

Subsidiary Legislation made under ss.6(1), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 620(1), 621(1) and 627 of, and paragraph 6 of Schedule 10.

## Financial Services (Payment Services) Regulations 2020

### LN.2020/030

		<i>Commencement</i>	<b>15.1.2020</b>
Amending enactments	Relevant current provisions		Commencement date
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2021/094	r. 84(2)(b)(i), (5)(a)(ii), (10)		1.1.2021
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*In exercise of the powers conferred on the Minister under sections 6(1), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 620(1), 621(1) and 627 of, and paragraph 6 of Schedule 10 to, the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and on the Government by section 23(g)(ii) of that Act and by all other enabling powers, the Minister and the Government have made the following Regulations.*

**PART 1  
PRELIMINARY**

**Title, commencement and transitional.**

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

(2) These Regulations come into operation on the day of publication.

**Interpretation.**

2.(1) In these Regulations, unless the context otherwise requires—

“account information services” means payment services within paragraph 17(8) of Schedule 2 to the Act and “account information service provider” (“AISP”) means a person who provides such services;

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

“the Act” means the Financial Services Act 2019;

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

“authentication” means a procedure that 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 personalized security credentials;

“branch” means a place of business which forms a legally dependent part of a payment institution and which carries out directly all or some of the transactions inherent in the business of a payment institution;

“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

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transaction is open for business as required for the execution of the payment transaction;

“digital content” means goods or service 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 of consumption of physical goods or services;

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

“group” means a group of undertakings of which at least one is a payment institution and which consists of a parent undertaking and its subsidiaries, or of undertakings that are related to each other a by common management relationship within the meaning of Article 4.1(38A) of the Capital Requirements Regulation;

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

“own funds” means own funds within the meaning of Article 4.1(118) 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 of 75% of the Tier 1 capital is in the form of Common Equity Tier 1 capital;

“Part 7 permission” means permission under Part 7 of the Act;

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

“payment initiation services” means payment services within paragraph 17(7) of Schedule 2 to the Act (payment initiation services) and “payment initiation service provider” means a payment service provider who provides such services;

“payment institution” means a regulated firm whose initial application for Part 7 permission is for permission to carry on the regulated activity of providing payment services;

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

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

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

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

“the Register” means the register which is established and maintained by the GFSC in accordance with both Part 4 of the Act and, in relation to the provision of payment services, regulation 106;

“Regulation (EU) 2015/847” means Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) 1781/2006 as it forms part of the law of Gibraltar after IP completion day;

“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;

“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;

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

- (a) knowledge (something only the user knows);

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(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.

(2) Without limiting the application of section 21 of the Interpretation and General Clauses Act, any expression used in these Regulations which is used in Schedule 2 to the Act has the same meaning as it has for the purposes of that Schedule.

(3) Accordingly, in these Regulations, the expressions listed in the first column below are defined or otherwise explained by the provisions of Schedule 2 to the Act which are listed in the second column—

<i>Expression</i>	<i>Provision of Schedule 2 to the Act</i>
<b>account information services</b>	Paragraph 17(8)
<b>direct debit</b>	Paragraph 15
<b>electronic money</b>	Paragraph 12
<b>funds</b>	Paragraph 15
<b>payee</b>	Paragraph 15
<b>payer</b>	Paragraph 15
<b>payment account</b>	Paragraph 15
<b>payment initiation service</b>	Paragraph 17(7)(a)
<b>payment instrument</b>	Paragraph 15
<b>payment order</b>	Paragraph 15
<b>payment service provider</b>	Paragraph 15
<b>payment services</b>	Paragraphs 15 to 17
<b>payment service user</b>	Paragraph 15
<b>payment system</b>	Paragraph 18(h)
<b>payment transaction</b>	Paragraph 15

**Application: overview.**

3.(1) These Regulations apply to payment services provided in or from Gibraltar and 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) The Regulations have effect in relation to—

- (a) payment institutions;
- (b) account information service providers;
- (c) payment services providers;
- (e) agents registered under regulation 14 of—
  - (i) payment institutions which are regulated firms; or
  - (ii) registered account information service providers (“AISPs”);
- (f) persons carrying on activities referred to in regulation 6(1).

(3) Parts 2, 5 and 8 apply to payment institutions only.

(4) The persons referred to in sub-regulation (2)(f) are subject only to the requirements of regulation 6(2) to (7).

**Application: payment service providers.**

4.(1) This Part and Parts 3, 4, 6 and 9 apply to all payment service providers.

(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

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- (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.

**Exempt persons in respect of payment services.**

5. The following are exempt from the general prohibition in respect of the regulated activity of providing payment services–

- (a) the Gibraltar Savings Bank;
- (b) an account information service provider which satisfies the requirements of Schedule 1;
- (c) an agent through which a payment institution provides payment services in Gibraltar and which, in accordance with regulation 14, is entered on the Register.

**Persons providing excluded services or transactions.**

6.(1) This regulation applies to any person providing the following services or transactions, which are excluded by paragraph 18 of Schedule 2 to the Act from falling within the definition of payment services–

- (a) services within sub-paragraph (k)(i) or (ii) of paragraph 18 of that Schedule (services based on payment instruments usable in certain limited ways); or

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- (b) transactions within sub-paragraph (1) of that paragraph (payment transaction by provider of electronic communications networks or services for subscribers).
- (2) A person providing services referred to in sub-regulation (1)(a) must notify the GFSC where the total value of payment transactions executed exceeds EUR 1,000,000 in any 12 months.
- (3) A notification under sub-regulation (2) must be made in the form and manner the GFSC directs and—
- (a) contain a description of the services offered; and
  - (b) specify the exclusion referred to in sub-regulation (1)(a) under which the services are considered to be provided.
- (4) Where the GFSC receives a notification under sub-regulation (3), it must assess whether the services fall within paragraph 18(k)(i) to (iii) of Schedule 2 to the Act.
- (5) If the GFSC proposes to declare that any part of the services does not fall within paragraph 18(k)(i) to (iii) of Schedule 2 to the Act, it must give the person a warning notice.
- (6) If the GFSC decides to declare that any part of the services does not fall within that paragraph, it must give the person a decision notice.
- (7) A person carrying out transactions referred to in sub-regulation (1)(b) must notify the GFSC, in the form and manner it directs, and provide the GFSC with an annual audit opinion, testifying that the transactions are within the limits set out in paragraph 18(l) of Schedule 2 to the Act.
- (8) The GFSC must include a description of any services or transactions notified under sub-regulations (2) and (7) in the Register.

## **PART 2 PAYMENT INSTITUTIONS**

### **Introduction.**

7.(1) This Part includes provisions which supplement the threshold conditions as they apply to payment institutions.

(2) In giving or varying Part 7 permission to an applicant to provide payment services, the GFSC must ensure that the applicant meets, and will continue to meet, the threshold conditions.

(3) A payment institution which has Part 7 permission must at all times comply with the threshold conditions and these Regulations.

*Permission*

**Application for permission by payment institutions.**

8.(1) Each application made by a payment institution for Part 7 permission to provide payment services must, among other things, include–

- (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 payment institution 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 80;
- (d) for payment institutions referred to in regulation 84(1), a description of the measures taken for safeguarding payment service users' funds in accordance with that regulation;
- (e) a description of the payment institution'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 87;
- (g) a description of the process in place to file, monitor, track and restrict access to sensitive payment data;

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- (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 the payment services to be provided 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 obligations in relation to money laundering and terrorist financing under Part 3 of the Proceeds of Crime Act 2015 and Regulation (EU) 2015/847, a description of the internal control mechanisms which the payment institution has established in order to comply with those obligations;
- (l) a description of the payment institution'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 institution 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 any controller of the payment institution, 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 78(1); and
- (c) take account of any guidance issued by the GFSC on the establishment, implementation and monitoring of security measures.

#### **Changes to information etc. provided under regulation 8.**

9. A payment institution must promptly inform the GFSC of any change that affects the accuracy of any information or evidence provided in accordance with regulation 8.

#### **Application of threshold conditions.**

10.(1) This regulation supplements the threshold conditions in Schedule 12 to the Act, as they apply to a payment institution seeking Part 7 permission to provide payment services.

(2) A payment institution must be a legal person 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 in Gibraltar.

(3) The initial, and ongoing, capital requirements to be met by a payment institution are as specified in regulations 80 to 83.

(4) The GFSC may give permission to a payment institution only if, taking into account the need to ensure the sound and prudent management of the payment institution, the GFSC is satisfied that the payment institution has—

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- (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.

(5) The GFSC may refuse permission if, taking into account the need to ensure the sound and prudent management of a payment institution, the GFSC is not satisfied as to the suitability of the payment institution's controllers.

(6) Where the GFSC has reasonable grounds for considering that the influence exercised by a person making a proposed acquisition of control is likely to be prejudicial to the sound and prudent management of a payment institution, the GFSC may take reasonable steps to resolve that situation by imposing sanctions on the directors or other persons responsible for the management of the payment institution.

(7) A firm that applies for Part 7 permission to provide payment services within paragraph 17(7) of Schedule 2 to the Act must, as a condition of its permission, 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-

- (a) regulation 50;
- (b) regulation 66; and
- (c) regulation 68.

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

#### **Scope of permission.**

11.(1) Where the GFSC gives Part 7 permission to a payment institution–

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- (a) the GFSC must ensure that the permission specifies the payment services to which the permission relates; and
  - (b) the permission is to be treated as extending to any of the activities referred to in sub-regulation (2)(a) which the institution carries on.
- (2) 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, including–
    - (i) ensuring the execution of payment transactions;
    - (ii) foreign exchange services;
    - (iii) safekeeping activities; and
    - (iv) the storage and processing of data;
  - (b) the operation of payment systems, but without limiting regulation 71; and
  - (c) business activities other than the provision of payment services, subject to any applicable law.
- (3) A payment institution may grant credit in relation to the provision of payment services within paragraph 17(4) or (5) of Schedule 2 to the Act only if–
- (a) such credit is ancillary to, and granted exclusively in connection with, the execution of a payment transaction;
  - (b) in cases where such credit granted by a payment institution in exercise of its rights under Part 8, the credit must be repaid within 12 months;
  - (c) such 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 GFSC) be appropriate in view of the overall amount of credit granted.
- (4) A payment institution seeking permission to extend its business to additional payment services not foreseen at the time of its initial application for permission must make an

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application to the GFSC to vary the payment institution's permission under section 68 of the Act.

(5) Any funds received by a payment institution from payment service users with a view to the provision of payment services–

- (a) are not a deposit for the purposes of Part 2 of Schedule 2 to the Act; or
- (b) are not electronic money.

#### **Imposition of requirements.**

12. Where a payment institution intends to carry on business activities other than the provision of payment services, and the GFSC considers that the carrying on of such business impairs or is likely to impair–

- (a) the financial soundness of the payment institution; or
- (b) the GFSC's effective supervision of the payment institution,

the GFSC may, in exercise of the power conferred by section 70 of the Act, require the payment institution to establish a separate entity to carry on the payment services business.

#### *Other requirements*

#### **Payment accounts.**

13. 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.

#### **Use of agents and branches, registration and removal from Register.**

14.(1) Payment institutions may not provide payment services in or from Gibraltar through an agent unless the agent is entered in the Register.

(2) A payment institution that intends to provide payment services in Gibraltar through an agent must provide the GFSC 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

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under Part 3 of the Proceeds of Crime Act 2015 (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).

(3) The GFSC, within two months of receiving the information in sub-regulation (2) from a payment institution, must inform the payment institution whether the agent has been entered in the Register.

(4) Where the GFSC considers that any information provided under sub- regulation (2) is incorrect, the GFSC 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.

(5) If the GFSC proposes to refuse to enter an agent in the Register, it must give the payment institution a warning notice.

(6) If the GFSC decides to refuse to enter an agent in the Register, it must give the payment institution a decision notice.

(7) An agent must not begin providing payment services until it has been entered in the Register.

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

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

(10) *Omitted.*

(11) The GFSC may remove an agent of a payment institution from the register where–

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- (a) the institution requests, or consents to, the agent's removal from the register;
- (b) the institution has obtained registration through false statements or any other irregular means;
- (c) the GFSC has reasonable grounds to suspect that, in connection with the provision of services through the agent—
  - (i) money laundering or terrorist financing within the meaning of section 7(2) or 1ZA respectively of the Proceeds of Crime Act 2015 is taking place, has taken place, or has been attempted; or
  - (ii) the risk of such activities taking place would be increased;
- (d) the GFSC is not satisfied that the persons referred to in sub-regulation (2)(c) are fit and proper persons;
- (e) the removal is desirable in order to protect the interests of consumers; or
- (f) the agent's provision of payment services is otherwise unlawful.

(12) Where the GFSC proposes to remove an agent from the register, other than at the request of the payment institution, it must give the payment institution a warning notice.

(13) Where the GFSC decides to remove the agent, it must give the payment institution a decision notice.

### **Outsourcing.**

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

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- (ii) the GFSC's ability to monitor and retrace the payment institution's compliance with the Act, these Regulations and any other regulations made under the Act ("relevant provisions");
  - (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 limitation, requirement or other condition with which the payment institution must comply in relation to it having Part 7 permission to provide payment services; or
  - (e) require the removal or variation of any limitation, requirement or other condition to which the payment institution's permission 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 limitation, requirement or other condition to which its permission is subject;
  - (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 GFSC without undue delay of any change to its outsourcing arrangements.

**Responsibility of payment institution for third parties.**

16.(1) A payment institution which relies on a third party for the performance of operational functions must take reasonable steps to ensure that the requirements of the Act and 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.

**PART 3**

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## CONDUCT OF BUSINESS

### Chapter 1

#### Transparency of conditions and information requirements for payment services

##### *General rules*

#### **Scope of Chapter 1 of Part 3.**

17.(1) This Chapter 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 Chapter does not apply in whole or in part.

(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).

#### **Charges for information.**

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

(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 Chapter;
- (b) more frequently than is required under this Chapter; 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.**

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

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

20.(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 29 and 33 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 2 are made available in an easily accessible manner;
- (b) the parties may agree that regulation 31 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 29(1)(a) and (2); and
- (c) the parties may agree that regulations 34 and 35 do not apply but that after the execution of a payment transaction—

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- (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 sub-paragraph (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 22 to 27.**

21. Regulations 22 to 27 apply to single payment transactions not covered by a framework contract.

**Prior general information: single payment transactions.**

22.(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 23 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 23.

**Information and conditions.**

23.(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 email address; and
- (e) the contact details of the GFSC.

(3) Where applicable, any other relevant information and conditions specified in Schedule 2 must be made available to the payment service user in an easily accessible manner.

**Information following initiation of payment order.**

24.(1) In addition to any information and conditions provided under regulation 23, 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.**

25.(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 23(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 payee after execution.**

26.(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.**

27. 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 29 to 35.**

28. Regulations 29 to 35 apply to payment transactions covered by a framework contract.

**Prior general information: framework contracts.**

29.(1) A payment service provider must provide a payment service user with the information and conditions specified in Schedule 2—

- (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 2.

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

30. A payment service user, on 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 2.

**Changes in framework contract conditions.**

31.(1) Any proposed changes to—

- (a) a framework contract; or
- (b) any information and conditions provided under Schedule 2;

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 2 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 on 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 2; 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 29(2) applies to any information provided under sub-regulations (1) and (5).

### **Termination.**

32.(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.

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(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 29(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.**

33. 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 payer on individual payment transactions.**

34.(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 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;

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- (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 29(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 payee on individual payment transactions.**

35.(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 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;

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- (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 29(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 for Chapter 1 of Part 3*

**Currency and currency conversion.**

36.(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 and reductions.**

37.(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.

## **Chapter 2**

### **Rights and obligations in relation to provision and use of payment services**

#### *Common provisions for Chapter 2 of Part 3*

#### **Scope of Chapter 2 of Part 3.**

38. Where a payment service user is not a consumer, the payment service user and the payment service provider may agree that–

(a) the following provisions do not apply in whole or in part–

- (i) regulation 39(1);
- (ii) regulation 41(4);
- (iii) regulation 49;
- (iv) regulation 51;
- (v) regulation 53;
- (vi) regulation 54;
- (vii) regulation 57;
- (viii) regulation 65; and
- (ix) regulation 66; and

(b) different time limits are to apply from those laid down in regulation 48.

**Charges applicable.**

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

- (a) in accordance with—
  - (i) regulation 56(4) ;
  - (ii) regulation 57(6); or
  - (iii) regulation 64(2); 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 Gibraltar and both the payer’s and payee’s payment service providers are, or the sole payment service provider in the payment transaction is, within Gibraltar –

- (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.

(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.

(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;

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- (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 the Interchange Fees Regulation; or
- (b) payment services to which the SEPA regulation applies.

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

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

40.(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 46(1)(b), 47(1)(c) to (e) and 51(6) do not apply if the payment instrument does not allow its blocking or prevention of its further use;
- (b) regulations 49, 50, 51(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;

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- (c) despite regulation 56(1) to (4) (refusal of payment orders), 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 57 (irrevocability of payment order), 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 60 and 61, other execution periods apply.
- (3) Regulations 50 and 51 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.**

- 41.(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 57; and
  - (b) a series of payment transactions at any time, with the effect that any future transaction is considered to be unauthorised.

**Confirmation on availability of funds.**

42.(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, subject to any technical standards made in accordance with regulation 79A.

(3) Any confirmation under sub-regulation (1)—

- (a) must be provided in the form of a “yes” or “no” answer; and
- (b) must not—

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- (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.**

43.(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 17(7) of Schedule 2 to the Act (payment initiation services).

(2) Where, in accordance with regulation 41 (consent and withdrawal of consent), 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, subject to any technical standards made in accordance with regulation 79A;
- (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) A payment initiation service provider–
- (a) must not hold the payer’s funds at any time in connection with the provision of the payment initiation service;
  - (b) must 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) must 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, must–
    - (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, subject to any technical standards made in accordance with regulation 79A;
  - (e) must not store sensitive payment data of the payment service user;
  - (f) must not request any data from the payment service user other than data which is necessary to provide the payment initiation service;
  - (g) must not use, access or store any data for any purpose other than for providing the payment initiation service explicitly requested by the payer;
  - (h) must not modify the amount, the payee or any other feature of the transaction.

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

44.(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 17(8) of Schedule 2 to the Act (account information services).

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(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) communicates securely with the account information service provider, subject to any technical standards made in accordance with regulation 79A; 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–

- (a) must only provide services with the payment service user's explicit consent;
- (b) must 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, must–
  - (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, subject to any technical standards made in accordance with regulation 79A;
- (d) must access only the information from designated payment accounts and associated payment transactions;
- (e) must not request sensitive payment data linked to the payment accounts; and
- (f) must 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.**

45.(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

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- (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 GFSC, in the form and manner which the GFSC may direct, and the report must include the details of the case and the reasons for the action taken.

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

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

46.(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 payment service provider in relation to payment instruments.**

47.(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 46(1)(b); or
  - (ii) request the unblocking of the payment instrument, in accordance with regulation 45(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 46(1)(b);
- (e) provide the payment service user with an option to make a notification under regulation 46(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 46(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.**

48.(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 65) 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 Chapter 1 of this Part.

(3) Without limiting regulation 50(3) or 65(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 of authentication and execution of payment transactions.**

49.(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 46.

(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.**

50.(1) Without affecting regulation 48, 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 GFSC 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 49(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.**

51.(1) A payment service provider which is liable under regulation 50(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 46 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 loss, theft or misappropriation, in accordance with regulation 46(1)(b); or
  - (b) if the payment service provider does not provide appropriate means of notification, as required by regulation 47(1)(c).

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

52. 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 payee.**

53.(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 54 for direct debits of the type referred to in Article 1 of the SEPA regulation.

(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 23(1)(d) or paragraph 3(b) of Schedule 2 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 payee.**

54.(1) A payer must request a refund under regulation 53 (refunds for payment transactions initiated through payee) 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 74 to 76 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 53(4) applies.

*Execution of payment orders and amounts transferred*

**Receipt of payment orders.**

55.(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 60 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.**

56.(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 60.

(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 60 and 65 a payment order for which execution has been refused is deemed not to have been received.

**Irrevocability of payment orders.**

57.(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.

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(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 55(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.**

58.(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 60 to 63.**

59.(1) Regulations 60 to 63 apply to payment transactions–

- (a) executed wholly within the qualifying area in euro under a payment scheme which operates across the qualifying area;
- (b) executed wholly within Gibraltar in sterling;
- (c) executed wholly under a payment scheme which operates across the qualifying area and 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 60 to 63 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) dis-apply regulation 63; or
- (b) provide for the period specified in regulation 60 to be extended by more than four business days for intra- Gibraltar payment transactions.

(3) In sub-regulation (1), “qualifying area” has the meaning given in regulation 4(5).

**Payment transaction to payment account.**

60.(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 55.

(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 63.

(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 payment service provider.**

61. 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 payment account.**

62. 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.**

63.(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 between euro and sterling; 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.**

64.(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 65 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, on 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 23(1)(a) or paragraph 2(b) of Schedule 2, 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.**

65.(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 regulation 60(1) and (2) (payment transactions to a payment account), 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 63.

(6) Where a payment transaction is executed late, the payee's payment service provider must ensure, on 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), on 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 60(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 63 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) to (10), 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), on 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 48, 64(2) to (4) and 69.

**Payment initiation services: liability for non-execution, defective or late execution of payment transactions.**

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66.(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 55 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 48 and 64(2) to (4).

#### **Additional financial compensation.**

67. Any financial compensation additional to that provided for under regulations 64 to 69 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.**

68.(1) Where the liability of a payment service provider under regulation 50, 65 or 66 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.**

69.(1) A person is not liable for any contravention of regulations 41 to 69 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 41 to 69 which is due to the payment service provider's obligations under other provisions of or national law.

*Data protection*

**Data protection.**

70.(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) Without limiting section 636 of the Act, the processing of personal data and the provision of information to individuals about the processing of personal data must comply with the data protection legislation.

*Access to payment systems and payment accounts*

**Access to payment systems.**

71.(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;

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- (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.**

72.(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 payment accounts with credit institution.**

73.(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 GFSC.

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

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

*Complaints and ADR procedures***Complaints.**

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

(2) The GFSC 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.**

75.(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 this Part and the GFSC must monitor payment service providers' compliance with that obligation.

(2) *Omitted.*

(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 this Part.

(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.**

76.(1) Part 14 of the Act applies to disputes under these Regulations between payment service users who are microenterprises and payment service providers, as it applies to a financial service dispute submitted by or on behalf of a consumer.

(2) *Omitted.*

(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 as that Recommendation applied in Gibraltar immediately before IP completion day.

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

77.(1) A payment service provider must make available to its clients, free of charge, any approved consumer rights information.

(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 GFSC must make that information available in an easily accessible manner on its website.

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

(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.

**PART 4  
CORPORATE GOVERNANCE AND RISK MANAGEMENT**

**Management of operational and security risks.**

78.(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

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- (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 GFSC 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 GFSC may direct; and
- (b) in the form and manner that the GFSC may direct.

(4) This regulation applies subject to any guidance issued by the GFSC on the establishment, implementation and monitoring of security measures.

#### **Authentication.**

79.(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.

**Technical standards.**

79A. The Minister may make technical standards specifying—

- (a) requirements for the strong customer authentication referred to in regulation 79(1) and (2);
- (b) exemptions from the application of regulation 79(1), (2) and (3), based on—
  - (i) the level of risk involved in the service provided;
  - (ii) the amount, the recurrence of the transaction, or both; or
  - (iii) the payment channel used for the execution of the transaction;
- (c) requirements with which security measures must comply, in accordance with regulation 79(3), in order to protect the confidentiality and integrity of payment service users' personalised security credentials; and
- (d) requirements for common and secure open standards of communication for the purpose of identification, authentication, notification, and information, as well as for the implementation of security measures, between account servicing payment service providers, payment initiation service providers, account information service providers, payers, payees and other payment service providers.

**PART 5  
PRUDENTIAL REQUIREMENTS**

*Prudential requirements*

**Initial capital.**

80.(1) Immediately before the giving of Part 7 permission to provide payment services, a payment institution must hold not less than the following initial capital—

- (a) EUR 20,000, where the payment institution only provides payment services within paragraph 17(6) of Schedule 2 to the Act (money remittance);

- (b) EUR 50,000, where the payment institution only provides payments services within paragraph 17(7) of Schedule 2 to the Act (payment initiation services); or
- (c) EUR 125,000, if it provides payments services within paragraph 17(1) to (5) of Schedule 2 to the Act.

(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.**

81.(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 80; or
- (b) the amount of its own funds, calculated in accordance with regulation 82.

(2) The GFSC 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 GFSC may decide not to apply regulation 82 to payment institutions—

- (a) which are included in the consolidated supervision of the parent credit institution; and
- (b) in respect of which the conditions in Article 7 of the Capital Requirements Regulation are met.

#### **Calculation of own funds.**

82.(1) This regulation applies to payment institutions other than those only offering payment services within either or both of—

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- (a) paragraph 17(7) of Schedule 2 to the Act (payment initiation services); or
- (b) paragraph 17(8) of that Schedule (account information services).

(2) Despite the initial capital requirements in regulation 80, the payment institution must hold at all times own funds calculated in accordance with one of the three methods in Schedule 3 of these Regulations as the GFSC may direct.

(3) Based on the GFSC's evaluation of a payment institution's risk-management processes, risk loss data base and internal control mechanisms, the GFSC 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 (2); 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.

#### **Exercise of powers to ensure sufficient capital.**

83.(1) Despite the requirements of regulations 80, 81(1) and (2) and 82, the GFSC may exercise one or more of the powers listed in sub-regulation (2) 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.

(2) The listed powers are to–

- (a) vary or cancel the payment institution's permission under Part 7 of the Act;
- (b) require documents and information under section 132 of the Act;
- (c) carry out an on-site inspection under section 134 of the Act;
- (d) to issue directions, recommendations or guidelines under regulation 100(3).

#### *Safeguarding*

#### **Safeguarding of funds.**

84.(1) A payment institution which provides payment services within paragraph 17(1) to (6) of Schedule 2 to the Act must safeguard any funds which it has received–

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- (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 recognised credit institution; or
  - (ii) invest them in such secure, liquid low-risk assets as the GFSC 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

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- (ii) a comparable guarantee provided by a recognised 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 on 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 GFSC, to be representative of the portion attributable to the execution of the payment transaction.
- (10) In this regulation, “recognised credit institution” means–
- (a) a credit institution with Part 7 permission to carry on the regulated activity of accepting deposits;
  - (b) a central bank of a state that is a member of the Organisation for Economic Co-operation and Development (an “OECD state”);
  - (c) a credit institution that is supervised by the central bank or other banking regulator of an OECD state;
  - (d) any credit institution that–

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- (i) is subject to regulation by the banking regulator of a country or territory that is not an OECD state;
- (ii) is required by the law of the country or territory in which it is established to provide audited accounts;
- (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time);
- (iv) has a surplus of revenue over expenditure for the last two financial years; and
- (v) has an annual report which is not materially qualified.

**Accounting and statutory audit.**

85.(1) The following apply, with any necessary modifications, to payment institutions—

- (a) the Financial Services (Credit Institutions) (Accounts) Regulations 2021;
- (b) Part 7 of the Companies Act 2014; and
- (c) the UK-adopted international accounting standards within the meaning of section 237(1) of the Companies Act 2014.

(2) A payment institution's annual accounts and consolidated accounts must be audited by a statutory auditor or audit firm (within the meaning of Part 24 of the Act), unless it is exempt under Part 7 of the Companies Act 2014 and, where applicable, the Financial Services (Credit Institutions) (Accounts) Regulations 2021.

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

- (a) the payment institution's provision of payment services; and
- (b) its carrying on of any activities within regulation 11(2),

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.

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(4) Regulation 99 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 applies, with any necessary modifications, to the statutory auditor or audit firm of a payment institution in respect of its payment services activities.

**Record-keeping.**

86.(1) A payment institution must keep all appropriate records for the purpose of these Regulations for at least five years.

(2) This regulation applies without affecting any other enactment.

**PART 6**  
**REPORTING AND NOTIFICATION**

**Incident reporting.**

87.(1) A payment service provider must, without undue delay, notify the GFSC 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) On receiving a notification under sub-regulation (1), the GFSC must, after assessing the incident, notify any other relevant authorities in Gibraltar.

(4) *Omitted.*

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

(6) This regulation applies subject to any guidance issued by the GFSC on the classification of major operational and security incidents, the procedures for notifying the GFSC of such incidents and on the content and format of such notifications.

**PART 7**  
***Omitted***

88. to 99. *Omitted*

**PART 8**

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## REGULATORY POWERS

### Chapter 1 Intervention

#### **Additional powers.**

100.(1) Sub-regulation (2) and (3) supplement, in relation to payment institutions which are regulated firms, the powers of the GFSC under the Act.

(2) The power of the GFSC under Part 10 of the Act to carry out on-site inspections includes on-site inspections at any agent or branch of a payment institution, or at any entity to which a payment institution's activities are outsourced.

(3) The GFSC may issue directions, recommendations and guidelines for the purposes of verifying compliance with Part 2 of these Regulations.

### Chapter 2 Sanctions for contravention

#### **Sanctioning powers.**

101. For the purposes of section 150 of the Act, the sanctioning powers set out in Part 11 of the Act which are exercisable in relation to contravention of a regulatory requirement (within the meaning of that Part) are to be read together with the provisions of this Chapter.

#### **Additional persons subject to powers.**

102. In addition to the persons specified in section 147 and 148 of the Act the GFSC may exercise the sanctioning powers set out in Part 11 of the Act and in this Chapter against—

- (a) a member of the management body of a payment institution;
- (b) anyone who effectively controls the business of a payment institution.

#### **Additional power: management prohibition order.**

103.(1) This regulation applies to any individual ("P") who—

- (a) has contravened a requirement of these Regulations and, at the time of the contravention, P was exercising a management function in a payment service provider which is a regulated firm; or

- (b) was knowingly concerned in respect of a contravention of a requirement of these Regulations by a payment service provider and, at the time of the contravention, P was exercising a management function in the payment service provider.
- (2) The GFSC may issue a prohibition order against P which prohibits P from—
  - (a) discharging managerial responsibilities with a specified payment service provider;
  - (b) exercising management functions in any payment service provider.
- (3) The prohibition order must specify the period during which it has effect.
- (4) The prohibition order must specify the description of functions to which it applies.
- (5) The provisions of sections 158 to 162 of the Act apply to any prohibition order issued under this regulation.

**Maximum amounts of administrative penalty.**

104.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement in connection with the provision of payment services must be of an amount that does not exceed the higher of the following—

- (a) where the amount of the benefit derived as a result of the contravention can be determined, two times the amount of that benefit;
  - (b) in the case of a legal person—
    - (i) £250,000; or
    - (ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body;
  - (c) in the case of an individual, £125,000.
- (2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Part 7 of the Companies Act 2014, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual turnover, or the corresponding type of income in accordance with the relevant accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

**PART 9  
MISCELLANEOUS****Consumer credit law.**

105. Nothing in these Regulations limits any statutory provision relating to consumer credit or the conditions for granting credit to consumers.

**The Register: provision of payment services.**

106.(1) This regulation makes provision as to the contents of the Register in connection with the provision of payment services.

(2) The Register must contain such information as the GFSC considers appropriate and at least the following (in separate lists)–

- (a) payment institutions and their agents;
- (b) any branches of Gibraltar payment institutions;
- (c) account information service providers (and their agents) under regulation 5(b);
- (d) institutions that are entitled to provide payment services but which are exempt from all or any part of these Regulations.

(3) The Register must identify the payment services–

- (a) for which a payment institution has permission under Part 7 of the Act; or
- (b) for which an account information services provider is registered in accordance with Schedule 1.

(4) The Register must include details of–

- (a) any cancellation of a payment institution's permission under Part 7 of the Act; or
- (b) any withdrawal of an AISP's registration.

(5) The GFSC must make public the cancellation of a permission.

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(6) If it appears to the GFSC that a person in respect of whom there is an entry in the Register as a result of any provision of sub-regulation (2) has ceased to be a person to whom that provision applies, the GFSC may remove the entry from the Register.

(7) The GFSC must–

- (a) publish the Register online and make it available for public inspection; and
- (b) update the Register without delay.

107. *Omitted.*

108. *Omitted.*

**Revocation of 2015 and 2018 Regulations.**

109. The following instruments are revoked–

- (a) Financial Services (EEA) (Payment Services) (Supplemental) Regulations 2015;
- (b) Financial Services (Payment Services) Regulations 2018.

**SCHEDULE 1**

Regulation 5(b)

**ACCOUNT INFORMATION SERVICE PROVIDERS.***Registration*

1. An account information service provider (“AISP”) must be entered in the Register.
- 2.(1) An AISP which applies for registration must submit to the GFSC–
  - (a) a programme of operations setting out, in particular, the type of account information services envisaged;
  - (b) a business plan, including a forecast budget calculation for the first three financial years which demonstrates that the AISP is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;
  - (c) a description of the AISP’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;
  - (d) 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 AISP’s notification obligations under regulation 87;
  - (e) a description of the process in place to file, monitor, track and restrict access to sensitive payment data;
  - (f) 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;
  - (g) a security policy document, including a detailed risk assessment in relation to the AISP’s account information 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;

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- (h) a description of the AISP'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 AISP 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;
- (i) the identities of–
  - (i) the directors and other persons responsible for the management of the AISP; and
  - (ii) where relevant, other persons responsible for the management of the account information service activities of the AISP;and evidence that they are of good repute and possess appropriate knowledge and experience to perform payment services;
- (j) the AISP's legal status and articles of association;
- (k) the address of the AISP's head office.

(2) For the purposes of sub-paragraph (1)(c), (d) and (h), the AISP 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-paragraph (1)(g) 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 AISP or the undertakings to which it outsources the whole or part of its operations;
  - (b) include the security measures required by regulation 78(1); and
  - (c) take account of any guidance issued by the GFSC on the establishment, implementation and monitoring of security measures.
- (4) An application for registration must–
  - (a) be made in such manner as the GFSC may direct; and

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- (b) contain or be accompanied by such other information as the GFSC may reasonably require.

(5) At any time after the application is received and before it is determined, the GFSC may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

3.(1) An AISP 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.

(2) Technical standards may specify the information to be provided to the GFSC in the application for the authorisation of an AISP.

*Scope of exemption*

4. Where an AISP is entered on the Register, its exemption from the general prohibition under regulation 5 applies only in relation to payment services within paragraph 17(8) of Schedule 2 to the Act (account information services).

*Supervision by the GFSC*

5.(1) The functions of the GFSC include supervising a registered AISP's compliance with the requirements of this Schedule.

(2) In order to check compliance, the GFSC may, in particular—

- (a) require the AISP to provide any information needed to monitor compliance specifying the purpose of the request, as appropriate, and the time limit by which the information is to be provided;

- (b) suspend or withdraw the AISP's registration.

(3) In relation to any contravention of a requirement of these Regulations by an AISP or those who effectively control its business, the GFSC may take any sanctioning action in relation to the AISP which—

- (a) is aimed specifically at ending the contravention; and

- (b) may be taken in relation to a payment institution which is a regulated firm.

(4) If the GFSC proposes to exercise any power under sub-paragraph (2)(b) or (3), it must give the AISP a warning notice.

(5) If the GFSC decides to exercise that power, it must give the AISP a decision notice.

*Rights and obligations of AISPs*

6.(1) An AISP is subject to—

- (a) regulation 19;
- (b) regulation 23;
- (c) regulation 30, where applicable;
- (d) regulation 44;
- (e) regulation 46; and
- (f) Part 4;
- (g) Part 6; and
- (h) regulation 100(2) and (3).

(2) *Omitted.*

(3) In the application of any provision of these Regulations in relation to an AISP, the AISP is to be treated as if it were a payment institution.

**SCHEDULE 2**

Regulation 29

**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 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 GFSC and of the Register referred to in regulation 106 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 41 and 57;
  - (d) a reference to the time of receipt of a payment order in accordance with regulation 55 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 45(1);
  - (g) in the case of card-based payment instruments which are co-badged within the meaning of the Interchange Fees Regulation, the payment service user's rights under Article 8 of that Regulation.
3. The following information about charges, interest and exchange rates—

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- (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 31(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 30.

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 46(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 45;

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- (d) the liability of the payer in accordance with regulation 51, 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 48, as well as the payment service provider's liability for unauthorised payment transactions in accordance with regulation 50;
  - (f) the liability of the payment service provider for the initiation or execution of payment transactions in accordance with regulation 65;
  - (g) the conditions for refund in accordance with regulations 53 and 54.
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 31, 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 31(1) to (3) or 32.
7. The following information about redress—
- (a) any contractual clause on the law applicable to the framework contract and/or the competent courts;
  - (b) the ADR procedures available to the payment service user in accordance with regulations 74 to 77.

**SCHEDULE 3**

Regulation 82(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 GFSC 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 GFSC.

**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 subparagraph (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 subparagraph (4) and by the scaling factor  $k$  in paragraph 4.

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

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- (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—

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- (a) 0.5 where the payment institution only provides the payment service with paragraph 17(6) to Schedule 2 of the Act; or
- (b) 1 where the payment institution provides any of the payment services in paragraph 17(1) to (5) of Schedule 2 to the Act.