

Subsidiary Legislation made under s.53.

**FINANCIAL SERVICES (PAYMENT SERVICES)  
REGULATIONS 2018**

**(LN. 2018/010)**

*Commencement*      **13.1.2018**

Amending enactments	Relevant current provisions	Commencement date
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LN. 2018/103	<i>Notice of Corrigendum</i>	
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**Transposing –**  
Directive (EU) 2015/2366

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*In exercise of the powers conferred upon the Minister by section 53 of the Financial Services (Investment and Fiduciary Services) Act, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and in order to transpose Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, the Minister has made the following Regulations—*

**PART 1  
PRELIMINARY**

**Title and commencement.**

1.(1) These Regulations may be cited as the Financial Services (Payment Services) Regulations 2018.

(2) These Regulations come into operation on 13th January 2018.

**Overview.**

2.(1) These Regulations make provision concerning—

- (a) the transparency of conditions and information requirements for payment services; and
- (b) the respective rights and obligations of payment service users and payment service providers in relation to the provision of payment services as a regular occupation or business activity.

(2) In these Regulations, a “payment service provider” means any of the following persons when carrying out payment services—

- (a) payment institutions, including—
  - (i) small payment institutions within the meaning of regulation 32; and
  - (ii) account information service providers which are treated as a payment institution in accordance with regulation 33;
- (b) EEA payment institutions exercising passport rights in Gibraltar;

- (c) credit institutions within the meaning of Article 4(1) of the Capital Requirements Regulation, including branches of those institutions within the EEA, regardless of whether the head offices of those branches are located within the EEA or (in accordance with Article 47 of the Capital Requirements Directive) outside the EEA;
- (d) electronic money institutions within the meaning of Article 2(1) of the E-Money Directive, including branches within the EEA of electronic money institutions with head offices outside the EEA, so far as the payment services provided by those branches are linked to the issuance of electronic money;
- (e) post office giro institutions entitled under Gibraltar law to provide payment services;
- (f) the ECB and the national central banks of EEA States, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and
- (g) EEA States and their regional or local authorities, other than when carrying out functions of a public nature.

**Application.**

3.(1) These Regulations apply to payment services provided in or from Gibraltar.

(2) Parts 3 and 4 apply to payment transactions provided from an establishment in Gibraltar maintained by a payment service provider or its agent where—

- (a) the transaction is in an EEA currency; and
- (b) both the payer's payment service provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located in Gibraltar or elsewhere in the EEA.

(3) Part 3 (other than regulations 44(1)(b) and 54(a) and paragraph 2(e) of Schedule 3) and Part 4 (other than regulations 79 to 83) apply to payment transactions provided from an establishment in Gibraltar maintained by a payment service provider or its agent where—

- (a) the transaction is in a currency other than an EEA currency; and



- (b) both the payer's payment service provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located in Gibraltar or elsewhere in the EEA;

but only in respect of any parts of the payments transaction which is carried out in the EEA.

(4) Part 3 (other than regulations 44(1)(b) and 54(a) and paragraphs 2(e) and 5(g) of Schedule 3) and Part 4 (other than regulations 60(2) and (4), 74, 75, 79, 81(1) and (2), 86 and 89) apply to payment transactions provided from an establishment in Gibraltar maintained by a payment service provider or its agent where—

- (a) the transaction is in any currency; and
- (b) only one payment service provider is located in Gibraltar or elsewhere in the EEA;

but only in respect of any part of the payment transaction which is carried out in the EEA.

(5) In sub-regulations (2) and (3) “an EEA currency” means sterling, euro or any other currency of an EEA State.

(6) These Regulations do not apply to the Gibraltar Savings Bank.

### **Interpretation.**

4. In these Regulations—

“account information service” means an online service to provide consolidated information on one or more payment accounts held by a payment service user with either another payment service provider or with more than one payment service provider;

“account information service provider” means a payment service provider pursuing the business activity referred to in paragraph 1(h) of Schedule 1;

“account servicing payment service provider” means a payment service provider providing and maintaining a payment account for a payer;

“acquiring of payment transactions” means a payment service provided by a payment service provider contracting with a payee to accept

and process payment transactions, which results in a transfer of funds to the payee;

“agent” means a person who acts on behalf of a payment institution in providing payment services;

“authentication” means a procedure which allows a payment service provider to verify the identity of a payment service user or the validity of the use of a specific payment instrument, including the use of the user’s personalised security credentials;

“branch” means a place of business other than the head office which–

- (a) is a part of a payment institution;
- (b) has no legal personality; and
- (c) carries out directly some or all of the transactions inherent in the business of a payment institution;

and for the purposes of this definition, all the places of business set up in the same EEA State by a payment institution with a head office in another EEA State are to be regarded as a single branch;

“business day” means a day on which the relevant payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction;

“the Capital Requirements Directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time;

“the Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as amended from time to time;

“consumer” means an individual who is acting for purposes other than the individual’s trade, business or profession;

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

“credit transfer” means a payment service for crediting a payee’s payment account with a payment transaction or a series of payment transactions from a payer’s payment account by the payment service provider which holds the payer’s payment account, based on an instruction given by the payer;

“digital content” means goods or services which are produced and supplied in digital form, the use or consumption of which is restricted to a technical device and which do not include in any way the use or consumption of physical goods or services;

“direct debit” means a payment service for debiting a payer’s payment account, where a payment transaction is initiated by the payee on the basis of consent given by the payer to the payee, to the payee’s payment service provider or to the payer’s own payment service provider;

“durable medium” means any instrument which enables a payment service user to store information addressed personally to that payment service user in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;

“EBA” means the European Banking Authority established under Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24 November 2010;

“ECB” means the European Central Bank;

“EEA payment institution” has the meaning given in regulation 28(5);

“EEA State” means a Member State of the European Economic Area listed in Schedule 3 to the European Communities Act and, where the context requires, includes Gibraltar;

“electronic communications network” means a network as defined in Article 2(a) of Directive 2002/21/EC of the European Parliament and of the Council;

“electronic communications service” means a service as defined in Article 2(c) of Directive 2002/21/EC;

“electronic money” has the meaning given in Article 2(2) of the E-Money Directive;

“the E-Money Directive” means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as amended from time to time;

“framework contract” means a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;

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

“funds” means banknotes, coins, scriptural money or electronic money;

“group” means–

- (a) a group of undertakings which are linked to each other by a relationship referred to in Article 22(1), (2) or (7) of Directive 2013/34/EU; or
- (b) undertakings as defined in Articles 4 to 7 of Commission Delegated Regulation (EU) No 241/2014, which are linked to each other by a relationship referred to in Article 10(1) or Article 113(6) or (7) of the Capital Requirements Regulation;

“home EEA State” means either the EEA State in which–

- (a) a payment service provider’s registered office is situated; or
- (b) its head office is situated if, under its national law, it has no registered office;

“home State competent authority” means the competent authority in a payment service provider’s home EEA State;

“host EEA State” means the EEA State other than the home EEA State in which a payment service provider has an agent or a branch or provides payment services;

“host State competent authority” means the competent authority in an EEA State, other than its home EEA State, in which a payment service provider has an agent or branch or provides payment services;

“issuing of payment instruments” means a payment service by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer’s payment transactions;

“means of distance communication” means a method for concluding a payment services contract which may be used without the simultaneous physical presence of the payment service provider and the payment service user;

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

“the Money Laundering Directive” means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as amended from time to time;

“money remittance” means a payment service where funds are received from a payer, without any payment account being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee, to another payment service provider acting on the payee’s behalf or where the funds are received on behalf of and made available to the payee;

“own funds” means own funds within the meaning of Article 4(1) of the Capital Requirements Regulation, of which (as defined in that Regulation)–

- (a) the amount of Tier 2 capital is equal to or less than one third of the amount of Tier 1 capital; and
- (b) at least 75% of the Tier 1 capital is in the form of Common Equity Tier 1 capital;

“passport rights” means a person’s right to establish or provide payment services in an EEA State other than the person’s home EEA State—

- (a) in accordance with the Treaty on the Functioning of the European Union as applied in the EEA; and
- (b) subject to the Payment Services Directive;

“payee” means a person who is the intended recipient of funds which have been the subject of a payment transaction;

“payer” means a person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, who gives a payment order;

“payment account” means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

“payment brand” means any material or digital name, term, sign, symbol or combination of them, capable of denoting under which payment card scheme card-based payment transactions are carried out;

“payment initiation service” means a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider;

“payment initiation service provider” means a payment service provider pursuing business activities referred to in paragraph 1(g) of Schedule 1;

“payment institution” means a legal person that has been granted authorisation in accordance with regulation 12 to provide and execute payment services throughout the EEA;

“payment instrument” means a personalised device or procedure, agreed between a payment service user and a payment service provider, used in order to initiate a payment order;

“payment order” means an instruction by a payer or payee to its payment service provider requesting the execution of a payment transaction;

“payment service” means any of the activities specified in Part 1 of Schedule 1, other than any of the activities specified in Part 2 of that Schedule;

“payment service provider” has the meaning given in regulation 2(2);

“payment service user” means a person making use of a payment service in the capacity of payer, payee, or both;

“the Payment Services Directive” means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, as amended from time to time;

“payment system” means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing or settlement of payment transactions;

“payment transaction” means an act, initiated by or on behalf of the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;

“personalised security credentials” means personalised features provided by a payment service provider to a payment service user for the purposes of authentication;

“reference exchange rate” means the exchange rate which is used as the basis to calculate any currency exchange and which is made available by the payment service provider or comes from a publicly available source;

“reference interest rate” means the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source which can be verified by both parties to a payment service contract;

“remote payment transaction” means a payment transaction initiated via the internet or through a device that can be used for distance communication;

“sensitive payment data” means data, including personalised security credentials which can be used to carry out fraud but, for the activities of payment initiation service providers and account information service providers, excludes the name of the account owner and the account number;

“strong customer authentication” means an authentication based on the use of two or more elements categorised as–

- (a) knowledge (something only the user knows);
- (b) possession (something only the user possesses); and
- (c) inherence (something the user is);

that are independent, in that the breach of one does not compromise the reliability of the others, and is designed in such a way as to protect the confidentiality of the authentication data;

“unique identifier” means a combination of letters, numbers or symbols specified to a payment service user by a payment service provider and to be provided by the payment service user to identify unambiguously another payment service user or the payment account of that other payment service user for a payment transaction;

“value date” means a reference time used by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account.

## PART 2 PAYMENT SERVICE PROVIDERS

### *The register*

#### **The register.**

5.(1) The FSC must establish and maintain a register in which the following are entered in separate lists–

- (a) payment institutions and their agents;
- (b) any branches of payment institutions which provide payment services in EEA States;
- (c) persons (and their agents) benefiting from an exemption under the following provisions–
  - (i) small payment institutions under regulation 32; or
  - (ii) account information service providers under regulation 33; and



- (d) institutions that are entitled to provide payment services but which, in accordance with Article 2(5) of the Payment Services Directive, are exempt from all or any part of these Regulations.
- (2) The register must identify the payment services for which a payment institution is authorised or the payment services for which a person is registered.
- (3) The register must include details of any withdrawal of an authorisation and any exemptions under regulation 32 or 33.
- (4) The FSC must–
  - (a) publish the register online and make it available for public inspection;
  - (b) update the register without delay; and
  - (c) notify the EBA without delay of–
    - (i) the information entered in the register;
    - (ii) any changes to that information; and
    - (iii) the reasons for the withdrawal of an authorisation or any exemption under regulation 32 or 33.

*Authorisation of payment institutions*

**Applications for authorisation.**

6.(1) An application for authorisation as a payment institution must be submitted to the FSC, in the form and manner it may direct, together with the following–

- (a) a programme of operations setting out, in particular, the type of payment services envisaged;
- (b) a business plan, including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;
- (c) evidence that the payment institution holds the initial capital required under regulation 8;

- (d) for payment institutions referred to in regulation 11(1), a description of the measures taken for safeguarding payment service users' funds in accordance with regulation 11;
- (e) a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that those governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;
- (f) a description of the procedure in place to monitor, handle and follow up a security incident and security related customer complaints, including an incidents reporting mechanism which takes account of the payment institution's notification obligations under regulation 93;
- (g) a description of the process in place to file, monitor, track and restrict access to sensitive payment data;
- (h) a description of business continuity arrangements, including a clear identification of the critical operations, effective contingency plans and a procedure to regularly test and review the adequacy and efficiency of such plans;
- (i) a description of the principles and definitions applied for the collection of statistical data on performance, transactions and fraud;
- (j) a security policy document, including a detailed risk assessment in relation to its payment services and a description of security control and mitigation measures taken to adequately protect payment service users against the risks identified, including fraud and illegal use of sensitive and personal data;
- (k) for payment institutions subject to the obligations in relation to money laundering and terrorist financing under the Money Laundering Directive and Regulation (EU) 2015/847 of the European Parliament and of the Council, a description of the internal control mechanisms which the applicant has established in order to comply with those obligations;
- (l) a description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and of the off-site and on-site checks that the applicant undertakes to perform on them at least

annually, as well as a description of outsourcing arrangements, and of its participation in a national or international payment system;

- (m) the identity of persons holding in the applicant, directly or indirectly, qualifying holdings within the meaning of Article 4(1) of the Capital Requirements Regulation, the size of their holdings and evidence of their suitability taking into account the need to ensure the sound and prudent management of a payment institution;
- (n) the identities of—
  - (i) the directors and other persons responsible for the management of the payment institution; and
  - (ii) where relevant, other persons responsible for the management of the payment services activities of the payment institution;

and evidence that they are of good repute and possess appropriate knowledge and experience to perform payment services;

- (o) where applicable, the identity of its statutory auditors and audit firms;
- (p) the applicant's legal status and articles of association;
- (q) the address of the applicant's head office.

(2) For the purposes of sub-regulation (1)(d) to (f) and (l), the applicant must provide a description of its audit arrangements and the organisational arrangements it has set up with a view to taking all reasonable steps to protect the interests of its users and to ensure continuity and reliability in the performance of payment services.

(3) The security control and mitigation measures under sub-regulation (1)(j) must—

- (a) indicate how they ensure a high level of technical security and data protection, including for the software and IT systems used by the applicant or the undertakings to which it outsources the whole or part of its operations;
- (b) include the security measures required by regulation 92(1); and

- (c) take account of any guidelines on security measures issued by the EBA under Article 95(3) of the Payment Services Directive.

(4) An undertaking that applies for authorisation to provide payment services in paragraph 1(g) of Schedule 1 must, as a condition of authorisation, hold professional indemnity insurance covering the territories in which it offers services, or a comparable guarantee against liability, to ensure that it can cover its liabilities under regulations 71, 87 and 89.

(5) An undertaking that applies for registration to provide payment services in paragraph 1(h) of Schedule 1 must, as a condition of registration, hold professional indemnity insurance covering the territories in which it offers services, or a comparable guarantee against liability, to ensure that it can cover its liabilities to any account servicing payment service provider or payment service user resulting from unauthorised or fraudulent access to or use of payment account information.

(6) In specifying the minimum monetary amount of any professional indemnity insurance or comparable guarantee required under sub-regulation (4) or (5), the FSC must have regard to any guidelines issued by the EBA under Article 5(4) of the Payment Services Directive and any regulatory technical standards adopted by the European Commission under Article 5(6) of that Directive.

#### **Qualifying holdings.**

7.(1) A person who intends to make a proposed acquisition in respect of a payment institution (a “proposed acquisition”) must, before doing so, notify the FSC in accordance with sub-regulation (5).

(2) A person intends to make a proposed acquisition if that person proposes, whether directly or indirectly—

- (a) to acquire a qualifying holding in a payment institution; or
- (b) to increase a qualifying holding in a payment institution so that—
  - (i) the proportion of voting rights or capital held would be or exceed 20%, 30% or 50%; or
  - (ii) the payment institution would become a subsidiary of the person making the proposed acquisition.

(3) A person must notify the FSC in accordance with sub-regulation (5) before the person, whether directly or indirectly–

- (a) disposes of a qualifying holding in a payment institution; or
- (b) reduces a qualifying holding in a payment institution so that–
  - (i) the proportion of voting rights or capital held would be less than 20%, 30% or 50%; or
  - (ii) the payment institution would cease to be a subsidiary of the person making the disposal.

(4) In sub-regulations (2) and (3), “qualifying holding” has the same meaning as in the Capital Requirements Regulation.

(5) Notice of a proposed acquisition or of a disposal to which sub-regulation (3) applies must be given in advance to the FSC in writing, in the form and manner it may direct, and must include–

- (a) the size of the holding to be acquired or disposed of; and
- (b) in the case of an acquisition, the information required under section 54(4) of the Financial Services (Banking) Act.

(6) If the FSC has reasonable grounds for considering that the influence exercised by a person making a proposed acquisition is likely to operate to the detriment of the prudent and sound management of the payment institution concerned, the FSC may oppose the proposed acquisition and take appropriate steps to resolve that situation, including–

- (a) imposing sanctions on the directors and other persons responsible for the management of the payment institution;
- (b) directing that the exercise of the voting rights of the shares held by the shareholders or members are to be suspended; or
- (c) applying to the Supreme Court for an injunction or other order that the FSC considers appropriate.

(7) Where the FSC opposes a proposed acquisition it must inform the person concerned in writing of the decision and the reasons for it.

(8) If a person fails to comply with the obligation to provide the FSC with information in relation to a proposed acquisition or disposal before it takes

place, the FSC may take any of the steps specified in sub-regulation (6)(a) to (c).

(9) If a proposed acquisition takes place despite the opposition of the FSC then, regardless of any other sanction it may impose, the FSC may direct that—

- (a) the votes cast are a nullity; and
- (b) any further exercise of the corresponding voting rights is suspended.

(10) The Minister may by regulations make further provision to facilitate the operation of sub-regulations (6) to (9).

#### **Initial capital.**

8.(1) A payment institution, at the time of authorisation, must hold not less than the following initial capital—

- (a) EUR 20,000, where the payment institution only provides payment services in paragraph 1(f) of Schedule 1;
- (b) EUR 50,000, where the payment institution only provides payment services in paragraph 1(g) of Schedule 1; or
- (c) EUR 125,000, where the payment institution provides any of the payment services in paragraphs 1(a) to (e) of Schedule 1.

(2) For the purposes of sub-regulation (1) a payment institution's capital may comprise one or more of the Common Equity Tier 1 items in Article 26(1)(a) to (e) of the Capital Requirements Regulation.

#### **Own funds.**

9.(1) A payment institution's own funds must not fall below the higher of—

- (a) the amount of its initial capital, as determined under regulation 8; or
- (b) the amount of its own funds, calculated in accordance with regulation 10.

(2) The FSC must take any measures which are necessary to prevent the multiple use of elements which are eligible for inclusion in a payment institution's own funds where the payment institution—

- (a) belongs to the same group as another payment institution, credit institution, investment firm, asset management company or insurance undertaking; or
  - (b) has a hybrid character and carries out activities other than providing payment services.
- (3) The FSC may decide not to apply regulation 10 to payment institutions—
- (a) which are included in the consolidated supervision of the parent credit institution under the Capital Requirements Directive; and
  - (b) in respect of which the conditions in Article 7 of the Capital Requirements Regulation are met.

**Calculation of own funds.**

10.(1) Despite the initial capital requirements in regulation 8, payment institutions, other than those only offering payment services in either or both of paragraphs 1(g) or (h) of Schedule 1, must hold at all times own funds calculated in accordance with one of the three methods in Schedule 2 as the FSC may direct.

(2) The FSC, based on an evaluation of a payment institution's risk-management processes, risk loss data base and internal control mechanisms, may—

- (a) require the payment institution to hold an amount of own funds which is up to 20% higher than the amount which would result from the application of the method chosen in accordance with sub-regulation (1); or
- (b) permit the payment institution to hold an amount of own funds which is up to 20% lower than the amount which would result from the application of that method.

**Safeguarding requirements.**

11.(1) A payment institution which provides payment services in paragraphs 1(a) to (f) of Schedule 1 must safeguard any funds which it has received—

- (a) from, or for the benefit of, a payment service user for the execution of a payment transaction; or
- (b) from a payment service provider for the execution of a payment transaction on behalf of a payment service user;

by either complying with sub-regulations (2) to (4) or sub-regulations (5) and (6).

(2) A payment institution–

- (a) must keep funds to which sub-regulation (1) applies segregated from any other funds that it holds; and
- (b) where it continues to hold those funds at the end of the business day following the day on which they were received, must–
  - (i) deposit them in a separate account which it holds with a credit institution; or
  - (ii) invest them in such secure, liquid low-risk assets as the FSC may approve.

(3) An account in which funds or assets are placed in accordance with sub-regulation (2) must–

- (a) be designated so as to show that it is an account which is held for the purpose of segregating and safeguarding the funds or assets in accordance with this regulation; and
- (b) be used only for holding those funds or assets.

(4) No person other than the payment institution may have any interest in or right over any funds or assets placed in an account in accordance with sub-regulation (2).

(5) A payment institution must ensure that–

- (a) any funds to which sub-regulation (1) applies are covered by–
  - (i) an insurance policy with, or comparable guarantee provided by, an authorised insurer which does not belong to the same group as the payment institution; or



(ii) a comparable guarantee provided by a credit institution which does not belong to the same group as the payment institution; and

(b) the proceeds of any insurance policy or comparable guarantee are payable upon an insolvency event or if the payment institution is otherwise unable to meet its financial obligations into a separate account held by the payment institution which must—

(i) be designated so as to show that it is an account which is held for the purpose of safeguarding funds in accordance with this regulation; and

(ii) be used only for holding those proceeds.

(6) For the purpose of sub-regulation (5) an “insolvency event” means any of the insolvency events specified in section 3 of the Insolvency Act 2011.

(7) No person other than the payment institution may have any interest in or right over the proceeds placed in an account in accordance with sub-regulation (5).

(8) Where only a portion of any sum referred to in sub-regulation (1) is to be used for the execution of payment transactions (and the remainder is to be used for non-payment services), that portion of the funds which is to be used for payment transactions must be safeguarded in accordance with the requirements of that sub-regulation.

(9) Where the precise portion of any funds referred to in sub-regulation (8) which is attributable to the execution of a payment transaction is variable or unknown in advance, the funds which must be safeguarded in accordance with sub-regulation (1) are the amount which may be reasonably estimated, on the basis of historical data and to the satisfaction of the FSC, to be representative of the portion attributable to the execution of the payment transaction.

#### **Granting of authorisation.**

12.(1) An undertaking that intends to provide payment services must obtain authorisation as a payment institution before commencing the provision of payment services unless it is—

(a) an undertaking of a kind in regulation 2(2)(c) to (g); or

(b) benefits from an exemption under regulation 32 or 33.

(2) An authorisation may only be granted to an applicant which is a legal person established or incorporated under Gibraltar law and which–

- (a) has its head office and registered office in Gibraltar; and
- (b) carries on, or will carry on, at least part of its payment service business there.

(3) The FSC may grant an authorisation if –

- (a) the information and evidence accompanying the application complies with the requirements of regulation 6; and
- (b) having scrutinised the application, the FSC's overall assessment is favourable.

(4) Before granting an authorisation, the FSC may consult other relevant public authorities in Gibraltar.

(5) The FSC may grant an authorisation only if, taking into account the need to ensure the sound and prudent management of a payment institution, the FSC is satisfied that the payment institution has–

- (a) robust governance arrangements for its payment services business, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
- (b) effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed; and
- (c) adequate internal control mechanisms, including sound administrative and accounting procedures;

and that those arrangements, procedures and mechanisms are comprehensive and proportionate to the nature, scale and complexity of the payment services provided by the payment institution.

(6) Where a payment institution provides any of the payment services in paragraphs 1(a) to (g) of Schedule 1 and, at the same time, is engaged in other business activities, the FSC may require the payment institution to establish a separate entity for the payment services business, where the non-payment services activities of the payment institution impair or are likely to impair–

- (a) the payment institution's financial soundness; or

- (b) the FSC's ability to monitor the payment institution's compliance with its obligations under these Regulations.

(7) The FSC may refuse to grant an authorisation if, taking into account the need to ensure the sound and prudent management of a payment institution, the FSC is not satisfied as to the suitability of the shareholders or members that have qualifying holdings.

(8) The FSC must not grant an authorisation if it would be prevented from exercising its supervisory functions effectively by reason of—

- (a) any close links between the payment institution and any person;
- (b) the laws, regulations or administrative provisions of a territory outside of the EEA governing any person with which the payment institution has close links; or
- (c) any difficulties involved in the enforcement of those laws, regulations or administrative provisions;

and for this purpose “close links” has the same meaning as in Article 4(1) of the Capital Requirements Regulation.

(9) An authorisation is valid in all EEA States and allows the payment institution concerned, in exercise of its passport rights, to provide the authorised payment services throughout the EEA.

**Communication of the decision.**

13.(1) The FSC, within three months of receiving a complete authorisation application, must inform the applicant whether the authorisation has been granted or refused.

(2) If the FSC proposes to refuse an application for authorisation, it must give the applicant a warning notice.

(3) If the FSC decides to refuse an application for authorisation, it must give the applicant a decision notice.

**Withdrawal of authorisation.**

14.(1) The FSC may withdraw a payment institution's authorisation if the institution—

- (a) does not make use of the authorisation within 12 months, expressly renounces it or has ceased to engage in business for more than six months;
- (b) has obtained the authorisation through false statements or any other irregular means;
- (c) no longer meets the conditions under which authorisation was granted or fails to inform the FSC of any major development or major change in circumstances in this respect;
- (d) would constitute a threat to the stability of, or trust in, the payment system by continuing its payment services business; or
- (e) falls within any case where withdrawal is provided for in regulations made by the Minister under this regulation.

(2) If the FSC–

- (a) proposes to withdraw an authorisation, other than at the payment institution's request, it must give the payment institution a warning notice; and
- (b) decides to withdraw an authorisation, it must give the payment institution a decision notice.

(3) The FSC must make public the withdrawal of an authorisation, including in the register maintained under regulation 5.

#### **Maintenance of authorisation.**

15. A payment institution must promptly inform the FSC of any change that affects the accuracy of any information or evidence provided in accordance with regulation 6.

#### **Accounting and statutory audit.**

16.(1) The following apply, with any necessary modifications, to payment institutions–

- (a) Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions;

- (b) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC; and
- (c) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

(2) A payment institution's annual accounts and consolidated accounts must be audited by a statutory auditor or audit firm (within the meaning of the Financial Services (Auditors) Act 2009), unless it is exempt under Directive 2013/34/EU and, where applicable, Directive 86/635/EEC.

(3) A payment institution must provide the FSC with separate accounting information in respect of the payment institution's—

- (a) provision of payment services; and
- (b) carrying on of any activities in regulation 17(1);

and that information must be subject to an auditor's report prepared by, where applicable, the payment institution's statutory auditors or an audit firm.

(4) Regulation 65 of the Financial Services (Capital Requirements Directive IV) Regulations 2013 (duty of persons responsible for the legal control of annual and consolidated accounts) applies, with any necessary modifications, to the statutory auditor or audit firm of a payment institution in respect of its payment services activities.

**Other activities.**

17.(1) A payment institution, in addition to providing payment services, may engage in the following activities—

- (a) the provision of operational and closely related ancillary services, such as ensuring the execution of payment transactions, foreign exchange services, safekeeping activities, and the storage and processing of data;
- (b) the operation of payment systems (but without limiting regulation 34); and

- (c) business activities other than the provision of payment services, subject to any applicable European Union or Gibraltar law.

(2) Where a payment institution engages in the provision of one or more payment services, it may hold only payment accounts which are used exclusively for payment transactions.

(3) Any funds received by a payment institution from payment service users with a view to the provision of payment services does not constitute a deposit or other repayable funds within the meaning of the Financial Services (Banking) Act, nor electronic money.

(4) A Payment institution may only grant credit in relation to the provision of payment services in paragraph 1(d) or (e) of Schedule 1 if–

- (a) the credit is ancillary to, and granted exclusively in connection with, the execution of a payment transaction;
- (b) in the case of credit granted by a payment institution in exercise of its rights under regulations 12(9) and 27, the credit must be repaid within 12 months;
- (c) the credit is not granted from any funds received or held for the purpose of executing a payment transaction; and
- (d) the payment institution's own funds will at all times (to the satisfaction of the FSC) be appropriate in view of the overall amount of credit granted.

(5) Payment institutions must not conduct the business of taking deposits or other repayable funds within the meaning of the Financial Services (Banking) Act.

(6) These Regulations apply without limiting any statutory provision relating to consumer credit or the conditions for granting credit to consumers that is in conformity with European Union law.

*Other requirements*

**Use of agents and branches.**

18.(1) A payment institution that intends to provide payment services in Gibraltar through an agent must provide the FSC with the following information–

- (a) the name and address of the agent;
- (b) a description of the internal control mechanisms that the agent will use in order to comply with its obligations in relation to money laundering and terrorist financing under the Money Laundering Directive (which must be updated without delay if there is a material change to those particulars);
- (c) the identity of the directors and persons responsible for the management of the agent and, if the agent is not a payment service provider, evidence that they are fit and proper persons;
- (d) the payment services for which the agent is appointed; and
- (e) the unique identification code or number of the agent (if any).

(2) The FSC, within two months of receiving the information in sub-regulation (1) from a payment institution, must inform the payment institution whether the agent has been entered in the register maintained under regulation 5.

(3) Where the FSC considers that any information provided under sub-regulation (1) is incorrect, the FSC may—

- (a) take further steps to verify the information; and
- (b) where it has done so and is not satisfied that the information provided is correct, refuse to enter the agent in the register maintained under regulation 5.

(4) If the FSC—

- (a) proposes to refuse to enter an agent in the register, it must give the payment institution a warning notice; and
- (b) in the event that it decides to refuse to enter an agent in the register, it must give the payment institution a decision notice.

(5) An agent must not begin providing payment services until it has been entered in the register maintained under regulation 5.

(6) A payment institution must ensure that any agent or branch acting on its behalf informs payment service users of that fact.

(7) A payment institution must inform the FSC without undue delay of any change regarding its use of any agent or any entity to which its activities are outsourced.

(8) A payment institution that intends to provide payment services in another EEA State by engaging an agent or establishing a branch must follow the procedure set out in regulation 27.

### **Outsourcing.**

19.(1) A payment institution that intends to outsource any operational functions relating to its provision of payment services must inform the FSC, in the form and manner that the FSC may direct.

(2) A payment institution must not outsource an important operational function, including its information technology systems, unless all of the conditions in sub-regulation (3) are met.

(3) The conditions are that outsourcing must not—

- (a) be undertaken in a way which impairs—
  - (i) the quality of the payment institution's internal control;  
or
  - (ii) the FSC's ability to monitor and retrace the payment institution's compliance with these Regulations;
- (b) result in any delegation of responsibility by the payment institution's senior management;
- (c) alter the payment institution's relationship with and obligations towards its payment service users under these Regulations;
- (d) undermine any conditions with which the payment institution must comply in order to be and remain authorised under these Regulations; or
- (e) require the removal or variation of any condition to which the payment institution's authorisation is subject.

(4) For the purposes of sub-regulation (2), an operational function is to be regarded as important if a defect or failure in its performance would materially impair—



- (a) the payment institution's continuing compliance with any requirement of its authorisation under these Regulations;
- (b) its other obligations under these Regulations;
- (c) its financial performance; or
- (d) the soundness or continuity of its payment services.

(5) A payment institution must inform the FSC without undue delay of any change to its outsourcing arrangements.

**Liability.**

20.(1) A payment institution which relies upon on a third party for the performance of operational functions must take reasonable steps to ensure that the requirements of these Regulations are complied with.

(2) A payment institution remains fully liable for any acts of its employees, and of any agent, branch or entity to which its activities are outsourced.

**Record-keeping.**

21.(1) A payment institution must keep all appropriate records for the purpose of this Part for at least five years.

(2) This regulation applies without affecting the Money Laundering Directive or any other relevant European Union law.

*The competent authority and supervision*

**Designation of competent authorities.**

22.(1) The FSC is designated as the competent authority for the purpose of the Payment Services Directive and these Regulations and, in particular, is responsible for—

- (a) the authorisation and prudential supervision of payment institutions; and
- (b) monitoring and taking appropriate steps to ensure effective compliance with these Regulations.

(2) The FSC must maintain appropriate arrangements for the performance of its functions under these Regulations.

- (3) The FSC may exercise its powers under these Regulations—
- (a) directly under its own authority; or
  - (b) where appropriate, by application to or under the supervision of the courts, including by way of appeal where an application is not granted.

(4) The Minister must ensure that the European Commission is informed of the FSC's designation under sub-regulation (1), in accordance with Articles 22(1) and 100(5) of the Payment Services Directive.

(5) In exercising its functions under sub-regulation (1)(b), the FSC must have regard to any guidelines issued by the EBA under Article 100(6) of the Payment Services Directive.

#### **Supervision.**

23.(1) For the purposes of verifying compliance with this Part the FSC may, in particular—

- (a) require a payment institution to provide the FSC with any information it may need to monitor compliance, specifying the purpose of the request, as appropriate, and the time limit by which the information is to be provided;
- (b) carry out on-site inspections at a payment institution, at any of its agents or branches providing payment services, or at any entity to which its activities are outsourced;
- (c) issue directions, recommendations and guidelines; or
- (d) suspend or withdraw an authorisation in accordance with regulation 14.

(2) Any controls exercised by the FSC for verifying continued compliance with this Part must be proportionate, adequate and responsive to the risks to which payment institutions are exposed.

(3) Without limiting the procedures under these Regulations for the withdrawal of an authorisation or any other provision of Gibraltar law, the FSC may apply measures or impose penalties upon -

- (a) a payment institution which breaches any law, regulation or administrative provision concerning the pursuit or supervision or its payment service business; or
- (b) any person who effectively controls the business of the payment institution;

where those measures or penalties are aimed specifically at ending the breach or the cause of that breach.

(4) Despite the requirements of regulations 8, 9(1) and (2) and 10, the FSC may take one or more steps under sub-regulation (1) in order to ensure that a payment institution has sufficient capital for payment services, and, in particular, where its non-payment services activities impair its financial soundness or are likely to do so.

**Professional secrecy.**

24.(1) Without affecting cases covered by criminal law, any person who works or has worked for the FSC and any expert who acts or has acted on its behalf, is bound by the obligation of professional secrecy.

(2) Professional secrecy is to be applied strictly, in order to protect individual and business rights, in any exchange of information under regulation 25.

(3) In applying this regulation, Articles 53 to 61 of the Capital Requirements Directive are to be taken into account, with any necessary modifications.

**Exchange of information.**

25.(1) The FSC must cooperate with—

- (a) the competent authorities in other EEA States; and
- (b) where appropriate—
  - (i) the ECB, the national central banks of EEA States and the EBA; and
  - (ii) other relevant competent authorities designated under European Union law or the law of an EEA State which is applicable to payment service providers.

(2) The FSC may exchange information with the following—

- (a) the competent authorities of other EEA States responsible for the authorisation and supervision of payment institutions;
- (b) the ECB and the national central banks of EEA States in their capacity as monetary and oversight authorities and, where appropriate, other public authorities responsible for overseeing payment and settlement systems;
- (c) other authorities designated under the Payment Services Directive, the Money Laundering Directive or any other European Union law which applies to payment service providers, such as laws relating to money laundering and terrorist financing; and
- (d) the EBA, in its capacity of contributing to the consistent and coherent functioning of supervising mechanisms as referred to in Article 1(5)(a) of Regulation (EU) No 1093/2010.

**Settlement of disagreements between competent authorities.**

26.(1) If the FSC considers that, in a particular matter, cross-border cooperation with the competent authority of an EEA State does not comply with the relevant conditions set out in regulations 25 or 27 to 31, the FSC may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(2) If the EBA is assisting the FSC or a competent authority an EEA State in in respect of a disagreement between them of the kind referred to in sub-regulation (1), the FSC must defer any decision in relation to the subject matter of the disagreement until it has been resolved under Article 19 of Regulation (EU) No 1093/2010.

**Exercise of passport rights outside Gibraltar.**

27.(1) A payment institution that proposes to exercise its passport rights to provide payment services outside of Gibraltar must provide the FSC, in the form and manner it may direct, with the following information–

- (a) the name, address and any authorisation number of the payment institution;
- (b) the EEA States in which it intends to operate;
- (c) the payment services to be provided;

- (d) where the payment institution intends to use an agent to provide the services in any of those States, the information referred to in regulation 18(1);
- (e) where the payment institution intends to use a branch to provide the services in any of those States—
  - (i) the information in regulation 6(1)(b) and (e) in relation to the payment service business to be provided through each branch;
  - (ii) a description of the organisational structure of each branch; and
  - (iii) the identity of those responsible for the management of each branch; and
- (f) notice of any intention of the payment institution to outsource operational functions relating to its provision of payment services in those EEA States.

(2) The FSC, within one month of receiving all of the information referred to in sub-regulation (1), must send it to the host State competent authority.

(3) The FSC, within three months of receiving all of the information referred to in sub-regulation (1), and taking account of any information it receives from the host State competent authority, must—

- (a) determine whether the payment institution is to be permitted to exercise its passport rights in the EEA State in question; and
- (b) notify the payment institution and the host State competent authority of its decision and provide the reasons for that decision if the FSC disagrees with the assessment of the host State competent authority.

(4) Where the FSC—

- (a) proposes to refuse to register the payment institution's agent or branch or withdraw a registration which it has already made, it must give the payment institution a warning notice; and
- (b) decides to take any of those steps, it must give the payment institution a decision notice.

(5) A payment institution may commence its activities in the relevant EEA State only after the FSC has–

- (a) has notified the payment institution of its decision to permit the payment institution to do so; and
- (b) entered the payment institution's agent or branch in the relevant EEA State in the register maintained under regulation 5.

(6) The payment institution must notify the FSC of the date from which it starts to provide payment services in the relevant EEA state through its agent or branch and the FSC must inform the host State competent authority accordingly.

(7) A payment institution must promptly inform the FSC of any change to the information provided under sub-regulation (1), including changes to the its agents or branches or the entities to which its activities are outsourced in the EEA States in which it operates.

(8) The procedures under sub-regulations (2) to (4) by which the FSC considers and reaches a determination in respect of information provided under sub-regulation (1) also apply, with any necessary modification, to any information which is provided under sub-regulation (7).

(9) This regulation applies subject to any regulatory technical standards adopted by the European Commission under Article 28(5) of the Payment Services Directive.

#### **Exercise of passport rights in Gibraltar.**

28.(1) If a home State competent authority sends information to the FSC concerning an EEA payment institution which intends to exercise its passport rights to provide payment services in Gibraltar, the FSC must, within one month of receiving the information–

- (a) assess the information; and
- (b) provide the home State competent authority with relevant information in connection with the EEA payment institution's intended provision of payment services in Gibraltar.

(2) The information provided by the FSC under sub-regulation (1) must include, in particular, any reasonable grounds for concern in connection with the intended engagement of an agent or establishment of a branch in

Gibraltar with regard to money laundering or terrorist financing within the meaning of the Money Laundering Directive.

(3) An EEA payment institution may provide payment services in Gibraltar in accordance with the information it has provided to its home State competent authority once its agent or branch has been entered in the register maintained by that home State competent authority.

(4) Parts 2 to 4, other than those provisions relating to authorisation, apply to an EEA payment institution exercising passport rights in Gibraltar and, for that purpose—

- (a) references in those Parts to a payment institution are to read as references to an EEA payment institution; and
- (b) the FSC is the competent authority for services provided from an establishment maintained by an EEA payment institution or its agent in Gibraltar.

(5) In these Regulations an “EEA payment institution” means a person authorised in an EEA State other than Gibraltar to provide payment services in accordance with the Payment Services Directive.

**Supervision of payment institutions exercising passport rights.**

29.(1) The FSC must co-operate with the home State competent authority or host State competent authority (as the case may be) in relation to an agent or branch of a payment institution or EEA payment institution which has exercised passport rights, for the purposes of performing the functions provided for in Parts 2 to 4 or Titles II to IV of the Payment Services Directive.

(2) In particular, the FSC must—

- (a) notify the host State competent authority whenever the FSC intends to carry out an on-site inspection in the territory of that competent authority; and
- (b) provide the home State competent authority or host State competent authority (as the case may be)—
  - (i) with any relevant information, including in relation to any infringement or suspected infringement by an agent or a branch which has occurred in the exercise of the freedom to provide services; and

- (ii) on its own initiative, with all essential information, including on compliance by the payment institution with the conditions under regulation 12(2).

(3) Where the FSC and the home State competent authority agree, the FSC may carry out on-site inspections in Gibraltar on behalf of the home State competent authority in respect of payment services provided by an EEA payment institution exercising its passport rights.

(4) The FSC may require an EEA payment institution which has an agent or branch in Gibraltar to report to the FSC periodically on its activities in Gibraltar–

- (a) for information or statistical purposes; and
- (b) where the EEA payment institution has exercised its right of establishment in Gibraltar, to monitor compliance with Parts 3 and 4.

(5) The professional secrecy requirements under regulation 24 apply to an agent or branch of an EEA payment institution in Gibraltar in relation to any confidential information provided to the FSC under sub-regulation (4).

(6) The FSC may direct an EEA payment institution operating in Gibraltar through agents under the right of establishment to appoint a central contact point in Gibraltar to ensure adequate communication and information reporting on compliance with Parts 3 and 4 and to facilitate supervision by the FSC and the home State competent authority.

(7) Sub-regulation (6) applies without limiting any statutory provision relating to anti-money laundering and countering terrorist financing.

(8) This regulation applies subject to any regulatory technical standards adopted by the European Commission under Article 29(5) to (7) of the Payment Services Directive.

**Measures in case of non-compliance, including precautionary measures.**

30.(1) Without limiting the responsibility of the home State competent authority, where the FSC as the host State competent authority ascertains that an EEA payment institution with an agent or branch in Gibraltar is not complying with any provision of Parts 2 to 4, it must inform the home State competent authority without delay.

(2) In an emergency, where immediate action is necessary to address a serious threat to the collective interests of payment service users in



Gibraltar, the FSC may also take precautionary measures pending action by the home State competent authority.

(3) Any precautionary measures under sub-regulation (2)–

- (a) must be appropriate and proportionate to their purpose of protecting against a serious threat to the collective interests of payment service users in Gibraltar;
- (b) must not result in a preference for the EEA payment institution's payment service users in Gibraltar over its payment service users in other EEA States; and
- (c) must be temporary and end when the serious threats identified are addressed, including with the assistance or co-operation of the home State competent authority or of the EBA as referred to in regulation 26.

(4) Where the FSC decides to take precautionary measures, it must inform the home State competent authority, the competent authority of any other EEA State concerned, the European Commission and the EBA of those measures and justification for them–

- (a) in advance of taking the measures, where doing so is compatible with the emergency; and
- (b) in any case without undue delay.

(5) Where the FSC, as home State competent authority, receives information of the kind in sub-regulation (1) from a host State competent authority in respect of a payment institution authorised under these Regulations, the FSC must–

- (a) evaluate the information received;
- (b) promptly take any measures which are appropriate to ensure that the payment institution concerned remedies the situation; and
- (c) promptly inform the host State competent authority (and any other relevant competent authority) of the measures taken.

**Reasons and communication.**

31.(1) Any measure taken by the FSC under regulations 23, 27, 29 or 30 involving penalties or restrictions on the exercise of passport rights must be properly justified and communicated to the payment institution concerned.

(2) Regulations 27 to 30 apply without affecting the FSC's or any other competent authority's obligations under the Money Laundering Directive and Regulation (EU) 2015/847, in particular under Article 48(1) of that Directive and Article 22(1) of that Regulation, to supervise or monitor compliance with the requirements laid down in those instruments.

#### *Exemptions*

#### **Small payment institutions.**

32.(1) The Minister may by regulations provide for persons providing any of the payment services in paragraphs 1(a) to (f) of Schedule 1 to be exempt from regulations 6 to 21, 23 and 26 to 31 where—

- (a) the monthly average of the preceding 12 months' total value of payment transactions executed by the person concerned, including any agent for which it assumes full responsibility, is not more than EUR 3 million;
- (b) the person's head office, registered office or place of residence (as the case may be) is in Gibraltar; and
- (c) none of the individuals responsible for the management or operation of the business has been convicted of offences relating to money laundering, terrorist financing or other financial crimes.

(2) For the purposes of sub-regulation (1)(a), where the person has yet to begin providing payment services or has done so for less than 12 months, the monthly average may be based on the projected total amount of payment transactions over a 12-month period.

(3) A person to whom regulations under sub-regulation (1) apply (a "small payment institution") is to be treated as a payment institution for the purposes of these Regulations but—

- (a) regulations 12(9) and 27 to 30 do not apply to a small payment institution; and
- (b) regulations under sub-regulation (1) may limit the activities in regulation 17 in which small payment institutions may engage.

(4) A small payment institution which no longer meets, or is unlikely to continue to meet, a condition in sub-regulation (1) or a limitation imposed under sub-regulation (3)(b) must promptly inform the FSC and, within 30 days of becoming aware of the change in circumstances, must apply for authorisation as a payment institution under regulation 6 if it intends to continue providing payment services in or from Gibraltar.

(5) This regulation applies without affecting the Proceeds of Crime Act 2015 or the Money Laundering Directive.

(6) The Minister must notify the European Commission of any exemption granted by regulations under sub-regulation (1), the number of persons concerned and, on an annual basis, the total value of payment transactions executed (as referred to in sub-regulation (1)(a)) as at 31st December in each year.

**Account information service providers.**

33. A person who only provides account information services in paragraph 1(h) of Schedule 1 is to be treated as a payment institution for the purposes of these Regulations, but is exempt from—

- (a) the following provisions of this Part—
  - (i) regulation 6, other than sub-regulations (1)(a), (b), (e) to (h), (j), (l), (n), (p) and (q) and (5);
  - (ii) regulations 7 to 21;
  - (iii) regulation 23(4); and
- (b) Parts 3 and 4, other than regulations 40, 44, 50, 65, 67 and 92 to 94.

*Common provisions*

**Access to payment systems.**

34.(1) The rules on access to a payment system by authorised or registered payment service providers that are legal persons must—

- (a) be objective, non-discriminatory and proportionate; and
- (b) not inhibit access more than is necessary to—

- (i) safeguard against specific risks, such as settlement risk, operational risk or business risk; and
  - (ii) protect the financial and operational stability of the payment system.
- (2) A payment system must not impose rules on payment service providers, payment service users or other payment systems which—
- (a) restrict effective participation in other payment systems;
  - (b) discriminate, in relation to the rights, obligations and entitlements of participants, between—
    - (i) different authorised payment service providers; or
    - (ii) different registered payment service providers; or
  - (c) impose any restriction on the basis of institutional status.
- (3) Sub-regulations (1) and (2) do not apply to—
- (a) a payment system designated under the Financial Markets and Insolvency (Settlement Finality) Regulations 2011 (“a designated system”); or
  - (b) a payment system composed exclusively of payment service providers belonging to the same group.

**Indirect access to designated systems.**

35.(1) Where a participant in a designated system allows an authorised or registered payment service provider that is not a participant in the system to pass transfer orders through the system, that participant, when requested by another authorised or registered payment service provider to provide it with the same opportunity—

- (a) must consider that request in an objective, non-discriminatory and proportionate manner;
- (b) must not inhibit access to the designated system more than is necessary to—
  - (i) safeguard against specific risks, such as settlement risk, operational risk or business risk; and

- (ii) protect the financial and operational stability of the payment system;
- (c) must not discriminate, in relation to the rights, obligations or entitlements of such providers in relation to access to or participation in the system, between–
  - (i) different authorised payment service providers; or
  - (ii) different registered payment service providers; and
- (d) must not impose any restrictions on the basis of institutional status.

(2) If a participant rejects a request made in accordance with sub-regulation (1), it must provide the requesting payment service provider with full reasons for that rejection.

**Access to accounts maintained with a credit institution.**

36.(1) A credit institution must grant payment service providers access to payment accounts services–

- (a) on an objective, non-discriminatory and proportionate basis; and
- (b) in a manner which is sufficiently extensive to allow payment service providers to provide payment services in an unhindered and efficient manner.

(2) If a credit institution rejects a request for access to payment accounts services from a payment service provider, it must notify the FSC.

(3) A notification under sub-regulation (2) must–

- (a) be made in the form and manner that the FSC may direct; and
- (b) contain duly motivated reasons for the rejection.

**Prohibition on providing payment services and duty of notification.**

37.(1) A person must not provide a payment service in or from Gibraltar, or purport to do so, unless the person is–

- (a) a payment service provider;

- (b) an EEA payment institution exercising passport rights in Gibraltar; or
- (c) exempt from these Regulations.

(2) A person who contravenes sub-regulation (1) commits an offence and is liable, on summary conviction, to a term of imprisonment not exceeding three months, to a fine not exceeding level 5 on the standard scale or to both.

(3) A person who provides services of the type in paragraph 2(k)(i) and (ii) of Schedule 1 for which the total value of payment transactions executed exceeds EUR 1,000,000 in any 12 months, must notify the FSC.

(4) A notification under sub-regulation (3) must be made in the form and manner the FSC directs and–

- (a) contain a description of the services offered; and
- (b) specify the exclusion in paragraph 2(k) of Schedule 1 under which the activity is considered to be carried out.

(5) Where the FSC receives a notification under sub-regulation (4), it must assess whether the services fall within paragraph 2(k)(i) to (iii) of Schedule 1.

(6) If the FSC–

- (a) proposes to declare that any part of the services do not fall within paragraph 2(k) of Schedule 1, it must give the person a warning notice; and
- (b) decides to declare that any part of the services do not fall within that paragraph, it must give the person a decision notice.

(7) A person carrying out an activity referred to in paragraph 2(l) of Schedule 1 must notify the FSC, in the form and manner it directs, and provide the FSC with an annual audit opinion, testifying that the activity complies with the limits set out in paragraph.

(8) The FSC must–

- (a) inform the EBA of any services notified under sub-regulations (3) and (7), stating under which exclusions those activities are carried out; and

- (b) include a description of those notified activities in the register maintained under regulation 5.

**PART 3**  
**TRANSPARENCY OF CONDITIONS AND INFORMATION**  
**REQUIREMENTS FOR PAYMENT SERVICES**

*General rules*

**Scope of Part 3.**

38.(1) This Part applies to—

- (a) single payment transactions;
- (b) framework contracts; and
- (c) payment transactions covered by framework contracts.

(2) If the payment service user is not a consumer, the parties to a contract for payment services may agree that this Part shall not apply in whole or in part.

(3) These Regulations apply without affecting—

- (a) the Consumer Credit Directive;
- (b) any other relevant European Union law; or
- (c) any Gibraltar law regarding the conditions for granting credit to consumers which is not harmonised by the Payment Services Directive but which complies with European Union law.

(4) The Part applies without affecting any European Union law containing additional requirements on prior information but, where the Financial Services (Distance Marketing) Act 2006 applies, the requirements of regulations 43, 44 and 50 apply in place of the information requirements in schedule 1 to that Act, other than paragraphs 2(c) to (g), 3(a), (d) and (e), and 4(b).

**Charges for information.**

39.(1) A payment service provider must not charge a payment service user for providing information which must be provided under this Part.

(2) A payment service provider and payment service user may agree on charges for any information which, at the payment service user's request, is provided—

- (a) in addition to the information which must be provided under this Part;
- (b) more frequently than is required under this Part; or
- (c) by a means of communication other than one specified in the framework contract.

(3) Any charges imposed under sub-regulation (2) must be reasonable and correspond to the payment service provider's actual costs.

**Burden of proof on information requirements.**

40. It is for a payment service provider to prove that it has complied with the information requirements in this Part.

**Derogation from information requirements for low-value payment instruments and electronic money.**

41.(1) This regulation applies to payment instruments which according to the relevant framework contract—

- (a) can only be used to execute individual payment transactions that do not exceed EUR 30 or, in relation to payment transactions executed wholly within Gibraltar, EUR 60;
- (b) have a spending limit of EUR 150 or, where payment transactions must be executed wholly within Gibraltar, EUR 300; or
- (c) store funds that do not exceed EUR 500 at any time.

(2) Where this regulation applies—

- (a) regulations 50 and 54 do not apply and the payment service provider is only required to provide the payer with information on the main characteristics of the payment service, including—
  - (i) the way in which the payment instrument can be used;



- (ii) the payer's liability, the charges levied and any other material information the payer may need to take an informed decision; and
  - (iii) an indication of where the information and conditions specified in Schedule 3 are made available in an easily accessible manner;
- (b) the parties may agree that regulation 52 does not apply and that the payment service provider is not required to propose changes to the conditions of the framework contract as provided for in regulation 50(1)(a) and (2); and
- (c) the parties may agree that regulations 55 and 56 do not apply but that after the execution of a payment transaction—
- (i) the payment service provider must provide or make available a reference enabling the payment service user to identify the payment transaction, the amount of the transaction and any charges for that transaction;
  - (ii) in the case of several payment transactions of the same kind made to the same payee, the payment service provider must provide or make available to the payment service user information on the total amount and charges for those payment transactions; or
  - (iii) the payment service provider is not required to provide or make available the information referred to in subparagraph (i) or (ii) where the payment instrument is used anonymously or the payment service provider is not otherwise technically able to do so but that the payment service provider must enable the payer to verify the amount of funds stored.

*Single payment transactions*

**Application of regulations 43 to 48.**

42. Regulations 43 to 48 apply to single payment transactions not covered by a framework contract.

**Prior general information.**

43.(1) Before a payment service user is bound by a single payment service contract or offer, the payment service provider must—

- (a) make available to the payment service user, in an easily accessible manner, the information and conditions specified in regulation 44 with regard to its own services; and
- (b) at the payment service user's request, provide the information and conditions on paper or another durable medium.

(2) The information and conditions must be given in easily understandable words and in a clear and comprehensible form, either in English or another language agreed between the parties.

(3) If the single payment service contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with sub-regulation (1) or (2), the payment service provider must fulfil its obligations under that sub-regulation immediately after the execution of the payment transaction.

(4) The obligations under sub-regulation (1) may also be discharged by supplying a copy of the draft single payment service contract or draft payment order which includes the information and conditions specified in regulation 44.

#### **Information and conditions.**

44.(1) A payment service provider must provide or make available to a payment service user the following information and conditions–

- (a) a specification of the information or unique identifier to be provided by the payment service user in order for a payment order to be properly initiated or executed;
- (b) the maximum execution time for the payment service to be provided;
- (c) all charges payable by the payment service user to the payment service provider and, where applicable, a breakdown of those charges; and
- (d) where applicable, the actual or reference exchange rate to be applied to the payment transaction.

(2) A payment initiation service provider must, before initiation, provide or make available to the payer the following clear and comprehensive information–

- (a) the name of the payment initiation service provider,
- (b) the geographical address of its head office;
- (c) where applicable, the geographical address of its agent or branch in Gibraltar;
- (d) other contact details relevant for communicating with the payment initiation service provider, including its electronic mail address; and
- (e) the contact details of the FSC.

(3) Where applicable, any other relevant information and conditions specified in Schedule 3 must be made available to the payment service user in an easily accessible manner.

**Information following initiation of a payment order.**

45.(1) In addition to any information and conditions provided under regulation 44, where a payment order is initiated through a payment initiation service provider, immediately after initiation the payment initiation service provider must provide or make available to the payer and, where applicable, the payee—

- (a) confirmation of the successful initiation of the payment order with the payer's account servicing payment service provider;
- (b) a reference enabling the payer and the payee to identify the payment transaction and, where appropriate, the payee to identify the payer, and any information transferred with the payment transaction;
- (c) the amount of the payment transaction;
- (d) where applicable, the amount of any charges payable to the payment initiation service provider for the transaction, and where applicable a breakdown of the amounts of those charges.

(2) Where a payment order is initiated through a payment initiation service provider, the payment initiation service provider must make available to the payer's account servicing payment service provider the reference for the payment transaction.

**Information for payer after receipt of payment order.**

46.(1) A payer's payment service provider, immediately after receipt of a payment order, must provide or make available to the payer the following information—

- (a) a reference enabling the payer to identify the payment transaction and, where appropriate, information relating to the payee;
- (b) the amount of the payment transaction in the currency used in the payment order;
- (c) the amount of any charges for the payment transaction payable by the payer and, where applicable, a breakdown of the amounts of those charges;
- (d) where the exchange rate used in the payment transaction differs from the rate provided under regulation 44(1)(d), the actual rate used and the amount of the payment transaction after that currency conversion; and
- (e) the date when the payment service provider received the payment order.

(2) Any information under sub-regulation (1) must be made available in an easily accessible manner and, at the payer's request, provided on paper or another durable medium.

**Information for the payee after execution.**

47.(1) A payee's payment service provider, immediately after the execution of a payment transaction, must provide or make available to the payee the following information—

- (a) a reference enabling the payee to identify the payment transaction and, where appropriate, the payer and any information transferred with the payment transaction;
- (b) the amount of the payment transaction in the currency in which the funds are at the payee's disposal;
- (c) the amount of any charges for the payment transaction payable by the payee and, where applicable, a breakdown of the amounts of those charges;

- (d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion; and
- (e) the credit value date.

(2) Any information under sub-regulation (1) must be made available in an easily accessible manner and, at the payee's request, provided on paper or another durable medium.

**Duplication of information.**

48. Where a payment order for a single payment transaction is transmitted by a payment instrument covered by a framework contract, the payment service provider is not obliged to provide or make available to the payment service user information which has been or will be provided or made available by another payment service provider in respect of the framework contract.

*Framework contracts*

**Application of regulations 50 to 56.**

49. Regulations 50 to 56 apply to payment transactions covered by a framework contract.

**Prior general information.**

50.(1) A payment service provider must provide a payment service user with the information and conditions specified in Schedule 3–

- (a) in good time before the payment service user is bound by any framework contract or offer; or
- (b) if the framework contract has been concluded at the payment service user's request by a means of distance communication which does not enable the payment service provider to comply with paragraph (a), immediately after conclusion of the framework contract.

(2) The information and conditions must be given in easily understandable words and in a clear and comprehensible form, on paper or on another durable medium, either in English or in the language agreed between the parties.

(3) The obligation under sub-regulation (1) may also be discharged by providing a copy of the draft framework contract which includes the information and conditions specified in Schedule 3.

**Access to information and conditions of framework contract.**

51. A payment service user, upon request at any time during the contractual relationship, is entitled to receive from the payment service provider, on paper or on another durable medium, the contractual terms of the framework contract and the information and conditions specified in Schedule 3.

**Changes in framework contract conditions.**

52.(1) Any proposed changes to—

- (a) a framework contract; or
- (b) any information and conditions provided under Schedule 3;

must be provided by the payment service provider to the payment service user no later than two months before the date on which they are to take effect.

(2) The payment service user may either accept or reject the changes before the date on which they are to take effect.

(3) Where paragraph 6(a) of Schedule 3 applies to a framework contract, the payment service provider must inform the payment service user that—

- (a) the payment service user is deemed to have accepted those changes if the payment service user does not notify the payment service provider, before the date on which they are to take effect, that they are not accepted; and
- (b) in the event that the payment service user rejects those changes, the payment service user has the right to terminate the framework contract without charge at any time until the date when the changes would have taken effect.

(4) A change in the interest or exchange rates may be applied immediately and without notice where—

- (a) such a right is agreed upon in the framework contract and any change in the interest or exchange rates is based on the reference interest or exchange rates agreed in accordance with paragraphs (3)(b) and (c) of Schedule 3; or

- (b) the change in interest or exchange rates is more favourable to the payment service user.

(5) The payment service user must be informed of any change in the interest rate at the earliest opportunity, unless the parties have agreed on a specific frequency or manner in which the information is to be provided or made available.

(6) Changes in the interest or exchange rate used in payment transactions must be implemented and calculated in a neutral manner that does not discriminate against payment service users.

(7) Regulation 50(2) applies to any information provided under sub-regulations (1) and (5).

**Termination.**

53.(1) A payment service user may terminate a framework contract at any time, unless the parties have agreed on a notice period not exceeding one month.

(2) A payment service user may terminate a framework contract without charge, except where the contract has been in force for less than six months, in which event the payment service provider may impose an appropriate charge which corresponds to the costs of termination.

(3) A payment service provider may terminate a framework contract concluded for an indefinite period by giving at least two months' notice, if the contract so provides.

(4) Regulation 50(2) applies to a notice under sub-regulation (3).

(5) If charges for payment services are levied on a regular basis, those charges must be apportioned up to the date the contract is terminated and any unused portion of the charges paid in advance must be reimbursed proportionally.

(6) This regulation does not affect the rights of any party, under the law of contract, to treat a framework contract as unenforceable or void.

**Information before execution of individual payment transactions.**

54. Where an individual payment transaction under a framework contract is initiated by the payer and the payer so requests, the payment service

provider must provide the payer with the following information in respect of that transaction–

- (a) the maximum execution time;
- (b) the charges payable by the payer; and
- (c) where applicable, a breakdown of the amounts of any charges.

**Information for the payer on individual payment transactions.**

55.(1) The payer’s payment service provider under a framework contract must provide the payer with the information in sub-regulation (2) in respect of each payment transaction on paper or on another durable medium at least once per month free of charge.

(2) The information is–

- (a) a reference enabling the payer to identify the payment transaction and, where appropriate, information relating to the payee;
- (b) the amount of the payment transaction in the currency in which the payer’s payment account is debited or in the currency used for the payment order;
- (c) the amount of any charges for the payment transaction and, where applicable, a breakdown of the amounts of those charges, or the interest payable by the payer;
- (d) where applicable, the exchange rate used in the payment transaction by the payer’s payment service provider, and the amount of the payment transaction after that currency conversion; and
- (e) the debit value date or the date of receipt of the payment order.

(3) Regulation 50(2) applies to any information provided under sub-regulations (1) and (2).

(4) A framework contract may include a condition that the payer may require the information referred to in sub-regulation (2) to be provided or made available periodically, at least once a month, without charge and in an agreed manner which allows the payer to store and reproduce information unchanged.



(5) Sub-regulation (1) does not require a payment service provider to provide information where—

- (a) the information has been, or is to be, provided or made available as required by the payer under a condition of the type referred to in sub-regulation (4); or
- (b) more than one month has passed since information was last provided, but there are no payment transactions in respect of which the payment service provider has not previously provided or made available information in accordance with sub-regulation (1) or as required by the payer under a condition of the type referred to in sub-regulation (4).

**Information for the payee on individual payment transactions.**

56.(1) The payee's payment service provider under a framework contract must provide to the payee the information specified in sub-regulation (2) in respect of each payment transaction on paper or on another durable medium at least once per month free of charge.

(2) The information is—

- (a) a reference enabling the payee to identify the payment transaction and the payer, and any information transferred with the payment transaction;
- (b) the amount of the payment transaction in the currency in which the payee's payment account is credited;
- (c) the amount of any charges for the payment transaction and, where applicable, a breakdown of the amounts of those charges, or the interest payable by the payee;
- (d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion; and
- (e) the credit value date.

(3) Regulation 50(2) applies to any information provided under sub-regulations (1) and (2).

(4) A framework contract may include a condition that the information specified in sub-regulation (2) is to be provided or made available

periodically at least once a month and in an agreed manner which enables the payee to store and reproduce the information unchanged.

(5) Sub-regulation (1) does not require a payment service provider to provide information where—

- (a) the information has been, or is to be, provided or made available in accordance with a condition of the type referred to in sub-regulation (4); or
- (b) more than one month has passed since information was last provided, but there are no payment transactions in respect of which the payment service provider has not previously provided or made available information in accordance with sub-regulation (1) or in accordance with a condition of the type referred to in sub-regulation (4).

*Common provisions*

**Currency and currency conversion.**

57.(1) Payments must be made in the currency agreed between the parties.

(2) Where a currency conversion service is offered before the initiation of a payment transaction at an ATM, at the point of sale or by the payee—

- (a) the party offering the currency conversion service must disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction; and
- (b) the payer must agree to the currency conversion service on that basis.

**Information on additional charges or reductions.**

58.(1) Where, for the use of a given payment instrument, the payee requests a charge or offers a reduction, the payee must inform the payer of that charge or reduction before the initiation of the payment transaction.

(2) Where, for the use of a given payment instrument, the payment service provider or another party involved in the transaction requests a charge, it must inform the payment service user of that charge before the initiation of the payment transaction.

(3) A payer is only obliged to pay a charge under sub-regulation (1) or (2) if the full amount was made known before the initiation of the payment transaction.

**PART 4**  
**RIGHTS AND OBLIGATIONS IN RELATION TO THE PROVISION**  
**AND USE OF PAYMENT SERVICES**

*Common provisions*

**Scope of Part 4.**

59.(1) Where a payment service user is not a consumer, the payment service user and the payment service provider may agree that—

- (a) regulations 60(1), 62(4), 70, 72, 74, 75, 78, 86 and 87 do not apply in whole or in part; and
- (b) different time limits are to apply from those laid down in regulation 69.

(2) These Regulations apply without limiting the Consumer Credit Directive, or any statutory provision relating to the conditions for granting credit to consumers which are not harmonised by the Payment Services Directive but comply with European Union law.

**Charges applicable.**

60.(1) A payment service provider may only charge a payment service user for fulfilling an obligation under this Part—

- (a) in accordance with regulations 77(4), 78(6) or 85(2)(b); and
- (b) where the charges—
  - (i) have been agreed by the parties; and
  - (ii) are appropriate and in line with the payment service provider's actual costs.

(2) Where a payment transaction is provided within the EEA and both the payer's and payee's payment service providers are, or the sole payment service provider in the payment transaction is, within the EEA—

- (a) the payer must pay any charges levied by the payer's payment service provider; and

- (b) the payee must pay the charges levied by the payee's payment service provider.

(3) The payee's payment service provider must not prevent the payee from—

- (a) requesting a charge from the payer for the use of a specific payment instrument;
- (b) offering a reduction to the payer for the use of a specific payment instrument; or
- (c) otherwise steering the payer towards the use of a specific payment instrument;

but any charges applied must not exceed the direct costs borne by the payee for the use of the specific payment instrument.

(4) A payee must not request charges for—

- (a) the use of payment instruments for which interchange fees are regulated under Chapter II of Regulation (EU) 2015/751; or
- (b) payment services to which Regulation (EU) No 260/2012 applies.

**Derogation for low-value payment instruments and electronic money.**

61.(1) This regulation applies to payment instruments which according to the relevant framework contract—

- (a) can only be used to execute individual payment transactions that do not exceed EUR 30 or, in relation to payment transactions must be executed wholly within Gibraltar, EUR 60;
- (b) have a spending limit of EUR 150 or, where payment transactions must be executed wholly within Gibraltar, EUR 300; or
- (c) store funds that do not exceed EUR 500 at any time.

(2) Where this regulation applies, payment service providers may agree with their payment service users that—

- (a) regulations 67(1)(b), 68(1)(c) to (e) and 72(6) do not apply if the payment instrument does not allow its blocking or prevention of its further use;
  - (b) regulations 70, 71, 72(1) to (3) and (6) do not apply if the payment instrument is used anonymously or the payment service provider is not in a position for other reasons which are intrinsic to the payment instrument to prove that a payment transaction was authorised;
  - (c) despite regulation 77(1) to (4), the payment service provider is not required to notify the payment service user of the refusal of a payment order, if the non-execution is apparent from the context;
  - (d) despite regulation 78, the payer may not revoke the payment order after transmitting the payment order or giving consent to execute the payment transaction to the payee; and
  - (e) despite regulation 81 and 82, other execution periods apply.
- (3) Regulations 71 and 72 also apply to electronic money, except where the payer's payment service provider does not have the ability to—
- (a) freeze the payment account on which the electronic money is stored; or
  - (b) block the payment instrument.

*Authorisation of payment transactions*

**Consent and withdrawal of consent.**

62.(1) A payment transaction is considered to be authorised only if the payer has given consent to execute the payment transaction, in accordance with the procedure for giving consent agreed between the payer and the payment service provider.

(2) A payment transaction may be authorised by the payer before or, if agreed between the payer and the payment service provider, after the execution of the payment transaction.

(3) Consent to execute a payment transaction or a series of payment transactions—

- (a) must be given in the form and subject to the procedure agreed between the payer and the payment service provider; and
  - (b) may also be given via the payee or the payment initiation service provider.
- (4) The payer may withdraw consent to—
- (a) a specific payment transaction at any time before the point at which the payment cannot be revoked under regulation 78; and
  - (b) a series of payment transactions at any time, with the effect that any future transaction is considered to be unauthorised.

**Confirmation on the availability of funds.**

63.(1) An account servicing payment service provider, at the request of a payment service provider issuing card-based payment instruments, must immediately confirm whether an amount necessary for the execution of a card-based payment transaction is available on the payer's payment account if the following conditions are met—

- (a) the payer's payment account is accessible online at the time of the request;
  - (b) the payer has given explicit consent to the account servicing payment service provider to respond to requests from a specific payment service provider to confirm that the amount corresponding to a certain card-based payment transaction is available on the payer's payment account; and
  - (c) that consent was given before the first request for confirmation is made.
- (2) A payment service provider may request confirmation under sub-regulation (1) where the following conditions are met—
- (a) the payer has given explicit consent to the payment service provider to request the confirmation;
  - (b) the payer has initiated the card-based payment transaction for the amount in question using a card based payment instrument issued by the payment service provider; and
  - (c) the payment service provider—

- (i) authenticates itself towards the account servicing payment service provider before each confirmation request; and
  - (ii) communicates with the account servicing payment service provider securely, in accordance with any regulatory technical standards adopted by the European Commission under Article 98(4) of the Payment Services Directive and which apply to payment service providers under Article 98(1)(d) of that Directive.
- (3) Any confirmation under sub-regulation (1)–
- (a) must be provided in the form of a “yes” or “no” answer; and
  - (b) must not–
    - (i) be a statement of the account balance;
    - (ii) be stored or used for any purposes other than for the execution of the card-based payment transaction to which it relates; and
    - (iii) allow the account servicing payment service provider to block funds on the payer’s payment account.
- (4) If the payer so requests, the account servicing payment service provider must inform the payer of the identity of the payment service provider that requested the confirmation and the answer provided.
- (5) This regulation does not apply to payment transactions initiated through card-based payment instruments on which electronic money is stored.

**Access to payment account for payment initiation services.**

64.(1) In respect of a payment account which is accessible online, a payer has the right to make use of a payment initiation service provider to obtain payment services of the kind referred to in paragraph 1(g) of Schedule 1.

(2) Where, in accordance with regulation 62, a payer gives explicit consent for a payment to be executed by use of a payment initiation service, the account servicing payment service provider must–

- (a) communicate securely with the payment initiation service provider, in accordance with regulation in accordance with any

regulatory technical standards adopted by the European Commission under Article 98(4) of the Payment Services Directive and which apply to payment service providers under Article 98(1)(d) of that Directive;

- (b) immediately after receiving the payment order from the payment initiation service provider, provide or make available to it all information on the initiation of the payment transaction and all information accessible to the account servicing payment service provider regarding the execution of the payment transaction; and
- (c) treat the payment order transmitted through the services of the payment initiation service provider without discrimination (other than for objective reasons) and in the same way as a payment order transmitted directly by the payer, in particular in terms of timing, priority and charges.

(3) The account servicing payment service provider must not require the payment initiation service provider to enter into a contract before the account servicing payment service provider complies with its obligations under sub-regulation (2).

(4) The payment initiation service provider must–

- (a) not hold the payer's funds at any time in connection with the provision of the payment initiation service;
- (b) ensure that the payment service user's personalised security credentials–
  - (i) are not accessible to other parties, with the exception of the user and the issuer of the personalised security credentials; and
  - (ii) are transmitted through safe and efficient channels;
- (c) ensure that any other information about the payment service user, obtained when providing payment initiation services, is only provided to the payee and only with the payment service user's explicit consent;
- (d) each time a payment is initiated–
  - (i) identify itself towards the payer's account servicing payment service provider; and



- (ii) communicate with the account servicing payment service provider, the payer and the payee securely, in accordance with any regulatory technical standards adopted by the European Commission under Article 98(4) of the Payment Services Directive and which apply to payment service providers under Article 98(1)(d) of that Directive;
- (e) not store sensitive payment data of the payment service user;
- (f) not request any data from the payment service user other than data which is necessary to provide the payment initiation service;
- (g) not use, access or store any data for any purpose other than for providing the payment initiation service explicitly requested by the payer;
- (h) not modify the amount, the payee or any other feature of the transaction.

**Access to payment accounts for account information services.**

65.(1) A payment service user, in respect of a payment account which is accessible online, has the right to make use of services enabling access to account information of the kind referred to in paragraph 1(h) of Schedule 1.

(2) Where a payment service user uses an account information service, the payment service user's account servicing payment service provider must, in relation to payment accounts—

- (a) communicate securely with the account information service provider, in accordance with any regulatory technical standards adopted by the European Commission under Article 98(4) of the Payment Services Directive and which apply to payment service providers under Article 98(1)(d) of that Directive; and
- (b) treat data requests transmitted through the services of an account information service provider without any discrimination other than for objective reasons.

(3) The account servicing payment service provider must not require the account information service provider to enter into a contract before the account servicing payment service provider complies with its obligations under sub-regulation (2).

- (4) An account information service provider must–
- (a) only provide services with the payment service user’s explicit consent;
  - (b) ensure that the payment service user’s personalised security credentials–
    - (i) are not accessible to other parties, with the exception of the user and issuer of the personalised security credentials; and
    - (ii) are transmitted through safe and efficient channels;
  - (c) for each communication session–
    - (i) identify itself towards the payment service user’s account servicing payment service provider; and
    - (ii) communicate with the account servicing payment service and the payment service user securely, in accordance with any regulatory technical standards adopted by the European Commission under Article 98(4) of the Payment Services Directive and which apply to payment service providers under Article 98(1)(d) of that Directive;
  - (d) access only the information from designated payment accounts and associated payment transactions;
  - (e) not request sensitive payment data linked to the payment accounts; and
  - (f) not use, access or store any data for purposes other than for performing the account information service explicitly requested by the payment service user.

**Limits on use of payment instruments and access to payment accounts by payment service providers.**

66.(1) Where a specific payment instrument is used for the purposes of giving consent to payment transactions, the payer and the payer’s payment service provider may agree on spending limits for payment transactions executed through that payment instrument.

(2) A framework contract may provide for the payment service provider to have the right to block the use of the payment instrument on objectively justified grounds relating to—

- (a) the security of the payment instrument;
- (b) suspected unauthorised or fraudulent use of the payment instrument; or
- (c) in the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil its liability to pay.

(3) The payment service provider must inform the payer of the blocking of the payment instrument and the reasons for doing so, in the manner agreed between them, either—

- (a) where possible, before the payment instrument is blocked; or
- (b) immediately after the payment instrument is blocked;

but this obligation does not apply where providing that information would compromise objectively justified security measures or is unlawful.

(4) The payment service provider must unblock the payment instrument or replace it with a new payment instrument once the reasons for blocking it cease to exist.

(5) An account servicing payment service provider may deny an account information service provider or a payment initiation service provider access to a payment account on objectively justified and duly evidenced grounds relating to unauthorised or fraudulent access to the payment account by that account information service provider or payment initiation service provider, including the unauthorised or fraudulent initiation of a payment transaction.

(6) If an account servicing payment service provider denies access to a payment account under sub-regulation (5), it must inform the payer that access is being denied and the reasons for doing so, in the manner agreed between them, either—

- (a) where possible, before access is denied; or
- (b) immediately after it is denied;

but this obligation does not apply where providing that information would compromise objectively justified security measures or is unlawful.

(7) The account servicing payment service provider must allow access to the payment account once the reasons for denying access cease to exist.

(8) In any case to which sub-regulation (5) applies, the account servicing payment service provider must immediately report the incident to the FSC, in the form and manner which the FSC may direct, and the report must include the details of the case and the reasons for the action taken.

(9) Where the FSC receives a report under sub-regulation (8), it must assess the case and, if necessary, take any measures that it considers appropriate.

**Obligations of the payment service user in relation to payment instruments and personalised security credentials.**

67.(1) A payment service user who is entitled to use a payment instrument must—

- (a) use the payment instrument in accordance with the terms governing the issue and use of the payment instrument, which must be objective, non-discriminatory and proportionate;
- (b) notify the payment service provider, or the entity specified by the latter, without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

(2) For the purposes of sub-regulation (1)(a), the payment service user must, in particular, take all reasonable steps to keep safe personalised security credentials relating to a payment instrument.

**Obligations of the payment service provider in relation to payment instruments.**

68.(1) A payment service provider issuing a payment instrument must—

- (a) ensure that the personalised security credentials are not accessible to parties other than the payment service user that is entitled to use the payment instrument;
- (b) not send an unsolicited payment instrument, except where a payment instrument already given to the payment service user is to be replaced;

- (c) ensure that appropriate means are available at all times to enable the payment service user to—
  - (i) notify the payment service provider of the loss or unauthorised use of the payment instrument, in accordance with regulation 67(1)(b); or
  - (ii) request the unblocking of the payment instrument, in accordance with regulation 66(4);
- (d) on request, provide the payment service user with the means to prove, for 18 months after notification, that the payment service user made a notification under regulation 67(1)(b);
- (e) provide the payment service user with an option to make a notification under regulation 67(1)(b) without charge and ensure that any charge for replacing the payment instrument is directly attributable to the costs of doing so; and
- (f) prevent any use of the payment instrument once notification under regulation 67(1)(b) has been made.

(2) The payment service provider bears the risk of sending a payment instrument or any personalised security credentials relating to it to the payment service user.

**Notification and rectification of unauthorised or incorrectly executed payment transactions.**

69.(1) A payment service user is entitled to the rectification of an unauthorised or incorrectly executed payment transaction by a payment service provider, but only if the payment service user notifies the payment service provider without undue delay on becoming aware of any transaction giving rise to a claim (including under regulation 86) and in any event no later than 13 months after the debit date.

(2) The time limits for notification in sub-regulation (1) do not apply where the payment service provider has failed to provide or make available information concerning the payment transaction in accordance with Part 3.

(3) Without limiting regulation 71(3) or 86(1) to (7), where a payment initiation service provider is involved, the payment service user must obtain rectification under sub-regulation (1) from the account servicing payment service provider.

**Evidence on authentication and execution of payment transactions.**

70.(1) Where a payment service user–

- (a) denies having authorised an executed payment transaction; or
- (b) claims that the payment transaction was not correctly executed;

it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency of the service provided by the payment service provider.

(2) If a payment transaction is initiated through a payment initiation service provider, it is for the payment initiation service provider to prove that, within its sphere of competence, the payment transaction was authenticated, accurately recorded and not affected by a technical breakdown or other deficiency linked to the payment initiation service of which it is in charge.

(3) Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider, including the payment initiation service provider where appropriate, is not in itself necessarily sufficient to prove either that–

- (a) the payment transaction was authorised by the payer; or
- (b) the payer acted fraudulently or failed with intent or gross negligence to fulfil one or more obligations under regulation 67.

(4) A payment service provider, including a payment initiation service provider, where appropriate, must provide supporting evidence to prove any claim of fraud or gross negligence on the part of a payment service user.

**Payment service provider's liability for unauthorised payment transactions.**

71.(1) Without affecting regulation 69, where a payment transaction was unauthorised, the payer's payment service provider must–

- (a) refund the amount of the unauthorised payment transaction to the payer immediately, and in any event by no later than the end of the business day following the day on which it is notified of the transaction; and

- (b) where applicable, restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place, including by ensuring that the credit value date for the payer's payment account is no later than the date on which the unauthorised amount was debited.

(2) Sub-regulation (1) does not apply where the payment service provider has reasonable grounds for suspecting fraud by the payer and informs the FSC or the Royal Gibraltar Police of those grounds in writing.

(3) Where an unauthorised payment transaction was initiated through a payment initiation service provider—

- (a) the account servicing payment service provider must comply with sub-regulation (1); and
- (b) if the payment initiation service provider is liable for the unauthorised payment transaction, it must immediately compensate the account servicing payment service provider, at its request, for the losses incurred or sums paid as a result of complying with sub-regulation (1), including the amount of the unauthorised payment transaction.

(4) In accordance with regulation 70(1) and (2), it is for the payment initiation service provider to prove that, within its sphere of competence, the payment transaction was authenticated, accurately recorded and not affected by a technical breakdown or other deficiency linked to the payment service of which it is in charge.

(5) Additional financial compensation may be payable, as determined in accordance with any agreement concluded between—

- (a) the payer and the payment service provider; or
- (b) where applicable, the payer and the payment initiation service provider.

**Payer's liability for unauthorised payment transactions.**

72.(1) A payment service provider which is liable under regulation 71(1) may require that the payer is liable to bear the losses incurred from an unauthorised payment transaction, up to a maximum of EUR 50, arising from the use of a lost or stolen payment instrument or from the misappropriation of a payment instrument.

(2) Sub-regulation (1) does not apply if—

- (a) the loss, theft or misappropriation of a payment instrument was not detectable by the payer before a payment, except where the payer has acted fraudulently; or
- (b) the loss was caused by the acts or omissions of an employee, agent or branch of a payment service provider or of an entity to which its activities were outsourced.

(3) The payer is liable for all losses incurred in respect of an unauthorised payment transactions (and the limit in sub-regulation (1) does not apply) where the payer–

- (a) has acted fraudulently; or
- (b) has failed to fulfil an obligation under regulation 67 with intent or by gross negligence.

(4) Except where the payer has acted fraudulently, the payer is not liable for any financial losses arising from the failure of the payer's payment service provider to require strong customer authentication.

(5) Where the payee or the payee's payment service provider fails to accept strong customer authentication, it must reimburse the payer's payment service provider for any financial damage caused to the payer's payment service provider by that failure.

(6) Except where the payer has acted fraudulently, the payer is not liable for any financial consequences resulting from the use of a lost, stolen or misappropriated payment instrument–

- (a) after notification of the lost, theft or misappropriation, in accordance with regulation 67(1)(b); or
- (b) if the payment service provider does not provide appropriate means of notification, as required by regulation 68(1)(c).

**Payment transactions where the transaction amount is not known in advance.**

73. Where a card-based payment transaction is initiated by or through the payee and the exact amount of the transaction is not known when the payer consents to its execution, the payer's payment service provider–



- (a) may block funds on the payer's payment account only if the payer has given consent to the exact amount of the funds to be blocked; and
- (b) must release the blocked funds without undue delay after receipt of information about the exact amount of the payment transaction and at the latest immediately after receipt of the payment order.

**Refunds for payment transactions initiated by or through a payee.**

74.(1) A payer is entitled to a refund from the payment service provider of an authorised payment transaction which was initiated by or through a payee and has been executed, if both of the following conditions are met—

- (a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was made; and
- (b) the amount of the payment transaction exceeded the amount the payer could reasonably have expected taking into account the previous spending pattern, the conditions in the framework contract and relevant circumstances of the case.

(2) At the payment service provider's request, it is for the payer to prove those conditions are met.

(3) A refund must consist of the full amount of the executed payment transaction and the credit value date for the payer's payment account must be no later than the date when the amount of the unauthorised payment transaction was debited.

(4) In addition to any rights under sub-regulation (1) (and without affecting sub-regulation (6)), the payer has an unconditional right to a refund within the time limits laid down in regulation 75 for direct debits of the type referred to in Article 1 of Regulation (EU) No 260/2012.

(5) For the purposes of sub-regulation (1)(b), the payer cannot rely on currency exchange reasons if the reference exchange rate agreed with its payment service provider under regulation 44(1)(d) or paragraph 3(b) of Schedule 3 was applied.

(6) The payer and the payment service provider may agree in a framework contract that the payer has no right to a refund where—

- (a) the payer has given consent to execute the payment transaction directly to the payment service provider; and

- (b) where applicable, information on the payment transaction was provided or made available in an agreed manner to the payer for at least four weeks before the due date by the payment service provider or the payee.

**Requests for refunds for payment transactions initiated by or through a payee.**

75.(1) A payer must request a refund under regulation 74 within eight weeks from the date on which the funds were debited.

(2) The payment service provider, within 10 business days of receiving a request for a refund, must either–

- (a) refund the full amount of the payment transaction; or
- (b) refuse the refund and provide a justification for doing so, indicating the bodies to which the payer may refer the matter under regulations 95 to 97 if the payer does not accept the reasons provided.

(3) The payment service provider's right under sub-regulation (2)(b) to refuse a refund does not apply in any case to which regulation 74(4) applies.

*Execution of payment orders and amounts transferred*

**Receipt of payment orders.**

76.(1) For the purposes of these Regulations, the time of receipt of a payment order is the time when the payment order is received by the payer's payment service provider.

(2) A payer's account must not be debited before receipt of a payment order.

(3) If the time of receipt is not on a business day for the payer's payment service provider, the payment order is deemed to have been received on the following business day.

(4) The payment service provider may establish a cut-off time near the end of a business day after which any payment order received is deemed to have been received on the following business day.

(5) If the payment service user initiating a payment order and the payment service provider agree that execution of the payment order is to take place–

- (a) on a specific day;
- (b) at the end of a certain period; or
- (c) on the day on which the payer has put funds at the payment service provider's disposal;

the time of receipt for the purposes of regulation 81 is the agreed day or, if that day is not a business day for the payment service provider, the following business day.

**Refusal of payment orders.**

77.(1) Where a payment service provider refuses to execute a payment order or initiate a payment transaction, it must notify the payment service user of—

- (a) the refusal;
- (b) if possible, the reasons for the refusal; and
- (c) the procedure for correcting any factual error that led to the refusal.

(2) Sub-regulation (1) does not apply where notification would be otherwise unlawful.

(3) A notification under sub-regulation (1) must be provided or made available by a payment service provider in an agreed manner at the earliest opportunity and, in any event, within the periods specified in regulation 81.

(4) A framework contract may provide for a payment service provider to charge a reasonable fee for a refusal which is objectively justified.

(5) Where all of the conditions set out in the payer's framework contract are met, the payer's account servicing payment service provider must not refuse to execute an authorised payment order irrespective of whether the payment order is initiated by a payer, including through a payment initiation service provider, or by or through a payee, unless execution is otherwise unlawful.

(6) For the purposes of regulations 81 and 86 a payment order for which execution has been refused is deemed not to have been received.

**Irrevocability of a payment order.**

78.(1) Subject to sub-regulations (2) to (5), a payment service user must not revoke a payment order once it has been received by the payer's payment service provider.

(2) In the case of a payment transaction initiated by a payment initiation service provider or by or through the payee, the payer must not revoke the payment order after giving consent to—

- (a) the payment initiation service provider to initiate the payment transaction; or
- (b) the payee to execute the payment transaction.

(3) In the case of a direct debit (and without affecting any applicable refund rights), the payer may revoke the payment order before the end of the business day preceding the day agreed for debiting the funds.

(4) In the case of a payment order under regulation 76(5), the payment service user may revoke a payment order before the end of the business day preceding the agreed day.

(5) At any time after the time limits specified in sub-regulations (1) to (4), a payment order may be revoked only if it is—

- (a) agreed between the payment service user and the relevant payment service providers; and
- (b) in the case of a payment order to which sub-regulation (2) or (3) applies, it is also agreed with the payee.

(6) A framework contract may provide for the relevant payment service provider to charge for revocation.

#### **Amounts transferred and amounts received.**

79.(1) Subject to sub-regulation (2), the payment service providers of the payer and payee and any intermediaries of those payment service providers must transfer the full amount of any payment transaction and must not deduct any charges from the amount transferred.

(2) The payee and its payment service provider may agree that the relevant payment service provider is to deduct its charges from the amount transferred before crediting it to the payee.

(3) In respect of any transaction to which sub-regulation (2) applies, the full amount of the payment transaction and the amount of the charges deducted must be stated separately in the information given to the payee.

(4) If any charges, other than those referred to in sub-regulation (2), are deducted from the amount transferred—

- (a) the payer's payment service provider must ensure that the payee receives the full amount of any payment transaction initiated by the payer; and
- (b) the payee's payment service provider must ensure that the payee receives the full amount of any payment transaction initiated by or through the payee.

*Execution time and value date*

**Application of regulations 81 to 84.**

80.(1) Regulations 81 to 84 apply to payment transactions—

- (a) in euro;
- (b) executed wholly within Gibraltar in sterling;
- (c) involving only one currency conversion between the euro and sterling, where—
  - (i) the required currency conversion is carried out in Gibraltar; and
  - (ii) in the case of cross-border payment transactions, the cross-border transfer takes place in euro.

(2) Regulations 81 to 84 also apply to any other payment transaction unless the payment service user and payment service provider agree otherwise, but such an agreement may not—

- (a) disapply regulation 84; or
- (b) provide for the period specified in regulation 81 to be extended by more than four business days for intra-EEA payment transactions.

**Payment transactions to a payment account.**

81.(1) The payer's payment service provider must ensure that the amount of the payment transaction will be credited to the payee's payment service provider's account by the end of the business day following its receipt as referred to in regulation 76.

(2) In the case of paper-initiated payment transactions the time limit in sub-regulation (1) may be extended by one business day.

(3) The payee's payment service provider must value date and make available the amount of the payment transaction to the payee's payment account after the payment service provider has received the funds in accordance with regulation 84.

(4) The payee's payment service provider must transmit a payment order initiated by or through the payee to the payer's payment service provider within the time limits agreed between the payee and the payment service provider, enabling a direct debit to be settled on the agreed due date.

**Absence of payee's payment account with the payment service provider.**

82. Where a payment service provider receives funds for a payee who does not have a payment account with that payment service provider, the payment service provider must make those funds available to the payee immediately after the funds have been credited to that payment service provider's account.

**Cash placed on a payment account.**

83. Where a payment service user places cash on a payment account with a payment service provider in the currency of that payment account, the payment service provider must ensure that—

- (a) where the payment service user is a consumer, the amount is made available and value dated immediately after receipt of the funds; or
- (b) where the payment service user is not a consumer, the amount is made available and value dated by no later than the business day after receipt of the funds.

**Value date and availability of funds.**

84.(1) The credit value date for the payee's payment account must be no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account.

(2) The payee's payment service provider must ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account where—

- (a) the transaction does not involve a currency conversion;
- (b) the transaction only involves a currency conversion—
  - (i) between euro and sterling or another EEA State currency;
  - (ii) between sterling and another EEA State currency; or
  - (iii) between two other EEA State currencies; or
- (c) the transaction involves only one payment service provider.

(3) The debit value date for the payer's payment account must be no earlier than the time at which the amount of the payment transaction is debited to that payment account.

*Liability*

**Incorrect unique identifiers.**

85.(1) Where a payment order is executed in accordance with a unique identifier, the payment order is deemed to have been executed correctly with respect to the payee specified by the unique identifier.

(2) Where the unique identifier provided by a payment service user is incorrect, the payment service provider is not liable under regulation 86 for non-execution or defective execution of the payment transaction, but the payment service provider—

- (a) must make reasonable efforts to recover the funds involved in the payment transaction; and
- (b) may, if agreed in the framework contract, charge the payment service user for recovery.

(3) The payee's payment service provider must cooperate with the payer's payment service provider in its recovery efforts, in particular, by providing to the payer's payment service provider all relevant information for the collection of the funds.

(4) If the payer's payment service provider is unable to recover the funds under sub-regulation (2), it must provide to the payer, upon written request, all available relevant information to enable the payer to make a legal claim for the recovery of the funds.

(5) Where the payment service user provides information in addition to that specified in regulation 44(1)(a) or paragraph 2(b) of Schedule 3, the payment service provider is liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.

**Payment service providers' liability for non-execution, defective or late execution of payment transactions.**

86.(1) Where a payment order is initiated directly by the payer, the payer's payment service provider is liable to the payer for correct execution of the payment transaction unless it can prove to the payer and the payee's payment service provider (where relevant) that the payee's payment service provider received the amount of the payment transaction in accordance with regulations 81(1) and (2), in which event, the payee's payment service provider is liable to the payee for the correct execution of the payment transaction.

(2) Where the payer's payment service provider is liable under sub-regulation (1), it must without undue delay refund to the payer the amount of the non-executed or defective payment transaction, and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

(3) The credit value date for a credit under sub-regulation (2) must be no later than the date on which the amount was debited.

(4) Where the payee's payment service provider is liable under sub-regulation (1), it must immediately place the amount of the payment transaction at the payee's disposal and, where applicable, credit the corresponding amount to the payee's payment account.

(5) The credit value date for a credit under sub-regulation (4) must be no later than the date on which the amount would have been value dated if the transaction had been correctly executed in accordance with regulation 84.

(6) Where a payment transaction is executed late, the payee's payment service provider must ensure, upon the request of the payer's payment service provider acting on behalf of the payer, that the credit value date for



the payee's payment account is no later than the date the amount would have been value dated had the transaction been correctly executed.

(7) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payer, the payer's payment service provider must, regardless of any liability under sub-regulations (1) to (6), upon request and free of charge to the payer, make immediate efforts to trace the payment transaction and notify the payer of the outcome.

(8) Where a payment order is initiated by or through the payee, the payee's payment service provider is liable to the payee for correct transmission of the payment order to the payer's payment service provider in accordance with regulation 81(4).

(9) Where the payee's payment service provider is liable under sub-regulation (8), it must immediately re-transmit the payment order in question to the payment service provider of the payer.

(10) In the case of a late transmission of the payment order, the amount must be value dated on the payee's payment account no later than the date the amount would have been value dated had the transaction been correctly executed.

(11) The payee's payment service provider is also liable to the payee for handling the payment transaction in accordance with regulation 84 and must ensure that the amount of the payment transaction is—

- (a) at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account; and
- (b) value dated on the payee's payment account no later than the date the amount would have been value dated had the transaction been correctly executed.

(12) In the case of a non-executed or defectively executed payment transaction for which the payee's payment service provider is not liable under sub-regulations (8), (9) or (11), the payer's payment service provider is liable to the payer and must, as appropriate, without undue delay—

- (a) refund to the payer the amount of the non-executed or defective payment transaction and restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place; and

- (b) ensure that the credit value date for the payer's payment account is no later than the date the amount was debited.

(13) The obligation under sub-regulation (12) does not apply to the payer's payment service provider where the payer's payment service provider proves that the payee's payment service provider has received the amount of the payment transaction, even if its execution is merely delayed, and in that event the payee's payment service provider must value date the amount on the payee's payment account no later than the date the amount would have been value dated had it been executed correctly.

(14) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by or through the payee, the payee's payment service provider must, regardless of any liability under sub-regulations (8) to (13), upon request and free of charge to the payee, make immediate efforts to trace the payment transaction and notify the payee of the outcome.

(15) A payment service provider is liable to its respective payment service users for any charges for which they are responsible, and for any interest to which the payment service user is subject as a consequence of the non-execution or defective or late execution of the payment transaction.

(16) Sub-regulations (1), (8) and (11) apply without limiting regulations 69, 85(2) to (4) and 90.

**Liability in the case of payment initiation services for non-execution, defective or late execution of payment transactions.**

87.(1) Where a payment order is initiated by the payer through a payment initiation service provider, the account servicing payment service provider must refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

(2) It is for the payment initiation service provider to prove that the payment order was received by the payer's account servicing payment service provider in accordance with regulation 76 and that within its sphere of competence the payment transaction was authenticated, accurately recorded and not affected by a technical breakdown or other deficiency linked to the non-execution, defective or late execution of the transaction.

(3) If the payment initiation service provider is liable for the non-execution, defective or late execution of the payment transaction, it must immediately compensate the account servicing payment service provider at

its request for the losses incurred or sums paid as a result of the refund to the payer.

(4) Sub-regulation (1) applies without limiting regulations 69 and 85(2) to (4).

**Additional financial compensation.**

88. Any financial compensation additional to that provided for under regulations 85 to 90 may be determined in accordance with the law applicable to the contract concluded between the payment service user and the payment service provider.

**Right of recourse.**

89.(1) Where the liability of a payment service provider under regulation 71, 86 or 87 is attributable to another payment service provider or an intermediary, including any failure to use strong customer authentication, that payment service provider or intermediary must compensate the first payment service provider for any losses incurred or sums paid under those regulations.

(2) Without affecting sub-regulation (1), additional financial compensation may be payable, as determined in accordance with any agreement concluded between payment service providers and intermediaries.

**Abnormal and unforeseeable circumstances.**

90.(1) A person is not liable for any contravention of regulations 62 to 90 which arises from abnormal and unforeseeable circumstances beyond the person's control, the consequences of which would have been unavoidable despite all efforts to the contrary.

(2) A payment service provider is not liable for any contravention of regulations 62 to 90 which is due to the payment service provider's obligations under other provisions of European Union or national law.

*Data protection*

**Data protection.**

91.(1) A payment service provider must only access, process or retain personal data for the provision of payment services with the explicit consent of the payment service user.

(2) Personal data may be processed by payment systems and payment service providers where doing so is necessary to safeguard the prevention, investigation and detection of payment fraud.

(3) The processing of personal data and the provision of information to individuals about the processing of personal data must comply with the Data Protection Act 2004.

*Operational and security risks and authentication*

**Management of operational and security risks.**

92.(1) A payment service provider must—

- (a) establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks relating to the payment services it provides; and
- (b) as part of the framework, establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents.

(2) A payment service provider must provide to the FSC an updated and comprehensive assessment of the operational and security risks relating to the payment services it provides and on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks.

(3) An assessment under sub-regulation (2) must be provided—

- (a) each year or at shorter intervals as the FSC may direct; and
- (b) in the form and manner that the FSC may direct.

(4) This regulation applies subject to—

- (a) any guidelines issued by the EBA under Article 95(3) of the Payment Services Directive; or
- (b) any regulatory technical standards adopted by the European Commission under Article 95(4) of that Directive.

**Incident reporting.**

93.(1) A payment service provider must, without undue delay, notify the FSC of any major operational or security incident.

(2) Where an incident has or may have an impact on the financial interests of its payment service users, a payment service provider must, without undue delay, inform its payment service users of the incident and of all measures that they can take to mitigate the adverse effects of the incident.

(3) Upon receiving a notification under sub-regulation (1), the FSC must—

- (a) without undue delay, provide the relevant details of the incident to the EBA and to the ECB;
- (b) after assessing the incident, notify any other relevant authorities in Gibraltar; and
- (c) co-operate with the EBA and the ECB in assessing the relevance of the incident to other relevant authorities outside of Gibraltar.

(4) If the FSC is notified of an incident by the EBA or the ECB it must, where appropriate, take all of the necessary measures to protect the immediate safety of the financial system.

(5) Payment service providers must provide to the FSC, at least once each year, statistical data on fraud relating to different means of payment and the FSC must provide the EBA and the ECB with that data in an aggregated form.

(6) This regulation applies subject to any guidelines issued by the EBA under Article 96(3) of the Payment Services Directive.

#### **Authentication.**

94.(1) A payment service provider must apply strong customer authentication where a payer—

- (a) accesses its payment account online;
- (b) initiates an electronic payment transaction; or
- (c) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.

(2) Where a payer initiates an electronic remote payment transaction, the payment service providers must apply strong customer authentication that includes elements which dynamically link the transaction to a specific amount and a specific payee.

(3) A payment service provider must have in place adequate security measures to protect the confidentiality and integrity of payment service users' personalised security credentials.

(4) Sub-regulations (2) and (3) also apply where payments are initiated through a payment initiation service provider.

(5) Sub-regulations (1) and (3) also apply when the information is requested through an account information service provider.

(6) An account servicing payment service provider must allow a payment initiation service provider or account information service provider to rely on the authentication procedures provided by the account servicing payment service provider to the payment service user in accordance with the other provisions of this regulation.

#### *Complaints and ADR procedures*

#### **Complaints.**

95.(1) The FSC must establish procedures which allow payment service users and other interested parties (including consumer associations) to submit complaints to the FSC concerning the alleged infringement of these Regulations by payment service providers.

(2) The FSC must include information about the Financial Services Ombudsman in any reply to a complaint made under sub-regulation (1), where it considers it appropriate to do so.

#### **Dispute resolution.**

96.(1) A payment service provider must put in place and apply adequate and effective complaint resolution procedures for the settlement of complaints of payment service users concerning the rights and obligations arising under Parts 3 and 4 and the FSC must monitor payment service providers' compliance with that obligation.

(2) Those procedures must—

- (a) be applied in every EEA State where the payment service provider offers payment services; and
- (b) be available in an official language of the relevant EEA State, or in another language if agreed between the payment service provider and the payment service user.

(3) A payment service provider must make every possible effort to reply to a payment service user's complaints, addressing all the points raised, within an adequate timeframe and, at the latest, within 15 business days of receiving the complaint.

(4) Any reply must be sent on paper or, where agreed between the payment service provider and the payment service user, on another durable medium.

(5) In exceptional situations, where an answer cannot be given within 15 business days for reasons beyond the control of the payment service provider, it must send a holding reply, clearly indicating the reasons for the delay and specifying the deadline by which the payment service user will receive the final reply which, in any event, must not exceed 35 business days.

(6) A payment service provider must inform a payment service user about at least one alternative dispute resolution (ADR) entity which is competent to deal with any disputes concerning rights and obligations arising under Parts 3 and 4.

(7) The information in sub-regulation (6) must—

- (a) be included in a clear, comprehensive and easily accessible way
  - (i) on a payment service provider's website (if any),
  - (ii) at any branch, and
  - (iii) in the general terms and conditions of the contract between the payment service provider and the payment service user; and
- (b) specify how further information on the ADR entity concerned and on the conditions for using it can be accessed.

**Consumer dispute procedure.**

97.(1) The Financial Services Ombudsman Act 2016 applies to disputes under these Regulations between payment service users who are consumers or microenterprises and payment service providers as it applies to a financial service dispute arising under a relevant Act.

(2) The Financial Services Ombudsman must cooperate with counterparts in other EEA States in the resolution of cross-border disputes concerning

rights and obligations arising under Titles III and IV of the Payment Services Directive.

(3) In this regulation a “microenterprise” means an enterprise which, at the time the relevant payment service contract was concluded, was an enterprise within the meaning of Articles 1, 2(1) and (3) of the Annex to Recommendation 2003/361/EC.

**Obligation to inform consumers of their rights.**

98.(1) A payment service provider must make available to its clients, free of charge, any information on the rights of consumers produced by the European Commission under Article 106 of the Payment Services Directive.

(2) That information must be provided in an easily accessible manner–

- (a) on the payment service provider’s website (if any); and
- (b) on paper at any branches and from any agent it uses or any entity to which its activities are outsourced.

(3) The FSC must make that information available in an easily accessible manner on its website.

(4) Payment service providers and the FSC must make the information available in accessible formats and by alternative means so that it is accessible to persons with disabilities.

**PART 5  
ENFORCEMENT, PENALTIES AND APPEALS**

**Sanctions for infringements.**

99. The FSC may take any of the actions specified in regulations 100 to 104 if it is satisfied that an infringement of these Regulations (an “infringement”) has occurred.

**Public statement.**

100.(1) The FSC may publish a statement specifying–

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



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

**Cease and desist order.**

101. The FSC may order a person–

- (a) to cease any conduct which constitutes an infringement; and
- (b) to desist from any repetition of that conduct.

**Prohibition order.**

102.(1) The FSC may by order (“a prohibition order”) prohibit a specified individual–

- (a) from discharging managerial responsibilities within a specified payment service provider;
- (b) from exercising management functions in payment service providers.

(2) A prohibition order must specify a period during which it has effect.

**Suspension or revocation of authorisation.**

103.(1) The FSC may by order suspend or revoke an authorisation granted under these Regulations.

(2) A suspension under sub-regulation (1) must specify a period during which it has effect.

**Civil penalties.**

104.(1) The FSC may by order impose a penalty for an infringement of an amount not exceeding the equivalent of level 5 on the standard scale.

(2) A penalty imposed under this regulation may be enforced as if it was a civil debt owed to the FSC.

**Exercise of powers.**

105. The FSC must ensure that, in determining the type and level of sanction imposed for an infringement, all relevant circumstances are taken into account, including where appropriate–

- (a) the gravity and duration of the infringement;
- (b) the degree of responsibility of the person responsible;
- (c) the financial strength of the person responsible, for example, as indicated by a legal person's total turnover or an individual's annual income;
- (d) in so far as they can be determined, the importance of the profits gained or losses avoided by the person responsible;
- (e) the level of cooperation with the FSC of the person responsible;
- (f) previous infringements by the person responsible; and
- (g) measures taken by the person responsible to prevent its repetition.

**Warning notices.**

106.(1) The FSC must give the person concerned a warning notice before—

- (a) taking any action under regulations 100 to 104 in respect of an infringement;
- (b) refusing an application for authorisation under regulation 13;
- (c) withdrawing an authorisation under regulation 14;
- (d) refusing to register an agent under regulation 18; or
- (e) making a declaration under regulation 37 that a service is not within part 2(k) of Schedule 1.

(2) Sub-regulation (1) does not apply if the FSC is satisfied that a warning notice—

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

- (3) A warning notice must—
- (a) specify the action proposed and the reasons for it;
  - (b) give the recipient not less than 14 days to make representations; and
  - (c) specify a period within which the recipient may decide whether to make oral representations.
- (4) The period for making representations may be extended by the FSC.

**Decision notices.**

- 107.(1) This regulation applies where the FSC has—
- (a) issued a warning notice; or
  - (b) dispensed with the requirement to do so under regulation 106(2).
- (2) After considering any representations made in accordance with regulation 106, the FSC must issue—
- (a) a decision notice stating that the FSC will take the action specified in the warning notice;
  - (b) a discontinuance notice stating that the FSC does not propose to take that action; or
  - (c) a combined notice consisting of a decision notice stating that the FSC will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.
- (3) A decision notice in respect of an infringement takes effect, and the specified action under regulations 100 to 104 may be taken—
- (a) at the end of the period for bringing an appeal if no appeal is brought; or
  - (b) when any appeal is finally determined or withdrawn.
- (4) A decision notice in respect of any of the matters in regulation 106(1)(b), (d) or (e) has immediate effect.

**Interim orders.**

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

**Appeals.**

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

(2) The person concerned may also appeal to the Supreme Court where the FSC fails to make a decision in respect of any of the matters in regulation 106(1)(b), (d) or (e) within six months of the FSC having received a complete application or declaration (as the case may be).

(3) An appeal must be brought—

- (a) within the period of 28 days beginning with the date of the decision notice; or
- (b) where the appeal is against a failure to make a decision referred to in sub-regulation (2), within the period of 28 days beginning with the day after the end of the six month period specified in that sub-regulation.

**Publication of enforcement action.**

110.(1) The FSC may publish on its official website details of any action taken in respect of a person under this Part, after the person concerned is informed of the decision.

(2) The information published under sub-regulation (1) must include at least—

- (a) the type and nature of the infringement; and
- (b) the identity of the person responsible for it;

unless the FSC considers that publication would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

(3) Sub-regulation (1) does not apply while an appeal could be brought or is pending unless the FSC—

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- (a) applies to the Supreme Court for permission to publish the decision notice pending an appeal or the outcome of an appeal; and
- (b) is granted that permission by the Supreme Court.

**PART 6  
FINAL PROVISIONS****Transitional provision.**

111.(1) A person who provides payment services before 13th January 2018 in accordance with the Financial Services (EEA) (Payment Services) Regulations 2010 may continue to do so in accordance with the requirements of those Regulations without the need to seek authorisation under regulation 6 or comply with the other provisions of Part 2 until 13th July 2018.

(2) A payment institution to which sub-regulation (1) applies must submit all relevant information to the FSC, in order to allow the FSC to assess, by 13th July 2018, whether that payment institution complies with the requirements of Part 2 and, if not, which measures need to be taken in order to ensure compliance or whether a withdrawal of authorisation is appropriate.

(3) Where the FSC verifies that a payment institution complies with the requirements of Part 2, it must be granted authorisation and entered in the register maintained under regulation 5.

(4) A payment institution to which sub-regulation (1) applies which does not comply with the requirements of Part 2 by 13th July 2018 is prohibited from providing payment services.

(5) The FSC may grant automatic authorisation to a payment institution to which sub-regulation (1) applies and enter it in the register maintained under regulation 5 without further formalities where the FSC is satisfied that the institution meets the requirements of regulations 6 and 12; but the FSC must inform the payment institutions concerned before doing so.

(6) Sub-regulation (7) applies to persons who benefited under Article 26 of Directive 2007/64/EC before 13th January 2018 and pursued payment services activities within the meaning of that Directive.

(7) A person in sub-regulation (6) may continue those activities within Gibraltar in accordance with Directive 2007/64/EC until 13th January 2019 without being required to seek authorisation under regulation 6 or obtain an exemption under regulation 32 or to comply with the other provisions of Part 2.

(8) Any person in sub-regulation (6) who has not, by 13th January 2019, been authorised or exempted under these Regulations is prohibited from providing payment services.

(9) A legal person which, before 12th January 2016, was performing in Gibraltar the activities of a payment initiation service provider or account information service provider may continue to perform those activities, in accordance with the regulatory regime that applied before these Regulations came into operation, until the operative date determined under regulation 112(1).

(10) Despite sub-regulation (1), a payment institution that has been authorised to provide payment services as referred to in point (7) of the Annex to Directive 2007/64/EC retains that authorisation for the provision of those payment services which are considered to be payment services under paragraph 1(c) of Schedule 1 where, by 13th January 2020, the FSC has evidence that the requirements of regulations 8(1)(c) and 10 are met.

**Compliance with regulatory technical standards.**

112.(1) Despite regulation 1(2), the obligation to apply the security measures referred to in regulations 63 to 65 and 94 only apply 18 months after the coming into operation of the relevant regulatory technical standards adopted under Article 98 of the Payment Services Directive (“the operative date”).

(2) In the period between the coming into operation of these Regulations and the operative date, an account servicing payment service provider must not use the absence of those regulatory technical standards to obstruct the use of payment initiation and account information services for the accounts that they are servicing.

**Revocation.**

113. The Financial Services (EEA) (Payment Services) Regulations 2010 are revoked.

**Consequential amendments.**

114. Schedule 4 makes consequential amendments to other enactments.

**SCHEDULE 1  
PAYMENT SERVICES****PART 1  
PAYMENT SERVICES**

1. Subject to Part 2, the following activities, when carried out as a regular occupation or business activity, are payment services–

- (a) services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account;
- (b) services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account;
- (c) execution of payment transactions, including transfers of funds on a payment account with the user’s payment service provider or with another payment service provider–
  - (i) execution of direct debits, including one-off direct debits;
  - (ii) execution of payment transactions through a payment card or a similar device;
  - (iii) execution of credit transfers, including standing orders;
- (d) execution of payment transactions where the funds are covered by a credit line for a payment service user–
  - (i) execution of direct debits, including one-off direct debits;
  - (ii) execution of payment transactions through a payment card or a similar device;
  - (iii) execution of credit transfers, including standing orders;
- (e) issuing of payment instruments and/or acquiring of payment transactions;
- (f) money remittance;
- (g) payment initiation services;



- (h) account information services.

**PART 2**  
**ACTIVITIES WHICH DO NOT CONSTITUTE PAYMENT**  
**SERVICES**

2. The following activities do not constitute payment services—
- (a) payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention;
  - (b) payment transactions from the payer to the payee through a commercial agent authorised via an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;
  - (c) professional physical transport of banknotes and coins, including their collection, processing and delivery;
  - (d) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;
  - (e) services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction through a payment for the purchase of goods or services;
  - (f) cash-to-cash currency exchange operations where the funds are not held on a payment account;
  - (g) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee—
    - (i) paper cheques governed by the Geneva Convention of 19 March 1931 providing a uniform law for cheques or similar paper cheques governed by the laws of EEA States which are not party to that Convention;
    - (ii) paper-based drafts governed by the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes or similar paper-based

- drafts governed by the laws of EEA States which are not party to that Convention;
- (iii) paper-based vouchers;
  - (iv) paper-based traveller's cheques;
  - (v) paper-based postal money orders as defined by the Universal Postal Union;
- (h) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses or central banks and other participants of the system, and payment service providers (but without limiting regulation 34);
- (i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in subparagraph (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services and any other entities allowed to have the custody of financial instruments;
- (j) services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services, with the exclusion of payment initiation services and account information services;
- (k) services based on specific payment instruments that can be used only in a limited way, that meet one of the following conditions—
- (i) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;
  - (ii) instruments which can be used only to acquire a very limited range of goods or services;

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- (iii) instruments valid only in a single Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers having a commercial agreement with the issuer;
- (l) payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service—
  - (i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or
  - (ii) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets;

where the value of any single payment transaction does not exceed EUR 50 and either the cumulative value of payment transactions for an individual subscriber does not exceed EUR 300 per month or, where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed EUR 300 per month;

- (m) payment transactions carried out between payment service providers, their agents or branches for their own account;
- (n) payment transactions and related services between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group;
- (o) subject to paragraph 3, cash withdrawal services offered by means of ATM by providers which—
  - (i) are acting on behalf of one or more card issuers;
  - (ii) are not a party to the framework contract with the customer withdrawing money from a payment account; and

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(iii) do not conduct any other payment services in Part 1 of this Schedule.

3. A customer using cash withdrawal services offered by means of ATM under paragraph 2(o) must be provided with the information on any withdrawal charges referred to in regulations 44, 46, 47 and 57 before carrying out the withdrawal and on receipt of the cash at the end of the transaction after withdrawal.

**SCHEDULE 2  
OWN FUNDS**

**Method A**

1.(1) The payment institution's own funds must amount to at least 10% of its fixed overheads of the preceding year.

(2) The FSC may adjust that requirement in the event of a material change in a payment institution's business since the preceding year.

(3) Where a payment institution has not completed a full year's business at the date of the calculation, its own funds must amount to at least 10% of the corresponding fixed overheads as projected in its business plan, unless an adjustment to that plan is required by the FSC.

**Method B**

2. The payment institution's own funds must amount to at least the sum of the following elements multiplied by the scaling factor  $k$  in paragraph 4, where payment volume (PV) represents one twelfth of the total amount of payment transactions executed by the payment institution in the preceding year—

- (a) 4.0% of the slice of PV up to EUR 5 million; plus
- (b) 2.5% of the slice of PV above EUR 5 million up to EUR 10 million; plus
- (c) 1% of the slice of PV above EUR 10 million up to EUR 100 million; plus
- (d) 0.5% of the slice of PV above EUR 100 million up to EUR 250 million; plus
- (e) 0.25% of the slice of PV above EUR 250 million.

**Method C**

3.(1) Subject to sub-paragraph (5), the payment institution's own funds must amount to at least the relevant indicator in sub-paragraph (2), multiplied by the multiplication factor in sub-paragraph (4) and by the scaling factor  $k$  in paragraph 4.

(2) The relevant indicator is the sum of the following—

- (a) interest income;
  - (b) interest expenses;
  - (c) commissions and fees received; and
  - (d) other operating income.
- (3) In calculating the relevant indicator–
- (a) each element must be included in the sum with its positive or negative sign;
  - (b) income from extraordinary or irregular items must not be used;
  - (c) expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if it is incurred from a payment service provider subject to supervision under these Regulations;
  - (d) the relevant indicator is calculated on the basis of the 12-monthly observation at the end of the previous financial year; and
  - (e) business estimates may be used when audited figures are not available.
- (4) The multiplication factor is–
- (a) 10% of the slice of the relevant indicator up to EUR 2.5 million;
  - (b) 8% of the slice of the relevant indicator from EUR 2.5 million up to EUR 5 million;
  - (c) 6% of the slice of the relevant indicator from EUR 5 million up to EUR 25 million;
  - (d) 3% of the slice of the relevant indicator from EUR 25 million up to 50 million;
  - (e) 1.5% above EUR 50 million.
- (5) The relevant indicator must be calculated over the previous financial year, but own funds calculated in accordance with this method must not fall

below 80% of the average of the previous three financial years for the relevant indicator.

**Scaling Factor**

4. The scaling factor  $k$ , to be used in Methods B and C, is—
- (a) 0.5 where the payment institution only provides the payment service in paragraph 1(f) of Schedule 1; or
  - (b) 1 where the payment institution provides any of the payment services in paragraphs 1(a) to (e) of Schedule 1.

**SCHEDULE 3  
PRIOR GENERAL INFORMATION FOR FRAMEWORK  
CONTRACTS**

1. The following information about the payment service provider—
  - (a) the name of the payment service provider, the geographical address of its head office and, where applicable, the geographical address of its agent or branch established in the Member State where the payment service is offered, and any other address, including electronic mail address, relevant for communication with the payment service provider;
  - (b) the particulars of the FSC and of the register provided for in regulation 5 or of any other relevant public register of authorisation of the payment service provider and the registration number or equivalent means of identification in that register.
  
2. The following information about the use of the payment service—
  - (a) a description of the main characteristics of the payment service to be provided;
  - (b) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly initiated or executed;
  - (c) the form of and procedure for giving consent to initiate a payment order or execute a payment transaction and withdrawal of such consent in accordance with regulations 62 and 78;
  - (d) a reference to the time of receipt of a payment order in accordance with regulation 76 and the cut-off time, if any, established by the payment service provider;
  - (e) the maximum execution time for the payment services to be provided;
  - (f) whether there is a possibility to agree on spending limits for the use of the payment instrument in accordance with regulation 66(1);
  - (g) in the case of card-based payment instruments which are co-badged within the meaning of Regulation (EU) 2015/751, the



payment service user's rights under Article 8 of that Regulation.

3. The following information about charges, interest and exchange rates—
  - (a) all charges payable by the payment service user to the payment service provider including those connected to the manner in and frequency with which information under these Regulations is provided or made available and, where applicable, the breakdown of the amounts of such charges;
  - (b) where applicable, the interest and exchange rates to be applied or, if reference interest and exchange rates are to be used, the method of calculating the actual interest, and the relevant date and index or base for determining such reference interest or exchange rate;
  - (c) if agreed, the immediate application of changes in reference interest or exchange rate and information requirements relating to the changes in accordance with regulation 52(4).
  
4. The following information about communication—
  - (a) where applicable, the means of communication, including the technical requirements for the payment service user's equipment and software, agreed between the parties for the transmission of information or notifications under these Regulations;
  - (b) the manner in, and frequency with which, information under these Regulations is to be provided or made available;
  - (c) the language or languages in which the framework contract will be concluded and communication during this contractual relationship undertaken;
  - (d) the payment service user's right to receive the contractual terms of the framework contract and information and conditions in accordance with regulation 51.
  
5. The following information about safeguards and corrective measures—
  - (a) where applicable, a description of the steps that the payment service user is to take in order to keep safe a payment instrument and how to notify the payment service provider for the purposes of regulation 67(1)(b);

- (b) the secure procedure for notification of the payment service user by the payment service provider in the event of suspected or actual fraud or security threats;
- (c) if agreed, the conditions under which the payment service provider reserves the right to block a payment instrument in accordance with regulation 66;
- (d) the liability of the payer in accordance with regulation 72, including information on the relevant amount;
- (e) how and within what period of time the payment service user is to notify the payment service provider of any unauthorised or incorrectly initiated or executed payment transaction in accordance with regulation 69, as well as the payment service provider's liability for unauthorised payment transactions in accordance with regulation 71;
- (f) the liability of the payment service provider for the initiation or execution of payment transactions in accordance with regulations 86 and 87;
- (g) the conditions for refund in accordance with regulations 74 and 75.

6. The following information about changes to and termination of the framework contract—

- (a) if agreed, information that the payment service user will be deemed to have accepted changes in the conditions in accordance with regulation 52, unless the payment service user notifies the payment service provider before the date of their proposed date of entry into force that they are not accepted;
- (b) the duration of the framework contract;
- (c) the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with regulation 52(1) to (3) or 53.

7. The following information about redress—

- (a) any contractual clause on the law applicable to the framework contract and/or the competent courts;

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- (b) the ADR procedures available to the payment service user in accordance with regulations 95 to 97.

**SCHEDULE 4  
CONSEQUENTIAL AMENDMENTS****Financial Services (Distance Marketing) Act 2006.**

1.(1) The Financial Services (Distance Marketing) Act 2006 is amended as follows.

(2) In section 7, for subsection (6) substitute–

“(6) Where the provisions of the Financial Services (Payment Services) Regulations 2018 are also applicable, the requirements of this section, with the exception of paragraphs (2)(c) to (g), (3)(a), (d) and (e), and (4)(b) of Schedule 1, shall be replaced with regulations 43, 44 and 50 of, and Schedule 3 to, those Regulations.”.

**Financial Services (Electronic Money) Regulations 2011.**

2.(1) The Financial Services (Electronic Money) Regulations 2011 are amended as follows.

(2) In regulation 2–

(a) for the definition of “payment services” substitute–

““payment services” has the same meaning as in the Financial Services (Payment Services) Regulations 2018;” and

(b) for the definition of “Payment Services Directive” substitute–

““Payment Services Directive” means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, as amended from time to time;”.

(3) After regulation 3 insert–

**“Application of Payment Services Directive.**

3A. Without limiting these Regulations–

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- (a) regulations 5, 6, 12 to 16, 18(7) and (8), 19 to 31 and 109(1) to (3) of the Financial Services (Payment Services) Regulations 2018; and
- (b) any delegated acts adopted by the European Commission under Articles 15(4), 28(5) and 29(7) of the Payment Services Directive;

shall apply to electronic money institutions with any necessary modifications.”.

(4) In regulation 26–

- (a) in sub-regulation (2), in each of the three places where it occurs, for “Financial Services (EEA) (Payment Services) Regulations 2010” substitute “Financial Services (Payment Services) Regulations 2018”; and
- (b) in sub-regulation (3) for “Financial Services (EEA) (Payment Services) Regulations 2010” substitute “Financial Services (Payment Services) Regulations 2018”.

(5) In regulation 32, in sub-regulation (2) for “regulation 16(3) of the Financial Services (EEA) (Payment Services) Regulations 2010” substitute “regulation 17(4) of the Financial Services (Payment Services) Regulations 2018”.

(6) In regulation 33, after sub-regulation (3) insert–

“(4) Where an electronic money institution distributes electronic money in another EEA State by engaging such a natural or legal person, the following shall apply (with any necessary modification) to the electronic money institution–

- (a) regulations 26 to 31, other than regulation 29(6), of the Financial Services (Payment Services) Regulations 2018; and
- (b) any delegated acts adopted by the European Commission in accordance with Articles 28(5) and Article 29(7) of the Payment Services Directive.

(5) Electronic money institutions may provide payment services referred to in regulation 32(1)(a) through agents but subject to the conditions laid down in regulations 18 and 19 of the Financial Services (Payment Services) Regulations 2018.”.

(7) In regulation 36, for “Financial Services (EEA) (Payment Services) Regulations 2010” substitute “Financial Services (Payment Services) Regulations 2018”.

(8) In regulation 59, in sub-regulation (2) for “Regulations 80 to 83 of the Financial Services (EEA) (Payment Services) Regulations 2010” substitute “Regulations 95 to 97 of the Financial Services (Payment Services) Regulations 2018”.

(9) In regulation 73, for “Financial Services (EEA) (Payment Services) Regulations 2010” substitute “Financial Services (Payment Services) Regulations 2018”.

(10) After regulation 75 insert–

**“Transitional arrangements: Payment Services Directive**

75A.(1) An electronic money institution that has, before 13th January 2018, taken up activities in accordance with these Regulations and the Financial Services (EEA) (Payment Services) Regulations 2010 may continue to do so without the need to seek authorisation under the relevant provisions or to comply with the other requirements laid down or referred to in them until 13th July 2018.

(2) An electronic money institution to which sub-regulation (1) applies must submit all relevant information to the Authority, to allow it to assess, by 13th July 2018, whether that electronic money institution complies with the requirements of the relevant provisions and, if not, which measures need to be taken in order to ensure compliance or whether a withdrawal of authorisation is appropriate.

(3) Where the Authority verifies that an electronic money institution complies with the requirements of the relevant provisions, it must be granted authorisation and entered in the register.

(4) An electronic money institution to which sub-regulation (1) applies which does not comply with the requirements of the relevant provisions by 13th July 2018 is prohibited from issuing electronic money.

(5) In this regulation the “relevant provisions” means regulations 2, 4 to 17, 19 to 21, 23, 26 to 35, 37, 39, 47 to 49, 60, 71, 74, 77 and Schedules 1 and 2.”.

(11) In Schedule 2, in paragraph 21(4)–

- (a) for “paragraph 1(6) of Schedule 1 to the Financial Services (EEA) (Payment Services) Regulations 2010” substitute “paragraph (1)(f) of Schedule 1 to the Financial Services (Payment Services) Regulations 2018”; and
- (b) “paragraph 1(7) of the Schedule” substitute “paragraph (1)(g) of Schedule 1”.

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

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

(2) In the Schedule, for paragraph 4 substitute–

“4. Payment services as defined in Article 4(3) of Directive (EU) 2015/2366.”.