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**Isle of Man**

*Ellan Vannin*

**SD No.2015/0206**

# **PAYMENT SERVICES REGULATIONS 2015 (AS AMENDED 2018)**

*Approved by Tynwald 22 July 2015 (Original Order)*

*Coming into operation 23 July 2015: SD 2015/0206  
(amendments in operation 13 January 2018: SD 2017/0343)  
(amendments in operation 1 June 2018: SD 2018/0131)*

*Payment Services Regulations 2015 (as amended 2018)*

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Statutory Document No. 2015/0206



*Payment Services Act 2015*

## **PAYMENT SERVICES REGULATIONS 2015 (AS AMENDED 2018)**

*Approved by Tynwald: 22 July 2015  
Coming into operation in accordance with article 2*

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The Isle of Man Financial Services Authority makes the following Regulations under section 4 of the Payment Services Act 2015.

### **PART 1 – INTRODUCTION**

#### **1 Title**

These Regulations are the Payment Services Regulations 2015.

#### **2 Commencement**

If approved by Tynwald, these Regulations come into operation on the day following their approval.

#### **3 Application**

These Regulations apply to SEPA applicants, SEPA participants and SEPA payment transactions.

#### **4 Interpretation**

(1) In these Regulations –

“**the 2008 Act**” means the Financial Services Act 2008;

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

“**agent**” means a person who acts on behalf of an authorised payment institution in the provision of payment services;

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“**authentication**” means a procedure which allows a payment service provider to verify the identity of a payment service user or the validity of the use of a specific payment, including the use of the payment service user’s personalized security credentials;

“**authorised payment institution**” means a person licensed to conduct Class 8(2) activity by the Authority;

“**the Authority**” means the Isle of Man Financial Services Authority;

“**branch**” means a place of business of a relevant authorised payment institution, other than its head office, which has no legal personality and which carries out directly all or some of the transactions inherent in its business;

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

“**consumer**” means an individual who, in contracts for payment services to which these Regulations apply, is acting for purposes other than a trade, business or profession;

“**court**” means the High Court;

“**direct debit**” means a payment service for debiting the payer's payment account where a payment transaction is initiated by the payee on the basis of consent given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider;

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

“**the EEA**” means the European Economic Area;

“**the electronic money directive**” means Directive 2009/110/EC of the European Parliament and of the Council of 16<sup>th</sup> September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions<sup>(1)</sup>;

“**electronic money institution**” –

- (a) in relation to a person conducting business in or from the Island means a person licensed by the Authority to conduct Class 8(4) activity; and

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(1) OJ No L 267, 10.10.2009, p.7.

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- (b) in relation to a person conducting business in the EEA has the meaning given in Article 2(1) of the electronic money directive;
- “the European Payments Council”** means the *Conseil Européen des Paiements AISBL*;
- “framework contract”** means a contract for payment services which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;
- “funds”** means banknotes and coins, scriptural money, and electronic money as defined in Article 2(2) of the electronic money directive;
- “group”** has the meaning given by Article 4 of the Payment Services Directive;
- “means of distance communication”** means a method which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a contract for payment services between those parties;
- “notice”** means a notice in writing;
- “OFT”** means the Isle of Man Office of Fair Trading;
- “payment order”** means any instruction by—
- (a) a payer; or
  - (b) a payee,
- to their respective payment service provider requesting the execution of a payment transaction;
- “Payment Services Directive”** means Directive (EU) 2015/2366 of the European Parliament and of the Council 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC<sup>2</sup>;
- “payment system”** means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and settlement of payment transactions;
- “payment transaction”** means an act, initiated by the payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee;
- “personalized security credentials”** means personalized features provided by a payment service provider to a payment service user for the purposes of authentication;

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2 (OJ L 337, 23.12.2015, p. 35)

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

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

“**remote payment transaction**” means a payment transaction initiated through the internet or otherwise in initiated through a device that can be used for distance communication;

“**the Regulated Activities Order**” means the Regulated Activities Order 2011<sup>(3)</sup> made by the Treasury;

“**relevant area**” means the area comprising the relevant States;

“**relevant authorised payment institution**” means a person authorised in a relevant State to provide payment services in accordance with the payment services directive;

“**relevant State**” means an EEA State, the Island, the Bailiwick of Guernsey or the Bailiwick of Jersey;

“**SEPA**” means the Single Euro Payment Area;

“**the SEPA Payment Schemes**” means –

- (a) the SEPA Credit Transfer Scheme; and
  - (b) the SEPA Direct Debit Core Scheme;
- overseen by the European Payments Council;

“**single payment service contract**” means a contract for a single payment transaction not covered by a framework contract;

“**strong customer authentication**” means authentication based on the use of 2 or more elements that are independent, in that the breach of one element does not compromise the reliability of any other element, and designed in such a way as to protect the confidentiality of the authentication data, with the elements falling into 2 or more of the following categories –

- (a) something known only by the payment service user (“**knowledge**”);
- (b) something held only by the payment service user (“**possession**”);
- (c) something inherent to the payment service user (“**inherence**”);

“**the Tribunal**” means the Financial Services Tribunal<sup>(4)</sup>;

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<sup>(3)</sup> SD 2011/0884 as amended by SD 2013/0373, SD 2016/0099, SD 2016/0188 and SD 2017/0344.

<sup>(4)</sup> Established under section 32 of the 2008 Act.

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**“unique identifier”** means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user in relation to a payment transaction in order to identify unambiguously one or both of—

- (a) the other payment service user who is a party to the payment transaction;
- (b) the other payment service user's payment account; and

**“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) In these Regulations the following expressions have the same meaning as in the Regulated Activities Order—

- (a) deposit taker;
- (b) payee;
- (c) payer;
- (d) payment account;
- (e) payment instrument;
- (f) payment services;
- (g) payment service provider;
- (h) payment service user.

(3) In these Regulations a reference to an activity of a particular Class is to be construed in accordance with the Regulated Activities Order.

(4) In these Regulations references to amounts in euro include references to equivalent amounts in sterling or a currency of a relevant State not using the euro.

(5) Unless otherwise defined, expressions used in these Regulations which are also used in the payment services directive have the same meaning as in that directive.

(6) Expressions used in these Regulations and in a modification to a provision in primary or secondary legislation applied by these Regulations have the same meaning, in the legislation as so applied, as they have in these Regulations.

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## **PART 2 – INFORMATION REQUIREMENTS FOR PAYMENT SERVICES**

### *Application*

#### **5 Application of this Part**

- (1) This Part applies to payment services where –
  - (a) the services are provided from an establishment maintained by a payment service provider in the Island; 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 within the relevant area, or
    - (ii) the payment service provider of either the payer or the payee, but not both, is located within the relevant area.
- (1A) In the circumstances mentioned in paragraph (1)(b)(ii), this Part applies only in respect of those parts of a transaction which are carried out in the relevant area.
- (2) Regulations 7 to 10 apply to payment services provided under a single payment service contract.
- (3) Regulations 11 to 17 apply to payment services provided under a framework contract.
- (4) Unless the payment service user is a consumer, the parties may agree that any or all of the provisions of this Part do not apply to a contract for payment services.
- (5) This Part continues to apply to a payment service provided prior to 13 January 2018 as if the Payment Services (Amendment) Regulations 2017 had not been enacted.

#### **6 Regulations disappplied in the case of low-value payment instruments**

- (1) This regulation applies in respect of payment instruments that, under the framework contract governing their use –
  - (a) can be used only to execute individual payment transactions of 30 euro or less, or in relation to payment transactions executed wholly within the Island, 60 euro or less;
  - (b) have a spending limit of 150 euro, or if payment transactions must be executed wholly within the Island, 300 euro; or
  - (c) store funds that do not exceed 500 euro at any time.

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- (2) In a case to which this regulation applies paragraphs (3) to (5) make provision about the information to be provided.
- (3) In a case to which this regulation applies, regulations 10 and 15 do not apply and the payment service provider is only required to provide the payer with information about the main characteristics of the payment service, including—
  - (a) the way in which the payment instrument can be used;
  - (b) the liability of the payer, as set out in regulation 32(1);
  - (c) charges levied;
  - (d) any other material information the payer might need to take an informed decision; and
  - (e) an indication of where the information specified in Schedule 1 is made available in an easily accessible manner.
- (4) In a case to which this regulation applies, the parties may agree that regulations 15 and 16 do not apply and instead —
  - (a) the payment service provider must provide or make available a reference enabling the payment service user to identify the payment transaction, its amount and any charges payable in respect of it;
  - (b) 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 about the total amount of the payment transactions and any charges for those payment transactions; or
  - (c) if the payment instrument is used anonymously or the payment service provider is not otherwise technically able to provide or make available the information specified in subparagraph (a) or (b), the payment service provider must enable the payer to verify the amount of funds stored.
- (5) The parties may agree that regulation 18(1) does not apply to information provided or made available in accordance with regulation 12.

#### *Single payment service contracts*

### **7 Information required prior to the conclusion of a single payment service contract**

- (1) A payment service provider must provide or make available to the payment service user the information specified in paragraph (2) in relation to the service provided by the payee's payment service provider,

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whether by supplying a copy of the draft single payment service contract or supplying a copy of the draft payment order or otherwise, either —

- (a) before the payment service user is bound by the single payment service contract; or
  - (b) immediately after the execution of the payment transaction, if the contract is concluded at the payment service user's request using a means of distance communication which does not enable provision of such information in accordance with sub-paragraph (a).
- (2) The information referred to in paragraph (1) is—
- (a) the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;
  - (b) the maximum time in which the payment service will be executed;
  - (c) the charges payable by the payment service user to the user's payment service provider and, if applicable, a breakdown of the amounts of such charges;
  - (d) if applicable, the actual or reference exchange rate to be applied to the payment transaction; and
  - (e) such of the information specified in Schedule 1 as is relevant to the single payment service contract in question.

## **8 Information required after receipt of the payment order**

- (1) The payer's payment service provider must, immediately after receipt of the payment order, provide or make available to the payer the information specified in paragraph (2) in relation to the service provided by the payee's payment service provider.
- (2) The information referred to in paragraph (1) is—
  - (a) a reference enabling the payer to identify the payment transaction and, if 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, if applicable, a breakdown of such charges;
  - (d) if an exchange rate is used in the payment transaction and the actual rate used in the payment transaction differs from the rate provided in accordance with regulation 7(2)(d), the actual rate used or a reference to it, and the amount of the payment transaction after that currency conversion; and

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- (e) the date on which the payment service provider received the payment order.

## **9 Information for the payee after execution**

- (1) The payee's payment service provider must, immediately after the execution of the payment transaction, provide or make available to the payee the information specified in paragraph (2).
- (2) The information referred to in paragraph (1) is—
  - (a) a reference enabling the payee to identify the payment transaction and, if 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, if applicable, a breakdown of the amount of such charges;
  - (d) if 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.

## **10 Avoidance of duplication of information**

If a payment order for a single payment transaction is transmitted by way of a payment instrument issued under a framework contract, the payment service provider in respect of that single payment transaction need not provide or make available under regulations 7 to 9 information which has been provided or made available, or will be provided or made available, under regulations 11 to 16 by another payment service provider in respect of the framework contract.

### *Framework contracts*

## **11 Prior general information for framework contracts**

- (1) A payment service provider must provide to the payment service user the information specified in Schedule 1, either—
  - (a) in good time before the payment service user is bound by the framework contract; or
  - (b) if the contract is concluded at the payment service user's request using a means of distance communication which does not enable

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provision of such information in accordance with sub-paragraph (a), immediately after the conclusion of the contract.

- (2) The payment service provider may discharge the duty under paragraph (1) by supplying a copy of the draft framework contract provided that such contract includes the information specified in Schedule 1.

## 12 Information during period of contract

If the payment service user so requests at any time during the contractual relationship, the payment service provider must provide the information specified in Schedule 1 and the terms of the framework contract.

## 13 Changes in contractual information

- (1) Subject to paragraph (4), any proposed changes to —
  - (a) the existing terms of the framework contract; or
  - (b) the information specified in Schedule 1,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 framework contract may provide for any such proposed changes to be made unilaterally by the payment service provider if the payment service user does not, before the proposed date of entry into force of the changes, notify the payment service provider to the contrary.
- (3) If paragraph (2) applies, the payment service provider must inform the payment service user that—
  - (a) the payment service user will be deemed to have accepted the changes in the circumstances referred to in that paragraph; and
  - (b) the payment service user has the right to terminate the framework contract immediately and without charge before the proposed date of their entry into force.
- (4) Changes in the interest or exchange rates may be applied immediately and without notice if—
  - (a) such a right is agreed under the framework contract and the changes are based on the reference interest or exchange rates information on which has been provided to the payment service user in accordance with this Part; or
  - (b) the changes are more favourable to the payment service user.
- (5) The payment service provider must inform the payment service user of any change to the interest rate as soon as possible unless the parties have

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agreed on a specific frequency or manner in which the information is to be provided or made available.

- (6) Any change 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.

## **14 Termination of framework contract**

- (1) The payment service user may terminate the framework contract at any time unless the parties have agreed on a period of notice not exceeding one month.
- (2) Subject to paragraph (3), any charges for the termination of the contract must reasonably correspond to the actual costs to the payment service provider of termination.
- (3) The payment service provider may not charge the payment service user for the termination of a framework contract after the expiry of 6 months of the contract.
- (4) The 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.
- (5) Notice of termination given in accordance with paragraph (4) must be provided in the same way as information is required by regulation 18 to be provided or made available.
- (6) If charges for the payment service are levied on a regular basis, such charges must be apportioned up until the time of the termination of the contract and any charges paid in advance must be reimbursed proportionally.
- (7) This regulation does not affect any right of a party to the framework contract to treat it in accordance with the general law of contract, as unenforceable, void or discharged.

## **15 Information prior to execution of individual payment transaction**

If an individual payment transaction under a framework contract is initiated by the payer, at the payer's request the payer's payment service provider must inform the payer of—

- (a) the maximum execution time;
- (b) the charges payable by the payer in respect of the payment transaction; and
- (c) if applicable, a breakdown of the amounts of such charges.

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## **16 Information for the payer on individual payment transactions**

- (1) The payer's payment service provider under a framework contract must provide to the payer the information referred to in paragraph (2) in respect of each payment transaction on paper or on another durable medium at least once per month free of charge.
- (2) The information referred to in paragraph (1) is—
  - (a) a reference enabling the payer to identify the payment transaction and, if 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, if applicable, a breakdown of the amounts of such charges, or the interest payable by the payer;
  - (d) if 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) A framework contract may include a condition that the information specified in paragraph (2) be provided or made available periodically at least once a month and in an agreed manner which enables the payer to store and reproduce the information unchanged.
- (4) Paragraph (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 paragraph (3); 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 paragraph (1) or as required by the payer under a condition of the type referred to in paragraph (3).

## **17 Information for the payee on individual payment transactions**

- (1) The payee's payment service provider under a framework contract must provide to the payee the information referred to in paragraph (2) in respect of each payment transaction on paper or on another durable medium at least once per month free of charge.

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- (2) The information referred to in paragraph (1) is—
  - (a) a reference enabling the payee to identify the payment transaction, 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, if applicable, a breakdown of the amounts of such charges, or the interest payable by the payee;
  - (d) if 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) A framework contract may include a condition that the information specified in paragraph (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.
- (4) Paragraph (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 paragraph (3); 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 paragraph (1) or in accordance with a condition of the type referred to in paragraph (3).

#### *Common provisions*

### **18 Communication of information**

- (1) Subject to regulation 6(4)(c), any information provided or made available in accordance with this Part must be provided or made available—
  - (a) in the case of single payment service contracts, in an easily accessible manner;
  - (b) on paper or on another durable medium, but subject to paragraph (2);

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- (c) in easily understandable language and in a clear and comprehensible form; and
  - (d) in English or in the language agreed by the parties.
- (2) Paragraph (1)(b) —
- (a) only applies in the case of single payment service contracts if the payment service user so requests; and
  - (b) in the case of framework contracts is subject to any agreement in accordance with regulation 16(3) or 17(3) as to the manner in which information is to be provided or made available.

## **19 Charges for information**

- (1) A payment service provider may not charge for providing or making available information which is required to be provided or made available by this Part.
- (2) The payment service provider and the payment service user may agree on charges for any information which is provided at the request of the payment service user if such information is —
- (a) additional to the information required to be provided or made available by this Part;
  - (b) provided more frequently than is specified in this Part; or
  - (c) transmitted by means of communication other than those specified in the framework contract.
- (3) Any charges imposed under paragraph (2) must reasonably correspond to the payment service provider's actual costs.

## **20 Currency and currency conversion**

- (1) Payment transactions must be executed in the currency agreed between the parties.
- (2) If a currency conversion service is offered before the initiation of the payment transaction—
- (a) at the point of sale; or
  - (b) by the payee,
- the party offering the currency conversion service to the payer must disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction.

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## **21 Information on additional charges or reductions**

- (1) The payee must inform the payer of any charge requested or reduction offered by the payee for the use of a particular payment instrument before the initiation of the payment transaction.
- (2) The payment service provider, or any relevant other party involved in the transaction, must (before the initiation of a payment transaction) inform the payment service user of any charge requested by the payment service provider or other party, as the case may be, for the use of a particular payment instrument.
- (3) A payer or payment service user is not obliged to pay a charge of the type referred to in paragraph (1) or (2) if the payer or payment service user was not informed of the full amount of the charge in accordance with the relevant paragraph.

### **21A Burden of proof on payment service provider**

If a payment service provider is alleged to have failed to provide information in accordance with this Part, it is for the payment service provider to prove that it provided the information in accordance with this Part.

## **PART 3 – RIGHTS AND OBLIGATIONS IN RELATION TO THE PROVISION AND USE OF PAYMENT SERVICES**

### *Application*

## **22 Application of this Part**

- (1) This part applies to payment services where –
  - (a) the services are provided from an establishment maintained by a payment service provider in the Island; 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 within the relevant area, or
    - (ii) the payment service provider of either the payer or the payee, but not both, is located within the relevant area.
- (1A) In the circumstances mentioned in paragraph (1)(b)(ii) –
  - (a) this Part applies only in respect of those parts of a transaction which are carried out in the relevant area; and

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- (b) regulations 24(2), 33, 34, 38, 40(1) and (2), and 45 to 48 do not apply.
- (2) Regulation 43(1) applies whether or not the payment service providers of both the payer and the payee are located within the relevant area.
- (3) Unless the payment service user is a consumer, the parties may agree that—
  - (a) any or all of regulations 24(1), 25(3) or (4), 30, 32, 35, 37, 45, 46 and 47 do not apply;
  - (b) a different time period applies for the purposes of regulation 29(1).
- (4) This Part shall continue to apply to a payment service provided prior to 13th January 2018 as if the Payment Services (Amendment) Regulations 2017 had not been enacted.

### **23 Certain regulations not applying in the case of low value payment instruments**

- (1) This regulation applies in respect of payment instruments that, under the framework contract governing their use—
  - (a) can be used only to execute individual payment transactions of 30 euro or less, or in relation to payment transactions executed wholly within the Island, 60 euro or less;
  - (b) have a spending limit of 150 euro, or if payment transactions must be executed wholly within the Island, 300 euro; or
  - (c) store funds that do not exceed 500 euro at any time.
- (2) If this regulation applies the parties may agree that—
  - (a) regulations 27(1)(b), 28(1)(c), (d) and (e) and 32(4) do not apply if the payment instrument does not allow for the stopping or prevention of its use;
  - (b) regulations 30, 31 and 32(1) and (2) do not apply if the payment instrument is used anonymously or the payment service provider is not in a position, for other reasons concerning the payment instrument, to prove that a payment transaction was authorised;
  - (c) despite regulation 36(1), 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) the payer may not revoke the payment order under regulation 37 after transmitting the payment order or giving their consent to execute the payment transaction to the payee;

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- (e) execution periods other than those provided by regulations 40 and 41 apply.
- (3) Subject to paragraph (2)(b), regulations 31, and 32(1) and (2) apply to electronic money, as defined in Article 2(2) of the electronic money directive, unless the payer's payment service provider does not have the ability under the contract to—
  - (a) freeze the payment account; or
  - (b) stop the use of the payment instrument.

### *Charges*

## **24 Charges**

- (1) The payment service provider may only charge the payment service user for the fulfilment of any of its obligations under this Part—
  - (a) in accordance with regulation 36(3), 37(1) or 44(2)(b);
  - (b) if agreed between the parties; and
  - (c) if such charges reasonably correspond to the payment service provider's actual costs.
- (2) If both the payer's and the payee's payment service providers, or the only payment service provider, in respect of a payment transaction are within the relevant area, 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 payment of a charge by the payer for the use of a particular payment instrument;
  - (b) offering a reduction to the payer for the use of a particular payment instrument; or
  - (c) otherwise steering the payer towards the use of a particular payment instrument.

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### *Authorisation of payment transactions*

## **25 Consent and withdrawal of consent**

- (1) A payment transaction is to be regarded as having been authorised by the payer for the purposes of this Part only if the payer has given its consent to—
  - (a) the execution of the payment transaction; or
  - (b) the execution of a series of payment transactions of which that payment transaction forms part.
- (2) Such consent—
  - (a) may be given before or, if agreed between the payer and its payment service provider, after the execution of the payment transaction; and
  - (b) must be given in the form, and in accordance with the procedure, agreed between the payer and its payment service provider.
- (3) The payer may withdraw its consent to a payment transaction at any time before the point at which the payment order can no longer be revoked under regulation 37(1).
- (4) Subject to regulation 37(3) to (5), the payer may withdraw its consent to the execution of a series of payment transactions at any time with the effect that any future payment transactions are not regarded as authorised for the purposes of this Part.

## **26 Limits on the use of payment instruments**

- (1) If a specific payment instrument is used for the purpose of giving consent to the execution of a payment transaction, the payer and its payment service provider may agree on spending limits for any payment transactions executed through that payment instrument.
- (2) A framework contract may provide for the payment service provider to have the right to stop the use of a payment instrument on reasonable grounds relating to—
  - (a) the security of the payment instrument;
  - (b) the 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.

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- (3) The payment service provider must, in the manner agreed between the payment service provider and the payer and before carrying out any measures to stop the use of the payment instrument—
  - (a) inform the payer that it intends to stop the use of the payment instrument; and
  - (b) give its reasons for doing so.
- (4) If the payment service provider is unable to inform the payer in accordance with paragraph (3) before carrying out any measures to stop the use of the payment instrument, it must do so immediately after.
- (5) Paragraphs (3) and (4) do not apply if provision of the information in accordance with paragraph (3) would compromise reasonable security measures or is otherwise unlawful.
- (6) The payment service provider must allow the use of the payment instrument or replace it with a new payment instrument as soon as practicable after the reasons for stopping its use cease to exist.

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

- (1) A payment service user to whom a payment instrument has been issued must—
  - (a) use the payment instrument in accordance with the terms and conditions governing its issue and use; and
  - (b) notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.
- (2) Paragraph (1)(a) applies only in relation to terms and conditions that are objective, non-discriminatory and proportionate.
- (3) The payment service user must take all reasonable steps to keep safe personalized security credentials relating to a payment instrument.

## **28 Obligations of the payment service provider in relation to payment instruments**

- (1) A payment service provider issuing a payment instrument must—
  - (a) subject to regulation 27(1), ensure that the personalised security credentials are not accessible to persons other than the payment service user to whom the payment instrument has been issued;

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- (b) not send an unsolicited payment instrument, except if a payment instrument already issued to a payment service user is to be replaced;
  - (c) ensure that appropriate means are available at all times to enable the payment service user to notify the payment service provider in accordance with regulation 27(1)(b) or to request that, in accordance with regulation 26(6), the use of the payment instrument is no longer stopped;
  - (d) on request, provide the payment service user at any time during a period of 18 months after the alleged date of notification under regulation 27(1)(b) with the means to prove that such notification to the payment service provider was made;
  - (e) provide the payment service user with an option to make a notification under regulation 27(1)(b) free of charge, and ensure that any costs charged are directly attributed to the replacement of the payment instrument;
  - (f) prevent any use of the payment instrument once notification has been made under regulation 27(1)(b).
- (2) The payment service provider bears the risk of sending to the payment service user a payment instrument or any personalized security credentials relating to it.

## **29 Notification of unauthorised or incorrectly executed payment transactions**

- (1) A payment service user is entitled to redress under regulation 31, 45, 46 or 47 only if the user notifies the payment service provider without undue delay, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised or incorrectly executed payment transaction.
- (2) If the payment service provider has failed to provide or make available information concerning the payment transaction in accordance with Part 2 of these Regulations, the payment service user is entitled to redress under the regulations referred to in paragraph (1) despite the payment service user's failure to notify the payment service provider as mentioned in that paragraph.

## **30 Evidence on authentication and execution of payment transactions**

- (1) If a payment service user—
  - (a) denies having authorised an executed payment transaction; or
  - (b) claims that a payment transaction has not been correctly executed,

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it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the payment service provider's accounts and not affected by a technical breakdown or some other deficiency in the service provided by the payment service provider.

- (2) If a payment service user denies having authorized an executed payment transaction, the use of a payment instrument recorded by the payment service provider shall not in itself necessarily be sufficient to prove that –
  - (a) the payment transaction was authorized by the payer; or
  - (b) the payer –
    - (i) acted fraudulently, or
    - (ii) failed to comply with regulation 27 with intent with or gross negligence.
- (3) If a payment service provider claims that a payer –
  - (a) acted fraudulently, or
  - (b) failed with intent or gross negligence to comply with regulation 27,

the payment service provider must provide supporting evidence to the payer.

### **31 Payment service provider's liability for unauthorized payment transactions**

- (1) If an executed payment transaction was not authorised in accordance with regulation 25, the payment service provider must –
  - (a) refund the amount of the unauthorized payment transaction to the payer; and
  - (b) where applicable, restore the debited payment account to the state it would have been in had the unauthorized payment transaction not taken place.

This is subject to regulations 29 and 30.

- (2) The payment service provider must provide a refund under paragraph (1)(a) as soon as practicable, and in any event no later than the end of the business day following the day on which it becomes aware of the unauthorized transaction.
- (3) Paragraph (2) does not apply where the payment service provider has reasonable grounds to suspect fraudulent behaviour by the payment

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service user and notifies a constable or a customs officer of those grounds in writing.

- (4) When crediting a payment account under paragraph (1)(b), a payment service provider must ensure that the credit value date is no later than the date on which the amount of the unauthorized payment transaction was debited.

## **32 Payer's or payee's liability for unauthorised payment transactions**

- (1) A payment service provider which is liable under regulation 31(1) may require that the payer is liable up to a maximum of £35 for any losses incurred in respect of unauthorized payment transactions arising from the use of a lost or stolen payment instrument, or from the misappropriation of a payment instrument.

This is subject to paragraphs (2) to (4),

- (2) Paragraph (1) does not apply if –
  - (a) the loss, theft or misappropriation of the payment instrument was not detectable by the payer prior to the payment, except where the payer acted fraudulently; or
  - (b) the loss was caused by acts or omissions of an employee, agent or branch of a payment service provider or of an entity which carried out activities on behalf of the payment service provider.
- (3) The payer shall be liable for all losses incurred in respect of an unauthorised payment transaction if the payer –
  - (a) has acted fraudulently; or
  - (b) has, with intent or gross negligence, failed to comply with regulation 27.
- (4) Except where the payer has acted fraudulently, the payer shall not be liable for any losses incurred in respect of an unauthorized payment transaction –
  - (a) arising after notification under regulation 27(1)(b);
  - (b) if the payment service provider has failed at any time to provide, in accordance with regulation 28(1)(c), appropriate means for notification; or
  - (c) if regulation 44B requires the application of strong customer authentication, but the payer's payment service provider does not require strong customer authentication.
- (5) If regulation 44B requires the application of strong customer authentication, but the payee or the payee's payment service provider

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does not accept strong customer authentication, the payee or the payee's payment service provider, or both (as the case may be) must compensate the payer's payment service provider for the losses incurred or sums paid as a result of complying with regulation 31(1).

### **33 Refunds for payment transactions initiated by or through a payee**

- (1) If the conditions in paragraph (2) and the requirement in regulation 34(1) are satisfied, the payer is entitled to a refund from its payment service provider of the full amount of any authorised payment transaction initiated by or through the payee.
- (2) The conditions are that—
  - (a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was given in accordance with regulation 25(1); and
  - (b) the amount of the payment transaction exceeded the amount that the payer could reasonably have expected taking into account the payer's previous spending pattern, the conditions of the framework contract and the circumstances of the case.
- (3) The payer is entitled to an unconditional refund from its payment service provider of the full amount of any direct debit transactions of the type referred to in Article 1 of 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 (OJ L 94, 30.3.2012, p. 22).
- (4) When crediting a payment account under paragraph (1), a payment service provider must ensure that the credit value date is no later than the date on which the amount of the unauthorised payment transaction was debited.
- (5) For the purposes of paragraph (2)(b), the payer cannot rely on currency exchange fluctuations if the reference exchange rate provided under regulation 7(2)(d) or paragraph 3(b) of Schedule 1 was applied.
- (6) The payer and payment service provider may agree in the framework contract that the right to a refund does not apply where—
  - (a) the payer has given consent directly to the payment service provider for the payment transaction to be executed; and
  - (b) if 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 by the payee.

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### **34 Requests for refunds for payment transactions initiated by or through a payee**

- (1) The payer must request a refund under regulation 33 from its payment service provider within 8 weeks from the date on which the funds were debited.
- (2) The payment service provider may require the payer to provide such information as is reasonably necessary to prove that the conditions in regulation 33(2) are satisfied.
- (3) The payment service provider must either –
  - (a) refund the full amount of the payment transaction; or
  - (b) provide justification for refusing to refund the payment transaction, indicating the bodies to which the payer may refer the matter if the payer does not accept the justification provided.
- (4) Any refund or justification for refusing a refund shall be provided within 10 business days of receiving a request for a refund or, where applicable, within 10 business days of receiving any further information requested under paragraph (2).
- (5) If the payment service provider requires further information under paragraph (2), it may not refuse the refund until it has received further information from the payer.

#### *Execution of payment transactions*

### **35 Receipt of payment orders**

- (1) A payer's payment service provider shall not debit the payment account before receipt of a payment order.
- (2) For the purposes of these Regulations, the time of receipt of a payment order is the time at which the payment order is received by the payer's payment service provider, but subject to paragraphs (3) to (6).
- (3) If the time of receipt of a payment order does not fall on a business day for the payer's payment service provider, the payment order is deemed to have been received on the first business day thereafter.
- (4) The payment service provider may set a time towards the end of a business day after which any payment order received will be deemed to have been received on the following business day.
- (5) If the payment service user initiating a payment order agrees with its payment service provider that execution of the payment order is to take place –

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- (a) on a specific day;
  - (b) on the last day of a certain period; or
  - (c) on the day on which the payer has put funds at the disposal of its payment service provider,
- the time of receipt is deemed to be the day so agreed.
- (6) If the day agreed under paragraph (5) is not a business day for the payer's payment service provider, the payment order is deemed to have been received on the first business day thereafter.

### **36 Refusal of payment orders**

- (1) If a payment service provider refuses to execute a payment order, it must notify the payment service user of—
- (a) the refusal;
  - (b) if possible, the reasons for such refusal; and
  - (c) if it is possible provide reasons for the refusal and those reasons relate to factual matters, the procedure for rectifying any factual errors that led to the refusal.

This is subject to paragraph (4).

- (2) Any notification under paragraph (1) must be given or made available in an agreed manner and at the earliest opportunity, and in any event within the periods specified in regulation 40(1).
- (3) The framework contract may provide for the payment service provider to charge the payment service user for such refusal if the refusal is reasonably justified.
- (4) The payment service provider is not required to notify the payment service user under paragraph (1) if such notification would be otherwise unlawful.
- (5) If all the conditions set out in the payer's framework contract with the account servicing payment service provider have been satisfied, that payment service provider may not refuse to execute an authorised payment order irrespective of whether the payment order is initiated by the payer or by or through a payee, unless such execution is otherwise unlawful.
- (6) For the purposes of regulations 40, 45 and 46 a payment order of which execution has been refused is deemed not to have been received.

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### **37 Revocation of a payment order**

- (1) A payment service user may only revoke a payment order, after it has been received by the payer's payment service provider, as provided in paragraphs (2) to (5).
- (2) In the case of a payment transaction initiated by or through the payee, the payer may not revoke the payment order after giving consent to execute the payment transaction to the payee.
- (3) In the case of a direct debit, the payer may not revoke the payment order after the end of the business day preceding the day agreed for debiting the funds.
- (4) If a day is agreed under regulation 35(5), the payment service user may not revoke a payment order after the end of the business day preceding the agreed day.
- (5) At any time after the time limits for revocation set out in paragraphs (1) to (4), the payment order may only be revoked if the revocation is—
  - (a) agreed between the payment service user and the relevant payment service provider or providers; and
  - (b) in the case of a payment transaction initiated by or through the payee, including in the case of a direct debit, also agreed with the payee.
- (6) A framework contract may provide for the relevant payment service provider to charge for revocation under this regulation.

### **38 Amounts transferred and amounts received**

- (1) The payment service providers of the payer and payee must ensure that the full amount of the payment transaction is transferred and that no charges are deducted from the amount transferred, but subject to paragraph (2).
- (2) The payee and its payment service provider may agree for the relevant service provider to deduct its charges from the amount transferred before crediting it to the payee provided that the full amount of the payment transaction and the amount of the charges are clearly stated in the information provided to the payee.
- (3) If charges other than those provided for by paragraph (2) are deducted from the amount transferred—
  - (a) in the case of a payment transaction initiated by the payer, the payer's payment service provider must ensure that the payee receives the full amount of the payment transaction;

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- (b) in the case of a payment transaction initiated by the payee, the payee's payment service provider must ensure that the payee receives the full amount of the payment transaction.

#### *Execution time and value date*

### **39 Application of regulations 40 to 43**

- (1) Regulations 40 to 43 apply to any payment transaction—
  - (a) in euro;
  - (b) executed in sterling wholly within the Island; or
  - (c) involving only one currency conversion between the euro and sterling, provided that—
    - (i) the currency conversion is carried out in the Island; and
    - (ii) in the case of cross-border payment transactions, the cross-border transfer takes place in euro.
- (2) In respect of any other payment transaction, the payment service user may agree with the payment service provider that regulations 40 (other than regulation 40(4)) to 43 do not apply.

### **40 Payment transactions to a payment account**

- (1) The payer's payment service provider must ensure that the amount of the payment transaction is credited to the payee's payment service provider's account by the end of the business day following the time of receipt of the payment order.

This is subject to paragraphs (2) and (3).

- (2) If a payment transaction is initiated by way of a paper payment order the reference in paragraph (1) to the end of the business day following the time of receipt of the payment order is to be treated as a reference to the end of the second business day following the time of receipt of the payment order.
- (3) If a payment transaction—
  - (a) does not fall within paragraphs (a) to (c) of regulation 39(1); but
  - (b) is to be executed wholly within the relevant area,

the payer's payment service provider must ensure that the amount of the payment transaction is credited to the payee's payment service provider's account by the end of the fourth business day following the time of receipt of the payment order.

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- (4) The payee's payment service provider must value date and credit the amount of the payment transaction to the payee's payment account following its receipt of the funds.
- (5) 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 its payment service provider, enabling settlement in respect of a direct debit to occur on the agreed due date.

#### **41 Absence of payee's payment account with the payment service provider**

- (1) If a payment service provider accepts funds on behalf of a payee who does not have a payment account with that payment service provider, paragraph (2) applies.
- (2) The payment service provider must make the funds available to the payee immediately after the funds have been credited to that payment service provider's account.

#### **42 Cash placed on a payment account**

If a payment service user places cash on its payment account with a payment service provider in the same currency as that payment account, the payment service provider must—

- (a) if the user is a consumer, ensure that the amount is made available and value dated immediately after the receipt of the funds;
- (b) in any other case, ensure that the amount is made available and value dated no later than the end of the next business day after the receipt of the funds.

#### **43 Value date and availability of funds**

- (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 account of the payee's payment service provider.
- (2) Paragraph (3) applies if –
  - (a) the transaction does not involve a currency conversion;
  - (b) the transaction involves only a currency conversion between the euro and pounds sterling or another member State currency, between pounds sterling and another member State currency, or between two other member State currencies; or

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- (c) the transaction involves only one payment service provider.
- (3) 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 has been credited to that payment service provider's account.
- (4) 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*

#### **44 Incorrect unique identifiers**

- (1) If a payment order is executed in accordance with the unique identifier, the payment order is deemed to have been correctly executed by each payment service provider involved in executing the payment order with respect to the payee specified by the unique identifier.
- (2) If the unique identifier provided by the payment service user is incorrect, the payment service provider is not liable under regulation 45 or 46 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 any such recovery.
- (3) The payee's payment service provider must co-operate with the payer's payment service provider in its efforts to recover the funds, in particular by providing to the payer's payment service provider all relevant information for the collection of funds.
- (4) If the payer's payment service provider is unable to recover the funds it must, on receipt of a written request, provide to the payer all available relevant information in order for the payer to claim repayment of the funds.
- (5) If the payment service user provides information additional to that referred to in regulation 7(2)(a) or paragraph 2(b) of Schedule 1, 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.

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#### **45 Non-execution or defective or late execution of payment transactions initiated by the payer**

- (1) This regulation applies if a payment order is initiated directly by the payer.
- (2) The payer's payment service provider is liable to the payer for the correct execution of the payment transaction unless it can prove to the payer and, where relevant, to the payee's payment service provider, that the payee's payment service provider received the amount of the payment transaction in accordance with regulation 40.
- (3) If the payer's payment service provider is liable under paragraph (2), 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.
- (4) The credit value date for a credit under paragraph (3) shall be no later than the date on which the amount was debited.
- (5) If the payer's payment service provider proves that the payee's payment service provider received the amount of the payment transaction in accordance with regulation 40, the payee's payment service provider is liable to the payee for the correct execution of the payment transaction and must—
  - (a) immediately make available the amount of the payment transaction to the payee; and
  - (b) where applicable, credit the corresponding amount to the payee's payment account.
- (6) The credit value date for a credit under paragraph (5)(b) shall be no later than the date on which the amount would have been value dated if the transaction had been executed correctly.
- (7) Where a payment transaction is executed late, the payee's payment service provider shall, on receipt of a request from the payer's payment service provider on behalf of the payer, ensure that the credit value date for the payee's payment account is no later than the date the amount would have been value dated if the transaction had been executed correctly.
- (8) Regardless of liability under this regulation, the payer's payment service provider shall, on request by the payer, immediately and without charge—
  - (a) make efforts to trace any non-executed or defectively executed payment transaction; and

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- (b) notify the payer of the outcome.

#### **46 Non-execution or defective or late execution of payment transactions initiated by the payee**

- (1) This regulation applies where a payment order is initiated by the payee.
- (2) The payee's payment service provider shall be liable to the payee for the correct transmission of the payment order to the payer's payment service provider in accordance with regulation 40(4).
- (3) Where the payee's payment service provider is liable under paragraph (2), it shall immediately re-transmit the payment order in question to the payer's payment service provider.
- (4) The payee's payment service provider shall also ensure that the transaction is handled in accordance with regulation 43, such that the amount of the transaction –
  - (a) is at the payee's disposal immediately after it is credited to the payee's payment service provider's account; and
  - (b) is value dated on the payee's payment account no later than the date the amount would have been value dated if the transaction had been executed correctly.
- (5) The payee's payment service provider shall, on request by the payee and free of charge, make immediate efforts to trace the payment transaction and notify the payee of the outcome.
- (6) If the payee's payment service provider proves to the payee and, where relevant, to the payer's payment service provider, that it is not liable under paragraph (2) in respect of a non-executed or defectively executed payment transaction, the payer's payment service provider shall be liable to the payer and shall, as appropriate and immediately –
  - (a) refund to the payer the amount of the payment transaction; and
  - (b) restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

The credit value date for a credit under subparagraph (b) shall be no later than the date on which the amount was debited.

This paragraph is subject to paragraph (7).

- (7) If the payer's payment service provider proves that the payee's payment service provider has received the amount of the payment transaction, paragraph (6) does not apply and the payee's payment service provider shall value date the amount on the payee's payment account no later

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than the date the amount would have been value dated if the transaction had been executed correctly.

#### **47 Liability of payment service provider for charges and interest**

A payment service provider is liable to its payment service user for—

- (a) any charges for which the payment service user is responsible; and
- (b) any interest which the payment service user must pay,

as a consequence of the non-execution or defective or late execution of the payment transaction.

#### **48 Right of recourse**

If the liability of a payment service provider under regulation 32, 45 or 46 is attributable to another payment service provider or an intermediary, including where there is a failure to use strong customer authentication as required by regulation 49B, the other payment service provider or intermediary must compensate the first-mentioned provider for any losses incurred or sums paid under those regulations.

#### **49 Force majeure**

- (1) A person is not liable for any contravention of a requirement imposed on it by or under this Part if the contravention is due to 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 a requirement imposed on it by or under this Part if the contravention is due to the obligations of the payment service provider under other provisions of the law of the Island, or of Community law or national law.

#### **49A Consent for use of personal data**

A payment service provider must not access, process or retain any personal data for the provision of payment services by it unless it has the explicit consent of the payment service user to do so.

#### **49B Authentication**

- (1) A payment service provider shall apply, in accordance with the relevant technical standards, strong customer authentication where a payment service user –

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- (a) accesses its payment account online;
  - (b) initiates an electronic payment transaction; or
  - (c) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.
- (2) If a payer initiates an electronic remote payment transaction, the payment service provider must apply, in accordance with the relevant technical standards, 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 maintain adequate security measures to protect the confidentiality and integrity of payment service users' personalized security credentials.
  - (4) Paragraphs (1) to (3) are subject to any exemptions from the requirements in those paragraphs provided for in the relevant technical standards.
  - (5) In this regulation "the relevant technical standards" means the regulatory technical standards adopted under Article 98 of the Payment Services Directive.

## PART 4 – THE AUTHORITY AND OFT

### *Functions of the Authority*

#### **50 Functions of the Authority: amendment of the Financial Services Act 2008**

In paragraph 2(2) of Schedule 1 to the *Financial Services Act 2008* after paragraph (zd) insert—

| **(ze)** the *Payment Services Act 2015*. **(z)**.

#### **51 Application of provisions of the Financial Services Act 2008**

The *Financial Services Act 2008* applies to these Regulations as it would apply if they had been made under it.

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### *Supervision and enforcement*

## **52 Reporting requirements**

- (1) A payment service provider must give the Authority such information in respect of its provision of payment services and its compliance with requirements imposed by or under Parts 2 to 4 of these Regulations as the Authority may require.
- (2) Information required under paragraph (1) must be given at such times and in such form, and verified in such manner, as the Authority may specify.

## **53 Complaints**

- (1) The OFT must maintain arrangements designed to enable payment service users and other interested parties to submit complaints to it that a requirement imposed by or under any provision of Parts 2 and 3 of these Regulations has been breached by a payment service provider.
- (2) If it considers it appropriate, the OFT must include in any reply to a complaint under paragraph (1) details of the OFT's complaints handling arrangements (see regulation 54 and the amendments there set out).

## **54 Amendment of the Financial Services Act 2008**

- (1) In consequence of regulation 53, the Financial Services Act 2008 is amended as follows.
- (2) In section 24 at the end insert **44** and payment service disputes **45**.
- (3) Paragraphs (4) to (14) have effect to amend Schedule 4 to the Act.
- (4) At the end of paragraph 1 insert —
  - 44**(5) This paragraph does not apply in relation to a payment services dispute (see paragraph 1A). **45**.
- (5) After paragraph 1 insert —

### **44** *Mediation in payment service disputes*

1A. (1) A “**payment services dispute**” is a dispute, relating to a payment service, between —

- (a) a payment service user or other interested party (“the complainant”); and
- (b) a payment service provider.

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- (2) A payment services dispute may be referred to the OFT by the submission to that office of a completed complaint form by the complainant.
- (3) The OFT must seek to mediate between the parties to a payment services dispute which has been referred to it by —
- (a) inquiring into the circumstances and cause of the dispute; and
  - (b) offering its assistance to the parties to the dispute (whether by way of mediation or arbitration or any other means) with a view to bringing about a settlement. **22**.
- (6) In paragraph 2 —
- (a) in sub-paragraphs (1), (2) and (3) after “1(3)” insert **63** or 1A(3) **22**; and
  - (b) in sub-paragraph (2) omit “under paragraph 1(2)”.
- (7) In paragraph 3(1) after “1(3)” insert **63** or 1A(3) **22**.
- (8) In paragraph 4(1) —
- (a) for “6 persons” substitute **63** 8 persons **22**; and
  - (b) at the end add **63** or payment service disputes **22**.
- (9) In paragraph 5(4) after “and determining a financial services dispute” insert **63** or a payment services dispute **22**.
- (10) In paragraph 8(1), (2) and (3) after “financial services dispute” insert **63** or a payment services dispute **22**.
- (11) In paragraph 9(1) —
- (a) after “financial services dispute” insert **63** or a payment services dispute **22**; and
  - (b) in paragraph (a) after “financial services” insert **63** or the payment service provider **22**.
- (12) In paragraph 10(1) after “financial services dispute” insert **63** or a payment services dispute **22**.
- (13) In paragraph 11(1) after “financial services suppliers” insert **63** or payment service providers **22**.
- (14) In paragraph 12 at the end add —
- 63** “payment services dispute” has the meaning given by paragraph 1A; and references to payment services, payment service providers and payment service users are to be construed in accordance with the Payment Services Directive (Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on

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payment services in the internal market [OJEU No L 319, 5.12.2007, p. 1].<sup>22</sup>.

## PART 5 – OFFENCES

### 55 Contravention of regulations 20 and 21

- (1) A person (not being a payment service provider) who contravenes regulation 20(2) or 21(2) is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.
- (2) No offence is committed if the person took all reasonable steps and exercised all due diligence to secure compliance with the requirement imposed on the person by regulation 20(2) or 21(2), as the case may be.

### 56 Misleading the Authority or the OFT

- (1) A person may not, in purported compliance with any requirement imposed by or under these Regulations, knowingly or recklessly give—
  - (a) the Authority; or
  - (b) the OFT,information which is false or misleading in a material particular.
- (2) A person may not—
  - (a) provide any information to another person, knowing the information to be false or misleading in a material particular, or
  - (b) recklessly provide to another person any information which is false or misleading in a material particular,knowing that the information is to be used for the purpose of providing information to the Authority or the OFT in connection with their respective functions under the *Payment Services Act 2015*.

MADE 8 JUNE 2015

**B STOTT**  
*Commissioner*

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**J R ASPDEN**  
Commissioner



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## SCHEDULE 1

### PRIOR GENERAL INFORMATION FOR FRAMEWORK CONTRACTS

(Regulation 11)

#### 1 Payment service provider

The following information about the payment service provider—

- (a) the name of the payment service provider;
- (b) the address and contact details of the payment service provider's head office;
- (c) if different from the information under sub-paragraph (b), the address and contact details of the branch or agent from which the payment service is being provided;
- (d) details of the payment service provider's regulators, including any reference or registration number of the payment service provider.

#### 2 Payment service

The following information about the payment service—

- (a) a description of the main characteristics of the payment service to be provided;
- (b) the information or unique identifier that must be provided by the payment service user in order for a payment order to be properly executed;
- (c) the form and procedure for giving consent to the execution of a payment transaction and for the withdrawal of consent in accordance with regulation 25;
- (d) a reference to the time of receipt of a payment order, in accordance with regulation 35, 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 spending limits for the use of a payment instrument may be agreed in accordance with regulation 26(1).

#### 3 Charges, interest and exchange rates

The following information about charges, interest and exchange rates—

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- (a) details of 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 is provided or made available and, where applicable, a breakdown of the amounts of any charges;
- (b) if relevant, details of 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 rates;
- (c) if relevant and if agreed, the immediate application of changes in reference interest or exchange rates and information requirements relating to the changes in accordance with regulation 13(4).

#### **4 Communication**

The following information about communication—

- (a) the means of communication agreed between the parties for the transmission of information or notifications under these Regulations including, if relevant, any technical requirements for the payment service user's equipment and software for receipt of the information or notifications;
- (b) the manner in which 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 in which any information or notifications under these Regulations will be communicated;
- (d) the payment service user's right to receive the terms of the framework contract and information in accordance with regulation 12.

#### **5 Safeguards and corrective measures**

The following information about safeguards and corrective measures—

- (a) if relevant, 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 27(1)(b);
- (b) the secure procedure by which the payment service provider will contact the payment service user in the event of suspected or actual fraud or security threats;

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- (c) if relevant, the conditions under which the payment service provider proposes to reserve the right to stop or prevent the use of a payment instrument in accordance with regulation 26(2) to (6);
- (d) the payer's liability under regulation 32, including details of any limits on such liability;
- (e) how and within what period of time the payment service user is to notify the payment service provider of any unauthorised or incorrectly executed payment transaction under regulation 29, and the payment service provider's liability for unauthorised payment transactions under regulation 31;
- (f) the payment service provider's liability for the execution of payment transactions under regulation 45 or 46;
- (g) the conditions for the payment of any refund under regulation 33.

## **6 Changes to and termination of the framework contract**

The following information about changes to and termination of the framework contract—

- (a) if relevant, the proposed terms under which the payment service user will be deemed to have accepted changes to the framework contract in accordance with regulation 13(2), unless they notify the payment service provider that they do not accept such changes before the proposed date of their entry into force;
- (b) the duration of the framework contract;
- (c) if relevant, the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with regulation 14.

## **7 Information about redress**

The following information about redress—

- (a) any contractual clause on—
  - (i) the law applicable to the framework contract;
  - (ii) the competent courts;
- (b) the availability of alternative dispute resolution procedures for the payment service user and the methods for having access to them.

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## SCHEDULE 2

### MEANING OF “EXCEPTED CONTRACT”

#### Regulation 32(4)(b)

#### 1 Meaning of “excepted contract”

- (1) For the purposes of these Regulations an “excepted contract” is —
- (a) a contract —
    - (i) for the sale or other disposition of land, or any estate or interest in land (including a charge on land);
    - (ii) to finance the purchase of land;
    - (iii) for a bridging loan in connection with the purchase of land; or
    - (iv) for the construction or extension of a building or other erection on land;(not including a contract for the supply of goods and their incorporation in any land or a contract for the repair or improvement of a building or other erection on land, where the contract is not financed by a loan secured by a land mortgage);
  - (b) a contract for the supply of food, drink or other goods intended for current consumption by use in the household and supplied by regular roundsmen;
  - (c) a contract for the supply of goods or services which satisfies all the following conditions, namely —
    - (i) terms of the contract are contained in a trader’s catalogue which is readily available to the consumer to read in the absence of the trader or his representative before the conclusion of the contract;
    - (ii) the parties to the contract intend that there shall be maintained continuity of contact between the trader or his representative and the consumer in relation to the transaction in question or any subsequent transaction; and
    - (iii) both the catalogue and the contract contain or are accompanied by a prominent notice indicating that the consumer has a right to return to the trader or his representative goods supplied to him within the period of not less than 14 days from the day on which the goods are received by the consumer and otherwise to cancel the contract within that period without the consumer incurring

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any liability, other than any liability which may arise from the failure of the consumer to take reasonable care of the goods while they are in his possession;

- (d) a contract of insurance;
  - (e) a contract not falling within paragraph (f) under which the total payments to be made by the consumer do not exceed such sum as may be prescribed; and
  - (f) a contract under which credit is provided not exceeding such sum as may be prescribed other than a hire-purchase or conditional sale agreement.
- (2) In paragraph (1), "charge on land" includes any security charged on land.

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### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations give effect to those parts of the Payment Services Directive Payment Services Directive (Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market [OJEU No L 319, 5.12.2007, p. 1]) which are required to be represented in the law of the Island in order that appropriately licensed financial institutions may provide payment services (within the meaning of that Directive) as part of the Single Euro Payment Area.