

Financial Services (Banking)

FINANCIAL SERVICES (PAYMENT ACCOUNTS) REGULATIONS 2016

1992-11

Repealed
Subsidiary
2016/177

Subsidiary Legislation made under s.79 of the Financial Services (Banking) Act and s.53 of the Financial Services (Investment and Fiduciary Services) Act, as read with s.23(g)(i) of the Interpretation and General Clauses Act and upon the Government by s.23(g)(ii) of that Act.

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Repealed by LN.2020/043 as from 15.1.2020

(LN. 2016/177)

Commencement **18.9.2016**

Amending enactments	Relevant current provisions	Commencement date
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Transposing EU:
Directive 2014/92/EU

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In exercise of the powers conferred upon the Minister by section 79 of the Financial Services (Banking) Act and 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 upon the Government by section 23(g)(ii) of that Act and of all other enabling powers, and in order to transpose Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, the Minister and the Government have made the following Regulations.

PART 1 **PRELIMINARY**

Title and commencement.

1.(1) These Regulations may be cited as the Financial Services (Payment Accounts) Regulations 2016.

(2) These Regulations come into operation on 18 September 2016.

(3) Without affecting sub-regulation (2), by no later than nine months after the entry into force of the regulatory technical standards referred to in regulation 4(2)(c)–

- (a) payment service providers must comply with the obligations imposed upon them by regulations 5, 6 and 7; and
- (b) the FSC must comply with the obligations imposed upon it by regulation 8.

Overview.

2.(1) These Regulations lay down rules and procedures concerning–

- (a) the transparency and comparability of fees charged on payment accounts held by consumers;
- (b) the switching of payment accounts within Gibraltar;
- (c) the facilitation of cross-border payment account-opening for consumers; and
- (d) the right for consumers to open and use basic payment accounts.

(2) These Regulations apply to any payment account which enables a consumer to—

- (a) place funds in the account;
- (b) withdraw cash from the account; and
- (c) execute and receive payment transactions, including credit transfers, to and from a third party.

Interpretation.

3. In these Regulations—

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

“competent authority” means—

- (a) in Gibraltar, the FSC; and
- (b) in an EEA State, an authority designated in that State under Article 21 of the Payment Accounts Directive;

“consumer” means an individual who is acting for purposes which are outside the individual’s trade, business, craft or profession;

“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 institution” has the same meaning as in Regulation (EU) No 575/2013 of the European Parliament and of the Council;

“credit interest rate” means any rate at which interest is paid to the consumer in respect of funds held in a payment account;

“credit transfer” means a national or cross-border 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;

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“direct debit” means a national or cross-border payment service for debiting a payer’s payment account, where a payment transaction is initiated by the payee on the basis of the payer’s consent;

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

“EEA State” means–

- (a) a Member State of the European Union; or
- (b) any other state which is a party to the European Economic Area Agreement;

“fees” means all charges and penalties, if any, payable by the consumer to the payment service provider for or in relation to services linked to a payment account;

“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;

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

“funds” means–

- (a) banknotes and coins;
- (b) scriptural money; and
- (c) electronic money within the meaning of Directive 2009/110/EC of the European Parliament and of the Council;

“legally resident consumer” means an individual who has the right to reside in Gibraltar or an EEA State by virtue of European Union or domestic law, including a consumer with no fixed address or an individual seeking asylum under the Geneva Convention of 28 July 1951 Relating to the Status of Refugees, the Protocol to the Convention of 31 January 1967 and other relevant international treaties;

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

“overdraft facility” means an explicit credit agreement under which a payment service provider makes available to a consumer funds which exceed the current balance in the consumer’s payment account;

“overrunning” means a tacitly accepted overdraft by which a payment service provider makes available to a consumer funds which exceed the current balance in the consumer’s payment account or the agreed overdraft facility;

“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—

- (a) holds a payment account and allows a payment order from that payment account; or
- (b) where there is no payer’s payment account, makes a payment order to a payee’s payment account;

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

“Payment Accounts Directive” means Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, as amended from time to time;

“payment instrument” has the same meaning as in the Payment Services Directive;

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

“payment service” has the same meaning as in the Payment Services Directive;

“Payment Services Directive” means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives

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97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, as amended from time to time;

“payment service provider” has the same meaning as in the Payment Services Directive;

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

“receiving payment service provider” means the payment service provider to which the information required to perform the switching is transferred;

“the representative linked services list” has the meaning given in regulation 4(1);

“services linked to the payment account” means all services related to the opening, operating and closing of a payment account, including—

- (a) payment services and payment transactions within the scope of Article 3(g) of the Payment Services Directive; and
- (b) overdraft facilities and overrunning;

“the standardised terms” has the meaning given in regulation 4(2);

“standing order” means an instruction given by the payer to the payment service provider which holds the payer’s payment account to execute credit transfers at regular intervals or on predetermined dates;

“switching” or “switching service” means, upon a consumer’s request, transferring from one payment service provider to another either the information about all or some standing orders for credit transfers, recurring direct debits and recurring incoming credit transfers executed on a payment account, or any positive payment account balance from one payment account to the other, or both, with or without closing the former payment account;

“transferring payment service provider” means the payment service provider from which the information required to perform the switching is transferred.

PART 2 **PAYMENT ACCOUNTS: COMPARABILITY OF FEES**

List of representative linked services.

4.(1) The FSC must publish a list of at least 10 and not more than 20 of the most representative services linked to a payment account and subject to a fee, offered by at least one payment service provider in Gibraltar (“the representative linked services list”).

(2) The representative linked services list must–

- (a) be published in English;
- (b) contain terms and definitions for each of the services included (but limited to only one term for each service); and
- (c) use the standardised terminology set out in the regulatory technical standards adopted by the European Commission in accordance with Article 3(4) of the Payment Accounts Directive (“the standardised terms”).

(3) For the purposes of sub-regulations (1) and (2), the FSC must have regard to–

- (a) the services that–
 - (i) are most commonly used by consumers in relation to their payment account; and
 - (ii) generate the highest cost for consumers, both overall as well as per unit; and
- (b) any guidelines on the application of the criteria in paragraph (a) issued by the EBA under Article 16 of Regulation (EU) No 1093/2010.

(4) The FSC must–

- (a) publish the representative linked services list without delay (and at the latest within three months) after those regulatory technical standards have entered into force; and
- (b) review and, where appropriate, revise the representative linked services list every four years following its publication.

Fee information and glossary.

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5.(1) A payment service provider, in good time before entering into a contract for a payment account with a consumer, must provide the consumer with a fee information document.

(2) A fee information document must—

- (a) use the standardised terms that are used in the representative linked services list and, where the payment service provider offers any service featured in that list, quote the corresponding fee for that service;
- (b) be a short and stand-alone document, presented on paper or another durable medium;
- (c) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
- (d) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
- (e) be written in English or, if agreed by the consumer and the payment service provider, in another language;
- (f) be accurate, not misleading and expressed in the currency of the payment account or, if agreed by the consumer and the payment service provider, in another currency of the European Economic Area;
- (g) contain the title 'fee information document' at the top of the first page and the common symbol referred to in sub-regulation (4); and
- (h) include a statement that it contains fees for the most representative services related to the payment account and that complete pre-contractual and contractual information on all the services is provided in other documents.

(3) Where one or more services are offered as part of a package of services linked to a payment account, the fee information document must disclose—

- (a) the fee for the entire package;
- (b) the services, and the quantity of those services, included in the package; and

- (c) the additional fee, if any, for any service that exceeds the quantity covered by the package fee.

(4) A fee information document must comply with any technical standards adopted by the European Commission under Article 4(6) of the Payment Accounts Directive concerning the format of, and common symbol for, a fee information document.

(5) The FSC may require a fee information document which meets the requirements of sub-regulations (2) to (4) to be provided by payment service providers together with other information which they are required to provide by or under–

- (a) the Financial Services (EEA) (Payments) Regulations 2010;
- (b) the Financial Services (Compensation and Resolution Schemes) Act 2015; or
- (c) any European Union or other domestic law concerned with payment accounts or related services which the Minister may by order specify.

(6) A payment service provider must make available to consumers a glossary of the standardised terms used in the representative linked services list and their related definitions.

(7) Any glossary provided under sub-regulation (6) must be drafted in clear, unambiguous and non-technical language and must not be misleading.

(8) A payment service provider must make a fee information document or glossary available to consumers (including those who are not customers of the payment service provider) at any time and in an easily accessible manner, including–

- (a) in electronic form on the payment service provider's website (where available);
- (b) in the premises of the payment service provider that are accessible to consumers; and
- (c) at the request of a consumer, free of charge on paper or another durable medium.

(9) This regulation applies without affecting Article 42(3) of the Payment Services Directive or Chapter II of the Consumer Credit Directive.

Annual statement of fees.

6.(1) A payment service provider must provide an annual statement of fees (a “statement of fees”) free of charge to all consumers who hold a payment account with that provider setting out–

- (a) the fees incurred by the consumer during the period to which the statement relates (“the relevant period”) for services linked to the payment account; and
- (b) where applicable, information regarding the overdraft and credit interest rates referred to in sub-regulation (3)(c) and applied to the payment account during the relevant period.

(2) A statement of fees must be provided by the method agreed between the payment service provider and the consumer and must be provided on paper at the consumer’s request.

(3) A statement of fees must specify–

- (a) the unit fee charged for each service and the number of times the service was used during the relevant period, and where the services are combined in a package, the fee charged for the package as a whole, the number of times the package fee was charged during the relevant period and the additional fee charged for any service exceeding the quantity covered by the package fee;
- (b) the total amount of fees incurred during the relevant period for each service, each package of services provided and services exceeding the quantity covered by the package fee;
- (c) where applicable–
 - (i) the overdraft interest rate applied to the payment account and the total amount of interest charged relating to the overdraft during the relevant period; and
 - (ii) the credit interest rate applied to the payment account and the total amount of interest earned during the relevant period; and

(d) the total amount of fees charged for all services provided during the relevant period.

(4) A statement of fees must–

- (a) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
- (b) be accurate, not misleading and expressed in the currency of the payment account or any other currency agreed by the consumer and the payment service provider;
- (c) contain the title “statement of fees” at the top of the first page of the statement and the common symbol referred to in sub-regulation (5);
- (d) be written in English or, if agreed by the consumer and the payment service provider, in another language; and
- (e) where applicable, use the standardised terms set out in the representative linked services list.

(5) A statement of fees must comply with any technical standards adopted by the European Commission under Article 5(4) of the Payment Accounts Directive concerning the format of, and common symbol for, a statement of fees.

(6) This regulation applies without affecting Articles 47 and 48 of the Payment Services Directive or Article 12 of the Consumer Credit Directive.

Information for consumers.

7.(1) A payment service provider must use the terms in the representative linked services list (where applicable) in its contractual, commercial and marketing information to consumers.

(2) A payment service provider may use brand names–

- (a) to designate its services in contractual, commercial and marketing information to consumers, provided that it clearly identifies (where applicable) the corresponding terms set out in the representative linked services list; and
- (b) in the fee information document and the statement of fees, provided that brand names are used in addition to the terms set out in the representative linked services list, as a secondary designation of those services.

Comparison websites.

8.(1) The FSC must ensure that consumers have access without charge to at least one website comparing fees charged by payment service providers for at least the services included in the representative linked services list.

(2) A comparison website may be operated by the FSC, another public authority or a private operator.

(3) A comparison website must—

- (a) be operationally independent of, and give equal treatment in search results to, payment service providers;
- (b) clearly disclose its owners;
- (c) set out clear, objective criteria on which comparisons are based;
- (d) use plain and unambiguous language and, where applicable, the terms used in the representative linked services list;
- (e) provide accurate and up-to-date information and state the time it was last updated;
- (f) include a broad range of payment account offers covering a significant part of the market and, where the information presented is not a complete overview of the market, a clear statement to that effect, before displaying results; and
- (g) provide an effective procedure for reporting incorrect information on published fees.

(4) The FSC must ensure that information is made available online about the availability of any website that complies with this regulation.

Packaged payment accounts.

9. A payment service provider that offers a consumer a payment account as part of a package with another product or service which is not linked to a payment account, must—

- (a) inform the consumer whether it is possible to purchase the payment account separately; and
- (b) if so, provide the consumer with separate information regarding the costs and fees associated with each of the other

products and services which are offered in the package and that can be purchased separately.

**PART 3
SWITCHING SERVICE**

Provision of switching service.

10. Payment service providers must provide a switching service as described in regulation 11 between payment accounts—

- (a) denominated in the same currency; and
- (b) opened or held by a consumer with a payment service provider in Gibraltar.

The switching service.

11.(1) The receiving payment service provider must initiate and perform the switching service upon receipt of an authorisation from the consumer.

(2) In the case of an account held by two or more consumers, an authorisation must be obtained from each of them.

(3) Except where sub-regulation (12) applies, the switching service must meet the requirements set out in sub-regulations (4) to (11).

(4) An authorisation must—

- (a) be drawn up in writing, in English or in any other language agreed between the parties, and a copy must be provided to the consumer;
- (b) allow the consumer to provide specific consent to the performance—
 - (i) by the transferring payment service provider of each of the tasks referred to in sub-regulation (6); and
 - (ii) by the receiving payment service provider of each of the tasks referred to in sub-regulation (8); and
- (c) allow the consumer to—

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- (i) identify specific incoming credit transfers, standing orders for credit transfers and direct debit mandates that are to be switched; and
- (ii) specify the date from which standing orders for credit transfers and direct debits are to be executed from the payment account opened or held with the receiving payment service provider.

(5) The date specified in accordance with sub-regulation (4)(c)(ii) must be at least six business days after the date on which the receiving payment service provider receives the documents transferred from the transferring payment service provider in accordance with sub-regulation (7).

(6) The receiving payment service provider, within two business days of receiving an authorisation, must request that the transferring payment service provider (to the extent provided for in the consumer's authorisation)–

- (a) transmit to the receiving payment service provider and, if specifically requested by the consumer, to the consumer–
 - (i) a list of the existing standing orders for credit transfers and available information on direct debit mandates that are being switched; and
 - (ii) the available information about recurring incoming credit transfers and creditor-driven direct debits executed on the consumer's payment account in the previous 13 months;
- (b) where it does not provide a system for automated redirection of the incoming credit transfers and direct debits to the consumer's payment account, stop accepting direct debits and incoming credit transfers with effect from the date specified in the authorisation;
- (c) cancel standing orders with effect from the date specified in the authorisation;
- (d) transfer any remaining positive balance to the payment account opened or held with the receiving payment service provider on the date specified by the consumer; and
- (e) close the consumer's payment account on the date specified by the consumer.

(7) The transferring payment service provider, upon receiving a request from the receiving payment service provider and to the extent provided for in the consumer's authorisation, must carry out the following tasks—

- (a) send the receiving payment service provider the information referred to in sub-regulation (6)(a) within five business days;
- (b) where it does not provide a system for automated redirection of the incoming credit transfers and direct debits to the consumer's payment account—
 - (i) stop accepting incoming credit transfers and direct debits on the payment account with effect from the date specified in the authorisation; and
 - (ii) inform the payer or payee of the reason for not accepting the payment transaction;
- (c) cancel standing orders with effect from the date specified in the authorisation;
- (d) transfer any remaining positive balance from the consumer's payment account to the payment account opened or held with the receiving payment service provider on the date specified in the authorisation; and
- (e) without affecting Articles 45(1) and (6) of the Payment Services Directive, on the date specified in the authorisation—
 - (i) close the consumer's payment account if the actions in paragraphs (a), (b) and (d) have been completed and the consumer has no outstanding obligations on that account; or
 - (ii) immediately inform the consumer of any outstanding obligation that is preventing the consumer's payment account from being closed.

(8) Within five business days of receiving the information requested from the transferring payment service provider in accordance with sub-regulation (6), the receiving payment service provider, if provided for in the consumer's authorisation and to the extent that the information provided enables it to do so, must carry out the following tasks—

- (a) set up the standing orders for credit transfers requested by the consumer and execute them with effect from the date specified in the authorisation;

- (b) make any necessary preparations to accept direct debits and accept them with effect from the date specified in the authorisation;
- (c) where relevant, inform consumers of their rights under Article 5(3)(d) of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012;
- (d) inform payers specified in the authorisation and making recurring incoming credit transfers into a consumer's payment account of the details of the consumer's payment account with the receiving payment service provider and transmit to the payers a copy of the consumer's authorisation; and
- (e) inform payees specified in the authorisation and using a direct debit to collect funds from the consumer's payment account of the details of the consumer's payment account with the receiving payment service provider and the date from which direct debits are to be collected from that payment account and transmit to the payees a copy of the consumer's authorisation.

(9) If the receiving payment service provider does not have all the information it needs to inform payers or payees in accordance with sub-regulation (8)(d) or (e), it must ask the consumer or the transferring payment service provider to provide the missing information.

(10) Where the consumer chooses to personally provide the information referred to in sub-regulation (8)(d) or (e) to payers or payees rather than provide specific consent for the receiving payment service provider to do so, the receiving payment service provider must provide the consumer with standard letters providing details of the payment account and the starting date specified in the authorisation within the deadline specified in sub-regulation (8).

(11) Without affecting Article 55(2) of the Payment Services Directive, in order that the provision of payment services to the consumer is not interrupted in the course of switching, the transferring payment service provider must not block payment instruments before the date specified in the consumer's authorisation.

(12) The FSC may approve alternative arrangements to the switching service (an "alternative switching arrangement") where the FSC is satisfied that those arrangements—

- (a) are clearly in the interest of the consumer;

- (b) impose no additional burden on the consumer; and
 - (c) allow the switching to be completed within the same overall time-frame as that indicated in this regulation.
- (13) An application for the approval of an alternative switching arrangement must—
- (a) be made in the form and manner that the FSC may direct; and
 - (b) be accompanied by any information that the FSC may reasonably require for the purpose of determining the application.
- (14) The FSC may issue a notice approving an alternative switching arrangement and, where it does so, the notice must state the date on which it comes into operation.
- (15) The FSC may at any time require the operator of an alternative switching arrangement to provide the FSC with any information or assistance that it may reasonably require for the purpose of determining whether the alternative switching arrangement continues to meet the requirements of sub-regulation (12).
- (16) The FSC may revoke a notice issued under sub-regulation (14) where—
- (a) the operator of the alternative switching arrangement fails to comply with a requirement imposed under sub-regulation (15); or
 - (b) in the FSC's opinion, the alternative switching arrangement no longer meets the requirements of sub-regulation (12).
- (17) Where the FSC proposes to revoke a notice under sub-regulation (16), it must provide the operator of the alternative switching arrangement with an opportunity to make representations to the FSC unless, in its opinion, doing so would be detrimental to the interests of consumers.
- (18) Where the FSC—
- (a) refuses to issue a notice under sub-regulation (14); or
 - (b) revokes a notice under sub-regulation (16);

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it must give the applicant or operator a written notice to that effect stating the reasons for the decision.

Facilitating cross-border account-opening for consumers.

12.(1) Where a consumer indicates to a payment service provider in Gibraltar with whom the consumer holds a payment account (“the Gibraltar provider”) that the consumer wishes to open a payment account with a payment service provider located outside of Gibraltar but in an EEA State (“the EEA provider”), the Gibraltar provider must, in respect of the consumer’s payment account with the Gibraltar provider–

- (a) provide the consumer free of charge with–
 - (i) a list of the currently active standing orders for credit transfers and debtor-driven direct debit mandates on the account (where available); and
 - (ii) available information about recurring incoming credit transfers and creditor-driven direct debits executed on the account in the previous 13 months;
- (b) transfer any positive balance remaining on the account to the payment account opened or held by the consumer with the EEA provider; and
- (c) close the account.

(2) The requirement in paragraph (1)(b) only applies where the consumer has–

- (a) requested that the transfer be made; and
- (b) provided full details of the account opened or held with the EEA provider which enable the new payment service provider and the consumer’s payment account with that provider to be identified.

(3) Subject to sub-regulation (4), the Gibraltar provider must conclude the steps set out in sub-regulation (1) by a date specified by the consumer, which must be at least six business days after the Gibraltar provider receives the consumer's request, unless the Gibraltar provider and the consumer agree otherwise.

(4) Sub-regulation (3) does not apply if there is an outstanding obligation on the consumer’s payment account with the Gibraltar provider which

prevents it from being closed but, in that event, the Gibraltar provider must immediately inform the consumer of the outstanding obligation and that it is preventing closure of the account.

(5) This regulation applies without affecting Articles 45(1) and 45(6) of the Payment Services Directive.

Switching service fees.

13.(1) A transferring or receiving payment service provider must provide the consumer free of charge with details of any standing orders and direct debits which apply to the consumer's payment account with that provider.

(2) The transferring payment service provider must not charge the consumer or receiving payment service provider for providing any information requested from it by the receiving payment service provider in accordance with regulation 11(7)(a).

(3) Any fee charged by the transferring payment service provider for terminating a payment account held with that provider must be determined in accordance with Articles 45(2), (4) and (6) of the Payment Services Directive.

(4) Subject to sub-regulations (1) to (3), any fee charged by a payment service provider for any service provided under regulation 11 must be—

- (a) reasonable; and
- (b) in line with the payment service provider's actual costs in carrying out the relevant task.

Switching: consumer financial losses.

14.(1) A payment service provider must reimburse a consumer without delay for any financial loss, including charges and interest, incurred by the consumer as a direct result of the payment service provider's failure to comply with any obligation under regulation 11.

(2) Sub-regulation (1) does not apply to an unavoidable loss arising from—

- (a) abnormal and unforeseeable circumstances beyond the payment service provider's control; or
- (b) the payment service provider's compliance with an obligation arising under European Union or domestic legislation.

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(3) A breach of sub-regulation (1) is actionable at the suit of a consumer who suffers a loss of the kind specified in that sub-regulation as a result of that breach, but subject to sub-regulation (2) and the defences and other incidents applying to actions for breach of statutory duty.

Information about switching service.

15.(1) A payment service provider must make available to consumers the following information about the switching service–

- (a) the roles of the transferring and receiving payment service provider for each step of the switching process, as set out in regulation 11;
- (b) the timeframe for completion of the respective steps;
- (c) the fees, if any, charged for the switching process;
- (d) the information that the consumer will be asked to provide; and
- (e) the consumer's right to refer any dispute to the Financial Services Ombudsman.

(2) The information in sub-regulation (1) must be made available without charge–

- (a) on paper or another durable medium at all of the payment service provider's premises that are accessible to consumers;
- (b) in electronic form at all times on the payment service provider's website; and
- (c) at the consumer's request.

PART 4
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Non-discrimination.

16.(1) Credit institutions must not discriminate on grounds of nationality, place of residence or on any ground mentioned in Article 21 of the Charter of Fundamental Rights of the European Union, against legally resident consumers who apply for or access a payment account.

(2) The conditions for holding a basic payment account must not be discriminatory and the process of obtaining a basic payment account must not be too difficult or burdensome for the consumer.

Designated credit institutions.

17.(1) The Minister may designate one or more credit institutions in Gibraltar as credit institutions to which sub-regulation (3) applies.

(2) The Minister, in exercising the power under sub-regulation (1)–

- (a) must seek to ensure that–
 - (i) a basic payment account is available to all eligible consumers in Gibraltar; and
 - (ii) distortion of competition is prevented; and
- (b) may not designate a credit institution which only provides payment accounts with solely online facilities as the sole designated credit institution.

(3) A designated credit institution must offer a basic payment account to any consumer who applies for a basic payment account and meets the requirements of regulation 18.

Eligibility for basic payment account.

18.(1) Subject to sub-regulations (2) to (11), an eligible consumer, irrespective of the consumer's place of residence, is entitled to open and use a basic payment account with a designated credit institution in Gibraltar.

(2) The opening and use of a basic payment account must conform with the Money Laundering Directive and a designated credit institution must–

- (a) refuse an application for a basic payment account where opening an account would result in an infringement of the provisions of the Money Laundering Directive relating to the prevention of money laundering and the countering of terrorist financing; and
- (b) adopt appropriate measures in respect of the reporting obligations under Chapter III of the Money Laundering Directive.

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(3) A designated credit institution may refuse an application to open a basic payment account where the consumer fails to show a genuine interest in doing so.

(4) In assessing a consumer's genuine interest in opening a basic payment account, a designated credit institution—

- (a) must undertake the assessment on a case by case basis, in a proportionate and non-discriminatory manner;
- (b) must not impose requirements which are too difficult or burdensome for the consumer; and
- (c) must not base the assessment upon a consumer's place of residence.

(5) A designated credit institution may refuse an application for a basic payment account where the consumer already holds a payment account with a credit institution in Gibraltar which allows the consumer to use the services specified in regulation 19(1).

(6) Sub-regulation (5) does not apply where—

- (a) the credit institution with which the consumer holds the payment account has given notice that the account is to be closed; and
- (b) the designated credit institution has either—
 - (i) verified that such a notice has been given; or
 - (ii) chosen to accept a declaration made by the consumer to that effect.

(7) A designated credit institution may refuse to open a basic payment account where—

- (a) doing so would breach a requirement or limitation imposed upon the designated credit institution by the FSC under—
 - (i) Part IV of the Financial Services (Banking) Act 1992;
 - (ii) Part II of the Financial Services (EEA) (Payment Services) Regulations 2010; or

(iii) Part 2 of the Financial Services (Electronic Money) Regulations 2011; or

(b) it considers that the consumer's conduct towards it or its staff amounts to the commission of an offence under section 58, 82, 88, 89, 92, 92A, 94, 94A, 99 or 415 to 422 of the Crimes Act 2011.

(8) A designated credit institution, without undue delay and at the latest 10 business days after receiving a complete application for a basic payment account, must either—

- (a) open the account; or
- (b) refuse the application.

(9) Where an application is refused under sub-regulation 2(a), (3), (5) or (7), the designated credit institution must—

- (a) immediately inform the consumer of the refusal and reason for it, in writing and free of charge, unless doing so would be contrary to the Money Laundering Directive, public policy or national security objectives; and
- (b) advise the consumer of the procedure and relevant contact information for—
 - (i) submitting a complaint against the refusal to the designated credit institution; and
 - (ii) referring the matter to the FSC or to the Financial Services Ombudsman under regulation 27.

(10) A designated credit institution must not make access to a basic payment account conditional upon the purchase of—

- (a) additional services; or
- (b) shares in the designated credit institution, except where that condition applies to all of the credit institution's customers.

(11) In this regulation—

“eligible consumer” means a legally resident consumer and includes a consumer who is not granted a residence permit but whose expulsion is impossible for legal or factual reasons; and

“the Money Laundering Directive” means Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, as amended from time to time.

Basic payment accounts.

19.(1) A basic payment account must be denominated in Sterling and enable a consumer to—

- (a) open, operate and close the account;
- (b) place funds in the account;
- (c) withdraw cash from the account within the EEA—
 - (i) at the publicly accessible counter within the premises of the designated credit institution or a relevant provider; or
 - (ii) at automated teller machines during or outside the opening hours of the designated credit institution or a relevant provider; and
- (d) execute payment transactions within the EEA by means of—
 - (i) direct debits;
 - (ii) a payment card, including online payments; or
 - (iii) credit transfers, including standing orders, at (where available) terminals and counters and via the online facilities of the designated credit institution.

(2) In sub-regulation (1)(c), a “relevant provider” means a payment service provider with which the designated credit institution has agreed arrangements that allow consumers who hold payment accounts with the designated credit institution which are not basic payment accounts to withdraw cash at the publicly accessible counter of that payment service provider or from its automated teller machines.

(3) A designated credit institution must offer the services listed in sub-regulation (1)(a) to (d) to the extent that it already offers those services to consumers who hold payment accounts other than basic payment accounts.

(4) A basic payment account must allow a consumer to execute an unlimited number of operations in relation to the services specified in sub-regulation (1).

(5) A consumer must be able to manage and initiate payment transactions from the consumer's basic payment account—

- (a) in the premises of the credit institution that are accessible to consumers; or
- (b) by means of online facilities (where available).

(6) Access to, or use of, a basic payment account must not be restricted by, or made conditional upon, the purchase of an overdraft credit facility or any other credit services.

Associated fees.

20.(1) A designated credit institution must offer the services referred to in regulation 19 either free of charge or for a reasonable fee.

(2) Any fees charged to a consumer for non-compliance with the consumer's commitments under a framework contract must be reasonable.

(3) In determining the reasonable fees referred to in sub-regulations (1) and (2), a designated credit institution must take account of—

- (a) income levels in Gibraltar; and
- (b) the average fees charged by credit institutions in Gibraltar for services provided on payment accounts.

Framework contracts and termination.

21.(1) Subject to sub-regulations (2) to (4), a framework contract providing access to a basic payment account must comply with the Payment Services Directive.

(2) A credit institution may terminate a framework contract where at least one of the following conditions is met—

- (a) the consumer has deliberately used the payment account for illegal purposes;
- (b) there has been no transaction on the payment account for more than 24 consecutive months;

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- (c) the consumer provided incorrect information in order to obtain the basic payment account and, if the correct information had been provided, the application would have been refused;
 - (d) the consumer is no longer a legally resident consumer; or
 - (e) the consumer has subsequently opened another payment account which allows the consumer to make use of the services listed in regulation 19(1) in Gibraltar.
- (3) A credit institution may terminate a framework contract where—
- (a) permitting the consumer to continue using the payment account would breach a requirement or limitation imposed upon the credit institution by the FSC under—
 - (i) Part IV of the Financial Services (Banking) Act 1992;
 - (ii) Part II of the Financial Services (EEA) (Payment Services) Regulations 2010; or
 - (iii) Part 2 of the Financial Services (Electronic Money) Regulations 2011; or
 - (b) it considers that the consumer's conduct towards it or its staff amounts to the commission of an offence under section 58, 82, 88, 89, 92, 92A, 94, 94A, 99 or 415 to 422 of the Crimes Act 2011.
- (4) Where a credit institution terminates the contract for a basic payment account—
- (a) on one or more of the grounds in sub-regulation (2)(b), (d) or (e), it must inform the consumer of the reasons for the termination in writing and free of charge at least two months before it takes effect, unless doing so would be contrary to objectives of national security or public policy; or
 - (b) on one of the grounds in sub-regulation (2)(a) or (c) or (3), the termination has immediate effect.
- (5) A termination notice must advise the consumer of the procedure and relevant contact information for—

- (a) submitting a complaint against the termination to the designated credit institution; or
- (b) referring the matter to the FSC or to the Financial Services Ombudsman under regulation 27.

General information on basic payment accounts.

- 22.(1) The FSC must take adequate steps to raise public awareness about–
- (a) the availability and general pricing conditions of, and how to obtain, basic payment accounts; and
 - (b) the role of the Financial Services Ombudsman in resolving disputes in respect of basic payment accounts.
- (2) The FSC must ensure that the steps taken under this regulation are sufficient and well-targeted, in particular to consumers who are vulnerable, mobile or do not have access to a payment account.
- (3) A designated credit institution must make available to consumers, free of charge, accessible information and assistance about–
- (a) the specific features of any basic payment account which it offers; and
 - (b) the fees and conditions of use associated with an account of that kind, including a statement that access to the account is not conditional upon the purchase of additional services.

**PART 5
ENFORCEMENT AND DISPUTE RESOLUTION**

Competent authority.

- 23.(1) The FSC is designated as the competent authority for the purposes of these Regulations and the Payment Accounts Directive and as the contact point under Article 22(1) of that Directive.
- (2) The Minister must ensure that the European Commission and the European Banking Authority are notified of the designation under sub-regulation (1) and of any change to that designation.
- (3) The FSC must maintain appropriate arrangements for the purpose of enabling it to secure compliance by payment service providers with the requirements imposed by or under these Regulations.

(4) For the purposes of sub-regulation (3), Parts III and IV of the Financial Services (Information Gathering and Co-Operation) Act 2013 apply to these Regulations as if they were a Supervisory Act within the meaning of that Act, but nothing in this sub-regulation affects the application of that Act to a payment service provider under any other law.

Obligation of professional secrecy.

24. Any person who works or has worked for the FSC and any auditor or expert instructed by the FSC is bound by the obligation of professional secrecy and must not disclose any confidential information received in the course of that person's duties to any person except—

- (a) in summary or aggregate form;
- (b) for the purpose of any criminal investigation or proceedings;
- (c) as provided for in these Regulations or the Payment Accounts Directive; or
- (d) when providing confidential information to any other competent authority in accordance with European Union or domestic law.

FSC's obligation to cooperate.

25.(1) The FSC must cooperate with other competent authorities whenever necessary for the purpose of carrying out their respective duties or making use of their respective powers under these Regulations and the Payment Accounts Directive.

(2) The FSC must—

- (a) render assistance to other competent authorities and, in particular, exchange information and cooperate in any investigation or supervisory activities; and
- (b) without undue delay supply any information to other competent authorities which they require for the purposes of carrying out their duties under the Payment Accounts Directive.

(3) The FSC, when providing any information to another competent authority, may indicate that the competent authority may only use the

information for the purposes for which it is provided and that it must not be disclosed without the FSC's express agreement.

(4) The FSC may refuse to act on a request for cooperation in carrying out an investigation or supervisory activity or to exchange information where—

- (a) an investigation, on-the-spot verification, supervisory activity or exchange of information might adversely affect the sovereignty, security or public policy of Gibraltar;
- (b) judicial proceedings have already been initiated in Gibraltar in respect of the same actions and the same persons; or
- (c) final judgement has already been delivered in Gibraltar in respect of the same persons and the same actions.

(5) In the event of a refusal, the FSC must notify the requesting competent authority and provide it with as much information as possible.

Disagreements between competent authorities.

26.(1) Where the FSC has requested cooperation and, in particular, the exchange of information from another competent authority and that request has been rejected or not acted upon within a reasonable time, the FSC may refer the situation to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(2) A binding decision made by the EBA in accordance with that Article is binding upon the FSC and any other competent authority concerned regardless of whether or not that competent authority is a member of the EBA.

Alternative dispute resolution.

27. The Financial Services Ombudsman Act 2016 applies to disputes arising between a consumer and a payment service provider under these Regulations as it applies to a financial service dispute within the meaning of that Act.

Contraventions.

28. The FSC may take any of the actions specified in regulations 29 to 31 where it is satisfied that a person has contravened any provision of these Regulations (a "contravention").

Public statement.

29. The FSC may publish on its website a statement specifying—

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

Remediation order.

30.(1) The FSC may order a person to take any steps that the FSC considers to be appropriate for securing compliance with these Regulations.

(2) A remediation order may, in particular, require the person to—

- (a) take specified action;
- (b) refrain from taking specified action; and
- (c) review, or take remedial action in respect of, past conduct.

Civil penalty.

31.(1) The FSC may impose a penalty on a person.

(2) The maximum penalty that may be imposed under sub-regulation (1) is an amount equivalent to level 5 on the standard scale.

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

Warning notices.

32.(1) Before taking action under regulation 29, 30 or 31, the FSC must give the person concerned a warning notice, stating the action proposed and the reasons for it.

(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—

- (a) must give the recipient not less than 14 days to make representations; and
- (b) must specify a period within which the recipient may decide whether to make oral representations.

(4) The FSC may extend the period for making representations.

Decision notices.

33.(1) This regulation applies where the FSC has—

- (a) issued a warning notice; or
- (b) dispensed with the requirement to give a warning notice in accordance with regulation 32(2).

(2) After considering any representations made in accordance with regulation 32 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 takes effect, and the specified action 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.

Interim orders.

34. The FSC may apply to the Supreme Court for permission to take action under regulations 29 to 31 where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

Publication of enforcement action.

35.(1) This regulation applies where the FSC has issued a decision notice in respect of a contravention.

(2) The FSC may make public, by publication on its website and by any other means that it considers appropriate, any sanction that will be imposed upon a person under a decision notice for a contravention unless disclosure would—

- (a) seriously jeopardise the financial markets; or
- (b) cause disproportionate damage to the parties involved.

(3) The FSC must ensure that any publication in accordance with this regulation is of proportionate duration and remains on the FSC's website for a minimum of five years after all rights of appeal have been exhausted or have expired; but that personal data is only retained on the website for so long as is necessary, in accordance with the Data Protection Act 2004.

Appeals.

36.(1) A person who is the subject of a decision notice may appeal against that decision to the Supreme Court.

(2) An appeal under this regulation shall be made within 28 days beginning with the date on which the decision notice is served.

PART 6
MISCELLANEOUS PROVISIONS

Evaluation.

37. The FSC must ensure that the European Commission is notified of the following information, for the first time by 18 September 2018 and every two years after that—

- (a) compliance by payment service providers with regulations 5, 6 and 7 (which give effect to Articles 4, 5 and 6 of the Payment Accounts Directive);

- (b) compliance with the requirement to ensure the existence of a comparison website under regulation 8 (which gives effect to Article 7 of the Payment Accounts Directive);
- (c) the number of payment accounts that have been switched and the proportion of applications for switching that have been refused; and
- (d) the number of credit institutions offering basic payment accounts, the number of accounts that have been opened and the proportion of applications for basic payment accounts that have been refused.

Revocations.

38. The following Regulations are revoked—

- (a) the Financial Services (EEA) (Payment Services) (Amendment) Regulations 2014; and
- (b) regulation 34A the Financial Services (EEA) (Payment Services) Regulations 2010.