

Consultation Paper

CP16/7**

The Payment Accounts Regulations 2015

Draft Handbook changes
and draft guidance



March 2016

Contents

Abbreviations used in this document	3
1 Overview	5
Introduction	5
Who does this consultation affect?	5
Is this of interest to consumers?	6
Context	6
Summary of our proposals	8
Next steps	9
2 Definition of a ‘payment account’	10
Background	10
Proposed guidance	11
3 Packaged accounts	13
Background	13
Proposed guidance	14
Financial promotions	15
Proposed Handbook change	15
4 Switching	17
Overview of PAD requirements	17
UK implementation	17
Proposed Handbook changes	18
5 Regulatory reporting	20
Overview of PAD requirements	20
UK implementation	20
Proposed Handbook changes	21
6 Our approach to supervising and enforcing the Payment Accounts Regulations	24
Supervision	24
Enforcement	24
7 What we will do next	25
Follow-up to this Consultation Paper	25
UK list of terms and definitions for services linked to payment accounts and subject to fees	25

Annex

1	List of questions	26
2	Cost benefit analysis	27
	Legal requirements and our proposals	27
	Context and policy approach	27
	Proposed Handbook changes	28
	Proposed guidance	29
3	Compatibility statement	30
	Compatibility with the FCA's general duties	30
	Legislative and Regulatory Reform Act 2006	32
	Equality Impact Assessment	33

Appendix

1	Draft Handbook text	34
2	Draft guidance on the definition of a 'payment account' under the Payment Accounts Regulations 2015	54
	Background	54
	'Payment account' under the PARs	55
	Assessment of accounts	55
	Examples	57
	Beyond the initial assessment of accounts	58
3	Draft guidance on regulation 13 of the Payment Accounts Regulations 2015 (packaged accounts)	59
	Background	59
	Regulation 13 on packaged accounts	60
	When a payment account or other product/service is available separately	61
	Disclosure of costs and fees	62

We are asking for comments on this Consultation Paper by 3 May 2016.

You can send them to us using the form on our website at:
www.the-fca.org.uk/cp16-7-response-form.

Or in writing to:

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

Telephone: 020 7066 0246
Email: PADimplementation@fca.org.uk

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

You can download this Consultation Paper from our website: www.fca.org.uk.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 0790 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS

Abbreviations used in this paper

BCOBS	Banking: Conduct of Business sourcebook
CASS	Current Account Switch Service
CBA	cost benefit analysis
DEPP	Decision Procedures and Penalties Manual
EBA	European Banking Authority
EG	Enforcement Guide
FEES	Fees Manual
FSMA	Financial Services and Markets Act 2000 (as amended by the Financial Services Act 2012)
ICOBS	Insurance: Conduct of Business sourcebook
LRRA	Legislative and Regulatory Reform Act 2006
PAD	Payment Accounts Directive 2014/92/EU
PARs (or 'the Regulations')	Payment Accounts Regulations 2015
PERG	Perimeter Guidance Manual
PSD	Payment Services Directive 2007/64/EC
PSD2	Revised Payment Services Directive (EU) 2015/2366
PSP	payment services provider
PSR	Payment Systems Regulator
PSRs	Payment Services Regulations 2009
RTS	regulatory technical standards
SMEs	small and medium-sized enterprises
SUP	Supervision module of the FCA Handbook
Treasury	Her Majesty's Treasury

1. Overview

Introduction

- 1.1** The EU Payment Accounts Directive (PAD) was adopted in July 2014 and implemented in the UK by means of the Payment Accounts Regulations 2015 (PARs), which were made in December 2015. The provisions on switching, payment accounts with basic features¹, and packaged accounts take effect on 18 September 2016.
- 1.2** The PARs place a new obligation on the FCA to gather and submit to Her Majesty's Treasury (the Treasury) certain data on payment accounts with basic features and the switching of payment accounts. In order to meet this obligation, we are proposing changes to our Handbook which introduce new regulatory reporting requirements. With a view to reflecting the requirements of the PARs on payment services providers (PSPs), we are also proposing a number of amendments to guidance provisions in our Handbook.
- 1.3** Furthermore, we are seeking stakeholders' views on proposed non-Handbook guidance to assist PSPs with the implementation of two aspects of the PARs.

Who does this consultation affect?

- 1.4** This consultation will primarily be of interest to:
 - banks
 - building societies
 - e-money institutions
 - other providers of payment accounts
 - trade bodies representing providers of payment accounts
- 1.5** It may also be of interest to organisations representing the interests of consumers.

¹ 'Payment accounts with basic features' are similar to accounts usually referred to in the UK as 'basic accounts' or 'basic bank accounts'. In order to be clear that we are referring to basic accounts within the meaning of the PARs, we retain the terminology 'payment accounts with basic features' throughout this paper.

Is this of interest to consumers?

- 1.6** PAD entitles consumers holding a payment account to receive information relating to fees and charges, and to the provision of a switching service which meets certain minimum standards. It also entitles consumers to certain information when opening a packaged account. This consultation proposes changes to our Handbook, and guidance aimed at assisting PSPs with the implementation of the new requirements.
- 1.7** Ultimately, this will be in the interests of consumers who have a current account or other type of payment account (including packaged accounts) or who are considering opening one. However, we do not expect the proposals contained in this paper to be of direct interest to individual consumers, though we would welcome any feedback consumers may have.

Context

- 1.8** PAD was adopted by the European Parliament and the Council of the European Union in July 2014. It aims to:
- improve transparency and comparability of fee information on payment accounts through provisions on the disclosure of fees and charges (pre-contractual information and regular statements of fees), some standardised terminology, and rules on packaged accounts
 - facilitate switching of payment accounts within a Member State
 - ensure every EU resident has access to a payment account with basic features
- 1.9** Most of the provisions on fee information do not require implementation by PSPs until after the European Commission has adopted three technical standards to be drafted by the European Banking Authority (EBA). We expect implementation to be in 2017/2018. These provisions on fee information do not form the subject of this consultation. We will consider in due course whether to consult on any potential Handbook changes or guidance related to these aspects of PAD.
- 1.10** The implementation deadline for the provisions on packaged accounts, switching and payment accounts with basic features is 18 September 2016. It is these provisions with which this consultation is concerned.
- UK Government approach to PAD implementation**
- 1.11** The Treasury has chosen to implement PAD by means of regulations. Following a Government consultation in summer 2015, the PARs were made on 15 December 2015, having been approved by Parliament. In accordance with the implementation deadline set out in the Directive, the relevant parts of the PARs enter into force on 18 September 2016.
- 1.12** The Government has stated that its overall approach to PAD implementation is to minimise any negative impact on UK industry and consumers, and to preserve existing UK structures as far as possible while ensuring compliance with the Directive. In line with the Government's default approach to implementing EU directives, the provisions of PAD have been copied out into the

regulations as far as this is possible and appropriate given the overarching aim of maintaining existing regulation and structures.²

Our approach

- 1.13** Many of the PAD provisions are prescriptive in nature. For example, they set out which disclosures must be made when offering packaged accounts, the steps that must be followed when performing a switching service, and the minimum characteristics of a payment account with basic features. These details have been reproduced in the PARs and do not also need to be incorporated into our Handbook.
- 1.14** Nevertheless, the PARs do necessitate some amendments to our Handbook. These changes need to be made before the implementation deadline of 18 September 2016. Given the short period for implementation, our proposed approach is to make only those amendments which are necessary to ensure the compatibility of our Handbook with the PARs and to enable us to fulfil our legal obligations. This approach does not preclude further work at a later date, for example to coincide with the entry into force of the provisions on fee information.
- 1.15** In addition, we propose in this consultation to issue guidance on the definition of a 'payment account' in the PARs and on the provisions on packaged accounts. The proposed guidance relates to provisions contained in the PARs and not to FSMA or rules in our Handbook. Furthermore, our Handbook has limited application to PSPs that are not authorised under FSMA. For these reasons, we propose to issue non-Handbook guidance.
- 1.16** The proposed guidance is intended to set out our understanding of certain requirements in the PARs. This will assist PSPs with their preparations for implementation, which will need to be completed within a short timeframe.
- 1.17** Industry stakeholders have indicated to us that other provisions of the PARs may also present particular implementation challenges. We are grateful to stakeholders for making us aware of how the requirements of the Regulations impact on their business, and the practical difficulties they face. We have considered whether we could provide further assistance by proposing guidance in these areas but believe the Directive and the Regulations are clear, in particular, that:
- When consumers who are legally resident in the EU apply for or access a payment account³, credit institutions must not discriminate against these consumers by reason of their nationality, place of residence or any other ground referred to in Article 21 of the EU Charter of Fundamental Rights.⁴
 - Credit institutions with a duty to provide payment accounts with basic features, i.e. credit institutions designated by the Treasury, must refuse to open a payment account with basic features if it would be unlawful to do so. The examples of unlawful opening of an account that are cited in the PARs include situations in which it would be contrary to the Fraud Act 2006, or where it would be contrary to the Money Laundering Regulations 2007.⁵
 - Credit institutions designated by the Treasury as having a duty to provide payment accounts with basic features may only close such an account if at least one of the conditions set out

² See section 1.6 of the Treasury document '[Consultation: Implementation of the EU payment accounts directive](#)', 23 June 2015; see also paragraphs 6 and 7 of the Treasury document '[Implementation of the EU payment accounts directive: Consultation response](#)', 16 November 2015.

³ On the definition of a 'payment account' in the PARs, see chapter 2.

⁴ See regulation 18(1) of the PARs.

⁵ See regulation 25(1) of the PARs.

in regulation 26(2) of the PARs is met. The conditions set out include the consumer having knowingly used, or attempted to use, the account for illegal purposes.⁶

- 1.18** This paper does not consider whether to propose changes to our Fees Manual (FEES) in order to reflect our statutory obligations under the PARs. Potential changes to FEES will be considered in the consultation paper on regulatory fees and levies in October/November 2016.

Summary of our proposals

- 1.19** We are requesting feedback on our proposals for changes to our Handbook (Appendix 1) and on our draft guidance (Appendices 2 and 3). The background to and rationale for our proposals are set out in the following chapters.

- 1.20** In summary, our proposals are:

- to issue guidance on the **definition of a 'payment account'** within the meaning of the PARs
- to issue guidance on the implementation of the provisions on **packaged accounts**
- to introduce new **regulatory reporting requirements** in relation to switching and payment accounts with basic features
- to make **minor Handbook changes** in order to take account of the provisions in the PARs on:
 - packaged accounts
 - switching
- to update our Decision Procedures and Penalties Manual (DEPP) and Enforcement Guide (EG) to reflect the **powers of enforcement** we have been given under the PARs

- 1.21** We do not consider that the provisions of the PARs on payment accounts with basic features require any Handbook changes to be made.

Equality and diversity considerations

- 1.22** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper. We do not consider that our proposals raise concerns with regard to equality and diversity issues. In particular, we do not consider that the proposals in this consultation adversely impact any of the groups with protected characteristics, i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.

- 1.23** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and welcome any input to this consultation on such matters.

⁶ See regulation 26(2) of the PARs.

Next steps

What do you need to do next?

- 1.24** We are requesting feedback on the proposals for Handbook changes and guidance set out in this Consultation Paper. In particular, we would welcome responses to the questions listed in Annex 1.
- 1.25** Please send us your feedback by 3 May 2016. You can submit your response by using the online response form available on our website, by emailing us at PADimplementation@fca.org.uk or by writing to us.
- 1.26** We are proposing a two month consultation period in order to ensure that our final Handbook changes and finalised guidance can be published as early as possible before the implementation deadline of 18 September 2016. In this way, we hope to maximise the time available to PSPs to take any action needed.

What will we do?

- 1.27** We will analyse responses to this Consultation Paper and consider any suggestions for alternatives to the Handbook changes and guidance we are proposing. We aim to publish our final changes and guidance as soon as possible in summer 2016.

2. Definition of a ‘payment account’

- 2.1** In this chapter, we explain our proposed guidance on the definition of a ‘payment account’ in the PARs.

Background

- 2.2** Parts 2 and 3 of the PARs transpose into UK law the PAD provisions on the transparency and comparability of fee information, and switching. These parts of the Regulations are to be applied by PSPs in respect of the payment accounts they offer. This means that the scope of these provisions is determined by what constitutes a ‘payment account’ within the meaning of the PARs.
- 2.3** The term ‘payment account’ is already defined in the Payment Services Directive (PSD),⁷ and the PSRs transpose this definition into UK law. However, that definition of a ‘payment account’ differs from the definition which is used in the PARs. The two definitions are distinct. This means that the definition used in the PARs does not impact on the definition used in the PSRs. The definition of a payment account in the PARs is relevant only in the context of the PARs themselves.
- 2.4** Regulation 2 of the PARs defines a ‘payment account’ as:

‘an account held in the name of one or more consumers through which consumers are able to place funds, withdraw cash and execute and receive payment transactions to and from third parties, including the execution of credit transfers, but does not include any of the following types of account provided that the account is not used for day-to-day payment transactions: savings accounts; credit card accounts where funds are usually paid in for the sole purpose of repaying a credit card debt; current account mortgages or e-money accounts’.

- 2.5** This definition is intended to reflect both the description of the scope in Article 1(6) of PAD and the clarification provided in Recital 12 of PAD.⁸ The Treasury stated in its [consultation feedback document](#) on the PARs that it considers that the definition limits the scope to current accounts and ‘accounts that have functionalities directly comparable to those of current accounts’.⁹
- 2.6** Our engagement with stakeholders suggests that banks, building societies and e-money institutions find the definition of a ‘payment account’ difficult to navigate and are unsure how

⁷ This definition is left unchanged by the revised Payment Services Directive 2015 (PSD2).

⁸ See section 1.6 of the Treasury document ‘[Consultation: Implementation of the EU payment accounts directive](#)’, 23 June 2015.

⁹ See paragraph 17.

to apply it in practice. In particular, they are unsure of the extent to which accounts other than current accounts fall within the definition.

Proposed guidance

- 2.7** In this section, we explain our guidance on which accounts fall within the definition of a 'payment account' in the PARs.

Potential detriment

- 2.8** The main risk we perceive in relation to the definition of a 'payment account' is that PSPs might interpret it too narrowly with respect to the accounts it includes, for example by restricting it to traditional current accounts.
- 2.9** Interpretations which are narrower than intended have the potential to undermine the overarching aims of the Directive with regard to transparency, comparability, and ease of switching. Specifically, some consumers would not receive the information and the access to a switching service which PAD foresees.

Our proposals

- 2.10** In order to mitigate these risks, we propose to issue guidance on the definition of a 'payment account' under the PARs. Because the definitions of a 'payment account' in the PSRs and in the PARs are distinct, our proposed guidance does not impact on the definition in the PSRs or on the guidance we provide in chapter 15.3 of our Perimeter Guidance Manual (PERG) on the definition of a 'payment account' in the PSRs.
- 2.11** Because the definition is laid down by the PARs, which in turn implement PAD, our guidance cannot introduce any prescriptive or determinative criteria for defining which types of accounts are in or out of scope, as this is not provided for by PAD. It will therefore remain for PSPs to consider each of the accounts they offer and in each case to determine whether the account falls within the definition of a 'payment account' in the PARs.
- 2.12** Nevertheless, we consider that our proposed guidance will assist PSPs in assessing which of their own accounts fall within the definition. Ultimately, we believe that this will contribute to ensuring better outcomes for consumers by ensuring they gain the benefits intended by the Directive with regard to transparency and comparability of fee information, and ease of switching. In this way, we believe it will contribute to our operational objectives of consumer protection and promoting effective competition in the interests of consumers.

Overview of proposed guidance

- 2.13** Our draft guidance can be found in Appendix 2. The guidance:
- offers an explanation of the definition, breaking it down into its constituent parts and clarifying the relationship between these parts
 - suggests five steps that PSPs could find helpful when conducting their assessment of an account
 - provides some examples of accounts that we consider would be likely to be in or out of scope

- sets out our expectations of PSPs beyond the initial assessment of the accounts offered in September 2016

Q1: Do you agree with our proposed guidance on the definition of a 'payment account'? If not, please explain why not and suggest amendments.

3. Packaged accounts

- 3.1** In this chapter, we explain our proposed guidance on the application of the provisions of the PARs on packaged accounts. We also set out a Handbook change we are proposing to reflect these provisions.

Background

- 3.2** With the aim of ensuring improved transparency and comparability of costs, PAD introduces certain disclosure requirements which apply where a payment account is offered to a consumer *'as part of a package together with another product or service which is not linked to a payment account'*.¹⁰ Although PAD does not define what it means for a product or service to be 'not linked' to a payment account, it does provide a definition of 'services linked to the payment account':

'services linked to a payment account means all services related to the opening, operating and closing of a payment account, including payment services and payment transactions falling within the scope of point (g) of Article 3 of Directive 2007/64/EC and overdraft facilities and overrunning'.

- 3.3** On this basis, it is our understanding that a payment account offered *'as part of a package together with another product or service which is not linked to a payment account'* refers to what is generally known in the UK as a 'packaged account' or 'packaged bank account'.¹¹ For ease, we refer to these accounts in this paper as 'packaged accounts'.
- 3.4** The PAD requirements in relation to packaged accounts have been transposed into UK law by regulation 13 of the PARs:

'13.—(1) Where a payment account is offered as part of a package with another product or service which is not linked to a payment account, the payment service provider must inform the consumer whether it is possible to purchase the payment account from it separately.

(2) Where a payment service provider informs the consumer pursuant to paragraph (1) that it is possible to purchase the payment account from it separately, the payment service provider must additionally provide the consumer with separate information regarding the costs and fees associated with each of the other products and services offered in the package that can be purchased separately from the payment service provider.'

¹⁰ See Article 8 of PAD.

¹¹ This is consistent with the interpretation adopted by the Treasury, see section 2.3 of the Treasury document *'Consultation: Implementation of the EU payment accounts directive'*, 23 June 2015.

- 3.5** Our engagement with industry stakeholders suggests that they are unsure how to apply regulation 13. In order to assist PSPs and mitigate the risk of detriment to consumers, we propose to issue guidance in which we clarify our expectations of PSPs in applying the provisions on packaged accounts.

Proposed guidance

- 3.6** Our draft guidance can be found in Appendix 3. Following an explanation of regulation 13 and its general scope of application, the proposed guidance sets out our expectations of PSPs in relation to two issues.

When a payment account or other product/service is available separately

- 3.7** The disclosure requirements of regulation 13 apply only when the payment account in the package is also available separately from that PSP. This gives rise to the question of how similar the two payment accounts (the packaged one and the one available separately) must be in order for the account in the package to be said to be 'available separately'. In order to determine whether the disclosure requirements apply, it is also necessary to consider whether or not each of the other products/services in the package is available separately. For this reason, the same question arises in relation to the other elements of the package.

- 3.8** The Treasury notes in its [consultation feedback document](#) on the PARs that some PSPs assume the provision only applies when the account or other product/service can be purchased separately on identical terms and conditions to the one in the package.¹² We share the view expressed by the Treasury¹³ that this interpretation would result in so few situations falling within the scope of the provisions as to render the benefits to consumers minimal. We consider this restrictive interpretation to be incompatible with the Directive's aim of ensuring transparency and improving comparability, and not in the interests of consumers.

- 3.9** In order to ensure that consumers enjoy the intended benefits of this disclosure requirement we clarify our expectations in our proposed guidance. We also suggest two steps which PSPs could use to identify whether the account or other product/service in the package is the same as the one offered separately.

Disclosure of costs and fees

- 3.10** Where the payment account in the package is available separately and one or more of the other products/services in the package is also available separately, PSPs are required to provide the consumer with separate information about the costs and fees associated with each of the other products/services available separately. It is not explicit as to whether PSPs must disclose the fees and costs of the product/service when offered as part of the package (i.e. a part of the overall package cost) or those that would be incurred when the consumer purchases the product/service separately.

- 3.11** In our proposed guidance, we clarify that we would expect PSPs to disclose the fees and costs to that individual consumer of purchasing the other product/service separately, i.e. on a stand-alone basis, from that provider.

- 3.12** We believe this is the correct interpretation of regulation 13 as it reflects the aims of the disclosure requirement. The inclusion in PAD of the provision on packaged accounts is based

¹² See paragraph 31.

¹³ See paragraph 37.

on the concern of the EU legislature that packages can reduce transparency and comparability of prices and, in turn, have a negative impact on switching.¹⁴ It can be difficult for consumers to work out whether or not they would be getting good value from purchasing a package of products for one combined price without also knowing how much they would pay for these products separately. Only by disclosing the cost to the individual consumer of the products separately can this objective be achieved.

- 3.13** This interpretation is also entirely consistent with the fact that the disclosure requirement only applies where the product/service in the package is also available separately from the same PSP.
- 3.14** Overall, we believe that our proposed guidance will contribute to a uniform interpretation of the disclosure requirement. This is important in order to ensure that the information provided by different PSPs enables consumers to make valid and helpful comparisons.

Financial promotions

- 3.15** When complying with the requirement of regulation 13 to disclose the fees and costs to the individual consumer of purchasing products/services separately, firms authorised under the Financial Services and Markets Act 2000 (FSMA) must also comply with our Principles for Businesses, and the rules and guidance contained in BCOBS. In particular, we would like to remind firms authorised under FSMA that Principles 6 and 7 continue to apply to the marketing and sale of packaged accounts as do the rules and guidance in BCOBS 2 on communications with banking customers and financial promotions.
- 3.16** The Consumer Protection from Unfair Trading Regulations 2008 also apply alongside the PARs. They apply to the commercial practices of all PSPs, including in connection with their payment service business.
- 3.17** We will continue to monitor providers' marketing practices in relation to packaged accounts with a view to ensuring that financial promotions are clear, fair and not misleading, and commercial practices are not unfair.

Proposed Handbook change

- 3.18** ICOBS contains rules and guidance applicable to packages containing insurance products. Some of these rules apply to all packages containing an insurance product, while others are specific to packaged accounts sold with insurance.
- 3.19** ICOBS 6.1.13(1) requires firms to disclose to consumers the individual insurance premium for each insurance policy contained in a package. It applies to all situations in which an insurance policy is bought by a consumer in connection with other goods or services except where these other goods or services are provided as part of a packaged bank account.
- 3.20** There is a risk that firms and other readers of ICOBS 6.1.13 may interpret the exception for packaged accounts as meaning that there are no price disclosure requirements applicable to insurance products when these form part of a packaged account.

¹⁴ See recital 24 of PAD.

3.21 In order to mitigate this risk and ensure that firms are not misled as to their obligations, we propose to include in ICOBS 6.1.13 a signpost to regulation 13 of the PARs.

Q2: Do you agree with the two elements of our proposed guidance on packaged accounts? If not, please explain why not and suggest amendments.

Q3: Do you agree with our proposed addition to ICOBS 6? If not, please explain why not and suggest an alternative approach.

4. Switching

- 4.1** In this chapter, we set out the Handbook changes we are proposing in relation to the switching of payment accounts.

Overview of PAD requirements

- 4.2** PAD requires PSPs to offer consumers a switching service between payment accounts denominated in the same currency. It establishes a switching process under which minimum requirements are laid down, for example regarding the tasks of the transferring and receiving PSPs, and the timeframes in which these must be carried out. The switching service need only be offered within a Member State.
- 4.3** PAD permits Member States to maintain or establish alternative switching arrangements provided that the alternative service meets three criteria:
- It must be clearly in the interest of the consumer.
 - There must be no additional burden on the consumer.
 - The switching must be completed within the same overall timeframe of 12 working days at the most.

UK implementation

- 4.4** The PARs provide that any operator of a switching service may apply to the Payment Systems Regulator (PSR) for designation as an alternative switching arrangement. If the PSR is satisfied that the service meets the three criteria, it may issue a designation certificate to that operator.
- 4.5** The PSR intends to consult on its proposed designation and ongoing monitoring processes in March 2016 with a view to determining designation applications before the PARs enter into force on 18 September 2016.
- 4.6** The Treasury is of the view that the Current Account Switch Service (CASS)¹⁵ meets the three criteria for designation, while also acknowledging that it will be for the PSR to make this decision upon receiving an application from the operator of CASS.¹⁶

¹⁵ CASS is a voluntary switching scheme launched in September 2013 in which 40 bank and building society brands participate. It is owned and operated by Bacs. CASS makes switching current accounts simpler and quicker for customers. Further information for consumers is available at: <http://www.simplerworld.co.uk>. Useful information for PSPs can be found at: <http://www.bacs.co.uk/Bacs/Banks/AccountSwitchingService/Pages/AccountSwitchingService.aspx>

¹⁶ See also section 3.3 of the Treasury document '[Consultation: Implementation of the EU payment accounts directive](#)', 23 June 2015.

- 4.7** In order to fulfil its obligation to offer a switching service, a PSP in the UK must either be a party to and compliant with a designated switching service, or provide a switching service which meets the minimum requirements of the switching service set out in the PARs. The Regulations do not introduce any obligation on PSPs to join an alternative switching arrangement.

Proposed Handbook changes

- 4.8** BCOBS 5.1.5R requires firms to *'provide a prompt and efficient service'* to enable banking customers to switch a retail banking service to another firm. High-level guidance on the extent of this requirement is provided in BCOBS 5.1.6G, 5.1.7G and 5.1.8G.
- 4.9** The PARs are considerably more detailed regarding the duties and responsibilities of transferring and receiving PSPs than those set out in our rule and guidance provisions. The scope of the switching obligations under the PARs also differs from the scope of BCOBS in a number of other respects:

Table 1: Scope of PARs and BCOBS 5

	BCOBS 5	PARs
Payment service providers	firms authorised under FSMA	all payment service providers that offer a 'payment account'
Customers	consumers, micro-enterprises, SMEs with an annual income of less than £1 million	consumers
Types of accounts	all deposit accounts	payment accounts within the meaning of the PARs
Currency of accounts	new and old accounts need not be denominated in same currency	new and old accounts must be denominated in same currency

- 4.10** The high-level requirement to *'provide a prompt and efficient service'* is compatible with the more specific switching process of the PARs and of any designated alternative switching service. It should therefore continue to apply.
- 4.11** However, the guidance in BCOBS 5.1.6 and 5.1.7 on the extent of this requirement does not reflect the duties and responsibilities of PSPs under the switching process set out in the PARs. Accordingly, it should not apply in situations falling within the scope of the PARs. The guidance provisions will continue to apply in all other situations, for example where the banking customer is a small enterprise or where the retail banking service to be switched is not a payment account within the meaning of the PARs.
- 4.12** We propose to amend BCOBS 5.1 to:
- signpost firms to the switching requirements of the PARs
 - disapply the guidance provisions of 5.1.6 and 5.1.7 when the provisions of the PARs on switching apply
 - delete the reference to the European Banking Industry Committee Common Principles for Bank Account Switching, as these have been superseded by PAD

4.13 This approach will ensure that following the entry into force of the PARs all customers can expect at least the same level of service as today. It also clarifies for firms the relationship between their switching obligations under the new legislation and the requirement to provide a prompt and efficient service under BCOBS.

**Q4: Do you agree with our proposed changes to BCOBS 5.1?
If not, please explain why not and suggest an alternative approach.**

5. Regulatory reporting

- 5.1** In this chapter, we set out our proposals for new regulatory reporting requirements.

Overview of PAD requirements

- 5.2** PAD requires each Member State to provide the European Commission with information on the following:
- compliance by PSPs with the transparency requirements relating to the fee information document, statement of fees, standardised terminology and glossary
 - compliance with the requirement to establish a price comparison website on payment accounts
 - the number of payment accounts that have been switched
 - the proportion of switching applications that have been refused
 - the number of credit institutions offering payment accounts with basic features
 - the number of payment accounts with basic features that have been opened
 - the proportion of applications for payment accounts with basic features that have been refused
- 5.3** The information is to be submitted to the European Commission for the first time by 18 September 2018 and every two years thereafter.

UK implementation

- 5.4** We are required by the PARs to gather the information and to supply it to the Treasury by 18 July 2018 and every two years thereafter. This applies to all the information listed above with the exception of that regarding the price comparison website, which the Treasury will gather. The PARs require the Treasury to submit all the information to the European Commission on behalf of the UK by 18 September 2018 and every two years thereafter.
- 5.5** The PARs require PSPs to give us any information we may direct them to provide about their compliance with the requirements imposed by or under the Regulations.

Proposed Handbook changes

Compliance with transparency requirements

- 5.6** The PARs require us to monitor and enforce the requirements imposed on PSPs under the Regulations. This includes PSPs' compliance with the transparency requirements when they enter into force in 2017/2018. We will outline any relevant observations we have made during our compliance monitoring in our information to the Treasury.
- 5.7** We do not consider it necessary to make any Handbook changes to enable us to gather this compliance information.

Data on switching and on payment accounts with basic features

- 5.8** We do not currently collect any of the required data on switching or payment accounts with basic features on a regular or systematic basis. We therefore propose to require PSPs to provide the information by means of a new regulatory reporting requirement added to SUP 16 of our Handbook. We propose to create a new reporting form for this purpose.
- 5.9** In addition to fulfilling our reporting obligations under the PARs, the data will help us to assess PSPs' compliance with the provisions of the PARs on switching and payment accounts with basic features. In particular, the data on payment accounts with basic features will provide us with a picture of developments in relation to this market. This will help us to assess the impact of PAD, both in terms of the overall competitiveness of the market for payment accounts with basic features and the extent to which consumers are being granted access to an account.
- 5.10** In line with our general approach to the PARs, we propose to keep the additional reporting burden on PSPs as low as possible.

Which data must be reported?

- 5.11** We propose that PSPs are required to report two data items:

- the number of payment accounts that have been switched
- the proportion of switching applications that have been refused

In addition, we propose that credit institutions offering payment accounts with basic features also report two further data items:

- the number of payment accounts with basic features that have been opened
- the proportion of applications for payment accounts with basic features that have been refused

- 5.12** In order to ensure that the data we receive is comparable and will be meaningful when we collate the data supplied by individual PSPs, we propose to set out what, for the purposes of reporting, constitutes:

- a payment account switch
- a refusal of a switching application
- a payment account with basic features
- a refusal of an application for a payment account with basic features

5.13 This can be found in our draft notes for completing the new reporting form in Appendix 1 to this consultation. We believe this will provide PSPs with a greater level of certainty with regard to the data they need to collect and report.

Which PSPs need to report?

5.14 The two data items on switching of payment accounts will need to be reported by all PSPs offering payment accounts within the meaning of the PARs.¹⁷

5.15 As the operator of the Current Account Switch Service (CASS), Bacs already collects and publishes information on the number of current accounts switched through CASS. With this in mind, we have explored whether it would be feasible to exempt the PSPs which are CASS participants from having to report their CASS switches to us.

5.16 After considering the implications of this, we have concluded that it would not be simpler or more efficient overall. This is because the Bacs data represents only one (albeit large) subset of the total switching data we are required to submit to the Treasury. In particular, it does not include the switches that take place outside of CASS, including switches between payment accounts which are not current accounts. This means that CASS participants would still need to submit the remaining switching data to us.

5.17 Credit institutions which offer payment accounts with basic features as defined by the PARs will also need to report the remaining two data items. This includes not only those credit institutions designated by the Treasury under the Regulations but also others choosing to provide payment accounts with basic features within the meaning of the PARs. We believe this is necessary in order for us to be able to report to the Treasury the total number of credit institutions offering payment accounts with basic features. It will also ensure that the data we submit on the number of accounts and the proportion of applications refused is complete.

How should the data be submitted?

5.18 We propose that PSPs submit the required data on a new regulatory reporting form within the existing reporting system. The proposed new form can be found in our proposal for a new annex to SUP 16 in Appendix 1 to this consultation.

5.19 Previous experience with data submission shows that firms favour the use of regulatory reporting over manual and ad hoc data requests because of its relative efficiency. It also allows us to process and analyse the data quickly, accurately and efficiently. Overall, we consider this method of data submission to be the most cost effective way of collecting the data we are required to submit to the Treasury.

When should the data be reported?

5.20 In line with the entry into force of the PARs, PSPs will need to start collecting the data on switching and payment accounts with basic features from 18 September 2016.

5.21 We are required to submit the data totals to the Treasury every two years. Consistent with our general approach to the PARs, we propose that PSPs also report the data to us every two years. However, we are aware that PSPs submit many other data items to us on an annual basis, and so are open to views on the relative merits of annual reporting of the data under the PARs.

5.22 We propose a single submission date (30 April) in respect of the same reporting period (the two year period ending 31 March) for all PSPs, irrespective of their accounting reference dates. This will enable us to make valid comparisons and calculate meaningful totals for submission to the Treasury. We propose that PSPs submit the data for the first time by 30 April 2018 in respect of

¹⁷ See chapter 2 for more on the definition of a 'payment account' for the purposes of the PARs.

the reporting period 18 September 2016 to 31 March 2018. All subsequent reporting periods will be two years long and run from 1 April to 31 March.

5.23 The general reporting provisions in SUP 16.3 require that firms authorised under FSMA submit complete reporting data in a timely manner. Failure to do so results in an administrative fee of £250. We intend to extend the application of these general reporting provisions to PSPs in respect of the payment account reporting requirements that we are proposing.

- Q5:** Do you agree with our proposed guidance notes on what each individual data item should include? If not, please explain why not and suggest amendments.
- Q6:** Do you agree with our proposal to require PSPs to report the data every two years or would you prefer an annual submission requirement? Please explain your reasons.
- Q7:** Do you agree with the other aspects of our proposal to introduce new regulatory reporting requirements? If not, please explain why not and suggest an alternative approach.

6.

Our approach to supervising and enforcing the Payment Accounts Regulations

- 6.1** In this chapter, we briefly set out our approach to monitoring and enforcing PSPs' compliance with the requirements of the PARs.

Supervision

- 6.2** We are required by the PARs to determine whether PSPs are complying with the requirements imposed by or under the Regulations. We intend to monitor compliance as part of a risk-based approach to supervision.
- 6.3** As set out in chapter 4, the PARs provide that the PSR may designate a switching service as an alternative arrangement if the PSR is satisfied that it meets three criteria. We have an obligation to monitor the requirement for PSPs to either be a party to a designated alternative switching service or provide a switching service which meets the minimum requirements of the switching service set out in the PARs. We will coordinate closely with the PSR, as appropriate.
- 6.4** We do not consider it necessary to make any Handbook changes.

Enforcement

- 6.5** The PARs also give us powers to take enforcement action where we deem it necessary. We propose to make changes to the Enforcement Guide (EG) to describe how we could take enforcement action in line with our general approach to enforcing FSMA, by exercising our powers in a manner that is transparent, proportionate and consistent with our publicly stated policies.
- 6.6** We also propose changes to our Decision Procedures and Penalties Manual (DEPP). These describe our decision-making procedures relating to the exercise of our disciplinary powers and the giving of statutory notices.

Q8: Do you agree with our proposed changes to DEPP and EG? If not, please explain why not and suggest an alternative approach.

7. What we will do next

- 7.1** In this chapter, we set out the next steps in the implementation of PAD.

Follow-up to this Consultation Paper

- 7.2** We will analyse responses to this Consultation Paper and consider any suggestions for alternatives to the Handbook changes and guidance we are proposing.
- 7.3** We are mindful of the importance to PSPs of having certainty about our final Handbook changes and finalised guidance as soon as possible before the implementation deadline of 18 September 2016. We will publish these as soon as we can in summer 2016. In the accompanying Policy Statement, we will summarise the feedback of respondents and explain how we have finalised the Handbook amendments and guidance.

UK list of terms and definitions for services linked to payment accounts and subject to fees

- 7.4** In our *Call for Input: Terms and definitions for services which are linked to payment accounts and subject to fees* of June 2015, we explained the process set out in PAD by which the standardised terms and definitions are to be developed.¹⁸ We completed the first step of this process in September 2015 with the publication of the provisional UK list of terms and definitions in *Feedback Statement 15/4*¹⁹, and the submission of the list to the European Commission and European Banking Authority (EBA).
- 7.5** The next step is for the EBA – following a public consultation – to submit to the European Commission draft regulatory technical standards (RTS) with EU standardised terminology for some services linked to payment accounts. The Commission will then adopt the RTS as a delegated act.
- 7.6** The final step in the process will be for us to integrate the EU standardised terminology into the provisional UK list and publish the resulting final list for use by PSPs. We are required by the PARs to publish the final list without delay and at the latest within three months of the entry into force of the Commission delegated act. At the present time, we do not anticipate the delegated act will enter into force before the middle of 2017.
- 7.7** We will consider the integration of the EU standardised terminology into the UK provisional list in due course.

¹⁸ See paragraphs 2.7 to 2.18.

¹⁹ The provisional UK list is in Annex 1 to the Feedback Statement.

Annex 1

List of questions

- Q1:** Do you agree with our proposed guidance on the definition of a 'payment account'? If not, please explain why not and suggest amendments.
- Q2:** Do you agree with the two elements of our proposed guidance on packaged accounts? If not, please explain why not and suggest amendments.
- Q3:** Do you agree with our proposed addition to ICOBS 6? If not, please explain why not and suggest an alternative approach.
- Q4:** Do you agree with our proposed changes to BCOBS 5.1? If not, please explain why not and suggest an alternative approach.
- Q5:** Do you agree with our proposed guidance notes on what each individual data item should include? If not, please explain why not and suggest amendments.
- Q6:** Do you agree with our proposal to require PSPs to report the data every two years or would you prefer an annual submission requirement? Please explain your reasons.
- Q7:** Do you agree with the other aspects of our proposal to introduce new regulatory reporting requirements? If not, please explain why not and suggest an alternative approach.
- Q8:** Do you agree with our proposed changes to DEPP and EG? If not, please explain why not and suggest an alternative approach.
- Q9:** Do you agree that the proposed reporting requirements would result in only a minimal increase in costs for PSPs?
- Q10:** Do you have any other comments on our cost benefit analysis?

Annex 2

Cost benefit analysis

Legal requirements and our proposals

1. Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) of any rules we propose. Only in the specified instances does this requirement not apply. These instances include where the proposed rules would result in no or only a minimal increase in costs for firms. There is no legal requirement to publish a CBA in relation to proposals for guidance.
2. FSMA defines a CBA as '*an analysis of the costs, together with an analysis of the benefits*' that will arise if the proposed rules are made. It also requires us to include estimates of those costs and benefits, unless they cannot reasonably be estimated or it is '*not reasonably practicable*' to produce an estimate.
3. The changes we are proposing to Handbook modules ICOBS, BCOBS and DEPP, and to EG are not proposals for rules but for guidance. For this reason, they are not subject to the requirement to publish a CBA.
4. Our two proposals for non-Handbook guidance are made under regulation 40 of the PARs. They are not subject to the CBA requirement of FSMA.
5. Some of our proposed changes to SUP on regulatory reporting are based on our powers to make directions under the PARs, others are made under FSMA. To the extent that they are guidance and/or are being proposed under the PARs, there is no requirement to publish a CBA. The CBA requirement applies only in relation to rules we are proposing on the basis of our powers under FSMA.
6. In summary, there is no legal requirement to publish a CBA in relation to most of the proposals in this Consultation Paper. Nevertheless, we have considered whether they impose costs on PSPs beyond those which are inherent in the PARs. This has assisted us in assessing the proportionality of our proposals.

Context and policy approach

7. PAD has three high-level aims:
 - to improve the functioning of the EU internal market and avoid distortions of competition in retail banking
 - to empower consumers by enabling them to make informed choices

- to allow all EU citizens the opportunity to benefit from the single market by promoting economic and financial inclusion
8. Based on these aims the European Commission carried out an impact assessment, which it published with its directive proposal in May 2013. We have taken this impact assessment into account and do not propose to repeat the analysis presented therein.
- Government approach to implementation**
9. The UK Government has implemented PAD by means of the PARs. The Government has stated that its overall approach to PAD implementation is to preserve existing UK structures as far as possible while at the same time ensuring compliance with the Directive.²⁰ This is reflected by the use of copy-out of many provisions combined with the use of a number of Member State options and discretions.
10. The Government published its own impact assessment together with the final PARs. We have taken this impact assessment into account and do not propose to repeat the analysis presented therein.
- Our approach**
11. Our approach to implementation is to make only those amendments which are necessary to ensure the compatibility of our Handbook with the PARs and to enable us to fulfil our legal obligations.
12. In line with this approach, we do not consider that any of our proposed Handbook changes go further than necessary. In particular, we do not propose to introduce higher standards than those already set out in the PARs or to introduce additional requirements.

Proposed Handbook changes

- Packaged accounts and switching**
13. We propose some minor Handbook changes to our conduct of business sourcebooks on insurance (ICOBS) and banking (BCOBS) to take account of the provisions of the PARs in relation to packaged accounts and switching. The proposed amendments are guidance and have a largely signposting function, that is, they do not introduce new rules but rather highlight to PSPs where the PARs contain related or overlapping requirements. Such changes are designed to assist PSPs with the implementation of the PARs by clarifying the relationship between certain regulations and existing Handbook provisions.
14. We believe the impact of these signposts on PSPs to be cost neutral as they do not entail any additional obligations or costs for PSPs.
- Enforcement**
15. The proposed changes to DEPP and to our EG merely reflect the powers we have been given under the PARs. Referencing these powers and how we intend to use them ensures transparency while maintaining an up-to-date EG. Accordingly, our proposals do not impose any additional costs on PSPs.

²⁰ See section 1.6 of the Treasury document 'Consultation: Implementation of the EU payment accounts directive', 23 June 2015; see also paragraphs 6 and 7 of the Treasury document 'Implementation of the EU payment accounts directive: Consultation response', 16 November 2015.

Regulatory reporting

16. Neither the Directive nor the PARs imposes a direct obligation on PSPs to collect and submit data on switching and payment accounts with basic features. However, the PARs impose a statutory obligation on us to gather this information.
17. We do not already collect any of the data items on a regular or systematic basis. While the PARs do not stipulate how or from which source we must gather the data, we consider that the only way for us to meet our statutory duty is to request the data from PSPs.
18. The data we are required to submit to the Treasury every two years is to be in respect of the preceding two year period. This means that PSPs will need to collect the relevant data on an ongoing basis from the date of entry into force of the PARs. We are of the view that a regular reporting requirement which provides PSPs with the certainty required to ensure they are collecting the necessary data from the outset is the only reasonable method by which we can comply with the Regulations.
19. As explained in chapter 5 of this Consultation Paper, we have explored alternatives to sourcing the data directly from PSPs and considered which method would be most appropriate for its collection. We are satisfied that our proposals for submitting the data by using the existing reporting infrastructure is the least burdensome and least costly method – for both PSPs and the FCA – of collecting the required data. Furthermore, as the submission of data every two years is an unusual frequency, we have included a separate question in our consultation to ascertain PSPs' views on the frequency of the proposed reporting requirements.
20. Against this background and to the extent our proposals on regulatory reporting are for rules made under our FSMA powers, we consider that PSPs will incur only a minimal increase in costs by collecting and submitting to us the two data items on payment account switching. A small number of credit institutions will additionally incur the costs associated with the collection and submission of the two data items on payment accounts with basic features. These costs are also likely to represent only a minimal increase for credit institutions.

Proposed guidance

21. Our proposals for non-Handbook guidance on the definition of a 'payment account' and the provisions of the PARs on packaged accounts are intended to explain provisions of the PARs which PSPs find difficult to navigate and implement. Our overarching intention is to assist PSPs with the implementation of the PARs with a view to ensuring that all relevant consumers benefit from the new provisions as the Directive intends.
22. Our proposed guidance does not impose any additional requirements on PSPs or entail higher costs than those inherent in the PARs. By providing guidance, the initial – and in some instances also the ongoing – costs of compliance may even be reduced.

Q9: Do you agree that the proposed reporting requirements would result in only a minimal increase in costs for PSPs?

Q10: Do you have any other comments on our cost benefit analysis?

Annex 3

Compatibility statement

Compatibility with the FCA's general duties

1. When consulting on new rules, we are required by section 138I(2) of FSMA to also include:
 - an explanation of how our proposals are compatible with our strategic objective and advance one or more of our operational objectives
 - an explanation of how we have had regard to the regulatory principles set out in section 3B of FSMA
 - a statement on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons
2. As explained in our CBA in Annex 2, the requirements of section 138I do not apply to our proposals for guidance or to the proposals we are making under the PARs. However, to the extent we are discharging our general functions, we are nevertheless obliged to act, so far as is reasonably possible, in accordance with our objectives and with regard to the regulatory principles of section 3B of FSMA. We therefore consider it is appropriate for us to provide the explanations required by section 138I(2) of FSMA, even if there is no legal obligation for us to do so in relation to all aspects of our proposals.

Compatibility with our strategic objective and operational objectives

3. Our proposed Handbook changes and guidance are compatible with our strategic objective of ensuring that the relevant markets function well. They primarily give effect to policies put in place by PAD and the PARs, and so contribute to fulfilling their aims. These correspond closely with our operational objectives of ensuring an appropriate level of consumer protection and promoting effective competition in the interests of consumers.
4. Our proposals will help advance our objective of ensuring an appropriate level of consumer protection by:
 - improving transparency of costs and fees of the different elements of packaged accounts
 - ensuring all consumers have access to a payment account with basic features
5. They are also intended to promote effective competition in the interests of consumers by:
 - making it easier for consumers to shop around for and switch payment accounts
 - enabling consumers to compare the costs and fees associated with the different elements of a packaged account

Compatibility with the principles of good regulation

6. In preparing the proposals set out in this Consultation Paper, we have had regard to the regulatory principles set out in section 3B of FSMA. We set out below how our proposals are compatible with each principle.

The need to use our resources in the most efficient and economic way

7. We have ensured that the Handbook changes we are proposing are limited to those which are necessary to ensure the compatibility of our Handbook with the PARs and to enable us to fulfil our legal obligations. By taking this approach, we have minimised the use of our resources and have been able to publish this Consultation Paper in a timely manner having regard to the short period for PSPs to comply with the Regulations and any rules we may make.

The principle that a burden or restriction which is imposed should be proportionate to the benefits

8. As set out in our CBA in Annex 2, we do not consider that any of our proposed Handbook changes go further than necessary. We consider that our proposals for new reporting requirements are the least burdensome, least costly and most proportionate method by which we can comply with our obligation in the PARs to collect the data in question.
9. None of the other Handbook changes we are proposing impose any burdens or restrictions on PSPs which are not already inherent in the PARs.
10. We propose to issue guidance on the definition of a 'payment account' in the PARs and on the provisions on packaged accounts. The guidance does not require firms to take any action but should assist PSPs in implementing the Regulations.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

11. We do not expect our proposals to have a material impact on growth in the UK.

The general principle that consumers should take responsibility for their decisions

12. By seeking to give effect to policies put in place by PAD, we will be contributing to the Directive's aims of enabling consumers to make more informed choices about payment accounts through appropriate and timely information, and making switching easier.
13. In particular, our draft guidance on the application of the provisions on packaged accounts will contribute to PSPs interpreting the provisions in a consistent manner. This will help to ensure that consumers receive the information intended by the legislation which will enable them to compare product offerings.

The responsibilities of the senior management of persons subject to requirements imposed by or under FSMA, including those affecting customers in relation to compliance with those requirements

14. Senior managers of PSPs which are authorised under FSMA will need to ensure compliance with our proposed reporting requirements in relation to the requested data items on switching and, where relevant, payment accounts with basic features.
15. We do not expect our proposals will have any other impact on senior management requirements beyond what is already inherent in the PARs.

The desirability where appropriate of the FCA exercising its functions in a way which recognises differences in the nature and objectives of the business it regulates

16. Our proposals are driven by the provisions in the PARs. We are consulting on the Handbook changes that we consider are necessary to give effect to those provisions.
17. Our draft guidance on the definition of a 'payment account' is intended to assist all PSPs offering accounts to consumers which could potentially fall within the scope of the PARs. We consider that the guidance would be of particular help to smaller PSPs that may be finding the relevant legislative provisions challenging to navigate and the impact on their business difficult to assess.

The desirability of publishing information relating to persons on whom requirements are imposed by or under FSMA

18. We have the power to publish information relating to investigations into firms authorised under FSMA, and individuals. However, as set out in the EG, we will not normally make public the fact that we are or are not investigating a particular matter, or any of our investigation findings or conclusions, except in the circumstances described in chapter 6 of the EG. We usually take the same approach with regard to PSPs not authorised under FSMA.

19. The proposals contained in this Consultation Paper do not make any changes in this regard.

The principle that we should exercise our functions as transparently as possible

20. We are an open and transparent regulator. We engaged with relevant stakeholders during the process of developing our proposals on the PARs.
21. We are proposing a two month consultation period in order to ensure that our final rules and guidance can be published as early as possible before the implementation deadline.

Impact on mutual societies

22. The PARs do not apply to credit unions. To the extent that other mutual societies offer 'payment accounts' within the meaning of the PARs and so fall within their scope, we do not consider that they would be impacted by our proposals in a way which is significantly different from other PSPs.

Legislative and Regulatory Reform Act 2006

23. Under the Legislative and Regulatory Reform Act 2006 (LRRRA), we are required when exercising our regulatory functions to have regard to:
- the principles contained in section 21 of the LRRRA
 - the Regulators' Code when determining general policies and principles and giving general guidance (but not when exercising other legislative functions)
24. In line with the LRRRA principles, we consider that our proposals are transparent, accountable, proportionate, consistent, and targeted at situations in which we see detriment or the potential for detriment to consumers.
25. We have also considered the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance. We believe that our proposals, and in particular our draft guidance, will be effective in helping PSPs to understand and meet regulatory

requirements more easily and in a manner that leads to the positive outcomes for consumers that are intended by the EU and UK legislatures.

Equality Impact Assessment

26. As required under the Equality Act 2010, we have conducted an initial equality impact assessment of our proposals to ensure that the equality and diversity implications are considered. This included an assessment of potential impacts arising from each of our policy proposals.
27. The main outcomes of our initial assessment are:
 - The impact is expected to be neutral or positive for all consumers; we do not expect the impact to be different for protected groups.
 - No potential negative impacts have been identified for any of the groups with protected characteristics.
28. We would welcome any comments or information respondents may have on any equality and diversity issues arising from our proposals.

Appendix 1

Draft Handbook text

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 Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

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

Amendments to material outside the Handbook

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

Citation

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

By order of the Board
[*date* 2016]

Annex B

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

...

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)**

...			
SUP 16.1, SUP 16.2 and SUP 16.3		All categories of <i>firm</i> except:	Entire sections

	...		
	(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>	
	...		

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 16.12*); and
- (17) reporting under the *Payment Accounts Regulations* (*SUP 16.22*).

After SUP 16.21 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.

(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) 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;
 - (2) online using the appropriate systems accessible from the *FCA*’s website; and
 - (3) within 1 month 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 31 March 2018.
- 16.22.7 D Subsequent reporting periods are consecutive periods of two years commencing on 1 April 2018 and on 1 April every other year thereafter.
- 16.22.8 G For example, the second reporting period commences on 1 April 2018 and ends on 31 March 2020 and the third reporting period commences on 1 April 2020 and ends on 31 March 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 insert the following new Annexes. The text is new and is not underlined.

SUP 16 Annex 41AR Payment accounts report

Payment accounts report

Information on switching of payment accounts

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

Information on payment accounts with basic features

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

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

General

The purpose of these notes is to assist *payment service providers (PSP)* 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 [link]. 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.

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 1:

- (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; and
- (c) where one or both *PSPs* are located outside the *UK*.

Row 2:

- (1) *PSPs* should only report the proportion of switching applications that have been refused where they are the receiving *PSP*.
- (2) *PSPs* should report the proportion of switching applications that have been refused during the relevant period as a percentage of the total number of applications in that period to one decimal place. The total number of applications received should include only those 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:
 - (a) the transferring provider has failed to carry out the tasks necessary for the switch to be effected; or
 - (b) the transferring provider has failed to provide the information that is necessary to the receiving provider for the switch to be effected; or
 - (c) 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 3:

- (1) The question in this row is to 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 4 or 5.

Row 4:

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 5:

- (1) *Credit institutions* should express the proportion of applications for payment accounts with basic features they have refused as a percentage of the total number of applications for such accounts in the relevant reporting period to one decimal place. The total number of applications received should include only those 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.

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

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

<u>The Payment Accounts Regulations 2015</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 34, 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>

2 Annex 2G Supervisory notices

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

<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 1)</u> <u>See DEPP 2.5.17G</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.			

Schedule 3 Fees and other required payments

...

Sch 3.2G

The <i>FCA</i> 's power to impose financial penalties is contained in:	
	...
	<u>the <i>Payment Accounts Regulations</i></u>

Schedule 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> and , by article 23(4) of the <i>MCD Order</i>); and by regulation 36(6) of the <i>Payment Accounts Regulations</i>)
	...
	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> and , by article 24(2) of the <i>MCD Order</i>); and by <u>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 provisions after EG 19.29.

**EG
19.30** **The Payment Accounts Regulations 2015**

- 19.30.1 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.
- 19.30.2 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.
- 19.30.3 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.
- 19.30.4 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

- 19.30.5 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*.
- 19.30.6 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

- 19.30.7 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*.
- 19.30.8 For decisions made by executive procedures, the procedures to be followed will be those described in *DEPP 4*.
- 19.30.9 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* and *decision notices* given under the *PARs*.

Public censures and the imposition of penalties

- 19.30.10 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*.
- 19.30.11 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.
- 19.30.12 The *FCA* will apply the approach to publicity that is outlined in *EG 6*.

Appendix 2

Draft guidance on the definition of a ‘payment account’ under the Payment Accounts Regulations 2015

1. This guidance is given under regulation 40 of the Payment Accounts Regulations 2015 (PARs). Its purpose is to assist payment service providers (PSPs) in determining which of the accounts they offer fall within the definition of a ‘payment account’ in the PARs. The guidance suggests some ways that PSPs could assess their accounts but these are not the only ways of achieving compliance with the PARs. It is essential that PSPs refer to the text of the PARs in order to gain a full understanding of the broader context of the definition of a ‘payment account’.
2. Guidance is not binding. Accordingly, we will not take supervisory or enforcement action against a PSP merely because it has not followed this guidance. There is also no presumption that departing from this guidance is indicative of a breach of the PARs. If a person acts in accordance with this guidance in the circumstances contemplated by it, we will proceed on the basis that the person has complied with the aspects of the Regulations to which the guidance relates.

Background

3. Parts 2 and 3 of the PARs transpose into UK law the provisions of the Payment Accounts Directive (PAD) on the transparency and comparability of fees on payment accounts, and switching. These parts of the Regulations apply to all PSPs as defined by the Payment Services Regulations 2009 (PSRs) but not to credit unions, National Savings and Investments, or the Bank of England.
4. The provisions in Parts 2 and 3 apply to payment accounts offered by PSPs. The definition of a ‘payment account’ for the purposes of the PARs is set out in regulation 2 and reproduced below:

“payment account” means an account held in the name of one or more consumers through which consumers are able to place funds, withdraw cash and execute and receive payment transactions to and from third parties, including the execution of credit transfers, but does not include any of the following types of account provided that the account is not used for day-to-day payment transactions: savings accounts; credit card accounts where funds are usually paid in for the sole purpose of repaying a credit card debt; current account mortgages or e-money accounts.

5. This definition is intended to reflect both the description of the scope in Article 1(6) of PAD and the clarification provided in Recital 12 of PAD.²¹ It means that the accounts which fall within the scope of Parts 2 and 3 are to be determined according to the functionalities with which they provide the consumer. A categorisation solely by type of account (current account, savings account, etc.) is not possible.
6. The purpose of this guidance is to assist PSPs in determining which of the accounts they offer fall within the definition. This guidance does not impact on the definition of a 'payment account' that is in the PSRs or on the guidance we provide in chapter 15.3 of our Perimeter Guidance Manual (PERG) on the definition in the PSRs.

'Payment account' under the PARs

7. In order to fall within the definition of a 'payment account', an account must have all the listed functionalities. It must enable the consumer to:
 - place funds in the account
 - withdraw cash from the account
 - execute payment transactions to third parties, including credit transfers
 - receive payment transactions from third parties
8. However, not every account with these functionalities falls within the definition of a 'payment account' under the PARs. This is because the definition states that certain types of accounts usually (but not always) fall outside the scope of the Regulations. These types of accounts are:
 - savings accounts
 - credit card accounts where funds are usually paid in for the sole purpose of repaying a credit card debt
 - current account mortgages
 - e-money accounts
9. Yet in some cases, these types of accounts will indeed be in scope. This exception applies when an account has all the listed functionalities, is one of the types of accounts listed in the preceding paragraph, and is used for day-to-day payment transactions.

Assessment of accounts

10. PSPs have an obligation to comply with the requirements of the PARs. In order to do so, all PSPs²² should consider whether they offer accounts that fall within the definition of a 'payment account' and are therefore in the scope of Parts 2 and 3 of the PARs. Not only banks and

²¹ See section 1.6 of the Treasury document '[Consultation: Implementation of the EU payment accounts directive](#)', 23 June 2015.

²² Credit unions, National Savings and Investment, and the Bank of England are exempted from the scope of the PARs.

building societies but also payment institutions and e-money institutions should determine which of their accounts, if any, are in scope.

11. PSPs should ensure that they do not unduly restrict the accounts they assess, for example by considering only current accounts. All accounts which could potentially fall within the scope of the PARs should be assessed.
12. Accounts must be assessed against the definition in regulation 2 but we suggest some steps which PSPs could find helpful.

'Payment account' under the Payment Services Regulations 2009

13. A starting point for the assessment of an account under the PARs is whether or not that account is a payment account within the meaning of the PSRs. If this is not the case, the account will not fall within the definition of a payment account in the PARs either.
14. The definition of a 'payment account' in the PSRs is wider than that in the PARs. Regulation 2 of the PSRs includes the definitions below:

"payment account" means an account held in the name of one or more payment service users which is used for the execution of payment transactions.

"payment transaction" means an act, initiated by the payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee.

15. These definitions are relevant to the question of whether or not a payment account falls within the scope of the PSRs. Guidance on their meaning can be found in chapter 15.3 of PERG.
16. Payment accounts under the PARs are a sub-set of those under the PSRs. It is not possible for a payment account within the meaning of the PARs to not also be a payment account for the purposes of the PSRs.

Held by consumers

17. If a PSP concludes that an account falls within the definition of a payment account for the purposes of the PSRs, it might next consider whether that account can be held by consumers.
18. The definition of consumer which is to be applied is set out in regulation 2 of the PARs:

"consumer" means any natural person who is acting for purposes which are outside that person's trade, business, craft or profession.

19. This definition means that accounts which are not available to consumers do not fall within the scope of the PARs. These include accounts for micro-enterprises and/or small and medium-sized enterprises (SMEs).

Functionalities

20. Having ascertained that the account is available to consumers, a PSP might then examine the functionalities which the account offers.²³
21. If the account does not have all of the functionalities listed in the definition of a 'payment account' in the PARs, it does not fall within the scope of the Regulations, and no further consideration is required.

²³ Guidance on the situations in which a PSP is providing a certain functionality can be found in PERG 15.3.

22. If the account indeed offers all of the functionalities listed, PSPs may proceed to the next step.

Type of account

23. PSPs might next consider whether the account is one of the four types of accounts named in the definition as accounts which are usually (but not always) outside the scope of the Regulations.

24. If the account is not one of these types, this indicates it is a payment account within the meaning of the PARs. If the account is one of the four account types named, it may or may not be in the scope of the PARs. In order to determine this, PSPs may proceed to the final step.

Used for day-to-day payment transactions

25. Finally, PSPs will need to consider whether the savings account, credit card account, current account mortgage or e-money account in question is used for day-to-day payment transactions.

26. In assessing this, PSPs may find it helpful to consider factors such as:

- the purpose for which the account is designed and held out
- the extent to which the consumers holding the account use the account's payment service functionalities in practice
- the types of payment transactions carried out by the consumers holding the account, e.g. whether direct debits for utility bills or a standing order for the payment of rent are paid out of the account, as these may be indicative of its use for day-to-day transactions
- the types of payment instrument, if any, available on the account

27. If an account is one of the named types and is used for day-to-day transactions, it meets the definition of a payment account under the PARs. If an account is one of the named types but is not used for day-to-day transactions, it remains out of scope.

Examples

28. A traditional bank current account is very likely to fall within the definition of a 'payment account' in the PARs, as it typically offers all the functionalities listed in regulation 2. This will be the case even if it pays interest and is also used for the purposes of saving. As current accounts are not one of the types of accounts named in the definition as accounts which are usually outside the scope of the PARs, it is not necessary to consider whether or not the account is used for day-to-day payment transactions. If a current account offers all the functionalities, this will suffice to bring it within the scope of the Regulations.

29. A savings account which allows a consumer to make transfers only to accounts held in his/her own name would not fall within the scope of the PARs. This is because it does not have the functionality of executing payment transactions to third parties. It would not be necessary in such a case to consider whether or not the account is used for day-to-day payment transactions as the functionalities criterion is not met.

30. An e-money account will fall within the scope of the PARs if it offers all the functionalities listed in regulation 2 and is used for day-to-day payment transactions. Such an account would be likely to meet the definition of a 'payment account' if it is marketed as an alternative to

a current account, and is also used by consumers in a similar way to a current account, for example to pay household bills and receive regular payments such as wages, salary or benefits.

Beyond the initial assessment of accounts

- 31.** We would expect that PSPs put processes in place to ensure that further assessments of accounts are carried out beyond the initial assessment that should be performed prior to September 2016.
- 32.** PSPs should carry out an assessment for every new account introduced.
- 33.** PSPs should perform an updated assessment of an existing account if changes to the functionalities of the account are made.
- 34.** Even when no formal changes to an account are made, PSPs should ensure that they conduct an updated assessment at appropriate intervals for each of their savings accounts, e-money accounts, current account mortgages and credit card accounts. Regular assessments allow PSPs to consider changing consumer use and any other factors relevant to the definition of a 'payment account' under the PARs.

Appendix 3

Draft guidance on regulation 13 of the Payment Accounts Regulations 2015 (packaged accounts)

1. This guidance is given under regulation 40 of the Payment Accounts Regulations 2015 (PARs). Its purpose is to clarify our expectations of payment service providers (PSPs) in relation to the application of regulation 13 of the PARs on packaged accounts. The guidance is designed to shed light on particular aspects of this regulation, but it is essential that PSPs refer to the text of regulation 13.
2. Guidance is not binding. Accordingly, we will not take supervisory or enforcement action against a PSP merely because it has not followed this guidance. There is also no presumption that departing from this guidance is indicative of a breach of the PARs. If a person acts in accordance with this guidance in the circumstances contemplated by it, we will proceed on the basis that the person has complied with the aspects of the Regulations to which the guidance relates.

Background

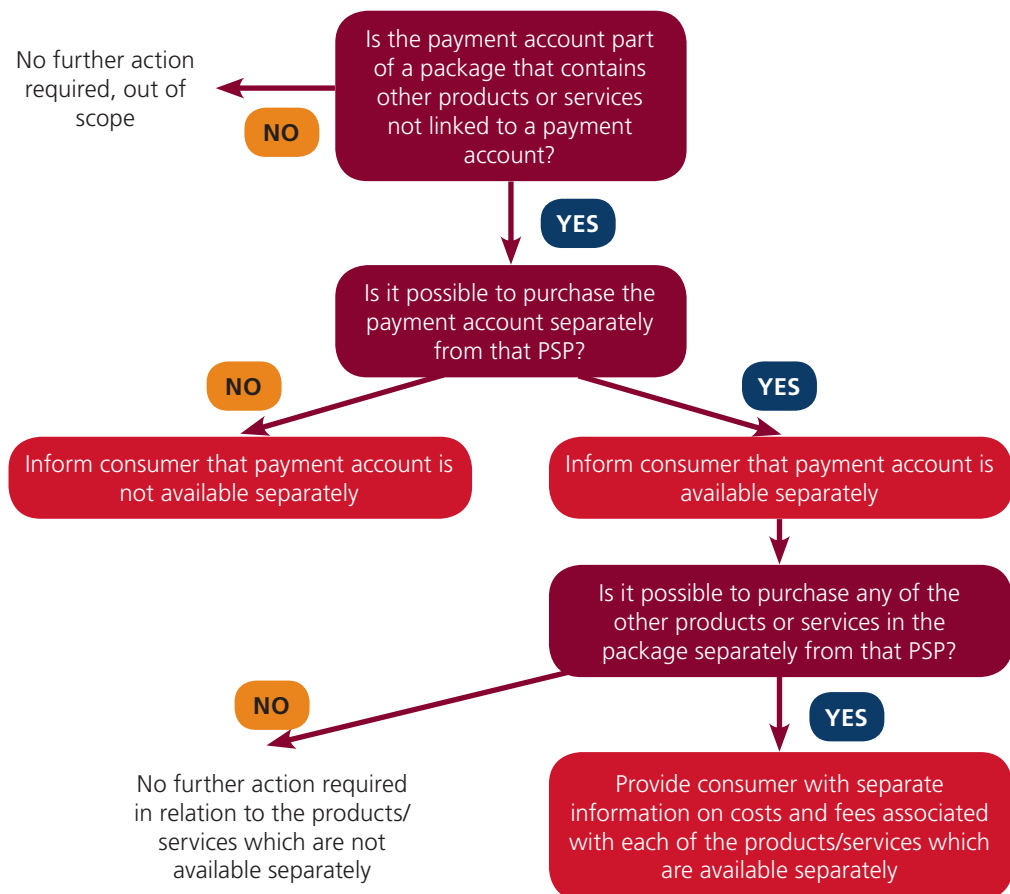
3. One of the objectives of the Payment Accounts Directive (PAD) is to improve transparency and comparability of fee information about payment accounts. The European legislature acknowledges that packaged accounts can be beneficial for consumers, for example by providing cost savings and increasing choice, but is also concerned that they may *'reduce transparency and comparability of prices, limit purchase options for consumers and negatively impact upon their mobility'*.²⁴
4. With these objectives of transparency and comparability in mind, Article 8 of PAD introduces certain disclosure requirements which apply where a payment account is offered to a consumer as part of a package together with another product or service which is not linked to a payment account. These requirements have been transposed into UK law by regulation 13 of the PARs.
5. The packages to which this provision applies are generally referred to in the UK as 'packaged accounts' or 'packaged bank accounts'. The other products or services in the package are often insurances, for example travel insurance or mobile phone insurance. Other examples include cinema tickets and restaurant discount cards.

²⁴ Recital 24 of PAD.

Regulation 13 on packaged accounts

6. Regulation 13(1) provides that where a PSP offers a payment account as part of a package together with a product or service which is not linked to a payment account, the PSP must inform the consumer whether or not it is possible to purchase the payment account separately from that same PSP.
7. If it is not possible to purchase the payment account separately from that PSP, then regulation 13(2) does not apply.
8. If it is possible to purchase the payment account separately from that PSP, then regulation 13(2) will apply. Where this is the case, the PSP should consider whether any of the other products and services in the package can be purchased separately from it. If so, the PSP must provide the consumer with separate information on the costs and fees associated with this/these product(s) or service(s). This means that the requirement to disclose the costs and fees applies only in respect of the individual products and services which are available separately from the PSP.
9. The flowchart below summarises these disclosure requirements.

Figure 1: Flowchart of disclosure requirements under regulation 13



10. Her Majesty's Treasury (the Treasury) provided some clarifications in relation to the intended scope and content of regulation 13 in its [consultation paper on draft Payment Account Regulations](#)²⁵ in June 2015, and in its [consultation response paper](#)²⁶ in November 2015:
- The disclosure requirement only applies where the additional product/service is available from the same PSP. This means that there is no requirement to provide consumers with any information on products/services offered by other providers, including those which are separate entities in the same corporate group.
 - Regulation 13 applies to sales of packaged accounts which take place after the entry into force of the PARs. There is no requirement to disclose information to existing customers in respect of additional products/services in packaged accounts purchased before the entry into force of the PARs.
11. Our understanding of regulation 13 is consistent with these Treasury clarifications.

When a payment account or other product/service is available separately

12. As set out above, regulation 13(1) requires a PSP offering packaged accounts to consider whether or not the payment account in the package is also available separately from that PSP. Similarly, regulation 13(2) requires a PSP to consider whether or not each of the other products/services in the package is available separately from it.
13. The objectives of the disclosure requirement are to improve transparency and comparability.²⁷ The requirement should therefore help consumers to decide whether to purchase either the package in question or some/all of the products separately. It should also enable consumers to compare the products offered by different providers. In order not to undermine this purpose, we would not expect PSPs to take an unduly narrow approach to assessing whether the account or other product in the package is available separately.
14. For example, we would not expect a PSP to base its comparison of two products solely on the terms and conditions applicable to each. In this way, the terms and conditions of the product offered in the package need not be identical to those of the product offered separately in order to conclude that the product in the package is available separately. A narrower approach would not be consistent with the aims of ensuring transparency and comparability of costs, and would not be in the interests of consumers.²⁸
15. We would expect PSPs to have regard to how consumers would view the two products (i.e. the one in the package and the one available separately). Differences in the terms and conditions on which the two products are offered, which from the perspective of the consumer are minor, are unlikely to prevent the payment account or other product/service in the package from being available separately.
16. We suggest two steps which PSPs could find helpful when identifying whether the account or other product in the package is the same as the one offered separately:

²⁵ See section 2.3.

²⁶ See paragraphs 28 to 40.

²⁷ See recital 24 of PAD.

²⁸ This is consistent with the view expressed by the Treasury in paragraph 37 of its document '[Implementation of the EU payment accounts directive: Consultation response](#)', 16 November 2015.

- Consider which features of the product are likely to be the most important from a consumer perspective.
- Compare the most important features of the two products. Not every difference between the features of two products will be significant enough to conclude that the products are not the same. If there are differences, PSPs will need to take a view as to whether they – either individually or collectively – are sufficiently significant from the perspective of consumers as to render the two products not the same.

Disclosure of costs and fees

17. Where the payment account in the package is available separately and one or more of the other products or services in the package is also available separately, regulation 13(2) requires the PSP to provide the consumer with separate information about the costs and fees associated with each of the other products and services available separately.
18. We would expect that PSPs disclose the fees and costs to that individual consumer of purchasing the other product or service separately, i.e. on a stand-alone basis, from that PSP. We believe that this reflects the intention of the EU legislature. It also ensures that the cost information disclosed to consumers is meaningful to that individual, and comparable.
19. When providing this information to consumers, firms authorised under FSMA must also comply with our Principles for Businesses, and the rules and guidance contained in BCOBS. In particular, we would remind firms of their obligations under Principles 6 and 7, which are reinforced by the rules and guidance contained in chapter 2 of the Banking: Conduct of Business sourcebook (BCOBS 2). Principles 6 and 7 are set out below:

Principle 6: Customers' interests

A firm must pay due regard to the interests of its customers and treat them fairly.

Principle 7: Communications with clients

A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

20. We would also remind all PSPs that the Consumer Protection from Unfair Trading Regulations 2008, which protect consumers from unfair or misleading trading practices, also apply alongside the PARs.

Financial Conduct Authority

PUB REF: 005152

© Financial Conduct Authority 2016
25 The North Colonnade Canary Wharf
London E14 5HS
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk
All rights reserved