

Chapter 15

Guidance on the scope of the Payment Services Regulations 2017

15.1 Introduction

The purpose of this chapter is to help businesses in the UK consider whether they fall within the scope of the Second Payment Services Directive 2015/2366/EC (PSD2), as given effect to in the Payment Services Regulations 2017 (the 'PSRs 2017'). The PSRs 2017 create a separate authorisation and registration regime which differs from the authorisation requirements under the Financial Services and Markets Act. In particular, it is aimed at helping these businesses consider whether they need to be separately authorised or registered for the purposes of providing payment services in the UK. References to individual regulations are to the PSRs 2017, unless otherwise stated.

Background

PSD2 provides the legal framework for the operation of a single market in payment services. This includes a harmonised authorisation regime, designed to establish a single licence for payment service providers which are neither deposit-takers nor electronic money institutions.

The relevant payment services, as transposed in the PSRs 2017, are set out fully in Annex 2 to this chapter and include, amongst other things, services relating to the operation of payment accounts (for example, cash deposits and withdrawals from current accounts and flexible savings accounts), execution of payment transactions, card issuing, merchant acquiring, and money remittance. The Directive focuses on electronic means of payment including direct debit, debit card, credit card, standing order, mobile or fixed phone payments and payments from other digital devices as well as money remittance services; it does not apply to cash-only transactions or paper cheque-based transfers.

PSD2 also creates authorisation and registration regimes for firms who provide holders of online payment accounts with payment initiation services and account information services.

Authorised payment institutions and registered account information service providers can provide services on a cross-border basis, using passport rights acquired under PSD2.

All payment service providers (including credit institutions and electronic money institutions) must comply with the conduct of business requirements of the PSRs 2017.

Scope

In terms of scope, the PSRs 2017 are likely to be of relevance to a range of firms including credit institutions, electronic money institutions, the Post Office Limited, money remitters, certain bill payment service providers, card issuers, merchant acquirers, payment initiators, account aggregators and certain electronic communication network service providers. It is also likely to

be relevant to those agents of the above businesses which provide payment services.

Generally speaking, depending on the nature and size of its activities, a business to which the PSRs 2017 apply (other than a credit institution, an electronic money institution, an EEA authorised payment institution or an EEA authorised electronic money institution and their agents) will need to be:

- authorised by the FCA as an authorised payment institution; or
- registered as a "small payment institution"; or
- registered as a registered account information services provider; or
- registered as an agent of an authorised payment institution, EEA authorised payment institution, a small payment institution or a registered account information services provider.

The conditions for authorisation as a payment institution are set out in regulation 6. In addition to the authorisation regime for payment institutions, there is an alternative regime for those which fall within the category of small payment institutions (that is businesses which meet the conditions in regulation 14). Broadly, the category of small payment institutions will only be relevant to firms executing payment transactions with a monthly average of 3 million euros (or an equivalent amount) or less, over a 12 month period and that do not carry on account information services or payment initiation service. Broadly, small payment institutions are not subject to the requirements in Part 3 of the PSRs 2017 (including capital requirements), but they are subject to a registration regime and the conduct of business provisions in Parts 6 and 7. There is a further registration regime for payment service providers providing no payment services other than account information services. The conditions for registration are set out in regulation 18. Registered account information services providers must comply with certain conduct provisions, as set out in the regulations.

The PSRs 2017 also provide for the appointment of agents by authorised payment institutions, small payment institutions and registered account information services providers. These agents are not required to be authorised under regulation 6 but they are required to be registered on the Financial Services Register by their principal (or each of their principals). When the agent's principal is an EEA authorised payment institution, it needs to be registered on the register of the Home State of that payment institution. A business can also provide payment services as an agent of a credit institution, in which case there are no registration requirements under the PSRs 2017. Electronic money institutions can provide payment services through agents, in which case the registration requirements of the Electronic Money Regulations 2011 apply (see PERG 3A).

Exemptions and exclusions

As well as small payment institutions, registered account information services providers and agents, the PSRs 2017 make provision for a limited number of exempt bodies, notably credit unions and municipal banks. The regulations do not apply to these bodies although municipal banks are required to notify the FCA if they propose to provide payment services.

More generally, there is a broad range of activities which do not constitute payment services under Schedule 1 Part 2 to the PSRs 2017. Amongst these excluded activities, set out more fully in Annex 3, are:

- payment transactions through commercial agents acting on behalf of either the payer or the payee;

- cash-to-cash currency exchange activities (for example, bureaux de change);
- payment transactions linked to securities asset servicing (for example, dividend payments, share sales or unit redemptions);
- services provided by technical service providers (which does not include account information services or payment initiation services);
- payment services based on instruments used within a limited network of service providers or for a very limited range of goods or services ('limited network exclusion'); and
- payment transactions for certain goods or services up to certain value limits, resulting from services provided by a provider of electronic communication networks or services ('electronic communications exclusion').

These and other activities are the subject of Q&A in ■ PERG 15.5. A firm will be exempt from authorisation and registration requirements under the regulations to the extent that its activities fall within one or more of the exclusions in Schedule 1 Part 2 to the regulations. In each case, it will be for businesses to consider their own circumstances and whether they fall within the relevant exclusions. However, firms making use of the limited network exclusion must notify us when the total value of payment transactions executed through relevant services exceeds 1 million euros in any 12 month period beginning on or after 13 January 2018, and we will assess whether the notified services fall within this exclusion. Providers of electronic communications networks or services providing services falling within the electronic communications exclusion must notify us and provide us with an annual audit opinion which testifies that the transactions comply with the value limits set out in that exclusion as directed. See <https://www.fca.org.uk/firms/electronic-communications-exclusion>.

Other scope issues

As explained in ■ PERG 15.2, Q13, the regulations also apply in limited circumstances to non-payment service providers, if they provide a currency conversion service. Likewise, a non-payment services provider which imposes charges or offers reductions for the use of a given payment instrument is required to provide information on any such charges or reductions (see regulations 58 and 141).

Transitionals

Subject to the exclusions and exemptions outlined above, a person (other than an EEA payment services provider and its agents, a credit institution, an electronic money institution and certain other specified bodies such as the Post Office) is caught by the authorisation and registration requirements of the PSRs 2017 when it provides payment services, as a regular occupation or business activity, in or from the UK. That said, there are important transitional provisions which delay the need for businesses authorised or registered under the Payment Services Regulations 2009 to re-apply for authorisation or registration under the PSRs 2017, before and during an initial period after the commencement of regulation on 13 January 2018. There is also a transitional provision applying to providers of account information services and payment initiation services which were providing those services before 12 January 2016 – see 15.7.

How does this chapter work?

The chapter is made up of Q&As divided into the following sections:

- General (■ PERG 15.2)

- Payment services (■ PERG 15.3)
- Small payment institutions, agents and exempt bodies (■ PERG 15.4)
- Negative scope/exclusions (■ PERG 15.5)
- Territorial scope (■ PERG 15.6)
- Transitional arrangements (■ PERG 15.7)
- Tables ■ PERG 15 Annex 2 and ■ PERG 15 Annex 3)

Definitions

The PSRs 2017 contain their own definitions which you can find in regulation 2. We refer to some of these in the Q&A including "payment transaction", "payment account", "payment instrument" and "money remittance".

15.2 General

Q1. Why does it matter whether or not we fall within the scope of the PSRs 2017?

Broadly, when you provide payment services, as a regular occupation or business activity

, in the UK and these services do not fall within an exclusion or exemption, you must be:

- (a) an authorised payment institution; or
 - (b) an EEA authorised payment institution; or
 - (c) a small payment institution; or
 - a registered account information services provider or an EEA registered account information service provider; or
 - (d) a credit institution (either one with a Part 4A permission to accept deposits or an EEA credit institution where it is exercising passport rights under paragraph 4 of Annex 1 to the *CRD*); or
 - (e) an electronic money institution or an EEA authorised electronic money institution; or
 - (f) the Post Office Limited, Bank of England, a central bank or government departments and local authorities; or
 - (g) an exempt person (that is a credit union, municipal bank and the National Savings Bank)
- (h) Unless you are one of the above (or acting as an agent – see ■ PERG 15.4), subject to transitional provisions you risk committing a criminal offence under regulation 138.

Q2. Is there anything else we should be reading?

The Q&As complement, and should be read in conjunction with, the PSRs 2017. The FCA provides guidance on its regulatory approach under the PSRs 2017 in its Approach Document.

Q3. How much can we rely on these Q&As?

The answers given in these Q&As represent the FCA's views but the interpretation of financial services legislation is ultimately a matter for the courts. How the scope of the PSRs 2017 affects the regulatory position of any particular person will depend on his individual circumstances. If you have doubts about your position after reading these Q&As, you may wish to seek legal advice. The Q&As do not purport to be exhaustive and are not a substitute for reading the relevant legislation. In addition to FCA guidance, some PSD2 provisions may be the subject of guidance or communications by the European Commission or the European Banking Authority.

Q4. We are a UK firm not authorised under FSMA providing payment services to our clients, as a regular business activity. Are we required to be authorised or registered under the regulations?

Yes, unless the exclusions or exemptions in the regulations apply to you or you are an electronic money institution, an EEA authorised electronic money institution, the Post Office Limited or an agent of a credit institution or electronic money institution. If this is not the case, you need to be:

- authorised by the FCA as an authorised payment institution; or
- registered as a small payment institution; or
- registered as an account information services provider; or
- registered as an agent of an authorised payment institution, EEA authorised payment institution or a small payment institution.

Q5. As a payment institution rather than a credit institution, are we right in thinking that our maintenance of payment accounts does not amount to accepting deposits?

Yes, articles 9AB and 9L of the *Regulated Activities Order* provide that funds received by payment institutions from payment services users with a view to the provision of payment services shall constitute neither deposits nor *electronic money*.

As a payment institution, any payment accounts you hold must only be used in relation to payment transactions (see regulation 33 of the PSRs 2017). A "payment transaction" for these purposes is defined in regulation 2 of the PSRs 2017 as meaning "an act, initiated by the payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee". Our view is that this means that a payment institution cannot hold funds for a payment service user unless accompanied by a payment order for onward transfer (whether to be executed immediately or on a future date). Funds cannot be held indefinitely. They should not be held for longer than is necessary for operational and technical reasons.

The fact that a payment account operated by a payment institution can only be used for payment transactions distinguishes it from a deposit. A deposit can nevertheless be a form of payment account (for example a bank current account is both a deposit and a payment account). For guidance on what constitutes a deposit for the purposes of the regulated activity of "accepting deposits" and guidance on the regulated activity itself, see ■ PERG 2.6.2 G to ■ 2.6.4 G and ■ PERG 2.7.2 G.

A payment institution is not prohibited from paying interest on a payment account but such interest cannot be paid from funds received from customers. More generally, if a payment institution were to offer savings facilities to its customers in the accounts it provides, in our view it would be holding funds not simply in relation to payment transactions and so would be in breach of regulation 33.

Q6. We are a credit card company and a payment institution. We are not a bank. Sometimes our customers will have a positive balance on their account because they have accidentally overpaid or because of refunds. Would this put us in breach of the requirement in regulation 33 that payment accounts held by payment institutions may be used only in relation to payment transactions?

No. In our view, this does not amount to a breach of regulation 33 and nor does the handling of credit balances in the circumstances constitute the activity of accepting deposits.

Q7. We are a credit institution. Do the PSRs 2017 apply to us?

Yes. If you are a credit institution, you will be subject to the conduct of business requirements in the PSRs 2017 to the extent that you provide payment services. The authorisation process applying to UK and non-EEA credit institutions remains that imposed by Part 4A of the Act. Authorised credit institutions will do not though need to apply for a separate Part 4A permission, in order to provide payment services. In other words, if a UK credit institution has a Part IV permission to carry on the regulated activity of accepting deposits, it will not need to be separately authorised to provide payment services in the UK. However, credit institutions intending to provide account information services or payment initiation services should have regard to the notification requirements in ■ SUP 15.8. The UK branch of a non-EEA credit institution with a Part 4A permission to accept deposits is also authorised to provide payment services in the UK.

An EEA credit institution wishing to provide payment services through a UK branch must exercise its passport rights under paragraph 4 of the Annex to the CRD. Similarly, a UK credit institution which wishes to provide payment services in other Member States may exercise its CRD passport rights to do so.

Q8. We are an electronic money institution. Do the PSRs 2017 apply to us?

Yes. If you are an electronic money institution, you will be subject to the conduct of business requirements in the PSRs 2017. If you are a credit institution, a credit union or a municipal bank, issuing electronic money is a regulated activity and you will require permission under the Act (see ■ PERG 2.6.4A). The authorisation and registration requirements for any other person intending to issue electronic money are governed by the Electronic Money Regulations (see ■ PERG 3A for guidance on the scope of the Electronic Money Regulations). If you are an authorised or small electronic money institution or an EEA authorised electronic money institution, the PSRs 2017 introduce a transitional provision into the Electronic Money Regulations which affects your right to continue to provide services in the UK after 12 July 2018 – see ■ PERG 3A.7.

Q9. If we provide payment services to our clients, will we always require authorisation or registration under the regulations?

Not necessarily; you will only be providing payment services, for the purpose of the regulations, when you carry on one or more of the activities in ■ PERG 15 Annex 2:

- as a regular occupation or business activity; and
- these are not excluded or exempt activities (see ■ PERG 15.5 Negative scope/exclusions).

Simply because you provide payment services as part of your business does not mean that you require authorisation or registration. You have to be providing payment services, themselves, as a regular occupation or business to fall within the scope of the regulations (see definition of "payment services" in regulation 2(1)). In our view this means that the services must be provided as a regular occupation or business activity in their own right and not merely as ancillary to another business activity. Accordingly, we would

not generally expect the following to be providing payment services as a regular occupation or business activity:

- solicitors or broker dealers, merely through operating their client accounts in connection with their main professional activities;
- letting agents, handling tenants' deposits or rent payments in connection with the letting of a property by them;
- debt management companies, receiving funds from and making repayments for a customer as part of a debt management plan being administered for that customer;
- individuals initiating payments and dealing with payment account information for another person under a power of attorney they have entered into in a personal capacity, for example for a family member; and
- operators of loan or investment based crowd funding platforms transferring funds between participants as part of that activity.

The fact that a service is provided as part of a package with other services does not, however, necessarily make it ancillary to those services – the question is whether that service is, on the facts, itself carried on as a regular occupation or business activity.

Q10. [deleted]

Q11. Is it possible to be both an authorised person under FSMA and the agent of an authorised payment institution, a small payment institution or a registered account information provider?

Yes. There is nothing in the PSRs 2017 or the Act (for example section 39) which prevents a person from being both an authorised person and the agent of an authorised payment institution or a small payment institution or a registered account information provider.

Q11A. Is it possible to be both an authorised person under FSMA and an authorised payment institution, a small payment institution or a registered account information provider?

Yes. There is nothing in the PSRs 2017 or the Act which prevents a person from being both an authorised person and an authorised payment institution, a small payment institution or a registered account information provider. In some cases, for example if you issue credit cards (see further Q20A), it is likely that you will need permissions under the Act and the PSRs 2017 in order to provide your services.

Q11B. Is it possible to be both an authorised payment institution and the agent of an authorised payment institution, a small payment institution or a registered account information provider?

Yes. There is nothing in the PSRs 2017 which prevents a person from being both an authorised payment institution or electronic money institution and the agent of an authorised payment institution, a small payment institution or a registered account information provider. However, businesses will need to make clear to payment service users the capacity in which they are providing services, in accordance with regulation 34(16) and consumer protection legislation.

Q12. We provide electronic foreign exchange services to our customers/clients. Will this be subject to the PSRs 2017?

Not necessarily, as providing foreign exchange services is not itself a payment service. Foreign exchange transactions may exist as part of, or independent

from, payment services. You will fall within the scope of the PSRs 2017 if you are providing payment services, by way of business, in the UK. For example, where a customer instructs their bank to make payment in euros from the customer's sterling bank account to a payee's bank account, we expect conduct of business requirements in the regulations to apply to the transfer of funds including information requirements relating to the relevant exchange rate.

By contrast, we would not expect the conduct of business provisions (including the right of cancellation) in the Payment Services Regulations to apply to a spot or forward fx transaction itself. That said, the electronic transmission, for example, by a bank on behalf of a customer to an fx services provider is likely to be subject to the PSD, because this is a transfer of funds executed by the bank. Similarly, the onward payment by a bank or fx services provider, on behalf of a client, to a third party of currency purchased in an fx transaction may amount to a payment service.

If you are a small payment institution or an authorised payment institution under the PSRs 2017, you may provide foreign exchange services that are closely related and ancillary to your payment services. However, that does not allow you to provide foreign exchange derivative services that would otherwise require authorisation under MiFID. You therefore need to consider the availability of MiFID exclusions for your foreign exchange business (see ■ PERG 13 Q31K).

Q13. We are a business that does not provide payment services. We usually accept payment in sterling for our goods and services but also offer a facility to our customers who prefer to pay us in other currencies, to do so on the basis of a currency conversion when making electronic payments via their payment service provider. Do the regulations apply to us?

Generally no. You are not required to be authorised or registered under the regulations. You will though be required to disclose information relating to your currency conversion service, including charges and the exchange rate to be used (for further information including details of criminal sanctions, see regulations 57 and 141).

15.3 Payment services

Q14. Where do we find a list of payment services?

In Schedule 1 Part 1 to the PSRs 2017. There are eight payment services, set out in full in Annex 2 to this chapter (including six activities which were payment services under the PSD regulations and the two new activities of payment initiation services and account information services). References to categories of payment services below adopt the structure of Schedule 1 to the PSRs 2017: for example, paragraph (1)(f) refers to "money remittance".

The payment service referred to in paragraph (1)(g) of Schedule 1 to the PSD regulations does not appear as a separate payment service in the PSRs 2017. Telecommunications, IT system or network operators with a paragraph (1)(g) permission should consider which permission(s) they require under the PSRs 2017, such as executing a payment transaction within (1)(c) or issuing a payment instrument under (1)(e). If the services within your paragraph 1(g) permission are also of the type described in paragraph 1(c), under the transitional provisions in regulation 152 of the PSRs 2017 you will be treated as an authorised payment institution, subject to the requirement to provide us (or your home state competent authority if you are an EEA firm) with evidence, by 13 January 2020, that you hold the required own funds.

Q15. When might we be providing services enabling cash to be placed on a payment account (paragraph 1(a))?

When you are accepting cash electronically or over the counter or through ATMs which is placed on a payment account which you operate.

The crediting of interest to a payment account is not a service enabling cash to be placed on a payment account.

If you are a professional cash in transit business, or a non-professional cash collector in the not-for-profit sector, you may benefit from one of the exclusions in Schedule 1 paragraphs 2(b) and (c) of the PSRs 2017 (see Q33B and Q34A below).

Q16. What is a payment account?

"Payment account" is defined in regulation 2 as "an account held in the name of one or more payment service users which is used for the execution of payment transactions". When determining whether or not an account is a "payment account" for the purposes of the regulations, in our view it is appropriate to focus on its underlying purpose. To establish this it is necessary to consider a number of factors including:

- the purpose for which the account is designed and held out;

- the functionality of the account (the greater the scope for carrying out payment transactions on the account, the more likely it is to be a payment account);
- restrictive features relating to the account (for example, an account that has notice periods for withdrawals, or reduced interest rates if withdrawals are made, may be less likely to be a payment account);
- a limited ability to place and withdraw funds unless there is additional intervention or agreement from the payment service provider (this will tend to point more towards the account not being a payment account); and
- the extent to which customers use an account's payment service functionality in practice.

Accordingly, in our view, "payment accounts" can include, for example, current accounts, e-money accounts, flexible savings accounts, credit card accounts, other *running-account credit accounts* and current account mortgages. On the other hand, in our view fixed term deposit accounts (where there are restrictions on the ability to make withdrawals), child trust fund deposit accounts and certain cash Individual Savings Accounts (ISAs) are not payment accounts.

We consider only the features of the account used for the purpose of making transactions, to which the regulations apply, fall within scope. For example, in the case of a current account mortgage, the mortgage element of the account would be out of scope, albeit that a mortgage payment from the current account would be subject to the regulations.

In our view, mortgage or loan accounts do not fall within the scope of the regulations. This is on the basis that the simple act of lending funds or receiving funds by way of repayment of that loan does not amount to provision of a payment service.

The definition of 'payment account' in the PSRs 2017 is different to (and wider than) that in the Payment Accounts Regulations 2015.

If you are a provider of non-payment accounts, you may still be carrying on the payment services in paragraphs 1(c) and (d), for example if you execute payment transactions out of those non-payment accounts. Chapter 8 of the Approach Document provides guidance on how the PSRs 2017 conduct of business requirements apply to you.

Q17. When might we be providing services enabling cash withdrawals from a payment account (paragraph 1(b))?

When you provide, for example, an ATM cash withdrawal or over the counter cash withdrawal service in relation to the payment accounts which you operate.

Q18. When might we be providing execution of payment transactions, including transfers of funds on a payment account with a user's payment service provider or with another payment service provider: (i) direct debits, including one-off direct debits, or (ii) payment transactions through a payment card or a similar device, or (iii) credit transfers, including standing orders (paragraph 1(c))?

When you transfer funds from or to your clients, enabling them to pay or receive payment by way, for example, of direct debit, payment card (such as a debit card), electronic cheque or credit transfer (such as a standing order).

Where the funds are covered by a credit line though, you will be providing the service in paragraph 1(d).

In our view, the simple act of accepting payment by way of debit card or credit card for supply of your own goods or services does not generally amount to the provision of the service of execution of payment transactions through a payment card. For instance, where a restaurant accepts payment from a customer using the customer's payment card it is not providing a payment service to the customer, but simply accepting payment for the price of the meal. It is merely a payment service user receiving payment from the customer. The firm providing the merchant acquiring service enabling the restaurant to process the card transaction and receive payment is providing a payment service in this instance.

As regards a "direct debit", regulation 2 defines this as meaning "a payment service for debiting the payer's payment account where a payment transaction is initiated by the payee on the basis of consent given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider". As well as the likes of utility and other household bills, in our view this definition extends to a case where sender and recipient are the same person, for example where the person holds two bank accounts in two different banks.

Providers of electronic communications networks or services may be providing this service or the service in paragraph 1(d). For example, where a subscriber to a mobile network can buy digital content from a third party via premium SMS services and the payment transactions do not fall within the exemption in ■ PERG 15 Annex 3(l), the service in paragraph (c) may be provided (this may be the case where the payment is made from the subscriber's prepaid account) or (if the provider is giving the subscriber credit to finance the purchase) the service in paragraph (d) may be provided (this may be the case where the payment is charged to the subscriber's monthly bill).

Q19. When might we be providing execution of the following types of payment transaction where the funds are covered by a credit line for the payment user-

- (i) direct debits, including one-off direct debits,**
- (ii) payment transactions executed through a payment card or a similar device,**
- (iii) credit transfers, including standing orders (paragraph 1(d))?**

When you provide a service to clients enabling them to complete payment, for example, by way of direct debit using overdraft facilities, payment card such as deferred debit or credit card, electronic cheque using overdraft facilities or credit transfer (such as a standing order) using overdraft facilities.

Q20. When might we be issuing payment instruments (paragraph 1(e))?

Issuing of payment instruments is defined in regulation 2 as 'a payment service by a payment service provider contracting with a payer to provide a payment instrument to initiate payment orders and to process the payer's payment transactions'.

A payment instrument is defined in regulation 2 and means any (a) personalised device or (b) personalised set of procedures agreed between the

payment service user and the payment service provider, in both cases where used by the payment service user in order to initiate a payment order.

Examples of persons issuing payment instruments, for the purposes of Schedule 1 to the regulations, include credit card and debit card issuers and electronic money institutions. In addition to the issue of physical instruments such as cards, arrangements by way of telephone call with password, or online instruction or a mobile telephone application by which a payment order can be initiated could also amount to issuing payment instruments, depending on the service being provided (see further the Court of Justice of the European Union decision in T-Mobile Austria GmbH v Verein für Konsumenteninformation, C-616/11).

In our view, it is the person who agrees the set of procedures with the payer and agrees that the payer can use those procedures to initiate an instruction to them requesting that they transfer funds to a payee that is issuing the payment instrument. So, for example, a business that provides a payer with a mobile application that transmits the payer's card details (or a number or series of numbers that will be recognised by the recipient as corresponding to that card, which may sometimes be described as a 'token'), along with a payment order, for processing by another person who is a payment service provider, is not issuing a payment instrument.

We would not generally expect you to be issuing payment instruments (or providing other payment services) if all you do is issue direct debit mandates simply for the purpose of being paid for the goods or services you provide to your customers or clients.

Q20A We are applying to become an authorised payment institution. Do we also need to be authorised under FSMA in order to issue credit cards?

Probably yes. While regulation 32(2) of the PSRs 2017 permits authorised payment institutions and small payment institutions to grant credit as an ancillary activity in certain circumstances, this regulation does not exempt you if you otherwise need to be an authorised person under FSMA. If you issue payment instruments and provide a credit line under a regulated credit agreement which covers transactions initiated using those payment instruments, you are likely to need to be an authorised person under FSMA (see ■ PERG 2.7 and CONC generally), with permission to carry on credit-related regulated activity, in addition to being authorised or registered under the PSRs 2017.

This is not necessarily the case, however, if you do not provide credit to individuals or relevant recipients of credit, or if the credit agreements are exempt agreements or an exclusion applies. There is, for example, a specific FSMA exclusion for activities carried on by an EEA authorised payment institution exercising passport rights in the United Kingdom in accordance with article 18(4) of the Payment Services Directive. Those activities are excluded from the regulated activities of entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement (see ■ PERG 2.8.14ZB G and article 60JA of the FSMA Regulated Activities Order).

Q21. When might we be acquiring payment transactions (paragraph 1(e))?

Acquiring of payment transactions is defined in regulation 2 as "a payment services provided with a payment service provider contracting with a payee to accept and process payment transactions which result in a transfer of funds to the payee."

This includes traditional 'merchant acquiring' services enabling suppliers of goods, services, accommodation or facilities to be paid for purchases arising from card scheme transactions. However, as set out in Recital 10 of PSD2 it is designed to be technology neutral and capture different business models, in particular:

- those where more than one acquirer is involved (and so you may be acquiring payment transactions even if you are not the 'acquirer of record' from the point of view of the card scheme);
- regardless of the payment instrument used to initiate the transaction (for example where the instrument is a mobile telephone application); and
- those where there is no actual transfer of funds from acquirer to payee, because another form of settlement is agreed.

In our view, this definition is likely to capture 'master merchants' or 'payment facilitators' that contract with payees for the provision of acquiring services and activities carried out by businesses that aggregate carrier billing transactions. However, provision of merely technical services to merchants, such as processing or storage of data and provision of terminals or online gateways, will not itself constitute acquiring.

Q22. When might we be providing money remittance services (paragraph 1(f))?

Money remittance is defined in regulation 2 as: "... a service for the transmission of money (or any representation of monetary value), without any payment accounts being created in the name of the payer or payee, where-

- (a) funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee; or
- (b) funds are received on behalf of, and made available to, the payee".

The service of money remittance cannot therefore involve the creation of payment accounts. Recital 9 of PSD2 describes money remittance as "a simple payment service that is usually based on cash provided by a payer to a payment service provider, which remits the corresponding amount, for example, via communication network, to a payee or to another payment service provider acting on behalf of the payee".

This service is likely therefore to be relevant, for example, to money transfer companies and hawala brokers.

Although money remittance is traditionally a cash-based service, the definition is technology neutral and may therefore apply to business models where funds are received and transferred electronically.

Q23. We are a mobile network operator offering our client facilities to make payments - how do we tell whether and when the regulations apply to us?

You will be subject to the regulations if you provide a payment service as a regular occupation or business activity in the UK and this service does not fall within an exclusion.

You will not be providing a payment service when a customer uses their mobile device merely as an authentication tool to execute payment from the customer's payment account held with another provider (for example, simply providing instructions to their bank via SMS or a payment application), and payment is not made via you.

If your client can use pre-paid airtime to make purchases, you should also consider whether you are issuing electronic money, see ■ PERG 3A.

Mobile network operators and other electronic communication network operators may be able to take advantage of the exclusion set out in ■ PERG 15 Annex 3(l), see Q41A.

Q24 [deleted]

Q25. We are a bill payment firm. Do the PSRs 2017 apply to us?

Not in our view where you receive payment on behalf of the payee so that your receipt constitutes settlement of the payer's debt to the payee. By contrast, if you provide a remittance service which does not involve receipt on behalf of the payee and corresponds to the definition of "money remittance" in regulation 2, you will be providing a money remittance service.

Q25A. When might we be providing an account information service?

The service of providing account information is an online service to provide consolidated information on one or more payment accounts held by the payment service user with another payment service provider or with more than one payment service provider. This includes whether information is provided in its original form or after processing; and whether it is provided only to the payment service user or to the payment service user and to another person in accordance with the payment service user's instructions.

Account information service providers include businesses that provide users with an on-line 'dashboard' where they can view information from various payment accounts in a single place, businesses that use payment account data to provide users with personalised comparison services supported by presentation of account information, and businesses that provide information from the user's various payment accounts to both the user and another party (such as a lender or a financial advisor) on a user's instruction.

Whether a service is an account information service depends on whether there has been access to payment accounts. The account information service provider is subject to rights and obligations concerning such access under the PSRs 2017 (see Chapter 17 of the Approach Document). For a service to be an account information service it is also necessary for it to involve the provision of payment account information to the payment service user that has been consolidated in some way (although a service may be an account information service even if the information relates to only one payment account).

In our view, an account information service is not provided if the only information provided to the customer is the customer's name, account number and sort code.

More than one business may be involved in obtaining, processing and using payment account information to provide an online service to a customer. However, the business that requires authorisation or registration to provide the account information service is the one that provides consolidated account information to the payment service user (including through an agent) in line with the payment service user's request to that business.

A business that obtains and processes payment account information in support of an authorised or registered account information service provider, but does not itself provide the information to the user, is a technical service provider. It does not require authorisation or registration as an account information service provider. The authorised or registered account

information service provider is responsible for compliance with the PSRs 2017 where account access is outsourced to a technical service provider.

An agent of an account information service provider cannot provide or purport to provide account information services in its own right. This means that if a firm (Firm A) (which may or may not be an account information service provider) passes data to another firm (Firm B), and Firm B uses that data to provide account information services to its customers, Firm B must be authorised or registered with permission to provide account information services. However, if Firm A is an account information service provider and Firm B is acting as Firm A's agent, it may present Firm A's account information service to users through its own platform: for example, its website or application. It must be clear to the customer that Firm B is acting as agent of Firm A, the principal. This may include, for example, using Firm A's branding within Firm B's application. Further, the agreement for the provision of account information services must be between the customer and Firm A, the principal.

Q25B. When might we be providing a payment initiation service?

The service of payment initiation is defined in regulation 2 as 'an online service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider'.

This includes businesses that contract with online merchants to enable customers to purchase goods or services through their online banking facilities, instead of using a payment card or other payment method. However, it is not limited to arrangements where the service provider has a pre-existing relationship with the merchant. Any business offering payment initiation services as a regular occupation or business activity will require this permission unless exempt under Schedule 1 Part 2.

In our view, the provider of a service that transmits a payer's card details, along with a payment order, to the payer's payment service provider, but does not come into possession of personalised security credentials, is not carrying out a payment initiation service.

15.4 Small payment institutions, agents and exempt bodies

Q26. What criteria must we meet to be a "small payment institution"?

The conditions are set out in regulation 14 and include the following:

- the average of the preceding 12 months' total amount of payment transactions executed by you, including your agents in the UK, does not exceed 3 million euros (or an equivalent amount) per month;
- your business must not include the provision of account information services or payment initiation services;
- none of the individuals responsible for the management or operation of your business has been convicted of offences relating to money laundering or terrorist financing, the Act, the PSRs 2017 or the PSD regulations or financial crimes;
- if you are a partnership, an unincorporated association, or a body corporate, you must satisfy us that any persons having a qualifying holding in your business are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of a small payment institution;
- you must satisfy us that your directors (if you are a body corporate), any persons responsible for the management of your business, and where relevant the persons responsible for the management of your payment services, are of good repute and possess appropriate knowledge and experience to provide payment services;
- if you are a body corporate you must satisfy us that any close links you have with another person are not likely to prevent our effective supervision of you. If it appears to us that you have any close links that are subject to the laws, regulations or administrative provisions of a territory outside of the EEA ("the foreign provisions") you must satisfy us that neither the foreign provisions, nor any deficiency in their enforcement, would prevent our effective supervision of you;
- your head office, registered office or place of residence, as applicable, is in the UK; and
- you must comply with the registration requirements of the Money Laundering Regulations 2017, where they apply to you.

Q27. We satisfy the conditions for registration as a small payment institution - does that mean we have to register as one?

No, there are other options available to you. If you register as a small payment institution, you cannot acquire passport rights under the regulations, so you may wish to become an authorised payment institution if you wish to take advantage of the passport. You may also choose to become an agent of a payment services provider.

Q28. We only wish to be an agent. Do we need to apply to the FCA and/or PRA for registration?

No. If your principal is a payment institution, it is its responsibility to register you as its agent. Assuming your principal is not an EEA firm, you are required to be registered on the Financial Services Register before you provide payment services. If your principal is an EEA firm, your principal will need to comply with the relevant Home State legislation relating to your appointment. You will not be able to provide payment services in the UK on behalf of an EEA firm unless it has also complied with the relevant requirements for the exercise of its passport rights.

You may act for more than one principal, but each principal must register you as its agent.

An agent can only provide its principal's payment services; the agent cannot provide or purport to provide the services in its own right. A person who behaves, or otherwise holds themselves out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that they are a payment service provider is guilty of an offence under regulation 139 of the PSRs 2017. It must be clear to a customer that the agent is acting on behalf of the principal and the agreement to provide payment services must be between the principal and the customer.

Q29. We are an agent of a credit institution for the purpose of providing payment services. Do we need to apply to the FCA and/or PRA for registration?

No. If you are such an agent of a credit institution which is permitted to provide payment services in the UK, you are not required to be registered under the PSRs 2017. A credit institution will be permitted to provide payment services if it has a Part 4A permission to accept deposits, or if it is an EEA credit institution exercising passport rights under paragraph 4 of Annex I to the Fourth Capital Requirements Directive.

Q30. We are an agent of an electronic money institution for the purpose of providing payment services. Do we need to apply to the FCA for registration under the PSRs 2017?

As such an agent you will need to be registered by your principal under the *Electronic Money Regulations*, see ■ PERG 3A Q21.

Q31. We are a credit union. Are we exempt from the regulations?

Yes. You are exempt from the PSRs 2017 by virtue of regulation 3. Note, however, that as a consequence of this the conduct requirements set out in the FCA's Banking: Conduct of Business sourcebook (BCOBS) will apply to you in circumstances in which they would not apply to other payment service providers.

Q32. We are a municipal bank. Are we exempt from the regulations?

Yes. You are exempt from the PSRs 2017 (together with credit unions and the National Savings Bank), by virtue of regulation 3. Unlike credit unions, you are required to notify us if you wish to provide payment services, although you only need to do this once.

15.5 Negative scope/exclusions

Schedule 1 Part 2 to the PSRs 2017 contains a list of activities which do not constitute payment services. The following questions only deal with a selection of these. You should consult Annex 3 to this chapter for a full list of provisions, if you require more details.

Q33. Our business consists of cash payments directly from or to our customers - do the regulations apply to us?

No. The PSRs 2017

do not apply to payment transactions made in cash, without the intervention of an intermediary (see ■ PERG 15 Annex 3, paragraph (a)).

Q33A. We are an e-commerce platform that collects payments from buyers of goods and services and then remits the funds to the merchants who sell goods and services through us – do the regulations apply to us?

Recital 11 of PSD2 makes it clear that some e-commerce platforms are intended to be within the scope of regulation. Whether an e-commerce platform is in or out of scope of the PSRs 2017 will depend on its business model.

An e-commerce platform may not be carrying on payment services at all: for example, if the platform is a re-seller of the goods or services (i.e. is acting as principal in the sale or supply of goods or services having purchased them from a third party), such that it is the intended recipient of the funds paid by the customer and there is no contract between the customer to whom the goods or services are now being sold and the third party from whom the platform purchased the goods or services.

If they are providing payment services, the platform should consider whether they are doing so as a regular occupation or business activity (see Q9).

The platform should also consider whether they fall within the exclusion at ■ PERG 15 Annex 3, paragraph (b). The PSRs 2017 do not apply to payment transactions from the payer to the payee through a commercial agent authorised via 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.

An example of where a platform will be acting for both the payer and the payee would be where the platform allows a payer to transfer funds into an account that it controls or manages, but this does not constitute settlement of the payer's debt to the payee, and then the platform transfers corresponding amounts to the payee, pursuant to an agreement with the payee.

In our view, you have the authority to conclude the sale or purchase of goods or services on behalf of the payer or the payee only if you have the

authority to affect the legal relations of your principal, who is the payer or the payee, with third parties and to bind the payer or payee to a purchase or sale of goods or services. This would not be fulfilled simply by providing the technical means by which a payer places or a payee accepts an order.

If an e-commerce platform is providing payment services as a regular occupation or business activity and does not benefit from an exclusion or exemption, it will need to be authorised or registered by us.

An example of an e-commerce platform that is likely to need to be authorised or registered by the FCA is one that provides escrow services as a regular occupation or business activity. Escrow services generally involve a payment service consisting of the transfer of funds from a payer to a payee, with the platform holding the funds pending the payee's fulfilment of certain conditions or confirmation by the payer. It should be kept in mind that an escrow service may be a regular occupation or business activity of a platform even if it is provided as part of a package with other services. Escrow providers do not typically have the authority to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee, and in those circumstances, would not fall within the exclusion for commercial agents.

Q33B. We are a professional cash collection company. We collect coins and banknotes from our customers and then remit them electronically to our customers' bank accounts – do the regulations apply to us?

No. The PSRs 2017 do not apply to the professional physical transport of banknotes and coins, including their collection, processing and delivery (■ PERG 15 Annex 3, paragraph (c)). In our view, the exclusion applies to the delivery of funds to the customer, whether in physical or electronic form. However, it does not extend to the remitting of funds to third parties on the customer's behalf.

Q34. We are a charity which collects donations in the form of coins, banknotes and electronic payments and transmits funds via bank transfer to the causes that we support do the regulations apply to us?

No. The PSRs 2017 do not apply to payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity (see ■ PERG 15 Annex 3, paragraph (d)).

Q34A. We are an online fundraising platform which collects donations in the form of electronic payments and transmits funds electronically to the causes and charities that have an agreement with us - do any of the exclusions apply to us?

Persons collecting cash on behalf of a charity and then transferring the cash to the charity electronically do not fall within the exclusion in ■ PERG 15 Annex 3, paragraph (d), unless they themselves are carrying this out both non-professionally and as part of a not-for-profit or charitable activity. For example, a group of volunteers that organises regular fundraising events to collect money for charities would fall within this exclusion. On the other hand, an online fundraising platform that derives an income stream from charging charities a percentage of the money raised for them (whether or not this is for profit) is unlikely to fall within this exclusion.

Nor will an online fundraising platform accepting donations and then transmitting them to the intended recipient be able to take advantage of the exclusion in paragraph (b), as they are not a commercial agent authorised via 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.

Online fundraising platforms should also consider the guidance in Q33A.

Q35. We provide a "cashback" service to our customers when they pay for their goods at the checkout - do the regulations apply to us?

No. The PSRs 2017 do not apply to cashback services (see ■ PERG 15 Annex 3, paragraph (e)).

Q36. We are a bureau de change providing cash only forex services and our clients do not have accounts with us - are these services outside the scope of the regulations?

Yes. The PSRs 2017 do not apply to cash-to-cash currency exchange operations where the funds are not held on a payment account (see ■ PERG 15 Annex 3, paragraph (f)). If you allow a customer to pay for foreign currency using a payment card, this does not mean that you will be providing a payment service. The regulations will though apply to the payment transaction made using the payment card and the payment service provided to you by the merchant acquirer. In other words, the regulations apply to the merchant acquirer's services but yours remain outside the scope of authorisation or registration.

The PSRs 2017 do not affect your obligations under the *Money Laundering Regulations*.

Q37. Do the regulations distinguish between (i) payment transactions between payment service providers and (ii) payment services provided to clients?

Yes, broadly the object of the PSRs 2017 is the payment service provided to specific clients and not the dealings among payment service providers to deliver the end payment arising from that service. The PSRs 2017 do not apply to payment transactions carried out between payment service providers, their agents or branches for their own account (see PERG 15 Annex 3, paragraph (m)). This would include, for example, electronic payment from one payment services provider to another acting as such, in discharge of a debt owed by one to the other.

A payment transaction may involve a chain of payment service providers. Where a bank, for example, provides a cash withdrawal or execution of payment transaction service to its customer which involves the use of a clearing bank, it will still be providing a payment service to its customer.

The regulations do not though cover inter-bank settlement. More specifically, the regulations do not apply to payment transactions carried on within a payment or securities settlement system between payment service providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system (see ■ PERG 15 Annex 3, paragraph (h)).

Q38. We are an investment firm providing investment services to our clients - are payment transactions relating to these services caught by the regulations?

Generally, no. Where payment transactions only arise in connection with the main activity of providing investment services, in our view it is unlikely that you will be providing payment services by way of business. In those limited

cases where you are, the PSRs 2017 do not apply to securities assets servicing, including dividends, income or other distributions and redemption or sale (see ■ PERG 15 Annex 3, paragraph (i)).

Q39. We are a firm simply providing IT support in connection with payment system infrastructures - are these services subject to the regulations?

No. There is an exclusion for technical service providers which simply provide IT support for the provision of payment services (see ■ PERG 15 Annex 3, paragraph (j)). Other support services that may be provided by technical service providers include data processing, storage and authentication. This does not mean that where these services form part of a payment service they are not regulated, but in that case it is the payment service provider that is responsible under the PSRs 2017 for the provision of these services, not the person they have outsourced these technical services to.

Providers of payment initiation services or account information services are not technical service providers.

Q40. Which types of payment card could fall within the so-called "limited network" exclusion (see PERG 15, Annex 3, paragraph (k))?

The "limited network" exclusion forms part of a broader exclusion which applies to services based on specific payment instruments that can be used only in a limited way and -

- (a) allow the holder to acquire goods or services only in the issuer's premises;
- (b) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer;
- (c) may be used only to acquire a very limited range of goods or services; or
- (d) are valid only in a single EEA State, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer.

As regards (a), examples of excluded instruments could include:

- (1) staff catering cards - reloadable cards for use in the employer's canteen or restaurant;
- (2) tour operator cards - issued for use only within the tour operator's holiday village or other premises (for example, to pay for meals, drinks and sports activities);
- (3) store cards - where the card can only be used at the issuer's premises or website (so where a store card is co-branded with a third party debit card or credit card issuer and can be used as a debit card or credit card outside the store, it will not benefit from this exclusion). On the other hand, in our view, 'gift cards' where the issuer is a retailer and the gift card can only be used to obtain goods or services from that retailer are not payment instruments within the meaning of the PSRs 2017. This is because these basic gift cards do not initiate payment orders; payment for the goods or services is made by the customer to the retailer of the

goods in advance, when the card is purchased from the retailer. Accordingly, this exclusion is not relevant to them.

In order to meet the test in (b), recital 13 of PSD2 states that the instrument must be limited to use at a 'specific retailer or specific retail chain, where the entities involved are directly linked by a commercial agreement which for example provides for the use of a single payment brand and that payment brand is used at the points of sale and appears, where feasible, on the payment instrument that can be used'. It also states that to help limit risks to consumers, it should not be possible to use the same instrument to make payment transactions to acquire goods and services within more than one limited network.

Recital 14 of PSD2 goes on to state that 'instruments which can be used for purchases in stores of listed merchants should not be excluded from the scope of this Directive as such instruments are typically designed for a network of service providers which is continuously growing.'

In our view, examples of excluded instruments falling within (b) include:

- (1) transport cards - where these are used only for purchasing travel tickets (for example, the Oyster card which provides access to different service providers within the London public transport system);
- (2) fuel cards (including pan-European cards) - where these are issued for use at a specified chain of fuel stations and forecourts at these stations;
- (3) membership cards - where a card can only be used to pay for goods or services offered by a specific club or organisation;
- (4) store cards - where the card can be used at a specified chain of stores sharing a common brand under a franchise agreement between the store owners and the issuer.

We would not generally expect 'city cards' to fall within this exclusion, to the extent that participation is open to all a city's shops and businesses.

'Mall cards' may fall within this exclusion if, on the facts, the criteria are met. In our view you will not be able to take advantage of this exclusion unless: it is made clear in the relevant terms and conditions of the card that the purchaser of the value is only permitted to use the card to buy from merchants located within that particular shopping centre with whom you have direct commercial agreements; and the card is functionally restricted to one shopping centre. A card that can be used at a number of different shopping centres, or where use is restricted only by the terms and conditions that apply to the card and is not functionally restricted is unlikely to fall within this exclusion.

In relation to (c), recital 13 states that it should only be possible to purchase a 'very limited range of goods or services, such as where the scope of use is effectively limited to a closed number of functionally connected goods or services regardless of the geographical location of the point of sale'.

Examples of instruments falling within (c) could be:

fuel cards - where these can only be used to purchase fuel and a closed number of goods or services that are functionally connected to fuel (such as engine oil and brake fluid), including where the cards can be used at multiple retail chains;

transport cards – where these are used only for purchasing travel tickets (for example, the Oyster card which provides access to

different service providers within the London public transport system).

In our view, instruments falling within (d) could include:

pre-paid cards provided by local authorities to benefit recipients for use at a specified chain of grocery stores;

government-issued childcare vouchers.

Instruments for the purpose of this exclusion can include vouchers, mobile applications, cards and other devices.

Service providers relying on this exclusion are required to notify the FCA where the total value of payment transactions executed through such services exceeds 1 million euros in any 12 month period as directed: see <https://www.fca.org.uk/firms/limited-network-exclusion>.

Q41. [deleted]

Q41A. In what circumstances are payments made via a mobile phone excluded?

The 'electronic communications exclusion' (see PERG 15 Annex 2 paragraph (l)) applies to payment transactions resulting from services provided by a provider of electronic communications networks or services.

For this exclusion to apply the service must be provided in addition to electronic communications services for a subscriber to the network or service and the payment must be charged to the related bill.

Where the provider of the network or service allows the customer to pay for eligible transactions out of a prepaid balance that is also used to purchase the electronic communications services, in our view this will amount to the payment transaction being charged to the related bill.

The exclusion only applies:

to the purchase of digital content and voice-based services (such as music and other digital downloads and premium rate services), regardless of the device used for the purchase or consumption of the digital content; or

when performed from or via an electronic device for donations to charity (for example SMS donations) or for the purchase of tickets.

In all cases the value of any single payment transaction must not exceed £40, and the cumulative value of payment transactions for an individual subscriber in a month must not exceed £240.

A electronic communications network or service provider providing services falling within the electronic communications exclusion must notify the FCA and provide it with an annual audit opinion that the transactions to which the services relate comply with the financial limits - as directed. See: <https://www.fca.org.uk/firms/electronic-communications-exclusion>. For the purpose of application of the financial limits, the FCA will expect notification on the basis of individual telephone numbers or SIM cards being treated as separate 'subscribers', rather than account holders.

In practice electronic network operators often do not deal directly with suppliers of digital goods and services, but via carrier billing platforms that

act as intermediaries or aggregators. The PSRs 2017 make clear that where a network operator benefits from the exclusion with respect to a particular transaction, the provider of any other payment service resulting from that transaction will also benefit from the exclusion. The service provided by the billing platform to merchants will amount to a payment service (for example merchant acquiring or operation of a payment account) only where it results from transactions that do not fall within this exclusion.

Where a provider of a network or service sells subscribers additional goods or services itself (i.e. where it is acting as principal) this exclusion will not be relevant, as no payment service is being provided by the provider of the network or service even if the payment is charged to the related bill.

Q42. [deleted]

Q43. We are a company which performs a group treasury function, including providing payment services directly to other group companies - are these intra-group payment services excluded from the regulations?

Yes. Intra-group payment transactions and related services are excluded from the PSRs 2017, where payment is made direct from one group company to another (see ■ PERG 15 Annex 3, paragraph (n)). This includes the case where the group company providing the payment service is, itself, a payment service provider otherwise subject to the regulations. However, it does not include intra-group payment transactions that are made through a payment service provider that does not belong to the group.

In our view, this exclusion is likely to extend to payment initiation services and account information services where these are provided by one group company to another member of the same group as part of a group treasury function.

Q44. We are an independent ATM deployer offering cash dispensing facilities to users on behalf of card issuers. We are not a bank. Are we subject to the regulations?

No, assuming you do not provide other payment services listed in Schedule 1 Part 1 to the PSRs 2017 and are not party to the framework contract with the customer withdrawing money (see ■ PERG 15 Annex 3, paragraph (o)). However, you must still provide the customer with the information referred to in regulation 61 of the PSRs on withdrawal charges. If other payment services are provided, all your payment services (including the ATM cash dispensing facilities) will be subject to the regulations, to the extent that other exclusions are inapplicable.

15.6 Territorial scope

Q45. We are a UK payment institution - when will we need to make a passport notification?

You will need to make a notification if you intend to exercise passport rights either for the purposes of:

- establishment (for example, setting up a branch in another EEA State); or
- providing services in another EEA State.

As to the circumstances in which you may need to exercise these rights, this gives rise to issues of interpretation both under the PSRs 2017 and the local law of the EEA State in which you wish to do business. Our guidance below relates only to the PSRs 2017 and may differ from the approach in other EEA States. We cannot give guidance on the local law of other EEA States and you may therefore wish to take professional advice if you think your business is likely to be affected by these issues (for instance, if you are soliciting clients in other EEA States).

As regards the provision of payment services in other EEA States and passport notification, in our view the Commission Interpretative Communication (Freedom to provide services and the interest of the general good in the Second Banking Directive (97C 209/04)) provides a useful starting point, in particular because payment services form part of the CRDpassport. On this basis, we would identify the following factors as being relevant to whether you need to make a passport notification.

Factors indicating the provision of payment services in another EEA State and the need for passport notification

- (i) The establishment of a physical presence (for example, offices) in another EEA State, for use by you, triggers the need for an establishment notification.
- (ii) The appointment of an agent established in another EEA State is likely to amount to an exercise of a right of establishment where the agent (a) has a permanent mandate in relation to payment services, (b) is subject to your management and control and (c) is able to provide payment services on your behalf.
- (iii) The installation of an ATM in another EEA State, where the ATM is your only presence in that other EEA State, gives rise to the need for a services (and not an establishment) notification.

Actions which are not sufficient alone to constitute cross-border services into another EEA State and the need for passport notification

- (i) The act of executing direct debits/standing orders/credit transfers from the UK where the payee is located in another EEA State.

- (ii) The act of remitting money from the UK to a payee in another EEA State.
- (iii) The act of executing a payment transaction to a payee located in another EEA State upon receipt of an instruction from the payer received by e-mail, text, or other electronic means (for example, internet banking).
- (iv) Where you provide an execution service enabling your credit or debit cardholders to use their credit card/debit card within the territory of another EEA State, for example for the purposes of a hotel bill (see the services in ■ PERG 15 Annex 2, paragraphs (c) and (d)).

Q46. We are a non-EEA payment institution providing payment services to UK customers from a location outside the EEA. Do we require authorisation or registration under the regulations?

No. When considering whether you fall within the scope of the PSRs 2017, our starting point is to consider whether a UK payment services provider would be providing cross-border services in analogous circumstances (for example, when it provides payment services to EEA customers from a location in the UK). Accordingly, we would not generally expect a payment services provider incorporated and located outside the EEA to be within the scope of the regulations, if all it does is to provide internet-based and other services to UK customers from that location. A non-EEA payment institution for these purposes would include firms incorporated in the Isle of Man or Channel Islands, both of which are outside the scope of the Second Payment Services Directive.



15.7 Transitional provisions

15.7

Q47. We are a provider of account information and payment initiation services who was providing those services before 12 January 2016. Can we continue to provide those services after the PSRs 2017 come into force?

Yes, initially. Providers of account information services and payment initiation services which were providing those services before 12 January 2016 and which continue to provide such services immediately before 13 January 2018 will be able to continue to do so after that date without registration or authorisation until the EBA's Regulatory Technical Standards on strong customer authentication and common and secure communication apply. However, while provided in reliance on this transitional provision, those services will be treated under the PSRs 2017 as if they were not account information services or payment initiation services. More information can be found in Chapters 3 and 17 of our Approach Document.

[deleted]

[deleted]

Payment Services in Schedule 1 Part 1 to the PSRs 2017

- (a) Services enabling cash to be placed on a payment account and all of the operations required for operating a payment account
- (b) Services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account
- (c) The execution payment transactions, including transfers of funds on a payment account with the user's payment service provider or another payment service provider-
 - (i) execution of direct debits, including one-off direct debits;
 - (ii) execution of payment transactions through a payment card or a similar device;
 - (iii) execution of credit transfers, including standing orders
- (d) The execution of payment transactions where the funds are covered by a credit line for the payment user-
 - (i) execution of direct debits, including one-off direct debits;
 - (ii) execution of payment transactions executed through a payment card or a similar device;
 - (iii) execution of credit transfers, including standing orders
- (e) Issuing payment instruments or acquiring payment transactions
- (f) Money remittance
- (g) Payment initiation services
- (h) Account information services

Schedule 1 Part 2 to the PSRs 2017: Activities which do not constitute payment services

- (a) Payment transactions executed wholly in cash and directly between the payer and the payee, without any intermediary intervention.
- (b) Payment transactions between the payer and the 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.
- (c) The professional physical transport of banknotes and coins, including their collection, processing and delivery.
- (d) Payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity.
- (e) Services where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods or services following an explicit request by the payer immediately before the execution of the payment transaction.
- (f) Cash-to-cash currency exchange operations where the funds are not held on a payment account.
- (g) Payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee-
 - (i) paper cheques of any kind, including travellers' cheques;
 - (ii) bankers' drafts;
 - (iii) paper-based vouchers;
 - (iv) paper postal orders.
- (h) Payment transactions carried out within a payment or securities settlement system between payment services providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system.
- (i) Payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in sub-paragraph (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments.
- (j) Services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession of the funds to be transferred, excluding payment initiation services or account information services but including-
 - (i) the processing and storage of data;
 - (ii) trust and privacy protection services;
 - (iii) data and entity authentication;
 - (iv) information technology;
 - (v) communication network provision; and
 - (vi) the provision and maintenance of terminals and devices used for payment services.
- (k) Services based on specific payment instruments that can only be used in a limited way and meet one of the following conditions:
 - (i) allow the holder to acquire goods or services only in the issuer's premises;

- (ii) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer;
- (iii) may be used only to acquire a very limited range of goods or services; or
- (iv) are valid only in a single EEA State, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer,

and for these purposes the "issuer" is the person who issues the instrument in question.

- (l) Payment transactions resulting from services provided by a provider of electronic communications networks or services, including transactions between persons other than that provider and a subscriber, where those services are provided in addition to electronic communications services for a subscriber to the network or service and where the additional service is-
 - (i) for the purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content, and charged to the related bill; or
 - (ii) performed from or via an electronic device and charged to the related bill for the purchase of tickets or for donations to organisations which are registered or recognised as charities by public authorities, whether in the United Kingdom or elsewhere.

provided that the value of any single payment transaction does not exceed £40, and the cumulative value of payment transactions for an individual subscriber in a month does not exceed £240.

- (m) Payment transactions carried out between payment service providers, or their agents or branches, for their own account.
- (n) 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.
- (o) Cash withdrawal services provided through automated teller machines, where the provider-
 - (i) is acting on behalf of one or more card issuers;
 - (ii) is not party to the framework contract with the customer withdrawing money from a payment account; and
 - (iii) does not conduct any other payment service.