

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5170 GIBRALTAR Thursday 5th September 2024

LEGAL NOTICE NO.166 OF 2024

FINANCIAL SERVICES ACT 2019

FINANCIAL SERVICES (STRONG CUSTOMER AUTHENTICATION ETC.) (TECHNICAL STANDARDS) (AMENDMENT) REGULATIONS 2024

In exercise of the powers conferred on the Minister by sections 626A and 627 of the Financial Services Act 2019, the Minister has made these Regulations-

Title.

1. These Regulations may be cited as the Financial Services (Strong Customer Authentication Etc.) (Technical Standards) (Amendment) Regulations 2024.

Commencement.

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

Amendment of the Technical Standards on strong customer authentication, etc.

3.(1) In the Financial Services (Strong Customer Authentication Etc.) (Technical Standards) Regulations 2021, the Technical Standards on Strong Customer Authentication and Common and Secure Methods of Communication set out in the Annex to those Regulations are amended as follows.

(2) Before the heading to the Technical Standards, insert “ANNEX”.

(3) For Article 10, substitute–

“Payment account information accessed directly by a payment service user.

10.(1) This Article applies where a payment service user is not using an account information service provider to access payment account information.

(2) Payment service providers are allowed not to apply strong customer authentication, subject to compliance with the requirements in Article 2 and to paragraph (3) and, where a payment service user is limited to accessing either or both of the following items online without disclosure of sensitive payment data–

(a) the balance of one or more designated payment accounts;

- (b) the payment transactions executed in the last 90 days through one or more designated payment accounts.

(3) For the purpose of paragraph (2), payment service providers are not exempt from the application of strong customer authentication where either of the following conditions are met–

- (a) the payment service user is accessing online the information specified in paragraph (2) for the first time;
- (b) more than 90 days have elapsed since the last time the payment service user accessed online the information specified in paragraph (2)(b) and strong customer authentication was applied.”.

(4) After Article 10, insert–

“Payment account information accessed through an account information service provider.

10A.(1) This Article applies where a payment service user is accessing account information through an account information service provider.

(2) Payment service providers are allowed not to apply strong customer authentication, subject to compliance with the requirements in Article 2 and paragraph (3) where a payment service user is limited to accessing either or both of the following items without disclosure of sensitive payment data–

- (a) the balance of one or more designated payment accounts;
- (b) the payment transactions executed in the last 90 days through one or more designated payment accounts.

(3) For the purpose of paragraph (2), payment service providers are not exempt from the application of strong customer authentication unless strong customer authentication has been applied on at least one previous occasion where the account information service provider accessed the information specified in paragraph (2) on behalf of the payment service user.”.

(5) In Article 18(2)–

- (a) in sub-paragraph (a), for “Annex” substitute “Schedule”;
- (b) in sub-paragraph (b), for “Annex” substitute “Schedule”.

(6) In Article 19(1), in both places it occurs, for “Annex” substitute “Schedule”.

(7) In Article 20–

- (a) in paragraph (1), for “Annex” substitute “Schedule”;
- (b) in paragraph (2), for “Annex” substitute “Schedule”.

(8) In Article 30–

- (a) in paragraph (6), for “less than six months before the target date for” substitute “later than the date of”;
- (b) in paragraph (9), for “six months before the target date for” substitute “the date of”.

(9) In Article 31–

- (a) re-number Article 31 as paragraph (1);
- (b) after paragraph (1), insert–

“(2) Subject to paragraph (3), account servicing payment service providers must establish the interfaces referred to in Article 30 by means of a dedicated interface or by allowing the payment service providers referred to in Article 30(1) to use the interfaces used for authentication and communication with the account servicing payment service provider’s payment services users.

(3) Account servicing payment service providers specified in paragraph (4) must establish the interfaces referred to in Article 30 by means of a dedicated interface in respect of all payment accounts that fall within one or more of the following descriptions–

- (a) a payment account as defined in paragraph 15 of Schedule 2 to the Act;
- (b) an account operated for an SME that would be the type of account described in sub-paragraph (a) if it were operated for a consumer; or
- (c) a credit card account operated for a consumer or an SME.

(4) An account servicing payment service provider is specified for the purposes of paragraph (3) if it is not–

- (a) a small payment institution;
- (b) a small electronic money institution as defined in regulation 2(1) of the Financial Services (Electronic Money) Regulations 2020; or

- (c) deemed to be authorised under the Financial Services (Passport Rights and Transitional Provisions) (EU Exit) Regulations 2020.

(5) For the purposes of this Article–

“consumer” has the meaning given in section 2(2) of the Act;

“SME” means an enterprise as defined in Article 1 and Article 2(1) of the Annex to Recommendation 2003/361/EC of 6th May 2003 concerning the definition of micro, small and medium-sized enterprises.”.

(10) In Article 33–

- (a) in paragraph (5), after “purpose,” insert “and from no later than six months after the date of the market launch of the interface,”;
- (b) in paragraph (6), for “The” substitute “Subject to paragraph (6A), the”;
- (c) after paragraph (6), insert–

“(6A) An account servicing payment service provider to whom this paragraph applies is deemed to have been exempted by the GFSC under paragraph (6) if, immediately before IP completion day, it was exempted from the obligation to set up a contingency mechanism by its home state competent authority under Article 33(6) of Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communications.

(6B) Paragraph (6A) applies to account servicing payment service providers deemed to be authorised under the Financial Services (Passport Rights and Transitional Provisions) (EU Exit) Regulations 2020.”;

- (d) in paragraph (7), after “paragraph (6)” insert “(including any deemed exemption under paragraph (6A))”.

(11) After Article 36(6), insert–

“(7) An account information service provider may only access information in the circumstances described in paragraph (6)(b) if the payment service user has confirmed with the account information service provider within the previous 90 days that the payment service user continues to consent to such access.”.

(12) In the heading to the Annex to the Technical Standards, for “ANNEX” substitute “SCHEDULE”.

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

4. In regulation 79 of the Financial Services (Payment Services) Regulations 2020–
- (a) in sub-regulation (1)–
 - (i) in the opening words, for “payer” substitute “payment service user”;
 - (ii) in paragraph (a), after “online” insert “, whether directly or through an account information service provider”;
 - (b) in sub-regulation (2), for “transaction, the payment service providers” substitute “transaction, whether directly or through an account information service provider, the payment service provider”.

Dated: 5th September 2024.

N FEETHAM KC
Minister with responsibility for Financial Services

EXPLANATORY MEMORANDUM

These regulations amend the Technical Standards on Strong Customer Authentication and Common and Secure Methods of Communication which are set out in the Annex to the Financial Services (Strong Customer Authentication Etc.) (Technical Standards) Regulations 2021. They also make consequential amendments to the Financial Services (Payment Services) Regulations 2020.