

STATES OF JERSEY



DRAFT EU LEGISLATION (PAYMENT SERVICES – SEPA) (AMENDMENT) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 17th October 2017
by the Chief Minister**

STATES GREFFE



Jersey

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REPORT

Introduction

Legislation was passed in 2015 for Jersey to join the Single European Payments Area (“SEPA”).

Since then, the relevant EU Directive has been updated which requires updated legislation from SEPA members.

Background

Membership of SEPA arose as a result of consultation with and support from the Jersey Bankers Association. It means that payments in Euros are able to be made by Jersey banks to and from banks in the SEPA that are subject to the protections and support of the SEPA rules.

Membership of the SEPA has been welcomed by industry. The initiative improves the efficiency of cross-border payments and turn the fragmented national markets for euro payments into a single domestic one that reduces the cost of moving euro funds across Europe. The initiative has included the development of common standards, procedures and infrastructure to enable economies of scale.

The European Union Legislation (Payment Services) (Jersey) Regulations 2015 (the “**SEPA Regulations**”) introduced a legislative framework in order for banks in Jersey to be able to participate in the SEPA. The draft European Union Legislation (Payment Services) (Amendment) (Jersey) Regulations 2015 (the “**Draft SEPA Amendment Regulations**”) will update the SEPA Regulations as a consequence of changes to the associated EU legislation.

The SEPA Regulations implemented in Jersey provisions that are substantially equivalent to those of Titles III and IV of European Union (“**EU**”) Directive 2007/64/EC, which is commonly referred to as the ‘Payment Services Directive’ (“**PSD1**”).

Title III of PSD1 sets out the information that a ‘payment service provider’ (generally a bank) must provide its customer with when processing a payment (e.g. information on the charges, processing timescale, etc.). Title IV sets out the respective rights and obligations of the payment service provider and its customer when payments are made.

In November 2015, the EU adopted Directive 2015/2366 – commonly referred to as the ‘Second Payment Services Directive’ (“**PSD2**”). In essence, PSD2 updates and

replaces PSD1. Key changes are: the bringing into scope of transactions in which one of the payment service providers is outside the SEPA; and enhancing consumer protections. SEPA members must transpose PSD2 into national legislation by 13th January 2018.

To ensure Jersey's continuing membership of the SEPA – and, therefore, Jersey banks' access to SEPA payment systems – the SEPA Regulations need to be updated to reflect, to the extent relevant to the Island's membership of the SEPA, the changes made to Titles III and IV of PSD1 by PSD2.

Membership of the SEPA is not to be confused with membership of the euro area, which is an economic and monetary union of 19 EU Member States that have adopted the euro currency as their sole legal tender.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers to the Chief Minister, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

There are no financial or manpower costs directly arising from the adoption of the draft Regulations.

Explanatory Note

These Regulations amend the EU Legislation (Payment Services – SEPA) (Jersey) Regulations 2015 (the “principal Regulations” as defined in *Regulation 1*) to implement (to the extent relevant to Jersey’s membership of SEPA and in line with the United Kingdom) 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 (OJ L 337, 23.12.2015, p. 35). The amendments bring into scope transactions in which one of the payment service providers involved in the transaction is outside the SEP statutory area (as defined in Regulation 1(1) of the principal Regulations) and make a number of enhancements to the consumer protection elements of the principal Regulations.

These Regulations come into force on 13th January 2018 except that provision is made for Regulation 35 (which inserts new Regulation 44B into the principal Regulations) to come into force on the same day as Regulation 100 of the United Kingdom’s Payment Services Regulations 2017 (S.I. 2017/752) comes into force.



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Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 2 of the European Union Legislation (Implementation) (Jersey) Law 2014¹, have made the following Regulations –

1 Interpretation

In these Regulations “principal Regulations” means the EU Legislation (Payment Services – SEPA) (Jersey) Regulations 2015².

2 Regulation 1 amended

In Regulation 1 of the principal Regulations –

- (a) before the definition “BBAN” there shall be inserted the following definitions –

“ ‘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 personalized security credentials;”;

- (b) in the definition “electronic money” for the words “Community Provisions (Wire Transfers) (Jersey) Regulations 2007³” there shall be substituted the words “EU Legislation (Information Accompanying Transfers of Funds) (Jersey) Regulations 2017⁴”;

- (c) for the definition “group” there shall be substituted the following definition –

“ ‘group’ has the meaning given by Article 4 of the Payment Services Directive;”;

- (d) in the definition “means of distance communication” for the words “any means” there shall be substituted the words “a method”;

- (e) in the definition “payment service user” the word “either” shall be deleted;
- (f) for the definition “Payment Services Directive” there shall be substituted the following definition –
- “ ‘Payment Services Directive’ means 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 (OJ L 337, 23.12.2015, p. 35);”;
- (g) after the definition “payment transaction” there shall be inserted the following definition –
- “ ‘personalized security credentials’ means personalized features provided by a payment service provider to a payment service user for the purposes of authentication;”;
- (h) after the definition “reference exchange rate” there shall be inserted the following definition –
- “ ‘remote payment transaction’ means a payment transaction initiated through the internet or otherwise initiated through a device that can be used for distance communication;”;
- (i) for the definition “single payment service contract” there shall be substituted the following definition –
- “ ‘single payment service contract’ means a contract for a single payment transaction not covered by a framework contract;”;
- (j) after the definition “single payment service contract” there shall be inserted the following definition –
- “ ‘strong customer authentication’ means authentication based on the use of 2 or more elements that are independent, in that the breach of one element does not compromise the reliability of any other element, and designed in such a way as to protect the confidentiality of the authentication data, with the elements falling into 2 or more of the following categories –
- (a) something known only by the payment service user (‘knowledge’);
- (b) something held only by the payment service user (‘possession’);
- (c) something inherent to the payment service user (‘inherence’);”;
- (k) in the definition “unique identifier” in paragraph (a) for the words “the other” there shall be substituted the word “another”.

3 Regulation 2 amended

In Regulation 2 of the principal Regulations –

- (a) for paragraph (1) there shall be substituted the following paragraphs –

- “(1) This Part applies to payment services where –
- (a) the services are provided from an establishment maintained by a payment service provider in Jersey; 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 paragraph (1)(b)(ii), this Part applies only in respect of those parts of a transaction which are carried out in the SEP statutory area.”;
- (b) in paragraph (5) –
 - (i) for sub-paragraph (a) there shall be substituted the following sub-paragraph –
 - “(a) a payment transaction from a payer to a payee through a commercial agent authorized 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;”,
 - (ii) in sub-paragraph (f), after the words “a payment transaction” there shall be inserted the words “and related service;
 - (c) after paragraph (5) there shall be inserted the following paragraph –
 - “(6) This Part shall continue to apply to a payment service provided prior to 13th January 2018 as if the EU Legislation (Payment Services – SEPA) (Amendment) (Jersey) Regulations 201-⁵ had not been enacted.”.

4 Regulation 4 amended

In Regulation 4 of the principal Regulations –

- (a) in paragraph (1), after the words “in paragraph (2)”, there shall be inserted the words “in relation to the service”;
- (b) in paragraph (2)(c), the words “the amounts of” shall be deleted.

5 Regulation 5 amended

In Regulation 5(1) of the principal Regulations, after the words “in paragraph (2)”, there shall be added the words “in relation to the service to be provided by the payer’s payment service provider”.

6 Regulation 6 amended

In Regulation 6(1) of the principal Regulations, after the words “in paragraph (2)”, there shall be added the words “in relation to the service provided by the payee’s payment service provider”.

7 Regulation 8 amended

In Regulation 8(2) of the principal Regulations, for the word “supplying”, there shall be substituted the word “providing”.

8 Regulation 10 amended

In Regulation 10 of the principal Regulations –

- (a) in paragraph (3), for the words “immediately and without charge” there shall be substituted the words “without charge at any time”;
- (b) in paragraph (4)(a), for the words “the changes”, there shall be substituted the words “any such changes”.

9 Regulation 11 amended

In Regulation 11 of the principal Regulations –

- (a) in paragraph (3), for the words “Subject to paragraph (4), any” there shall be substituted the word “Any”;
- (b) for paragraph (4) there shall be substituted the following paragraph –
 - “(4) The payment service provider shall not charge the payment service user for the termination of the contract under paragraph (1) or (2) after the expiry of 6 months of the contract.”.

10 Regulation 13 amended

In Regulation 13 of the principal Regulations –

- (a) for paragraph (1) there shall be substituted the following paragraph –
 - “(1) The payer’s payment service provider under a framework contract shall provide to the payer the information referred to in paragraph (2) in respect of each payment transaction on paper or on another durable medium at least once per month free of charge.”;
- (b) in paragraph (2)(a) for the word “each” there shall be substituted the word “the”;
- (c) for paragraph (3) there shall be substituted the following paragraphs –
 - “(3) A framework contract may include a condition that the payer may require the information referred to in paragraph (2) 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) Paragraph (1) does not require a payment service provider to provide information where –
 - (a) the information has been, or is to be, provided or made available as required by the payer under a condition of the type referred to in paragraph (3); or
 - (b) more than one month has passed since information was last provided, but there are no payment transactions in respect of which the payment service provider has not previously provided or made available information in accordance with paragraph (1) or as required by the payer under a condition of the type referred to in paragraph (3).”.

11 Regulation 14 amended

In Regulation 14 of the principal Regulations –

- (a) for paragraph (1) there shall be substituted the following paragraph –
 - “(1) The payee’s payment service provider under a framework contract shall provide to the payee the information referred to in paragraph (2) in respect of each payment transaction on paper or on another durable medium at least once per month free of charge.”;
- (b) in paragraph (2)(a), the words “,where appropriate,” shall be deleted;
- (c) after paragraph (3), there shall be added the following paragraph –
 - “(4) Paragraph (1) does not require a payment service provider to provide information where –
 - (a) the information has been, or is to be, provided or made available in accordance with a condition of the type referred to in paragraph (3); or
 - (b) more than one month has passed since information was last provided, but there are no payment transactions in respect of which the payment service provider has not previously provided or made available information in accordance with paragraph (1) or in accordance with a condition of the type referred to in paragraph (3).”.

12 Regulation 18 amended

In Regulation 18 of the principal Regulations for paragraphs (4) and (5) there shall be substituted the following paragraphs –

- “(4) The payment service provider, or any relevant other party involved in the transaction, shall (before the initiation of a payment transaction) inform the payment service user of any charge requested by the payment service provider or other party, as the case may be, for the use of a particular payment instrument.

- (5) A person who (being such other party) fails to comply with paragraph (4) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.
- (6) A payer or payment service user is not obliged to pay a charge of the type referred to in paragraph (1) or (4) if the payer or payment service user was not informed of the full amount of the charge in accordance with the relevant paragraph.”.

13 Regulation 18A inserted

After Regulation 18 of the principal Regulations there shall be inserted the following Regulation –

“18A Burden of Proof on payment service provider

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.”.

14 Regulation 19 amended

In Regulation 19 of the principal Regulations –

- (a) for paragraph (1) there shall be substituted the following paragraphs –

“(1) This Part applies to payment services where –

- (a) the services are provided from an establishment maintained by a payment service provider in Jersey; 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 paragraph (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) Regulations 21(2), 30, 31, 35, 36(1) and (2), 40, 41, 42 and 43 do not apply.”;

- (b) after paragraph (3) there shall be substituted the following paragraph –

“(4) This Part shall continue to apply to a payment service provided prior to 13th January 2018 as if the EU Legislation (Payment Services – SEPA) (Amendment) (Jersey) Regulations 201- had not been enacted.”.

15 Regulation 20 amended

In Regulation 20(2) of the principal Regulations –

- (a) in sub-paragraph (a), for the words “and 29(3)” there shall be substituted the words “and 29(4)”;
- (b) in sub-paragraph (c), for the words “the payment service provider is not required under Regulation 33(1)” there shall be substituted the words “despite Regulation 33(1), the payment service provider is not required”.

16 Regulation 21 amended

In Regulation 21 of the principal Regulations, for paragraphs (2) and (3) there shall be substituted the following paragraphs –

- “(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 the payee’s payment service provider; and
 - (b) the payer pays any charges levied by the payer’s payment service provider.
- (3) The payee’s payment service provider 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.”.

17 Regulation 24 amended

In Regulation 24 of the principal Regulations –

- (a) in the heading, after the words “payment instruments” there shall be added the words “and personalized security credentials”;
- (b) for paragraph (2), there shall be substituted the following paragraphs –
 - “(2) Paragraph (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 personalized security credentials relating to a payment instrument.”.

18 Regulation 25 amended

In Regulation 25 of the principal Regulations –

- (a) in paragraph (1) –
 - (i) in sub-paragraph (a), for the words “features of the payment instrument” there shall be substituted the word “credentials”,
 - (ii) for sub-paragraph (c)(ii) there shall be substituted the following clause –
 - “(ii) to request that, in accordance with Regulation 23(6), the use of the payment instrument is no longer stopped;”,
 - (iii) for sub-paragraph (e) there shall be substituted the following sub-paragraphs –
 - “(e) provide the payment service user with an option to make a notification under Regulation 24(1)(b) free of charge, and ensure that any costs charged are directly attributed to the replacement of the payment instrument;
 - (f) prevent any use of the payment instrument once notification has been made under Regulation 24(1)(b).”;
- (b) for paragraph (2) there shall be substituted the following paragraph –
 - “(2) The payment service provider bears the risk of sending to the payment service user a payment instrument or any personalized security credentials relating to it.”.

19 Regulation 27 amended

In Regulation 27 of the principal Regulations –

- (a) in paragraph (1), after the words “some other deficiency” there shall be added the words “in the service provided by the payment service provider”;
- (b) for paragraphs (2) and (3) there shall be substituted the following paragraphs –
 - “(2) Where a payment service user denies having authorized an executed payment transaction, the use of a payment instrument recorded by the payment service provider shall not in itself necessarily be sufficient to prove that –
 - (a) the payment transaction was authorized by the payer; or
 - (b) the payer acted fraudulently or failed with intent or gross negligence to comply with Regulation 24.
 - (3) If a payment service provider claims that a payer acted fraudulently or failed with intent or gross negligence to comply with Regulation 24, the payment service provider shall provide supporting evidence to the payer.”.

20 Regulation 28 substituted

For Regulation 28 of the principal Regulations there shall be substituted the following Regulation –

“28 Payment service provider’s liability for unauthorized payment transactions

- (1) Subject to Regulations 26 and 27, where an executed payment transaction was not authorized in accordance with Regulation 22, the payment service provider shall –
 - (a) refund the amount of the unauthorized payment transaction to the payer; and
 - (b) where applicable, restore the debited payment account to the state it would have been in had the unauthorized payment transaction not taken place.
- (2) The payment service provider shall provide a refund under paragraph (1)(a) as soon as practicable, and in any event no later than the end of the business day following the day on which it becomes aware of the unauthorized payment transaction.
- (3) Paragraph (2) does not apply where the payment service provider has reasonable grounds to suspect fraudulent behaviour by the payment service user and notifies a police officer mentioned in Article 33(1)(a) or (b) of the Proceeds of Crime (Jersey) Law 1999⁶ of those grounds in writing.
- (4) When crediting a payment account under paragraph (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 unauthorized payment transaction was debited.”

21 Regulation 29 substituted

For Regulation 29 of the principal Regulations there shall be substituted the following Regulation –

“29 Payer’s or payee’s liability for unauthorized payment transactions

- (1) Subject to paragraphs (2), (3) and (4), a payment service provider which is liable under Regulation 28(1) may require that the payer is liable up to a maximum of £35 for any losses incurred in respect of unauthorized payment transactions arising from the use of a lost or stolen payment instrument, or from the misappropriation of a payment instrument.
- (2) Paragraph (1) does not apply if –
 - (a) the loss, theft or misappropriation of the payment instrument was not detectable by the payer prior to the payment, except where the payer acted fraudulently; or
 - (b) the loss was caused by acts or omissions of an employee, agent or branch of a payment service provider or of an entity which carried out activities on behalf of the payment service provider.
- (3) The payer shall be liable for all losses incurred in respect of an unauthorized payment transaction where the payer –

- (a) has acted fraudulently; or
 - (b) has with intent or gross negligence failed to comply with Regulation 24.
- (4) Except where the payer has acted fraudulently, the payer shall not be liable for any losses incurred in respect of an unauthorized payment transaction –
- (a) arising after notification under Regulation 24(1)(b);
 - (b) where the payment service provider has failed at any time to provide, in accordance with Regulation 25(1)(c), appropriate means for notification; or
 - (c) where Regulation 44B requires the application of strong customer authentication, but the payer’s payment service provider does not require strong customer authentication.
- (5) Where Regulation 44B 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 Regulation 28(1).”.

22 Regulation 30 amended

In Regulation 30 of the principal Regulations –

- (a) for paragraph (3) there shall be substituted the following paragraph –
 - “(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 (EU) No. 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).”;
- (b) paragraphs (4) and (5) shall be renumbered as paragraphs (5) and (6) respectively;
- (c) after paragraph (3) there shall be inserted the following paragraph –
 - “(4) When crediting a payment account under paragraph (1), a payment service provider shall ensure that the credit value date is no later than the date on which the amount of the unauthorized payment transaction was debited.”.

23 Regulation 31 amended

In Regulation 31 of the principal Regulations –

- (a) in paragraph (2), for the words “ascertain whether” there shall be substituted the words “prove that”;

- (b) in paragraph (3), for the words “Subject to paragraph (4), the” there shall be substituted the word “The”;
- (c) for paragraphs (4) and (5) there shall be substituted the following paragraphs –
 - “(4) Any refund or justification for refusing a refund shall be provided within 10 business days of receiving a request for a refund or, where applicable, within 10 business days of receiving any further information requested under paragraph (2).
 - (5) If the payment service provider requires further information under paragraph (2), it may not refuse the refund until it has received further information from the payer.”.

24 Regulation 32 amended

In Regulation 32 of the principal Regulations –

- (a) paragraphs (2), (3), (4) and (5) shall be renumbered as paragraphs (3), (4), (5) and (6) respectively;
- (b) for paragraph (1), there shall be substituted the following paragraphs –
 - “(1) A payer’s payment service provider shall not debit the payment account before receipt of a payment order.
 - (2) Subject to paragraphs (3) to (6), for the purposes of these Regulations the time of receipt of a payment order is the time at which the payment order is received by the payer's payment service provider.”;
- (c) in renumbered paragraph (6), for the words “paragraph (4)” there shall be substituted the words “paragraph (5)”.

25 Regulation 33 amended

In Regulation 33 of the principal Regulations –

- (a) in paragraph (3), for the word “notification” there shall be substituted the word “refusal”;
- (b) in paragraph (5) for the words “framework contract have been satisfied, the payment service provider” there shall be substituted the words “framework contract with the account servicing payment service provider have been satisfied, the account servicing payment service provider”.

26 Regulation 34 amended

In Regulation 34 of the principal Regulations –

- (a) in paragraph (2), the words “transmitting the payment order or” shall be deleted;
- (b) in paragraph (4), for the words “Regulation 32(4)” there shall be substituted the words “Regulation 32(5)”;

- (c) for paragraph (5)(a) there shall be substituted the following sub-paragraph –
 - “(a) agreed between the payment service user and the relevant payment service provider or providers; and;”;
- (d) in paragraph (6), after the words “may provide for the” there shall be inserted the word “relevant”.

27 Regulation 35 amended

In Regulation 35 of the principal Regulations –

- (a) in paragraph (2), for the words “may agree that the payment service provider” there shall be substituted the words “may agree for the relevant payment service provider to”;
- (b) in paragraph (3) the word “nevertheless” shall be deleted wherever it occurs.

28 Regulation 36 amended

In Regulation 36(1) of the principal Regulations, for the words “paragraphs (2) and (3)” there shall be substituted the words “paragraph (2)”.

29 Regulation 38 amended

In Regulation 38 of the principal Regulations –

- (a) paragraphs (2) and (3) shall be renumbered as paragraphs (3) and (4) respectively;
- (b) after paragraph (1) there shall be inserted the following paragraph –
 - “(2) Paragraph (3) applies where –
 - (a) the transaction does not involve a currency conversion;
 - (b) the transaction involves only a currency conversion between the euro and pounds sterling or another member State currency, between pounds sterling and another member State currency, or between two other member State currencies; or
 - (c) the transaction involves only one payment service provider.”.

30 Regulation 39 amended

In Regulation 39 of the principal Regulations, for paragraph (3) there shall be substituted the following paragraphs –

- “(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 Regulation 4(2)(a) or paragraph 2(b) of Schedule 1, 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.”.

31 Regulations 40 and 41 substituted

For Regulations 40 and 41 of the principal Regulations there shall be substituted the following Regulations –

“40 Non-execution or defective or late execution of payment transactions initiated by the payer

- (1) This Regulation applies where a payment order is initiated directly by the payer.
- (2) The payer’s payment service provider shall be liable to the payer for the correct execution of the payment transaction unless it can prove to the payer and, where relevant, to the payee’s payment service provider, that the payee’s payment service provider received the amount of the payment transaction in accordance with Regulation 36(1) and (2).
- (3) Where the payer’s payment service provider is liable under paragraph (2), it 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 paragraph (3) shall be no later than the date on which the amount was debited.
- (5) If the payer’s payment service provider proves that the payee’s payment service provider received the amount of the payment transaction in accordance with Regulation 36, 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 paragraph (5)(b) shall be no later than the date on which the amount would have been value dated if the transaction had been executed correctly.
- (7) Where a payment transaction is executed late, the payee’s payment service provider shall, on receipt of a request from the payer’s payment service provider on behalf of the payer, ensure that the

credit value date for the payee's payment account is no later than the date the amount would have been value dated if the transaction had been executed correctly.

- (8) Regardless of liability under this Regulation, the payer's payment service provider shall, on request by the payer, immediately and without charge –
- (a) make efforts to trace any non-executed or defectively executed payment transaction; and
 - (b) notify the payer of the outcome.

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

- (1) This Regulation applies where a payment order is initiated by the payee.
- (2) The payee's payment service provider shall be liable to the payee for the correct transmission of the payment order to the payer's payment service provider in accordance with Regulation 36(4).
- (3) Where the payee's payment service provider is liable under paragraph (2), it shall immediately re-transmit the payment order in question to the payer's payment service provider.
- (4) The payee's payment service provider shall also ensure that the transaction is handled in accordance with Regulation 38, such that the amount of the transaction –
- (a) is at the payee's disposal immediately after it is credited to the payee's payment service provider's account; and
 - (b) is value dated on the payee's payment account no later than the date the amount would have been value dated if the transaction had been executed correctly.
- (5) The payee's payment service provider shall, on request by the payee and free of charge, make immediate efforts to trace the payment transaction and notify the payee of the outcome.
- (6) Subject to paragraph (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 paragraph (2) in respect of a non-executed or defectively executed payment transaction, the payer's payment service provider shall be liable to the payer and shall, as appropriate and immediately –
- (a) refund to the payer the amount of the payment transaction; and
 - (b) restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.
- (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 the payee’s payment service provider has received the amount of the payment transaction, paragraph (6) does not apply and the payee’s payment service provider shall value date the amount on the payee’s payment account no later than the date the amount would have been value dated if the transaction had been executed correctly.”.

32 Regulation 42 amended

In Regulation 42 of the principal Regulations after the word “defective” there shall be inserted the words “or late”.

33 Regulation 43 substituted

For Regulation 43 of the principal Regulations there shall be substituted the following Regulation –

“43 Right of recourse

Where the liability of a payment service provider under Regulation 28, 40 or 41 is attributable to another payment service provider or an intermediary, including where there is a failure to use strong customer authentication as required by Regulation 44B, the other payment service provider or intermediary shall compensate the first-mentioned provider for any losses incurred or sums paid pursuant to those Regulations.”.

34 Regulation 44A inserted

After Regulation 44 of the principal Regulations there shall be inserted the following Regulation –

“44A Consent for use of personal data

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.”.

35 Regulation 44B inserted

After new Regulation 44A of the principal Regulations there shall be inserted the following Regulation –

“44B Authentication

- (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 its payment account online;

- (b) initiates an electronic payment transaction; or
 - (c) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.
- (2) 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' personalized security credentials.
- (4) Paragraphs (1), (2) and (3) are subject to any exemptions from the requirements in those paragraphs provided for in regulatory technical standards adopted under Article 98 of the Payment Services Directive.”.

36 Regulations 51 amended

In Regulation 51(6)(a) of the principal Regulation, for the words “paragraph (1)(b)” there shall be substituted the words “paragraph (7)”.

37 Schedule 1 amended

In Schedule 1 to the principal Regulations –

- (a) in paragraph 2(d), for the words “as defined in” there shall be substituted the words “in accordance with”;
- (b) in paragraph 3 –
 - (i) for sub-paragraph (a) there shall be substituted the following sub-paragraph –
 - “(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;”;
 - (ii) in sub-paragraph (c) before the word “if” there shall be inserted the words “where relevant and”;
- (c) in paragraph 4(a), after the words “payment service user’s equipment” there shall be inserted the words “and software”;
- (d) in paragraph 5 –
 - (i) sub-paragraphs (b), (c), (d), (e) and (f) shall be renumbered as sub-paragraphs (c), (d), (e), (f) and (g),
 - (ii) after sub-paragraph (a), there shall be inserted the following sub-paragraph –

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- “(b) the secure procedure by which the payment service provider will contact the payment service user in the event of suspected or actual fraud or security threats;”,
 - (iii) in renumbered sub-paragraph (c), for the words “Regulation 23” there shall be substituted the words “Regulation 23(2), (3), (4), (5) and (6)”;
 - (e) in paragraph 6(c), before the words “the right of” there shall be inserted the words “where relevant.”;
 - (f) in paragraph 7(b), for the words “out-of-court complaint and redress” there shall be substituted the words “alternative dispute resolution”.

38 Citation and commencement

These Regulations may be cited as the EU Legislation (Payment Services – SEPA) (Amendment) (Jersey) Regulations 201- and shall come into force on 13th January 2018 except that Regulation 35 shall come into force on the same day as Regulation 100 of the United Kingdom’s Payment Services Regulations 2017 (S.I. 2017/752) comes into force.

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- 1 *chapter 17.245*
 - 2 *chapter 17.245.54*
 - 3 *chapter 17.245.57*
 - 4 *R&O.57/2017*
 - 5 *P.99/2017*
 - 6 *chapter 08.780*