

Call for Input: the FCA's approach to the current payment services regime



February 2016

Sending us your input

Please submit your answers through the online form by 23 March 2016. If you are unable to use the form, either email Paymentservices@fca.org.uk with the subject title 'Call for Input: the FCA's approach to the current payment services regime' or write to the address below.

Banking and Payments Policy
Strategy & Competition Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

If writing to us, please structure your input to match the questions on page 7 and include your name and contact details.

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1. Introduction

- 1.1** In 2007 the EU introduced the Payment Services Directive (PSD). The PSD aimed to:
- create a class of regulated firms known as payment institutions (which, for those based in the UK, must be authorised or registered by the FCA)
 - enhance competition, efficiency and innovation in the European payments market by removing barriers to entry and ensuring fair market access, and
 - establish a set of rules on the information requirements, and the rights and obligations, applicable to all payment service providers (PSPs) and end-users in the EU.
- 1.2** The Directive was transposed into UK law in 2009 by HM Treasury through the Payment Services Regulations (PSRs) and by a small number of related FCA rules set out in our Handbook of Rules and Guidance (the Handbook). These regulations and rules form the basis of the current payment services regime in the UK. Under this regime, the FCA has regulated payment services since 2009.
- 1.3** As the main competent authority under the Directive, the FCA is responsible for the authorisation/ registration and prudential requirements for payment institutions¹ and for the conduct of business rules for the provision of payment services by all PSPs. The Payment Systems Regulator is competent authority for provisions relating to access to payment systems.

¹ The PSRs created a new class of firms authorised or registered to provide payment services called payment institutions. Examples of Payment Institutions include money remitters, non-bank credit card issuers and merchant acquirers. Banks and building societies who provide payment services are required to comply with the code of conduct requirements of the PSRs but do not need to be authorised under the PSRs because they are authorised under the Financial Services and Markets Act (FSMA).

2. Focus of this Call for Input

- 2.1** This Call for Input (Cfi) seeks views on existing guidance the FCA published in 2009 to assist firms in complying with their legal requirements under the payment services regime.
- The Payment Services Approach Document – aims to help firms navigate through the PSRs and our relevant rules, provides guidance on our requirements and, together with our regulatory guides (see Annex 1), sets out our general regulatory approach in this area.
 - Perimeter Guidance Manual (PERG 15) – contains guidance aimed at helping businesses consider whether they need to be authorised or registered for the purposes of providing payment services in the UK.
- 2.2** Other documents that may be useful to read for context are listed in Annex 1.
- 2.3** It is important to reiterate that HM Treasury are responsible for the PSRs and the maximum harmonising nature of PSD limits considerably the scope for member states (and competent authorities such as the FCA) to depart from or add to the provisions of the Directive.
- 2.4** This should set the context for the Cfi. We seek views on how we have approached the PSRs through the documents above, rather than on the PSRs themselves.

3. Why are we asking for this input?

- 3.1** In December 2015 the EU published Directive 2015/2366: a revised Payment Services Directive (PSD2) which will amend the current rules for PSPs. HM Treasury will be responsible for transposing this Directive into national law by January 2018. In light of these changes we intend to update our Approach Document and PERG 15.
- 3.2** Before doing so, we seek views on whether these documents have kept pace with market developments and growth in payment services, so that we can address any existing issues and incorporate necessary changes when we update them.
- 3.3** Like PSD, PSD2 is mainly a 'maximum harmonising' directive which means that member states have very limited discretion as to what rules to implement. Given the text of PSD2 has been finalised, there is no scope to re-open issues at the EU level and we are not seeking views on the text of PSD2.
- 3.4** We are also not seeking views on how PSD2 should be implemented – this is a matter for HM Treasury and we expect them to consult on it in due course. Our intention is to gather input more specifically on the documents above and to build on relevant feedback we have already received to date, for example through our previous Call for Input on Regulatory barriers to innovation in digital and mobile solutions.

4.

Who should read this document?

- 4.1** The PSRs affect firms providing payment services and their customers. These firms include, for example, banks, building societies, e-money issuers, money remitters, non-bank credit card issuers and non-bank merchant acquirers.
- 4.2** We welcome views from anyone interested or affected by the regulatory regime for payment services. This includes PSPs; individuals, businesses or organisations that use payment services; or those that represent PSPs or users.
- 4.3** This CfI will be of particular interest to those who are authorised and regulated by us for payment and e-money services and others who refer to the guidance we provide.

5. Next steps

- 5.1** Beyond this CfI, we will be proactively engaging with relevant stakeholders over the coming months. Details of this engagement will be published on the FCA website.
- 5.2** We also anticipate further consultation over the next two years focusing specifically on changes to our approach brought about by PSD2.
- 5.3** HM Treasury is expected to consult in Summer 2016 on the UK transposition of PSD2. Unless respondents indicate otherwise, we will share any relevant input from this CfI with them.

6. Questions

- Q1:** Since the Approach Document and PERG 15 were published in 2009, have you identified any specific sections of these documents which should be updated to reflect developments in payment services and changes in the market?
- Q2:** Are there any specific parts of the PSRs where the FCA could provide further guidance or clarification in its Approach Document and/or PERG 15 to assist your understanding and/or compliance with the regulatory regime?
- Q3:** If you are regulated under the PSRs or are in the process of applying to be regulated, was the Approach Document and/or PERG 15 useful and, if so, how? If not, please tell us why and what could be improved.
- Q4:** Have you used the interactive [Payment Services e-learning](#) we provide for firms? Did you find it useful?
- Q5:** The FCA provides separate Approach Documents giving guidance to firms on the PSRs and the E-money Regulations (see the [E-money Approach Document](#)). Firms authorised under the Electronic Money Regulations 2011 are also subject to certain provisions of the PSRs and therefore may need to refer to both documents. Whether you currently use both of these Approach Documents or only one, does this structure present any difficulties?
- Q6:** At section 8.11 of the Payment Services Approach Document we provide some guidance on how the PSRs interact with other relevant pieces of legislation (for example, the Consumer Credit Act). Is the current guidance useful and are there any further pieces of legislation that it would be helpful to include in this section?

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Annex 1

Other relevant documents

- 6.1** Our Handbook is an extensive document that sets out the rules and guidance for financial services regulation. A Reader's Guide to the Handbook is available on the [Handbook website](#) together with a User Guide for the online version.
- 6.2** The following documents include relevant provisions:
- Glossary – this provides definitions of terms used elsewhere in the Handbook. Clicking on an italicised term in the Handbook will open up the glossary definition.
 - General Provisions (GEN) – contains provisions on interpreting the Handbook.
 - Supervision Manual (SUP) – describes how people can seek individual guidance on regulatory requirements and the reliance they can place on guidance received.
 - Banking: Conduct of Business sourcebook (BCOBS) – from 1 November 2009, banks and building societies were required to comply with the conduct of business rules for the PSRs. BCOBS sets out conduct of business rules that are complementary to the PSRs, and applies to retail deposit taking, except where this is contrary to the provisions of the Payment Services Directive. The BCOBS Policy Statement ([PS09/6](#)) contains further information about the interaction between BCOBS and the PSRs.
 - Fees Manual (FEES) – contains fees provisions for funding the FCA and the Financial Ombudsman Service relevant to payment service providers.
 - Decision Procedure and Penalties Manual (DEPP) – this contains the procedures we must follow for taking decisions in relation to enforcement action and setting penalties.
 - Dispute Resolution: Complaints sourcebook (DISP) – contains the obligations on PSPs for their own complaint handling procedures. It also sets out the rules concerning customers' rights to complain to the ombudsman service.
- 6.3** The Handbook website also contains the following regulatory guides that are relevant to PSPs:
- Enforcement Guide (EG) – this describes our approach to exercising the main enforcement powers given to us under FSMA and the PSRs.
 - Financial Crime: a guide for firms – this contains guidance on the steps firms can take to reduce their financial crime risk.
 - The Unfair Contracts and Consumer Notices Regulatory Guide (UNFCOG) – this guide explains our powers under the Unfair Terms in Consumer Contracts Regulations 1999 and our approach to exercising them.



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