

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 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

The PSRs 2017 implemented the Second Payment Services Directive (2015/2366/EC) (PSD2) in the *United Kingdom*. The PSRs 2017 provide an authorisation regime for payment service providers which are neither deposit-takers nor electronic money institutions.

The relevant payment services 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 PSRs 2017 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; they do not apply to cash-only transactions or paper cheque-based transfers.

The PSRs 2017 also creates authorisation and registration regimes for firms who provide holders of online payment accounts with payment initiation services and account information services.

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 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, 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). 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 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".