

Statutory Document No. 2018/0155



*Bills of Exchange Act 1883*

## **BILLS OF EXCHANGE (ELECTRONIC INSTRUMENTS) (EVIDENCE OF PAYMENT AND COMPENSATION FOR LOSS) REGULATIONS 2018**

*Approved by Tynwald: 18 July 2018*  
*Coming into Operation: 1 July 2018*

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The Treasury makes the following Regulations under sections 89D(1) and 89E(1) of the Bills of Exchange Act 1883.

### **1 Title**

These Regulations are the Bills of Exchange (Electronic Instruments) (Evidence of Payment and Compensation for Loss) Regulations 2018.

### **2 Commencement**

If approved by Tynwald these Regulations come into operation on 1 July 2018.

### **3 Interpretation**

- (1) In these Regulations —
- “**the Act**” means the Bills of Exchange Act 1883 and any references to sections means sections of this Act;
  - “**banker**” has the same meaning as that specified in the Act;
  - “**creator of the instrument**” has the same meaning as that specified in section 89D of the Act;
  - “**responsible banker**” has the same meaning as that specified in section 89E(3) of the Act;

### **4 Provision of copy of a paid instrument**

- (1) A banker who has paid an instrument as a result of presentment under section 89A must, if requested to do so by the creator of the instrument, provide a copy of the instrument to the creator before the end of the period of 10 working days beginning with the first working day after the banker received the request.

- (2) The copy of the instrument must be a complete and accurate reproduction of both faces of the instrument.
- (3) The copy of the instrument must be accompanied by the following information —
  - (a) confirmation of —
    - (i) the decision of the banker, or a person authorised to pay or refuse payment on the banker's behalf, that the payment should be made and the date on which that decision was made; and
    - (ii) the automated instruction for payment of the instrument, and the date of that automated instruction.
  - (b) the value of the payment made to the banker authorised to collect payment of the instrument;
  - (c) the sort code and account number of the account of the creator of the instrument; and
  - (d) any reference number allocated by the banker authorised to collect payment of the instrument, used to identify the payment instrument.
- (4) The copy and accompanying information must be provided —
  - (a) on paper; or
  - (b) in another format which —
    - (i) enables the creator of the instrument to store the copy and information in a way which is accessible for future reference for a period of time adequate for the purposes for which the copy and information is provided to the creator; and
    - (ii) allows the unchanged reproduction of the copy and information.
- (5) If the copy and accompanying information are provided in accordance with paragraph 4(b) and the creator of the instrument requests that the copy and accompanying information be provided on paper, they must be provided on paper.
- (6) The first copy of an instrument provided under paragraph (1) must be provided free of charge.
- (7) If the creator of an instrument requests more than one copy of an instrument, or makes more than one request for a copy of the same instrument —
  - (a) the banker who paid the instrument may request that the creator of the instrument pay a fee for the provision of the copies of the instrument other than the first; and

- (b) if the banker makes such a request, until the creator of the instrument has paid such a fee the banker need not comply with the requirement in paragraph (1) in relation to copies other than the first.
- (8) In paragraph (7), the references to a fee are to a fee which reasonably corresponds to the banker's costs of providing the copies of the instrument and accompanying information other than the first copy.

## **5 Copy of instrument as evidence of payment**

A copy of an instrument and the accompanying information provided in accordance with regulation 4 is evidence of receipt by the payee named in the instrument of the sum payable by the instrument.

## **6 Responsible banker to compensate eligible claimants**

- (1) Subject to the following provisions of these Regulations, a responsible banker must compensate a person ("the claimant") for loss incurred by the claimant if —
  - (a) the claimant incurred the loss in connection with electronic presentment or purported electronic presentment of an instrument;
  - (b) the claimant is —
    - (i) the customer of the banker which has paid the instrument, from whose account the payment was debited; or
    - (ii) the banker which paid the instrument;
  - (c) the loss resulted wholly or in part from a factor other than —
    - (i) gross negligence on the part of the claimant; or
    - (ii) fraudulent activity in which the claimant was knowingly involved;
  - (d) the claimant has notified a banker in accordance with regulation 7(1) and made a claim, in accordance with regulation 7(3) and (4); and
  - (e) a criterion in paragraph (2) is met.
- (2) The criteria in this paragraph are that —
  - (a) the electronic presentment or purported electronic presentment of the instrument was of a type described in section 89E(2)(c), (d) or (e); or
  - (b) the instrument was collected for or paid to a person other than the true owner of the instrument.
- (3) Paragraph (1) applies irrespective of fault for the loss incurred by the claimant (but regulation 9 makes provision for the reduction in the amount of compensation to be paid in certain circumstances).

- (4) In this regulation —
- (a) “gross negligence” has the same meaning as in Directive 2015/2366/EU of the European Parliament and of the Council of 25<sup>th</sup> November 2015 (*the Second Payment Services Directive*).
  - (b) references to “loss” are to loss arising directly from the debiting of funds from the claimant’s account and do not include any further loss arising in consequence thereof.

## 7 Procedure for making and determining claims

- (1) Before making a claim for compensation under regulations 6 to 10—
- (a) where the claimant is the customer of the banker which paid the instrument, from whose account the payment was debited, the claimant must notify that banker in writing of the loss to which the claim relates; or
  - (b) where the claimant is the banker which paid the instrument, the claimant must notify the responsible banker in writing of the loss to which the claim relates.
- (2) Where the banker which paid the instrument has been notified in accordance with paragraph (1)(a), that banker must notify the responsible banker in writing of that notification before the end of the period of 5 working days starting on the first working day after the banker received the notification.
- (3) A claim for compensation under regulations 6 to 10 must —
- (a) be made to the responsible banker in writing; and
  - (b) include all information relating to the claim necessary for the responsible banker to assess whether the conditions in regulation 6 have been met.
- (4) A claim for compensation under regulations 6 to 10 —
- (a) may be made only if —
    - (i) the period of 56 days beginning on the day after the day on which the claimant notified the loss in accordance with paragraph (1) has expired; and
    - (ii) compensation for the total loss to which the claim relates has not been paid to the claimant (including another scheme); and
  - (b) must be made before the end of the period of 6 years beginning on the day after the day on which the loss was incurred.
- (5) Subject to paragraph (7), the responsible banker must before the end of the period of 15 working days beginning on the first working day after the day on which the responsible banker receives a claim for

compensation under regulations 6 to 10, send to the claimant in writing —

- (a) acceptance of the claim, and confirmation of —
    - (i) the amount that has been paid in respect of the claim; or
    - (ii) the amount that will be paid in respect of the claim and the date by which such amount will be paid, which must be before the end of the period of 10 working days beginning with the first working day after the day on which the acceptance is sent;
  - (b) refusal of the claim and the reason behind the refusal; or
  - (c) a request for further information to enable the responsible banker to assess the claim.
- (6) If the responsible banker requests further information under paragraph (5)(c), the responsible banker must in any event send the claimant an acceptance or refusal of the claim as described in paragraph (5)(a) or (b) within the period of 120 days beginning with the day after that on which the responsible banker received the claim.
- (7) The responsible banker is not required to give a notification of refusal in accordance with paragraph (5)(b) if —
- (a) the responsible banker has reasonable grounds to suspect fraudulent activity in which the claimant was knowingly involved;
  - (b) the responsible banker has notified the appropriate authority of such suspected fraudulent activity and grounds; and
  - (c) the responsible banker considers that giving a notification in accordance with paragraph (5)(b) would be likely to prejudice any investigation into the suspected fraudulent activity.

## **8 Protection of potential claimant by section 80**

Regulation 6 does not require the responsible banker to compensate the claimant if the claimant is entitled to the same rights, and is placed in the same position, as if payment of the instrument had been made to the true owner thereof pursuant to section 80 (protection to banker and drawer where cheque is crossed).

## **9 Contributory behaviour by the claimant**

Where a claimant incurs a loss in respect of which a responsible banker is liable to pay compensation under regulation 6, and that loss results wholly or in part from an act or omission of the claimant, the amount of the compensation to be paid by the responsible banker to the claimant is reduced in proportion to the contribution of such act or omission to the loss.

**10 Action for damages**

A failure by a banker to pay the full amount of compensation to be paid to a claimant under regulations 6 to 10 is actionable at the suit of the claimant, subject to the defences and other incidents applying to actions for breach of statutory duty.

**MADE 20<sup>th</sup> JUNE 2018**

**A L CANNAN**  
*Minister for the Treasury*

*EXPLANATORY NOTE*

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

These Regulations support the presentment for payment of instruments by electronic means as provided for under Part 4A of the Bills of Exchange Act 1883.

Regulations 4 and 5 provide for banks to supply copies of paid instruments as evidence of payment. Regulations 6 to 10 govern compensation for loss arising out of the presentment of instruments by electronic means.