

PAYMENT ACCOUNTS INSTRUMENT 2016

Powers exercised

- A. The Financial Conduct Authority makes this instrument in exercise of:
- (1) the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance);
 - (d) section 210(1) (Statements of policy) as applied by regulation 36(6) of the Payment Accounts Regulations 2015 (SI 2015/2038);
 - (e) section 395 (The FCA’s and PRA’s procedures) as applied by paragraph 4 of Schedule 7 of the Payment Accounts Regulations 2015 (SI 2015/2038); and
 - (f) paragraph 23 of Part 3 (Penalties and Fees) of Schedule 1ZA; and
 - (2) the following provisions of the Payment Accounts Regulations 2015 (SI 2015/2038):
 - (a) regulation 29 (Reporting requirements); and
 - (b) regulation 40 (Guidance).
- B. The rule-making powers listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 18 September 2016.

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Insurance: Conduct of Business sourcebook (ICOBS)	Annex B
Banking: Conduct of Business sourcebook (BCOBS)	Annex C
Supervision manual (SUP)	Annex D
Decision Procedure and Penalties manual (DEPP)	Annex E

Notes

- E. In Annex D to this instrument, the “note” (indicated by “**Note:**”) is included for the convenience of readers but does not form part of the legislative text.

Amendments to material outside the Handbook

- F. The Enforcement Guide (EG) is amended in accordance with Annex F to this instrument.

Citation

- G. This instrument may be cited as the Payment Accounts Instrument 2016.

By order of the Board
28 July 2016

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>PARs</i>	<i>Payment Accounts Regulations.</i>
<i>Payment Accounts Regulations</i>	Payment Accounts Regulations 2015 (SI 2015/2038).
<i>PSP</i>	<i>payment service provider.</i>

Amend the existing definition as shown.

<i>consumer</i>	<p style="text-align: center;">...</p> <p style="text-align: center;"><u>(9) (in relation to the <i>Payment Accounts Regulations</i>) any natural person who is acting for purposes which are outside that person's trade, business, craft or profession.</u></p>
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Annex B**Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)**

In this Annex, underlining indicates new text.

6 Product information**6.1 General**

...

6.1.13A G *Firms are reminded that when offering a policy as part of a packaged bank account the firm may be subject to the requirements of regulation 13 (payment accounts packaged with another product or service) of the Payment Accounts Regulations.*

Annex C

Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

5 Post sale

5.1 Post sale requirements

...

5.1.7A G *BCOBS 5.1.6G and 5.1.7G do not apply to a firm with respect to a switching service that the firm is required to offer under Part 3 of the Payment Account Regulations.*

5.1.8 G A *firm* may find it helpful to take account of ~~the European Banking Industry Committee Common Principles for Bank Account Switching and the Cash ISA to Cash ISA Transfer Industry Guidelines.~~

Annex D

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text unless otherwise stated.

16 Reporting requirements

16.1 Application

...

16.1.1E D The rules, directions and guidance in SUP 16.22 apply to a payment service provider located in the UK other than:

(1) a credit union;

(2) National Savings and Investments; and

(3) the Bank of England.

16.1.2 G The only categories of *firm* to which no section of this chapter applies are:

...

(2) an *incoming EEA firm* or *incoming Treaty firm*, unless it is:

...

(b) an *insurer* with *permission* to effect or carry out *life policies*; or

(c) a *firm* with *permission* to establish, operate or wind up a *personal pension scheme* or a *stakeholder pension scheme*; or

(d) a payment service provider to which SUP 16.22 applies; and

(3) a *UCITS qualifier*.

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16 ~~and~~, SUP 16.17 and SUP 16.22)

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
SUP 16.1, SUP 16.2 and SUP	All categories of <i>firm</i> except:	Entire sections

16.3			
	...		
	(b)	an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> , which is not:	
		...	
		(iii)	a <i>firm with permission to establish, operate or wind up a personal pension scheme or a stakeholder pension scheme</i> ; <u>or</u>
		(iv)	<u>a payment service provider to which SUP 16.22 applies;</u> <u>and</u>
	(c)	a <i>UCITS qualifier</i> .	
...			

...

16.3 General provisions on reporting

...

Structure of the chapter

16.3.2 G This chapter has been split into the following sections, covering:

...

- (15) *AIFMD* reporting (*SUP 16.18*); ~~and~~
- (16) reporting under the *MCD Order* for *CBTL firms* (*SUP 16.21*)
; and
- (17) reporting under the *Payment Accounts Regulations* (*SUP 16.22*).

...

After SUP 16.21 (Reporting under the MCD Order for CBTL firms) insert the following new section. The text is not underlined.

16.22 Reporting under the Payment Accounts Regulations

Application

- 16.22.1 G This section applies to a *payment service provider* located in the *UK* other than:
- (a) a *credit union*;
 - (b) National Savings and Investment; and
 - (c) the Bank of England.

[**Note:** see *SUP* 16.1.1ED]

Purpose

- 16.22.2 G The purpose of this section is to give directions to *payment service providers* under regulation 29 (Reporting requirements) of the *Payment Accounts Regulations* about:
- (1) the information concerning their compliance with the requirements imposed on them under Part 3 (Switching) and Part 4 (Access to payment accounts) of the *Payment Accounts Regulations*; and
 - (2) the time at which and the form in which they must provide that information.

Reporting requirement

- 16.22.3 D A *payment service provider* that offers a payment account within the meaning of the *Payment Accounts Regulations* must submit a duly completed report (referred to in this section as a “payment accounts report”) to the *FCA*.
- 16.22.4 R A *payment service provider* to which *SUP* 16.22.3D applies and which is a *credit institution* is required to complete every row in the payment accounts report, including rows 4 and 5, in accordance with *SUP* 16.22.5D to *SUP* 16.22.10R, even if it has not been designated under regulation 21 of the *Payment Accounts Regulations*.

Frequency and timing of report

- 16.22.5 D The payment accounts report required by *SUP* 16.22.3D and *SUP* 16.22.4R must be submitted:
- (1) online using the appropriate system accessible from the *FCA*’s website;
 - (2) in the format set out in *SUP* 16 Annex 41AD; notes for the completion of the report are set out in *SUP* 16 Annex 41BG; and

- (3) within two *months* of the end of the relevant reporting period.
- 16.22.6 D The first reporting period is the period commencing on 18 September 2016 and ending on 28 February 2018.
- 16.22.7 D Subsequent reporting periods are consecutive periods of two years commencing on 1 March 2018 and on 1 March every other year thereafter.
- 16.22.8 G For example, the second reporting period commences on 1 March 2018 and ends on 29 February 2020 and the third reporting period commences on 1 March 2020 and ends on 28 February 2022.
- 16.22.9 D *SUP* 16.3.11R (Complete reporting) and *SUP* 16.3.13R (Timely reporting) apply to the submission of payment accounts reports under this section as if a reference to *firm* in those *rules* were a reference to *payment service provider*.
- 16.22.10 R *SUP* 16.3.14R (Failure to submit reports) applies to the submission of payment accounts reports under this section as if a reference to *firm* in that rule were a reference to *payment service provider*.

After SUP 16 Annex 40 (Data items related to recovery and information for resolution plans) insert the following new Annexes. The text is new and not underlined.

SUP 16 Annex 41AD Payment accounts report

REP014 Payment Accounts Report

A

1 Do you offer payment accounts as defined by regulation 2 of the Payment Accounts Regulations?

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Information on switching of payment accounts

- 2 How many payment accounts have you switched?
- 3 How many applications for switching of a payment account have you refused?

Information on payment accounts with basic features

- 4 Are you a credit institution offering payment accounts with basic features?
- 5 How many payment accounts with basic features have you opened?
- 6 How many applications for payment accounts with basic features have you refused?

SUP 16 **Notes for completion of payment accounts report in SUP Annex 41AD**
Annex
41BG

General

The purpose of these notes is to assist *payment service providers (PSPs)* in the completion of the payment accounts report ('the report'). There is no consolidated group reporting for this form and therefore a separate form is required for each legal entity to which *SUP 16.22* applies.

The report is to be completed by all *PSPs* located in the *UK* that offer payment accounts within the meaning of the *Payment Account Regulations* (including *credit institutions*, but excluding *credit unions*, National Savings and Investments and the Bank of England).

'Payment account' is defined in regulation 2 of the *Payment Accounts Regulations*. The *FCA* has provided guidance on this definition available at <http://www.fca.org.uk/news/fg16-6-payment-accounts-regulations-2015>. The effect of *SUP 16.22.3D* is that *PSPs* that do not offer this type of account are not required to submit the report.

Row 1:

PSPs should answer 'yes' if they provide payment accounts as defined in regulation 2 of the *Payment Accounts Regulations*.

Switching

For the purpose of this report 'switching' means a switching service between payment accounts that a *firm* is required to offer under Part 3 of the *Payment Accounts Regulations*, whether such a service meets the requirements in Schedule 3 to those regulations or is a switching service designated as an alternative arrangement. 'Switching' and 'switching service' are defined in regulation 2(1) of the *Payment Accounts Regulations*.

Row 2:

- (1) *PSPs* should enter the total number of payment accounts (including payment accounts with basic features) they have switched during the relevant period.
- (2) To prevent double-counting, *PSPs* should report only the accounts switched where they are the receiving *PSP* (see paragraph 1 of Schedule 3 to the *Payment Accounts Regulations*), i.e. they are required to report incoming switches only.
- (3) *PSPs* should include switches where the *consumer's* account with the transferring provider (see paragraph 1 of Schedule 3 to the *Payment Accounts Regulations*) remains open (partial switch) as well as those

where the account has been closed (full switch).

- (4) *PSPs* should not include switches between accounts:
 - (a) with the same provider;
 - (b) denominated in different currencies;
 - (c) that are not payment accounts (e.g. not held by a *consumer*); or
 - (d) where one or both *PSPs* are located outside the *UK*.

Row 3:

- (1) *PSPs* should only report the total number of switching applications that have been refused where they are the receiving *PSP*.
- (2) *PSPs* should report the total number of switching applications that have been refused during the relevant period. This should include only those applications that have been finally determined. It should not include applications that are still under consideration, still being processed or which are the subject of further enquiries or investigation.
- (3) *PSPs* should not record a refusal to open a payment account (or a particular type of payment account) as a refusal of a switching application, unless the reason for refusal relates directly to switching.
- (4) *PSPs* should include all other refusals, including those where the reason for refusal relates to the transferring provider, for example where the transferring provider has:
 - (a) failed to carry out the tasks necessary for the switch to be effected; or
 - (b) failed to provide the information that is necessary to the receiving provider for the switch to be effected; or
 - (c) turned down the request from the receiving *PSP*, for example, because the funds held in the account with the transferring provider cannot be moved.

Payment accounts with basic features

For the purpose of this report, ‘payment account with basic features’ means an account:

- (1) having the features set out in regulation 19 of the *Payment Accounts Regulations*;
- (2) where no fees are payable other than those permitted by regulation 20 of the *Payment Accounts Regulations*; and

- (3) that is at least available to consumers meeting the eligibility criteria in regulation 23 of the *Payment Accounts Regulations*.

Row 4:

- (1) The question in this row should be answered by all *PSPs* required to complete the report.
- (2) A *credit institution* should respond 'yes' to this question if it offers payment accounts with basic features, whether or not it has been designated under regulation 21 of the *Payment Accounts Regulations*. A *PSP* that responds 'no' to this question is not required to complete rows 5 or 6.

Row 5:

Credit institutions should include the total number of payment accounts with basic features that have been opened during the relevant period. This should include accounts that have subsequently been closed, switched, upgraded or migrated to another account.

Row 6:

- (1) *Credit institutions* should report the total number of applications for payment accounts with basic features they have refused. This should include only those applications that have been finally determined. *Credit institutions* should not include applications that are still under consideration.
- (2) A refusal is a decision to reject a complete application. These include situations in which the *consumer* has not met identification and verification checks (where these take place after a complete application has been submitted) and/or has not met fraud checks.

Annex E

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new table at the end of this Annex.

2 Annex 1 Warning notices and decision notices under the Act and certain other enactments

...

<u>The Payment Accounts Regulations 2015</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 34 and Regulation 35(4)(a)</u>	<u>when the FCA is proposing or deciding to publish a statement or impose a financial penalty*</u>		<u>RDC</u>

Insert the following new table at the end of this Annex:

2 Annex 2 Supervisory notices

...

<u>The Payment Accounts Regulations 2015</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 30</u>	<u>when the FCA is exercising the power to impose a direction</u>		<u>RDC or executive procedures (Note)</u> <u>See DEPP 2.5.17G</u>
<u>Note: The RDC will take the decision to give a notice imposing a direction. However, FCA staff under executive procedures will be the decision maker whenever a firm agrees not to contest the direction.</u>			

...

Amend the following as shown.

Sch 3 Fees and other required payments

...

Sch 3.2G

The <i>FCA</i> 's power to impose financial penalties is contained in:	
	...
	the <i>Small and Medium Sized Business (Credit Information) Regulations</i>
	<u>the <i>Payment Accounts Regulations</i></u>

Sch 4 Powers Exercised

Sch 4.1G

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :	
	...
	Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> , by paragraph 3 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i> , by article 23(4) of the <i>MCD Order</i> and by ² regulation 43 of the <i>Small and Medium Sized Business (Credit Information) Regulations</i> <u>and by regulation 36(6) of the <i>Payment Accounts Regulations</i></u>)
	...
	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i> , by paragraph 5 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i> , by article 24(2) of the <i>MCD Order</i> and by ² regulation 44 of the <i>Small and Medium Sized Business (Credit Information) Regulations</i> <u>and by paragraph 4 of Schedule 7 of the <i>Payment Accounts Regulations</i></u>)

Annex F

Amendments to the Enforcement Guide (EG)

In this Annex, all the text is new and not underlined.

Insert the following new section after EG 19.31 (The Small and Medium Sized Business (Credit Information) Regulations).

19.32 The Payment Accounts Regulations 2015

- 19.32.1 The *Payment Accounts Regulations 2015* (“the *PARs*”) implement the Payment Accounts Directive. They entitle *consumers* who hold a payment account (such as a current account) to receive certain information about the fees and charges applied to that account. They also entitle *consumers* to use a switching service which meets certain minimum standards, if they wish to change their payment account to another provider.
- 19.32.2 The *PARs* impose various obligations on payment account providers, such as a duty to disclose certain information when offering a packaged account to a *consumer* (i.e. the costs and fees of the products or services included in the package). They also introduce an obligation to offer a switching service between payment accounts. The *PARs* also require *credit institutions* designated by Her Majesty’s Treasury to provide eligible *consumers* with access to basic banking services.
- 19.32.3 As the requirements arise under the *PARs* and not under the *Act*, the *PARs* create a separate monitoring and enforcement regime but apply, or make provision corresponding to, certain aspects of the *Act*.
- 19.32.4 The *FCA’s* approach to taking enforcement action under the *PARs* will reflect its general approach to enforcing the *Act*, as set out in *EG 2*. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment of subjects under investigation when exercising its enforcement powers.
- Information gathering and investigation powers
- 19.32.5 Part 1 of Schedule 7 to the *PARs* applies many of the provisions of the *Act* in relation to the *FCA’s* investigation and information-gathering powers to the *FCA’s* functions under the *PARs*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating any breaches of the *PARs*.
- 19.32.6 For example, the *FCA* will, if appropriate, notify the subject of the investigation that it has appointed investigators to carry out an investigation and the reasons for the appointment. The *FCA’s* policy in regulatory investigations under the *PARs* is to use powers to compel information, in the same way as it would in the

course of an investigation under the *Act*.

Decision making under the PARs

- 19.32.7 The *RDC* is the *FCA*'s decision maker for some decisions which require *warning notices*, *decision notices* or other written notices to be given under the *PARs* as set out in *DEPP 2 Annex 1* and *DEPP 2 Annex 2*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3* or *DEPP 3.4*.
- 19.32.8 For decisions made by *executive procedures*, the procedures to be followed will be those described in *DEPP 4*.
- 19.32.9 Paragraph 1 of Schedule 7 to the *PARs* applies the procedural provisions of Part 9 of the *Act* (with some modifications), in respect of matters that can be referred to the *Tribunal*, and Paragraph 4 of Schedule 7 to the *PARs* applies Part 26 of the *Act* to *warning notices* and *decision notices* given under the *PARs*.

Public censures and the imposition of penalties

- 19.32.10 When determining whether to take action to impose a penalty or to issue a public censure under the *PARs*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP 6.2* and *DEPP 6.4*. When determining the level of financial penalty, the *FCA*'s policy includes having regard to the relevant principles and factors in *DEPP 6.5*, *DEPP 6.5A*, *DEPP 6.5D* and *DEPP 6.7*.
- 19.32.11 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving breaches of the *PARs* to assist it to exercise its functions. *DEPP 5*, *DEPP 6.7* and *EG 5* set out information on the *FCA*'s settlement process and the *settlement discount scheme*.
- 19.32.12 The *FCA* will apply the approach to publicity that is outlined in *EG 6*.