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

Commencement **15.1.2020**

Amending enactments	Relevant current provisions	Commencement date
LN.2020/498	rr. 1(3)(b), 2(1), 3(3), 4(2)-(7), 6(8), 7(4), 8(3)(c), 10(8), 11(2)(c), 14(10), 17(3), 39(2), (2A), (4)(b), (5), 42(2)(c)(ii), 43(2)(a), (4)(d)(ii), 44(2)(a), (4)(c)(ii), 53(4), 55(1)(a), (c), (2)-(3), 63(2)(b), 69(2), 75(2), 76(2)-(3), 77(1), (5), 78(4), 86(2), 87(3)-(6), 88-99, 105(1)-(2), 106(2)(b), (7), 107-108, Schs. 1, 2	1.1.2021
2021/094	r. 84(2)(b)(i), (5)(a)(ii), (10)	1.1.2021
2022/188	r. 85(1)(c)	1.1.2021
2021/229	rr. 42(2)(c)(ii), 43(2)(a), (4)(d)(ii), 44(2)(a), (4)(c)(ii), 79A	15.4.2021
2022/153	rr. 1(3)-(4), 2, 8(1)(k), (3)(c), 10(7), 11(3), 14(2)(b), (11)(c)(i), 43(1), 44(1), 78(4), 80(1)(a)-(c), 81(3)(a), 82(1)(a)-(b), 84(1), 85(1)(a)-(b), (2), 87(6), 104(2), 106(2)(d), Schs. 1, 3	23.6.2022
2022/321	r. 85A.(1)-(2)	24.11.2022
2024/166	r. 79(1), (a), (2)	5.9.2024
2026/224	rr. 84(1), (1A), (11)-(12), 84A, 85B-85C, Schs. 4-5	16.7.2026

ARRANGEMENT OF REGULATIONS.

Regulation

General rules

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Chapter 2
Rights and obligations in relation to provision and use of payment services

Common provisions for Chapter 2 of Part 3

Authorisation of payment transactions

Execution of payment orders and amounts transferred

Execution time and value date

Liability

PRIOR GENERAL INFORMATION FOR FRAMEWORK CONTRACTS

SCHEDULE 3
OWN FUNDS

SCHEDULE 4
SAFEGUARDING RELEVANT FUNDS

SCHEDULE 5
SAFEGUARDING AUDIT REQUIREMENTS

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 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;

"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);

(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–

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

(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

(b) transactions within sub-paragraph (l) 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 (l)(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;

(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–

(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–

(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 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 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–

(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

(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
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–

(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.

(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;

(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;

(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;

(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;

(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–

(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).

(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

(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.

(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.

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;

(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

(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 payment service user –

(a) accesses its payment account online, whether directly or through an account information service provider;

(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, whether directly or through an account information service provider, the payment service provider 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–

(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 relevant funds by–

(a) complying with either–

(i) sub-regulations (2) to (4); or

(ii) sub-regulations (5) and (6);

(b) complying with the requirements of Part 1 of Schedule 4; and

(c) maintaining and being able to retrieve a safeguarding resolution pack in accordance with Part 2 of that Schedule.

(1A) In sub-regulation (1), "relevant funds" means any funds which a payment institution has received–

(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.

(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

(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–

(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.

(11) A payment institution must keep a record of –

(a) any relevant funds segregated in accordance with sub-regulation (2)(a); and

(b) any relevant funds or relevant assets placed in an account in accordance with sub-regulation (2)(b).

(12) A payment institution must maintain organisational arrangements sufficient to minimise the risk of the loss or diminution of relevant funds or relevant assets through fraud, misuse, negligence or poor administration.

Safeguarding returns.

84A.(1) A payment institution that safeguards relevant funds in accordance with regulation 84(1) must submit a safeguarding return to the GFSC, in the form and manner it directs, within 15 business days of the end of each calendar month (other than the month during which it becomes a payment institution).

(2) If the date for submission of a safeguarding return falls on a day which is not a business day, the return must be submitted so as to be received by the GFSC no later than the first business day after that date.

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.

(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.

Submission of accounts, etc. to GFSC.

85A.(1) A payment institution must submit to the GFSC, within four months of the end of the period to which they relate, a copy of each of the following documents–

(a) every account and balance sheet prepared in accordance with regulation 85;

(b) any report of the institution's auditor on any such account or balance sheet; and

(c) every published annual account and balance sheet and the auditor's report on them.

(2) Sub-regulation (1) applies without limiting regulation 85(3).

Communications by auditors to GFSC. Separate accounting information.

85B.(1) This regulation applies where a statutory auditor or audit firm ("A") is–

(a) an auditor of a payment institution;

(b) an auditor of both–

(i) a payment institution; and

(ii) a body ("CL") which has close links with the payment institution.

(2) For the purposes of sections 166 and 167 of the Act, the circumstances specified in sub-regulation (3) are those in which A must notify the GFSC of information–

(a) which relates to the payment services provided by the payment institution; and

(b) of which A becomes aware in A's capacity as auditor of the payment institution or CL.

(3) The specified circumstances are that–

(a) A reasonably believes that–

(i) there is or has been, or may be or may have been, a contravention of any requirement imposed on the payment institution by or under the Act or these Regulations; and

(ii) the contravention may be of material significance to the GFSC in determining whether to exercise, in relation to that institution, any functions conferred on the GFSC by the Act or these Regulations;

(b) A reasonably believes that the information on, or A's opinion on, those matters may be of material significance to the GFSC in determining whether the institution meets or will continue to satisfy the conditions set out in regulations 8(1)(b), (d), (k). (m) and (n) and 10(2), (4) and (7), paragraph 3(1) of Schedule 1 and paragraph 3(2)(f) of Schedule 12 to the Act and, if applicable, the requirement in regulation 81 to maintain own funds or the requirement in regulation 81 to maintain own funds;

(c) A reasonably believes that the institution is not, may not be or may cease to be, a going concern;

(d) A is precluded from stating in the auditor's report that the annual accounts have been properly prepared; or

(e) A is precluded from stating in the auditor's report, where applicable, that the annual accounts give a true and fair view of the company's accounts.

(4) In this regulation a person has close links with a payment institution ("A") if that person is–

(a) a parent undertaking of A;

(b) a subsidiary undertaking of A;

(c) a parent undertaking of a subsidiary undertaking of A; or

(d) a subsidiary undertaking of a parent undertaking of A.

Safeguarding audit requirements.

85C. A payment institution to which paragraph 1 of Schedule 5 applies must comply with the safeguarding audit requirements in that Schedule.

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
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.

(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;

(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

(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–

(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;

(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–

(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–

(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.

SCHEDULE 4

Regulation 84(1)

SAFEGUARDING RELEVANT FUNDS

Application.

1. This Schedule applies to payment institutions that receive or hold relevant funds in accordance with regulation 84(1).

Interpretation.

2. In this Schedule–

"acknowledgement letter fixed text" means the text in the acknowledgement letter in the Annex that is not in square brackets;

"acknowledgement letter variable text" means the text in the acknowledgement letter in the Annex that is in square brackets;

"authorised custodian" means a regulated firm whose Part 7 permission extends to the safeguarding and administration of financial instruments;

"D+1 segregation requirement" means the total amount of relevant funds that should be held by a payment institution in accordance with regulation 84(2)(b);

"D+1 segregation resource" means the sum of items A and C of a payment institution's safeguarding resource in accordance with paragraph 12(1);

"designated system" has the meaning given in regulation 71(3)(a);

"electronic money distributor" means a distributor within the meaning of regulation 2(1) of the Electronic Money Regulations;

"external safeguarding reconciliation" means the reconciliation described in paragraph 18;

"funds" has the meaning given in paragraph 2(1) of Schedule 2 to the Act;

"individual safeguarding balance" means the total amount of all funds the payment institution should be safeguarding for a particular client;

"insolvency event" means any of the insolvency events specified in section 3 of the Insolvency Act 2011;

"insurance or guarantee method" means the method of safeguarding relevant funds described in regulation 84(4) to (7);

"internal safeguarding reconciliation" means the reconciliation described in paragraph 11(1);

"mixed remittance" means a remittance that is part client money or relevant funds and part other money or funds;

"reconciliation day" means a business day that is not a Saturday or Sunday, or a bank or public holiday in Gibraltar or where a reconciliation requires anything to be done by reference to a market outside of Gibraltar, any day on which that market is not normally open for business;

"reasonable assurance engagement" has the meaning given in paragraph 12 of the ISAE (UK) 3000 International Standard on Assurance Engagements, as amended from time to time;

"recognised credit institution" has the meaning given in regulation 84(10);

"relevant assets" means assets held by a payment institution for the purposes of regulation 84(2)(b)(ii);

"relevant assets account" means an account held at an authorised custodian which holds relevant assets for the purposes of regulation 84(2)(b)(ii);

"relevant funds bank account" means an account held at a recognised credit institution which holds funds for the purposes of regulation 84(2)(b)(i);

"safeguarding account acknowledgement letter" means a letter in form of the template in the Annex;

"safeguarding resource" means the total amount safeguarded by a payment institution (see para 12(1));

"safeguarding requirement" the total amount a payment institution is required to safeguard (see para 13);

"safeguarding obligations" means any of the safeguarding obligations imposed on payment institutions by regulation 84 and this Schedule; and “segregation method” means the method of safeguarding relevant funds described in regulation 84(2) to (4);

“standard method of internal safeguarding reconciliation” means the method of internal safeguarding reconciliation described in paragraphs 12 to 15;

PART 1
SAFEGUARDING REQUIREMENTS

Organisational requirements.

3.(1) A payment institution, when holding relevant funds, must maintain adequate arrangements to safeguard the client’s rights and prevent the use of relevant funds for its own account.

(2) A payment institution that is also authorised to carry on other regulated activities must establish adequate policies and procedures to identify and determine under which activity it is holding funds.

(3) A payment institution must allocate to a single director or senior manager of sufficient skill and authority responsibility for–

(a) oversight of the institution’s operational compliance with its safeguarding obligations; and

(b) reporting to the institution’s governing body in respect of that oversight.

Allocation of relevant funds.

4.(1) A payment institution must allocate any relevant funds it receives to an individual client–

(a) promptly and in a manner that enables it to comply with its obligations under these Regulations; and

(b) in any event, no later than the end of the business day following the day of receipt (or where, after the receipt of funds, it has identified that the funds, or some of them, are relevant funds under sub-paragraph (3), no later than the end of the business day following that identification).

(2) Until the allocation required under sub-paragraph (1) is made, the payment institution must record the received relevant funds in its books and records as unallocated relevant funds.

(3) If a payment institution receives funds (whether in a relevant funds bank account or another account) which it is unable to immediately identify as relevant funds or other funds, it must–

(a) take all necessary steps to identify the funds as either relevant funds or other funds; and

(b) record the funds in its books and records as unidentified relevant funds while it performs the necessary steps under paragraph (a).

The segregation method.

5.(1) A payment institution that receives mixed remittances must maintain a written policy to demonstrate its approach to complying with regulation 84(8).

(2) A payment institution that segregates relevant funds in a different currency from that in which they were received or in which the payment institution is liable to the relevant client must ensure that the amount held is adjusted each day on which it performs an internal safeguarding reconciliation to an amount at least equal to the original currency amount (or currency in which the payment institution has its liability to its clients, if different), calculated at the previous day's closing spot exchange rate.

Segregation: secure, liquid assets.

6.(1) Where a payment institution wishes to seek approval of assets that have not been approved by the GFSC as set out in regulation 84(2)(b)(ii), it must submit an application in writing to the GFSC that demonstrates–

(a) how the consumer protection objective of safeguarding will be met by investing in the assets in question; and

(b) how liquidity risks will be managed.

(2) A payment institution must take reasonable steps to ensure that investment in relevant assets complies with the following requirements–

(a) there must be a suitable spread of investments;

(b) investments must be made in accordance with an appropriate liquidity strategy;

(c) the investments must be in accordance with an appropriate credit risk policy;

(d) any foreign exchange risks must be prudently managed;

(e) the policies and procedures for complying with paragraphs (a) to (d) must be reviewed at least annually;

(f) any redemption of an investment must be by payment into a relevant funds bank account of the payment institution; and

(g) where a third party has been appointed by the payment institution to manage the relevant assets, the mandate should provide for the proceeds from the sale of any relevant assets to be promptly reinvested in other relevant assets or paid into the payment institution's relevant funds bank account.

(3) A payment institution may only appoint a third party to manage relevant assets if the third party has Part 7 permission to carry out the regulated activity of portfolio management.

(4) A payment institution that appoints a third party to manage relevant assets must–

(a) exercise all due skill, care and diligence in the selection, appointment, and periodic review of the third party and the arrangements for managing the relevant assets;

(b) ensure that the mandate given to the third party prevents the third party from making investment decisions that are inconsistent with these Regulations; and

(c) ensure that the arrangements require the third party to provide, or make available, information on the number of relevant assets held, at least every business day, which relate to the close of business on the previous business day.

(5) Where a payment institution makes the selection, appointment and conducts the periodic review of the third party it must take into account the expertise and market reputation of the third party with a view to ensuring the protection of clients' rights.

(6) A payment institution must, on the date the selection is made or the review completed, make a record of–

(a) the grounds upon which it satisfies itself as to the appropriateness of its selection and appointment of a third party under sub-paragraph (5) and (6); and

(b) each periodic review of its selection and appointment of a third party under sub-paragraph (5), its considerations and conclusions.

(7) A payment institution that appoints a third party in accordance with sub-paragraph (3) remains responsible for ensuring that the relevant funds are only invested in accordance with regulation 84 and this Part.

Insurance or guarantee method.

7.(1) This paragraph applies when a payment institution elects to protect some or all relevant funds using the insurance or guarantee method.

(2) A payment institution may protect relevant funds through an insurance policy or a guarantee if the policy or the guarantee complies with the following conditions–

(a) the proceeds of the insurance policy or guarantee must be payable upon an insolvency event of the payment institution;

(b) there must be no condition or restriction on the prompt paying out of the insurance or guarantee, other than the certification of the insolvency event;

(c) a certification requirement for the purposes of paragraph (b) must be no more onerous than is practically necessary;

(d) the terms of the insurance policy or guarantee must provide for the proceeds of the policy or guarantee to be promptly paid into a relevant funds bank account of the payment institution; and

(e) the terms of the insurance policy or guarantee must not permit or enable the provider to cancel the policy or guarantee prior to its expiry, unless–

(i) such cancellation is due to the non-payment of the premium; and

(ii) the provider has given the payment institution and the GFSC at least three months' notice of its decision to cancel the policy or guarantee.

(3) A payment institution must notify the GFSC at least two months before it intends to rely on the insurance or guarantee method for the first time, change the amount of cover provided by its insurance policies or guarantees, or change its insurer or guarantor.

(4) The notification must set out–

(a) the person providing the insurance policy or guarantee;

(b) how the insurance policy or guarantee complies with the conditions in sub-paragraph (2);

(c) when the insurance policy or guarantee expires, and if it renews automatically;

(d) whether the payment institution has alternative arrangements in place instead of renewal;

(e) an assessment by the payment institution as to whether the use of the insurance or guarantee method or the change to the safeguarding arrangements will lead to any increase in operational risk;

(f) an explanation of how the assessment in paragraph (e) was carried out; and

(g) a statement as to how the payment institution will mitigate any increased operational risk.

(5) A payment institution must–

(a) decide whether it intends to continue to use the insurance or guarantee method in good time and at least three months before the expiry of its existing insurance policy or guarantee; and

(b) notify the GFSC of its decision.

(6) Where a payment institution has less than three months remaining on an insurance policy or guarantee taken out for the purposes of safeguarding by the insurance or guarantee method and does not have a replacement for, or renewal of, the insurance policy or guarantee in place, the institution must–

(a) make a plan as to how it will use the segregation method to safeguard the funds that would have been protected by the insurance policy or guarantee if that policy or guarantee had been renewed or replaced; and

(b) provide the GFSC with that plan.

Selection and appointment of third parties.

8.(1) A payment institution must exercise all due skill, care and diligence in–

(a) the selection, appointment, and periodic review of third parties that provide–

(i) accounts where relevant funds are received, deposited or otherwise held;

(ii) accounts where relevant assets are deposited or otherwise held; or

(iii) insurance or a guarantee for the purpose of the insurance or guarantee method; and

(b) the arrangements for the holding or protection of relevant funds or relevant assets.

(2) The payment institution must consider the need for diversification as part of its due diligence under sub-paragraph (1).

(3) When a payment institution makes the selection, the appointment and conducts the periodic review of a third party, it must take into account–

(a) the expertise and market reputation of the third party with a view to ensuring the protection of clients' rights; and

(b) any legal or regulatory requirements or market practices relating to the holding of relevant funds or relevant assets or the provision of insurance or a guarantee that could adversely affect clients' rights.

(4) A payment institution must–

(a) periodically review whether it is appropriate to diversify (or further diversify) the third parties with which it deposits, holds, invests, insures or guarantees some or all of the relevant funds it is required to safeguard; and

(b) whenever it concludes that it is appropriate to do so, make adjustments accordingly to the third parties it uses and to the amounts of relevant funds or relevant assets deposited or held with them or covered by them.

(5) A payment institution must make a record of–

(a) the grounds upon which it satisfies itself as to the appropriateness of its selection and appointment of a third party under sub-paragraph (1);

(b) each periodic review of its selection and appointment of a third party under sub-paragraph (1), its considerations and conclusions; and

(c) each periodic review that it conducts under sub-paragraph (4), its considerations and conclusions.

(6) A record under sub-paragraph (5) must be made on the date the selection is made or the review is completed (as the case may be).

Safeguarding accounts: acknowledgement letters.

9.(1) For each relevant funds bank account, a payment institution must–

(a) complete and sign a safeguarding account acknowledgement letter clearly identifying the relevant funds bank account; and

(b) send it to the recognised credit institution with which the relevant funds bank account is, or will be, opened, requesting the credit institution to acknowledge and agree to the terms of the letter by countersigning it and returning it to the payment institution.

(2) For each relevant assets account, a payment institution must–

(a) complete and sign a safeguarding account acknowledgement letter clearly identifying the relevant assets account; and

(b) send it to the firm with which the relevant assets account is, or will be, opened, requesting the firm to acknowledge and agree to the terms of the letter by countersigning it.

(3) In drafting acknowledgement letters under this paragraph, a payment institution must use the template in the Annex.

(4) When completing an acknowledgement letter, a payment institution must–

(a) not amend any of the acknowledgement letter fixed text;

(b) subject to paragraph (c), ensure the acknowledgement letter variable text is removed, included or amended as appropriate; and

(c) not amend any of the acknowledgement letter variable text in a way that would alter or otherwise change the meaning of the acknowledgement letter fixed text.

(5) An acknowledgement letter will no longer comply with sub-paragraph (4) if, on countersigning and returning the acknowledgement letter to a payment institution, the relevant person has also made amendments to–

(a) any of the acknowledgement letter fixed text; or

(b) any of the acknowledgement letter variable text in a way that would alter or otherwise change the meaning of the acknowledgement letter fixed text.

(6) Amendments made to the acknowledgement letter variable text in the acknowledgement letter returned to a payment institution by the relevant person will not have the result that the letter has been inappropriately redrafted if those amendments–

(a) do not affect the meaning of the acknowledgement letter fixed text;

(b) have been specifically agreed with the payment institution; and

(c) do not cause the acknowledgement letter to be inaccurate.

(7) A payment institution must use reasonable endeavours to ensure that any individual that has countersigned an acknowledgement letter that has been returned to the payment institution was authorised to countersign the letter on behalf of the relevant person.

(8) A payment institution must retain each countersigned acknowledgement letter it receives from the date of receipt until the expiry of a period of five years starting on the date on which the last account to which the acknowledgement letter relates is closed.

(9) A payment institution must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this paragraph (such as any evidence it has obtained to ensure that the individual that has countersigned an acknowledgement letter that has been returned to the payment institution was authorised to countersign the letter on behalf of the relevant person).

(10) A payment institution must periodically (at least annually, and whenever it becomes aware that something referred to in an acknowledgement letter has changed) review each of its countersigned acknowledgement letters to ensure that they remain accurate.

(11) If a payment institution finds that a countersigned acknowledgement letter contains an inaccuracy, the payment institution must promptly draw up a replacement acknowledgement letter and request that the new acknowledgement letter is countersigned and returned by the relevant person.

(12) If a payment institution's relevant funds bank account or relevant assets account is transferred to another person, the payment institution must promptly draw up a new acknowledgement letter and request that the new acknowledgement letter is countersigned and returned by the relevant person.

Records and accounts.

10.(1) A payment institution must establish, implement and maintain adequate policies and procedures sufficient to ensure it complies with its safeguarding obligations, including in relation to any services provided through an agent.

(2) A payment institution must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish between relevant funds and other funds.

(3) A payment institution must maintain its records and accounts in a way that ensures their accuracy and, in particular, their correspondence to the relevant funds held for clients.

(4) A payment institution must–

(a) maintain records so that it is able to determine the total amount of relevant funds it should be holding for each of its clients promptly and at any time; and

(b) ensure that its records are sufficient to show and explain its transactions and commitments for its relevant funds.

(5) Subject to any other provision to the contrary, a payment institution must ensure that any record made under this Part is retained for a period of five years starting from the later of–

(a) the date it was created; or

(b) if it has been modified since that date, the date it was most recently modified.

(6) For each internal safeguarding reconciliation and external safeguarding reconciliation the payment institution conducts, it must ensure that it records–

(a) the time and date it carried out the relevant process;

(b) the actions it took in carrying out the relevant process;

(c) the outcome of its calculation of its safeguarding requirement and, where relevant, safeguarding resource; and

(d) where relevant, the outcome of its comparison of its D+1 segregation requirement and D+1 segregation resource.

Internal safeguarding reconciliations.

11.(1) An internal safeguarding reconciliation requires a payment institution to carry out a reconciliation of its internal records and accounts–

(a) to check whether–

(i) its safeguarding resource was equal to its safeguarding requirement, as at the reconciliation point in accordance with paragraph 11(6); and

(ii) the amount of relevant funds and relevant assets it is required to hold in relevant funds bank accounts and relevant assets accounts is held in such accounts in accordance with paragraph 15; and

(b) to promptly identify and resolve any discrepancies in accordance with paragraphs 19(1) to (3).

(2) A payment institution that uses the insurance or guarantee method to protect relevant funds (whether alone or in combination with the segregation method) and does so using an insurance policy or guarantee that is unlimited in the amount of cover it provides–

(a) does not need to carry out an internal safeguarding reconciliation; but

(b) must carry out a daily calculation of its safeguarding requirement and record–

(i) the date it carried out the calculation;

(ii) the actions it took in carrying out the calculation; and

(iii) the outcome of its calculation.

(3) A payment institution is not required to carry out the reconciliation described in paragraph 11(1)(a)(ii) (the comparison in paragraph 15) if all of its relevant funds–

(a) are held in a relevant funds bank account; or

(b) were, before the last internal safeguarding reconciliation, invested in relevant assets.

(4) In carrying out an internal safeguarding reconciliation, a payment institution must use the values contained in its internal records and ledgers (for example, the payment accounts it operates, its cash book or other internal accounting records) rather than the values contained in the records it has obtained from recognised credit institutions and other third parties with which it has placed relevant funds or relevant assets (for example, bank statements).

(5) Subject to paragraphs 11(2) and (8), a payment institution must perform an internal safeguarding reconciliation as frequently as necessary and no less than once each reconciliation day.

(6) A payment institution must select reconciliation points for every day on which it performs internal safeguarding reconciliations–

(a) which must be at the same time for every day on which the payment institution carries out internal safeguarding reconciliations; and

(b) each internal safeguarding reconciliation must be based on the payment institution's records as at the corresponding reconciliation point.

(7) A payment institution must record, as part of the policies and procedures required by paragraph 10(1)–

(a) the reconciliation points referred to in sub-paragraph (6); and

(b) the frequency with which it performs internal safeguarding reconciliations

(8) Following an insolvency event, a payment institution must–

(a) perform an internal safeguarding reconciliation that relates to the time of the insolvency event as soon as reasonably practicable after the insolvency event; and

(b) perform further internal safeguarding reconciliations as regularly as required under sub-paragraph (9), based on the records of the payment institution as at the close of business on the business day before the day on which the reconciliation takes place.

(9) A payment institution must determine when and how often to perform an internal safeguarding reconciliation under sub-paragraph (8)(b) so as to ensure that–

(a) the payment institution remains in compliance with paragraph 10(2) to (6); and

(b) the correct amounts of relevant funds are returned to clients.

(10) In carrying out its internal safeguarding reconciliation a payment institution may follow–

(a) the standard method of internal safeguarding reconciliation set out in paragraphs 12 to 15; or

(b) a non-standard method of internal safeguarding reconciliation if it complies with the requirements in paragraph 16.

Standard method: safeguarding resource.

12.(1) The safeguarding resource is the sum of–

(a) the aggregate balance of funds held in the payment institution's relevant funds bank accounts ("item A");

(b) the aggregate balance of relevant funds that have been segregated but not placed in a relevant funds bank account or invested in relevant assets ("item B");

(c) the aggregate value of relevant assets held in the payment institution's relevant assets accounts based on the payment institution's records as at the close of business on the previous business day ("item C"); and

(d) the aggregate value of relevant funds that the payment institution has protected using the insurance or guarantee method ("item D").

(2) In determining item C, a payment institution must ensure that any valuation of the relevant assets is performed impartially and with all due skill, care and diligence.

Standard method: safeguarding requirement.

13. The safeguarding requirement, the total amount a payment institution is required to safeguard, is the sum of–

(a) individual safeguarding balances calculated in accordance with paragraph 14(1), ignoring any negative balances; and

(b) any amounts received but unallocated to an individual client under paragraph 4(1) and (2).

Standard method: individual safeguarding balance.

14.(1) A payment institution must calculate a client's individual safeguarding balance in a way which captures the total amount of all funds the payment institution should be safeguarding for that client.

(2) When calculating an individual safeguarding balance for each client, a payment institution must–

(a) include–

(i) all relevant funds received by the payment institution for the client; and

(ii) any amounts credited to the client's account by the payment institution (for example, interest due and payable to a client on a payment account); and

(b) deduct–

(i) any payments executed for the client (provided the funds have been paid to the payee or the payee's payment service provider); and

(ii) any sums due and payable by the client to the payment institution (for example, any fees and charges which are due and, under the framework contract, may be deducted from the funds held by the payment institution).

(3) For the purpose of sub-paragraph (2)((b)(iii), a payment institution must not take into account any payment or sums due and payable by the client to the extent those payments or sums create a negative balance on an account operated by the payment institution for the client.

Standard method: D+1 comparison.

15. In accordance with paragraph 11(1)(a)(ii), and subject to paragraph 11(3), a payment institution must–

(a) compare its–

(i) D+1 segregation requirement; and

(ii) D+1 segregation resource; and

(b) promptly identify and resolve any discrepancies in accordance with paragraphs 19(2) and (3).

Non-standard method.

16.(1) A "non-standard method of internal safeguarding reconciliation" means a method of internal safeguarding reconciliation which does not meet the requirements of the standard method of internal safeguarding reconciliation.

(2) A payment institution, before using a non-standard method of internal safeguarding reconciliation, must–

(a) establish and document in writing its reasons for concluding that the method of internal safeguarding reconciliation it proposes to use will check whether–

(i) the amount of relevant funds recorded in the payment institution's records as being safeguarded meets the payment institution's safeguarding obligation to its clients; and

(ii) the amount of relevant funds recorded in the payment institution's records as being held in a relevant funds bank account or invested in relevant assets and held in a relevant assets account meets the payment institution's safeguarding obligations to its clients; and

(b) obtain a written report prepared by an independent auditor of the payment institution in line with a reasonable assurance engagement and stating the matters set out in sub-paragraph (3).

(3) The report in sub-paragraph (2)(b) must state whether, in the auditor's opinion–

(a) the method of internal safeguarding reconciliation which the payment institution will use is suitably designed to enable it to check whether–

(i) the amount of relevant funds recorded in the payment institution's records as being safeguarded meets the payment institution's safeguarding obligations to its clients; and

(ii) the amount of relevant funds recorded in the payment institution's records as being held in a relevant funds bank account or invested in relevant assets and held in a relevant assets account meets the payment institution's safeguarding obligations to its clients; and

(b) the payment institution's systems and controls are suitably designed to enable it to carry out the method of internal safeguarding reconciliation the payment institution will use.

(4) A payment institution using a non-standard method of internal payment reconciliation must not materially change its method of undertaking internal safeguarding reconciliations unless–

(a) the payment institution has established and documented in writing its reasons for concluding that the changed methodology will meet the requirements in sub-paragraph (2)(a); and

(b) an auditor of the payment institution has prepared a report that complies with the requirements in (2)(b) and (3) in respect of the payment institution's proposed changes.

(5) A payment institution must take reasonable steps to ensure that the auditor it appoints to prepare the report in sub-paragraph (2)(b)–

(a) is approved under Part 24 of the Act to carry out statutory audits; and

(b) has the required skill, experience and resources to perform the functions specified in this Part.

External safeguarding reconciliations.

17.(1) A payment institution must conduct reconciliations between its internal records and accounts and those of–

(a) the recognised credit institution with which the payment institution holds a relevant funds bank account;

(b) the persons with which the payment institution holds any other account in which relevant funds are held; and

(c) the authorised custodians with which the payment institution holds a relevant assets account, and any third party that manages relevant assets on behalf of the payment institution.

(2) A payment institution must perform an external safeguarding reconciliation–

(a) as frequently as necessary and no less than once each reconciliation day; and

(b) as soon as reasonably practicable after the date to which the external safeguarding reconciliation relates.

(3) Sub-paragraph (2) does not apply to a payment institution following an insolvency event.

(4) Following an insolvency event, a payment institution must perform an external safeguarding reconciliation that relates to the time of the insolvency event as soon as reasonably practicable after the insolvency event, based on the next available statements or other forms of confirmation after the insolvency event from–

(a) the recognised credit institutions with which the payment institution holds a relevant funds bank account;

(b) the persons with which the payment institution holds any other account in which relevant funds are held; and

(c) the authorised custodians with which the payment institution holds a relevant assets account, and any third party that manages relevant assets on behalf of the payment institution.

(5) When determining the frequency with which it will undertake further external safeguarding reconciliations after an insolvency event, a payment institution must have regard to–

(a) the frequency, number and value of transactions which the payment institution undertakes in respect of relevant funds;

(b) the risks to which the relevant funds are exposed, such as the nature, volume and complexity of the payment institution's activities and where and with whom the relevant funds are held or invested; and

(c) the need to be able to verify that–

(i) relevant funds within an asset pool have not been incorrectly distributed, transferred or dissipated; and

(ii) the proceeds of any payments and transactions that settle after the insolvency event and which involve relevant funds have been received correctly.

External safeguarding reconciliations: method.

18. An external safeguarding reconciliation requires a payment institution to–

(a) compare–

(i) the balance, currency by currency, as recorded by the payment institution, with the balance on that account as set out in the most recent statement or other form of confirmation issued by the person with which those accounts are held, for–

(aa) each relevant funds bank account; and

(bb) any other account in which relevant funds are held; and

(ii) the quantity of relevant assets, investment by investment, as recorded by the payment institution for each account held with an authorised custodian, with the quantity set out in the most recent statement or other form of confirmation issued by the authorised custodian; and

(b) promptly identify and resolve any discrepancies between those balances in accordance with paragraphs 19(5) and (6).

Reconciliation discrepancies.

19.(1) When a discrepancy arises between a payment institution's safeguarding resource and its safeguarding requirement, the payment institution must determine the reason for the discrepancy and, subject to sub-paragraph (4),ensure that–

(a) any shortfall is paid into a relevant funds bank account or invested in relevant assets as soon as possible and, in any case, by the end of the day on which the reconciliation is performed; or

(b) any excess is withdrawn from an account holding relevant funds or relevant assets.

(2) If a payment institution's D+1 segregation resource is lower than its D+1 segregation requirement, the payment institution must–

(a) determine the reason for the discrepancy; and

(b) subject to sub-paragraph (4), ensure that sufficient relevant funds are paid into a relevant funds bank account or invested in relevant assets to address the difference as soon as possible and, in any case, by the end of the day on which the reconciliation is performed.

(3) If it is not possible to use relevant funds to comply with sub-paragraph (2), the payment institution must use its own funds to do so, even if this leads to a discrepancy between its safeguarding requirement and safeguarding resource.

(4) Following an insolvency event, a payment institution is not required to make a payment, investment or withdrawal under sub-paragraphs (1) or (2) if the legal procedure for the insolvency event restricts it from doing so.

(5) If any discrepancy is identified by an external safeguarding reconciliation, the payment institution must–

(a) investigate the reason for the discrepancy; and

(b) take all reasonable steps to resolve it without undue delay,

unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and that of the payment institution.

(6) If an external safeguarding reconciliation has identified a discrepancy which a payment institution is unable to resolve immediately and a record or set of records examined during that

reconciliation indicates that there is a need to have a greater amount of relevant funds or relevant assets than is the case, until the matter is finally resolved the payment institution must–

(a) assume that the record or set of records is accurate; and

(b) pay its own funds into a relevant funds bank account or invest them in relevant assets.

(7) Following an insolvency event, a payment institution is not required to comply with sub-paragraph (6)(b) if the legal procedure for the insolvency event restricts it from doing so.

Notification requirements.

20. A payment institution must inform the GFSC in writing without delay if–

(a) its internal records and accounts of relevant funds are materially out of date, inaccurate or invalid so that the payment institution is no longer able to comply with the requirements in paragraphs 10(2), (3) or (4);

(b) it will be unable to, or materially fails to, conduct an internal safeguarding reconciliation in compliance with paragraphs 11(1) and (5)

(c) it will be unable to, or materially fails to, pay any shortfall into a relevant funds bank account or invest it in relevant assets, or withdraw any excess from an account holding relevant funds or relevant assets so that the payment institution is unable to comply with paragraph 19(1) to (3) after having carried out an internal safeguarding reconciliation;

(d) it will be unable to, or materially fails to, conduct an external safeguarding reconciliation in compliance with paragraph 17(1) or (2);

(e) it will be unable to, or materially fails to, identify and resolve any discrepancies under paragraph 19(5) and (6) after having carried out an external safeguarding reconciliation; or

(f) it becomes aware that, at any time in the preceding 12 months, the amount of relevant funds safeguarded was materially different from the total aggregate amount of relevant funds the payment institution was required to safeguard under these Regulations.

PART 2
SAFEGUARDING RESOLUTION PACK

Introduction.

21.(1) A payment institution which receives or holds relevant funds in accordance with Part 1 of this Schedule must maintain and be able to retrieve a safeguarding resolution pack in accordance with this Schedule.

(2) In this Part, "safeguarding resolution pack" means the documents and records specified in paragraph 2.

Safeguarding resolution pack: content.

22.(1) A payment institution must include within its safeguarding resolution pack–

(a) a master document containing information sufficient to retrieve each document in the institution's safeguarding resolution pack;

(b) a document which identifies the institutions the payment institution has appointed (including through an agent)–

(i) for the receipt or holding of relevant funds; and

(ii) for the holding of relevant assets;

(c) for each institution identified in paragraph (b), a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between that institution and the payment institution that relates to the holding of relevant funds or relevant assets including any acknowledgement letters sent or received in accordance with paragraph 9;

(d) a document which identifies the institutions the payment institution has appointed to provide insurance or a guarantee in accordance with regulation 84(5);

(e) for each institution identified in paragraph (d), a copy of each executed policy or guarantee with that institution, including any side letters or other agreements used to clarify or modify the terms of the executed policy or guarantee;

(f) a document which identifies each agent of the payment institution;

(g) a document which–

(i) identifies each member of the payment institution's group involved in operational functions related to its safeguarding obligations and, for each group member identified; and

(ii) for each group member, the type of entity (for example, branch, subsidiary or nominee company) the group member is, its jurisdiction of incorporation if applicable, and a description of its related operational functions;

(h) a document which–

(i) identifies each third party which the payment institution uses for the performance of operational functions related to its safeguarding obligations;

(ii) describes how to gain access to relevant information held by that third party; and

(iii) describes how to affect a transfer of any relevant funds or relevant assets held by the payment institution, but controlled by that third party;

(i) a copy of the payment institution's procedures for the management, recording and transfer of the relevant funds and relevant assets that it holds; and

(j) a document which identifies–

(i) each senior manager and director and any other individual and the nature of their responsibility within the payment institution who is critical or important to the performance of operational functions related to its safeguarding obligations; and

(ii) the individual to whom responsibility for operational oversight has been allocated under paragraph 3(3).

(2) For the purpose of sub-paragraph (1)(b), payment institutions must ensure that the document records–

(a) the full name of the appointed institution in question;

(b) its postal address, email address and telephone number; and

(c) the numbers of all accounts opened by that payment institution with that institution.

(3) A payment institution must include, as applicable, within its safeguarding resolution pack–

(a) the records required under the following provisions of Part 1–

(i) paragraph 6(6) (appointment of a third party to manage relevant assets)

(ii) paragraph 8(5) and (6) (selection and appointment of third parties); and

(iii) paragraphs 10(2), (4), (5) and (6) (records and accounts);

(b) the policies and procedures referred to in paragraph 10(1); and

(c) the standard terms and conditions incorporated into its contracts with clients.

Adequate arrangements and retrievability.

23.(1) A payment institution must, in relation to each document in its resolution pack–

(a) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it, or any material part of its property, is able to retrieve each document as soon as practicable and in any event within 48 hours of that officer's appointment; and

(b) ensure that it is able to retrieve each document as soon as practicable, and in any event within 48 hours, where it has taken a decision to do so or as a result of request of the GFSC.

(2) For the purpose of sub-paragraph (1), the following documents and records must be retrievable immediately–

(a) the documents identifying the institutions referred to in paragraph 22(1)(b) and (d);

(b) any acknowledgement letters referred to in paragraph 22(1)(c);

(c) a copy of each policy or guarantee referred to in paragraph 22(1)(e);

(d) the document identifying individuals referred to paragraph 22(1)(j); and

(e) the most recent internal safeguarding reconciliation and external safeguarding reconciliation records referred to paragraph 22(3)(a)(iii).

(3) Where a payment institution is reliant on the continued operation of certain systems for the provision of component documents in its safeguarding resolution pack, it must have

arrangements in place to ensure that these systems will remain operational and accessible to it after its insolvency.

Accuracy of resolution pack.

24.(1) A payment institution must ensure that it reviews the content of its safeguarding resolution pack on an ongoing basis to ensure that it remains accurate.

(2) Where a change of circumstances has the effect of making the content of a document specified in paragraph 22(1) inaccurate in any material respect, a payment institution must ensure that the inaccuracy is corrected promptly and, in any event, no more than five business days after the change of circumstances arose.

Reporting and notifications.

25.(1) A payment institution must ensure that its governing body receives a report in respect of compliance with this Part at least annually.

(2) A payment institution must notify the GFSC in writing immediately if it has not complied with, or is unable to comply with paragraph 21(1).

Groups.

26.(1) A payment institution is to be treated as satisfying a requirement in this Part to include a document in its safeguarding resolution pack if–

(a) a member of the payment institution's group–

(i) is subject to the same requirement; and

(ii) includes that document in its own safeguarding resolution pack; and

(b) the payment institution is still able to comply with paragraph 23(1).

(2) Where documents are held by members of a payment institution's group in accordance with sub-paragraph (1), the payment institution must have adequate arrangements in place with its group members which allow for delivery of the documents within the timeframe referred to in paragraph 23(1).

PART 3
TRANSITIONAL ARRANGEMENTS

Transitional Provisions.

27.(1) A payment institution which, when this Schedule comes into operation, has a third party appointment in place to which paragraphs 6(4)(a) and 8(1) apply, must carry out a review of that appointment within three months of this Schedule coming into operation.

(2) Paragraph 7(2)–

(a) does not apply to an insurance policy or guarantee obtained in accordance with regulation 84 before this Schedule comes into operation; but

(b) does apply to any renewal or extension of such a policy or guarantee after this Schedule comes into operation.

(3) Paragraphs 6(6)(a) and 8(5)(a) do not apply to third party appointments made before this Schedule comes into operation.

Annex
Safeguarding account acknowledgement letter template

[*Letterhead of payment institution, including institution's full name and address*]

[*Dat*e]

[*Name and address of recognised credit institution or authorised custodian*]

Safeguarding Account Acknowledgement Letter

We refer to the following [account[s]] which [name of payment institution], regulated by the Gibraltar Financial Services Commission), ("us", "we" or "our") [has opened or will open] [and/or] [has deposited or will deposit] with [name of recognised credit institution or authorised custodian] ("you" or "your"):

[insert the account title[s], the account unique identifier[s] (for example, sort code and account number, deposit number or reference code) and (if applicable) any abbreviated name of the account[s] as reflected in the firm's systems] ([collectively,] the "Safeguarding Account[s]").

For [each of] the Safeguarding Account[s] identified above you acknowledge that we have notified you that:

(1) we are under an obligation to keep [money] [or] [assets] we hold to meet the claims of our clients separate from other [money] [or] [assets];

(2) we have opened, or will open, the Safeguarding Account for the purpose of depositing [money] [or] [assets] with you to meet the claims of our clients; and

(3) we hold all [money] [or] [assets] standing to the credit of the Safeguarding Account to meet the claims of our clients.

For [each of] the Safeguarding Account[s] above you agree that:

(4) you do not have any interest in, or recourse or right against [money] [or] [assets] in the Safeguarding Account in respect of any sum owed to you, or owed to any third party, on any other account (including an account we use for our own [money] [or] [assets]). This means, for example, that you do not have any right to combine the Safeguarding Account[s] with any other account and any right of set-off or counterclaim against [money/assets] in the Safeguarding Account, except following an insolvency event as defined in regulation 84(6) of the Financial Services (Payment Services) Regulations 2020, and:

(a) to the extent that the right of set-off or counterclaim relates to your fees and expenses in relation to the operation of the Safeguarding Account; or

(b) if all the claims of our clients have been paid;

(5) you will title, or have titled, the Safeguarding Account as stated above and that this title is different to the title of any other account containing [money] [or] [assets] belonging to us or to any third party; and

(6) you are required to release on demand all [money] [or] [assets] standing to the credit of the Safeguarding Account upon proper notice and instruction from us or a liquidator, receiver, administrator, or trustee (or similar person) appointed for us in bankruptcy (or similar procedure), in any relevant jurisdiction, except:

(a) to the extent that you are exercising a right of set-off or security right; or

(b) until the fixed term expires, any amounts held under a fixed term deposit arrangement which cannot be terminated before the expiry of the fixed term,

provided that you have a contractual right to retain such [money] [or] [assets] under (a) or (b) and that this right is notwithstanding paragraphs (1) to (3) above and without breach of your agreement to paragraph (4) above.

We acknowledge that:

(7) you are not responsible for ensuring compliance by us with our own obligations in respect of the Safeguarding Account[s].

You and we agree that:

(8) the terms of this letter will remain binding upon the parties, their successors and assigns, and, for clarity, regardless of any change in any of the parties' names;

(9) this letter supersedes and replaces any previous agreement between the parties in connection with the Safeguarding Account[s], to the extent that such previous agreement is inconsistent with this letter;

(10) if there is any conflict between this letter and any other agreement between the parties over the Safeguarding Account[s], this letter will prevail;

(11) no variation to the terms of this letter shall be effective unless it is in writing, signed by the parties and permitted under the Financial Services (Payment Services) Regulations 2020;

(12) this letter is governed by the laws of [insert appropriate jurisdiction] [payment institutions may optionally use this space to insert additional wording to record an intention to exclude any rules of private international law that could lead to the application of the substantive law of another jurisdiction]; and

(13) the courts of [insert same jurisdiction as previous] have non-exclusive jurisdiction to settle any dispute or claim from or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible.

For and on behalf of [name of payment institution]

x ________________________________

Authorised Signatory
Print Name:
Title:

ACKNOWLEDGED AND AGREED:

For and on behalf of [name of recognised credit institution/custodian]

x ________________________________

Authorised Signatory

Print Name:
Title:
Contact Information: [insert signatory's phone number and email address]
Date:

SCHEDULE 5

Regulation 85C

SAFEGUARDING AUDIT REQUIREMENTS

Application.

1. This Schedule applies to payment institutions that–

(a) are authorised to carry out payment services other than–

(i) payment initiation services; or

(ii) account information services; and

(b) have been required to safeguard more than £100,000 of relevant funds at any time for a period of at least 53 weeks.

Interpretation.

2. In this Schedule–

"period covered" is to be construed in accordance with paragraph 8(2);

"reasonable assurance engagement" has the meaning given in paragraph 2 of Schedule 4;

"safeguarding obligations" means any of the safeguarding obligations imposed on payment institutions by regulation 84 and Schedule 4.

Appointment of auditors.

3.(1) A payment institution must–

(a) appoint an auditor;

(b) ensure that a replacement auditor is appointed to fill any vacancy in the office of auditor, either from the time it arises or as soon as reasonably practicable after that; and

(c) promptly notify the GFSC–

(i) of the appointment of an auditor, the auditor's name and business address and the date from which the appointment has effect; or

(ii) that a vacancy in the office of auditor has arisen or will arise, and of the reasons for the vacancy.

(2) If a payment institution fails to appoint an auditor within 28 days of being required to do so, and is not obliged to appoint an auditor under any other enactment, the GFSC may appoint an auditor for the payment institution.

(3) Where GFSC makes an appointment under sub-paragraph (2)–

(a) the payment institution is bound by and must comply with the terms on which the GFSC appointed the auditor;

(b) the institution must remunerate the auditor on the basis agreed between them or, in the absence of agreement, on a reasonable basis; and

(c) the auditor is to hold office until the auditor resigns or the institution appoints another auditor.

Auditors' qualifications.

4.(1) Before appointing an auditor, a payment institution must take reasonable steps to ensure that the auditor–

(a) is approved under Part 24 of the Act to carry out statutory audits; and

(b) has the required skill, experience and resources to perform the functions specified in this Schedule.

(2) A payment institution must not appoint as auditor a person who is disqualified from acting as an auditor either for that institution or for a relevant class of institution.

(3) A payment institution must take reasonable steps to ensure that any auditor that it is planning to appoint or has appointed, provides to the GFSC with any information that the GFSC may reasonably require regarding the auditor's qualifications, skills, experience and independence.

Independence of auditors.

5.(1) The auditor of a payment institution must be independent of that institution.

(2) A payment institution must–

(a) take reasonable steps to ensure that the auditor which it appoints is independent of the institution; and

(b) if becomes aware at any time that its auditor is not independent–

(i) take reasonable steps to ensure that it has an auditor independent of the institution; and

(ii) notify the GFSC if independence is not achieved within a reasonable time.

(3) The auditor of a payment institution must–

(a) take reasonable steps to satisfy itself that it is–

(i) independent of the payment institution; and

(ii) free from any conflict of interest in respect of that institution from which bias may reasonably be inferred; or

(b) take appropriate action where this is not the case.

Cooperation with auditors.

6. A payment institution must cooperate with its auditor in the discharge of the auditor's duties under this Schedule.

Obligations of auditors.

7.(1) An auditor of a payment institution must–

(a) cooperate with the GFSC; and

(b) give any skilled person appointed by the institution or the GFSC all assistance that person reasonably requires in accordance with section 509(4) of the Act.

(2) An auditor must notify the GFSC without delay if the auditor–

(a) is removed from office by a payment institution;

(b) resigns before the auditor's term of office expires; or

(c) is not re-appointed by a payment institution.

(3) An auditor who ceases to be, or is formally notified that they will cease to be, the auditor of a payment institution, must notify the GFSC without delay–

(a) of any matter connected with the cessation which the auditor thinks ought to be drawn to the GFSC's attention; or

(b) that there is no such matter.

Auditor's safeguarding report.

8.(1) The auditor of a payment institution must prepare a safeguarding report addressed to the GFSC which–

(a) states the matters set out in sub-paragraph (3);

(b) specifies the matters to which sub-paragraphs (4) and (5) refer; and

(c) is prepared in accordance with the terms of a reasonable assurance engagement.

(2) An auditor's safeguarding report must cover the period ending not more than 53 weeks after the later of–

(a) the date the payment institution becomes subject to this Schedule; or

(b) the end of the period covered by the previous report.

(3) The auditor's safeguarding report must state whether, in the auditor's opinion–

(a) the payment institution has maintained systems adequate to enable it to comply with its safeguarding obligations throughout the period covered; and

(b) the payment institution was in compliance with its safeguarding obligations at the end of the period covered by the report.

(4) If the auditor's safeguarding report states that one or more of the requirements in sub-paragraph (3) have not been met, the auditor must specify in the report each of those requirements and the respects in which they have not been met.

(5) Whether or not an auditor concludes that one or more of the requirements in sub-paragraph (3) have been met, the auditor must ensure that the safeguarding report–

(a) identifies each individual provision in respect of which a breach has been identified; or

(b) where the auditor has not identified any breaches includes a statement to that effect.

(6) If an auditor is unable to form an opinion as to whether one or more of the requirements in sub-paragraph (3) have been met, the auditor must specify in the safeguarding report those requirements and the reasons why the auditor has been unable to form an opinion.

(7) An auditor's safeguarding report must–

(a) be submitted to the GFSC in the form and manner it directs; and

(b) be signed on behalf of the statutory auditor by the individual with primary responsibility for the report and in that individual's name.

Review of draft report.

9.(1) An auditor must provide the payment institution with a draft of its safeguarding report so it has an adequate period of time to consider the auditor's findings and provide the auditor with comments of the kind referred to in sub-paragraph (2).

(2) A payment institution must consider the draft safeguarding report provided in accordance with sub-paragraph (1) and provide an explanation of–

(a) the circumstances that gave rise to each of the breaches identified in the draft report; and

(b) any remedial actions that it has undertaken or plans to undertake to correct those breaches.

(3) The explanation provided in accordance with sub-paragraph (2) must be submitted to the auditor in a timely manner and in any event before the auditor is required to deliver the report to the GFSC in accordance with paragraph 10.

(4) An auditor must ensure that the information provided to it by a payment institution in accordance with sub-paragraph (2) is included in the safeguarding report.

(5) If by the date at which the report is due for submission in accordance with paragraph 10 an auditor has not received the information referred to in with sub-paragraph (2), the auditor must submit the report without that information, together with an explanation for its absence.

Submission of final report.

10.(1) The auditor of a payment institution must deliver its safeguarding report to the GFSC within four months of the end of the period covered.

(2) If an auditor expects that it will be unable to comply with sub-paragraph (1), the auditor must, by no later than the end of the four-month period in question–

(a) notify the GFSC that the auditor expects that it will be unable to deliver a safeguarding report by the end of that period; and

(b) ensure that the notification includes or is accompanied by a full account of the reasons for the expected failure.

(3) If an auditor fails to comply with sub-paragraph (1), it must promptly–

(a) notify the GFSC of that failure; and

(b) ensure that the notification includes or is accompanied by a full account of the reasons for that failure.

(4) An auditor must deliver a copy of the final safeguarding report to the payment institution at the same time as it delivers that report to the GFSC.

(5) A payment institution must ensure that the final safeguarding report delivered to it in accordance with sub-paragraph (4) is reported to the institution's governing body.

Transitional Provisions.

11. For the period of 53 weeks beginning with the day on which this Schedule comes into operation–

(a) paragraph 1(b) has effect as if for the reference to "for a period of at least 53 weeks" there were substituted "since this Schedule came into operation"; and

(b) where the period covered to which paragraph 10(1) applies ends within that 53 week period, the auditor must deliver the safeguarding report within 6 months of the end of that period.