Finalised guidance

FG16/6 – Payment Accounts Regulations 2015

Definition of a 'payment account'

August 2016

Introduction

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.[1] 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

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

- 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 PSPs[2] 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 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 (PSRs)

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.

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

16. ‘Payment accounts’ under the PARs are a sub-set of those under the PSRs. A ‘payment account’ within the meaning of the PARs is always 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.[3]

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.

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.

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

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 including (but not limited to):

- 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 payment 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 payment 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 payment 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 updated assessments at appropriate intervals for their savings accounts, e-money accounts, current account mortgages and credit card accounts if changes in consumer use (or any other relevant factors) may result in a different determination as to whether the account is used for day-to-day payment transactions.