) concluding mortgage agreements with consumers on behalf of the principal.

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(2) Subject to sub-regulation (3), 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 Act.

(3) 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 mortgage 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 mortgage credit intermediary in relation to any matter covered by these Regulations or a provision in or made under the Act.

(4) An appointed representative must comply at all times with the requirements set out in regulation 8(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.

(5) Without limiting regulations 15, 66 and 67, 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 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.

(6) In determining whether an appointed representative has complied with these Regulations or any provision in or made under the 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.

(7) Nothing in sub-regulation (6) 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.

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(8) 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.

**Exemption from general prohibition.**

13.(1) An appointed representative is exempt from the general prohibition in respect of the regulated activity of acting as a mortgage credit intermediary if—

- (a) the representative is appointed by a mortgage credit intermediary who—
  - (i) appoints the representative to carry on mortgage credit activity exclusively on its behalf; and
  - (ii) accepts in writing full and unconditional responsibility for the appointed representative;
- (b) the appointed representative is registered in accordance with regulation 14; and
- (c) the requirements of regulations 10, 14, 15 and 26 are met.

(2) A mortgage credit intermediary's written acceptance of responsibility under sub-regulation (1)(a)(ii) must be in the form that the GFSC may direct.

*Registration and supervision of exclusively-tied mortgage credit intermediaries and appointed representatives*

**Registration of exclusively-tied mortgage credit intermediaries and appointed representatives.**

14.(1) This regulation makes provision as to the contents of the Register in connection with the registration of—

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

(2) The GFSC may admit a person to the Register if an application is made in accordance with sub-regulation (3) and the GFSC is satisfied that the person named in the application—

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- (a) will at all times meet the requirements set out in regulation 8(1) and meets the other requirements for registration as an exclusively-tied mortgage credit intermediary; or
  - (b) will at all times meet the requirements set out in regulation 8(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 mortgage credit intermediary; or
    - (ii) an appointed representative; and
  - (b) must–
    - (i) be made in the form and manner that the GFSC may direct; and
    - (ii) contain or be supported by any information that the GFSC may require for the purpose of determining the application.
- (4) If the GFSC admits a person to the Register under sub-regulation (2)(a) or (b), it must give written notice of its decision to the principal and that person.
- (5) If the GFSC–
- (a) proposes to refuse to admit a person to the Register under sub-regulation (2)(a) or (b), it must give the principal and that person a warning notice; or
  - (b) decides to refuse to admit a person to the Register under sub-regulation (2)(a) or (b), it must give the principal and that person a decision notice.
- (6) The issue of a decision notice under sub-regulation (5)(b) is a specified regulatory decision to which section 24(3) of the Act applies and there is no right of appeal against a decision notice which has been confirmed by the DMC under section 24(3)(b) of the Act.
- (7) The Register must contain the following information in respect of each exclusively-tied mortgage credit intermediary–
- (a) the names of the persons within the management who are responsible for the mortgage intermediation activities or mortgage advisory services;

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- (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 freedom of establishment or the freedom to provide services and of which the mortgage credit intermediary has informed the GFSC in accordance with regulation 69; and
- (d) the mortgage creditor on whose behalf the exclusively-tied mortgage credit intermediary acts.

(8) 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; and
- (d) the mortgage credit intermediary or, in the case of an appointed representative of a tied mortgage credit intermediary, the mortgage creditor on whose behalf the appointed representative acts.

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

15.(1) The GFSC must supervise compliance with these Regulations and the Act by–

- (a) exclusively-tied mortgage credit intermediaries; and
- (b) appointed representatives,

which are registered in accordance with regulation 14.

(2) Subject to sub-regulation (3), the GFSC may supervise an exclusively-tied mortgage credit intermediary–

- (a) directly; or

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- (b) as part of the supervision of the mortgage creditor for which the exclusively-tied mortgage credit intermediary acts, if the mortgage creditor is a credit institution with a Part 7 permission.
- (3) The GFSC must supervise directly an exclusively-tied mortgage credit intermediary which is registered in Gibraltar but provides services in an EEA State.
- (4) The GFSC 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 registration.**

16.(1) The GFSC may revoke the registration of an exclusively-tied mortgage credit intermediary or appointed representative if any condition in sub-regulation (2) is met.

- (2) The conditions are—
  - (a) that the exclusively-tied mortgage credit intermediary or appointed representative—
    - (i) has expressly renounced registration;
    - (ii) has not carried out mortgage intermediation activities or provided mortgage advisory services in the preceding six months;
    - (iii) has obtained registration through false or misleading statements or any other irregular means;
    - (iv) no longer fulfils the requirements under which registration was granted; or
    - (v) 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; or
  - (b) that the GFSC considers it is desirable to revoke the exclusively-tied mortgage credit intermediary's or appointed representative's registration for the protection of customers or investors, the public or the reputation of Gibraltar as a financial centre.

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- (3) If the GFSC—
- (a) proposes to revoke the registration of an exclusively-tied mortgage credit intermediary or appointed representative under regulation 16 (other than under regulation 16(2)(a)(i)), it must give the principal and the person concerned a warning notice; or
  - (b) decides to revoke a registration to which paragraph (a) applies, it must give the principal and the person concerned a decision notice,

and sections 612 to 614 of the Act apply to a notice under this sub-regulation.

(4) The issue of a decision notice under sub-regulation (5)(b) is a specified regulatory decision to which section 24(3) of the Act applies.

(5) A person aggrieved by a decision notice under sub-regulation (3)(b) may appeal under section 615 of the Act.

- (6) Where registration is revoked under this regulation, the GFSC 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 mortgage credit intermediary's or appointed representative's entry is removed from the Register without delay.

**PART 3  
CONDUCT OF BUSINESS**

*Conduct of business generally*

**Conduct of business obligations.**

17.(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;

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- (c) providing mortgage advisory services;
- (d) providing ancillary services; or
- (e) executing a mortgage credit agreement.

(3) The granting or intermediating on credit or providing mortgage advisory services and, where appropriate, providing ancillary services must 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 33(4)(a).

**Obligation to provide information without charge.**

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

**Remuneration arrangements.**

19.(1) A mortgage creditor must not remunerate its staff or mortgage credit intermediaries in a manner that impedes compliance with regulation 17.

(2) A mortgage credit intermediary must not remunerate its staff or appointed representatives in a manner that impedes compliance with regulation 17.

(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

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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.**

20.(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 GFSC must establish, in accordance with the principles set out in Schedule 3, 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 GFSC 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

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- (ii) the GFSC may establish the minimum knowledge and competence requirements which are applicable in respect of paragraphs 1(b), (c), (e) and (f) of Schedule 3.

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

(5) The GFSC, 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 GFSC.

*Information and practices preliminary to concluding mortgage credit agreement*

**Advertising and marketing: general provisions.**

21.(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 22 apply without limiting the Unfair Commercial Practices Directive.

**Advertising: standard information.**

22.(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;

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- (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,

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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.**

23.(1) In Gibraltar–

- (a) bundling practice is permitted; but
- (b) subject to sub-regulations (3) to (5), 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.

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(4) A mortgage creditor may engage in tying practice if the mortgage creditor can demonstrate to the GFSC 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) 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.**

24.(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 mortgage credit intermediaries or appointed representatives; and
- (b) mortgage credit intermediaries that are not tied mortgage 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 contracts that reference a benchmark are available, the names of the benchmarks and of their administrators and the potential implications for the

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consumer, and for these purposes “benchmark” and “administrator” have the same meanings as in the Benchmarks Regulation;

- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) 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;
- (l) a description of the conditions directly relating to early repayment;
- (m) 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;
- (n) 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
- (o) a general warning concerning the possible consequences of non-compliance with the commitments linked to the mortgage credit agreement.

(3) The GFSC may, by direction, require mortgage creditors to include any other warning which the GFSC considers to be relevant in Gibraltar (and in that event the GFSC must comply with Article 13.2 of the Mortgage Credit Directive).

**Pre-contractual information.**

25.(1) A mortgage creditor and, where applicable, any mortgage credit intermediary or appointed representative, must provide a consumer with the personalised information needed

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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 31; 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 2, 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

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- (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 2 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 2.

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

26.(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 33(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;

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- (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, discloses to the consumer—
- (a) the capacity in which the appointed representative is acting; and
  - (b) the mortgage credit intermediary that the appointed representative is representing.

**Adequate explanations.**

27.(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

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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 25, in the case of mortgage creditors;
    - (ii) regulations 25 and 26, 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.

*Annual percentage rate of charge*

**Calculation of APRC.**

- 28.(1) The APRC must be calculated—
- (a) in accordance with the mathematical formula set out in Schedule 1; and
  - (b) where applicable, using the additional assumptions set out in that Schedule.

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(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—

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- (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.

*Creditworthiness assessment*

**Obligation to assess creditworthiness.**

29.(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 31, the consumer knowingly withheld or falsified information of material relevance to the assessment of the consumer's creditworthiness.

(6) A mortgage creditor must—

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- (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 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.**

30.(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 GFSC may direct.
- (2) A mortgage creditor must–

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- (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.**

31.(1) The assessment of creditworthiness under regulation 29 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–

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- (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-regulations (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.

*Database access*

**Database access.**

32.(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 another EEA State.

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

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

*Mortgage advisory services*

**Standards for mortgage advisory services.**

33.(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 17 and 20, 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 sub-paragraph (i) is up to date at the time it is assessed for the purpose of making a recommendation; and

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- (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 mortgage credit intermediary or appointed representative of a tied mortgage 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 mortgage 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;
  - (ii) recommending suitable mortgage credit agreements in accordance with paragraphs (a), (b) and (c);
  - (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

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- (ii) where the number of mortgage creditors considered under subparagraph (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 27 to provide an adequate explanation to a consumer about a mortgage credit agreement or ancillary service.

*Foreign currency and variable rate loans*

**Foreign currency loans.**

34.(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.**

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35. 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 GFSC); and
- (b) historical records of indices for calculating the borrowing rates are maintained either by the providers of those indices or the mortgage creditor.

*Sound execution of mortgage credit agreements and related rights*

**Early repayment.**

36.(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—

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- (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.**

37.(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 GFSC must undertake appropriate statistical monitoring of the residential property market in Gibraltar, including for market surveillance purposes.

**Information about borrowing rate changes.**

38.(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.

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(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.**

39.(1) A mortgage creditor must exercise reasonable forbearance before commencing possession or foreclosure proceedings in respect of any residential immovable 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 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—

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- (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 4  
PRUDENTIAL REQUIREMENTS**

*Accounting records*

**Duty to keep accounting records.**

40.(1) A regulated firm must, in respect of its mortgage credit activity, keep accounting records which are sufficient to show and explain the regulated firm's transactions (whether effected on its own behalf or on behalf of others) and must be such as to—

- (a) disclose with reasonable accuracy, at any time, the financial position of the regulated firm at that time;
- (b) demonstrate whether or not the regulated firm is at that time complying with any financial resources requirements imposed by the GFSC; and
- (c) enable the regulated firm to prepare a balance sheet and a profit and loss account as at any time and which comply with the requirements of these Regulations.

(2) The accounting records must in particular contain—

- (a) entries from day to day of all sums of money received and expended by the regulated firm, and the matters in respect of which the receipt and expenditure takes place; and
- (b) a record of all assets and liabilities of the regulated firm including any commitments or contingent liabilities.

**Records to be kept up to date.**

41. The recording keeping obligations under this Part are continuing obligations and continuous performance of them is required so as to ensure that records are at all times up to date.

**Audit trail.**

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42.(1) Information required by this Part to be recorded must be recorded in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the regulated firm.

(2) All records must be arranged, filed, indexed and cross referenced so as to permit prompt access to any particular record.

**Reconciliation of customer money.**

43.(1) A regulated firm must, at least once every two months, reconcile the balance on each customer bank account (as recorded by the regulated firm) with the balance on that account (as set out on the statement issued by the authorised credit institution concerned).

(2) Where a customer bank account contains the money of more than one customer a regulated firm must, in addition to the reconciliation made under sub-regulation (1), at least once every two months reconcile the balance on that account with the total of the credit balances in respect of each customer (both totals as recorded by the regulated firm).

(3) Where any difference arises on reconciliation under sub-regulation (1) or (2), the regulated firm must correct it without delay unless the difference arises solely as a result of timing differences between the accounting systems of the authorised credit institution and of the regulated firm.

**Conformity with accounting standards.**

44. The accounting records required to be kept by a regulated firm must conform with statements of standard accounting practice issued by such body or bodies as may be prescribed.

**Retention of records.**

45. A regulated firm must preserve the accounting records which it is required to keep under regulation 40 for six years from the date on which they are made.

**Inspection of records.**

46. Accounting records which are required to be kept under regulation 40 must, at any time during the period in which they are required to be preserved, be produced to the GFSC, or to any person with the authority of the GFSC, on demand at such reasonable time and place as may be specified by the GFSC or that person.

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**Duty to prepare annual financial statements.**

47. A regulated firm must, in respect of its mortgage credit activity, prepare for each of its financial years annual financial statements which must consist of–

- (a) a balance sheet as at the last day of the financial year;
- (b) a profit and loss account for the financial year.

**Balance sheet to give a true and fair view.**

48. The balance sheet must give a true and fair view of the state of affairs of the regulated firm as at the end of the financial year.

**Profit and loss account to give a true and fair view.**

49. The profit and loss account must give a true and fair view of the profit or loss of the regulated firm for the financial year.

**Form and content of financial statements.**

50.(1) The financial statements of a regulated firm must comply with the provisions of Schedule 4 (so far as applicable) with respect to the form and content of the balance sheet, the profit and loss account and any additional information to be provided by way of notes to the financial statements.

(2) Where compliance with the provisions of Schedule 4, and the other provisions of this Chapter as to the matters to be included in the regulated firm's balance sheet or profit and loss account or in notes to them, would not be sufficient to give a true and fair view, the necessary additional information must be given in the balance sheet or profit and loss account or in a note to them.

(3) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the regulated firm must depart from that provision to the extent necessary to give a true and fair view.

(4) If the regulated firm departs under sub-regulation (3) from any such provision, particulars of the departure, the reasons for it and its effect must be given in a note to the financial statements.

**Annual financial statements to be submitted to meeting of partners, etc.**

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51.(1) Where the regulated firm is not a sole proprietor, the annual financial statements of the regulated firm must be submitted to a meeting of the partners or, if the regulated firm is not a partnership, to a meeting of the directors or other governing body of the regulated firm and the meeting must be invited to pass a resolution approving those statements.

(2) Where sub-regulation (1) applies, the balance sheet must contain a statement, in a position immediately above the signatures, whether the annual financial statements were approved at a meeting of the partners, directors or governing body of the regulated firm and, if so, the date on which they were approved.

**Additional requirement in case of sole proprietor.**

52. Where the regulated firm is a sole proprietor, the balance sheet must be accompanied by a statement (which must not be regarded as part of the annual financial statements of the regulated firm for the purposes of regulation 55) stating whether, at the date as at which the balance sheet is made up—

- (a) his or her current assets exceed his or her current liabilities; and
- (b) his or her total assets exceed his or her total liabilities.

**Annual financial statements to be submitted to GFSC.**

53. Each financial year a regulated firm must submit its annual financial statements to the GFSC within four months after the end of the financial year to which the annual financial statements relate.

*Audit requirements*

**Regulated firm to obtain auditor's report, etc.**

54.(1) A regulated firm must submit its annual financial statements to its auditor for audit and must obtain on them an auditor's report which complies with the requirements of regulation 55.

(2) A regulated firm must submit its auditor's report to the GFSC together with—

- (a) the annual financial statements in accordance with regulation 53; and
- (b) confirmation in writing that it has complied with each and every one of the requirements of this Part with which it is required to comply and such further information or confirmation as may be prescribed.

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(3) Where the auditor's report is qualified on the grounds of the auditor's uncertainty as to the completeness or accuracy of the accounting records, that report must when submitted by the regulated firm to the GFSC be accompanied by a written document (signed by those who signed the balance sheet) stating—

- (a) whether all the accounting records of the regulated firm have been made available to the auditor for the purposes of his audit;
- (b) whether all transactions undertaken by the regulated firm have been properly reflected and recorded in the regulated firm's accounting records; and
- (c) whether all other records of the regulated firm and related information have been made available to the auditor.

**Contents of auditor's report.**

55.(1) The auditor's report must be addressed to the GFSC and must state whether the annual financial statements of the regulated firm have been audited in accordance with approved auditing standards.

(2) The auditor's report must also state whether in the opinion of the auditor—

- (a) the annual financial statements of the regulated firm have been properly prepared in accordance with these Regulations;
- (b) in the case of the balance sheet, a true and fair view is given of the state of affairs of the regulated firm as at the end of the financial year;
- (c) in the case of the profit and loss account, a true and fair view is given of the profit or loss of the regulated firm for the financial year;
- (d) the regulated firm has, throughout the financial year, kept proper accounting records in accordance with the requirements of these Regulations;
- (e) the balance sheet and the profit and loss account are in agreement with the regulated firm's accounting records; and
- (f) the auditor has obtained all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit.

**Qualified reports.**

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56.(1) If the auditor is of the opinion that one or more of the requirements of regulation 55 have not been met, the auditor must state that fact in the auditor's report and must specify the relevant requirements and the respects in which they have not been met.

(2) If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit, the auditor must state that fact in the auditor's report.

(3) If the auditor is unable to form an opinion as to whether one or more of the requirements of regulation 55 have been met, the auditor must state that fact in the auditor's report, specifying those requirements and giving the reasons why the auditor has been unable to form an opinion.

*Appointment of auditors*

**Auditor required.**

57. A regulated firm must not carry on, or hold itself out as carrying on, mortgage credit activity unless it has appointed an auditor in accordance with these Regulations.

**Qualification for appointment as auditor.**

58. A person is not qualified for appointment as the auditor of a regulated firm unless the person is a statutory auditor or audit firm approved or recognised under Part 24 of the Act.

**Ineligibility for appointment.**

59.(1) A person is ineligible for appointment as an auditor of a regulated firm if the person is—

- (a) a director, officer, employee, shareholder or partner of the regulated firm; or
- (b) a partner or employee of such a person.

(2) For the purposes of this regulation a person is not to be regarded as an officer or employee of a regulated firm by virtue of being an auditor of the firm.

**Engagement letters.**

60. A regulated firm must ensure that the auditor appointed under these Regulations has the powers and duties specified in section 165 of the Act and that—

- (a) those powers and duties are set out in an engagement letter;

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- (b) the engagement letter is signed by the regulated firm and the auditor; and
- (c) the regulated firm retains a copy of the engagement letter.

**Powers and duties of auditors.**

61.(1) An auditor must submit a report to the GFSC on the annual financial statements of the regulated firm in accordance with these Regulations and the report must include the matters specified in regulation 55.

(2) In preparing a report for the purposes of these Regulations, the auditor must carry out such investigations as will enable the auditor to form an opinion as to the matters required by regulation 55 to be stated in the report.

**Auditor to notify GFSC of certain matters.**

62.(1) In the circumstances specified in sub-regulation (2), the auditor of a regulated firm must notify the GFSC of any matters relating to the affairs of the firm of which the auditor becomes aware in the capacity of auditor.

(2) The circumstances are that the auditor has reasonable cause to believe that the matters are or are likely to be of material significance for determining whether—

- (a) a person is a fit and proper person to carry on the business of the regulated firm; or
- (b) powers under section 69, 97(2), 102 or Part 11 of the Act should be exercised in order to protect customers from a significant risk of loss.

**Notification of auditor's appointment, removal or resignation.**

63.(1) A regulated firm must, within seven days, give the GFSC written notice of the appointment, removal or resignation of an auditor.

(2) Where an auditor resigns or is removed by a regulated firm, the notice under sub-regulation (1) must contain a statement signed by the auditor—

- (a) of the circumstances connected with the auditor's resignation or removal; or
- (b) that there are no circumstances connected with the auditor's resignation or removal which the auditor considers should be brought to the GFSC's attention.

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(3) For the purpose of this regulation, a failure to re-appoint an auditor at the end of the auditor's term of office is to be treated as the removal of that auditor.

**PART 5  
FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES**

**CHAPTER 1  
INCOMING EEA MORTGAGE CREDIT INTERMEDIARIES**

**Application.**

64.(1) This Chapter applies to EEA mortgage credit intermediaries which intend to exercise an EEA right deriving from the Mortgage Credit Directive in Gibraltar.

(2) In this Chapter, "EEA mortgage credit intermediary" means an EEA firm within the meaning of paragraph 1(1)(k) of Schedule 10 to the Act.

(3) An EEA mortgage credit intermediary to which this regulation applies may provide its services in relation to mortgage credit agreements offered by non-credit institutions to consumers in Gibraltar.

**Qualifying for authorisation.**

65.(1) An EEA mortgage credit intermediary to which this Chapter applies qualifies for authorisation once the qualifying conditions are satisfied.

(2) The qualifying conditions are that the GFSC—

- (a) has received a notification under Article 32 of the Mortgage Credit Directive in respect of the mortgage credit intermediary;
- (b) has completed preparations to supervise the mortgage credit intermediary in accordance with regulations 15, 66 and 67;
- (c) if necessary, has informed 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; and
- (d) using the information provided by the mortgage credit intermediary's home State regulator, has entered the intermediary in the Register.

**Supervision of EEA branches in Gibraltar.**

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66.(1) The GFSC 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 17 and 18;
- (b) regulations 20 to 22;
- (c) regulations 24 to 28; and
- (d) regulations 31, 33 and 71.

(2) The GFSC 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 GFSC is able to enforce the branch’s obligations under regulation 19 with respect to the services provided by the branch.

(3) Where the GFSC 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 GFSC 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 GFSC must–

- (a) take appropriate steps to ensure that the intermediary concerned ceases and, where necessary, rectifies the breach concerned; and
- (b) inform the intermediary’s home State regulator of the action which the GFSC has taken.

(5) If, despite the action taken by the GFSC, the mortgage credit intermediary concerned persists in breaching a provision referred to in sub-regulation (1), the GFSC, after informing the intermediary’s home State regulator, may take appropriate action–

- (a) to prevent or to penalise further irregularities; and

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(b) in so far as necessary, to prevent the intermediary from initiating any further transactions within Gibraltar.

(6) If the GFSC takes any action under sub-regulation (5), it must without undue delay inform the European Commission.

(7) Where the intermediary's home State regulator disagrees with the action taken by the GFSC, it may refer the matter to EBA and request its assistance in accordance with Article 19 of the EBA Regulation.

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

67.(1) The GFSC must notify a mortgage credit intermediary's home State regulator if the GFSC 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 66(1).

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

- (a) the home State regulator fails to take any action within one month of receiving; or
- (b) despite the action taken by the home State regulator, 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 GFSC, having informed the home State regulator—

- (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

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(c) may refer the matter to the EBA and request its assistance in accordance with Article 19 of the EBA Regulation.

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

**CHAPTER 2  
GIBRALTAR MORTGAGE CREDIT INTERMEDIARIES**

**Application.**

68.(1) This Chapter applies to a Gibraltar firm which is a mortgage credit intermediary having an EEA right deriving from the Mortgage Credit Directive (a “Gibraltar mortgage credit intermediary”).

**Extent of Gibraltar mortgage credit intermediary’s services in EEA State.**

69.(1) Subject to sub-regulation (2) and if the requirements of sub-regulations (3) to (5) are met, a Gibraltar mortgage credit intermediary may provide mortgage credit and ancillary services in another EEA State if those services are covered by the intermediary’s Part 7 permission or registration in accordance with regulation 14.

(2) A Gibraltar 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.

(3) A Gibraltar mortgage credit intermediary that intends to provide mortgage credit services in one or more EEA States under the freedom to provide services or by establishing a branch must inform the GFSC.

(4) Within one month of being informed under sub-regulation (3), the GFSC 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 intermediary is tied; and
  - (iii) whether those mortgage creditors take full and unconditional responsibility for the intermediary’s activities; and

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(b) at the same time inform the intermediary concerned of that notification.

(5) A mortgage credit intermediary may start business in an EEA State one month after the date on which it is informed by the GFSC of the notification referred to in sub-regulation (4)(b).

**PART 6  
REGULATORY POWERS**

**Directions.**

70.(1) If it appears to the GFSC that a person is not a fit and proper person to carry out any function in relation to a regulated firm or any mortgage credit activity carried on by a regulated firm, the GFSC may direct that the person must not perform a specified function, any function falling within a specified description, or any function as stated in the direction.

(2) Where the GFSC—

- (a) proposes to issue a direction under sub-regulation (1), it must give the regulated firm and the person concerned a warning notice; or
- (b) decides to issue a direction under sub-regulation (1), it must give the regulated firm and the person concerned a decision notice.

(3) Sub-regulation (2)(a) does not apply if the GFSC 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 direction; or
- (c) is superfluous having regard to the need to give notice of legal proceedings, or for some other reason.

(4) A person aggrieved by a decision notice under sub-regulation (2)(b) may appeal against the decision under section 615 of the Act.

(5) For the purposes of sub-regulation (3)(a), the GFSC must not consider that urgency exists unless Conditions B and C in section 80(3) and (4) of the Act are met.

(6) If those conditions are met, the GFSC must give the regulated firm and the person concerned a notice stating that the direction takes effect on the date of the notice or on any later date that may be specified in the notice.

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(7) Sections 80(7) and (8) and 81 of the Act apply to a decision by the GFSC under sub-regulation (3)(a)–

- (a) as if references in those sections to the varying of a permission or the imposing or varying of a requirement (however expressed) were references to the imposition of a direction under sub-regulation (1); and
- (b) with such other modifications as may be required by the circumstances and context of sub-regulation (3).

(8) The issue of a decision notice imposing a direction under sub-regulation (1) is a specified regulatory decision to which section 24(3) of the Act applies.

**Sanctioning powers.**

71. For the purposes of section 150 of the Act, the sanctioning powers set out in Part 11 of the Act which are exercisable in relation to contravention of a regulatory requirement (including a regulatory requirement contained in these Regulations) are to be read together with the provisions of regulation 72.

**Maximum amounts of administrative penalty.**

72.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement in connection with the provision of any mortgage credit activity must be of an amount that does not exceed the higher of the following–

- (a) where the benefit derived as a result of the contravention can be determined, twice the amount of that benefit;
- (b) in the case of a legal person–
  - (i) £250,000; or
  - (ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body;
- (c) in the case of an individual, £125,000.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with the Accounting Directive, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual turnover, or the corresponding type of income in accordance with the relevant

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accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

**PART 7  
FINAL PROVISIONS**

**Imperative nature of rights.**

73.(1) A consumer may not waive any right conferred on 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.

**Obligation to cooperate.**

74.(1) The GFSC 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 GFSC—

- (a) may request from the competent authority in an EEA State any information which the GFSC needs for the purposes of carrying out its duties under these Regulations or the Mortgage Credit Directive; and

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- (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 GFSC 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 GFSC 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 Gibraltar in respect of the same actions and persons,

and in the event of such a refusal, the GFSC must 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 GFSC to another competent authority has been rejected or not been acted upon within a reasonable time, the GFSC may refer the matter to the EBA, requesting its assistance in accordance with Article 19 of the EBA Regulation.

**Revocation of 2016 Regulations.**

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75. The Financial Services (Mortgage Credit) Regulations 2016 are revoked.

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**SCHEDULE 1**

**CALCULATION OF 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.

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- (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

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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

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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

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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;
  - (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.

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**SCHEDULE 2**  
**EUROPEAN STANDARDISED INFORMATION SHEET (ESIS)**

**Part 1**

1. The text in this model must be reproduced in the ESIS and the indications in square brackets must be replaced with the corresponding information. Instructions for the creditor (or, where applicable, credit intermediary) on how to complete the ESIS are provided in Part 2.
2. Wherever the words ‘where applicable’ are indicated, the creditor must—
  - (a) provide the information required, if it is relevant to the credit agreement; or
  - (b) where the information is not relevant—
    - (i) delete the information in question; or
    - (ii) delete the entire section (for example, where the section is not applicable) and adjust the numbering of the ESIS sections accordingly.
3. The ESIS must be provided in a single document and—
  - (a) the font used must be clearly readable;
  - (b) bold font, shading or larger font sizes must be used for the information elements to be highlighted; and
  - (c) all applicable risk warnings must be highlighted.

**(Introductory text)**

This document was produced for [name of consumer] on [current date].

This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.

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.

(Where applicable) This document does not constitute an obligation for [name of mortgage creditor] to grant you a loan.

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**1. Lender**

[Name]

[Telephone number]

[Geographical address]

(Optional) [E-mail address]

(Optional) [Fax number]

(Optional) [Web address]

(Optional) [Contact person/point]

(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.]

**2. (Where applicable) Mortgage credit intermediary**

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[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**

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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**

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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]

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**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**

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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**

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(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**

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(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

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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.

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(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

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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.

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

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brands within the same group or company with different margins above or below the ERR.	
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.

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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., 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).	Calculate using the method which produces the highest additional APRC.
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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.

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(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

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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

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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.

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**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

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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.
- (3) Where a reflection period or right of withdrawal for the consumer applies this must be clearly mentioned.

**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 consumers 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.

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(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 Article 3.1(3)(g) 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.**

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

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**SCHEDULE 3  
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 20 and for persons involved in the management of mortgage credit intermediaries or appointed representatives referred to in regulations 8(1)(c)(ii), 10(4)(b) and 12(5)(b) need to include at least—

- (a) appropriate knowledge of credit products within the scope of Part 12 of Schedule 2 to the Act 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 GFSC 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 GFSC may determine the appropriate level of knowledge and competence on the basis of—

- (a) professional qualifications; or

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

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**SCHEDULE 4**  
**FORM AND CONTENT OF FINANCIAL STATEMENTS**

**PART 1**  
**GENERAL RULES**

1. Subject to the following provisions of this Schedule, the annual financial statements of a regulated firm must—
  - (a) in the case of the balance sheet show the items listed in the balance sheet format set out in Appendix 1 to this Schedule; and
  - (b) in the case of the profit and loss account show the items listed in the profit and loss account format set out in Appendix 2 to this Schedule.
2. Any item required in accordance with paragraph 1 to be shown in a financial statement of a regulated firm may be shown in greater detail than required by the appropriate format.
3. A financial statement of a regulated firm may include as a separately identified item any item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the appropriate format.
- 4.(1) In respect of every item shown in a regulated firm's balance sheet or profit and loss account or in notes to them, the corresponding amount for the immediately preceding financial year must also be shown.
  - (2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount must be adjusted and particulars of the adjustment and the reasons for it must be disclosed in a note to the accounts.
5. Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.
6. In the case of a regulated firm which is a sole proprietor, the items to be included in the regulated firm's financial statements prepared in accordance with these Regulations must be those which arise in the course of the regulated activity of that regulated firm.

**PART 2**  
**ACCOUNTING PRINCIPLES AND RULES**

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7.(1) The amounts to be included in respect of all items shown in the annual financial statements of a regulated firm must be determined in accordance with the Companies Act 2014 and either Gibraltar Financial Reporting Standards or International Accounting Standards.

(2) Sub-paragraph (1) is subject to regulation 44.

8. Subject to paragraph 7, items must be included in such a way as to reflect the substance and not merely the form of the underlying transactions and balances.

**APPENDIX 1  
BALANCE SHEET FORMAT**

**A. FIXED ASSETS**

I. Intangible Assets

1. Development costs
2. Goodwill
3. Other

II. Tangible Assets

1. Freehold land and buildings
2. Leasehold land and buildings
3. Motor vehicles
4. Office equipment and computers
5. Fixtures and fittings
6. Payments on account
7. Other tangible assets

III. Investments

1. Loans to and shares in group companies and connected companies
2. Other listed investments
3. Other unlisted investments

**B. CURRENT ASSETS**

I. Physical stocks

II. Debtors (1)

1. Trade debtors (2)
2. Other debtors
3. Amounts due from connected and group companies
4. Prepayments and accrued income

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III. Investments (long positions)(3)

IV. Cash at bank and in hand

**C. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR**

1. Bank loans and overdrafts.
2. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors (4)
5. Investments (short positions)(5)
6. Income tax
7. Other taxation and social security
8. Amounts due to group and connected companies
9. Other creditors
10. Accruals and deferred income

**D. NET CURRENT ASSETS (LIABILITIES)**

**E. TOTAL ASSETS LESS CURRENT LIABILITIES**

**F. CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR**

1. Bank loans and overdrafts
2. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors(4)
5. Income tax
6. Amounts due to group and connected companies
7. Other creditors
8. Accruals and deferred income

**G. PROVISIONS FOR LIABILITIES AND CHARGES**

1. Commissions on indemnity terms
2. Pension and similar obligations
3. Taxation including deferred taxation
4. Other provisions

**H. TOTAL ASSETS LESS TOTAL LIABILITIES**

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**I. CAPITAL AND RESERVES**

1. Called up share capital (7)
2. Share premium account
3. Partners' or proprietors' capital accounts
4. Partners' or proprietors' current accounts
5. Revaluation reserve
6. Other reserves
7. Profit and loss account.

Approved by the [directors][partners][governing body] on

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

**NOTES ON THE BALANCE SHEET FORMAT**

**(1) Debtors**

The amount falling due after more than one year shall be shown separately for each item included under debtors.

**(2) Trade debtors**

(a) Fees

Outstanding for more than 30 days  
Outstanding for 30 days or less.

(b) Commissions

Outstanding for more than 30 days  
Outstanding for 30 days or less.

(c) Other

Amounts outstanding for more than 30 days  
Amounts outstanding for 30 days or less.

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**(3) Investments (long positions)**

**(i) Debt instruments**

	Residual Maturity				
	0 - 90 days	90 days - 12 Months	12 months - 5 years	more than 5 years	Total
UK Government, Government of Gibraltar and local authority debt Accepted or issued by an approved bank	_____	_____	_____	_____	_____
Floating Rate Notes	_____	_____	_____	_____	_____
Other debt instruments:					
- marketable investments	_____	_____	_____	_____	_____
- not marketable investments	_____	_____	_____	_____	_____

**(ii) Shares (other than in group companies)**

UK listed  
 UK unlisted:  
 - marketable investments  
 - not marketable investments  
 Overseas listed on an established investment exchange  
 Overseas unlisted

**(iii) Collective investment schemes**

Units in authorised and recognised unit trust schemes  
 Other

**(iv) Futures, options, contracts for differences**

Futures  
 Purchased options  
 Written options  
 Contracts for differences

**(v) Shares in group companies**

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(vi) **Other investments (specify)**

**(4) Trade Creditors**

- (a) Amounts due to be paid against delivery of securities
- (b) Amounts due to be paid in respect of securities transactions otherwise than against delivery of securities.
- (c) Others

**(5) Investments (short positions)**

The same detail should be given as that required by note (3) above

**(6) Eligible subordinated loans**

- (a) Eligible long term subordinated loans
- (b) Eligible short term subordinated loans
- (c) Committed undrawn subordinated loan facilities
- (d) Bank Undertakings

**(7) Called up share capital**

Any amount of share capital which has not been paid up shall be shown separately.

**(8) Contingent liabilities and commitments**

- (a) Amounts subject to an investment position risk factor
- (b) Other amounts arising in the ordinary course of business
- (c) Other contingent liabilities not provided for
- (d) Capital commitments contracted for but not provided for
- (e) Capital commitments authorised but not contracted for
- (f) Pension commitments not provided for
- (g) Other financial commitments not provided for

The following additional information shall be given, where relevant—

- (i) Whether any valuable security has been provided by the licensee in connection with a contingent liability or commitment
- (ii) The amounts which relate to undertakings on behalf of or for the benefit of group and connected companies.

**APPENDIX 2**

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**PROFIT AND LOSS ACCOUNT FORMAT**

**A. DEALING**

Gains/losses on principal dealings (trading)

1. equities
2. debt instruments
3. futures, options and contracts for differences
4. units in collective investment schemes
5. foreign exchange
6. other - specify

**B. REVENUE**

**I. Commissions on transactions in collective investment schemes**

1. authorised unit trust schemes and recognised schemes
2. other - specify

**II. Commissions on transactions in life insurance policies**

1. commission on indemnity terms
2. other initial commission
3. renewal commission
4. other - specify

**III. Commissions on securities transactions**

1. equities
2. debt instruments
3. other - specify

**IV. Commissions on transactions in futures, options, contracts for differences, etc.**

1. futures
2. options
3. contracts for differences
4. other - specify (e.g. commodities)

**V. Investment management fees**

**VI. Fee income in respect of financial advice**

**VII. Company management fees**

**VIII. Trustee fees**

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- IX. Interest and dividends
  - 1. investment positions
  - 2. loan accounts and margin accounts
  - 3. in respect of balances in client bank accounts
  - 4. other - specify
- X. Dealing and settlement services
- XI. Revenue from research and consulting services
- XII. Retained underwriting and placing commissions
- XIII. Other revenue - specify if material
- C. EXPENDITURE**
- I. Commissions
  - 1. paid to staff
  - 2. paid to other investment businesses
  - 3. other - specify
- II. Salaries and other employment costs (exclusive of commission)
- III. Directors' emoluments
- IV. Staff bonuses
- V. Interest charges
  - 1. payable to customer in respect of customer's money balances
  - 2. other - specify
- VI. Establishment costs
- VII. Communications and marketing
- VIII. Office equipment and services
- IX. Provisions for losses, bad and doubtful debts
- X. Professional charges
- XI. Investment exchange and clearing house charges

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- XII. Regulatory fees and expenses
- XIII. Audit fees (including expenses)
- XIV. Miscellaneous office expenses
- XV. Other expenditure - specify if material
  
- D. PROFIT OR LOSS BEFORE TAXATION**
  
- E. TAXATION**
  
- F. PROFIT OR LOSS AFTER TAXATION**
  
- G. EXTRAORDINARY ITEMS**
  
- H. PROFIT OR LOSS FOR THE FINANCIAL YEAR.**