

Direction under regulation 38 of the Payment Services Regulations 2017 (Notification of use of limited network exclusion)

Purpose and statutory context

Under regulation 38 of the Payment Services Regulations 2017 (“PSRs 2017”), if a person (a “service provider”) provides services of the type falling within paragraphs 2(k)(i) to (iii) of Schedule 1 to the PSRs 2017 (activities involving limited network payment instruments which do not constitute payment services) and the total value of the payment transactions executed through such services in any period of 12 months exceeds €1million, the service provider must:

- (a) notify the Financial Conduct Authority (“FCA”);
- (b) include with such notification a description of the service and the exclusion by virtue of which the services are not payment services.

The purpose of this document is to direct the form in which the information required by regulation 38 of the PSRs 2017 must be submitted to the FCA and the manner in which it must be verified.

The provisions of paragraphs 2(k)(i) to (iii) of Schedule 1 to the PSRs 2017, read alongside the definition of “payment service” in regulation 2(1) of the PSRs 2017, are referred to as the “limited network exclusion” in this Direction.

The Direction

The FCA directs that a service provider to which regulation 38 of the PSRs 2017 applies must provide the information required by that regulation in the form, at the time and verified in the manner described below.

This Direction may be amended by further Direction to all service providers, to a class of service providers or to an individual service provider. For the avoidance of doubt, such amendments are likely to be made only where necessary in exceptional circumstances.

Powers exercised

The FCA makes this Direction in exercise of the following powers under the PSRs 2017:

- Regulation 38(4)
- Regulation 109(1)

Background to this Direction

The revised Payment Services Directive ("PSD2") entered into force on 12 January 2016. PSD2 updates the regulation of payment services in Europe and departs from the original Payment Services Directive 2007 in a number of ways, including changing the scope of the exclusions and introducing notification and registration requirements for certain excluded providers. PSD2 was transposed into UK law through the PSRs 2017.

The FCA is the authority with responsibility for monitoring and enforcing compliance with the majority of the provisions of the PSRs 2017.

Who does this Direction apply to?

This direction concerns a person who provides services that are:

"based on specific payment instruments that can be used only in a limited way and meet one of the following conditions:

- (i) allow the holder to acquire goods or services only in the issuer's premises;*
- (ii) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer; or*
- (iii) may be used only to acquire a very limited range of goods or services..."*

A payment transaction that falls within this category does not constitute a payment service to which the prohibition in regulation 138 of the PSRs 2017 (Prohibition on provision of payment services by persons other than payment service providers) applies. The service provider in question may or may not be authorised or registered by the FCA in respect of other services or activities. Please refer to the FCA's Perimeter Guidance Manual (PERG 15.5 Q40) for further information about the scope of the limited network exclusion.

Assessing the €1 million threshold

Service providers that provide services falling into the limited network exclusion above must carry out ongoing assessments to determine whether the total value of payment transactions executed through such services exceeds €1 million over any period of 12 months.

In calculating the total value of the payment transactions, a service provider should:

- include all of those services that are provided in the UK and are considered by the service provider to fall within the limited network exclusion. The €1 million threshold applies to the total value of transactions across all products, i.e. specific payment instruments, that are considered by the service provider to fall

within the limited network exclusion, rather than the value of transactions executed through each product taken individually.

- exclude services that are regulated as either electronic money or payment services (under the Electronic Money Regulations 2011 or PSRs 2017 respectively).

For service providers that carry out transactions in currencies other than the euro, the FCA's view is that it would be reasonable to use the [Commission's monthly accounting rate of the euro](#) (Commission calculator) when calculating whether the transactions exceed the €1 million limit. The Commission calculator provides historical market rates on a month-by-month basis as quoted by the European Central Bank. We expect service providers to apply the euro exchange rate on a month-by-month basis (although more frequent application would be acceptable).

What information is required?

A person who provides services falling within the limited network exclusion at paragraphs 2(k)(i) to (iii) of Schedule 1 to the PSRs 2017, where the total payment transaction value of the services exceeds €1 million over any 12 month period must submit a notification to the FCA including, for each product (i.e. specific payment instrument):

- a description of the services provided in the UK that are considered to fall within the limited network exclusion
- the exclusion by virtue of which the services are not payment services.

When is the notification required?

The first notification:

If the conditions for notification are met on 13 January 2019 (i.e. if the total value of payment transactions executed through relevant services exceeds €1 million in the preceding 12 month period starting on 13 January 2018), the service provider must submit the notification by 10 February 2019, which is 28 days after the 13 January 2019.

If a service provider wishes to submit a services notification before the 10 February 2019 deadline then the service provider may do so at any time from 13 October 2017.

From 13 January 2019, service providers must submit their first notification no later than 28 days from the date on which the conditions for notification in regulation 38(1) of the PSRs 2017 were met.

Subsequent notifications

- (a) Unless (c) applies, service providers must submit an annual notification to cover the period of 12 months beginning on the day after the end of the 12 month period to which the previous notification related. Such notifications must be submitted no later than 28 days from the end date of the 12 month period to which it relates.

- (b) If, at the end of the 12 month period following the last notification, the service provider determines that the conditions for notification are no longer met (i.e. the total value of the payment transactions over the preceding 12 months falls below €1 million) the service provider must notify the FCA using the same regulation 38 form.
- (c) If, at any time after the service provider has submitted a notification in accordance with (b) above, the service provider determines that the notification conditions in regulation 38(1) are met again, the service provider must submit a new regulation 38 notification no later than 28 days from the date on which the conditions for notification were met.

Notwithstanding the notification requirement in relation to the services they provide that do not fall within the limited network exclusion and constitute payment services, service providers are reminded that it is a criminal offence under regulation 138 of the PSRs 2017 to provide a payment service in the UK unless you are authorised, or otherwise entitled, to do so under the PSRs 2017.

How to submit the notification

A service provider must use [Connect](#) to submit the notification.

The FCA's powers and responsibilities

In accordance with its obligations under 38(4) of the PSRs 2017, the FCA will assess each notification to determine whether the notified services fall within paragraph 2(k)(i) to (iii) of Schedule 1 to the PSRs 2017.

If the FCA considers that any part of the notified services does not fall within the limited network exclusion, it will notify the service provider. If the service provider disagrees with the FCA's determination it may refer the matter to the [Upper Tribunal](#) (Tax and Chancery Chamber).

The FCA may take appropriate action in the circumstances if it determines (by way of the notification or otherwise):

- that any of the services provided by the service provider do not fall within the limited network exclusion; or
- that the service provider has breached any of the conduct of business rules set out in the Electronic Money Regulations 2011, the Payment Services Regulations 2009 or the PSRs 2017 (as applicable).

In accordance with regulation 4(1) of the PSRs 2017, the FCA will maintain a register of persons that provide services that fall within the limited network exclusion and have submitted a notification pursuant to regulation 38 of the PSRs 2017. The register will be publicly available and will display the following information about each service provider: name, registered address, a description of the services that fall within the limited network exclusion and the specific exclusion by virtue of which the services are not payment or e-money services.