

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

LEGAL NOTICE NO. 498 OF 2020

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (PAYMENT SERVICES) (AMENDMENT) (EU EXIT) REGULATIONS 2020

In exercise of the powers conferred on the Minister by section 11 of the European Union (Withdrawal) Act 2019, the Minister has made these Regulations—

Title.

1. These Regulations may be cited as the Financial Services (Payment Services) (Amendment) (EU Exit) Regulations 2020.

Commencement.

2. These Regulations come into operation on 1st January 2021.

Amendment of the Financial Services (Payment Services) Regulations 2020.

3.(1) The Financial Services (Payment Services) Regulations 2020 are amended as follows.

(2) For regulation (1)(3)(b), substitute—

“(b) the obligation to apply security measures referred to in regulations 42 to 44 and 79 only apply as from 14th September 2019 (“the operative date”);”.

(3) In regulation 2(1)—

(a) for the definition of “branch” substitute—

““branch” in relation to payment institution, means a place of business other than the head office which—

(a) is 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;”;

- (b) omit the definition of “EEA payment institution”;
- (c) in the definition of “group”, after “Regulation (EU) 241/2014” insert “as it forms part of the law of Gibraltar after IP completion day”;
- (d) omit the definition of “host state regulator”;
- (e) in the definition of “Regulation (EU) 2015/847”, after “Regulation (EC) 1781/2006” insert “as it forms part of the law of Gibraltar after IP completion day”; and
- (f) after the definition of “sensitive payment data”, insert–

““the SEPA regulation” means Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 as it forms part of the law of Gibraltar after IP completion day;”.

(4) In regulation 3(3), omit “, 7”.

(5) In regulation 4, for sub-regulations (2) to (7), substitute–

“(2) Parts 3, 4 and 6 apply to payment transactions where–

(a) payment services are provided from an establishment maintained by a payment service provider or its agent in Gibraltar; and

(b) the services are provided in one of the following circumstances–

(i) the payment service providers of both the payer and the payee are located in Gibraltar and the transaction is in sterling;

(ii) the payment service providers of both the payer and the payee are located in the qualifying area and the transaction is in euro and executed under a payment scheme which operates across the qualifying area;

(iii) the payment service providers of both the payer and the payee are located in Gibraltar and the transaction is in a currency other than sterling or euro; or

(iv) the payment service provider of either the payer or the payee, but not both, is located in Gibraltar and the case does not fall within paragraph (ii).

(3) In sub-regulation (2)(b)(ii), the “qualifying area” means the area of Gibraltar, the United Kingdom and the EEA States.”

- (4) In the circumstances mentioned in sub-regulation (2)(b)(iii)–
- (a) Parts 3, 4 and 6 apply only in respect of those parts of a transaction which are carried out in Gibraltar; and
 - (b) the following provisions do not apply–
 - (i) regulation 23(1)(b);
 - (ii) regulation 33(a);
 - (iii) regulations 58 to 62; and
 - (iv) paragraph 2(e) of Schedule 2.
- (5) In the circumstances mentioned in sub-regulation (2)(b)(iv)–
- (a) Parts 3, 4 and 6 apply only in respect of those parts of a transaction which are carried out in Gibraltar; and
 - (b) the following provisions do not apply–
 - (i) regulation 23(1)(b);
 - (ii) regulation 33(a);
 - (iii) regulation 39(2) and (4);
 - (iv) regulation 53;
 - (v) regulation 54;
 - (vi) regulation 58;
 - (vii) regulation 60(1) and (2);
 - (viii) regulation 65;
 - (ix) regulation 68; and
 - (x) paragraphs 2(e) and 5(g) of Schedule 2.”.
- (6) For regulation 6(8), substitute–

“(8) The GFSC must include a description of any services or transactions notified under sub-regulations (2) and (7) in the Register.”

(7) Omit regulation 7(4).

(8) For regulation 8(3)(c), substitute–

“(c) take account of any guidance on security measures issued by the GFSC in accordance with Article 95.3 of the Payment Services Directive.”.

(9) For regulation 10(8), substitute–

“(8) Technical standards may specify the information to be provided to the GFSC in the application for the authorisation of payment institutions.”.

(10) In regulation 11(2)(c), omit “European Union or Gibraltar”.

(11) Omit regulation 14(10).

(12) For regulation 17(3), substitute–

“(3) Where the Financial Services (Distance Marketing) Act 2006 applies, the requirements of regulations 22, 23 and 29 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).”.

(13) In regulation 39–

(a) in sub-regulation (2), in both places it occurs, for “the EEA” substitute “Gibraltar”;

(b) after sub-regulation (2) insert–

“(2A) Where, in respect of payment transactions in euro executed under a payment scheme which operates across the qualifying area, both the payer’s and the payee’s payment service providers are, or the only payment service provider is, in Gibraltar the respective payment service providers must ensure that–

(a) the payee pays any charges levied by the payee’s payment service provider; and

(b) the payer pays any charges levied by the payer’s payment service provider.”;

(c) in sub-regulation (4)(b), for “Regulation (EU) No 260/2012” substitute “the SEPA regulation”; and

(d) after sub-regulation (4) insert–

“(5) In sub-regulation (2A), “qualifying area” has the meaning given in regulation 4(3).”.

(14) For regulation 42(2)(c)(ii) substitute–

“(ii) communicates with the account servicing payment service provider securely, subject to any technical standards made in accordance with Article 98.4 of the Payment Services Directive.”

(15) In regulation 43–

(a) for sub-regulation (2)(a) substitute–

“(a) communicate securely with the payment initiation service provider, subject to any technical standards made in accordance with Article 98.4 of the Payment Services Directive;”; and

(b) for sub-regulation (4)(d)(ii) substitute–

“(ii) communicate with the account servicing payment service provider, the payer and the payee securely, subject to any technical standards made in accordance with Article 98.4 of the Payment Services Directive;”.

(16) In regulation 44–

(a) for sub-regulation (2)(a) substitute–

“(a) communicates securely with the account information service provider, subject to any technical standards made in accordance with Article 98.4 of the Payment Services Directive; and”;

(b) for sub-regulation (4)(c)(ii) substitute–

“(ii) communicate with the account servicing payment service and the payment service user securely, subject to any technical standards made in accordance with Article 98.4 of the Payment Services Directive;”.

(17) In regulation 53(4), for “Regulation (EU) No 260/2012” substitute “the SEPA regulation”.

(18) In regulation 59–

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

“(a) executed wholly within the qualifying area in euro under a payment scheme which operates across the qualifying area;”;

(b) in sub-regulation (1)(c), in the opening words, before “involving” insert “executed wholly under a payment scheme which operates across the qualifying area and”;

- (c) in sub-regulation (2), for “EEA” substitute “Gibraltar”; and
- (d) after sub-regulation (2) insert–
 - “(3) In sub-regulation (1), “qualifying area” has the meaning given in regulation 4(5).”.
- (19) For regulation 63(2)(b) substitute–
 - “(b) the transaction only involves a currency conversion between euro and sterling; or”.
- (20) In regulation 69(2), omit “European Union”.
- (21) Omit regulation 75(2).
- (22) In regulation 76–
 - (a) omit sub-regulation (2); and
 - (b) in sub-regulation (3), after “Recommendation 2003/361/EC” insert “as that Recommendation applied in Gibraltar immediately before IP completion day”.
- (23) In regulation 77–
 - (a) in sub-regulation (1), for “information on the rights of consumers produced by the European Commission under Article 106 of the Payment Services Directive” substitute “approved consumer rights information”;
 - (b) after sub-regulation (4), insert–
 - “(5) In sub-regulation (4), “approved consumer rights information” means any information on the rights of consumers–
 - (a) which was produced by the European Commission under Article 106 of the Payment Services Directive before IP completion day; or
 - (b) which the GFSC may approve after that date.”.
- (24) For regulation 78(4) substitute–
 - “(4) This regulation applies subject to–
 - (a) any guidance on security measures issued by the GFSC in accordance with Article 95.3 of the Payment Services Directive; or

(b) any technical standards concerning the criteria and on the conditions for establishment, and monitoring, of security measures.”.

(25) In regulation 86(2), for “the Money Laundering Directive or any other relevant European Union law”, substitute “any other enactment”.

(26) In regulation 87–

(a) for sub-regulation (3), substitute–

“(3) On receiving a notification under sub-regulation (1), the GFSC must, after assessing the incident, notify any other relevant authorities in Gibraltar.”;

(b) omit sub-regulation (4);

(c) for sub-regulation (5), substitute–

“(5) Payment service providers must provide to the GFSC, at least once each year, statistical data on fraud relating to different means of payment.”; and

(d) for sub-regulation (6) substitute–

“(6) This regulation applies subject to any guidance issued by the GFSC in accordance with Article 96.3 of the Payment Services Directive.”.

(27) Omit Part 7.

(28) In regulation 105–

(a) re-number sub-regulation (1) as regulation 105;

(b) in that re-numbered regulation, omit “that is in conformity with European Union law”; and

(c) omit sub-regulation (2).

(29) In regulation 106–

(a) in sub-regulation (2)(b), omit “which provide payment services in EEA States”; and

(b) for sub-regulation (7), substitute–

“(7) The GFSC must–

(a) publish the Register online and make it available for public inspection; and

- (b) update the Register without delay.”.
- (30) Omit regulation 107.
- (31) Omit regulation 108.
- (32) In Schedule 1–
 - (a) for paragraph 2(3)(c), substitute–
 - “(c) take account of any guidance on security measures issued by the GFSC in accordance with Article 95.3 of the Payment Services Directive.”;
 - (b) for paragraph 3(2), substitute–
 - “(2) Technical standards may specify the information to be provided to the GFSC in the application for the authorisation of an AISP.”; and
 - (c) in paragraph 6, omit sub-paragraph (2).
- (33) In Schedule 2–
 - (a) in paragraph 1(a), omit “established in the Member State”; and
 - (b) in paragraph 2(g), for “Regulation (EU) 2015/751” substitute “the Interchange Fees Regulation”.

Dated: 24th December 2020.

A J ISOLA,
Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These regulations are made under the European Union (Withdrawal) Act 2019 and address failures of retained EU law to operate effectively and other deficiencies arising from Gibraltar’s withdrawal from the European Union. The regulations amend the Financial Services (Payment Services) Regulations 2020, which give effect in Gibraltar to Directive (EU) 2015/2366.