

Financial Services Bill 2019

Legislative Reform Programme



Current Regime



Need for:

- x Substantive reform & consolidation
- x Consistency across sectors
- x Procedural clarity
- x Fit for purpose regulatory & legislative framework

LRP
Introduces

LRP Regime:

Strategically important for Gibraltar & GFSC



- ✓ Powers & procedures, modernised, updated & harmonised
- ✓ Standardised approach to authorisation
- ✓ Introduction of Regulated Individuals' regime
- ✓ Independent Decision Making Committee
- ✓ Existing legislation consolidated & rationalised
- ✓ Streamlining of regulatory framework
- ✓ Benefits to the financial services industry

Main Architectural Parts of the New Act

Umbrella system for a single authorisation process under a consolidated Act

Note:

The following sectors instead use the approaches currently in place:

- Statutory auditors & audit firms
- Insolvency practitioners
- Regulated products (CIS, occupational & personal pension schemes)

Part 2 Regulated & Prohibited Activities

Sets out:

- What constitutes a regulated activity
- Excluded activities
- General prohibition
- Restrictions on financial promotion

To carry out a regulated activity, a person must be:

- An **authorised person**
 - Regulated firm
 - EEA firm
- An **exempt person**
E.g. appointed representatives & tied agents

Part 6 Authorisation & Exemptions

Sets out:

- Kinds of authorised persons
- Provisions for exempt persons
- Provisions for exercise of rights under single market directives

Two types of procedures:

- Regulated firms apply for **permission** under Part 7
- EEA firms qualify for **authorisation** by satisfying establishment or services conditions

Part 7 Permissions & Threshold Conditions

Sets out:

Threshold conditions

- Must be met to obtain permission
- Apply to all regulated firms
- Supplemented by **Sector Specific Regulations (SSRs)**
- **Examples**
 - Location of offices
 - Business to be conducted in a sound & prudent manner
 - Firm must be able to be effectively supervised
 - Fit & proper requirements

General supervisory powers

Examples

- Variation / cancellation of permission
- Imposition of requirements
- Exercise of power in support of overseas regulator

Requirement to be reasonable & proportionate

Grounds

- Failing or likely to fail to meet Threshold Conditions
- Significant risk to designated objectives
- No business in the last 12 months
- Sector-specific grounds

Procedure

- Warning / written notice, representations, Decision Making Committee (DMC), decision notice, appeal
- Directions can take effect immediately in urgent cases

Regulated Individuals (RIs) & Regulated Functions (RFs)


- Individuals performing RFs will require GFSC approval
- Applies to regulated firms, audit firms & incoming branches

Types of RF

Those that apply to all regulated & audit firms	Sector-specific RFs		Schedule 15 RFs (can be waived by GFSC and do not apply if not relevant to regulated activity carried out by firm)
<ul style="list-style-type: none"> • Director • Head of Compliance • MLRO • Partner / sole trader • Branch manager 	<p>AIFM Head of Investment Head of Internal Audit Head of Risk Management Head of Account (Valuations)</p> <p>UCITS Head of Investment Head of Account (Valuations) Head of Internal Audit Head of Risk Management</p> <p>Regulated Market Head of Markets (if trading) Head of Regulation</p> <p>Non-Bank Mortgage Creditors Head of Credit</p> <p>Incoming Branches Branch Manager MLRO</p>	<p>Insurance Head of Actuarial Function Head of Internal Audit Head of Risk Management Head of Finance</p> <p>DLT Head of Security Head of Technology Head of Risk Management Head of Finance</p> <p>Credit Institutions Head of Finance Chief Operating Officer Head of Treasury Head of Risk Management Head of Internal Audit</p> <p>Investment Firms Chief Investment Officer Head of Risk Management</p>	<ul style="list-style-type: none"> • Chair • Chief executive / MD • Chair of Risk Committee • Chair of Audit Committee • Head of Credit • Head of Underwriting • Head of Claims • Head of Markets • Head of Business Continuity • Head of Customer Care • Head of Trading • Head of Operations • Head of Finance • Chief Operating Officer • Head of Client Asset Oversight <p> • Companies only • DLT only • Regulated Markets only • Credit institutions only • Investment firms only • Insurance or reinsurance undertaking or intermediary </p> <p>Significant Influence Functions</p> <p>A person (“P”) exercises significant influence over a regulated firm if:</p> <ul style="list-style-type: none"> • P performs a regulated function; • P instructs or purports to instruct the person that performs a regulated function; or • The person that formally carries out the regulated function performs the role in accordance with P’s wishes or instructions

Regulated Individuals (RIs) & Regulated Functions (RFs)

Approvals

Criteria	Approval Process	Other Considerations	Cessation of RI Function																												
<ul style="list-style-type: none"> F&P Capacity to perform RF 	 <pre> graph TD A[Pre-application vetting by applicant] --> B[Submission of application (inc. Statement of Responsibilities)] B --> C[Interview] C --> D[Consideration by GFSC (30 days)] </pre>	<table border="1"> <tr> <td data-bbox="741 454 996 606">Provisional approval</td> <td data-bbox="996 454 1549 606">Candidate will satisfy approval criteria, once specified requirements complied with in specified time</td> </tr> <tr> <td data-bbox="741 606 996 759">Conditional approval</td> <td data-bbox="996 606 1549 759">In exceptional circumstances, approval may be subject to conditions</td> </tr> <tr> <td data-bbox="741 759 996 1239" rowspan="2">Transitional arrangements</td> <td data-bbox="996 759 1549 1239"> RI approval granted to those ... <table border="1"> <tr> <td data-bbox="1037 825 1230 959">Currently approved by GFSC</td> <td data-bbox="1230 873 1319 916">OR</td> <td data-bbox="1319 825 1523 959">Previously considered F&P by GFSC</td> </tr> <tr> <td colspan="3" data-bbox="1037 982 1319 1025">Otherwise ...</td> </tr> <tr> <td data-bbox="1037 1039 1230 1216">They have 12 months to submit RI application</td> <td data-bbox="1230 1102 1319 1145">AND</td> <td data-bbox="1319 1039 1523 1216">GFSC has 6 months to consider application</td> </tr> </table> </td> </tr> </table>	Provisional approval	Candidate will satisfy approval criteria, once specified requirements complied with in specified time	Conditional approval	In exceptional circumstances, approval may be subject to conditions	Transitional arrangements	RI approval granted to those ... <table border="1"> <tr> <td data-bbox="1037 825 1230 959">Currently approved by GFSC</td> <td data-bbox="1230 873 1319 916">OR</td> <td data-bbox="1319 825 1523 959">Previously considered F&P by GFSC</td> </tr> <tr> <td colspan="3" data-bbox="1037 982 1319 1025">Otherwise ...</td> </tr> <tr> <td data-bbox="1037 1039 1230 1216">They have 12 months to submit RI application</td> <td data-bbox="1230 1102 1319 1145">AND</td> <td data-bbox="1319 1039 1523 1216">GFSC has 6 months to consider application</td> </tr> </table>	Currently approved by GFSC	OR	Previously considered F&P by GFSC	Otherwise ...			They have 12 months to submit RI application	AND	GFSC has 6 months to consider application	<table border="1"> <tr> <td data-bbox="1633 454 1867 759">Withdrawal of Approval</td> <td data-bbox="1867 454 2420 759"> Approval may be withdrawn if individual no longer satisfies approval criteria, including: <ul style="list-style-type: none"> serious misconduct misleading GFSC conviction of an offence </td> </tr> <tr> <td data-bbox="1633 759 1867 1196">Temporary position</td> <td data-bbox="1867 759 2420 1196"> Someone other than the RI may carry out the RF when: <table border="1"> <tr> <td data-bbox="1913 873 2384 916">RI ceases to be an RI</td> <td data-bbox="2109 925 2186 959">AND</td> <td data-bbox="1913 968 2384 1045">It is unreasonable to expect the firm to find a new RI immediately</td> </tr> <tr> <td colspan="3" data-bbox="2109 1053 2186 1088">AND</td> </tr> <tr> <td colspan="3" data-bbox="1913 1096 2384 1173">The firm is taking all the necessary steps to find a new RI</td> </tr> </table> </td> </tr> </table>	Withdrawal of Approval	Approval may be withdrawn if individual no longer satisfies approval criteria, including: <ul style="list-style-type: none"> serious misconduct misleading GFSC conviction of an offence 	Temporary position	Someone other than the RI may carry out the RF when: <table border="1"> <tr> <td data-bbox="1913 873 2384 916">RI ceases to be an RI</td> <td data-bbox="2109 925 2186 959">AND</td> <td data-bbox="1913 968 2384 1045">It is unreasonable to expect the firm to find a new RI immediately</td> </tr> <tr> <td colspan="3" data-bbox="2109 1053 2186 1088">AND</td> </tr> <tr> <td colspan="3" data-bbox="1913 1096 2384 1173">The firm is taking all the necessary steps to find a new RI</td> </tr> </table>	RI ceases to be an RI	AND	It is unreasonable to expect the firm to find a new RI immediately	AND			The firm is taking all the necessary steps to find a new RI		
Provisional approval	Candidate will satisfy approval criteria, once specified requirements complied with in specified time																														
Conditional approval	In exceptional circumstances, approval may be subject to conditions																														
Transitional arrangements	RI approval granted to those ... <table border="1"> <tr> <td data-bbox="1037 825 1230 959">Currently approved by GFSC</td> <td data-bbox="1230 873 1319 916">OR</td> <td data-bbox="1319 825 1523 959">Previously considered F&P by GFSC</td> </tr> <tr> <td colspan="3" data-bbox="1037 982 1319 1025">Otherwise ...</td> </tr> <tr> <td data-bbox="1037 1039 1230 1216">They have 12 months to submit RI application</td> <td data-bbox="1230 1102 1319 1145">AND</td> <td data-bbox="1319 1039 1523 1216">GFSC has 6 months to consider application</td> </tr> </table>	Currently approved by GFSC	OR	Previously considered F&P by GFSC	Otherwise ...			They have 12 months to submit RI application	AND	GFSC has 6 months to consider application																					
	Currently approved by GFSC	OR	Previously considered F&P by GFSC																												
Otherwise ...																															
They have 12 months to submit RI application	AND	GFSC has 6 months to consider application																													
Withdrawal of Approval	Approval may be withdrawn if individual no longer satisfies approval criteria, including: <ul style="list-style-type: none"> serious misconduct misleading GFSC conviction of an offence 																														
Temporary position	Someone other than the RI may carry out the RF when: <table border="1"> <tr> <td data-bbox="1913 873 2384 916">RI ceases to be an RI</td> <td data-bbox="2109 925 2186 959">AND</td> <td data-bbox="1913 968 2384 1045">It is unreasonable to expect the firm to find a new RI immediately</td> </tr> <tr> <td colspan="3" data-bbox="2109 1053 2186 1088">AND</td> </tr> <tr> <td colspan="3" data-bbox="1913 1096 2384 1173">The firm is taking all the necessary steps to find a new RI</td> </tr> </table>	RI ceases to be an RI	AND	It is unreasonable to expect the firm to find a new RI immediately	AND			The firm is taking all the necessary steps to find a new RI																							
RI ceases to be an RI	AND	It is unreasonable to expect the firm to find a new RI immediately																													
AND																															
The firm is taking all the necessary steps to find a new RI																															

Regulated Individuals (RIs) & Regulated Functions (RFs)

Other Information

An RI must report to the GFSC ...

- When they cease to be an RI (including reason)
- Any disciplinary action linked to performance of RFs
- Whenever there is a significant change in their responsibilities

Procedures

Standard procedures apply (warning notices, decision notices, representation, DMC, appeal) where GFSC proposes to:

- Refuse an approval
- Approve subject to conditions
- Withdraw an approval
- Refuse an application to vary an approval
- Vary an approval

The Decision-Making Committee (DMC)

Independent statutory committee of the GFSC

Members



3 Lawyers

- ✓ 10+ years professional standing
- ✓ Supreme Court Barrister / solicitor



3 Financial Services

- ✓ Significant experience in 1+ sectors regulated by GFSC

- 6 members in total, appointed by Minister
- Must be ordinarily resident in, or carrying out business in & from, Gibraltar
- The Chair must be one of the legal members
- A panel of 3 members required for decision. At least one must be a legal member.
- Chair must preside unless not present or unable to act (so other legal member presides)
- In urgent cases, the Chair alone may exercise the DMC's functions

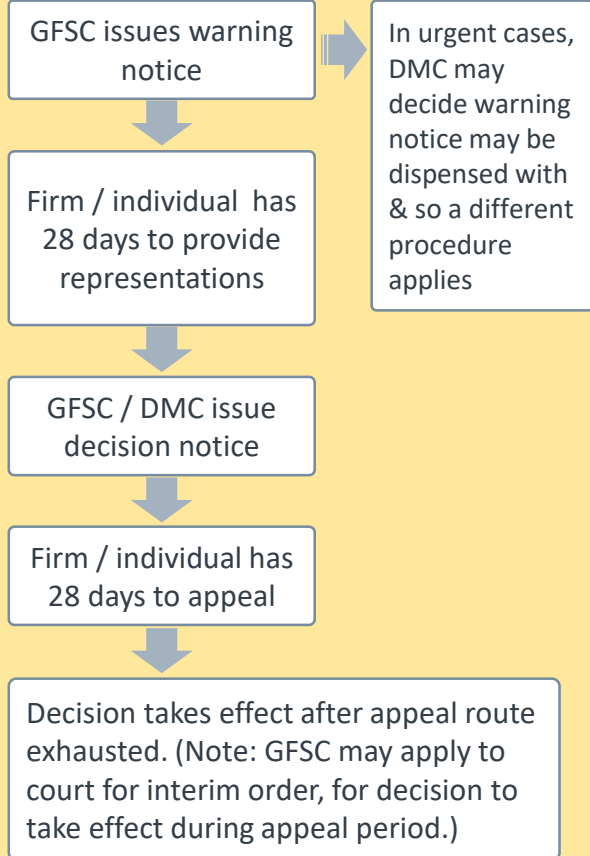
Purpose

The DMC makes 'specified regulatory decisions', as set out in Section 24 of the Bill

Examples include:

- To refer to the DMC:
 - Decision notices linked to supervisory or sanctioning powers (unless the recipient has agreed to the warning notice in writing)
 - 'Urgent' notices that impose a supervisory or sanctioning power without having been preceded by a warning notice
- To publish information about a sanctioning action
- To apply to the Court for permission to publish a decision which is, or may be, subject to an appeal
- To impose an inspection costs order
- To publish an inspector's report
- To refuse an RI's approval

Cross-Sectoral Sanctioning Powers

The Powers	Fining Limits	Exercising Powers																											
<ul style="list-style-type: none"> Gaps in current legislation are being addressed by the LRP The powers: <ul style="list-style-type: none"> Administrative penalty Public statement Cease & desist order Temporary suspension of permission order Prohibition order on individual They are exercisable on: <ul style="list-style-type: none"> Regulated firms & RIs All employees in a firm (where required by Directives) Powers are applicable once a regulatory requirement is breached & are different to investigatory or supervisory powers 	<p>For firms, it is the higher of ...</p> <table border="1" data-bbox="616 368 1274 768"> <tr> <td>Insurance, IDD, MiFID, UCITS & Banks</td> <td>DLT & AIFM</td> <td>All other sectors</td> </tr> <tr> <td>€5m</td> <td>£1m</td> <td>£0.25m</td> </tr> <tr> <td>10% of turnover</td> <td>5% of turnover</td> <td>5% of turnover</td> </tr> <tr> <td colspan="3">Double the benefit derived from a contravention</td> </tr> </table> <p>For RIs, it is the higher of ...</p> <table border="1" data-bbox="616 859 1274 1145"> <tr> <td>MiFID, UCITS & Banks</td> <td>IDD</td> <td>Ins.</td> <td>DLT & AIFM</td> <td>All other sectors</td> </tr> <tr> <td>€5m</td> <td>€0.7m</td> <td>£0.25m</td> <td>£0.25m</td> <td>£0.125m</td> </tr> <tr> <td colspan="5">Double the benefit derived from a contravention</td> </tr> </table>	Insurance, IDD, MiFID, UCITS & Banks	DLT & AIFM	All other sectors	€5m	£1m	£0.25m	10% of turnover	5% of turnover	5% of turnover	Double the benefit derived from a contravention			MiFID, UCITS & Banks	IDD	Ins.	DLT & AIFM	All other sectors	€5m	€0.7m	£0.25m	£0.25m	£0.125m	Double the benefit derived from a contravention					<p>Procedure</p>  <pre> graph TD A[GFSC issues warning notice] --> B[Firm / individual has 28 days to provide representations] B --> C[GFSC / DMC issue decision notice] C --> D[Firm / individual has 28 days to appeal] D --> E[Decision takes effect after appeal route exhausted. (Note: GFSC may apply to court for interim order, for decision to take effect during appeal period.)] A -.-> F[In urgent cases, DMC may decide warning notice may be dispensed with & so a different procedure applies] </pre> <p>GFSC must follow ...</p> <ul style="list-style-type: none"> Criteria for sanctioning actions Enforcement guide, including fining policy <p>Publication</p> <ul style="list-style-type: none"> DMC to take publication decisions GFSC may publish details of sanctioning actions taken on its website Publication mandatory under some directives Information published must be limited to: <ul style="list-style-type: none"> Identity of person Type & nature of contravention GFSC will have restrictions on publication
Insurance, IDD, MiFID, UCITS & Banks	DLT & AIFM	All other sectors																											
€5m	£1m	£0.25m																											
10% of turnover	5% of turnover	5% of turnover																											
Double the benefit derived from a contravention																													
MiFID, UCITS & Banks	IDD	Ins.	DLT & AIFM	All other sectors																									
€5m	€0.7m	£0.25m	£0.25m	£0.125m																									
Double the benefit derived from a contravention																													

Cross-Sectoral Investigatory Powers

Introduction

- Based on the Financial Services (Information Gathering & Cooperation) Act 2013 ('IGCA')
- Some current policy has been rationalised (particularly for the appointment & cost of inspectors, and removal of some appeal rights)

Skilled Person Report

GFSC required to publish a policy statement on how it will exercise this power. Requires Minister's consent

On-site Inspection Power

- Consistent across all sectors
- Requires consent of the firm
- GFSC needs to give reasonable notice
- Inspection has to be at reasonable times

Inspection Costs Orders

- GFSC pays for inspectors
- DMC may require costs contribution from relevant party, if found culpable of material contravention. DMC must consider:
 - Reasonableness & proportionality of costs incurred
 - Reasonableness of GFSC's decision to appoint an external inspector
 - Proportionality of imposing the requirement
 - The extent to which other persons may be liable for the inspector's costs
 - Whether it is just & equitable
- The costs contribution can be equal to all or part of the costs incurred by the GFSC
- The costs order is appealable. The Court must have regard to the above

Transitional Provisions

Carrying out existing financial services activities

	Current Regime	New Act
Regulated activities	Authorised, licensed etc.	Permission automatically granted
Regulated products*	Authorised, approved etc.	Authorisation, approval automatically granted
Statutory auditors & audit firms	Approved or registered	Approval or registration automatically granted
Insolvency practitioners	Licensed	Licence automatically granted

*CIS, personal & occupational pension schemes

Outstanding applications

These will be dealt with per the equivalent activity under the new Act

Offences & enforcement activity

Existing procedures will still apply to actions commenced before the enactment is repealed (except for publication & inspector's report costs).

Any penalty or sanction under repealed enactments will still apply to:

- Any investigation or proceedings for offences (alleged to have been) committed, before LRP; or
- Any supervisory or enforcement activity:
 - taken by the GFSC before LRP, or
 - brought to the GFSC's attention before LRP

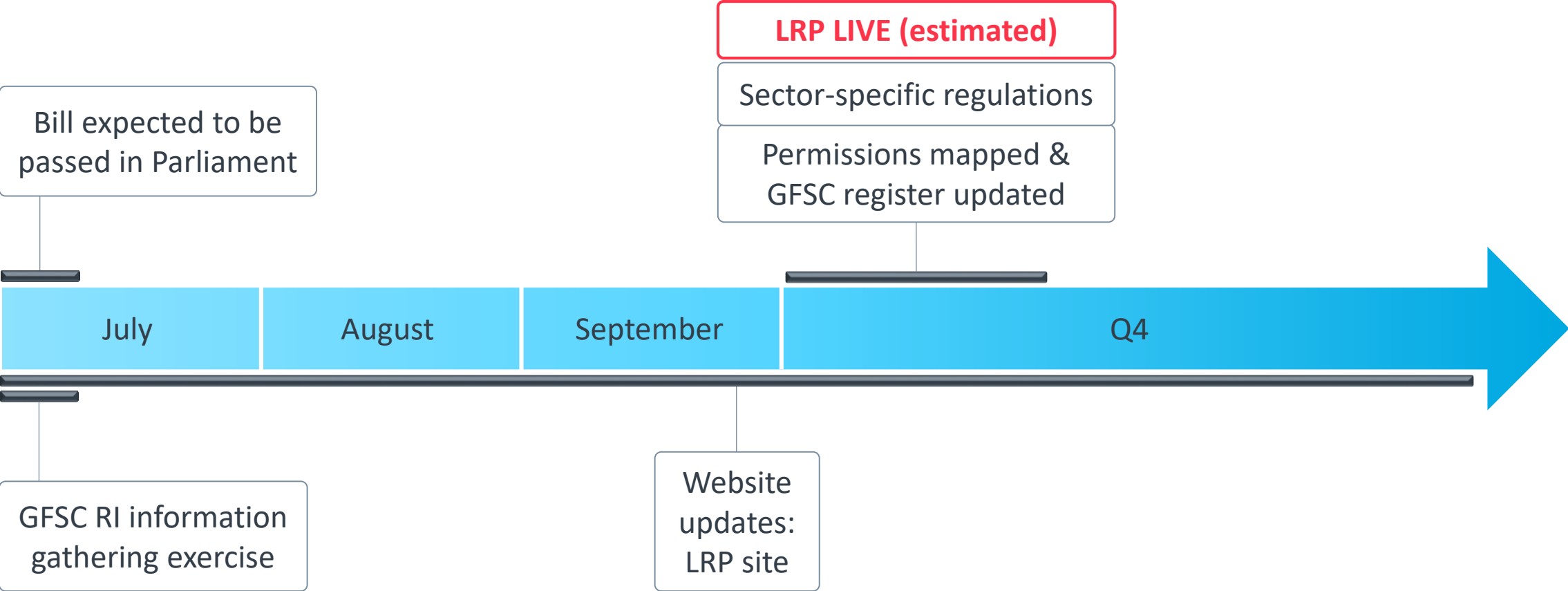
Appeals

Appeals commenced ...

- pre-LRP, or
- post LRP, but relating to a pre-LRP decision

... must be determined in accordance with the repealed enactment

Coming Up Next ...



For external queries, please contact LRP@gfsc.gi

Questions

Comments