

Policy Statement

PS16/20

The Payment Accounts Regulations 2015

Feedback on CP16/7, final Handbook
changes and finalised guidance



August 2016

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In this Policy Statement, we report on the main issues arising from Consultation Paper 16/7 (*The Payment Accounts Regulations 2015 – Draft Handbook changes and draft guidance*) and publish the final Handbook changes and finalised guidance.

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Abbreviations used in this document

AML	anti-money laundering
BCOBS	Banking: Conduct of Business sourcebook
CASS	Current Account Switch Service
CBA	cost benefit analysis
CP	Consultation Paper
DEPP	Decision Procedures and Penalties Manual
EBA	European Banking Authority
EG	Enforcement Guide
FSMA	Financial Services and Markets Act 2000 (as amended by the Financial Services Act 2012)
ICOBS	Insurance: Conduct of Business sourcebook
ID&V	identification and verification
JMLSG	Joint Money Laundering Steering Group
MAS	Money Advice Service
MLRs	Money Laundering Regulations 2007
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 service provider
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** In March 2016, we published *Consultation Paper 16/7: The Payment Accounts Regulations 2015 – draft Handbook changes and draft guidance (CP16/7)*. We consulted on proposed changes to our Handbook that are required as a result of the Payment Accounts Regulations 2015 (PARs). We also proposed non-Handbook guidance to assist payment service providers (PSPs) with the implementation of certain aspects of the PARs.
- 1.2** In this Policy Statement, we summarise the feedback we received to CP16/7 and set out our response. We publish the final Handbook changes and the finalised guidance.
- 1.3** We have developed the policy in this paper in the context of the existing UK and EU regulatory framework. We will keep the policy under review to assess whether any amendments will be required due to changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.

Who does this affect?

- 1.4** This Policy Statement will primarily interest:
- banks
 - building societies
 - e-money institutions
 - other providers of payment accounts, such as payment institutions
 - trade bodies representing providers of payment accounts
- 1.5** It may also be of interest to organisations representing consumers.

Is this of interest to consumers?

- 1.6** The PARs entitle consumers holding a payment account to receive information about 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.

- 1.7 Ultimately, our Handbook changes and finalised guidance 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.

Context

- 1.8 The EU Payment Accounts Directive (PAD) was adopted 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 (basic bank account)¹
- 1.9 Her Majesty's Treasury (the Treasury) has chosen to implement PAD by means of regulations. The PARs were approved by Parliament and made on 15 December 2015. In accordance with the implementation deadline set out in the Directive, the provisions of the PARs on packaged accounts, switching and basic bank accounts enter into force on 18 September 2016.²
- 1.10 Many of the PAD provisions are prescriptive in nature. The details have been reproduced in the PARs and do not need to also be incorporated into our Handbook, as the PARs apply directly to PSPs. Nevertheless, the PARs do require some amendments to our Handbook. These changes need to be made before the implementation deadline of 18 September 2016.
- 1.11 Given the short period for implementation, we proposed in CP16/7 to only make amendments which are necessary to ensure our Handbook is compatible with the PARs and to enable us to fulfil our legal obligations. We also proposed to issue non-Handbook guidance to assist PSPs with the implementation of two specific provisions of the PARs.
- 1.12 In summary, we proposed to:
- issue guidance on the **definition of a 'payment account'** within the meaning of the PARs
 - issue guidance on the implementation of the provisions on **packaged accounts**
 - introduce new **regulatory reporting requirements** in relation to switching and basic bank accounts
 - make **minor Handbook changes** in order to take account of the provisions in the PARs on packaged accounts and switching

1 'Payment accounts with basic features' are similar to accounts usually referred to in the UK as 'basic accounts' or 'basic bank accounts'. For ease of reference, we use the terminology 'basic bank account' and 'basic account' in this paper, including when referring to payment accounts with basic features.

2 The rest of the provisions, which are on fee information, do not come into force until after the European Commission has adopted three technical standards to be drafted by the European Banking Authority (EBA), see regulations 1(2)(a) and 3(1) of the PARs, and Article 3(4) of PAD.

- 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

1.13 Our proposed Handbook changes and guidance 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.

Summary of feedback and our response

1.14 We received 11 responses to CP16/7. Nine were from PSPs and other representatives of the financial services industry, and two were from consumer organisations.³ Some respondents replied to all ten questions while others focused on specific questions or issues.

Summary of feedback

1.15 Respondents broadly agreed with our overall approach and with our proposals for Handbook changes and non-Handbook guidance. We received many useful comments on our proposals. These have helped us to improve the clarity of our guidance and to ensure that PSPs have more certainty regarding the new reporting requirements.

1.16 Many respondents expressly welcomed our proposal for guidance on the definition of a 'payment account' under the PARs. Smaller PSPs in particular, including e-money institutions, found it helpful in assessing which of the accounts they offer fall within the scope of the PARs.

1.17 We received extensive comments on certain aspects of the draft guidance on packaged accounts. While some aspects of these proposals were well received, industry representatives expressed concern about non-insurance products and services being considered parts of a package. They also disagreed with our expectation that PSPs should disclose the cost to the *individual consumer* of purchasing the other products or services separately.

1.18 Respondents agreed with our overall approach to reporting requirements and with our proposed amendments to the Supervision module of our Handbook (SUP). We received a number of requests to clarify the precise scope of the data items on switching. Stakeholders also commented on the proposed frequency and timing of reporting, and several suggested that we should require PSPs to report additional data.

1.19 Stakeholders did not raise any concerns in relation to our proposals for minor changes to the Banking: Conduct of Business sourcebook (BCOBS) and the Insurance: Conduct of Business sourcebook (ICOBS), or for updates to DEPP and EG.

1.20 Besides the matters on which we consulted, several stakeholders suggested that we should also make rules or provide guidance on additional issues arising from the PARs. These included the provision of basic bank accounts, and reconciling certain requirements of the PARs with existing legal and regulatory obligations, for example relating to anti-money laundering.

1.21 We received little feedback on our cost benefit analysis (CBA). We have integrated the limited comments we received into the appropriate substantive chapters of this paper.

³ A list of non-confidential respondents is in Annex 1.

Summary of amendments

- 1.22** Following our analysis of the feedback, we confirm that we will proceed with the Handbook changes we proposed and will issue the two pieces of non-Handbook guidance. In line with the feedback we received, we have made some slight modifications.
- 1.23** The amendments we have made are summarised in the table below, and explained in more detail in the chapters which follow.

Issue	Summary of amendments
Guidance on the definition of a 'payment account'	<ul style="list-style-type: none"> • Minor amendments to improve clarity.
Guidance on packaged accounts	<ul style="list-style-type: none"> • Clarification of the scope of the PARs provisions on packaged accounts, including what 'other products and services' may include. • Addition of guidance on the timing and method of providing the information on the costs and fees of purchasing the other products/services separately. • Minor amendments to improve clarity.
Regulatory reporting requirements (SUP 16)	<ul style="list-style-type: none"> • <i>Total number</i> of refusals of switching applications to be reported (rather than the <i>proportion</i> of total applications refused). • <i>Total number</i> of refusals of applications for basic bank accounts to be reported (rather than the <i>proportion</i> of total applications refused). • Reporting deadline extended to two months (instead of one month) after the end of the reporting period. • Minor amendments to improve clarity and certainty.
Packaged accounts (ICOBS 6)	None
Switching (BCOBS 5)	None
Enforcement (DEPP and EG)	None

Equality and diversity considerations

- 1.24** As we explained in CP16/7, 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 on which we consulted 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.
- 1.25** We invited feedback on these aspects of our proposals but did not receive any comments from stakeholders. We do not believe the amendments we have made to our proposals following the consultation raise any equality and diversity issues.

Next steps

- 1.26** The provisions of the PARs on packaged accounts, switching and basic bank accounts enter into force on 18 September 2016. Our Handbook changes and non-Handbook guidance come into effect on the same day.

- 1.27** PSPs that offer, or are planning to offer, payment accounts within the meaning of the PARs should read the Handbook changes and finalised guidance published in Appendices 1, 2 and 3 to this paper. PSPs should ensure that they understand the rules and guidance we have made. They should pay particular attention to the new reporting requirements, and act to make the necessary changes to enable them to comply from 18 September 2016.
- 1.28** Credit institutions that offer basic bank accounts, whether or not they are designated as providers of such accounts under the PARs, should also note the new reporting requirements in respect of these accounts.

2. Guidance on the definition of a ‘payment account’

- 2.1** In this chapter, we summarise the feedback on our draft guidance on the definition of a ‘payment account’ in the PARs, and set out our response.
- 2.2** We explained in CP16/7 that our engagement with stakeholders indicated that a variety of PSPs were unsure how to apply the definition of a ‘payment account’ in regulation 2 of the PARs.⁴ Because of the risk that PSPs might interpret the definition too narrowly, for example by restricting it to traditional current accounts, we proposed to issue guidance to help PSPs assess which of the accounts they offer fall within the definition.
- 2.3** We asked:

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

Issuing guidance

- 2.4** Ten respondents answered this question, all agreeing with our proposal to issue guidance on the definition of a ‘payment account’. Many respondents expressly welcomed the proposed guidance. Smaller PSPs, including e-money institutions, found it especially helpful.
- 2.5** In particular, respondents:
- considered our approach helpful and practical because it breaks down the definition into possible steps that PSPs could take to assess which of their accounts are in scope
 - found the factors we listed as possible indicators of an account being used for ‘day-to-day payment transactions’ useful, given the practical significance of this element of the definition
 - welcomed the examples we provided of accounts we consider would be likely or unlikely to fall within the definition
- 2.6** One respondent noted that it was particularly helpful we had clarified the relationship between the definition of a ‘payment account’ in the PARs and the broader definition of a ‘payment account’ in the Payment Services Regulations (PSRs). However, another respondent suggested

⁴ Regulation 2 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’.

that we provide more clarity on the term and its more general interpretation given the forthcoming implementation of the revised Payment Services Directive (PSD2).

Our response

We are pleased that PSPs find our guidance useful in assessing which of the accounts they offer fall within the definition of a 'payment account' in the PARs. We confirm that we will issue guidance on this matter. We set out the amendments we have made in the rest of this chapter. The finalised guidance can be found in Appendix 2.

We explain in CP16/7⁵ and in paragraphs 6 and 13 to 16 of the guidance that the definition of 'payment account' in the Payment Services Directive (PSD), PSD2⁶ and the PSRs differs from the definition used in the PARs. The definition of a 'payment account' used in the PARs is relevant only in the context of the PARs. Accordingly, our guidance does not impact on the definition of a 'payment account' in the PSRs or on the guidance we provide in chapter 15.3 of our Perimeter Guidance Manual (PERG). We are currently considering our approach to the implementation of PSD2.

In paragraph 16 of the guidance, we also explain that payment accounts under the PARs are a subset of those under the PSRs. In the draft guidance, the second sentence of this paragraph read: *'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.'* In the finalised guidance, we have expressed this slightly differently to improve the clarity of our explanation. This improves readability without changing the content or meaning.

Adding to the guidance

- 2.7** While acknowledging that they found our guidance helpful, several industry respondents commented that it would be of greater use to PSPs if the guidance were more prescriptive and provided further detail on certain aspects of the definition. Respondents suggested that we:
- add to the functionalities an account must have to meet the definition of a 'payment account', for example with examples of payment instructions
 - add to the definition so that PSPs can take into account factors other than the functionalities of the account and whether it is used for 'day-to-day payment transactions' when assessing whether an account falls within the definition of a 'payment account'
 - provide more detail on what we consider is meant by 'day-to-day payment transactions'
- 2.8** Two stakeholders explained in their responses that they could not envisage any credit card accounts falling within the definition of a 'payment account' under the PARs. They asked us to confirm that credit card accounts are not in scope.

⁵ See paragraph 2.3 of [Consultation Paper 16/7](#).

⁶ The definition in PSD has remained unchanged in PSD2.

- 2.9 Other respondents referred to the Treasury's consultation feedback document in which the Treasury states that it considers the definition of a 'payment account' in the PARs to limit the scope to current accounts and 'accounts that have functionalities directly comparable to those of current accounts'.⁷ One respondent expressed concerns that our guidance may result in more accounts falling within the scope. Another considered our guidance was in line with the Treasury's intention, and asked us to confirm this.

Our response

The definition of a 'payment account' is laid down in regulation 2 of the PARs. Our guidance aims to assist PSPs in applying that definition. However, we have no power to amend or add elements to the definition. For this reason, we cannot add to the list of functionalities a payment account must have or introduce criteria (additional to those in the definition) which PSPs could take into account when assessing whether an account falls within the scope of the PARs.

We appreciate that whether an account is used for 'day-to-day payment transactions' can be decisive in a PSP's assessment of whether that account falls within the definition of a 'payment account' under the PARs. We have tried to assist PSPs as much as possible by listing in paragraph 26 of the guidance some factors which PSPs may find helpful to consider when determining whether an account is used for 'day-to-day payment transactions'. These are intended to provide PSPs with some examples of the types of factors that could be relevant. We do not propose to go beyond this, as to do so would risk failing to adequately take into consideration particular situations. PSPs will need to consider whether an account is used for 'day-to-day payment transactions' based on all the relevant circumstances.

Regarding credit card accounts, we cannot confirm that they fall wholly outside the definition of a 'payment account' under the PARs. To do so would be to contradict the definition itself which clearly states that there may be instances in which they are in scope. PAD applies in all 28 EU Member States, so covers a variety of markets and different types of payment account products. Consequently, it is possible that not every type of account mentioned in the definition is equally relevant in each Member State.

Concerning the Treasury's consultation feedback document, we find it helpful to consider the relevant passage in full:

'The government is bound to comply with the Directive and further clarification, narrowing the scope beyond what is set out in the Directive, may affect the government's compliance with the Directive.'

It is the government's view that the definition of 'payment account' in the regulations should be sufficient to limit the scope to current accounts – or accounts that have functionalities directly comparable to those of current accounts – in the UK. It will be for firms themselves to determine whether each of the accounts they offer falls within the scope of the regulations'.⁸

⁷ See paragraph 17 of the Treasury's [consultation feedback document](#).

⁸ See paragraphs 16 to 17 of the Treasury's [consultation feedback document](#).

We believe it is sufficiently clear from this that the Treasury does not consider the scope of the definition to be narrower or wider than that set out in the Directive.

Clarifying the guidance

- 2.10** We received requests from respondents to clarify some specific aspects of the draft guidance.
- 2.11** One respondent commented that the factors which PSPs may find helpful to consider when determining whether an account is used for 'day-to-day transactions' should not be treated as an exhaustive list. They noted that other factors may also indicate such account use.
- 2.12** The same respondent also noted that while the draft guidance usually refers to 'day-to-day payment transactions' (as does the definition in the PARs), this has in some instances been shortened to 'day-to-day transactions'. Because the latter is wider than the term used in the PARs, the stakeholder suggests we ensure the finalised guidance is consistent in referring to 'day-to-day *payment* transactions'.
- 2.13** Another respondent questioned the appropriateness of asking PSPs to 'consider' whether an account is used for 'day-to-day payment transactions'. They argued that PSPs should have to do more than just 'consider' the use consumers make of the accounts, and suggested that we strengthen the language to require them to 'monitor' whether they are used for 'day-to-day payment transactions'.

Our response

We confirm that the factors mentioned in the guidance are examples but not the only possible indicators of whether an account is used for 'day-to-day payment transactions'. PSPs may use other relevant factors too. We have amended paragraph 26 of the guidance to make this more explicit.

We confirm that the references in the guidance to 'day-to-day transactions' were unintentional. We have ensured consistency by adding the word 'payment' where it had been omitted.

Regarding the word 'consider', we use this when providing guidance on how a PSP may meet its obligations under the PARs. We would underline that PSPs are required to comply with the PARs, and this means they will need to ensure that accounts falling within the definition of a 'payment account' are treated accordingly.⁹ In the final part of the guidance, we also set out that we expect PSPs to assess their accounts on an ongoing basis, and not just in September 2016.¹⁰

⁹ See paragraphs 10 to 12 of the guidance.

¹⁰ See paragraphs 31 to 34 of the guidance. See also the next section of this document.

Beyond the initial assessment of accounts

- 2.14** We explained in our draft guidance that we would expect PSPs to put in place processes to ensure that assessments are carried out not only in respect of accounts available in September 2016 but also in the future:
- for every new account introduced
 - when changes to the functionalities of an existing account are made
 - at appropriate intervals to allow for changing consumer use and any other factors relevant to the definition of a 'payment account' under the PARs
- 2.15** While all respondents who commented on this part of the draft guidance agreed with the first two points, one asked for clarification of what we consider to be 'appropriate intervals' in the third point. A further respondent suggested that ongoing assessments of accounts where no formal product change has taken place would go beyond what is required by the PARs and be excessively onerous for PSPs.

Our response

Each PSP will need to be satisfied that its processes allow it to fulfil its obligations under the PARs. This applies not only on 18 September 2016 but on an ongoing basis. It includes ensuring that a PSP applies the PARs to the accounts it offers that fall within the definition of a 'payment account'. It is for each PSP to decide how to meet these legal obligations. What constitutes an 'appropriate interval' will therefore be for each PSP to decide.

We have amended paragraph 34 of the guidance to clarify that updated assessments will be necessary only for accounts where changes in actual consumer use (or any other relevant factors) could result in a different determination as to whether the account is used for 'day-to-day payment transactions'.

3. Guidance on packaged accounts

- 3.1** In this chapter, we summarise the feedback on our draft guidance on the application of the provisions of the PARs on packaged accounts. We also set out our responses to the issues raised.
- 3.2** We noted in CP16/7 that some industry stakeholders seem unsure how to apply regulation 13 of the PARs on packaged accounts.¹¹ To assist PSPs and to mitigate the risk of detriment to consumers, we proposed to issue guidance which clarifies our expectations of PSPs. Following an explanation of the disclosures required by regulation 13, we set out in the draft guidance our expectations in relation to two key issues:
- when a payment account or other product/service is available separately
 - disclosure of the costs and fees associated with each of the other products/services available separately
- 3.3** We asked stakeholders:

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

Scope of regulation 13

- 3.4** An industry representative expressed concern that in providing examples in the draft guidance of products and services offered with payment accounts and forming parts of packages in the UK, we refer not only to insurance but also to cinema tickets and restaurant discount cards. They argued that because packaged accounts are generally considered to be packages containing insurances, providers offering only discounts and rewards with a payment account do not consider themselves to be offering a packaged account.
- 3.5** This respondent noted that the consequence of considering this wider range of accounts to be within the scope of regulation 13 would be that providers would have to inform potential new customers whether such accounts are also available separately. They argued this would be confusing for consumers.

¹¹ Regulation 13 provides:

(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.*

- 3.6 The respondent suggested that the application of regulation 13 of the PARs should be limited to 'paid-for packages where insurances are involved'.

Our response

Regulation 13 applies where a payment account is offered as part of a package with another product or service which is not linked to a payment account. Packages of this kind are regularly called 'packaged accounts' and 'packaged bank accounts' in the UK. However, the scope of regulation 13 is not necessarily synonymous with any other understanding of what constitutes a packaged account or with the packaged accounts currently on the market and commonly referred to as such. The packages within the scope of regulation 13 must also be distinguished from the definition of 'packaged bank account' in our Handbook Glossary,¹² which defines the scope of application of the relevant rules in ICOBS 5.

The term 'other products and services' in Article 8 of PAD, and transposed in regulation 13 of the PARs, cannot be interpreted as referring solely to insurance. Recital 24 of PAD is clear that Article 8 is not intended to be limited in this way, as financial advice (a non-insurance service) is named as an example of 'other products and services'. Similarly, there is no indication that the provisions were intended to apply only to packages for which the consumer is charged a fee.

While the meaning of 'other products and services' must extend beyond insurance, we agree that not all additional products and services packaged with a payment account will necessarily fall within the scope of regulation 13. We have therefore added an additional section to the guidance which addresses this point. We have integrated paragraph 5 of the draft guidance into this new section and, in doing so, have deleted the references to cinema tickets and restaurant discount cards. This reflects that while cinema tickets and restaurant discount cards may constitute 'other products and services' under regulation 13, whether they in fact do so will depend on the particular circumstances. It will be for PSPs to decide whether benefits, incentives and any other elements offered together with a payment account constitute 'other products and services' under regulation 13.

We also clarify that it is not relevant whether the product or service is regulated or unregulated, and that the scope of regulation 13 is not limited to packages for which a fee is charged. We have moved the paragraphs concerning the Treasury's clarifications about the scope to the new section.

Finally, we would like to address the consequences of non-insurance products and services being in the scope of regulation 13. Because PSPs rarely sell non-insurance products and services separately, the only practical consequence of their being in the scope of regulation 13 is that PSPs must inform consumers whether or not it is possible to purchase the *payment account* separately. We accept that this information may seem redundant where the account is not available separately. However, where the payment account *is* available

¹² 'Packaged bank account' is defined in our Glossary as: 'an arrangement under which a firm provides a retail banking service as part of a package which includes access to other goods or services, whether or not a fee is charged.'

separately, providing consumers with this information will contribute to the aims of improved transparency and comparability.

This will particularly be the case where a fee is payable for the package but the payment account is available separately without a monthly or other periodic account fee. The information will prompt consumers to consider the extent to which they are likely to make use of the additional products and services.

Informing the consumer whether the payment account is available separately should not be confusing for consumers. In line with Principle 7, PSPs authorised under the Financial Services and Markets Act 2000 (FSMA) must ensure that they provide this information in a manner which is clear, fair and not misleading.

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

- 3.7** The respondents who commented on this element of the draft guidance all supported our suggestions on how a PSP might assess whether the account or other product in the package is 'available separately'.
- 3.8** They agreed it is important to prevent PSPs from taking an unduly narrow approach to the assessment. Respondents welcomed the two steps we proposed, in particular the focus on the consumer perspective of products and services.
- 3.9** Referring to the first suggested step, one respondent considered that PSPs might find it difficult to assess which features of a product are most important to consumers. They noted that consumers can be attracted to a certain product for many different reasons. With this in mind, the respondent asked that compliance be assessed leniently.

Our response

In view of stakeholders' positive feedback, we have retained this section of the guidance without modification.

We note the respondent's concern regarding PSPs' assessments of which product features are most important to consumers. However:

- The two steps are only a suggestion as to how firms might assess whether the account in the package is offered separately.¹³
- Our guidance refers to the features 'likely' to be the most important from a consumer perspective. There is no suggestion that the assessment should or could be based on the actual preferences of an individual consumer.
- Usually, more than one product feature will be likely to be important to consumers. The guidance acknowledges this by referring to features in the plural. It is not suggested that PSPs attempt to identify a single feature.

¹³ See paragraph 2 of the guidance in which we clarify that there is no presumption that departing from the guidance is indicative of a breach of the PARs, and that we will not take supervisory or enforcement action merely because a PSP has not followed the guidance.

Disclosure of costs and fees

- 3.10** Several stakeholders provided feedback on the section of our draft guidance on the disclosure of the costs and fees associated with each of the other products and services available separately.

Costs and fees of purchasing the product/service separately

- 3.11** Regulation 13 is not explicit on whether the costs and fees PSPs must disclose are those of the product or service when offered as part of the package (i.e. a part of the overall package cost) or those that would be incurred by the consumer when purchasing the other product or service separately. We clarified in our draft guidance that we would expect PSPs to disclose the costs and fees to the consumer of purchasing the product or service separately, i.e. on a stand-alone basis, from that PSP.
- 3.12** Few stakeholders commented on this point but those that did agreed with our suggested approach.

Our response

In light of the positive feedback received, we confirm that we will proceed with this aspect of the guidance.

Costs and fees to the individual consumer

- 3.13** We also clarified in our draft guidance that we would expect PSPs to disclose the costs and fees to the *individual consumer* of purchasing the product or service separately. One PSP welcomed our approach, and commented that greater transparency allows consumers to make better decisions and achieve better outcomes.
- 3.14** Another industry representative noted that this would require PSPs to provide individualised insurance quotes to consumers at the point of sale of the package, and opposed this on three grounds:
- It is not accurate to describe this as reflecting the intention of the EU legislature as neither PAD nor the PARs explicitly require that the cost information must be provided on an individual basis. Expecting PSPs to do so would go beyond what the legislation requires.
 - Providing detailed, bespoke comparative product information at point of sale would be practically very challenging for many PSPs given the systems and practices currently in place.
 - It would lead to unnecessary delays, complicate the customer journey and result in an overall more confusing customer experience with material detriment to consumers.
- 3.15** The stakeholder suggested that it would be sufficient to comply with regulation 13 if PSPs were to inform consumers at the point of sale of the package that the product or service in question is available separately, and provide generic cost information, for example a range of prices. Individualised cost information could be provided if the consumer requests it.

Our response

The PARs require that *'the'* costs and fees associated with each of the products and services in the package that can be purchased separately from the PSP

must be disclosed. We believe the natural reading of this requirement is that information on the *specific* costs and fees must be provided to the consumer. We also note that recital 24 of PAD refers to 'the applicable costs and fees' associated with the other products and services. We consider that our interpretation of regulation 13(2) of the PARs best reflects the purpose of the provision, which is to improve the transparency and comparability of the cost of packaged accounts.

Nevertheless, we accept that the reference in paragraph 18 of the draft guidance¹⁴ to 'the intention of the EU legislature' may be ambiguous. We have re-worded the paragraph to clarify that we are referring to the objectives of transparency and comparability for consumers.

Regarding the impact on PSPs and consumers, we would firstly underline that the disclosure requirements of regulation 13(2) apply only when both the payment account and the other product or service in question are available separately from the PSP. This means that not all packages will trigger the requirement to provide separate cost information in relation to all elements of the package. For example, if the payment account in the package is not available separately, no cost information on the other elements will have to be provided. If the payment account is available separately but only one of the other elements of the package is also available separately from that PSP, the cost information in relation to just that one element will need to be disclosed to the consumer. Thus a PSP is required to provide separate cost information only in respect of products and services it already sells on a stand-alone basis.

To the extent that insurance other than travel insurance (for example mobile phone, gadget or car breakdown insurance) is available separately from a PSP, we do not consider that generating individualised cost information will be burdensome or time-consuming. The costs associated with these products depend on only a small number of variable underwriting criteria. This means that the individualisation of the cost information is relatively simple. For example, mobile phone insurance costs are often in bands or groups according to the value and age of the mobile phone. Furthermore, the same information needed to generate the individualised cost information in relation to the insurance available separately is likely to also be required from the consumer for the insurance which is part of the package. Any additional burden and time required will likely be minimal.

We accept that providing individualised quotes for travel insurance may take a little more time given the product is more complex and based on more variable underwriting criteria than the types of insurance described above. This may mean more information needs to be obtained from the consumer. Nevertheless, medical screening (or arranging for medical screening to be carried out), one of the lengthier aspects of the travel insurance sales process, will in any case form part of the process for the sale of the package. This will not need to be duplicated. Therefore, we do not agree that providing individualised cost information for travel insurance would result in a large burden or long delay. It should also be borne in mind that separate cost information must only be made available if the PSP sells the travel insurance separately.

¹⁴ Paragraph 21 of the finalised guidance.

Regarding possible consumer detriment from the additional step in the sales process for a packaged account, we have already set out above that not every package sale will trigger the requirements of regulation 13(2), and that any delay should not be significant. Providing additional cost information should not be confusing for consumers. We would expect firms authorised under FSMA to ensure they provide the information in a manner which complies with Principle 7,¹⁵ and thus not confusing for the consumer. As a result, we do not see potential for consumer detriment. Any inconvenience to the consumer will be outweighed by the benefit of having the opportunity to compare the cost of the package with the cost of (at least some of) its individual components.

By contrast, we believe that providing generic cost information, such as a range of prices, is unlikely to fulfil the purpose of allowing consumers to make meaningful comparisons with the cost of the package or with other products offered on a stand-alone basis. A range of prices would usually result in a high degree of uncertainty for the consumer about the actual cost to him/her. In some cases, for example travel insurance, the range is likely to be so broad as to be of no practical use to the consumer.

We have amended paragraph 18 of the draft guidance¹⁶ to make it clearer that we believe the ability of the individual consumer to make meaningful comparisons is central to the purpose of regulation 13(2).

Timing and method of provision

- 3.16** An industry respondent noted that neither the PARs nor our draft guidance indicate *when* the information on the costs and fees of purchasing the other products and services separately should be provided to the consumer. Similarly, both are silent on the *method* of provision of the information, for example whether the cost information should be provided on a durable medium or could be provided orally instead.
- 3.17** The respondent commented that the timing and method of delivery of the cost information are critical to ensuring that the customer journey is not negatively affected, and consumers are aware of their options. With this in mind, they asked for clarification of these two points.

Our response

We agree that the timing and method of providing the cost information are important. They can influence the consumer's awareness of the information provided and the extent to which it acts as a prompt to consider comparing offers.

In recognition of the importance of these issues to PSPs offering packages, and that they are central to the objectives of transparency and comparability, we have added an additional paragraph to the guidance. The new paragraph 22 sets out our expectation that PSPs consider the purpose of the disclosures on costs and fees when deciding when and how to make them.

¹⁵ 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.'

¹⁶ Paragraph 21 of the finalised guidance.

In this context, we would like to emphasise that the new, additional step in the customer journey is inherent in the requirement to provide the cost information. The key consideration when implementing regulation 13, including in terms of the timing and method of providing the cost information, should not be the level of impact on current processes for the sale of packaged accounts but how to give effect to the objectives of transparency and comparability in the most appropriate way.

Marketing practices

- 3.18** One respondent noted there is a potential for consumer detriment if PSPs change the design of their packages or their sales processes in response to the PARs. This respondent therefore welcomed the statement in CP16/7 that we will continue to monitor providers' marketing practices in relation to packaged accounts.

Our response

We note the concerns expressed by this stakeholder. We have retained the paragraphs of the guidance in which we recall that Principles 6 and 7, BCOBS 2 and the Consumer Protection from Unfair Trading Regulations continue to apply alongside the PARs.

Other issues

- 3.19** Respondents to our consultation raised two further issues in relation to regulation 13 which were not included in our draft guidance.

Costs and fees of purchasing the payment account separately

- 3.20** One respondent asked for clarification of whether PSPs are expected to also provide information on the costs and fees in relation to the payment account that is available separately. In particular, the respondent wondered whether information on fees, charges and interest rates would need to be provided if these differ from those of the payment account offered in the package.

Our response

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 then the PSP must inform the consumer whether or not it is possible to purchase the payment account separately from that same PSP.

If it is possible to purchase the payment account separately from that PSP, then regulation 13(2) will apply. Regulation 13(2) requires a PSP to provide the consumer with the cost information for each of the other products and services contained in the package, i.e. other than the payment account, that is available separately from that PSP. It contains no reference to any disclosures about payment accounts.

We consider the disclosure requirements contained in regulation 13 are sufficiently clear from the explanation and flowchart which we provide in paragraphs 11 to 14 of the finalised guidance.¹⁷ Nevertheless, we have made some minor amendments to paragraph 13 to emphasise that the cost information required by regulation 13(2) relates only to the other products and services that are available separately, and not to the payment account that is available separately.

Although regulation 13 does not impose any requirements in relation to the provision of pre-contractual information on the costs and fees associated with payment accounts, we would expect PSPs to comply with all existing obligations both with regard to the content and the timing of providing such information. These include (but are not limited to) the requirements of Part 5 of the PSRs, the Consumer Credit (Disclosure of Information) Regulations 2010, and the Consumer Credit Act 1974.

Furthermore, regulation 8 of the PARs requires PSPs to provide consumers with a fee information document, details of which are provided in Schedule 1 of the PARs, in good time before entering into a contract for a payment account. However, this regulation will not come into force on 18 September 2016 but at a later date, which is still to be determined.¹⁸

Extending the scope of regulation 13

- 3.21** One respondent proposed that PSPs should have to apply regulation 13 not only to new customers but also to existing customers with packaged accounts. They also suggested that PSPs should be required to make available the information detailed in regulation 13 at any time upon the request of the consumer, and to provide it together with the annual statement of account.

Our response

The Treasury clarified in its consultation document on the draft PARs that regulation 13 applies only to purchases of packaged accounts that take place on or after 18 September 2016. This means that PSPs are not required to disclose information to existing customers on packages purchased before this date.¹⁹ In response to feedback it received, the Treasury confirmed in its consultation feedback document that extending regulation 13 to existing customers '*would extend the scope of the regulations beyond what is required by PAD*'.²⁰

Some measures are already in place which may act as prompts to consumers to re-assess whether they consider their package provides them with value for money. First, the overall cost of the package is shown on the consumer's annual account statement. This reminds the consumer how much he/she is paying for the package each year, so may encourage the consumer to shop around for alternatives.

¹⁷ These correspond to paragraphs 6 to 9 of the draft guidance.

¹⁸ Regulation 1(2)(a) of the PARs provides that regulations 6 to 12 come into force six months after the FCA publishes the linked services list in accordance with regulation 3.

¹⁹ See section 2.3 of the Treasury's [consultation document](#).

²⁰ See paragraph 39 of the Treasury's [consultation feedback document](#).

Second, ICOBS 5.1.3C(1) requires firms to provide an annual eligibility statement to consumers that hold a packaged bank account²¹ containing an insurance policy. This reminder must set out the eligibility criteria to claim each of the benefits under each of the insurances in the package. In this specific communication, firms must expressly recommend that the consumer reviews his/her circumstances and whether he/she meets the eligibility criteria.

While the focus of this rule is the consumer's eligibility to claim the benefits under the insurances in the package, the required eligibility statement may still act as a prompt to consumers to consider the extent to which the package meets their current needs. They may, as a result, look for alternatives. We are conducting a thematic review to assess how firms have implemented this and the other ICOBS rules on packaged bank accounts, which were introduced in 2013. We will publish the main findings of this review in the autumn.

²¹ For the purposes of ICOBS, a 'packaged bank account' is: 'an arrangement under which a firm provides a retail banking service as part of a package which includes access to other goods or services, whether or not a fee is charged.' See FCA Glossary.

4. Regulatory reporting

- 4.1** In this chapter, we summarise the feedback on our proposals for new regulatory reporting requirements, and set out our response.

The data to be reported

- 4.2** The PARs require us to gather and submit to the Treasury certain data on payment accounts with basic features (basic bank accounts) and the switching of payment accounts. To meet this obligation, we proposed in CP16/7 to require PSPs to provide the information by means of a new regulatory reporting requirement added to SUP 16 of our Handbook. We proposed to create a new reporting form, a 'payment accounts report', for this purpose.
- 4.3** We proposed that PSPs offering 'payment accounts' within the meaning of the PARs report two data items:
- the number of payment accounts that have been switched
 - the proportion of switching applications that have been refused
- 4.4** In addition, we proposed that credit institutions offering basic bank accounts report two further data items:
- the number of basic bank accounts that have been opened
 - the proportion of applications for basic bank accounts that have been refused

Our response

We received no comments on the reporting form itself or on the data to be submitted. However, we have further considered our proposals to require PSPs to report the *proportions* of applications for switching and for basic bank accounts that have been refused. Our proposals were based on the data that we must provide in consolidated form to the Treasury.²²

Upon further reflection, we do not believe it is necessary for PSPs to report proportions to us. If PSPs report the total number of refusals, they will not have to undertake calculations. We believe this will also reduce the margin for error, for example as a result of rounding, when we consolidate the data reported to us for submission to the Treasury.

²² See regulation 43 of the PARs.

For these reasons, we have amended the reporting form and guidance notes to require the reporting of the *number* of refusals of applications for switching and of applications for basic bank accounts.

PSPs have an obligation to comply with the requirements of the PARs. In order to do so, all PSPs²³ should consider whether they offer accounts that fall within the definition of a 'payment account'. Because it is for individual PSPs to make this assessment, PSPs will need to inform us whether they offer any 'payment accounts' as this will determine whether they need to report the switching data to us. To keep this notification as simple as possible, we have added an initial question to the reporting form asking PSPs to indicate (by answering yes or no) whether they offer 'payment accounts' as defined by regulation 2 of the PARs.

Proposed guidance notes

- 4.5** To provide PSPs with a greater level of certainty with regard to the data they need to collect and report, we proposed guidance notes setting out what, for the purposes of reporting, each individual data item should include.
- 4.6** We asked:
- 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.*
- 4.7** Around half the respondents answered this question. They generally agreed with our proposed guidance notes, commenting that they are clear and understandable. Some respondents requested additional clarity on specific aspects of the proposed guidance notes. All these requests related to the data items on switching.
- 4.8** Two respondents requested clarification as to whether the two data items on switching should include both consumer accounts and accounts held by small and medium-sized enterprises (SMEs). They noted that switches relating to both types of accounts are possible via the Current Account Switch Service (CASS). The respondent suggested that without further clarification of this point there may be a risk of inconsistent reporting by PSPs.
- 4.9** Two respondents asked us to clarify whether switching applications which the transferring provider does not accept should be reported by the receiving provider as refusals. One respondent suggested that the term 'unsuccessful' may be more appropriate than 'refusal' in such cases. It was noted that there are a number of reasons why a transferring or a receiving provider may not accept a switching application, and it was suggested that this should be acknowledged in the guidance notes.
- 4.10** One respondent also noted that at least some receiving PSPs open a payment account for the consumer before the switch takes place. They suggested that if the account has been successfully opened, the receiving provider will have no reason to refuse the switching application. If the account is not opened, there will be no refusal to report. This may result in some PSPs recording and reporting zero refusals.

²³ Credit unions, National Savings and Investment, and the Bank of England are exempted from the scope of the PARs.

- 4.11** One respondent asked us to clarify whether the switching data they report needs to be broken down into switches undertaken by a service that meets the requirements in Schedule 3 of the PARs and switches undertaken by a service designated as an alternative arrangement, for example CASS.

Our response

We have considered requests for clarification on whether the two data items on switching should include both SME and consumer accounts. We note that a 'payment account' within the meaning of the PARs relates only to accounts held by consumers, thereby excluding SME accounts from the data to be reported. While this is implicit in SUP 16.22.3 because of the reference to payment accounts within the meaning of the PARs, we nevertheless acknowledge that this is not completely clear when the reporting provisions are read in isolation.

Therefore, we have added further clarification to the guidance notes that only data relating to the switching of consumer payment accounts should form part of a PSP's payment accounts report. We have also added the definition of 'consumer' contained in regulation 2 of the PARs²⁴ to our Handbook Glossary term 'consumer'. This definition of consumer will apply in the context of Handbook provisions relating to the PARs.

Regarding what constitutes a refusal, we believe it is sufficiently clear in paragraph 4 of the proposed guidance notes for Row 3 that the refusals to be reported by the receiving PSP should include refusals for reasons that relate to the transferring provider. We have also provided three examples of such instances to acknowledge that the reasons for refusing a switching application can lie with the receiving or the transferring PSP. However, to avoid doubt, we have further clarified in the examples that the receiving PSP is to report a refusal where the request has been turned down by the transferring provider.

We do not intend such switches to be reported separately as 'unsuccessful' but rather included with the other 'refusals'. Both PAD and the PARs refer to 'refusals', which is what we are required to report to the Treasury. We consider that introducing different language would create a risk of confusion and misunderstanding.

We have noted the comment about zero refusals being reported by some PSPs because the payment account application precedes switching. However, our obligation under the PARs is to gather data on switching refusals and not account openings. As stated in our guidance notes, PSPs should not record a refusal to open an account as a refusal of a switching application unless the reason for the refusal relates directly to switching.

There may also be circumstances where a switch is refused subsequently to an account being opened with the receiving provider. As in one of the examples we provide in the guidance notes, this may occur where the funds held in the account with the transferring provider cannot be moved. All such switching refusals should be reported.

²⁴ "consumer" means any natural person who is acting for purposes which are outside that person's trade, business, craft or profession'.

Our proposed guidance notes, under the heading 'Switching', state that for the purposes of the report, 'switching' means a switching service between payment accounts and includes both a service that meets the requirements in Schedule 3 and a service designated as an alternative arrangement. This is also apparent from the draft payment accounts reporting form, which foresees that the total number of payment accounts switched is reported. Consequently, we believe it is sufficiently clear that PSPs should not differentiate between the switching services used to carry out the switches when submitting data.

Frequency of reporting

4.12 We are required by the PARs to supply the consolidated data to the Treasury every two years. In line with our general approach to the PARs, we proposed to keep the reporting burden on PSPs as low as possible by suggesting that PSPs report the data to us every two years. However, we also noted that PSPs submit many other data items to us annually, and welcomed views about whether annual reporting of the PARs data would be preferable.

4.13 We asked:

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.*

4.14 Most respondents who answered this question agreed with, or had no objection to, a requirement to submit the data every two years. However, two consumer organisations expressed a preference for annual reporting, arguing that this would enable us to monitor PSPs more closely, and so identify emerging issues.

4.15 One industry respondent suggested that many CASS participants make use of monthly switching figures which Bacs, as the operator of CASS, provides to each participant. The respondent noted that this data is made available to CASS participants 'in arrears' of around six weeks. Where Bacs data is the primary data source for CASS participants, the respondent suggested that these PSPs would be unable to meet our proposed submission deadline given that it is only one month after the reporting period ends. The respondent suggested that we extend the reporting deadline.

Our response

While recognising that most respondents accepted our proposal to require PSPs to report every two years, we agree that annual reporting has the potential to enable emerging issues with switching and the provision of basic bank accounts to be identified more quickly. However, any potential benefits from this need to be carefully weighed against the additional costs to PSPs of more frequent reporting.

In this context, we note that the number of switches performed via CASS is published monthly by Bacs as the operator of CASS. After 18 September 2016, it will be possible for switches to be carried out via means other than CASS, and the number of switches may increase. Nevertheless, we expect that a substantial

proportion of the number of switches will still be performed via CASS as a result of the approximately 40 CASS participants currently providing the vast majority of personal current accounts.

We also note that the Treasury has agreed with the designated providers of basic bank accounts that the providers will submit certain data to the Treasury, including the number of basic bank accounts opened and the number of applications refused, every six months.

Given that much of the data we are requesting from PSPs are already available, we consider the benefits of increasing the frequency with which PSPs are required to report to us would not be substantial enough to justify departing from our general approach to the PARs of ensuring that any burdens placed on PSPs are proportionate to the expected benefits.

We acknowledge the issue raised regarding CASS participants' use of data provided by Bacs and the difficulties these participants may have in complying with our reporting deadline. To address this, we will shorten the first reporting period by one month, so that it will end on 28 February 2018 rather than 31 March 2018. This means there will be two months between the end of the reporting period and the reporting deadline, which will remain 30 April. All subsequent reporting periods will commence on 1 March and end on the last day of February. The reporting deadline will also be 30 April. In this way, there will always be two months between the end of the reporting period and the reporting deadline.

Other aspects of our regulatory reporting requirements

- 4.16** Having posed two specific questions related to our proposals for new reporting requirements, we also asked in CP16/7:

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.*

Requests for additional data items

- 4.17** Most respondents had no comments on other aspects of our proposed reporting requirements. However, some suggested that we should require PSPs to report additional data as part of the new payment accounts report. They suggested that:

- PSPs could report on which day of the switching process the switching application was refused
- credit institutions should report the reason for rejecting an application for a basic bank account because this would allow us to monitor refusals more closely
- credit institutions should report the number of basic bank account customers who have had their account upgraded to a standard payment account, to help monitor whether consumers are upgraded responsibly

Our response

We have considered respondents' suggestions for additional data reporting requirements.

We understand that participants in CASS have access to information about the day of the CASS switching process on which a switching application has been refused. However, we consider that imposing an obligation on PSPs to report this additional information in relation to all payment account switches would be burdensome for PSPs. This is because it would apply not only to switches performed via CASS but also to switches carried out in accordance with Schedule 3 of the PARs. Given that the switching processes under CASS and under Schedule 3 are not the same, including with respect to the timelines, any information on which day a switching application has been refused would not be comparable. Consequently, the use of such data would be limited.

Regarding the suggestion that PSPs be required to report the reason for refusing applications for basic bank accounts, we consider that our arrangements for monitoring and supervising PSPs' compliance with their obligations under the PARs will be sufficient to comply with regulation 28 without collecting this additional information. Additionally, we note that a requirement to report the reasons for refusals would entail the development of a common system of refusal reporting, for example with the use of reason codes. This system would then need to be incorporated into PSPs' systems. We do not consider it is realistic to develop and implement such a common system by 18 September 2016.

We are aware of the potential for consumer detriment associated with credit institutions upgrading consumers from basic bank accounts to standard accounts. Although basic bank accounts have been available to consumers in the UK for many years, we are not aware that there are widespread issues in relation to upgrading at the present time. Should we identify consumer detriment in the future, we will consider how best to respond as part of our risk-based approach to supervision.²⁵

We also note that data on the number of upgrades performed are reported to the Treasury by providers of basic bank accounts. We therefore consider that collecting the same data would be of minimal benefit and an unnecessary duplication for PSPs.

For these reasons, we will not be requiring PSPs to report any additional information on payment accounts at the present time.

Requests for clarification

- 4.18** One respondent suggested that some of our proposed amendments to SUP 16.1 may require further clarification. Specifically, the respondent noted that the addition of 'a *payment service provider to which SUP 16.22 applies*' to SUP 16.1.2(2) may create confusion as to whether the section applies to PSPs, given that the section begins with: '*The only category of firm to which no section of this chapter applies*'. The respondent also requested that we clarify that the

²⁵ On the issue of upgrading, see also paragraph 6.12 and 'our response'.

proposed change to SUP 16.1.3 applies only where the firm is acting in the capacity of a PSP and not when it is acting in other capacities.

Our response

We note the suggestion that SUP 16.1.2 and SUP 16.1.3 could be clearer. SUP 16.1.2 sets out those categories of firm to which none of the SUP 16 reporting requirements apply. These include incoming EEA and Treaty firms with the exceptions set out in paragraphs 2(a) to (c) (as indicated by the phrase 'unless it is [...]'). Our addition of SUP 16.1.2(2)(d) ensures that it is clear that EEA PSPs which are subject to reporting under the PARs (as set out in SUP 16.22) are one such exception. We acknowledge that this is not immediately obvious when considering the amendments in isolation, but we think it is sufficiently clear when SUP 16.1.2 is read in full.

Our addition of subparagraph (iv) at SUP 16.1.3 similarly ensures that SUP 16.1, 16.2 and 16.3 are applied to those incoming EEA firms to which SUP 16.22 applies. These general provisions of SUP 16 do not impose any stand-alone reporting obligations on firms. Therefore, we do not consider further clarification necessary.

Cost of reporting requirements

4.19 We stated in CP16/7 that we consider the reporting requirements we proposed will result in only a minimal increase in costs for PSPs.

4.20 We asked:

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

4.21 Respondents agreed with our assessment of the reporting costs for PSPs, though some pointed out that the cost would only remain minimal if we do not extend the reporting requirements beyond what is necessary in order for us to meet our obligations under the PARs.

4.22 Respondents suggested that costs could be associated with:

- putting in place systems for reporting the data on switches performed under the Schedule 3 procedure
- CASS participants needing to extract the data relating to switching of payment accounts used by consumers from a wider data set containing information on both switching of payment accounts used by consumers and switching of payment accounts used by businesses
- reporting the transferring PSPs' reasons for not accepting a switching application

Our response

Regarding the costs of establishing systems to enable reporting of switches performed under the Schedule 3 procedure, we would highlight that we are required to gather this information under regulation 43(2) of the PARs. The PARs also require us to report switching data to the Treasury that relates only to the switching of payment accounts used by consumers. We do not have the discretion to add the data on the switching of payment accounts used by businesses to the data we submit to the Treasury.

We are not requiring PSPs to report the transferring PSPs' reasons for not accepting a switching request, so no additional costs will be generated in this respect.

For these reasons, we do not consider it is necessary to update or amend our CBA regarding the reporting requirements.

5. Other Handbook changes

- 5.1** In this chapter, we summarise the feedback on our proposals for changes to the Handbook modules ICOBS, BCOBS and DEPP, and to the Enforcement Guide (EG). We also set out our responses to the feedback.

Packaged accounts: ICOBS

- 5.2** ICOBS 6.1.13(1)R requires firms to disclose to consumers the individual insurance premium for each insurance policy contained in a package. However, this provision does not apply to insurance policies purchased as part of a packaged bank account.
- 5.3** As we explained in CP16/7, there is a risk that firms and other readers may interpret this exception as meaning that there are no cost disclosure requirements applicable to insurances that form part of a packaged bank account. To mitigate this risk and ensure that firms are not misled about their obligations, we proposed to add a signpost to regulation 13 of the PARs.
- 5.4** We asked:
- Q3:** *Do you agree with our proposed addition to ICOBS 6? If not, please explain why not and suggest an alternative approach.*
- 5.5** All respondents either agreed with or did not comment on this proposal.

Our response

We confirm that we will proceed with the addition of the new guidance provision as proposed.

Switching: BCOBS

- 5.6** 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 is provided in BCOBS 5.1.6G and 5.1.7G. However, this guidance does not reflect the more detailed duties and responsibilities of PSPs under the switching process set out in the PARs. We therefore proposed in CP16/7 to disapply BCOBS 5.1.6G and 5.1.7G to switching scenarios falling within the scope of the provisions of the PARs on switching.

5.7 We also proposed to delete the reference in BCOBS 5.1.8G to the European Banking Industry Committee Principles for Bank Account Switching. This self-regulatory initiative has been superseded by the switching provisions of PAD.

5.8 We asked:

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

5.9 All respondents either agreed with or did not comment on these proposals. One respondent added that it should be made clear that the disapplication of BCOBS 5.1.6G and 5.1.7G is only in respect of payment accounts that fall within the scope of the PARs.

Our response

Our proposed addition to BCOBS 5.1 provides that '*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 Accounts Regulations.*' The application of BCOBS 5.1.6G and 5.1.7G is therefore determined by the scope of the switching obligations set out in Part 3 of the PARs.

The scope of these obligations is defined in regulation 14(1) of the PARs, which provides that a PSP must offer a switching service between *payment accounts* that are denominated in the same currency and opened or held with a PSP located in the UK. This means that BCOBS 5.1.6G and 5.1.7G can only be disapplied in the context of switching 'payment accounts' within the meaning of the PARs.

We consider that the signpost to firms' obligations under Part 3 of the PARs is sufficient to convey this information. We confirm that we will proceed with the amendments to BCOBS 5.1 as proposed.

Enforcement: DEPP and EG

5.10 The PARs give us powers to take enforcement action where we deem it necessary. To reflect these powers, we proposed in CP16/7 to:

- amend the relevant parts of DEPP to describe our decision-making procedures relating to the exercise of our disciplinary powers and the giving of statutory notices under the PARs
- add a new section to the EG describing how we could take enforcement action in line with our general approach to enforcing FSMA

5.11 We asked:

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

5.12 All respondents either agreed with or did not comment on these proposals.

Our response

We confirm that we will proceed with the amendments to DEPP and EG as proposed.

6. Other issues

- 6.1** In this chapter, we summarise the feedback on issues related to the implementation of the PARs that did not form part of CP16/7. As far as possible, we set out our response to these issues.

Anti-money laundering and fraud

- 6.2** Two industry respondents commented that PSPs are finding it challenging to reconcile some of the requirements of the PARs with other existing legal and regulatory obligations. In particular, they expressed the view that the relationship between certain requirements around the provision of basic bank accounts, regulation 18 on non-discrimination, and anti-money laundering obligations is unclear. The respondents requested that we provide general guidance on these implementation issues.
- 6.3** In the sections below, we set out the key issues raised by these respondents, and our response.

Non-discrimination in the provision of payment accounts

- 6.4** Regulation 18(1) provides:

'A credit institution must not discriminate against consumers legally resident in the European Union by reason of their nationality or place of residence or by reason of any other ground referred to in Article 21 of the Charter of Fundamental Rights of the European Union²⁶ when those consumers apply for or access a payment account.'

- 6.5** One respondent stated that this may conflict with existing regulatory requirements, for example relating to product eligibility and suitability, identification and verification (ID&V), and anti-money laundering (AML). The respondent highlighted that a particular payment account may not be suitable for consumers throughout the EU due to its features or the channels through which it is sold and serviced. If regulation 18 were to override existing regulatory requirements then this may result in consumers from other EU Member States being able to hold accounts that are not suitable or appropriate to their needs.
- 6.6** The respondent therefore requested that we provide general guidance on what we would consider discriminatory and/or non-discriminatory practices in the provision of payment accounts.
- 6.7** The same respondent argued that requiring smaller payment account providers to comply with regulation 18 acts as a regulatory barrier to competition and innovation. The investment required to build the capabilities necessary to perform risk management on a pan-EU basis was

²⁶ The other grounds referred to in Article 21 of the Charter are sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age and sexual orientation.

said to be disproportionate to the number of new customers applying for payment accounts as a result. The respondent suggested that we set a *de minimis* threshold, for example a certain number of payment accounts opened per year, below which regulation 18 does not apply to providers.

Our response

Regulation 18(1) provides that credit institutions must not discriminate against consumers legally resident in the UK or any other EU Member State because of their nationality or where they live when such consumers apply to open an account or, once open, continue to access that account.

Proper application of money laundering and financial crime controls is not discrimination. We think it is clear from regulation 18(1), when read in conjunction with recital 34 of PAD,²⁷ that there is no conflict between the non-discrimination requirement and the existing obligations referenced by respondents. We therefore do not intend to issue guidance on this matter at the present time.

With regard to the respondent's competition concerns, regulation 18(1) implements Article 16 PAD and applies to all credit institutions in respect of payment accounts within the meaning of the PARs irrespective of size. Neither we nor the Treasury can derogate from this. We recognise that the legal framework of the EU single market in retail financial services is more fully developed than the underlying pan-EU infrastructure, for example in that UK credit institutions do not always have access to the credit histories of residents of other Member States,²⁸ and understand that compliance with the PARs may require investment.

Anti-money laundering, fraud and basic bank accounts

- 6.8** One respondent expressed disappointment that CP16/7 did not include draft guidance on the implementation of certain provisions on basic bank accounts. In particular, this respondent argued that these provisions seem to conflict with the current AML and fraud prevention policies and practices of UK credit institutions.
- 6.9** The respondent wondered whether the opening of a basic bank account can be refused on the grounds of it being contrary to the Money Laundering Regulations 2007 (MLRs)²⁹ if to open the account would not directly contravene the MLRs but would be contrary to the Joint Money Laundering Steering Group (JMLSG) Guidance on the MLRs.
- 6.10** The respondent also referred to regulation 26(2)(a) of the PARs under which credit institutions may terminate a basic bank account if the consumer has knowingly used or attempted to use

²⁷ Recital 34 of PAD: 'While it is important for credit institutions to ensure that their customers are not using the financial system for illegal purposes such as fraud, money laundering or terrorism financing, they should not impose barriers to consumers who want to benefit from the advantages of the internal market by opening and using payment accounts on a cross-border basis. Therefore, the provisions of Directive 2005/60/EC of the European Parliament and of the Council should not be used as a pretext for rejecting commercially less attractive consumers.' Directive 2005/60/EC is the Third Anti-Money Laundering Directive.

²⁸ This was acknowledged by the European Commission in its recent Green Paper on Retail Financial Services (page 23), COM(2015) 630 final, 10 December 2015: 'Without access to data on consumers, it is difficult for firms to provide financial products (particularly credit or insurance) in other markets as they cannot assess the risks to which they would be exposed. They are also unable to assess the risks of mobile consumers whose data was accrued in another Member State.'

²⁹ See regulation 25(1)(b) of the PARs.

the account for illegal purposes. They expressed concern that this may not be compatible with current policies and practices under which basic bank accounts are terminated due to *suspected* illegal purposes as part of a proactive approach to fraud detection.

Our response

In CP16/7, we noted that we had considered whether to provide guidance in these areas but concluded that the relevant provisions of PAD and the PARs are clear.³⁰ We continue to believe that the obligations on credit institutions concerning basic bank accounts are clear.

Regulation 22(1) of the PARs requires designated credit institutions to offer a basic bank account to any consumer who meets the eligibility criteria set out in regulation 23. Regulation 25(1) requires a designated credit institution to refuse to open a basic bank account for a consumer where it would be unlawful to do so. Such situations explicitly include, but are not limited to, where opening an account would be contrary to the Fraud Act 2006, the MLRs or section 40(3) of the Immigration Act 2014.

The MLRs require credit institutions to take risk-sensitive due diligence measures to identify their customers. Where a customer is not physically present for identification purposes, credit institutions are required by regulation 14(2) of the MLRs to apply specific and adequate measures to compensate for the higher risk this represents. Regulation 14(2) gives examples of measures that might be taken to meet this requirement:

- ensuring that the customer's identity is established by additional documents, data or information
- supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution which is subject to the EU Anti-Money Laundering Directive
- ensuring that the first payment is carried out through an account opened in the customer's name with a credit institution

Under regulation 11(1) of the MLRs, a firm that is unable to apply the relevant customer due diligence measures in relation to any customer must not establish a business relationship, and must terminate any existing business relationships, with that customer. This means that if a credit institution cannot establish the identity of an applicant for a basic bank account because the due diligence measures required by the MLRs cannot be applied, then the basic bank account must not be opened.

The JMLSG provides guidance for firms on meeting their obligations under the MLRs. This guidance is approved by Treasury ministers. When considering any enforcement action, we are required to have regard to the extent a firm has complied with the JMLSG Guidance.³¹

³⁰ See paragraph 1.17 of CP16/7.

³¹ See, for example, DEPP 6.2.3, EG 12.1.2, and EG 19.15.

The PARs do not state that incompatibility with the JMLSG Guidance is a ground on which the opening of a basic bank account may be refused. However, the JMLSG Guidance will be relevant in deciding whether the opening of an account would be contrary to the MLRs.

Regulation 26(2) of the PARs lists the circumstances in which a credit institution is permitted to terminate a basic bank account. This includes where *'the consumer has knowingly used, or attempted to use, the payment account for illegal purposes'*. We note that 'an illegal purpose' is not defined in the PARs but we would expect it to include financial crimes such as money laundering, terrorist financing and fraud.³² It will be for credit institutions to determine when one of conditions listed in regulation 26(2) is met.

Whilst Article 19(3) of PAD expressly permits Member States to add additional grounds to those set out in Article 19(2) on which credit institutions may terminate a basic bank account, this is a matter for the Treasury, not the FCA.

Basic bank accounts

- 6.11** One respondent expressly welcomed that the PARs put basic bank accounts on a statutory footing for the first time in the UK. This respondent also identified a number of risks to consumer protection from the introduction of these PARs-compliant basic accounts from 18 September 2016.
- 6.12** To mitigate these risks, it was suggested that we make new rules to:
- prevent providers from 'upgrading' consumers from basic bank accounts to standard accounts (to which fees and charges can be applied) unless the consumer agrees to the upgrade and has been eligible for a standard account for a minimum period, e.g. one year, or requests a standard account himself/herself
 - require credit institutions designated by the Treasury as providers of payment accounts with basic features to migrate consumers already holding a basic bank account to the new, PARs-compliant basic account (to ensure the consumer has a basic account on the most favourable terms available)
 - require credit institutions that provide basic bank accounts but are not designated by the Treasury to inform consumers holding a basic account on terms less favourable than the new, PARs-compliant accounts that they may benefit from switching to another provider (to ensure the eligibility criteria for the PARs-compliant basic account do not prevent consumers from switching to other providers)

³² See recital 34 of PAD which includes a reference to *'illegal purposes such as fraud, money laundering or terrorist financing'*.

Our response

We have carefully considered the suggestions in relation to basic bank accounts.

We are aware that the PARs are silent on the issue of providers 'upgrading' consumers from basic accounts to standard accounts. We are also mindful of the potential for consumer detriment in this regard, and to vulnerable consumers in particular. Although basic bank accounts have been available to consumers in the UK for many years, we are not aware that there are widespread issues in relation to upgrading at the present time. We are, however, mindful that any incentive for firms to upgrade consumers to standard accounts may be increased by the absence of fees for unpaid items and unarranged overdrafts on PARs-compliant basic accounts.

We recall that a firm must comply with the requirement in Principle 6 to '*pay due regard to the interests of its customers and treat them fairly*', including in the provision of basic bank accounts.

Should we identify consumer detriment following the introduction of the PARs-compliant accounts in September then we will assess its extent and impact, and consider how best to respond as part of our risk-based approach to supervision.

Regarding the suggestion to require firms to migrate existing basic bank account customers to the new, PARs-compliant basic account, we recall that designated credit institutions are only required under regulation 22 of the PARs to provide basic bank accounts to consumers who apply for one and who meet the eligibility criteria set out in regulation 23.

Credit institutions may make PARs-compliant basic accounts available to a wider group of consumers if they wish. However, we cannot require them to do so without imposing additional requirements which are not foreseen by the PARs.

Only a handful of non-designated credit institutions currently offer basic bank accounts. These are all smaller firms and include challenger banks. The terms and conditions of these accounts are not necessarily less favourable to consumers than those required for PARs-compliant basic accounts. Consequently, we believe the number of consumers holding basic accounts with non-designated providers on terms less favourable than under the PARs to be very low. To the extent that the existing basic accounts do not have all the features and functionalities of a PARs-compliant basic account, for example because a cash card is provided instead of a debit card, then it may even be in the interests of some consumers to retain the basic bank account they already have. In conclusion, while we acknowledge that some consumers may benefit from switching to a designated provider, we do not consider it proportionate to propose a new Handbook rule.

Furthermore, the PARs aim to ensure that all consumers have access to clear and comprehensible information about the availability of PARs-compliant basic bank accounts, including information about their features and any associated costs.³³ To this end, regulation 27 provides that:

³³ See recital 48 of PAD.

- the Money Advice Service (MAS) must aim to raise consumer awareness of PARs-compliant basic bank accounts
- designated credit institutions must make available to consumers, free of charge, information about the PARs-compliant basic bank accounts they offer

These communication measures will help to inform all consumers, including those holding non-PARs-compliant basic accounts with both designated and non-designated firms, of the availability of the new accounts. This will enable them to assess their eligibility for a PARs-compliant account and whether it would better meet their needs.

For the reasons outlined above, we do not propose to introduce new Handbook rules on basic bank accounts at the present time. We will keep under review the extent to which the risks referred to by the respondent materialise.

Switching

6.13 One respondent expressed concerns regarding the switching process set out in Schedule 3 of the PARs.

6.14 In particular, this respondent noted that:

- the process will result in overall implementation costs for PSPs that are disproportionate to the consumer benefit that can be expected to be derived from it
- the short timeframes foreseen for each step of the switching process mean it will be challenging for transferring providers to verify the consumer's identity, potentially leading to an increase in the risk of fraud and an associated loss of confidence in payment account switching as a whole

Our response

With our consumer protection and competition objectives in mind, we are grateful to this stakeholder for indicating the potential for fraud associated with the Schedule 3 switching process. Should this risk materialise, we will consider its impact on consumers, providers of payment accounts, and on the payment account market more broadly as part of our risk-based approach to supervision.

We understand the concerns about implementation costs for PSPs but note that these are inherent in the requirements of the PARs to provide a switching service. We do not have the power to amend the PARs or the switching process set out in Schedule 3.

Comparison website

- 6.15** One respondent referred to regulation 12 of the PARs, which requires MAS to provide consumers with access, free of charge, to a website comparing the fees charged by PSPs for the most important services linked to payment accounts.³⁴
- 6.16** The Chancellor of the Exchequer announced in the Budget Statement of March 2016 that MAS will be replaced with a new money guidance body with a different remit.³⁵ Against this background, the respondent requested clarification of how the comparison website required by the PARs will be taken forward.

Our response

The Government consulted from March to June 2016 on proposals for a new financial guidance delivery model, which is to include a new money guidance body. It clarifies in its consultation document³⁶ that the earliest date the new model will take effect is April 2018. This will allow for the finalisation of the new delivery model, the necessary legislative changes and a transition period.³⁷ Until that time, MAS and the other affected organisations '*will continue to provide guidance to consumers*'.³⁸

The Government intends to confirm the implementation timetable in its consultation response, which is scheduled for publication in autumn 2016.³⁹ Until the Government announces the details of the remit of the new body and provides clarity about the future allocation of MAS's tasks, it is not known how the comparison website will be provided.

We do not consider that this raises any immediate issues for PSPs or consumers, as the requirement in regulation 12 of the PARs to provide a comparison website does not come into force on 18 September 2016 but on a later date. This date will be six months after we have published the linked services list.⁴⁰ The publication of the list depends on the adoption by the European Commission of regulatory technical standards (RTS) setting out EU standardised terminology for some services linked to payment accounts, the timing of which is determined by the submission of draft RTS to the Commission by the EBA.⁴¹

³⁴ Further information on these 'linked services' is available in our [Call for Input on terms and definitions for services which are linked to payment accounts and subject to fees, and subsequent Feedback Statement](#).

³⁵ See section 7.39 of the [Budget Statement 2016](#), 16 March 2016.

³⁶ 'Public Financial Guidance Review: Proposal for consultation', 16 March 2016.

³⁷ See paragraph 5.9 of the consultation document.

³⁸ See paragraph 1.17 of the consultation document.

³⁹ See paragraph 5.8 and 5.10 of the consultation document.

⁴⁰ See regulation 1(2)(a) of the PARs.

⁴¹ See regulation 3(1) of the PARs, and Article 3(4) of PAD.

Annex 1

List of non-confidential respondents

We received 11 responses to Consultation Paper 16/7. Two of the respondents requested confidentiality. The nine non-confidential respondents are listed below.

Bacs Payment Schemes Ltd.

British Bankers' Association

Cheque & Credit Clearing Company

Electronic Money Association

Financial Services Consumer Panel

PayPal

Principality Building Society

Rightcard Payment Services

StepChange Debt Charity

Appendix 1

Made rules (legal instrument)

PAYMENT ACCOUNTS INSTRUMENT 2016

Powers exercised

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

Commencement

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

Amendments to the Handbook

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

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

Notes

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

Amendments to material outside the Handbook

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

Citation

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

By order of the Board
28 July 2016

Annex A

Amendments to the Glossary of definitions

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

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

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

Amend the existing definition as shown.

<i>consumer</i>	...
	<u>(9) (in relation to the <i>Payment Accounts Regulations</i>) any natural person who is acting for purposes which are outside that person's trade, business, craft or profession.</u>

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

In this Annex, underlining indicates new text.

6 Product information**6.1 General**

...

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

Annex C

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

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

5 Post sale

5.1 Post sale requirements

...

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

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

Annex D

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

16.1 Application

...

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

- (1) a credit union;
- (2) National Savings and Investments; and
- (3) the Bank of England.

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

...

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

...

- (b) an *insurer* with *permission* to effect or carry out *life policies*; or
- (c) a *firm* with *permission* to *establish, operate or wind up a personal pension scheme* or a *stakeholder pension scheme*; or
- (d) a payment service provider to which SUP 16.22 applies; and

(3) a *UCITS qualifier*.

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

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

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

...

16.3 General provisions on reporting

...

Structure of the chapter

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

...

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

...

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

16.22 Reporting under the Payment Accounts Regulations

Application

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

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

Purpose

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

Reporting requirement

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

Frequency and timing of report

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

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

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

SUP 16 Annex 41AD Payment accounts report

REP014 Payment Accounts Report

A

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

--

Information on switching of payment accounts

2 How many payment accounts have you switched?

--

3 How many applications for switching of a payment account have you refused?

--

Information on payment accounts with basic features

4 Are you a credit institution offering payment accounts with basic features?

--

5 How many payment accounts with basic features have you opened?

--

6 How many applications for payment accounts with basic features have you refused?

--

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

General

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

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

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

Row 1:

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

Switching

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

Row 2:

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

where the account has been closed (full switch).

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

Row 3:

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

Payment accounts with basic features

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

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

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

Row 4:

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

Row 5:

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

Row 6:

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

Annex E

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

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

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

...

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

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

2 Annex 2 Supervisory notices

...

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

...

Amend the following as shown.

Sch 3 Fees and other required payments

...

Sch 3.2G

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

Sch 4 Powers Exercised

Sch 4.1G

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

Annex F

Amendments to the Enforcement Guide (EG)

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

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

19.32 The Payment Accounts Regulations 2015

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

course of an investigation under the *Act*.

Decision making under the PARs

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

Public censures and the imposition of penalties

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

Appendix 2

Finalised guidance on the definition of a 'payment account' under the Payment Accounts Regulations 2015

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 PSPs² 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.

Appendix 3

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

Finalised guidance

FG16/7 – Payment Accounts Regulations 2015

Regulation 13 (packaged accounts)

August 2016

Introduction

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*'.¹

¹ Recital 24 of PAD.

4. With these objectives of transparency and comparability in mind, Article 8 of PAD introduces certain disclosure requirements which apply when a payment account is offered to a consumer as part of a package. These requirements have been transposed into UK law by regulation 13 of the PARs.

Scope of regulation 13

5. Regulation 13 applies 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.
6. The packages to which this provision applies are generally referred to in the UK as 'packaged accounts' or 'packaged bank accounts', although the scope of regulation 13 is not necessarily synonymous with other definitions or notions of packaged accounts. The other products or services in these packages are often insurances, for example travel insurance or mobile phone insurance.
7. However, neither the PARs nor PAD limit the meaning of 'products and services' to insurance.² It is also not relevant to this meaning whether the product or service is regulated or not. It is therefore possible for the packaging of non-insurance products and services with a payment account to trigger the disclosure requirements of regulation 13.
8. Regulation 13 is not limited to packages for which the PSP charges the consumer a fee.
9. Her Majesty's Treasury (the Treasury) provided some clarifications in relation to the intended scope of regulation 13 in its [consultation paper on draft Payment Account Regulations](#)³ in June 2015, and in its [consultation response paper](#)⁴ 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 packages purchased before the entry into force of the PARs.
10. Our understanding of regulation 13 is consistent with these Treasury clarifications.

² Recital 24 of PAD refers to 'financial advice' as an example of products and services not linked to a payment account that might be offered in a package with a payment account.

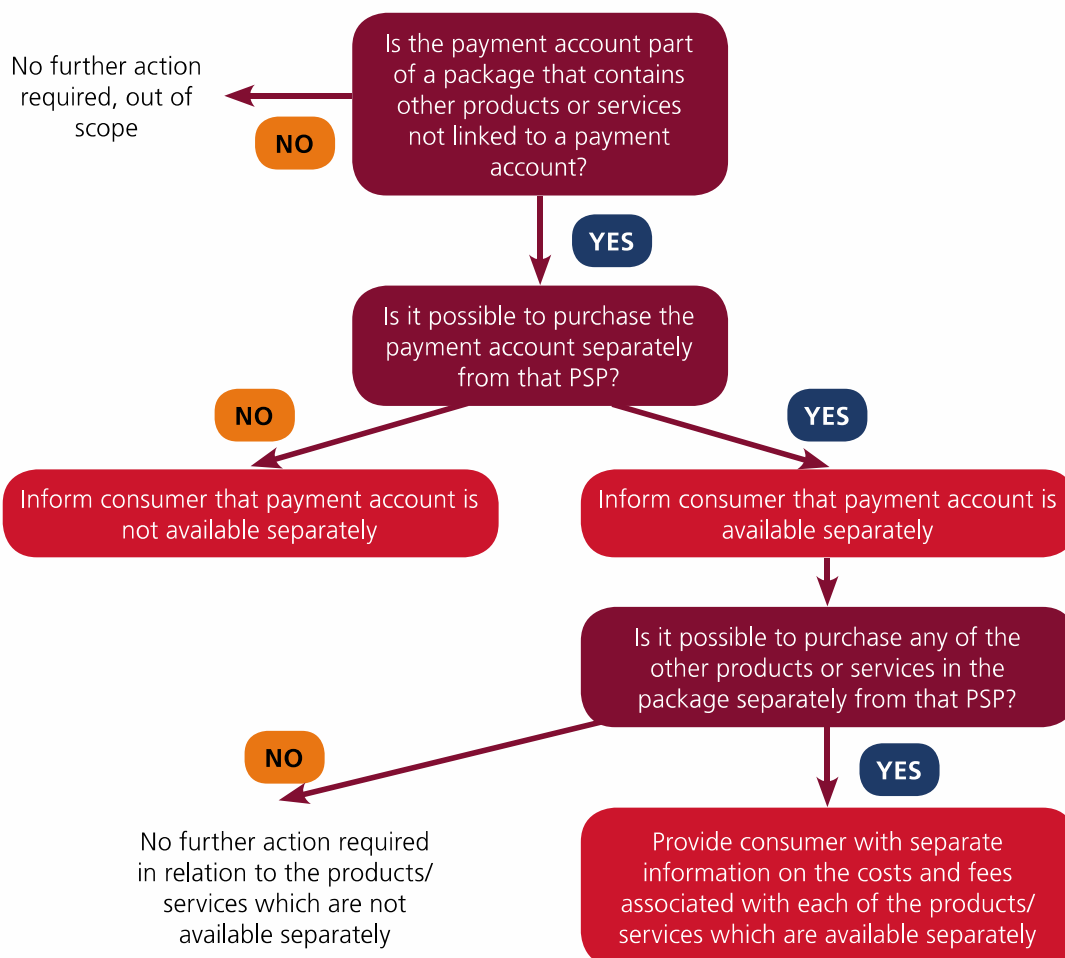
³ See section 2.3.

⁴ See paragraphs 28 to 40.

Disclosure requirements under regulation 13

11. 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.
12. If it is not possible to purchase the payment account separately from that PSP, then regulation 13(2) does not apply.
13. 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 other product(s) or service(s). This means that the requirement to disclose the costs and fees in regulation 13 applies only in respect of the individual products and services which are available separately from the PSP.
14. The flowchart below summarises these disclosure requirements.

Figure 1: Flowchart of disclosure requirements under regulation 13



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

15. 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.
16. The objectives of the disclosure requirement are to improve transparency and comparability.⁵ 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.
17. 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.⁶
18. 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.
19. 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:
 - 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.

⁵ See recital 24 of PAD.

⁶ 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.

Disclosure of costs and fees

20. 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.
21. We would expect that PSPs disclose the costs and fees to that individual consumer of purchasing the other product or service separately, i.e. on a stand-alone basis, from that PSP. This will ensure that the cost information disclosed to consumers can be used to conduct a comparison which is meaningful to that individual. We believe that this reflects the objectives of improved transparency and comparability of costs.
22. We would also expect PSPs to have regard to the purpose of the disclosures in relation to the timing and method of provision of this information.⁷
23. When providing the information on costs and fees 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.

24. 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.

⁷ Recital 9 of PAD: 'In order to support effective and smooth financial mobility in the long term, it is vital to establish a uniform set of rules to tackle the issue of low customer mobility [...]. Also, transparent fee information and switching possibilities [...] will allow Union citizens to move and shop around more easily within the Union [...]'.



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