



**HM Government
of Gibraltar**



**Financial Services
Commission**

Legislative Reform: Financial and Professional Services

A joint project by HM Government of Gibraltar and the Financial Services Commission

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1. Introduction

Gibraltar is a high quality international business hub. Financial and professional services represent a significant part of Gibraltar's GDP and, as a British overseas territory to which the EU Treaties apply, Gibraltar offers access to the EU Single Market in financial services.

The Government of Gibraltar is working to establish Gibraltar as the EU domicile of choice across the full spectrum of financial services. Critical to the achievement of this objective is efficient, robust and responsive regulation.

This paper introduces the Legislative Reform Programme that will be implemented from 2015 to 2016.

The planned programme of legislative and regulatory reform will be ground-breaking for Gibraltar. It will deliver a single consolidated act covering the regulation of all financial and professional services regulated by the Financial Services Commission ("FSC"), together with a financial and professional services regulatory handbook (the "Handbook"). We recognise the significance for financial and professional services firms and we are keen to work with practitioners to develop a regime that is fit for purpose for the Gibraltar market.

The legislative reform is further intended to ensure that the legislation relating to financial and related professional services (professional trustees and company managers, auditors, and insolvency practitioners) is easier to understand, more navigable for practitioners, and works in a way that facilitates innovation in financial and professional services and speed to market, both now and in the future, whilst at the same time strengthening it in various areas. The reform will deliver major benefits for firms, consumers and new market entrants. Our intention is that firms and consumers alike experience proportionate and effective, risk-based regulation and this should mean that firms' time and money is spent mitigating substantive regulatory risks.

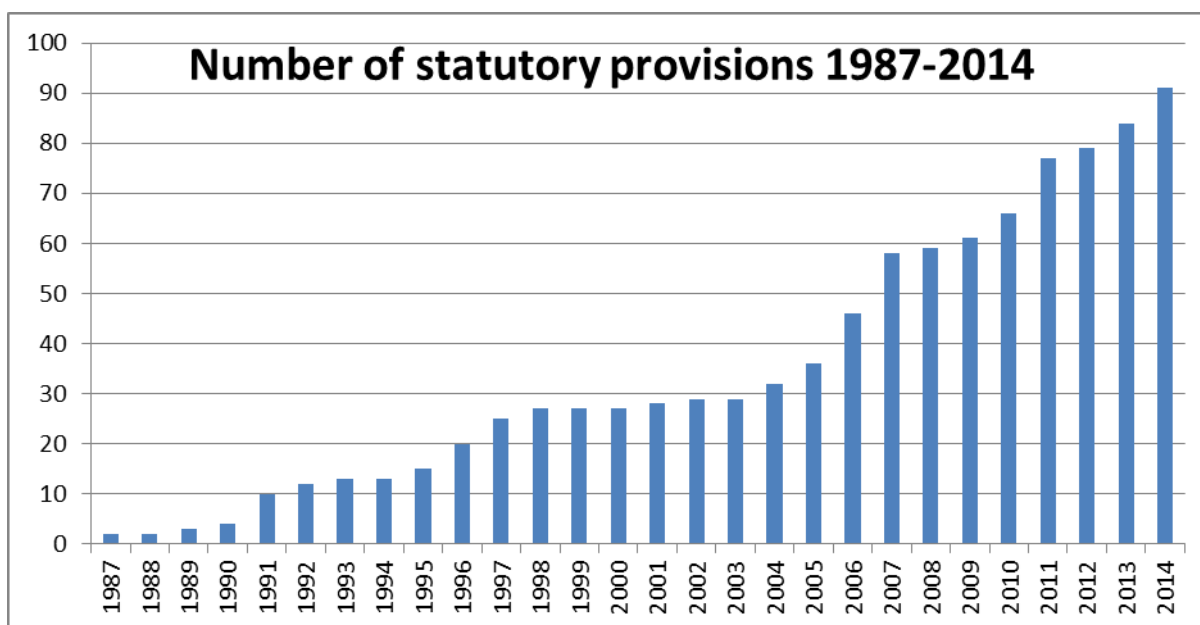
2. Plans for the new legislative framework

2.1 Introduction

There has always been a strong commitment to delivering effective regulation of financial services in Gibraltar. As the markets in financial and professional services have developed, so has the regulator and the regulatory regime. The FSC came into being as such in 1991 and, over the years, its scope has increased so that it now regulates a wide range of financial and professional services, reflecting the significance of Gibraltar as a financial and professional services centre:

- Banks
- Investment firms
- Insurance Companies (General, including Insurance Linked Securities)
- Insurance Companies (Life)
- Reinsurance Companies
- Insurance Intermediaries
- Insurance Managers
- Alternative Investment Fund Managers
- Experienced Investor Funds
- Collective Investment Schemes
- E-Money Institutions
- Payment Services Firms
- Occupational Pension Schemes
- Bureaux de Change
- Stock exchanges
- Professional Trustees
- Company Managers
- Auditors
- Insolvency Practitioners

The legislation and regulations governing the conduct of financial and professional services has developed on a piecemeal basis over time in response to market activity and in particular continuous EU legislation. This has resulted in a significant increase in the amount of primary and secondary legislation, hence the need to consolidate the legislation.



Note:

This includes 5 pieces of legislation that apply to the conduct of financial and professional services but have a broader application, e.g. the Market Abuse Act 2005.

As a result the regime is now:

- in need of reform to ensure consistency across the different sectors of the market-place;
- complex to navigate, because of the multiplicity of legislation, for the regulator, professional

firms and licensees including new market entrants;

- in need of reform to ensure the regulator is adequately empowered with fit for purpose regulations enabling it across all sectors to provide consistent and fit for purpose regulation, including improved enforcement provisions.

2.2 Approach to addressing these issues

The FSC published its Strategic Plan in October¹, setting out how it intends to meet the challenges of a growing and increasingly diversified financial and professional services market. In tandem with that, the Government of Gibraltar and the FSC have been working together to address the legislative issues and to deliver a regulatory regime for financial and professional services that is fit for the evolving Gibraltar market both, now and in the future. We propose to achieve this by:

- consolidating and enhancing the legislation;
- enhancing the FSC's powers in certain key areas;
- bringing new areas under the regulation of the FSC;
- updating the legislation and harmonising requirements across sectors as appropriate;
- creating a coherent, navigable Handbook of Regulations.

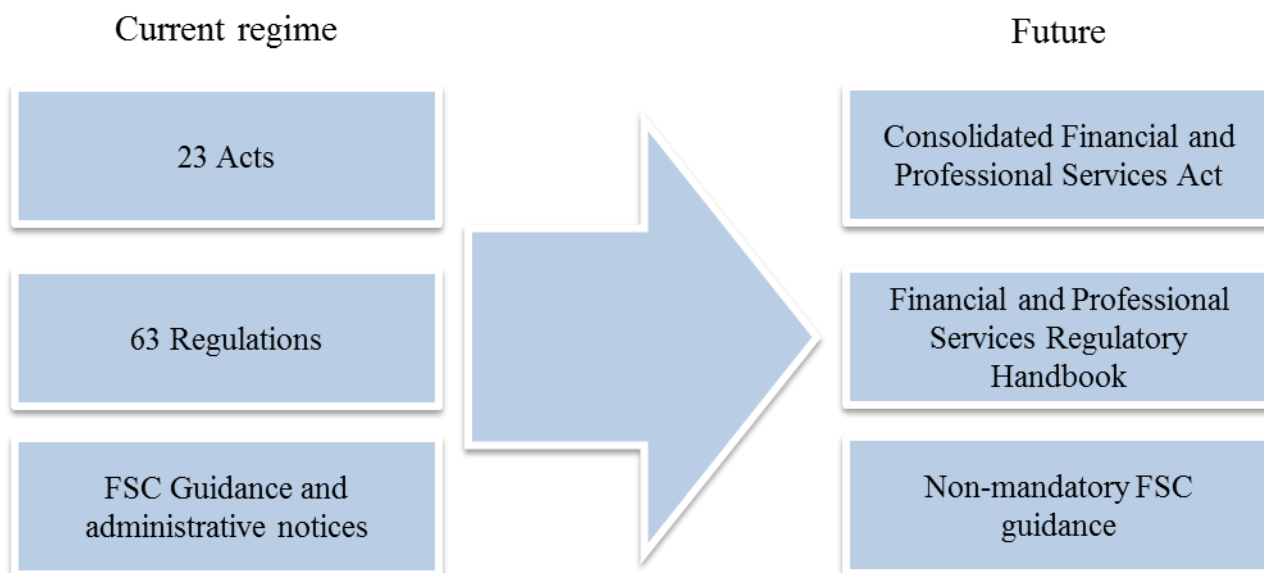
In introducing this legislative reform programme our objective is to simplify the legislative framework, improve regulatory processes and facilitate navigability. Firms will have a clearer understanding of their obligations and how they should engage with the FSC.

2.3 What we will deliver

The legislative reform programme will deliver:

- A consolidated Financial and Professional Services Act ("the New Act"), replacing the existing primary legislation;
- The Handbook, replacing (but containing much of the content of) the current regulations. An outline of the structure of the Handbook is set out in the Appendix;
- Amendments to other primary and secondary legislation to harmonise the terminology in accordance with the New Act;
- New structures – A Financial Services Ombudsman, and a new appeals body to facilitate appeals from regulatory decisions.

¹The FSC's Strategic Plan, published on the 14th October 2014, focuses on the operational delivery of effective regulation
(<http://www.fsc.gi/download/adobe/FSCStrategicPlan2014-2017.pdf>)



Notes:

1 The Handbook will consist of sets of regulations.

2 Consequential amendments will be made to other legislation, e.g., to harmonise terminology with the New Act.

Our plans are designed to:

- accommodate future plans for the development of Gibraltar as a financial and professional services market;
- facilitate the implementation of current and future EU legislation; and
- take on board the lessons learned from the FSC's previous authorisation and supervisory activity.

The legislative reform will be far more than a consolidation of existing legislation; it will create the foundations for a sustainable financial and professional services market in Gibraltar.

2.4 Benefits for the Gibraltar market, firms, new market entrants and consumers

The reformed legislation will enhance the reputation of Gibraltar as a quality financial and professional services centre whose regulatory regime meets international regulatory standards. There will be a credible deterrent to non-compliance because the FSC will be empowered to take proportionate regulatory action against those who fail or transgress, in order to protect that reputation.

By virtue of the New Act and Handbook, firms and individuals will experience a risk-based approach to authorisation, supervision and enforcement. There will be clarity in terms of the FSC's expectations for firms and individuals, and transparency of decision making. The plans set out in this paper will also assist the FSC in delivering a more proportionate and outcomes focused approach to supervision.

As published in the FSC's Strategic Plan, the FSC has already commenced its organisational restructure, which is designed to improve the effective and efficient operational delivery of regulation, supervision and deployment of capacity and capability.

Given the complexity of the financial and professional services market, the nature of the risks to which consumers and markets are exposed, and the volume and detail contained in EU legislation, it is inevitable that the New Act and the provisions of the Handbook will themselves be detailed. However, the New Act will enable the Government and FSC to achieve greater harmonisation in the regulation of financial and professional services, reducing the costs associated with sector by sector regulation and facilitating diversification within firms and groups. In addition, the processes that will be contained in the Handbook

relating to the manner in which firms will be supervised² will be streamlined and unbureaucratic. So, for example, the FSC will only request that information from firms and individuals which is required to enable the FSC to assess risks, make informed decisions and comply with EU legislation. All of these factors should reduce firms' costs and time spent on achieving compliance. They should also mean that the FSC is "easy to do business with" and able to take decisions more swiftly.

The provisions in the New Act and Handbook will be tailored and will be strengthened in some areas, to be appropriate for the Gibraltar market. Again, this should benefit existing firms and new market entrants alike.

Under the New Act, the FSC will be accountable for the decisions it takes, since the New Act will contain provisions for appeals against the FSC's decisions and a public FSC complaints procedure, building greater fairness into the new regulatory regime.

Finally, consumers will benefit from a harmonising of conduct of business requirements and a Financial Services Ombudsman, to whom consumers can refer a matter, if their complaint to a firm is not resolved to their satisfaction.

The high-level timetable is set out in section 6.3.

²See section 4 of this Paper

3. The New Act

Having all the provisions relating to financial and professional services in one place will significantly improve the user-friendliness of the legislative framework and facilitate market entry for those wishing to establish themselves in Gibraltar.

The New Act will:

- a) reproduce elements of the Financial Services Commission Act (“FSCA”) and the Financial Services (Information Gathering and Co-operation) Act, with some amendments to give greater flexibility, so that the FSC can determine at what level regulatory decisions may be taken;
- b) contain many of the provisions in the existing Supervisory Acts, other than those that will in the future form part of the Handbook. Wherever possible, we will seek to harmonise provisions, e.g., in relation to fees;
- c) contain harmonised provisions applicable to all financial and professional services firms within the jurisdiction of the FSC relating to:
 - a. the need to be authorised (including exemptions, e.g., for tied agents);
 - b. enforcement powers;
 - c. individually regulated persons (approval of persons within firms to undertake certain functions);
 - d. appeals;
 - e. criminal offences;
 - f. accountability of the FSC;
 - g. the referral of customer complaints to a Financial Services Ombudsman.
- d) contain provisions which are currently in secondary legislation (regulations), but which more properly sit within primary legislation, e.g., the Financial Services (EEA) (Payment Services) Regulations 2010;
- e) amend legislation that is applicable to financial and professional services but not exclusively related to it, e.g., the Crime (Money Laundering and Proceeds) Act 2007, in terms of some of the terminology, but such legislation will remain independent and will not be brought into the body of the New Act;
- f) incorporate those sections that relate to authorisation and regulation by the FSC, from current legislation concerning auditors and insolvency practitioners.

The Government of Gibraltar and the FSC will be conducting a joint consultation on the draft New Act in 2015/2016. This consultation will include a “destination table” (a guide to the consolidation of legislation) to enable readers to see the derivation of the provisions in the New Act.

4. The Financial and Professional Services Regulatory Handbook

The current statutory complexity relating to the conduct of financial and professional services includes regulations made under primary legislation.

Our plan is to:

- bring all the regulations applicable to financial and professional services within the Handbook;
- harmonise the content of the regulations, wherever possible, to apply across the market, rather than on a sector by sector basis;
- group the obligations currently contained in the regulations, so that firms can easily identify those provisions relating to, e.g., authorisation, supervision, prudential requirements or conducting business;
- where necessary, maintain sector specific provisions, but again these will be organised in such a manner as to enable firms to identify which regulations apply to them;
- make the Handbook available online.

Much of the content of the Handbook will be taken from existing regulations. However, the introduction of the Handbook provides the opportunity for the FSC to consider policy in areas such as conduct of business and to bring together fundamental regulatory requirements via the implementation of certain threshold conditions, ethical requirements and fundamental rules applicable to all licensed entities. In addition, unnecessary duplication and bureaucracy will be removed from regulations.

The Handbook will set out the processes by which firms will be authorised and supervised in a streamlined and unbureaucratic manner. This will result in the Handbook being easier to understand and more navigable for practitioners in comparison with the current secondary legislation requirements. The changes will also facilitate the innovation in financial and professional services and market entry. Our intention is to bring the Handbook into force in late 2016.

A draft outline of the Handbook is set out in the Appendix.

Consultations on the Handbook will be conducted in 2015/2016. These consultations will explain the implementation timetable for the New Act and Handbook and set out the impact of changes on a sector by sector basis.

5. Areas of Focus

Specific areas of focus for the new legislative regime are set out below. These will be the subject of public consultation throughout 2015 to ensure that the legislative framework is fit for purpose for the Gibraltar market.

5.1 Pensions

Legislative changes³, to be introduced in 2015, will extend the current pensions offerings in Gibraltar and ensure that the market for personal and occupational pensions is subject to appropriate regulation.

The proper management of a pension scheme's assets and investments is essential in the preservation of the member's future benefits. The regulation of those that advise on the establishment of schemes, and those who advise potential members to enter into such arrangements, is also a vital part of the proposed regulatory framework. The suitability of different pension products for different clients needs to be carefully considered before entering into long term financial commitments.

Interest in establishing QROPS and QNUPS schemes in Gibraltar continues and the potential for growth is seen as a huge development opportunity for the finance sector. Government of Gibraltar is keen to facilitate the growth and marketing of this sector. For this reason, the FSC is currently engaged with the Government to create a substantive regulatory framework in respect of pensions.

5.2 Tied agents⁴

The New Act will make provision for firms that are "tied agents" of an authorised firm.

Tied agents can be an effective means of providing products and services through the use of third parties. In addition, we are aware that the second Markets in Financial Instruments Directive ("MiFID II") will require regulators to permit such agents in relation to MiFID activities. For these reasons, we are proposing to permit firms of specified types to have "tied agents" to conduct particular regulated activities.

Experience in other jurisdictions suggests that "tied agents" can represent a significant risk and need to be properly controlled by the authorised firm. This may particularly be the case where the "tied agent" is conducting activities in another jurisdiction to that in which the authorised firm is established. For this reason, the New Act and regulations made under it will contain provisions necessary to ensure that this risk is mitigated.

5.3 Senior persons

The FSC has the power to approve certain individuals (e.g., directors, shareholders and controllers of firms) and to be notified of others. However, the current legislation does not provide for the regulation of such individuals in terms of standards applicable to them and, in terms of enforcement action, the FSC has only limited options – basically to declare that an individual is not fit and proper and to prevent them from conducting financial and professional services business in Gibraltar for a prescribed period of time.

The FSC is seeking to introduce an "individually-regulated persons regime", similar to the UK approved persons and senior persons regime, but tailored to the Gibraltar market. This regime will establish a regulatory relationship between the FSC and such persons, as a result of which such persons will be required to be approved by the FSC before they take up their role, be of sufficient competence to hold their role, comply with standards set by the FSC, and report specified matters to the FSC. The FSC will be empowered, as stated above, to take a range of enforcement action against such persons in the event of their failure to comply with their requirements.

5.4 Appeals

We propose to provide a swifter means of appeal from regulatory decisions of the FSC by establishing a new appeals body.

³The changes will later form part of the New Act.

⁴ By "tied agents" we mean a person who, under the responsibility of an authorised firm on whose behalf he acts, conducts specified activities. In this sense they are "tied" to a single authorised firm.

Under current legislation, those subject to decisions of the FSC have a right of appeal to the Supreme Court. However, there are variations and we are proposing to have a single set of consolidated appeals provisions which are easy to follow, fair for everyone and cost-effective.

Appeals to the Supreme Court can be delayed due to the lack of available court time. This may create a risk if the decision relates to enforcement action, since the action is stayed when an appeal is made. In addition, where the decision is to refuse authorisation, it would be in the interests of the party subject to the decision to obtain a swift judgement on their appeal. Also, appeals to the Supreme Court can be costly, which could deter appellants. An alternative would be to establish a separate appellate tribunal to hear appeals from decisions of the FSC.

5.5 Efficiency and accountability of FSC

We propose to introduce new measures to formalise the scrutiny of the manner in which the FSC conducts its activities.

The New Act will provide various means by which the FSC will be held accountable. These include:

- the right to appeal decisions of the FSC;
- publication of decisions of the FSC.

5.6 Money lenders

Under the Financial Services (Money Lending) Act 1917 (“the Money Lending Act”), the Government of Gibraltar licenses those who lend money but do not conduct banking activity. Under the Financial Services (Consumer Credit) Act 2011 (“the Consumer Credit Act”), the FSC was appointed as Director for the purposes of conduct of business requirements under that Act. Therefore, the FSC has responsibility for monitoring the working and effectiveness of the Consumer Credit Act, taking measures to ensure compliance and supervising creditors (money lenders) and credit intermediaries in order to ensure compliance with their obligations under that Act. Money lenders licensed under the Money Lending Act are subject to the provisions of the Consumer Credit Act.

Our proposal is to bring the licensing, regulation and supervision of money lenders under the FSC as the financial services regulator. This will improve the effectiveness of the regulation of money lenders by having one body responsible for authorising, supervising and taking enforcement action against such firms.

5.7 Compensation schemes

We are required to amend the Deposit Guarantee and Investor Compensation Schemes to keep these in line with EU Directives.

The provisions of the existing legislation relating to compensation arrangements (the Financial Services (Investor Compensation Scheme) Act 2002 and the Deposit Guarantee Scheme Act 1997) will be incorporated in the New Act. At the same time, we will update and amend the legislation.

5.8 Criminal offences

The New Act will aim to harmonise the criminal offences that have been created under the FSCA, the Financial Services (Information Gathering and Co-operation) Act and the Supervisory Acts. Currently there are inconsistencies in the definitions and treatment of offences under each Act. Our view is that there must be a clear public interest justification for all offences including those related to a part of the market, e.g., market abuse offences and some of the offences related to specific sectors.

5.9 Enforcement

Our proposal is to extend the powers of the FSC in relation to firms and individuals, harmonise them across sectors and introduce a new approach to the conduct of enforcement cases.

Currently, the FSC’s powers vary across sectors, creating significant differences in the action that the FSC can take against firms. Having a broader suite of powers for all sectors will enable the FSC to act proportionately

in disciplinary cases, depending on factors such as the nature of the wrongdoing, its scale (e.g., whether there is a systemic problem), the duration of the wrongdoing, whether consumers/clients have been prejudiced, and how the matter was identified (by the firm itself or by another means such as supervisory engagement).

5.10 Financial Services Ombudsman

An Ombudsman will be established enabling consumers of financial and some professional services to refer complaints to an independent Ombudsman in the event that they and the firm with whom they have a dispute cannot reach a satisfactory outcome to the complaint. The Ombudsman will be independent of Government and the FSC.

We propose that the Ombudsman be accessible to individual and microenterprise consumers of all financial, and some professional services firms, licensed by the FSC, as well as money lenders⁵. By microenterprise we mean an enterprise that employs fewer than ten persons and has an annual turnover or annual balance sheet that does not exceed EUR 2 million. Complaints made by Gibraltar residents in respect of services provided to them on a cross-border basis by firms licensed in other jurisdictions should be caught within the voluntary jurisdiction of the Ombudsman. The legislation will also list certain scenarios in which the Ombudsman will be able to dismiss complaints in order to deter the lodging of unreasonable or frivolous complaints.

The Ombudsman services will be free of charge for consumers and will be an efficient and effective alternative means of resolving matters without recourse to the courts. This represents a further significant step forward in consumer protection.

⁵At the present time, we do not propose to include complaints relating to insolvency practitioners and auditors within the scheme.

6. Bringing the new regulatory regime into being

6.1 Implementation

The transition to the new regulatory regime will be a two stage process.

Stage one will involve the creation of the New Act. The New Act will replace the vast majority of current primary financial and professional services legislation as well as certain financial and professional services regulations, which we consider should be in primary legislation.

Stage two will be the preparation of the Handbook, which will contain the majority of the current financial and professional services regulations as well as elements of current financial and professional services primary legislation that will not be incorporated into the New Act.

The aim is for the New Act and Handbook to come into force in late 2016. This approach would make the transition to the new regime easier to assimilate for the industry as all the current primary and secondary legislation would be repealed at the same time.

Some elements of the new regime (including those that are linked to the EU Directives) will come into force in 2015 as they need to be implemented ahead of the timetable for the New Act. The major example of this is Solvency II, but there are others such as the new Financial Services Ombudsman and changes to the compensation arrangements. The approach to addressing these elements is to amend existing legislation/regulations, creating building blocks for the New Act and, in due course, to bring those changes within the New Act and Handbook.

There will be extensive consultation on the changes to be introduced by the new regime. The changes in significant areas such as the FSC enforcement powers, tied agents and the senior persons regime, will be subject to consultation in Q1 2015 on the proposals, prior to the general consultation paper on the New Act, which is set to be issued in 2015/2016. Consultations on the Handbook are still under consideration but we anticipate consulting on the Handbook as a whole in 2015/2016.

6.2 Assessing the impact of change

In introducing the New Act and Handbook, the Government of Gibraltar and the FSC will take into account the following considerations, assessed through consultation with industry representatives:

- a. cost benefit;
- b. competition; and
- c. equality and human rights.

Our initial analysis is that the benefits attached to the plans set out in this paper will outweigh the implementation and ongoing costs for firms and the FSC. They will also facilitate competition without jeopardising the competitive position of FSC regulated firms internally, since they should result in greater responsiveness on the part of the FSC.

The implementation timetable will be transparent, enabling firms to prepare adequately for the new regime.

6.3 Timetable

The high-level timetable for the legislative reform programme is as follows:

January 2015 - June 2015 - Consultation on key aspects of the New Act, consultation on Ombudsman arrangements and consultation on compensation arrangements⁶.

Mid - late 2015 - The Financial Services Ombudsman comes into being.

2015/ 2016 - Consultations on New Act and Handbook, and New Act and implementing legislation made.

2016 - Second Handbook consultation, Handbook made, New Act and Handbook come into force.

This does not include the timetable for all of the directives that will come into effect during the lifetime of the reform programme. These will be set out in the consultations to follow.

⁶The Ombudsman arrangements will implement the Alternative Dispute Resolution Directive 2013/11/EU and changes to the compensation arrangements will implement the Deposit Guarantee Scheme Directive 2014/49/EU.

7. Keeping you informed

The Legislative Reform Programme is a significant undertaking for the Government, the FSC and firms. In addition to the planned consultations, the Government and FSC will keep stakeholders informed of developments by various means, including a page on the FSC's website dedicated to the Programme; and meetings with representative bodies which are planned to commence in early 2015 and continue throughout the lifetime of the reform programme.

Appendix

Draft structure of the Financial and Professional Services Regulatory Handbook

Element of Handbook	Commentary
Foundational requirements	These apply to all firms. Sections apply also to individuals who are approved by the FSC (Individually Regulated Persons)
<ul style="list-style-type: none"> • Threshold conditions • Ethical requirements - integrity, honesty, confidentiality • Fundamental rules - systems and controls, competence of staff, co-operation with regulator, treating customers fairly, etc. • Individually Regulated Persons requirements 	<p>What ethical considerations should be taken into account when a firm/individual makes decisions.</p> <p>Things that should be done to ensure the prudent and principled operation of firms.</p> <p>Requirements covering the conduct of Individually Regulated Persons.</p>
Conducting business	Some parts of this section will be activity-specific
<ul style="list-style-type: none"> • General conduct - includes client categorisation, marketing and advice, prospectuses, information for clients, know your client, status disclosure • Conduct specific to insurance mediation, giving investment advice, acting as an insolvency practitioner, acting as an auditor • Duties of pension trustees, administrators and auditors of pension schemes 	<p>There are likely to be different sets of rules for these activities, or different parts of one set of regulations.</p>
Enterprise risk management	Some parts of this section will be activity-specific, e.g. the capital requirements
<ul style="list-style-type: none"> • Enterprise-wide requirements re systems and controls • Corporate governance and risk management, including outsourcing • Prudential requirements for different types of firm - capital adequacy and liquidity • Investment rules for occupational and other pensions • Handling of client assets • Duties of auditors of Financial Services firms 	

Element of Handbook

Commentary

Regulatory engagement

- Authorisation
- Supervision - includes decision making, the fit and proper test for Individually Regulated Persons, reporting and notification requirements, applications for individual guidance and waivers, risk assessments - includes all supervisory tools.
- Enforcement
- Skilled persons
- Fees
- Accountability of the FSC

Protection of clients

- Complaints handling - including Financial Services Ombudsman Regulations
- Compensation schemes

Listing and trading

- Listing requirements
- Market abuse

Using the Handbook

- Interpretation
- General guidance

Notes

1 We will try to harmonise as much as possible the obligations on firms/individuals and regulatory processes that are subject to rules.

2 Each element under the sections of the Handbook will be a set of regulations and will have its own application provisions.

3 For insolvency practitioners and auditors, we will aim to integrate the requirements into this structure, rather than having separate sections for them.

4 Guidance and information will be located online with the regulations.

5 The Handbook will be online so will not necessarily follow this linear form.

6 We hope to be able to use software to enable firms to only view those regulations that are relevant to them.

7 The items listed here are for illustration and do not constitute an exhaustive list of all regulations.

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Suite 3, Ground Floor
Atlantic Suites
Europort Avenue
Gibraltar
www.fsc.gi
info@fsc.gi

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