



HM Treasury

Payment Services Regulations

Review and Call for Evidence

January 2023

Payment Services
Regulations
Review and Call for Evidence



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Executive Summary

1. Payments are essential to the UK's economy – to people, to businesses – and are a major source of the UK's competitive growth, at the heart of a dynamic and changing financial services sector. The government is steadfast in its commitment to support a flourishing, innovative and internationally competitive payments sector, which fosters competition and ensures consumers are protected, and where regulation supports and keeps pace with the sector. The government set out its vision and ambition in this area in its Payments Landscape Review¹ and has, since this time, progressed a number of specific, key initiatives:

- **Payments Regulation and the Systemic Perimeter** – the government published a consultation in July 2022 examining reforms to how systemic payments entities are supervised by the Bank of England, alongside a number of wider regulatory developments relating to both the Payment Systems Regulator (PSR) and the Financial Conduct Authority (FCA).² This consultation closed in October 2022, and the government is considering responses with an intention to formally respond in 2023.
- **stablecoin and cryptoasset regulation** – the government will consult on its approach to cryptoasset and stablecoin regulation in due course, further to introducing legislation in the Financial Services and Markets Bill to establish the framework for regulating cryptoassets and stablecoins.
- **Open Banking** – the Payments Landscape Review identified that the right future governance and regulatory oversight is critical to the next stage of Open Banking, and in unlocking the greater potential of Open Banking payments safely and securely. The UK's Joint Regulatory Oversight Committee (JROC) is undertaking work on developing the vision, strategic roadmap and governance model for Open Banking, and the government is developing a long-term regulatory framework, based on joint regulatory oversight by the FCA and PSR and backed by any necessary legislation. The joint statement of 16 December 2022 provided an update on the JROC's work and emerging thinking in relation to the vision and design of a future entity to succeed the Open Banking

¹ [Payments Landscape Review: Response to the Call for Evidence](#), HM Treasury, October 2021

² [Payments Regulation and the Systemic Perimeter: Consultation and Call for Evidence](#), HM Treasury, July 2022

Implementation Entity, ahead of the publication of JROC's final recommendations in Q1 2023.

2. Separate from these specific, priority policy initiatives, sit, at the core of payment services, the Payments Services Regulations 2017. These foundational regulations for the sector set the underpinning framework for the rights and responsibilities of payment service providers (including bank and non-bank providers) relative to payment service users (their customers). The regulations also speak to ensuring a fair balance of responsibilities and enabling competition between incumbent providers and newer forms of payment service. The regulations furthermore set the framework for the authorisation and regulation of payment institutions; these are regulated entities for the purpose of providing payment services – for example, money remittance firms and firms which provide card acquiring services to businesses. As a whole, the Payment Services Regulations act as the regulatory bedrock for payments and fintech, on which other regulatory initiatives build or complement, as the sector has evolved, and new challenges have emerged.
3. The Payment Services Regulations form part of retained EU law, principally the transposition of the second Payment Services Directive (PSD2). The FCA is the principal regulator under the Payment Services Regulations, while the Payment Systems Regulator is responsible under Part 10 for enforcing the access regime and requirements in relation to ATMs.
4. The Treasury is required by law to carry out a review of the Payment Services Regulations and publish a report setting out its conclusions.³ This document fulfils the government's statutory obligation in relation to reviewing the UK's Payment Services Regulations and, in summary, finds:
 - principally, that the payment Services Regulations have fostered a strong, innovative, and competitive UK payment sector that is recognised globally, supporting UK businesses and consumers to make simple and secure payments, and that the regulations continue to act as the foundation for regulating the sector and ensuring adequate consumer protection
 - in themselves, these regulations have not gone far enough in isolation, as evidenced in particular by the UK's work to foster meaningful competition via Open Banking, following the Competition & Markets Authority's review into retail banking in 2016. The pace of market change has also required the UK, like other major jurisdictions, to heed

³ [Payment Services Regulations 2017](#), [Regulation 158](#), [legislation.gov.uk](#)

broader developments in payments to ensure that regulation keeps pace with market developments, including but not limited to the emergence of cryptoassets

- recognising these continued market developments, and the UK's ability to determine its own approach to payments regulation following leaving the EU, that there are several key areas where the regulatory framework for payments, as it stands today, is potentially not working as well as it could

5. The government's assessment is set out in the remainder of this document.

Call for Evidence

6. The government is launching alongside this review a Call for Evidence on how UK payments regulation should evolve to continue to meet the government's aims and address the specific challenges highlighted in this review.

7. While the government's statutory review focuses on the Payment Services Regulations alone, there are several inter-connected areas of payments regulation on which the government also wishes to seek evidence so as to build a proper picture. As part of this Call for Evidence, the government therefore also wishes to seek evidence on the following:

- **the Electronic Money Regulations 2011⁴**. These regulations set the framework for the authorisation and supervision of electronic money institutions, mirroring or referring to many of the requirements for payment institutions in the Payment Services Regulations. Electronic money institutions are non-bank entities which can hold customer money for the purposes of making payments; however, they have different prudential requirements from banks and cannot hold and lend against deposits. To a customer, electronic money institutions can appear very similar to banks providing current accounts. Many new and innovative firms, authorised as electronic money institutions, have entered the payments market, and some have grown substantially in recent years.
- **the Cross Border Payments Regulation⁵**. This regulation complements the information requirements in the Payment Services Regulations, by

⁴ [The Electronic Money Regulations 2011](#), legislation.gov.uk

⁵ [Cross Border Payments Regulation, as amended in UK law](#), legislation.gov.uk

setting out further requirements on transparency of charges which involve currency conversion (for example, requiring the mark-up on currency conversion to be displayed if a point of sale or ATM offers a currency conversion service).

8. Other areas of payments law cover specific issues which are not as closely interconnected with the Payment Services Regulations themselves. This includes but is not limited to the Interchange Fee Regulation (IFR), which principally sets caps on the interchange fees that can be charged by card schemes and issuers. The Payment Systems Regulator (PSR) has recently published its final terms of reference for two market reviews into card fees, including cross-border interchange.⁶ The government will not pre-empt the findings of the PSR's investigations and will reflect on future interchange policy in due course.
9. The government is also aware of the importance of participation in the Single Euro Payments Area (SEPA) for enabling cross-border payments and supports the UK's continued participation in SEPA as a third country, outside the EU and EEA. SEPA participation relates in part to the Payment Services Regulations themselves and partly to the UK's wider regulatory framework for SEPA payments. The government will continue to seek to understand and monitor the impacts of regulatory change in the UK and EU on SEPA participation, while recognising that the UK must be able to determine its own regulatory approach.
10. Finally, the government is aware of the wide range of ongoing policy development and legislative change facing the payments and fintech sector, and the potential complexity this can entail for stakeholders. This review and call for evidence are designed to complement the ongoing work identified above, and provide an opportunity to look at the core of payment services regulation separate from the priority initiatives which have been launched to tackle new problems and gaps which have emerged since the regulation came into force. The government is committed to ensuring that the workstreams identified above remain joined up, and to keeping stakeholders informed of how policy is evolving across the payments landscape.

⁶ [Market Reviews into Card Fees](#), Payment Systems Regulator, October 2022

The objectives for UK payments regulation

11. In undertaking the review of the Payment Services Regulations, the Treasury is required by law to, in particular:

- set out the objectives intended to be achieved by the regulations
- assess the extent to which those objectives are achieved
- assess whether those objectives remain appropriate, and
- if those objectives remain appropriate, assess the extent to which they could be achieved in another way that imposes less onerous regulatory provision

12. Given that the principal objective of PSD2 was to further promote the integration of the retail payments market within the European Union⁷, it is necessary following the UK leaving the EU to approach afresh the desired objectives and purpose of the regulations.

13. Drawing more widely on the rationale and aims of the Directive⁸, these might be described as: creating a regulatory regime for payment services which fosters the growth and development of retail payments; to protect consumers, by outlining the rights, obligations and requirements pertaining to payment service providers and payment service users; and promoting competition and innovation in a changing marketplace of both incumbents and new entrants. This complements the government's own objectives for the sector as outlined in its Payments Landscape Review response⁹, as well as those of the FCA as the primary regulator in this area – with the FCA taking on increasing responsibility in future for setting the regulatory requirements that apply to the sector as a consequence of the

⁷ See recitals 1-6 of the [revised second Payment Services Directive](#), Official Journal of the European Union, December 2015.

⁸ See recitals 5-6 of the [revised second Payment Services Directive](#).

⁹ The government's response to the Payments Landscape Review set out an overarching vision for the future legislative and regulatory framework for payments: to ensure consumer protection; promote and foster innovation; provide the conditions for technology to continue to drive enhancements in payments; as well as ensure agile and proportionate regulation. See: [Payments Landscape Review: Response to the Call for Evidence](#), HM Treasury, October 2021

Future Regulatory Framework Review. The FCA's statutory objectives include:

- securing an appropriate degree of protection for consumers
- protecting and enhancing the integrity of the UK financial system
- promoting effective competition in the interests of consumers
- in addition, the Financial Services and Markets Bill introduces a secondary objective for the FCA to facilitate the international competitiveness of the UK economy and its growth in the medium to long-term, subject to aligning with international standards

14. Taking the rationale for the Directive together with the UK's own stated objectives for the sector and of the responsible regulator, the government considers that the following provide an appropriate set of objectives now and for the future on which to evaluate this legislation:

- A. Achieving agile and proportionate regulation, which facilitates the international competitiveness of the UK economy through growth and innovation in the UK payments sector**
- B. Ensuring appropriate trust and protection for consumers**
- C. Ensuring the resilience and integrity of the UK's payment market**
- D. Fostering competition, in the interests of consumers**

15. The extent to which these objectives could be achieved in another way that imposes less onerous regulatory provision will be informed by responses to the accompanying Call for Evidence, and the government's wider approach under the Future Regulatory Framework Review, through which regulators will generally be given responsibility for setting detailed firm-facing requirements in their rulebooks, under a framework set by government and Parliament. Overall, however, the government concludes (see paragraph 22) that the framework in this area has operated well.

16. The objectives above are taken in turn in the government's assessment, as provided in the remainder of this document.

The government's review: an assessment

A. Achieving agile and proportionate regulation, which facilitates the international competitiveness of the UK economy, and supports growth and innovation in the UK payments sector

17. The UK payments sector is a success story, and the UK has become home to one of the most diverse and innovative payments sectors in the world. The Kalifa Review found that UK fintech, of which UK payments and e-money firms play a key part, represented 10% of global market share and £11bn in revenue, and the UK is a leading force in global fintech.¹⁰ UK citizens are becoming digitally active and 71% are now using the services of at least one fintech company. Investment into UK fintech stood at \$9.1bn in the first half of 2022 – more than the rest of Europe combined. Over 1,000 firms are authorised as payment and e-money institutions in the UK today.
18. While much of the UK's success stems from its wider 'pull' factor: its track-record and agglomeration effects of being an international financial centre; the reputation of its regulators; and domestic efforts such as those by the Competition and Markets Authority and FCA to unlock Open Banking, having the requisite regulatory regime in place has also played its part, enabling the UK to regulate this dynamic market in a proportionate and tailored way. The Payment Services Regulations and Electronic Money Regulations have provided a regulatory framework for a new class of non-bank payment service providers. As part of this, the legislation set out more proportionate authorisation and supervision requirements for smaller firms – small payment institutions and small e-money institutions. It also set out the framework for new types of regulated firms that would provide innovative services to customers – payment initiation and account information services. The registration and authorisation requirements for these firms are set out in the regulations themselves, including prudential requirements and safeguarding requirements.
19. This has also meant that, up to this point, it has only been possible to update these requirements via primary legislation – which runs the risk of the framework failing to keep pace with market changes, and ensure the

¹⁰ [The Kalifa Review of UK Fintech](#), HM Treasury, February 2021

right tailored regulatory approach is preserved in time for this newer cadre of market actors. In this, the government is determined to ensure that payments regulation is future-proofed, agile, and proportionate. To this end, as the government enacts the repeal and replacement of retained EU law for payments, the government will consider the relative balance between delegation to the FCA and requirements in statute, noting that there is a strong case for delegation to the FCA of firm-facing rules, as outlined in the Future Regulatory Framework Review, to enable a more agile framework.

20. As part of the Call for Evidence – for which respondents should refer to the specific questions appended to this Review – the government considers it necessary to consider the following issues:

- Whether the definitions and scope of the regime are future-proofed for the rapidly changing payments and data landscape, including ensuring that the definitions are enabled for cryptoassets (including initially fiat referenced stablecoin) where relevant;
- If it is appropriate to maintain separate authorisation and regulatory regimes for payments and e-money institutions, or the benefits or having a single regulatory framework in this area;
- If the authorisation requirements for payments and e-money institutions support new market entrants and promote growth, while ensuring sufficient protection for consumers;
- Whether the regime for small payments and e-money institutions supports innovation and growth, while ensuring adequate protection for customers;
- If the regime for payment initiation service providers (PISPs) and account information service providers (AISPs), and related requirements regarding access to payment accounts, support competition and growth.

B. Regulation which provides appropriate protection for consumers

21. The Payment Services Regulations, and likewise the Electronic Money Regulations, have established clear protections for consumers. This includes protecting consumers from the risks of financial loss deriving from failing payment and electronic institutions, but also protections for consumers in relation to payment services more generally, including against

unauthorised payments, and requirements on payment service providers in relation to transparency, communication, and execution.

22. Generally speaking, the government concludes that the framework in this area has operated well. However, as the payments landscape has continued to evolve, the government is concerned that in some areas the regulatory framework may not be working as well as it could to protect consumers.

Protecting customers from firm insolvency

23. The current safeguarding regime for payments and e-money is set out in the form of high-level requirements in the Payment Services Regulations and Electronic Money Regulations, and is supplemented by firm-facing, non-binding FCA guidance. The safeguarding regime aims to ensure that there is a pool of funds available to meet customer claims in the event that a payment or e-money institution becomes insolvent. Notably, under the current payment services and e-money regime, there is no recourse to the Financial Services Compensation Scheme (FSCS).

24. While cases of insolvency are not frequent, where they have occurred, they have had detrimental impacts on consumers, with long delays to return of funds and consumers losing significant sums. In part, this has been due to the high-level nature of the existing requirements in the Payment Services Regulations and Electronic Money Regulations. This has led insolvency practitioners to seek Court directions in the course of the administration or liquidation process, thereby leading to lengthy and costly proceedings, ultimately to the detriment of consumers and eroding some of the underlying funds available for return.

25. Conscious of this, the government legislated in 2021 to establish the Payment and E-Money Institution Special Administration Regime with the intention of accelerating the distribution of funds to customers by providing insolvency practitioners with an expanded toolkit.¹¹

26. However, recent Court judgments¹² have highlighted ambiguity within the safeguarding regime that is best addressed *ex ante* through clearer

¹¹ [The Payment and Electronic Money Institution Insolvency Regulations 2021](#), legislation.gov.uk

¹² The Ipagoo judgment made two key determinations with respect to the safeguarding regime: firstly, it found that the Electronic Money Regulations (2011) do not create a statutory trust over an e-money institution's safeguarded asset pool; and secondly, it determined that any shortfall in an insolvent EMI's asset pool should be topped up with funds from the firm's other assets. While these determinations were welcome in clarifying the mechanics of the current regime, they also raised additional issues regarding the insolvency process, potentially adding further to the cost, and time

regulation. The provision of such clarity would provide for the more efficient insolvency of relevant firms and ensure safeguarding requirements keep pace with the ongoing evolution of the payments and e-money sector.

27. Under the Future Regulatory Framework Review, the government has set out that the regulators will generally have responsibility for setting detailed firm-facing requirements in their rulebooks, under a framework set by government and Parliament (in the case of payments services, this would be the FCA). Adopting this approach would lend itself to working towards transferring to the FCA responsibility for developing and delivering the safeguarding regime for payments and e-money under a framework set by the government and Parliament. This would enable the safeguarding regime to benefit from greater regulatory agility by setting requirements in regulatory rules; the FCA's supervisory experience in this area; and its wider experience of the client assets regime ("CASS") under FSMA. The government invites the FCA to consult later this year on changes to the safeguarding regime in light of market and legal developments.

Effective contractual protections for payment service users

28. The Payment Services Regulations establish a balance of rights and obligations between payment service providers and users. This recognises the integral role payment services firms play in providing services that facilitate important economic activities, such as making and receiving payments.
29. Among these, the government's understanding is that Regulation 51 of the regulations allows a payment service provider to terminate a contract by giving a minimum of 2 months' notice, if agreed in the framework contract (and subject to the Consumer Rights Act 2015) and without prejudice to the usual provisions of contract law¹³ – but such contracts cannot otherwise be used to circumvent the requirement for notice to apply. There are also obligations in FCA's Principle 6 on a provider to act fairly in relation to their customer, communicate appropriately and give notice, and

burden, and risk of consumer harm, with insolvency practitioners likely to continue to seek Court directions on these areas of ambiguity. The full Court of Appeal judgment can be found [here](#). In contrast, the FCA's Client Asset Sourcebook for FSMA authorised firms implements an express statutory trust over a firm's client money. The trust imposes a fiduciary duty on the firm to protect client money from loss, and insulates client money against the claims of other creditors of the firm, particularly in the event of insolvency.

¹³ Payment Services Regulations 2017, Regulation 51(7), e.g. the right to repudiate a contract, or to treat it as void. Larger corporations may also agree more bespoke terms under regulation 40(7).

provisions under Regulation 71 of the Payment Services Regulations, under which a provider may stop the use of a payment instrument on reasonable grounds, for example in relation to suspected fraud.

30. The extent to which there is a fair balance between providers and their customers has been called into question in the media and during the passage of the Financial Services and Markets Bill¹⁴, following a set of high-profile cases involving PayPal Europe which terminated and later reinstated a number of user accounts. While PayPal has not publicly disclosed the cause of the termination of service, the concern raised in this particular case related to a perception that the termination of services was due to the publicly held views of PayPal's users and those associated with them and the extent to which this raised principled risks around the protection of freedom of expression.
31. The government believes that free speech within the law, and the legitimate expression of differing views, is an important British liberty. The government does not support 'cancel culture' - the censorship of views due to an intolerance of dissenting opinion. The government is very clear that regulations must respect the balance of rights between users' and service providers' obligations, including in relation to protecting the freedom of expression of anyone expressing lawful views. As a minimum, it is the government's view that, without deviation, a notice-period and fair and open communication with a customer must apply in situations which relate to termination on grounds other than suspected or actual criminal offences or when otherwise allowed by law.
32. This is without prejudice to the Equality Act, and that the giving of a notice-period cannot be seen as a safe harbour from meeting any requirements under that Act with respect to a user's religious or philosophical beliefs.
33. At present, the government does not have evidence of the extent to which providers cease to provide services based on the views expressed by their customer base, or more generally, evidence of the circumstances and speed in which they terminate customer relationships. The government would like to hear more through this review from both providers and users of their experiences and reflections, to assess if the current framework is operating in the way explained in this document or requires further clarification or wider change to protect matters such as freedom of expression.

¹⁴ See, for example: [Financial Services and Markets Bill \(Tenth sitting, Commons Committee\)](#); Hansard, 3 November 2022

34. The government therefore intends to consider in particular, through the accompanying Call for Evidence:

- the effectiveness of the current provisions in the Payment Services Regulations, under Regulations 51 and 71 – their clarity and fairness
- how and when providers cease to do business with a user, the applicability of the 2-month notice period and in what circumstances a notice period is not applied
- what is the appropriate balance of rights for a provider and user (taking into account the rights of users to freedom of expression, and the right to manage potential commercial risk on the other)
- if specific protection is required for access to payment services enabling freedom of expression and other activities which Parliament has deemed to be lawful
- if greater protection for users is needed around termination of a payment service, e.g. if the notice-period is sufficiently robust and adequate in length so as not to unduly harm a user (or if this should be extended in any scenarios, e.g. to protect freedom of expression)

Protecting consumers from fraud

35. The Payment Services Regulations set out several protections for customers against payments fraud. These include in particular:

- the principle of payment service provider liability for unauthorised payment transactions, and
- the introduction of additional measures to prevent unauthorised fraud, through the implementation of Strong Customer Authentication standards. These set out requirements for the authentication of payments, as well as those for access to account information by third party providers

36. The government supports both the clear protection for customers in relation to unauthorised fraud and the introduction of Strong Customer Authentication provided by the Payment Services Regulations.

37. The government also considers, however, that the regulatory framework set out in the regulations has failed to keep pace with sophisticated crime, given the significant rise of authorised push payment fraud which has emerged in recent years.

38. Currently for APP fraud, there is a no equivalent framework for victim reimbursement or payment service provider liability in legislation. While the

industry has introduced several initiatives to voluntarily reimburse APP scam victims, this has still left a lack of a comprehensive and consistent framework to reimburse victims of APP fraud. The government is therefore legislating through the Financial Services and Markets Bill to amend the Payment Services Regulations, to enable the Payment Systems Regulator (PSR) to mandate the reimbursement of APP scams.¹⁵ The PSR is consulting on its approach, and the government looks forward to improved outcomes for victims of APP fraud following the PSR's action in due course.¹⁶

39. The payments sector, working with retailers and consumers, has now implemented Strong Customer Authentication standards and, in recent years, the rate of increase in unauthorised fraud has started to tail off, with evidence that it may have peaked and started to fall.
40. Nonetheless, and despite the importance of such measures in the regulatory framework, concerns have been raised about the prescriptiveness of the Strong Customer Authentication requirements under the legislation. In particular, concerns have been raised regarding whether some market practice in implementing the standards has had a detrimental impact on access to payment services by certain customer groups, particularly those who may not have access to a mobile phone or reliable mobile phone coverage. In addition, some critics have suggested that Strong Customer Authentication requirements – in particular 90-day reauthentication – has led to excessive friction in relation to Open Banking. In 2021, the FCA aimed to remedy that by redrafting one of the SCA exemptions, in effect removing the 90-day requirement. The final FCA rules took effect in 2022.
41. The government therefore believes it right to consider whether a more outcome-based approach to authenticating payments might enable firms to continue to have the flexibility to innovate to meet evolving threats, and to meet the complex and diverse needs of customers, and what this might entail.
42. Another area in which the government wishes to take evidence, and has already begun engaging with industry ahead of this review, relates to the requirement that banks and other providers must ensure payments are

¹⁵ See: [Government approach to authorised push payment scam reimbursement](#), HM Treasury, May 2022

¹⁶ See: [Authorised push payment scams: Requiring Reimbursement](#), Payment Systems Regulator, September 2022

credited to a receiving account by the end of the next working day (referred to as 'Day+1' or 'D+1').

43. This is an integral and welcome part of the current regulatory framework, ensuring speed and clarity underpinning transactions undertaken across the UK economy. However, the financial sector has highlighted to the government that these requirements would benefit, in their view, from greater flexibility and a more 'risk-based' approach, in a small number of complex cases where firms ought to be allowed to delay payments if they suspect a customer may be at risk of fraud and they need longer than a day to engage the customer and 'break the spell'.
44. While the existing regulatory framework enables firms to refuse to process payments (and to delay processing payments for a limited period within 'D+1'), some firms have suggested there may be benefits to enabling further time for a payment delay specifically, in order to engage the customer, than is currently permitted under the legislation. In tandem, the government is also considering if there may be benefits to enabling receiving banks – if they suspect that they may be hosting a fraudster's account – to delay the crediting of funds to a payee's account, before they properly engage the relevant provisions in the Proceeds of Crime Act.
45. The government is prioritising the development of policy in this area and swiftly examining the case for legislative change. In doing so, the government will seek to ensure there is effective and appropriate customer communication by payment service providers, and that customers can rely on swift payments for the vast majority of payments, so as to protect legitimate transactions. This issue is also examined further in the accompanying Call for Evidence.

C. Regulation which ensures the resilience and integrity of the UK payment market

46. The government welcomes the growth of the UK's payments sector as part of a diverse payments landscape. The Payment Services Regulations and accompanying Electronic Money Regulations have been instrumental in recognising in regulation (and thereby supporting the development of) newer market entrants, in a tailored and proportionate way. Pro-competition requirements in the Payment Services Regulations, opening up access to payment systems and payment accounts by new market entrants, has promoted innovation in payments technology and contributed to an evolution of user preferences over the last decade, supporting a fairer and more dynamic marketplace for consumers. Ten years ago, most digital

payments were initiated and settled between banks, and most payments made by consumers were cash-based – a landscape that is almost unrecognisable today.¹⁷

47. However, given the pace of change, it cannot be concluded that the foundational requirements in the Payment Services Regulations remain adequate without further reform and, in some areas, new regulation. Some of these gaps are being managed in an asset-class specific way, notably the government’s significant programme of work to bring cryptoassets into the regulatory perimeter so as to maximise the benefits of innovation and potential economic growth, while adequately protecting users and the wider financial system.¹⁸
48. Outside of cryptoassets, in the traditional payment services and e-money arena, the risks of not keeping up with a dynamic and evolving marketplace will be managed in large part through the approach to regulation that will result from the creation of a comprehensive FSMA model for financial services, under which the regulators generally have responsibility to set technical firm-facing requirements and better keep pace with market developments.
49. Within this evolving financial landscape, risks to financial stability specifically, or to the UK’s economic interests, are the preserve of the Bank of England, and the government has identified that such risks may arise beyond the Bank’s existing remit for regulating systemic payment systems.¹⁹ To this end, the government published a consultation on payments regulation and the Bank’s systemic perimeter which closed in October 2022. The government is now reviewing the evidence provided, and will set out its response later this year.

D. Regulation which fosters competition in the interests of consumers

50. The UK has a competitive payments sector, where consumers and businesses are able to choose from a wide range of providers, from high street retail banks, to newer and more specialist payment non-bank providers. Part of this trend has been supported by the payment services

¹⁷ [UK Payment Markets Summary 2022](#), UK Finance, August 2022

¹⁸ [Government sets out plan to make UK a global cryptoasset technology hub](#), HM Treasury, 4 April 2022

¹⁹ [Payments Regulation and the Systemic Perimeter: Consultation and Call for Evidence](#), HM Treasury, July 2022

and electronic money regulations, through its recognition and support for new market entrants, where in other areas the UK has had to supplement these objectives further domestically, notably in relation to fostering the development of Open Banking.

Promoting Open Banking

51. In addition to the requirements in the Payment Services Regulations, which have supported and protected the emergence of, for example, Payment Initiation Service Providers (PISPs) and Account Information Service Providers (AISPs), the UK has unilaterally developed a world-leading approach to Open Banking to further enhance competition in payment services. The decision of the Competition and Markets Authority (CMA) to prioritise the development of secure application programming interfaces (APIs) to a common standard and use secure common infrastructure (when necessary) has provided significant advantages to the UK's market. The CMA's Retail Banking Market Investigation Order of 2017 ('the CMA order') applied to nine specified retail banks, rather than all firms and complemented well the implementation led by the FCA of the open banking requirements under the Payment Services Regulations (derived from the Europe's Second Payment Services Directive), with a successful outcome for the sector in opening up competition and benefits for consumers, where some other markets have struggled to develop due to the lack of a common, integrated approach.
52. Setting out this standard has pushed payment account providers (including banks), AISPs and PISPs to work toward the implementation of the Open Banking API standard, as a way to comply with the requirements under the Payment Services Regulations. It has resulted in a flourishing fintech sector, with over 200 third party providers (TPPs) registered or authorised by the FCA. The extent of TPP growth and diversity is notably higher in the UK than in comparable EU member states which operate under the same overarching Payment Services Directive framework.²⁰ By reducing these barriers to entry, UK firms have been able to innovate faster and support growth in the industry, and in turn this has led to significant improvements in the banking experience for both businesses and consumers. As a result, there are now over 6 million regular users of Open Banking products and services in the UK.
53. HM Treasury and the FCA concluded in 2017²¹ that this approach should expand beyond those directly impacted by the CMA order once the Open

²⁰ [Q3 2022 Konsentus Third Party Provider Open Banking Tracker](#), Konsentus, October 2022

²¹ [Expectations for the third party access provisions in PSDII](#), HM Treasury and FCA, July 2017

Banking Implementation Entity (OBIE) had concluded its work. The government subsequently outlined in the Payments Landscape Review that unlocking Open Banking payments was critical for delivering on the government's visions for the payment's sector.²²

54. Further unilateral efforts, beyond the existing provisions in the Payment Services Regulations, will be necessary if the UK is to put Open Banking on a sustainable position for the longer term and unlock its true benefits, particularly in relation to supporting account-to-account payments. HM Treasury, the CMA, the FCA and the PSR therefore formed a Joint Regulatory Oversight Committee (JROC) in 2022 to oversee the transition of Open Banking to a new phase, as it moves from being a competition remedy to a permanent fixture of the UK fintech ecosystem. HM Treasury is working with the FCA and PSR to develop the long-term regulatory framework for Open Banking in the UK, based on joint regulatory oversight by the FCA and PSR and backed by any necessary legislation. The JROC has committed to producing its final report in Q1 2023. This will incorporate the recommendations from the committee, supported by evidence from the Strategic Working Group.
55. The government, regulators and industry are now preparing for the next phase of Open Banking, which will build on the foundations in these regulations and the work of the OBIE to help unlock and realise further benefits for the UK economy.
56. The JROC's joint statement of 16 December 2022 set out shared priorities that will inform government and regulators' vision of the future of Open Banking. These include:
- unlocking the potential of Open Banking payments
 - adopting a model that is scalable for future data sharing propositions
 - and establishing a sustainable footing for the ongoing development of the Open Banking ecosystem
57. The JROC is finalising design recommendations for a future entity that will play a central role in developing and progressing this vision in both the immediate and longer term. Other important activities are being progressed in parallel to the JROC's work, including the transition planning led by the OBIE and overseen by the CMA as well as the work led by the government to determine the any necessary legislation to underpin the long-term regulatory framework for Open Banking. The JROC will continue

²² [Payments Landscape Review: Response to the Call for Evidence](#), HM Treasury, October 2021

to coordinate to ensure all activities align to achieve the vision set out above.

58. In sum, the government is progressing the further development of Open Banking outside the scope of this review.

Ensuring customers can make informed choices

59. The Payment Services Regulations set out information requirements on payment service providers, including the information which they must provide payment service users. The government supports the provision of comprehensible and comparable information which enables consumers to make informed decisions about payment services, and which therefore promote a competitive market in payment services.

60. In addition to the Payment Services Regulations, the Cross Border Payments Regulation sets out additional requirements, specifically in relation to transactions which involve a currency conversion.

61. In relation to the Cross Border Payments Regulation, some observers have noted that further changes might be made to enhance the transparency requirements of this regulation. The powers to amend retained EU law under the EU Withdrawal Act were limited. Under the Future Regulatory Framework, the government and regulators will have much greater agility to tailor retained EU law for the UK as a sovereign country.

62. The government remains interested in whether the information requirements set in the Payment Services Regulations and Cross Border Payments Regulation can be enhanced to provide relevant information to consumers, and support a better, competitive market in payment services. The government welcomes observations on this as part of the accompanying Call for Evidence.

Ensuring fair access to payment systems

63. The government has previously identified, as part of its review into the systemic perimeter for payments²³, a weakness relating to ensuring fair access to payment systems. Part 8 of the Payment Services Regulations sets out direct and indirect requirements for access to payment systems, under Regulations 103-104. These overlap, however, with the UK's domestic

²³ [Payments Regulation and the Systemic Perimeter: Consultation and Call for Evidence](#), HM Treasury, July 2022

approach to ensuring fair access, as set out in Part 5 of the Financial Services Banking Reform Act 2013.

64. As previously signalled in its consultation on the systemic perimeter, it is the government's intention to ensure there is a single and effective regime governing access to payment systems, in place of regulatory overlap – which creates complexities for users and the Payment Systems Regulator to navigate alike. The government's consultation on the systemic perimeter is now closed and feedback from stakeholders is being analysed. The government will set out its next steps later this year.

Next steps

65. As identified above, the Payment Services Regulations and wider retained EU payments law have had some success in promoting the government's objectives for payments. However, this review has also identified certain deficiencies where the framework could be improved to better meet the revised objectives for payments regulation, as the government repeals retained EU law and replaces it with a framework specifically tailored to the UK for payments.
66. The government warmly invites stakeholders to engage with the Call for Evidence accompanying this review, and respond to these or identify other benefits for future policy change in this area. This consultation will remain open for 12 weeks, and close at 23:45 on **Friday 7 April 2023**.
67. The government recognises that the pace of change in payments policy has been a concern for some stakeholders in recent years. As it considers the replacement of retained EU law in this area, policy changes will only occur where there are concrete benefits or risks, and not for its own sake. Certain elements of the framework may be repealed and replaced to an accelerated timescale, where a clear and pressing need for change has been identified. This relates in particular to measures highlighted in the government's review of the systemic perimeter, and in this review of the Payment Services Regulations – such as in relation to enhancing fraud prevention; safeguarding; and the fair protection of customers in relation to the termination of payment services. Further detail on the government's approach to policy change across its broader programme to repeal and replace EU law in financial services is set out in Chapters 4 and 5 of the FRF implementation statement.²⁴
68. Finally, as required by legislation the government also intends, in due course, to arrange for a review for the Payment and Electronic Money Institution Insolvency Regulations. These regulations already apply in England, Wales and to certain companies in Scotland. As set out at consultation, the government intends for these regulations to apply across the UK where necessary, and is in the process of preparing the relevant regulations extending the regime to Northern Ireland and Scottish Limited Liability Partnerships. The review will be completed within two years of the regime having come into force throughout the UK. This will ensure the review can fully assess how far the regulations are meeting their objectives

²⁴ [Building a smarter financial services framework for the UK](#), HM Treasury, December 2022

for all firms in scope. In the interim, stakeholders are invited to provide any comments on the regime as part of their response to this call for evidence.

69. Please submit responses electronically or via addressed mail to the following addresses:

PaymentServicesCfE@hmtreasury.gov.uk

Payment Services Call for Evidence

Payments & Fintech

HM Treasury

1 Horse Guards Road

SW1A 2HQ

Confidentiality

'Payment Services Regulations Review: Call for Evidence' – Processing of Personal Data

This notice sets out how HM Treasury will use your personal data for the purposes of this consultation and call for evidence and explains your rights under the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

The data we collect (Data Categories)

Information may include your name, address, email address, job title, and employer of the correspondent, as well as your opinions. It is possible that you will volunteer additional identifying information about themselves or third parties.

Legal basis of processing

The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good effective government policies.

Special categories data

Any of the categories of special category data may be processed if such data is volunteered by the respondent.

Legal basis for processing special category data

Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

Purpose

The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Who we share your responses with

Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. This could include the Bank of England, the Financial Conduct Authority and the Payment Systems Regulator. Examples of other public bodies appear at:

www.gov.uk/government/organisations.

As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (Retention)

Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

Personal information in responses that is not published will be retained for 3 calendar years after the consultation has concluded.

Your rights

1. You have the right to request information about how your personal data are processed and to request a copy of that personal data.
2. You have the right to request that any inaccuracies in your personal data are rectified without delay.
3. You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
4. You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.
5. You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.
6. You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

How to submit a Data Subject Access Request (DSAR)

To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit
1 Horse Guards Road
London
SW1A 2HQ
dsar@hmtreasury.gov.uk

Complaints

If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk.

If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Call for Evidence: questions for stakeholders

General questions

1. How should the payment services framework²⁵ evolve – and what should be the government’s priorities – to better promote the following government objectives for payments regulation:
 - A. Achieving agile and proportionate regulation, which facilitates the international competitiveness of the UK economy through growth and innovation in the UK payments sector
 - B. Ensuring appropriate trust and protection for consumers
 - C. Ensuring the resilience and integrity of the UK’s payment market
 - D. Fostering competition, in the interests of consumers

In answering the above, the government would welcome concrete reflections from stakeholders for future policy, rather than the principles which should underpin regulation/regulatory change.

2. To what extent would you support rationalising and/or removing the distinctions in regulation between payment institutions and electronic money institutions – in effect, combining the two sets of legislation? Would this be easier for the sector to navigate and/or lead to better outcomes?

Scope and definitions²⁶

3. Are (a) the definitions and (b) the scope of the regulated activities in the payments services and e-money framework clear and do they capture the right actors and activities within regulation?
4. Do the exclusions under the PSRs and the EMRs continue to be appropriate (includes limited network, electronic communication, commercial agent etc)?

²⁵ [The Payment Services Regulations 2017, The Electronic Money Regulations 2011, Cross Border Payments Regulation, as amended in UK law](https://legislation.gov.uk), legislation.gov.uk

²⁶ Parts 1 and 5, and Schedule 1 of the Payment Services Regulations, and Part 1 of the Electronic Money Regulations

The regulatory treatment of payment services and e-money²⁷

Considered against the government's objectives for payments regulation (paragraph 14), and referring to paragraph 20 in the government's accompanying review document:

5. How, if at all, might the framework for the authorisation of payment institutions and electronic money institutions be reformed?
6. How, if at all, might the framework for the registration of small payment institutions and small electronic money institutions be reformed?
7. How, if at all, might the registration requirements for account information service providers be reformed?
8. Does the regulatory framework for payment initiation service providers (PISPs) and account information service providers (AISPs) sufficiently support the growth of this sector, and ensure a level playing field, and fair access to payment accounts, to support competition and growth?
9. How, if at all, might the registration requirements or wider regime for agents be reformed?

Information requirements for payment services²⁸

Considered against the government's objectives for payments regulation:

10. Is the current framework for the provision of information to payment service users effective? If not, how should its scope change?
11. Are there particular changes that you would advocate to the Cross-border Payments Regulation in relation to the transparency of currency conversion, and what would these entail?

Rights and obligations in relation to the provision of payment services²⁹

Considered against the government's objectives for payments regulation:

12. What has been the experience of a) providers and b) users/customers in relation to the termination of payment services contracts? Does the existing framework strike an appropriate balance of rights and obligations between payment service users and payment service providers, including but not limited to a notice period applying in such cases?

²⁷ To note in particular, Parts 2, 3 and 4, and Schedules 2 and 3 of the Payment Services Regulations, and Parts 2,3 and 4 and Schedules 1 and 2, of the Electronic Money Regulations.

²⁸ See in particular Part 6, and Schedule 4 of the Payment Services Regulations

²⁹ Part 7 of the Payment Services Regulations

13. With reference to paragraph 31 of the accompanying review, do stakeholders have any feedback on the government's view:
- that, as a general principle, a notice period and fair and open communication with a customer must apply before payment services are terminated?
 - that the regulations and wider law operate here as set out under paragraph 29?
14. How and when do providers cease to do business with a user, and in what circumstances is a notice period not applied?
15. How effective are the current requirements in the Payment Services Regulations, notably under Regulations 51 and 71 – are these sufficiently clear or would they benefit from greater clarity, in particular to ensure that notice-periods are given and customer communication is clear and fair?
16. Should there be additional protections for payment service users against the termination of contracts? Should anything be specific to protect their freedom of expression – e.g. to ensure that adequate (or longer) notice is given in such cases, and what communication requirements should apply?

Wider considerations in relation to the provision of payment services

17. What provision, if any, should the regulatory framework make regarding charges for payment services?
18. Does the existing framework strike an appropriate balance of rights and obligations between:
- Sending and receiving payment service providers?
 - Account servicing payment service providers and payment initiation service providers/account information service providers?
19. Are consumers adequately protected from evolving fraud threats under the existing legislation – is further policy needed to ensure this, and how should that policy be framed?
20. In relation to payment transactions which payment service providers suspect could be the result of fraud, is there a case for amending the execution times for payments to enable enhanced customer engagement? What requirements should apply here to ensure the risk to legitimate payments is minimised and that such delays only apply to high-risk, complex-to-resolve cases?
21. In relation to fraud, whether unauthorised or authorised, is there a need to a) complement rules with data sharing requirements; and b) for

further reforms be made to make Strong Customer Authentication work more effectively and proportionately?

Issuance and redeemability of electronic money³⁰

Considered against the government's objectives for payments regulation:

22. Are the requirements regarding issuance and redemption of electronic money still appropriate?

Miscellaneous

23. Noting the intention to commission an independent review in due course, do you have any immediate observations on the efficacy of the operation of the Payment and Electronic Money Institutions Insolvency Regulations to date?
24. Finally, do you have any other observations relating to the payments framework not encompassed above, and how this could be further improved, in line with the government's objectives?

³⁰ Part 5 of the Electronic Money Regulations

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

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