

Subsidiary Legislation made under ss.150(1), 620(1) and 621(1).

Financial Services (Payment Accounts) Regulations 2020**LN.2020/043**

		<i>Commencement</i>	15.1.2020
Amending enactments	Relevant current provisions	Commencement date	
LN.2020/497	rr. 3(b)-(c), 4, 6(2)(c), (3)(b), 7(2)(f), (4), (5)(c), (9), 8(5)-(6), 13(7)(e), (11), 14, 15(3), 16(2)(b), 18(1), 20(2), (a)-(b), (9)(a), 21(1)(c)-(d), (4A), 23(1), 28		1.1.2021
2020/067	rr. 6(3), 7(9), 8(6), 26(3), 27		17.3.2022
2023/264	rr. 3(a)-(b), 4, 5(2), 12-13, 15-17		7.9.2023

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In exercise of the powers conferred upon the Minister by sections 150(1), 620(1) and 621(1) of the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and upon the Government by section 23(g)(ii) of that Act, the Minister and the Government have made these Regulations.

**PART 1
PRELIMINARY**

Title.

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

Commencement.

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

Overview.

3. These Regulations specify rules and procedures concerning—

- (a) the transparency and comparability of fees charged on payment accounts held by consumers; and
- (b) *Omitted*
- (c) *Omitted*
- (d) the right for consumers to open and use basic payment accounts.

Interpretation.

4. In these Regulations—

“the Act” means the Financial Services Act 2019;

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

“competent authority” means the GFSC;

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

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

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

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

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

“Financial Services Ombudsman” means the Ombudsman established under Part 14 of the Act;

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

“funds” means—

- (a) banknotes and coins;
- (b) scriptural money; and
- (c) electronic money;

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

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

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

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

“payer” means a person who–

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

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

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

“payment service” means an activity specified in paragraph 17 of Schedule 2 to the Act;

“payment service provider” has the same meaning as in paragraph 15 of Schedule 2 to the Act;

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

“representative linked services list” means the list referred to in regulation 6(1);

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

- (a) payment services and payment transactions within the scope of paragraph 18(g) of Schedule 2 to the Act; and
- (b) overdraft facilities and overrunning;

“the standardised terms” means the standardised terms and definitions for representative linked services that are commonly provided in Gibraltar, specified in technical standards;

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

Application.

- 5.(1) These Regulations apply to any payment account which enables a consumer to–
- (a) place funds in the account;
 - (b) withdraw cash from the account; and
 - (c) execute and receive payment transactions, including credit transfers, to and from a third party.
- (2) Part 2 applies to payment service providers.
- (3) Part 4 applies to credit institutions.

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

List of representative linked services.

- 6.(1) The GFSC must publish a list of at least 10 and not more than 20 of the most representative services linked to a payment account and subject to a fee, offered by at least one payment service provider in Gibraltar (“the representative linked services list”).
- (2) The representative linked services list must–
- (a) be published in English;
 - (b) contain terms and definitions for each of the services included (but limited to only one term for each service); and
 - (c) use the standardised terms.
- (3) For the purposes of sub-regulations (1) and (2), the GFSC must have regard to the services that–
- (a) are most commonly used by consumers in relation to their payment account; and

- (b) generate the highest cost for consumers, both overall as well as per unit.
- (4) The GFSC must–
 - (a) publish the representative linked services list without delay (and at the latest within three months) after those regulatory technical standards have entered into force; and
 - (b) review and, where appropriate, revise the representative linked services list every four years following its publication.

Fee information and glossary.

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

- (2) A fee information document must–
 - (a) use the standardised terms that are used in the representative linked services list and, where the payment service provider offers any service featured in that list, quote the corresponding fee for that service;
 - (b) be a short and stand-alone document, presented on paper or another durable medium;
 - (c) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
 - (d) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
 - (e) be written in English or, if agreed by the consumer and the payment service provider, in another language;
 - (f) be accurate, not misleading and expressed in the currency of the payment account or, if agreed by the consumer and the payment service provider, in another currency;
 - (g) contain the title “Fee information document” at the top of the first page and the common symbol referred to in sub-regulation (4); and

- (h) include a statement that it contains fees for the most representative services related to the payment account and that complete pre-contractual and contractual information on all the services is provided in other documents.
- (3) Where one or more services are offered as part of a package of services linked to a payment account, the fee information document must disclose–
 - (a) the fee for the entire package;
 - (b) the services, and the quantity of those services, included in the package; and
 - (c) the additional fee, if any, for any service that exceeds the quantity covered by the package fee.
- (4) A fee information document must comply with any technical standards concerning the format of, and common symbol for, a fee information document.
- (5) The GFSC may require a fee information document which meets the requirements of sub-regulations (2) to (4) to be provided by payment service providers together with other information which they are required to provide by or under–
 - (a) Part 15 of the Act;
 - (b) the Financial Services (Payment Services) Regulations 2020; or
 - (c) any other domestic law concerned with payment accounts or related services which the Minister may by order specify.
- (6) A payment service provider must make available to consumers a glossary of the standardised terms used in the representative linked services list and their related definitions.
- (7) Any glossary provided under sub-regulation (6) must be drafted in clear, unambiguous and non-technical language and must not be misleading.
- (8) A payment service provider must make a fee information document or glossary available to consumers (including those who are not customers of the payment service provider) at any time and in an easily accessible manner, including–
 - (a) in electronic form on the payment service provider’s website (where available);
 - (b) in the premises of the payment service provider that are accessible to consumers; and

(c) at the request of a consumer, free of charge on paper or another durable medium.

(9) This regulation applies without affecting paragraph 3 of Schedule 2 to the Financial Services (Payment Services) Regulations 2020 or sections 6 to 10 and 19 of the Financial Services (Consumer Credit) Act 2011.

Annual statement of fees.

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

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

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

(3) A statement of fees must specify–

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

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

(4) A statement of fees must–

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

(5) A statement of fees must comply with any technical standards concerning the format of, and common symbol for, a statement of fees.

(6) This regulation applies without affecting regulations 34 and 35 of the Financial Services (Payment Services) Regulations 2020 or section 12(6) and (7) of the Financial Services (Consumer Credit) Act 2011.

Information for consumers.

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

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

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

Comparison websites.

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

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

(3) A comparison website must–

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

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

Packaged payment accounts.

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

- (a) inform the consumer whether it is possible to purchase the payment account separately; and
- (b) if so, provide the consumer with separate information regarding the costs and fees associated with each of the other products and services which are offered in the package and that can be purchased separately.

PART 3

Omitted

12. to 17. *Omitted.*

PART 4

PAYMENT ACCOUNTS

Non-discrimination.

18.(1) Credit institutions must not discriminate on grounds of nationality, place of residence or by reason of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation, against legally resident consumers who apply for or access a payment account.

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

Designated credit institutions.

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

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

(a) must seek to ensure that–

- (i) a basic payment account is available to all eligible consumers in Gibraltar; and
- (ii) distortion of competition is prevented; and

(b) may not designate a credit institution which only provides payment accounts with solely online facilities as the sole designated credit institution.

(3) A designated credit institution must offer a basic payment account to any consumer who applies for a basic payment account and meets the requirements of regulation 20.

Eligibility for basic payment account.

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

(2) The opening and use of a basic payment account must conform with the Proceeds of Crime Act 2015 and a designated credit institution must—

(a) refuse an application for a basic payment account where opening an account would result in an infringement of the provisions of the Proceeds of Crime Act 2015 relating to the prevention of money laundering and the countering of terrorist financing; and

(b) adopt appropriate measures in respect of the reporting obligations under that Act.

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

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

(a) must undertake the assessment on a case by case basis, in a proportionate and non-discriminatory manner;

(b) must not impose requirements which are too difficult or burdensome for the consumer; and

(c) must not base the assessment upon a consumer's place of residence.

(5) A designated credit institution may refuse an application for a basic payment account where the consumer already holds a payment account with a credit institution in Gibraltar which allows the consumer to use the services specified in regulation 21(1).

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

(a) the credit institution with which the consumer holds the payment account has given notice that the account is to be closed; and

(b) the designated credit institution has either—

(i) verified that such a notice has been given; or

(ii) chosen to accept a declaration made by the consumer to that effect.

- (7) A designated credit institution may refuse to open a basic payment account where—
- (a) doing so would breach a requirement or limitation imposed upon the designated credit institution by the GFSC under Part 7 of the Act; or
 - (b) it considers that the consumer’s conduct towards it or its staff amounts to the commission of an offence under section 58, 82, 88, 89, 92, 92A, 94, 94A, 99 or 415 to 422 of the Crimes Act 2011.
- (8) A designated credit institution, without undue delay and at the latest ten business days after receiving a complete application for a basic payment account, must either—
- (a) open the account; or
 - (b) refuse the application.
- (9) Where an application is refused under sub-regulation 2(a), (3), (5) or (7), the designated credit institution must—
- (a) immediately inform the consumer of the refusal and reason for it, in writing and free of charge, unless doing so would be contrary the Proceeds of Crime Act 2015, public policy or national security objectives; and
 - (b) advise the consumer of the procedure and relevant contact information for—
 - (i) submitting a complaint against the refusal to the designated credit institution; and
 - (ii) referring the matter to the GFSC or to the Financial Services Ombudsman.
- (10) A designated credit institution must not make access to a basic payment account conditional upon the purchase of—
- (a) additional services; or
 - (b) shares in the designated credit institution, except where that condition applies to all of the credit institution’s customers.
- (11) In this regulation “eligible consumer” means a legally resident consumer and includes a consumer who is not granted a residence permit but whose expulsion is impossible for legal or factual reasons; and

Basic payment accounts.

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

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

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

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

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

(4A) A basic payment account may allow a consumer to–

- (a) withdraw cash from the account outside Gibraltar or in a currency other than sterling in the manner specified in sub-regulation (1)(c)(i) or (ii); or

- (b) execute a payment transaction specified in sub-regulation (1)(d)(i), (ii) or (iii) outside Gibraltar or in a currency other than sterling.
- (5) A consumer must be able to manage and initiate payment transactions from the consumer's basic payment account–
- (a) in the premises of the credit institution that are accessible to consumers; or
 - (b) by means of online facilities (where available).
- (6) Access to, or use of, a basic payment account must not be restricted by, or made conditional upon, the purchase of an overdraft credit facility or any other credit services.

Associated fees.

- 22.(1) A designated credit institution must offer the services referred to in regulation 21 either free of charge or for a reasonable fee.
- (2) Any fees charged to a consumer for non-compliance with the consumer's commitments under a framework contract must be reasonable.
- (3) In determining the reasonable fees referred to in sub-regulations (1) and (2), a designated credit institution must take account of–
- (a) income levels in Gibraltar; and
 - (b) the average fees charged by credit institutions in Gibraltar for services provided on payment accounts.

Framework contracts and termination.

- 23.(1) Subject to sub-regulations (2) to (4), a framework contract providing access to a basic payment account must comply with the Financial Services (Payment Services) Regulations 2020.
- (2) A credit institution may terminate a framework contract where at least one of the following conditions is met–
- (a) the consumer has deliberately used the payment account for illegal purposes;
 - (b) there has been no transaction on the payment account for more than 24 consecutive months;

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- (c) the consumer provided incorrect information in order to obtain the basic payment account and, if the correct information had been provided, the application would have been refused;
 - (d) the consumer is no longer a legally resident consumer; or
 - (e) the consumer has subsequently opened another payment account which allows the consumer to make use of the services listed in regulation 21(1) in Gibraltar.
- (3) A credit institution may terminate a framework contract where–
- (a) permitting the consumer to continue using the payment account would breach a requirement or limitation imposed upon the credit institution by the GFSC under Part 7 of the Act; or
 - (b) it considers that the consumer’s conduct towards it or its staff amounts to the commission of an offence under section 58, 82, 88, 89, 92, 92A, 94, 94A, 99 or 415 to 422 of the Crimes Act 2011.
- (4) Where a credit institution terminates the contract for a basic payment account–
- (a) on one or more of the grounds in sub-regulation (2)(b), (d) or (e), it must inform the consumer of the reasons for the termination in writing and free of charge at least two months before it takes effect, unless doing so would be contrary to objectives of national security or public policy; or
 - (b) on one of the grounds in sub-regulation (2)(a) or (c) or (3), the termination has immediate effect.
- (5) A termination notice must advise the consumer of the procedure and relevant contact information for–
- (a) submitting a complaint against the termination to the designated credit institution; or
 - (b) referring the matter to the GFSC or to the Financial Services Ombudsman.

General information on basic payment accounts.

24.(1) The GFSC must take adequate steps to raise public awareness about–

- (a) the availability and general pricing conditions of, and how to obtain, basic payment accounts; and

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

**PART 5
ENFORCEMENT AND SANCTIONS**

Securing compliance by payment service providers.

25. The GFSC must maintain appropriate arrangements for the purpose of enabling it to secure compliance by payment service providers with the requirements imposed by or under these Regulations.

Sanctions for contraventions.

26.(1) Subject to sub-regulation (2), the GFSC may exercise one or more of the sanctioning powers under Part 11 of the Act where it is satisfied that a person has contravened these Regulations.

(2) An administrative penalty for contravening these Regulations must not exceed whichever is the higher of the following–

- (a) where the benefit derived or loss avoided as a result of the contravention can be determined, twice the amount of that benefit;
- (b) in the case of a legal person, £250,000 or 5% of its total annual turnover according to the last available annual accounts approved by its management body; or
- (c) in the case of an individual, £125,000.

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(3) 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 (2)(b) is the total annual turnover (or the corresponding type of income) according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

27. *Omitted.*

**PART 6
MISCELLANEOUS**

28. *Omitted.*

**PART 7
REVOCATION**

Revocation of 2016 Regulations.

29. The Financial Services (Payment Accounts) Regulations 2016 are revoked.