

ORDINANCE
OF THE STATES OF DELIBERATION

ENTITLED

The Single Euro Payments Area (Guernsey) Ordinance,
2016 *

[CONSOLIDATED TEXT]

NOTE

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* No. II of 2016; as amended by the: Protection of Investors (Bailiwick of Guernsey) Law, 2020 (No. XVIII of 2020); Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (No. XIX of 2020); Banking Supervision (Bailiwick of Guernsey) Law, 2020 (No. XX of 2020); Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (No. ** of 2022); Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017 (G.S.I. No. 104 of 2017); Single Euro Payments Area (Guernsey) (Amendment) Regulations, 2019 (G.S.I. No. 96 of 2019).

**ORDINANCE
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**The Single Euro Payments Area (Guernsey) Ordinance,
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(Made on 26th January, 2016.)

The Single Euro Payments Area (Guernsey) Ordinance, 2016

THE STATES, in pursuance of their Resolution of the 24th June, 2015^a, and in exercise of the powers conferred on them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^b and all other powers enabling them in that behalf, hereby order: –

PART I INTRODUCTORY

Implementation of Payment Services Directive and Regulation 260/2012.

1. This Ordinance implements –

- [(a) Titles III and IV of Directive (EU) 2015/2366 of the European Parliament and of the Council of 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 ("**the Payment Services Directive**"), and]
- (b) Article 5 of and the Annex to 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

^a Article VII of Billet d'État No. XI of 2015.

^b Ordres en Conseil Vol. XXXV(1), p. 65.

debits in euro and amending Regulation (EC) No 924/2009^d ("**Regulation 260/2012**").

NOTE

In section 1, paragraph (a) was substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 3, with effect from 13th January, 2018.

PART II

**TITLE III OF PAYMENT SERVICES DIRECTIVE:
TRANSPARENCY OF CONDITIONS AND INFORMATION
REQUIREMENTS FOR PAYMENT SERVICES**

CHAPTER 1

GENERAL RULES

Scope of Part II.

- 2.** [(1) This Part applies to payment services where –
- (a) the services are provided from an establishment maintained by a payment service provider in Guernsey, 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 SEP statutory area, or

^d OJ L 94, 30.3.2012, p. 22; amended by Regulation (EU) 248/2104.

- (ii) the payment service provider of either the payer or the payee, but not both, is located within the SEP statutory area.

(1A) In the circumstances mentioned in subsection (1)(b)(ii), this Part applies only in respect of those parts of a transaction which are carried out in the SEP statutory area.]

(2) Chapters 2 and 3 apply to payment services provided under a single payment service contract.

(3) Chapters 3 and 4 apply to payment services provided under a framework contract.

(4) Except where the payment service user is a consumer, the parties may agree that this Part shall not apply in whole or in part to a contract for payment services.

[(5) This Part shall continue to apply to payment services provided prior to 13th January, 2018 as if the Single Euro Payments Area (Guernsey) (Amendment) Regulations, 2017 had not been made.]

NOTE

In section 2, first, subsection (1) was substituted and subsection (1A) inserted and, second, subsection (5) was inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, respectively regulation 4 and regulation 5, with effect from 13th January, 2018.

Transactions to which Part II does not apply.

- 3. This Part does not apply to –

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- [(a) payment transactions from a payer to a payee through a commercial agent authorised in an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of either the payer or the payee but not both the payer and the payee,]

- (b) payment transactions carried out within a payment or securities settlement system between –
 - (i) payment service providers, and

 - (ii) settlement agents, central counterparties, clearing houses, central banks or other participants in the system,

- (c) payment transactions relating to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in paragraph (b) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services and any other entities allowed to have the custody of financial instruments,

- (d) services, provided by technical service providers, which support the provision of payment services, without the providers entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, provision of information

technology, provision of communication networks, and the provision and maintenance of terminals and devices used for payment services,

- (e) payment transactions carried out between payment service providers, their agents or their branches for their own account, or
- (f) payment transactions [and related services] between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group.

NOTE

In section 3, first, paragraph (a) was substituted and, second, the words in square brackets in paragraph (f) were inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, respectively regulation 6 and regulation 7, with effect from 13th January, 2018.

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

4. (1) This section applies in respect of payment instruments which, under the framework contract governing their use –

- (a) can be used only to execute individual payment transactions that do not exceed 30 euros or, in relation to payment transactions executed wholly within Guernsey, 60 euros, or

- (b) have a spending limit of 150 euros or, where payment transactions are to be executed wholly within Guernsey, 300 euros.
- (2) Where this section applies –
- (a) sections 12, 13 and 17 do not apply and the payment service provider is required to provide the payer only with information about the main characteristics of the payment service, including –
 - (i) the way in which the payment instrument can be used,
 - (ii) the liability of the payer, as set out in section 34,
 - (iii) any charges levied,
 - (iv) any other material information the payer might need in order to take an informed decision, and
 - (v) an indication of where the information referred to in section 13 is made available in an easily accessible manner,
 - (b) if the parties so agree, sections 18 and 19 do not apply and instead –
 - (i) the payment service provider shall provide or make available a reference enabling the payment service user to identify –

- (A) the payment transaction,
 - (B) the amount of the payment transaction,
 - (C) any charges payable in respect of the payment transaction, or
- (ii) where several payment transactions of the same kind are made to the same payee, the payment service provider shall provide or make available to the payment service user information about the total amount of and any charges for the payment transactions, and
- (c) if the parties so agree, section 20(1) does not apply to information provided or made available in accordance with section 15.

CHAPTER 2

SINGLE PAYMENT TRANSACTIONS

Scope of Chapter 2.

5. This Chapter applies to single payment transactions not covered by a framework contract.

Prior general information for single payment contracts.

6. (1) A payment service provider shall make available to the payment service user the information specified in section 7 [in relation to the service], in the manner provided for in section 20, at either of the following times –

- (a) before the payment service user is bound by the single payment service contract, or
- (b) where the single payment service contract is 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 paragraph (a), immediately after the execution of the payment transaction.

(2) The payment service provider may also discharge the obligations under subsection (1) by supplying a copy of the draft single payment service contract or the draft payment order including the information specified in section 7 [in relation to the service].

NOTE

In section 6, the words "in relation to the service" in square brackets, wherever occurring, were inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 8, with effect from 13th January, 2018.

Information for single payment contracts.

7. The information referred to in section 6 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 execution time for the payment service to be provided,

- (c) the charges payable by the payment service user to his payment service provider for the payment service and, where applicable, a breakdown of [...] the charges,
- (d) where applicable, the actual or reference exchange rate to be applied to the payment transaction, and
- (e) such of the information referred to in section 13 as is relevant to the single payment service contract in question.

NOTE

In section 7, the words omitted in square brackets in paragraph (c) were repealed by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 9, with effect from 13th January, 2018.

Information for the payer after receipt of payment order.

8. (1) The payer's payment service provider shall, immediately after receipt of the payment order, and in the manner provided for in section 20, provide or make available to the payer the information referred to in subsection (2) [in relation to the service to be provided by the payer's payment service provider].

- (2) The information referred to in subsection (1) 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 used in the payment order,

- (c) the charges payable by the payer for the payment transaction and, where applicable, a breakdown of the amounts of the charges,
- (d) where applicable, and when different from the rate referred to in section 7(d), the exchange rate used in the payment transaction by the payer's payment service provider or a reference thereto, and the amount of the payment transaction after the currency conversion, and
- (e) the date of receipt of the payment order.

NOTE

In section 8, the words in square brackets in subsection (1) were inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 10, with effect from 13th January, 2018.

Information for the payee after execution.

9. (1) The payee's payment service provider shall, immediately after the execution of the payment transaction, and in the manner provided for in section 20, provide or make available to the payee the information referred to in subsection (2) [in relation to the service to be provided by the payee's payment service provider].

(2) The information referred to in subsection (1) is –

- (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 charges payable by the payee for the payment transaction and, where applicable, a breakdown of the amount of the 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.

NOTE

In section 9, the words in square brackets in subsection (1) were inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 11, with effect from 13th January, 2018.

Avoidance of duplication of information.

10. Where 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 is not obliged under this Chapter to provide or make available information which has been or will be provided or made available to the payment service user under Chapter 3 by another payment service provider in respect of the framework contract.

CHAPTER 3

FRAMEWORK CONTRACTS

Scope of Chapter 3.

11. This Chapter applies to payment transactions covered by a framework contract.

Prior general information for framework contracts.

12. (1) A payment service provider shall provide to the payment service user the information specified in section 13, in the manner provided for in section 20, at either of the following times –

- (a) in good time before the payment service user is bound by the framework contract, or
- (b) where the framework contract is 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 paragraph (a), immediately after the conclusion of the contract.

(2) The payment service provider may also discharge the obligations under subsection (1) by [providing] a copy of the draft framework contract including the information specified in section 13.

NOTE

In section 12, the word in square brackets in subsection (2) was substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 12, with effect from 13th January, 2018.

Information for framework contracts.

13. (1) The following information is to be provided about the payment service provider –

- (a) the name of the payment service provider,
- (b) the geographic address of the payment service

provider's head office,

- (c) where applicable, the geographic address of the branch from which the payment service is offered,
- (d) any other address (including electronic mail address) relevant for communication with the payment service provider,
- (e) particulars of the payment service provider's regulator (that is, the Commission), and any reference, or registration number or equivalent means of identification, allocated by the regulator to the payment service provider.

(2) The following information is to be provided about 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 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 such consent in accordance with section 27,
- (d) a reference to the point in time of receipt of a payment

order, [in accordance with] section 37, 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 section 28(1).

(3) The following information is to be provided about charges, interest and exchange rates –

- [(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) where applicable, details of the 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 and exchange rates,
- (c) [where 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 section 15(3).

(4) The following information is to be provided about communication –

- (a) the means of communication agreed between the parties for the transmission of information or notifications under this Ordinance including, where applicable, any technical requirements for the payment service user's equipment [and software] for the receipt of information or notifications,
- (b) the manner in which and frequency with which information under this Ordinance 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 this Ordinance will be communicated,
- (d) the payment service user's right to receive the terms of the framework contract and information in accordance with section 14.

(5) The following information is to be provided 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 section 29(1)(b),

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- [(aa) 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,]
- (b) if agreed, 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 [sections 28(2), 28(3), 28(4), 28(5) and 28(6)],
- (c) the payer's liability under section 34, including information on the relevant amount,
- (d) 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 in accordance with section 31, and the payment service provider's liability for unauthorised payment transactions in accordance with section 33,
- (e) the payment service provider's liability for the execution of payment transactions in accordance with section 45 or 46,
- (f) the conditions for refund in accordance with section 35.

(6) The following information is to be provided about changes to and termination of the framework contract –

- (a) [where relevant and] if agreed, the proposed terms under which the payment service user shall be deemed to have

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accepted changes to the framework contract in accordance with section 15(2) if he does not, before the proposed date of their entry into force, notify the payment service provider that he does not accept them,

- (b) the duration of the framework contract,
- (c) [where relevant] the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with section 16.

(7) The following information is to be provided about redress –

- (a) any contractual clause on –
 - (i) the law applicable to the framework contract, and/or
 - (ii) the competent courts, and
- (b) the [alternative dispute resolution] procedures available to the payment service user and the methods of obtaining access to them.

NOTE

In section 13, first, the words in square brackets in paragraph (d) of subsection (2) were substituted, second, paragraph (a) of subsection (3) was substituted, third, the words in paragraph (c) of subsection (3) were inserted, fourth, the words in paragraph (a) of subsection (4) were inserted, fifth, paragraph (aa) of subsection (5) was inserted, sixth, the words, figures and parentheses in paragraph (b) of subsection (5) were substituted, seventh, the words in paragraph (a) of subsection (6) were inserted, eighth, the words in square brackets in paragraph (c) of subsection (6) were inserted and, ninth,

the words in square brackets in paragraph (b) of subsection (7) were substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 13, respectively paragraph (a), paragraph (b), paragraph (c), paragraph (d), paragraph (e), paragraph (f), paragraph (g), paragraph (h) and paragraph (i), with effect from 13th January, 2018.

Provision of information during period of framework contract.

14. If the payment service user so requests at any time during the contractual relationship, the payment service provider shall provide, in the manner provided for in section 20 –

- (a) the contractual terms of the framework contract, and
- (b) the information specified in section 13.

Changes in conditions of framework contract.

15. (1) Subject to subsection (3), notice of any proposed changes to –

- (a) the existing terms of the framework contract, or
- (b) the information referred to in section 13,

shall be provided by the payment service provider to the payment service user, in the manner provided for in section 20, no later than 2 months before the date on which they are to take effect.

(2) If the framework contract so provides, changes described in subsection (1) shall be deemed to have been accepted by the payment service user if he does not, before the proposed date of their entry into force, notify the payment service provider that he does not accept them, provided that the payment service provider informs the payment service user that –

- (a) the payment service user will be deemed to have accepted the changes in those circumstances, and
- (b) the payment service user has the right to terminate the framework contract [without charge at any time] before the proposed date of their entry into force.

(3) Changes in the interest or exchange rate used in payment transactions may be applied immediately and without notice where –

- (a) such a right is agreed upon in the framework contract and [any such changes] are based on the reference interest or exchange rates on which information has been provided to the payment service user in accordance with section 13, or
- (b) the changes are more favourable to the payment service user.

(4) Changes in the interest or exchange rate used in payment transactions shall be implemented and calculated in a neutral manner that does not discriminate against payment service users.

NOTE

In section 15, the words in square brackets in, first, paragraph (b) of subsection (2) and, second, paragraph (a) of subsection (3) were substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 14, respectively paragraph (a) and paragraph (b), with effect from 13th January, 2018.

Termination of framework contract.

16. (1) The payment service user may, subject to subsection (2), terminate the framework contract at any time.

(2) If the parties have agreed on a period of notice not exceeding 1 month, the payment service user may terminate the framework contract by giving at least that period of notice.

(3) [Any] charges for the termination of a framework contract under subsection (1) or (2) shall be appropriate and shall reasonably correspond to the payment service provider's actual costs of termination.

[(4) The payment service provider shall not charge the payment service user for the termination of the contract under subsection (1) or (2) after the expiry of 6 months of the contract.]

(5) If a framework contract concluded for an indefinite period so provides, the payment service provider may terminate the contract by giving, in the manner provided for in section 20, at least 2 months' notice or the period of notice provided for in the contract, whichever period of notice is the greater.

(6) Where charges for payment services are levied on a regular basis the charges shall be apportioned up until the time of the termination of the contract and any charges paid in advance shall be reimbursed proportionally.

(7) This section 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.

NOTE

In section 16, first, the word in square brackets in subsection (3) and,

second, subsection (4) were substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 15, respectively paragraph (a) and paragraph (b), with effect from 13th January, 2018.

Information prior to execution of individual payment transactions.

17. Where an individual payment transaction under a framework contract is initiated by the payer, the payer's payment service provider shall, on the payer's request for the payment transaction, inform the payer of –

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

Information for the payer on individual payment transactions.

18. [(1) The payer's payment service provider under a framework contract shall provide to the payer the information referred to in subsection (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 subsection (1) 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 payable by the payer for the payment transaction and, where applicable, a breakdown [of any such 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) A framework contract may include a condition that the payer may require the information referred to in subsection (2) to be provided or made available periodically at least once a month, free of charge and in an agreed manner which enables the payer to store and reproduce the information unchanged.

(4) Subsection (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 subsection (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 subsection (1) or as required by the payer under a condition of the type referred to in subsection (3).]

NOTE

In section 18, first, subsection (1), second, the word in square brackets in paragraph (a) of subsection (2) and, third, the words in square brackets in paragraph (c) of subsection (2) were substituted and, fourth, subsection (3) was substituted and subsection (4) inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 16, respectively paragraph (a), paragraph (b), paragraph (c) and paragraph (d), with effect from 13th January, 2018.

Information for the payee on individual payment transactions.

19. [(1) The payee's payment service provider under a framework contract shall provide to the payee the information referred to in subsection (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 subsection (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 payable by the payee for the payment transaction and, where applicable, a breakdown [of any such 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) A framework contract may include a condition that the information referred to in subsection (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) Subsection (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 subsection (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 a condition of the type referred to in subsection (3).]

NOTE

In section 19, first, subsection (1) was substituted, second, the words omitted in square brackets in paragraph (a) of subsection (2) were omitted, third, the words in square brackets in paragraph (c) of subsection (2) were substituted

and, fourth, subsection (4) inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 17, respectively paragraph (a), paragraph (b), paragraph (c) and paragraph (d), with effect from 13th January, 2018.

CHAPTER 4
COMMON PROVISIONS

Communication of information.

20. (1) Subject to section 4(2)(c), any information required to be provided or made available in accordance with section 7 or 13 shall be provided or made available –

- (a) in the case of single payment service contracts, in an easily accessible manner,
- (b) subject to subsection (2), on paper or on another durable medium,
- (c) in easily understandable words and in a clear and comprehensible form, and
- (d) in the English language or in any other language agreed between the parties.

(2) Subsection (1)(b) –

- (a) applies, in the case of a single payment service contract, only where the payment service user so requests, and
- (b) is subject, in the case of a framework contract, to any agreement in accordance with section 18(3) or 19(3) as

to the manner in which information is to be provided or made available.

Charges for information.

21. (1) The payment service provider shall not charge the payment service user for providing or making available information which is required to be provided or made available in accordance with section 7 or 13.

(2) The payment service provider and the payment service user may agree on charges for any information provided at the request of the payment service user where the information is –

- (a) additional to the information required to be provided or made available by this Part,
- (b) provided or made available more frequently than is required by this Part, or
- (c) transmitted by means of communication other than those specified in the framework contract.

(3) Any charges imposed pursuant to subsection (2) shall be appropriate and shall reasonably correspond to the payment service provider's actual costs.

Currency and currency conversion.

22. (1) Where a currency conversion service is, prior to the initiation of a payment transaction, offered –

- (a) at the point of sale, or

(b) by the payee,

the party offering the currency conversion service to the payer shall disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction.

(2) A person who fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

(3) Subsection (2) does not apply to a person who, in relation to the payment transaction, is a payment service provider.

Information on additional charges or reductions.

23. (1) Where, for the use of a particular payment instrument, the payee requests a charge or offers a reduction he shall inform the payer thereof prior to the initiation of the payment transaction.

(2) A payee who fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

(3) Subsection (2) does not apply to a person who, in relation to the payment transaction, is a payment service provider.

(4) Where, for the use of a particular payment instrument, a payment service provider or a third party requests a charge, he shall inform the payment service user thereof prior to the initiation of the payment transaction.

(5) A person who, being a third party referred to in subsection (4), fails to comply with that subsection is guilty of an offence and liable on summary

conviction to a fine not exceeding level 4 on the uniform scale.

NOTE

In section 23, first, subsection (4) and, second, the words in square brackets in subsection (5) were substituted and, third, subsection (6) was inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 18, respectively paragraph (a), paragraph (b) and paragraph (c), with effect from 13th January, 2018.

[Burden of proof on payment service provider.]

23A. Where 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.]

NOTE

Section 23A and the corresponding entry in the Arrangement of Sections were inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, respectively regulation 19 and regulation 2(a), with effect from 13th January, 2018.

PART III

TITLE IV OF PAYMENT SERVICES DIRECTIVE:

**RIGHTS AND OBLIGATIONS IN RELATION TO PROVISION
AND USE OF PAYMENT SERVICES**

CHAPTER 1

COMMON PROVISIONS

Scope of Part III.

24. [(1) This Part applies to payment services where –

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- (a) the services are provided from an establishment maintained by a payment service provider in Guernsey, 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 SEP statutory area, or
 - (ii) the payment service provider of either the payer or the payee, but not both, is located within the SEP statutory area.

(1A) In the circumstances mentioned in subsection (1)(b)(ii) –

- (a) this Part applies only in respect of those parts of a transaction which are carried out in the SEP statutory area, and
- (b) sections 25(2), 35, 36, 40, 41(1) and (2), 45, 46, 47 and 48 do not apply.]

(2) Except where the payment service user is a consumer, the parties may agree that –

- (a) sections 25(1), 27(3) or (4), 32, 34, 35, 36, 39, 45, 46 and 47 shall not apply in whole or in part, and
- (b) a period different from that specified in section 31(1)(b)

shall apply.

(3) This Part does not apply to any payment transaction or service specified in section 3.

[(4) This Part shall continue to apply to payment services provided prior to 13th January 2018 as if the Single Euro Payments Area (Guernsey) (Amendment) Regulations, 2017 had not been made.]

NOTE

In section 24, first, subsection (1) was substituted and subsection (1A) inserted and, second, subsection (4) was inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 20, respectively paragraph (a) and paragraph (b), with effect from 13th January, 2018.

Charges.

25. (1) The payment service provider may charge the payment service user for the fulfilment of any of its obligations under this Part only –

- (a) in accordance with section 38(3), 39(6) or 44(2)(b),
- (b) where agreed between the parties, and
- (c) where such charges are appropriate and reasonably correspond to the payment service provider's actual costs.

[(2) Where 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 SEP statutory area, the respective payment service providers shall ensure that –

- (a) the payee pays any charges levied by his payment service provider, and
 - (b) the payer pays any charges levied by his payment service provider.
- (3) The payee's payment service provider shall 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.]

NOTE

In section 25, subsection (2) and subsection (3) were substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 21, with effect from 13th January, 2018.

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

26. (1) This section applies in respect of payment instruments which, under the framework contract governing their use –

- (a) can be used only to execute individual payment transactions that do not exceed 30 euros or, in relation

to payment transactions executed wholly within Guernsey, 60 euros, or

- (b) have a spending limit of 150 euros, or where payment transactions are to be executed wholly within Guernsey, 300 euros.

(2) Where this section applies the parties may agree that –

- (a) sections 29(1)(b), 30(1)(c), (d) and (e) [and 34(4)] do not apply where the payment instrument does not allow for the stopping or prevention of its use,
- (b) sections 32, 33 and 34(1) and (2) do not apply where the payment service provider is not in a position, for reasons intrinsic to the payment instrument (for example, if the payment instrument is used anonymously), to prove that a payment transaction was authorised,
- (c) notwithstanding section 38(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) notwithstanding section 39, the payer may not revoke the payment order under that section after transmitting the payment order or giving his consent to execute the payment transaction to the payee,
- (e) execution times other than those provided for by

sections 41 and 42 apply.

NOTE

In section 26, the word, figures and parentheses in paragraph (a) of subsection (2) were substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 22, with effect from 13th January, 2018.

CHAPTER 2

AUTHORISATION OF PAYMENT TRANSACTIONS

Consent and withdrawal of consent.

27. (1) A payment transaction shall only be regarded as having been authorised by the payer for the purposes of this Part if the payer has given his 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) For the purposes of subsection (1), consent –

- (a) may be given –
 - (i) before, or,
 - (ii) if agreed between the payer and its payment service provider, after,

the execution of the payment transaction, and

(b) shall be given –

(i) in the form, and

(ii) in accordance with the procedure,

agreed between the payer and his payment service provider.

(3) The payer may withdraw his consent to a payment transaction at any time before the point at which the payment order can no longer be revoked under section 39.

(4) Subject to section 39(3) to (5), the payer may withdraw his 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.

Limits on the use of payment instruments.

28. (1) Where a specific payment instrument is used for the purpose of giving consent to the execution of a payment transaction, the payer and his 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 suspicion of 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 his liability to pay.

(3) Subject to subsections (4) and (5), the payment service provider shall, in the manner agreed between him and the payer and before carrying out any measures to stop the use of the payment instrument –

- (a) inform the payer that he intends to stop the use of the payment instrument, and
- (b) give his reasons for doing so.

(4) Subject to subsection (5), where the payment service provider is unable to inform the payer in accordance with subsection (3) before carrying out any measures to stop the use of the payment instrument, he shall do so immediately after.

(5) Subsections (3) and (4) do not apply where provision of the information in accordance with subsection (3) would compromise reasonable security measures or is otherwise unlawful.

(6) The payment service provider shall –

- (a) allow the use of the payment instrument, or
- (b) replace it with a new payment instrument,

as soon as practicable after the reasons for stopping its use cease to exist.

Obligations of the payment service user in relation to payment instruments [and personalised security credentials].

29. (1) A payment service user to whom a payment instrument has been issued shall –

- (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) Subsection (1)(a) applies only in relation to terms and conditions that are objective, non-discriminatory and proportionate.

(3) The payment service user shall take all reasonable steps to keep safe personalised security credentials relating to a payment instrument.]

NOTE

In section 29, first, the words in square brackets in the section heading were inserted and, second, subsection (2) was substituted and subsection (3) inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 23, respectively paragraph (a) and paragraph (b), with effect from 13th January, 2018.¹

Obligations of the payment service provider in relation to payment instruments.

30. (1) A payment service provider issuing a payment instrument shall –

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- (a) ensure that the personalized security [credentials] are not accessible to persons other than the payment service user to whom the payment instrument has been issued,
- (b) not send an unsolicited payment instrument, except where 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 –
 - (i) to notify the payment service provider in accordance with section 29(1)(b), or
 - [(ii) to request that, in accordance with section 28(6), the use of the payment instrument is no longer stopped,]
 - (ii) to request that the use of the payment instrument no longer be stopped and that section 28(6) apply,
- (d) on request, provide the payment service user at any time during a period of 18 months after the alleged date of a notification under section 29(1)(b) with the means to prove that such notification to the payment service provider was made, and
- [(e) provide the payment service user with an option to make a notification under section 29(1)(b) free of

charge, and ensure that any costs charged are directly attributed to the replacement of the payment instrument, and

- (f) prevent any use of the payment instrument once notification has been made under section 29(1)(b).]

[(2) The payment service provider bears the risk of sending to the payment service user a payment instrument or any personalised security credentials relating to it.]

(3) Nothing in subsection (1)(a) affects the obligations of the payment service user under section 29.

NOTE

In section 30, first, the word in square brackets in paragraph (a) of subsection (1) were substituted, second, paragraph (c)(ii) of subsection (1) was substituted, third, paragraph (e) of subsection (1) was substituted and paragraph (f) thereof inserted and, fourth, subsection (2) was substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 24, respectively paragraph (a)(i), paragraph (a)(ii), paragraph (a)(iii) and paragraph (b), with effect from 13th January, 2018.

Notification of unauthorised or incorrectly executed payment transactions.

31. (1) A payment service user is entitled to redress under section 33, 45, 46 or 47 only if he 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) Where the payment service provider has failed to provide or make available information concerning the payment transaction in accordance with Part II, the payment service user is nevertheless entitled to redress under section 33,

45, 46 or 47, notwithstanding that he has failed to notify the payment service provider in accordance with subsection (1).

Evidence on authentication and execution of payment transactions.

32. (1) Where a payment service user –
- (a) denies having authorised an executed payment transaction, or
 - (b) claims that a payment transaction has not been correctly executed,

it shall be for the payment service provider to prove that the payment transaction was –

- (i) authenticated,
- (ii) accurately recorded,
- (iii) entered in the payment service provider's accounts, and
- (iv) not affected by a technical breakdown or some other deficiency [in the service provided by the payment service provider].

[(2) Where a payment service user denies having authorised 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 authorised by the payer, or

- (b) the payer acted fraudulently or failed with intent or gross negligence to comply with section 29.

(3) If a payment service provider claims that a payer acted fraudulently or failed with intent or gross negligence to comply with section 29, the payment service provider shall provide supporting evidence to the payer.]

NOTE

In section 32, first, the words in square brackets subsection (1) were inserted and, second, subsection (2) and subsection (3) were substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 25, respectively paragraph (a) and paragraph (b), with effect from 13th January, 2018.

[Payment service provider's liability for unauthorised payment transactions.]

33. (1) Subject to sections 31 and 32 where an executed payment transaction was not authorised in accordance with section 27(1), the payment service provider shall –

- (a) refund the amount of the unauthorised payment transaction to the payer, and
- (b) where applicable, restore the debited payment account to the state it would have been in had the unauthorised payment transaction not taken place.

(2) The payment service provider shall provide a refund under subsection (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 unauthorised transaction.

(3) Subsection (2) does not apply where the payment service provider has reasonable grounds to suspect fraudulent behaviour by the payment service user and notifies a person for one of the purposes mentioned in section 43(1) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^{da} of those grounds in writing.

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

(5) This section is without prejudice to any further financial compensation that may be determined in accordance with the law applicable to the contract concluded between the payer and the payment service provider.]

NOTE

Section 33 was substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 26, with effect from 13th January, 2018.

[Payer's or payee's liability for unauthorised payment transactions.]

34. (1) Subject to subsections (2), (3) and (4), a payment service provider which is liable under section 33(1) may require that the payer is liable up to a maximum of €35 for any losses incurred in respect of unauthorised payment transactions arising from the use of a lost or stolen payment instrument, or from the misappropriation of a payment instrument.

(2) Subsection (1) does not apply if –

da Ordres en Conseil Vol. XXXIX, p. 137; there are amendments not relevant to this Ordinance.

- (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) Notwithstanding subsection (1), the payer shall be liable for all losses incurred in respect of an unauthorised payment transaction where the payer –

- (a) has acted fraudulently, or
- (b) has with intent or gross negligence failed to comply with section 29.

(4) Except where the payer has acted fraudulently, the payer shall not be liable for any losses incurred in respect of an unauthorised payment transaction –

- (a) arising after notification under section 29(1)(b),
- (b) where the payment service provider has failed at any time to provide, in accordance with section 30(1)(c), appropriate means for notification, or
- (c) where section 49B requires the application of strong [customer] authentication, but the payer's payment

service provider does not require strong customer authentication.

(5) Where section 49B requires the application of strong customer authentication, but the payee or the payee's payment service provider does not accept strong customer authentication, the payee or the payee's payment service provider, or both (as the case may be) shall compensate the payer's payment service provider for the losses incurred or sums paid as a result of complying with section 33(1).]

NOTES

Section 34 was substituted and the words "or payee's" in the corresponding entry in the Arrangement of Sections were inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, respectively regulation 27 and regulation 2(c), with effect from 13th January, 2018.

In section 34, the word in square brackets in paragraph (c) of subsection (4) was substituted by the Single Euro Payments Area (Guernsey) (Amendment) Regulations, 2019, regulation 3, with effect from 14th September, 2019.

Refunds for payment transactions initiated by or through a payee.

35. (1) Subject to section 36, where the conditions in subsection (2) are satisfied the payer shall be entitled to a refund from his 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 section 27, 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 shall be 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 260/2012.]

[(3A) When crediting a payment account under subsection (1), a payment service provider shall ensure that the credit value date is no later than the date on which the amount of the unauthorised payment transaction was debited.]

(4) For the purposes of subsection (2)(b), the payer cannot rely on currency exchange fluctuations where the reference exchange rate provided under section 7(d) or 13(3)(b) was applied.

(5) 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 4 weeks before the due date by the payment service provider or by the payee.

NOTE

In section 35, first, subsection (3) was substituted and, second, subsection (3A) was inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 28, respectively paragraph (a) and paragraph (c), with effect from 13th January, 2018.

Requests for refunds for payment transactions initiated by or through a payee.

36. (1) The payer may request a refund from his payment service provider under section 35 only within a period of 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 section 35(2) are satisfied.

(3) [The] payment service provider shall 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 subsection (2).

(5) If the payment service provider requires further information under subsection (2), it may not refuse the refund until it has received further information from the payer.]

NOTE

In section 36, first, the words in square brackets in subsection (2), second the word in square brackets in subsection (3) and, third, subsection (4) and subsection (5) were substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 29, respectively paragraph (a), paragraph (b) and paragraph (c), with effect from 13th January, 2018.

CHAPTER 3

EXECUTION OF PAYMENT TRANSACTIONS

Receipt of payment orders.

37. [(1) A payer's payment service provider shall not debit the payment account before receipt of a payment order.

(1A) Subject to subsections (2) and (5), for the purposes of this Ordinance 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.]

(2) 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 shall be deemed to have been received on the first business day thereafter.

(3) The payment service provider may set a time towards the end of a business day after which any payment order received shall be deemed to have been received on the following business day.

(4) Where the payment service user initiating a payment order agrees with its payment service provider that execution of the payment order is to take place –

(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 for the purposes of section 41 shall be deemed to be the day so agreed.

(5) If the day agreed under subsection (4) is not a business day for the payer's payment service provider, the payment order shall be deemed to have been received on the first business day thereafter.

NOTE

In section 37, subsection (1) was substituted and subsection (1A) inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 30, with effect from 13th January, 2018.

Refusal of payment orders.

38. (1) Subject to subsection (4), where a payment service provider refuses to execute a payment order, it shall notify the payment service user of –

- (a) the refusal,
- (b) if possible, the reasons for such refusal, and
- (c) where it is possible to provide reasons for the refusal and those reasons relate to factual matters, the procedure for rectifying any factual errors that led to the refusal.

(2) Any notification under subsection (1) shall be given or made available in an agreed manner and at the earliest opportunity, and in any event within the periods specified in section 41.

(3) The framework contract may provide for the payment service provider to charge the payment service user for such [refusal] where the refusal is reasonably justified.

(4) The payment service provider is not required to notify the payment service user under subsection (1) where such notification would be otherwise unlawful.

(5) Where all the conditions set out in the payer's [framework contract with the account servicing payment service provider have been satisfied, the account servicing payment service provider] shall 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 sections 41, 45 and 46, a payment order of which execution has been refused shall be deemed not to have been received.

NOTE

In section 38, first, the word in square brackets in subsection (3) and, second, the words in square brackets in subsection (5) were substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 31, respectively paragraph (a) and paragraph (b), with effect from 13th January, 2018.

Revocation of a payment order.

39. (1) Subject to subsections (2) to (5), a payment service user may not revoke a payment order after it has been received by the payer's payment service

provider.

(2) In the case of a payment transaction initiated by or through the payee, the payer may not revoke the payment order after [...] giving his consent to execute the payment transaction to the payee.

(3) In the case of a direct debit, and without prejudice to refund rights, the payer may not revoke the payment order after the end of the business day preceding the day agreed for debiting the funds.

(4) Where a day is agreed under section 37(4), 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 subsections (1) to (4), the payment order only may 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 Ordinance.

NOTE

In section 39, first, the words omitted in square brackets in subsection (2) were repealed, second paragraph (a) of subsection (5) was substituted and, third, the word in square brackets in subsection (6) was inserted by the

Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 32, respectively paragraph (a), paragraph (b) and paragraph (c), with effect from 13th January, 2018.

Amounts transferred and amounts received.

40. (1) Subject to subsection (2), the payment service providers of the payer and payee shall ensure that –

- (a) the full amount of the payment transaction is transferred, and
- (b) no charges are deducted from the amount transferred.

(2) The payee and his payment service provider [may agree for the relevant payment service provider to] deduct his 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 subsection (2) are deducted from the amount transferred, in the case of a payment transaction initiated –

- (a) by the payer, the payer's payment service provider shall ensure that the payee [...] receives the full amount of the payment transaction, and
- (b) by the payee, the payee's payment service provider shall ensure that the payee [...] receives the full amount of the payment transaction.

NOTE

In section 40, first, the words in square brackets in subsection (2) were substituted and, second, the words omitted in square brackets in subsection (3) were repealed by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 33, respectively paragraph (a) and paragraph (b), with effect from 13th January, 2018.

Payment transactions to a payment account.

41. (1) Subject to [subsection (2)], the payer's payment service provider shall 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 determined in accordance with section 37.

(2) Where a payment transaction is initiated by way of a paper payment order, the reference in subsection (1) to the end of the business day following the time of receipt of the payment order shall be treated as a reference to the end of the second business day following the time of receipt of the payment order determined in accordance with section 37.

(3) The payee's payment service provider shall value-date and credit the amount of the payment transaction to the payee's payment account following his receipt of the funds in accordance with section 43.

(4) The payee's payment service provider shall 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 his payment service provider, enabling settlement in respect of a direct debit to occur on the agreed due date.

NOTE

In section 41, the word, parentheses and figure in square brackets in subsection (1) were substituted by the Single Euro Payment Area (Guernsey)

(Amendment) Regulations, 2017, regulation 34, with effect from 13th January, 2018.

Absence of payee's payment account with the payment service provider.

42. Where a payment service provider accepts funds on behalf of a payee who does not have a payment account with him, he shall make the funds available to the payee immediately after the funds have been credited to his account.

Value date and availability of funds.

43. (1) The credit value date for the payee's payment account shall 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.

[(1A) Subsection (2) applies where –

- (a) the transaction does not involve a currency conversion,
- (b) the transaction involves only a currency conversion between –
 - (i) the euro and pounds sterling or the currency of another Member State,
 - (ii) pounds sterling and the currency of another Member State, or
 - (iii) the currencies of two other Member States, or
- (c) the transaction involves only one payment service provider.]

(2) The payee's payment service provider shall 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.

(3) The debit value date for the payer's payment account shall be no earlier than the time at which the amount of the payment transaction is debited to that payment account.

NOTE

In section 43, subsection (1A) was inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 35, with effect from 13th January, 2018.

Incorrect unique identifiers.

44. (1) Where a payment order is executed in accordance with the unique identifier, the payment order shall be 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) Where the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under section 45 or [46] for non-execution or defective execution of the payment transaction, but the payment service provider –

- (a) shall 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 shall 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 shall, 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) Where the payment service user provides information additional to that referred to in section 7(a) or section 13(2)(b), the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.]

NOTE

In section 44, first, the figures in square brackets in subsection (2) were substituted and, second, subsection (3) was substituted and subsection (4) and subsection (5) inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 36, respectively paragraph (a) and paragraph (b), with effect from 13th January, 2018.

[Non-execution or defective or late execution of payment transactions initiated by the payer.

45. (1) This section applies where a payment order is initiated directly by the payer.

(2) Without prejudice to sections 31 and 44, the payer's payment service provider shall be liable to the payer for the correct execution of the payment transaction unless he 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 section 41(1) and (2).

(3) Where the payer's payment service provider is liable under subsection (2), he shall 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 subsection (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 section 41(1) and (2), the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction and shall –

- (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 subsection (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 section, 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
- (b) notify the payer of the outcome.]

NOTE

Section 45 and the corresponding entry in the Arrangement of Sections were inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, respectively regulation 37 and regulation 2(d), with effect from 13th January, 2018.

[Non-execution or defective or late execution of payment transactions initiated by the payee.

46. (1) This section applies where a payment order is initiated by the payee.

(2) Without prejudice to sections 31 and 44, 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 section 41(4).

(3) Where the payee's payment service provider is liable under subsection (2), it shall immediately retransmit the payment order in question to the payer's payment service provider.

(4) The payer's payment service provider shall also ensure that the transaction is handled in accordance with section 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 date 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) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payee, the payee's payment service provider shall, on request by the payee and free of charge, and regardless of liability under this section, make immediate efforts to trace the payment transaction and notify the payee of the outcome.

(6) Subject to subsection (8), 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 subsection (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.

(7) The credit value date for a credit under paragraph (6)(b) shall be no later than the date on which the amount was debited.

(8) If the payer's payment service provider proves that that the payee's payment service provider has received the amount of the payment transaction,

subsection (6) does not apply and the payee's payment service provider shall value date the amount 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.]

NOTE

Section 46 and the corresponding entry in the Arrangement of Sections were inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, respectively regulation 37 and regulation 2(e), with effect from 13th January, 2018.

Liability of payment service provider for charges and interest.

47. (1) In addition to any liability imposed by section 45 or 46, but without prejudice to sections 31 and 44, a payment service provider shall be 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.

(2) This section is without prejudice to any additional financial compensation that may be determined in accordance with the law applicable to the contract concluded between the payment service user and the payment service provider.

NOTE

In section 47, the words in square brackets were substituted by the Single

Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 38, with effect from 13th January, 2018.

Right of recourse.

48. Where the liability of a payment service provider under section 33, 45 or 46 is attributable to another payment service provider or an intermediary, the other payment service provider or intermediary shall compensate the first-mentioned provider for any losses incurred or sums paid pursuant to that section.]

NOTE

Section 48 was substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 39, with effect from 13th January, 2018.

Force majeure.

- 49.** Notwithstanding the provisions of this Part –
- (a) a person shall not be liable for any contravention of a requirement imposed on it under this Part where the contravention is due to abnormal and unforeseeable circumstances beyond that person's control, the consequences of which would have been unavoidable despite all efforts to the contrary, and
 - (b) a payment service provider shall not be liable for any contravention of a requirement imposed on it under this Part where the contravention is due to the obligations of the payment service provider under other provisions of Guernsey law.

Consent for use of personal data.

49A. A payment service provider shall 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.]

NOTE

Section 49A and the corresponding entry in the Arrangement of Sections were inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, respectively regulation 40 and regulation 2(f), with effect from 13th January, 2018.

[Authentication.]

49B. (1) A payment service provider shall, in accordance with regulatory technical standards adopted under Article 98 of the Payment Services Directive, apply strong customer authentication where a payment service user –

- (a) accesses his payment account online,
- (b) initiates an electronic payment transaction, or
- (c) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.

(2) Where a payer initiates an electronic remote payment transaction, the payment service provider shall in accordance with regulatory technical standards adopted under Article 98 of the Payment Services Directive 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 shall maintain adequate security measures to protect the confidentiality and integrity of payment service users' personalised security credentials.

(4) Subsections (1), (2) and (3) are subject to any exemptions from the requirements in those subsections provided for in regulatory technical standards adopted under Article 98 of the Payment Services Directive.

(5) For the avoidance of doubt, a failure by another payment service provider or an intermediary to use strong customer authentication as required by this section may provide a right to recourse under section 48.]

NOTE

Section 49B and the corresponding entry in the Arrangement of Sections were inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, respectively regulation 41 and regulation 2(f), with effect from 13th January, 2018.

PART IV
IMPLEMENTATION OF ARTICLE 5 OF AND ANNEX TO
REGULATION 260/2012

Object of Part IV.

50. The object of this Part is to make provision for the implementation of Article 5 of and the Annex to Regulation 260/2012.

Interpretation of Part IV.

51. In this Part –

"collection" means a part of a SEPA direct debit transaction starting from its initiation by the payee until its end through the normal debiting of the payer's payment account,

"ISO 2002 XML standard" means a standard for the development

of electronic financial messages as defined by the International Organization for Standardization, encompassing the physical representation of the payment transactions in XML syntax, in accordance with business rules and implementation guidelines for schemes for payment transactions falling within the scope of this Part,

"large-value payment system" means a payment system the main purpose of which is to process, clear or settle single payment transactions of high priority and urgency, and primarily of large amount,

"mandate" means the expression of consent and authorisation given by the payer to the payee and (directly, or indirectly via the payee) to the payer's payment service provider to allow the payee to initiate a collection for debiting the payer's specified payment account and to allow the payer's payment service provider to comply with such instructions,

"microenterprise" means an enterprise which is a microenterprise within the meaning of Article 1, and Article 2(1) and (3) of the Annex, of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises^e,

"reference party" means a natural or legal person on behalf of whom a payer makes a payment or a payee receives a payment,

"retail payment system" means a payment system which is not a large-value payment system and the main purpose of which is to process, clear or settle SEPA credit transfers, or SEPA direct debits, which are generally bundled together for transmission and are primarily of small amount and low priority,

^e OJ L 124, 20.5.2003, p. 36.

"settlement date" means a date on which obligations with respect to the transfer of funds are discharged between the payer's payment service provider and the payee's payment service provider.

Application of Part IV.

52. (1) This Part applies to SEPA credit transfer transactions and SEPA direct debit transactions where –

- (a) the payment service providers of both the payer and the payee are located within the SEP statutory area, or
- (b) the sole payment service provider involved in the transaction is located within the SEP statutory area.

(2) This Part does not apply to the following –

- (a) payment transactions carried out between or within payment service providers, their agents or their branches for their own account,
- (b) payment transactions processed and settled through a large-value payment system, other than SEPA direct debit payment transactions which the payer has not explicitly requested be routed via a large-value payment system,
- (c) payment transactions through a payment card or similar device, including cash withdrawals, unless the card or device is used only to generate the information required to make directly a SEPA credit transfer to, or a SEPA

direct debit from, a payment account identified by BBAN or IBAN,

- (d) payment transactions by means of any telecommunication, digital or information technology device, unless the payment transaction results in a SEPA credit transfer to, or a SEPA direct debit from, a payment account identified by BBAN or IBAN,
- (e) transactions of money remittance as defined in Article 4(13) of the Payments Services Directive,
- (f) payment transactions transferring electronic money as defined in point 2 of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions^f, unless the transaction results in a SEPA credit transfer to, or a SEPA direct debit from, a payment account identified by BBAN or IBAN.

(3) Where payment schemes are based on payment transactions by SEPA credit transfers or SEPA direct debits but have additional optional features or services, this Part applies only to the underlying SEPA credit transfers or SEPA direct debits.

Requirements for credit transfer and direct debit transactions.

53. (1) Payment service providers shall carry out SEPA credit transfer

^f OJ L 267, 10.10.2009, p. 7.

transactions and SEPA direct debit transactions in accordance with the following requirements –

- (a) they shall use the payment account identifier specified in paragraph 1(a) of the Schedule for the identification of payment accounts regardless of the location of the payment service providers concerned,
 - (b) they shall use a message format specified in paragraph 1(b) of the Schedule when transmitting payment transactions to another payment service provider or via a retail payment system,
 - (c) they shall ensure that payment service users use the payment account identifier specified in paragraph 1(a) of the Schedule for the identification of payment accounts, whether the payer's payment service provider and the payee's payment service provider, or the sole payment service provider in the payment transaction, are located in the same country or territory in the SEP statutory area or in different countries or territories in the SEP statutory area,
 - (d) they shall ensure that where a payment service user that is not a consumer or a microenterprise initiates or receives individual credit transfers or individual direct debits which are not transmitted individually, but are bundled together for transmission, a message format specified in paragraph 1(b) of the Schedule is used.
- (2) Without prejudice to subsection (1)(b), payment service

providers shall, on the specific request of a payment service user, use a message format specified in paragraph 1(b) of the Schedule in relation to that payment service user.

- (3) In relation to a SEPA credit transfer –
 - (a) the payer's payment service provider shall ensure that the payer provides the data elements specified in paragraph 2(a) of the Schedule,
 - (b) the payer's payment service provider shall provide the data elements specified in paragraph 2(b) of the Schedule to the payee's payment service provider, and
 - (c) the payee's payment service provider shall provide or make available to the payee the data elements specified in paragraph 2(d) of the Schedule.

- (4) In relation to a SEPA direct debit –
 - (a) the payee's payment service provider shall ensure that –
 - (i) the payee provides the data elements specified in paragraph 3(a) of the Schedule with the first SEPA direct debit or one-off SEPA direct debit and with each subsequent SEPA direct debit,
 - (ii) the payer gives consent both to the payee and to the payer's payment service provider (directly, or indirectly via the payee),

- (iii) the mandates, together with later modifications or cancellation, are stored by the payee or by a third party on behalf of the payee,
 - (iv) the payee is informed of the obligation under subparagraph (iii) by the payment service provider in accordance with section 12,
- (b) the payee's payment service provider shall provide the payer's payment service provider with the data elements specified in paragraph 3(b) of the Schedule,
 - (c) the payer's payment service provider shall provide or make available to the payer the data elements specified in paragraph 3(c) of the Schedule,
 - (d) the payer shall have the right to instruct his payment service provider to do any one or more of the following
 -
 - (i) to limit a SEPA direct debit collection to a certain amount or to a certain periodicity or both,
 - (ii) where a mandate under a payment scheme does not provide for the right to a refund, to verify each SEPA direct debit transaction, and to check whether, according to the mandate-related information, the amount and periodicity of the submitted SEPA direct debit transaction is equal to the amount and periodicity agreed in the

mandate, before debiting the payer's payment account,

- (iii) to block any SEPA direct debits to the payer's payment account or to block any SEPA direct debits initiated by one or more specified payees or to authorise SEPA direct debits only if initiated by one or more specified payees.

(5) However, where neither the payer nor the payee is a consumer, payment service providers are not required to comply with subsection (4)(d)(i), (ii) or (iii).

(6) The payer's payment service provider shall inform the payer of the rights specified in subsection (4)(d) in accordance with section 12.

(7) Upon the first SEPA direct debit transaction or a one-off SEPA direct debit transaction, and upon each subsequent SEPA direct debit transaction, the payee shall send the mandate-related information to his payment service provider and the payee's payment service provider shall transmit that mandate-related information to the payer's payment service provider with each SEPA direct debit transaction.

(8) In addition to the requirements referred to in subsection (1), a payee who accepts a SEPA credit transfer –

- (a) shall communicate to the payer his payment account identifier specified in paragraph 1(a) of the Schedule, and
- (b) where necessary, shall communicate to the payer, if the acceptance occurs before the 31st October, 2016, his

payment service provider's BIC when a credit transfer is requested.

- (9) Before the first SEPA direct debit transaction, a payer –
- (a) shall communicate to the payee his payment account identifier specified in paragraph 1(a) of the Schedule, and
 - (b) where necessary, shall communicate to the payee, if the transaction occurs before the 31st October, 2016, his payment service provider's BIC.

(10) Where the framework agreement between the payer and the payer's payment service provider does not provide for the right to a refund, the payer's payment service provider shall, without prejudice to subsection (4)(a)(ii) and (iii), verify each direct debit transaction to check whether, according to the mandate-related information, the amount and periodicity of the submitted direct debit transaction is equal to the amount and periodicity agreed in the mandate, before debiting the payer's payment account.

(11) On and from the 31st October, 2016, payment service providers shall not require payment service users to indicate the BIC of the payment service provider of a payer or of the payment service provider of a payee.

(12) The payer's payment service provider and the payee's payment service provider shall not levy additional charges or other fees on the read-out process to automatically generate a mandate for those payment transactions which are initiated through or by means of a payment card at the point of sale and which result in a direct debit.

(13) This section is without prejudice to the provisions of the Data Protection (Bailiwick of Guernsey) Law, 2004^g.

Transitional provisions.

54. (1) Until the 31st October, 2016, payment service providers may provide payment service users with conversion services for national SEPA payment transactions enabling payment service users who are consumers to continue using a BBAN instead of the payment account identifier specified in paragraph 1(a) of the Schedule, on condition that interoperability is ensured by converting the payer's and the payee's BBAN technically and securely into their respective payment account identifiers specified in paragraph 1(a) of the Schedule.

(2) Those payment account identifiers shall be delivered to the initiating payment service user, where appropriate, before the payment is executed.

(3) In such a case payment service providers shall not levy any charges or other fees on the payment service user directly or indirectly linked to those conversion services.

(4) The [Committee] may by regulation waive, until the 31st October, 2016, all or any of the following requirements –

- (a) in the case of credit transfers, the technical requirements set out in section 53(1), (2), (3) and (8) and paragraphs 1 and 2 of the Schedule,
- (b) in the case of direct debits, the requirements set out in section 53(1), (2), (4), (5), (6), (7), (9), (10) and (12) and paragraphs 1 and 3 of the Schedule,

^g Ordres en Conseil Vol. XLII(1), p. 51.

for those payment transactions generated using a payment card at the point of sale which result in a SEPA direct debit to and from a payment account identified by BBAN or IBAN.

(5) The [Committee] may by regulation waive, until the 31st October, 2016, the specific requirement under section 53(1)(d) to use the message formats specified in paragraph 1(b) of the Schedule for payment service users who initiate or receive individual credit transfers or direct debits that are bundled together for transmission.

(6) Notwithstanding any such waiver, payment service providers shall comply with the requirements of section 53(1)(d) where a payment service user requests that the provider so comply.

(7) The [Committee] may by regulation defer, until the 31st October, 2016, the requirements relating to the provision of a BIC for national SEPA payments in section 53(8), (9) and (11).

NOTE

In section 54, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

PART V
ENFORCEMENT

Monitoring and enforcement - information seeking powers.

55. (1) The provisions of sections 25 (power to obtain information and documents), 26 (right of entry to obtain information and documents) and 27

(investigations by inspectors) of the Banking Law apply –

- (a) to payment service providers as they apply to licensed institutions within the meaning of that Law,
- (b) to payment service users as they apply to depositors or potential depositors of a licensed institution within the meaning of that Law,
- (c) in relation to such information as the Commission may reasonably require for the purpose of effectively monitoring or ensuring compliance with the requirements of this Ordinance or any regulation made under it as they apply in relation to such information as the Commission may reasonably require for the performance of its functions under that Law, and
- (d) as if section 25(11) of that Law also allowed the powers referred to in that section to be exercised if the Commission considers that it is desirable to do so in the interests of effectively monitoring or ensuring compliance with the requirements of this Ordinance or any regulation made under it.

(2) Sections 28 (investigation of suspected offences) and 29 (power of entry in cases of suspected offences) of the Banking Law apply in relation to an offence under this Ordinance or any regulation made under it as they apply in relation to an offence under section 1 or 21 of that Law.

(3) Sections 33A (rules of the Commission) and 36A (provision as to codes of practice, etc) of the Banking Law apply –

- (a) in relation to payment service providers and the carrying out of payment services as they apply in relation to licensed institutions and the carrying on or conduct of business regulated by that Law, and
- (b) for the purposes of effectively monitoring or ensuring compliance with the requirements of this Ordinance or any regulation made under it as they apply for the purposes of that Law.

(4) Sections 43 (restrictions on disclosure of information), 44 (cases where disclosure is permitted), 45 (information supplied by relevant overseas authority), 47 (false or misleading information), 52 (verification of information), 53 (service of notices) and 55 (limitation of liability) of the Banking Law apply as if references to that Law included references to this Ordinance or any regulation made under it.

(5) Without prejudice to subsections (1) to (4), references in the Banking Law or in any other enactment to, or to any provision of, section 25, 26, 28 or 29 of the Banking Law shall be construed as including references to that section or provision as applied by this section.

Offences.

56. A payment service provider who, without reasonable excuse, contravenes or fails to comply with any provision of this Ordinance [(except section 49B)] or any regulation made under it is guilty of an offence and liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding level 5 on the uniform scale, or to both, and

- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

NOTE

In section 56, the words in square brackets were inserted by the Single Euro Payments Area (Guernsey) (Amendment) Regulations, 2019, regulation 2, with effect from 14th September, 2019.

Criminal proceedings against unincorporated bodies.

57. (1) Where an offence under this Ordinance or any regulation made under it is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a partnership, any partner [of the partnership],
- (b) in the case of any other unincorporated body, any director or other officer [of that body] who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

- (2) Where an offence under this Ordinance or any regulation made

under it is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of that body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction of an offence under this Ordinance or any regulation made under it shall be paid from the funds of that body.

NOTE

In section 57, first, the words in square brackets in paragraph (a) and, second, the words in square brackets in paragraph (b) were substituted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, regulation 42, respectively paragraph (a) and paragraph (b), with effect from 13th January, 2018.

Criminal liability of directors, etc.

58. (1) Where an offence under this Ordinance or any regulation made under it is committed by a company and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) any director, liquidator, manager, secretary, receiver, administrator or other similar officer of the company, or
- (b) any person purporting to act in any such capacity,

he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

Defence of due diligence.

59. In any proceedings for an offence under this Ordinance or any regulation made under it it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

PART VI
GENERAL PROVISIONS

Power to make regulations.

- 60.** (1) The [Committee] may by regulation –
- (a) amend this Ordinance, whether for the purpose of –
 - (i) implementing the Payment Services Directive or, as the case may be, Regulation 260/2012, as from time to time amended, re-enacted (with or without modification), extended or applied, or
 - (ii) extending its application to other classes or descriptions of payment services, payment transactions or payment service providers,or otherwise, and
 - (b) make such other provision as they think fit for the purpose of giving effect to this Ordinance as from time to time amended.
- (2) Any regulations under this Ordinance –

- (a) may be amended or repealed by subsequent regulations,
 - (b) may contain consequential, incidental, supplemental, transitional and ancillary provisions, and
 - (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under the regulation or to the making of new regulations.
- (3) Any power conferred by this Ordinance to make regulations may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and
 - (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes, and

- (iii) any such provision either unconditionally or subject to any conditions specified in the regulations.

NOTES

In section 60, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

The following Regulations have been made under section 60:

Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017;
Single Euro Payments Area (Guernsey) (Amendment) Regulations, 2019.

Supervision by Commission.

- 61.** The Commission shall –
- (a) effectively monitor payment service providers, and
 - (b) take the necessary measures for the purpose of ensuring compliance by payment service providers with the requirements of this Ordinance and any regulation made under it.

Interpretation.

- 62.** (1) In this Ordinance, unless the contrary intention appears –

"agent" means a natural or legal person which acts on behalf of a payment institution in providing payment services,

["**account servicing payment service provider**" means a payment service provider providing and maintaining a payment account for a payer,]

["**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 personalised security credentials,]

"**Banking Law**" means the Banking Supervision (Bailiwick of Guernsey) Law, 1994^h,

"**BBAN**" means a payment account number identifier which uniquely identifies an individual payment account with a payment service provider and which can only be used for national SEPA payments,

"**BIC**" means business identifier code, being a code that unambiguously identifies a payment service provider, the elements of which are specified by ISO 13616 published by the International Organisation for Standardization,

"**branch**" means a place of business of a payment service provider, other than its head office, which forms a legally dependent part of the payment service provider and which carries out directly all or any of the transactions inherent in its business,

"**business day**" means, in relation to a payment service provider, a day on which the payment service provider is open for business as required for the execution of a payment transaction,

^h Ordres en Conseil Vol. XXXV (1), p. 271; there are amendments not material to this Ordinance.

"charge" means a charge levied by a payment service provider on the payment service user and directly or indirectly linked to a payment transaction,

"Commission" means the Guernsey Financial Services Commission,

"Community provision" has the meaning given by section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994,

"consumer" means a natural person who, in contracts for payment services, is acting for purposes other than a trade, business or profession,

"[Committee]" means the States of Guernsey [Committee for Economic Development],

"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 –

- (a) to the payee,
- (b) to the payee's payment service provider, or
- (c) to the payer's own payment service provider,

"durable medium" means any instrument –

- (a) which enables the payment service user to store information addressed personally to him in such a way

as to be accessible for future reference for a period of time adequate for the purposes of the information, and

- (b) which allows the unchanged reproduction of the information stored,

"EPC" means the European Payments Council, being the *association internationale sans but lucratif* of that name constituted under Title III of the "*Loi sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations*" of the 27th June, of the Kingdom of Belgium,

["**European Economic Area**" means the area created by the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993,]

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

"**fun**ds" means banknotes, coins, scriptural money or electronic money as defined in point 2 of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit of and prudential supervision of the business of electronic money institutionsⁱ,

["**group**" has the meaning given by Article 4 of the Payment Services Directive,]

ⁱ OJ L 267, 10.10.2009, p. 7.

"Guernsey" includes Herm and Jethou,

"IBAN" means international bank account number, being an international payment account number identifier that uniquely identifies an individual account with a unique payment service provider, the elements of which are specified by ISO 13616 published by the International Organization for Standardisation,

"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 payment services contract between those parties,

"money remittance" means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee,

"national SEPA payment" means an electronically processed payment transaction initiated by a payer, or by or through a payee, where the payer's payment service provider and the payee's payment service provider are located in Guernsey,

"payee" means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction,

"payer" means a natural or legal person who holds a payment account and allows a payment order from that payment account or, where there is no

payment account, a natural or legal person who gives a payment order,

"payment account" means an account held in the name of one or more payment service users which is used for the execution of payment transactions,

"payment instrument" means any –

- (a) personalised device, or
- (b) personalised set of procedures agreed between the payment service user and the payment service provider,

used by the payment service user in order to initiate a payment order,

"payment order" means an instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction,

"payment scheme" means a single set of rules, practices, standards or implementation guidelines, or all or any of these, agreed between payment service providers for the execution of payment transactions within the SEP statutory area, and which is separated from any infrastructure or payment system that supports its operation,

"payment service" means any of the following activities, when carried out as a regular occupation or business activity –

- (a) the execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider, including –

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- (i) the execution of direct debits, including one-off direct debits, and
 - (ii) the execution of credit transfers, including standing orders,
- (b) the execution of payment transactions where the funds are covered by a credit line for a payment service user, including –
- (i) the execution of direct debits, including one-off direct debits, and
 - (ii) the execution of credit transfers, including standing orders,

"payment service provider" means a licensed institution within the meaning of the Banking Law which –

- (a) is carrying out payment services in or from within Guernsey, or
- (b) being an institution the memorandum of which is registered in the Register of Companies within the meaning of the Companies (Guernsey) Law, 2008, is carrying out payment services in or from within any other place,

"payment service user" means a natural or legal person making use of a payment service in the capacity of [...] payer or payee, or both,

"Payment Services Directive": see section 1(a),

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

"payment transaction" means an act –

- (a) initiated by a payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee, and
- (b) effected using a payment instrument governed by –
 - (i) the SEPA Credit Transfer Scheme Rulebook published by the EPC,
 - (ii) the SEPA Direct Debit Core Scheme Rulebook, or
 - (iii) the SEPA Direct Debit Business to Business Scheme Rulebook published by the EPC,

in each case as in force from time to time,

[**"personalised security credentials"** means personalised features provided by a payment service provider to a payment service user for the purposes of authentication,]

"reference exchange rate" means the exchange rate which is used as

the basis for calculating 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 payment service contract,

"Regulation 260/2012": see section 1(b),

[**"remote payment transaction"** means a payment transaction initiated through the internet or otherwise initiated through a device that can be used for distance communication,]

"SEPA" means the single euro payments area referred to in recital (4) of the Payment Services Directive, the geographical scope of which is laid down in the European Payments Council list of SEPA Scheme countries, for the time being in force,

"SEPA credit transfer" means a payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer,

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

"SEPA payment" means a payment transaction carried out within the

SEP statutory area,

"SEP statutory area" means the area consisting of Guernsey, Jersey, the Isle of Man and [the European Economic Area],

[**"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 two 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 two 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"**),]

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989,

"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 to identify unambiguously –

- (a) [another] payment service user who is a party to the payment transaction, and/or
- (b) the other payment service user's payment account for the 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,

and any other expressions used in this Ordinance which are also used in the Payment Services Directive or, as the case may be, Regulation 260/2012 shall have the same meanings as in, respectively, that Directive or Regulation.

(2) A reference in this Ordinance to an enactment or Community provision is, unless the contrary intention appears, a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

NOTES

In section 62,

first, the definition of the expression "account servicing payment service provider" was inserted, second, the definition of the expression "authentication" was substituted, third, the definition of the expression "European Economic Area" was inserted, fourth, the definition of the expression "group" was substituted, fifth, the words in square brackets in the definition of the expression "means of distance communication" were substituted, sixth, the word omitted in square brackets in the definition of the expression "payment service user" was repealed, seventh, the definition of the expression "personalised security credentials" was inserted, eighth, the definition of the expression "remote payment transaction" was inserted, ninth, the definition of the expression "single payment service contract" was substituted, tenth, the words in square brackets in the definition of the expression "SEP statutory area" were substituted, eleventh, the definition of the expression "strong customer authentication" was inserted and, twelfth, the word in square brackets in the definition of the expression "unique identifier" was substituted by the Single Euro Payment Area (Guernsey)

(Amendment) Regulations, 2017, regulation 43, respectively paragraph (a), paragraph (b), paragraph (c), paragraph (d), paragraph (e), paragraph (f), paragraph (g), paragraph (h), paragraph (i), paragraph (j), paragraph (k) and paragraph (l), with effect from 13th January, 2018;

the words, first, "Committee" and, second, "Committee for Economic Development" in square brackets in the definition of the expression "Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 2 and section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The Banking Supervision (Bailiwick of Guernsey) Law, 1994 has since been repealed by the Banking Supervision (Bailiwick of Guernsey) Law, 2020, section 67(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 68 of the 2020 Law.

Amendments.

63. (1) In section 24(1) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 after paragraph (h) of the definition of "prescribed Laws"^k insert the following paragraph –

"(ha) the Single Euro Payments Area (Guernsey) Ordinance, 2016,".

(2) ...

(3) ...

^k Ordres en Conseil Vol. XXX, p. 243; the definition of the expression "prescribed Laws" was inserted by the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008 (Order in Council No. XIX of 2008).

(4) ...

(5) In Schedule 7 to the Insurance Business (Bailiwick of Guernsey) Law, 2002^o after paragraph 3(2)(f)(vi) insert the following item –

"(via) the Single Euro Payments Area (Guernsey) Ordinance, 2016,".

(6) In Schedule 4 to the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002^p after paragraph 3(2)(f)(vi) insert the following item –

"(via) the Single Euro Payments Area (Guernsey) Ordinance, 2016,".

(7) ...

(8) In section 32(1) of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008^r after paragraph (1) of the definition of "relevant enactments " insert the following paragraph –

"(la) the Single Euro Payments Area (Guernsey) Ordinance, 2016,".

^o Ordres en Conseil Vol. XLII(2), p. 766; Schedule 7 was substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations, 2008 (G.S.I. 2008 No. 4).

^p Ordres en Conseil Vol. XLII(2), p. 1022; Schedule 4 was substituted by the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Regulations, 2008 (G.S.I. 2008 No. 2).

^r No. XII of 2009; there are amendments not material to this Ordinance.

NOTES

In section 4,

subsection (2) was repealed by the Protection of Investors (Bailiwick of Guernsey) Law, 2020, section 80(r), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 81 of the 2020 Law;

subsection (3) was repealed by the Banking Supervision (Bailiwick of Guernsey) Law, 2020, section 67(k), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 68 of the 2020 Law;

subsection (4) was repealed by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, section 62(k), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 60 of the 2020 Law;

subsection (7) was repealed by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, section 91, Schedule 2, paragraph 8, with effect from 1st July, 2023, subject to the savings and transitional provisions in section 93 of the 2022 Law.

Extent.

64. This Ordinance has effect in the islands of Guernsey, Herm and Jethou.

Citation.

65. This Ordinance may be cited as the Single Euro Payments Area (Guernsey) Ordinance, 2016.

Commencement.

66. This Ordinance shall come into force on the 27th January, 2016.

SCHEDULE
TECHNICAL REQUIREMENTS

Sections 53 and 54

Credit transfer transactions and direct debit transactions: technical requirements.

1. In addition to the essential requirements set out in section 53, the following technical requirements apply to credit transfer transactions and direct debit transactions –

- (a) the payment account identifier referred to in section 53(1)(a) and (c) shall be an IBAN,
- (b) the standard for message format referred to in section 53(1)(b) and (d) shall be the ISO 20022 XML standard,
- (c) the remittance data field shall allow for 140 characters, except that payment schemes may allow for a higher number of characters unless the device used to remit information has technical limitations relating to the number of characters, in which case the technical limit of the device applies,
- (d) remittance reference information and all the other data elements provided in accordance with paragraphs 2 and 3 shall be passed in full and without alteration between payment service providers in the payment chain,
- (e) once the required data is available in electronic form payment transactions shall allow for fully automated, electronic processing in all process stages throughout the payment chain (end-to-end straight-through processing), enabling the entire payment process to be conducted electronically without the

need for re-keying or manual intervention,

- (f) the processing required under subparagraph (e) shall also apply to exceptional handling of credit transfers and direct debit transactions, whenever possible,
- (g) payment schemes shall not set a minimum threshold for the amount of the payment transaction allowing for credit transfers or direct debits but are not required to process payment transactions with a zero amount,
- (h) payment schemes are not obliged to carry out credit transfers or direct debits exceeding the amount of 999,999,999.99 euros.

Credit transfer transactions: additional requirements.

2. In addition to the requirements referred to in paragraph 1, the following requirements shall apply to credit transfer transactions –

- (a) the data elements referred to in section 53(3)(a) are the following –
 - (i) the payer's name and/or the IBAN of the payer's payment account,
 - (ii) the amount of the credit transfer,
 - (iii) the IBAN of the payee's payment account,
 - (iv) where available, the payee's name,
 - (v) the remittance information (if any),

- (b) the data elements referred to in section 53(3)(b) are the following –
 - (i) the payer's name,
 - (ii) the IBAN of the payer's payment account,
 - (iii) the amount of the credit transfer,
 - (iv) the IBAN of the payee's payment account,
 - (v) the remittance information (if any),
 - (vi) any payee identification code,
 - (vii) the name of any payee reference party,
 - (viii) the purpose of the credit transfer (if any),
 - (ix) the category (if any) of the purpose of the credit transfer,

- (c) in addition, the following mandatory data elements are to be provided by the payer's payment service provider to the payee's payment service provider –
 - (i) the BIC of the payer's payment service provider (if not agreed otherwise by the payment service providers involved in the payment transaction),

- (ii) the BIC of the payee's payment service provider (if not agreed otherwise by the payment service providers involved in the payment transaction),
 - (iii) the identification code of the payment scheme,
 - (iv) the settlement date of the credit transfer,
 - (v) the reference number of the credit transfer message of the payer's payment service provider,
- (d) the data elements referred to in section 53(3)(c) are the following –
- (i) the payer's name,
 - (ii) the amount of the credit transfer,
 - (iii) the remittance information (if any).

Direct debit transactions: additional requirements.

3. In addition to the requirements referred to in paragraph 1, the following requirements shall apply to direct debit transactions –

- (a) the data elements referred to in section 53(4)(a)(i) are the following –
 - (i) the type of direct debit (recurrent, one-off, first, last or reversal),
 - (ii) the payee's name,

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- (iii) the IBAN of the payee's payment account to be credited for the collection,
- (iv) where available, the payer's name,
- (v) the IBAN of the payer's payment account to be debited for the collection,
- (vi) the unique mandate reference,
- (vii) where the payer's mandate is given on or after the date of commencement of this Ordinance, the date on which it was signed,
- (viii) the amount of the collection,
- (ix) where the mandate has been taken over by a payee other than the payee who issued the mandate, the unique mandate reference as given by the original payee who issued the mandate,
- (x) the payee's identifier,
- (xi) where the mandate has been taken over by a payee other than the payee who issued the mandate, the identifier of the original payee who issued the mandate,
- (xii) the remittance information (if any) from the payee to the payer,

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- (xiii) the purpose (if any) of the collection,
 - (xiv) the category (if any) of the purpose of the collection,
- (b) the data elements referred to in section 53(4)(b) are the following –
- (i) the BIC of the payee's payment service provider (if not agreed otherwise by the payment service providers involved in the payment transaction),
 - (ii) the BIC of the payer's payment service provider (if not agreed otherwise by the payment service providers involved in the payment transaction),
 - (iii) the payer reference party's name (if present in the dematerialised mandate),
 - (iv) the payer reference party's identification code (if present in the dematerialised mandate),
 - (v) the payee reference party's name (if present in the dematerialised mandate),
 - (vi) the payee reference party's identification code (if present in the dematerialised mandate),
 - (vii) the identification code of the payment scheme,
 - (viii) the settlement date of the collection,

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- (ix) the payee's payment service provider's reference for the collection,
- (x) the type of mandate,
- (xi) the type of direct debit (recurrent, one-off, first, last or reversal),
- (xii) the payee's name,
- (xiii) the IBAN of the payee's payment account to be credited for the collection,
- (xiv) where available, the payer's name,
- (xv) the IBAN of the payer's payment account to be debited for the collection,
- (xvi) the unique mandate reference,
- (xvii) the date of signing of the mandate if the mandate is given by the payer on or after the date of commencement of this Ordinance,
- (xviii) the amount of the collection,
- (xix) the unique mandate reference as given by the original payee who issued the mandate (if the mandate has been taken over by a payee other than the payee who issued the mandate),

- (xx) the payee's identifier,
 - (xxi) the identifier of the original payee who issued the mandate (if the mandate has been taken over by a payee other than the payee who issued the mandate),
 - (xxii) the remittance information (if any) from the payee to the payer,
- (c) the data elements referred to in section 53(4)(c) are the following –
- (i) the unique mandate reference,
 - (ii) the payee's identifier,
 - (iii) the payee's name,
 - (iv) the amount of the collection,
 - (v) the remittance information (if any),
 - (vi) the identification code of the payment scheme.

1 The corresponding entry in the Arrangement of Sections was inserted by the Single Euro Payment Area (Guernsey) (Amendment) Regulations, 2017, section 2(b), with effect from 13th January, 2018.