

## Chapter 15

# Guidance on the scope of the Payment Services Regulations 2017

## 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.