

Payment Services Regulations

**Industry Best Practice
Guidance on Selected Issues**

October 2009

Contents

Introduction	3.
I. Structure and overview of the Payment Services Directive and Payment Services Regulations	
1. Introduction	6.
2. Structure of the PSRs	7.
3. FSA and European Commission documents	8.
II. Scope and definitions	
1. Introduction	9.
2. Key definitions – best practice guidance:	10.
a) Payment account – application of concept	10.
b) Business day – application of concept	13.
c) Payment instrument – application of concept	14.
3. General FAQs	15.
III. Information requirements	
1. Introduction	18.
2. Best practices in relation to key PSRs information requirements:	19.
a) Framework contracts – meaning and scope	19.
b) Reaching agreements with customers - opt-out for corporate customers	19.
c) Reference for payment transaction and the use of “where appropriate” in providing transaction information to PSU	20.
d) Application of PSRs information requirements to ATM transactions	21.
e) Spending limits	23.
3. General FAQs	23.
IV. Payment transaction processing and rights and obligations	
1. Introduction	27.
2. Inter-bank best practices in relation to key PSRs operational requirements:	28.
a) Full amount principle and charging	28.
b) Currency conversion and execution timescales for different payment transactions	30.
c) Value date and availability of funds	32.
d) Cash placement	33.
e) Liability	36.
3. General FAQs	37.
V. Annexes	38.

Introduction

The Directive on Payment Services in the Internal Market (“PSD”) was published in the EU Official Journal in December 2007 (2007/64/EC) and is due to be transposed into national law by all 30 EEA states (European Economic Area) which make up the Single Market in the EU by 1 November 2009.

The very broad and ambitious scope of the PSD makes it the most significant piece of EU financial services legislation in relation to the payments market ever seen. It will impact all current and future providers and users of payment services within the EU and beyond as well as market infrastructures, card schemes, software vendors and other ancillary service providers. For the UK, it is the first piece of European legislation to impact domestic sterling payments as previous laws have focussed on cross-border and euro payments.

In addition to providing the legal foundations for the Single Euro Payments Area (SEPA) initiative, the Directive introduces a new licensing regime to encourage non-banks to enter the payments market; sets common standards for terms and conditions with a focus on high levels of transparency; establishes maximum execution times for payments in euro and other EU currencies (including sterling); looks to encourage the adoption of more efficient payment types; and for some Member States, introduces a shift in liability between providers and customers in the interests of consumer protection.

The UK has passed the Payment Services Regulations (“PSRs”) to implement the Directive, which were laid before parliament on 9th February 2009. The PSRs appoint the Financial Services Authority (FSA) as the competent authority responsible for supervision and enforcement. Provisions allowing firms to apply to the FSA for authorisation under the regime created by the PSRs came into force on 1st May 2009. All other provisions, including those covering conduct of business rules, come into force on 1st November 2009.

Banking Conduct Regime

The FSA will be taking over all retail banking conduct regulation for deposit taking, as well as payment services, from 1st November 2009. The new framework will replace the non-lending aspects of the previous arrangement whereby the Banking Code Standards Board (BCSB) monitored and enforced The Banking Code and The Business Banking Code, and will be called the Banking Conduct Regime.

The main elements of this new framework are:

- The FSA's Principles for Businesses;
- The conduct of business requirements in the PSRs and the guidance in the Approach Document setting out the FSA's approach to its role under the PSRs; and
- The rules and guidance in the Banking Conduct of Business sourcebook.

More information on this new regime can be found at:

<http://www.fsa.gov.uk/Pages/Doing/Regulated/bcobs/index.shtml>

The Payments Council

The Payments Council is the organisation that sets strategy for UK payments. It was established to ensure that UK payment systems and services meet the needs of users, payment service providers and the wider economy.

The Payments Council has three core objectives:

- to have a strategic vision for payments and lead the future development of co-operative payment services in the UK;
- to ensure payment systems are open, accountable and transparent; and
- to ensure the operational efficiency, effectiveness and integrity of payment services in the UK.

The Payments Council is a membership organisation funded by its members, with an independent chairman.

Purpose of this document

The Payments Council, as the strategic body for payments in the UK, is issuing this guidance document to aid interpretation of, and compliance with, the PSRs.

The intention of this document is to provide high level guidance on selected issues for payment service providers that face implementing the Payment Services Regulations and focuses on the conduct of business requirements. It aims to address the implications of certain provisions at a very practical level – something which will be essential to ensure a consistent and efficient implementation and to ensure that the Regulations are implemented in line with their objectives. It should be stressed that this is a living document and may be updated as and when necessary. The document does not refer to the new authorisation regime for payment institutions at all.

Whilst discussing the Directive, this document follows the PSRs as it is intended for use in UK implementation.

These guidelines are not intended to constitute legal or other advice nor designed to be used as a substitute for legal advice on the PSRs as they apply to each payment service provider. The guidelines have no legal status: ultimately, the implementation and interpretation of the PSRs is a matter for the English courts and the relevant competent authorities, including the Financial Services Authority. While these guidelines have been prepared in good faith, the Payments Council does not accept any responsibility for any loss or damage caused or suffered by any person who relies upon this document and the guidance contained in it.

Additionally, it should be noted that guidance has been produced for the banking industry at European level by the PSD Expert Group (PSD EG). The guidance document can be read in conjunction with this UK guidance to provide best practice on some additional issues not covered here. The guidance produced by the PSD EG can be accessed at www.fbe.be

I. Structure and overview of the Payment Services Directive and the Payment Services Regulations

1. Introduction

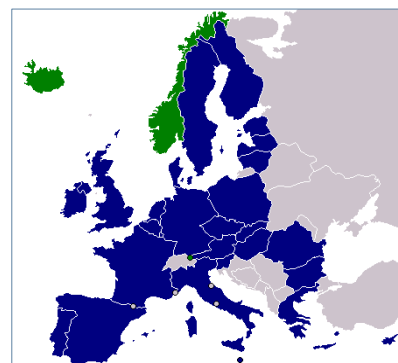
The PSD is a “full harmonisation” directive intended to provide clear and harmonised rules across Europe. However, there are three separate levels where certain provisions of PSD can be implemented differently:

- i. Member States have a number of options (or derogations) to implement certain provisions differently or to waive them altogether. For example, Member States have the discretion to decide on shorter maximum execution times for purely national payments, to treat ‘micro-enterprises’ as consumers under the PSD and establish slightly differing rules for the newly regulated non-bank payment institutions.
- ii. The “competent authorities” appointed by Member States to supervise the implementation of PSD have a degree of flexibility in the interpretation of certain provisions. For example, competent authorities have the discretion to decide how to implement the requirements under the PSD to implement out of court complaints redress procedures for settling disputes.
- iii. Payment service providers can decide how to implement the requirements of PSD to their existing products and whether there is an opportunity to provide new services to customers. For example, payment service providers have the discretion to decide whether to take advantage of the corporate opt-out; whether to not differentiate between products and transactions that do and those that do not come within the scope of PSD when applying the PSD’s conduct of business requirements; and whether to use the transitional provisions allowing for longer execution times. They can also decide to grant more favourable terms to their customers, for competitive reasons.

Geographical scope of the PSD

The PSD will be implemented by all Member States within the European Economic Area. This includes the 27 members that comprise the European Community plus Norway, Iceland and Liechtenstein of the European Free Trade Association.

- All 27 EU Member States
- 3 EFTA Member States (Iceland, Liechtenstein, Norway)



2. Structure of the PSRs

In the UK, the PSD is being implemented through secondary legislation called the Payment Services Regulations 2009. The PSRs are split into 9 parts and supplemented by 6 schedules.

The Payment Services Regulations	
Part	Subject
1	Introductory provisions
2	Registration and authorisation requirements for payment institutions
3	Authorised payment institutions: capital requirements and passporting rights
4	Provisions applicable for authorised and small payment institutions
5	Information requirements for payment services
6	Rights and obligations in relation to the provision of payment services
7	The authority - FSA functions, supervision and enforcement
8	Access to payment systems
9	General – criminal offences, actions for breach of requirements, transitional provisions
Schedules to the PSRs	
1	List of payment services in scope and those out of scope
2	Information to be included in or with an application for authorisation
3	Capital requirements
4	Prior general information for framework contracts
5	Application and modification of legislation
6	Amendments to primary and secondary legislation

The two key Parts of the Regulations for payment service providers are Part 5 and Part 6, which together form the conduct of business requirements. These are the requirements placed upon banks and building societies about what information they must provide to customers and when, and the rights and obligations of payment service providers and their customers when providing and using payment services.

During the transposition of the PSD, HM Treasury chose an option within the Directive to offer additional protection to micro-enterprises. As a result, all firms with an annual turnover or balance sheet not exceeding €2 million and less than 10 employees (and are not a subsidiary or linked partnership of a larger corporate group) will benefit from the full application of the information requirements in Part 5 and the rights and obligations in Part 6. The Treasury also chose to extend this option to cover charities with an annual income of less than £1 million. This effectively provides the same level of protection to micro-enterprises and small charities as to consumers.

3. FSA and European Commission documents

The FSA has produced a number of documents which provide information and guidance on the PSRs and set out the FSA's approach to implementation and supervision under the new regime. The key documents include:

- an "Approach Document" outlining the FSA rules and guidance on implementation of the PSRs and the general approach the FSA intends to take to supervision. This guidance has been produced under powers afforded to the FSA under Regulation 93 of the PSRs;
- a Perimeter Guidance document that defines the scope of activities covered by the PSRs; and
- a policy statement on implementation of the PSRs and the jurisdiction of the FOS.

These documents and other useful information, including some FAQs, can be found on the FSA website:

<http://www.fsa.gov.uk/Pages/About/What/International/psd/index.shtml>

In several places in this document there are references to FAQs provided by the European Commission. The FAQ document can be found on the Commission's website at:

http://ec.europa.eu/internal_market/payments/framework/transposition_en.htm

1. Introduction

Part 1 of the PSRs, together with Schedule 1, includes the scope of activities regulated by the PSRs, those that are excluded and the key definitions. These provisions correspond to Title 1 and the Annex of the PSD.

Payment services are defined in the Schedule 1 of the PSRs, and cover activities that most banks operating in the market are involved in, as well as the issue and administration of payment cards such as prepaid cards.

The key activities listed are as follows:

- Cash deposits onto, and withdrawals from, a payment account;
- Execution of payment transactions;
 - ♦ Credit transfers, including standing orders
 - ♦ Direct Debits, including one-off Direct Debits
 - ♦ Payment card transactions
- Issuing payment instruments or acquiring payment transactions;
- Money remittance;
- Execution of payment transactions through the intermediary of a telecom, IT system or network operator.

Schedule 1 Part 2 also lists a number of exclusions from its scope, notably:

- Cash only transactions (but any cash transaction involving movement to or from a payment account will be caught);
- Cheques and paper instruments (this removes cheque clearing, and UK giro credit clearing from the scope of the Regulations);
- Cash transportation (e.g. cash deliveries by commercial security companies);
- Payment transactions related to securities asset servicing;
- Payment transactions carried out between PSPs, or their agents or branches, for their own account;
- Technical services including independent ATM deployers;
- Instruments that can be used within a limited network of service providers or a limited range of goods or services; and
- Certain payment transactions through telecommunication, digital or IT device.

It should be noted that these negative scope provisions are not a totally exhaustive list – in other words they do not (and could not) describe all possible products and services not covered by the Directive.

Providers of payment services are known as payment service providers or “PSPs”. The PSRs require most institutions providing payment services to be authorised, either under existing banking or credit institution or e-money issuer authorisation, or as a payment institution under Parts 2 to 4. There are some PSPs that do not require authorisation, which include the Post Office Limited, central banks, government departments and local authorities. Additionally, there are some providers of payment services that are not classed as PSPs, such as credit unions and the National Savings Bank, and this latter group are exempt from the Regulations.

2. Key definitions – best practice guidance

Consistent implementation of many of the conduct of business requirements in Part 5 (information requirements) and Part 6 (rights and obligations) is dependent on a clear understanding and interpretation of the key terms defined within Part 1 (introductory provisions).

Three key terms used through the Regulations are “payment account”, “business day” and “payment instrument”.

“Payment account” is key as it determines, for example, when cash placements and cash withdrawals fall within the scope of the PSRs; “business day” is equally as important as it is central to understanding how to interpret the provisions on execution timescales and value dating; and “payment instrument” defines the devices and procedures that are subject to the Regulations.

a) Payment account – application of concept

Regulation reference: Regulation 2(1) (Article 4(14)) – Interpretation

‘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.

Best practice guidance:

The Commission Services confirmed in early 2008 that they considered ‘pure’ loan accounts and ‘pure’ mortgage accounts (i.e. except hybrid mortgage accounts) as excluded from scope and stated that “*savings accounts where the holder can place and withdraw funds without any additional intervention or agreement of his PSP should be considered as payment accounts within the meaning of the PSD*”, identifying fixed term deposits as clearly being excluded by this test.

The FSA has set out a principles-based approach for determining whether or not an account is a “payment account” for the purposes of the Regulations (see Chapter 15.3, Q.16 of Perimeter Guidance). The approach focuses on the underlying purpose of the product and requires the following non-exhaustive list of factors to be taken into consideration:

- the purpose for which the account is designed and held out;
- the functionality of the account (the greater the scope for carrying out payment transactions on the account, the more likely it is to be a payment account);
- restrictive features relating to the account (for example, an account that has notice periods for withdrawals, or reduced interest rates if withdrawals are made, may be less likely to be a payment account);
- a limited ability to place and withdraw funds unless there is additional intervention or agreement from the payment service provider (this will tend to point more towards the account not being a payment account); and
- the extent to which customers use an account's payment service functionality in practice.

These high-level principles can be applied in a wide context to assess the status of products and services that exist in retail banking.

What follows is a non-exhaustive table providing a high level look at different types of accounts and whether or not they could potentially be considered as a payment account. However, it is important to note that this is only high-level guidance and ultimately it is the responsibility of individual PSPs to assess their own products and services to determine their status. Similarly there are other types of accounts, such as collection accounts and delinquent accounts, which individual PSPs will need to assess, not least because of their differing functionality and purpose.

Account Type	Payment Account (Yes/No/Sometimes)	Reason
<p>Current accounts Instant access accounts used regularly to make and receive payments. Typical payments into current accounts include salary payments and cheque and cash deposits and examples of common outgoing payments include household bills and expenses.</p>	Yes	The primary purpose of current accounts is the making and receiving of payments. Therefore, these will be seen as payment accounts.
<p>Instant access or easy access accounts These types of account offer instant access to funds without the need to give any notice, pay a financial penalty or forfeit interest. Some accounts will provide a cash card so the funds can be withdrawn at any time, others may be internet-based so the funds can generally only be accessed by transferring the money to a nominated current account and then withdrawn.</p>	Sometimes	There is no restriction on individual deposits or withdrawals for such accounts. However, some accounts may be restrictive in their accessibility making it very difficult to transfer money anywhere except into an attached current account.

Account Type	Payment Account (Yes/No/Sometimes)	Reason
<p>Regular savings accounts These accounts require the user to commit to depositing money on a regular basis by mandating that a certain number of monthly payments have to be made into these accounts each year to prevent loss of interest, incurring a penalty or closure. There will also be a maximum and minimum amount that can be deposited each month. They usually offer a high-rate of interest and many will also offer an annual bonus. Most accounts limit the number of withdrawals that can be made each year so again, discourages the user from withdrawing funds and using the account primarily for making transactions.</p>	Sometimes	There are generally restrictions on how these accounts can be used. However, some may still be capable of being used as payment accounts and they need to be assessed on a case by case basis taking into account the level of restrictions placed on the value, the number of withdrawals and deposits, and the uses to which customers put the accounts.
<p>Notice accounts Notice accounts generally give a better rate of interest than instant access accounts but require a certain amount of notice to be given before withdrawing any funds, otherwise a penalty could be incurred. The amount of notice can vary from 7 days up to and including 120 days. The very nature of this type of account means that it encourages users to deposit funds and discourages the use of the account to make payment transactions.</p>	No	This type of account does not allow the customer to freely place or withdraw funds without additional intervention or agreement from the PSP. The notice period associated with this type of account is also relevant for its exclusion from scope.
<p>Tax-free accounts (ISAs) Individual Savings Accounts (ISAs) are available to individuals over the age of 16 who are resident in the UK for tax purposes. The interest earned on these accounts is tax-free but there are limits on how much can be deposited in a tax year, regardless of how much is withdrawn. This annual limit on how much can be deposited discourages these accounts from being used for regular payment transactions as it defeats the purpose of saving a limited amount each year tax-free.</p>	No	As these accounts are designed for tax-free savings, there are restrictions on the total amount that can be deposited in a year. This also dissuades customers from withdrawing money.

Account Type	Payment Account (Yes/No/ Sometimes)	Reason
<p>Bonds or Term accounts Fixed-term deposit accounts are known in the UK as Bonds or Term Accounts. These are high interest savings accounts that offer the most competitive rates of interest but which require the funds to be tied up for a specific period of time. This is usually between one to five years and doesn't tend to allow for additional funds to be added to the initial deposit. Most providers do not permit any type of withdrawal before the maturity date and if withdrawals are allowed then a penalty will normally be incurred.</p>	No	This type of account is very restrictive as it does not allow additional deposits to be made during the term and tend not to allow withdrawals.
<p>Dormant accounts A dormant account is one where there has been no customer-initiated activity on the account for a prolonged period of time. Individual banks and building societies will have different time frames for this ranging from one year to 15 years. The Dormant Bank and Building Society Accounts Act, that will underpin the new unclaimed assets scheme, uses a definition of 15 years of no customer-initiated inactivity.</p>	No	Where an account has become dormant and so the account's payment service functionality has ceased to be used at all, such accounts will then cease to be payment accounts (but may become payment accounts should the dormant account be re-opened).

b) Business day - application of concept

Regulation reference: Regulation 2(1) (Article 4(27)) - Interpretation

'business day' means any day on which the relevant payment service provider is open for business as required for the execution of a payment transaction.

Best practice guidance:

A "business day" is the time when a branch or system required to process a particular payment transaction is open. Business days can differ according to the payment type/product and system required for its processing; for example, one system may operate on a 24 hours a day, 7 days a week basis whilst another may only operate 10am to 4pm on weekdays (not including bank holidays).

Additionally, the PSRs allows for PSPs to set cut-off times for the receipt of a payment order (which again may vary according to the payment type/product and system required for its processing); such cut-off times must be towards the end of a “business day” and so for example any payment orders received later will be deemed to have been received on the next business day.

The key is that information on cut-off times and business days should be made clear and transparent for payment service users so that they know when a payment order will be deemed to have been received. This is important because the PSRs set clear requirements on the execution time of payments and for determining the point of irrevocability of a transaction.

This information on cut-off times established by the PSP needs to be provided to the PSU in the framework contract (and in the prior general information before the customer is bound by the framework contract) and where applicable, in the information provided to a customer before they are bound by a single payment service contract.

c) Payment instrument – application of concept

Regulation reference: Regulation 2(1) (Article 4(23)) – Interpretation

“payment instrument” means any:

- (a) personalised device; or*
- (b) personalised set of procedures agreed between the payment service user and the payment service provider, used by the payment service user in order to initiate a payment order*

Best practice guidance:

It is important to understand what devices and procedures fall under this definition.

As part of the dialogue between the PSD EG, the European industry group on which the Payments Council is represented, and the Commission Services, a helpful explanation was provided by the Commission Services in a letter of 28.03.08 stating the following:

“ This definition in the original Commission proposal was meant to include only “payment (verification) instruments”, which would cover physical devices (such as cards or SIM cards) and/ or set of procedures (such as PIN codes, TAN codes, digipass, login/password, etc.) which a payment service user can use to give instructions to his payment service provider in order to execute a payment transaction. This definition should be read together with definitions 19 (“authentication”) and 21 (“unique identifier”). So, a payment instrument is used to initiate a payment transaction whose execution is part of a payment service (a direct debit, a card payment, a credit transfer, etc.). If the payment transaction is initiated by paper, the paper slip itself is not considered as a payment instrument.”

Furthermore, the Commission stated in late 2008 (FAQ 34): “*this definition is meant to cover physical devices (such as cards or mobile phones) and/or [a] set of procedures (such as PIN codes TAN codes, digipass, login/password etc) which a payment service user can use to give instructions to his payment service provider in order to execute a payment transaction. If the payment transaction is initiated by paper, the paper slip is not considered as a payment instrument.*”

The fact that the initial term used in the Directive draft was “payment **verification** instrument” serves as a useful contextual reminder as to the relatively narrow application of this term.

3. General FAQs

1) What is the impact of the PSD on contractual relationships between banks concerning payment processing and services?

With very few exceptions (such as the full amount principle in Article 67/ Regulation 68) the direct regulatory focus of the PSD is limited to the relationship between a PSP and its end corporate/retail customer, rather than what happens in the inter-bank space and what contractual relationships may be in place there.

It is clear, for example, from Articles 3(h) and 3(m) (Schedule 2, Part 1, paragraph 3 (h) and (m)) that a PSP (including a bank when acting as a PSP) is regarded as a PSP under the Directive. For instance, when one PSP is acting for another in an intermediary role the contractual arrangements are not directly governed by the PSD and there would be no requirement for a framework contract to be in place. Similarly, payment transactions between PSPs for their own accounts would not fall within scope.

Thus, whilst there may be PSD impacts on the contractual relationships between banks, these impacts are indirect consequences of the PSD's direct requirements in the PSP-to-end-customer space.

However, there may be occasions where a PSP will act as a PSU, for example when it holds an office account with another PSP. In such instances, the PSP would be treated as a PSU and the account-holding PSP would need to consider whether/how to apply the corporate opt-out to the contractual relationship.

2) Are documentary products (such as documentary credits and documentary collections) within the scope of the PSD?

Broadly speaking, documentary products per se ought to be out of scope – see below for more specific product analysis.

A documentary credit is a written undertaking given by a bank on behalf of an

importer to pay an exporter a given sum of money within a specified time, providing that the exporter presents documents which comply with the terms laid down in that letter of credit. The provision of a documentary credit is not within the scope of the PSD, but the resultant payment made by the bank to the exporter on behalf of the payer could be within scope – for example if it involves an intra-EU credit transfer in an EEA currency.

The provision of documentary collections would also be out of scope. The collections normally comprise a set of commercial documents relating to goods being exported, which are sent to an importer's bank. The underlying payment transaction from an importer's payment account relating to that documentary collection could be in scope (as above).

3) Do payments in Swiss Francs fall under the scope of the PSD given that the Swiss Franc is the official currency of Liechtenstein?

According to the Commission Services, Titles III and IV (Parts 5 and 6 of the Regulations) of the PSD also apply to payment transactions made in Swiss Francs between two payment service providers both located in one Member State (e.g. France) and cross-border transactions (e.g. from a PSP located in France to a PSP located in Germany).

4) What is the intention behind the definition of the “unique identifier”?

The definition of the unique identifier has been included in the PSD partly as a supporting measure to facilitate the efficient and automated processing of payments within the Single Euro Payments Area (SEPA) initiative where payments are being sent and received using IBANs (to identify the PSUs' account numbers) and BICs (to identify the banks involved in the payment chain). However, to allow for a variety of alternative services and business models in the market today (such as those offered by money remittance providers) as well as to ensure future proofing, the definition of ‘unique identifier’ in Article 4(21) (Regulation 2 (1)) is a wide one which – as the Commission confirmed in the answer to FAQ 32 – “*may also include card numbers or any other identifier provided by a payment service provider to his user so that it can execute a payment transaction*”. In a UK domestic sterling credit transfer context, the “unique identifier” would typically be the sort code and account number.

5) What is the difference between a “payment order” and a “payment transaction”?

There is an important distinction to be made between a payment order and a payment transaction. A payment order is an instruction from a payer or payee to their PSP to initiate a payment. However, a payment order may be revoked if the conditions of a framework contract are not met or execution would be illegal due

to other legislation. In such circumstances, the payment order would therefore never lead to a payment transaction. For example, this may be the case if the details of the payee provided by a payer to his PSP were incomplete or there was to be insufficient funds in the payer's account. A payment transaction can result in a debit or a credit to an account.

1. Introduction

Part 5 of the PSRs sets out in detail what information payment service providers are required to provide to their customers, both for one-off transactions (or “single payment transactions”) and where there is an ongoing relationship that is covered by a framework contract.

The PSRs recognise that different business models exist in the payments market and that these require different treatment. For example, payment institutions such as money remitters will often be dealing with customers where there is no ongoing relationship; any payment service carried out for them will be under a single payment transaction contract. However, a credit institution such as a bank will tend to deal with customers where there is an established and ongoing relationship and any transactions are carried out within the contractual agreement of a framework contract. An exception to this might be where a customer of a credit institution wishes to make a one-off type of payment transaction which is not covered by the framework contract already in place. In such a case, the PSP and PSU may agree to carry this out under a single payment transaction contract rather than adding such a service to the framework contract, although both options are available.

Information requirements under the PSRs include those that must be given as prior general information before the conclusion of the contract and before and after a payment transaction is executed. Certain information provisions are not applied when a regulated contract under the Consumer Credit Act is involved, such as a credit card for consumer customers.

The PSRs also recognise that consumers (including micro-enterprises and small charities) and corporates have different needs; therefore, there is an option for PSPs and their corporate customers to agree that the requirements in this area of the Regulations do not apply.

2. Best practices in relation to key PSRs information requirements

a) Framework contracts – meaning and scope

Regulation reference: Regulation 2(1) (Article 4(12)) - Interpretation

‘framework contract’ means a contract for payment services which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account.

Best practice guidance:

A framework contract is focused on a specific set of terms (as set out in Schedule 4 of the PSRs) governing the provision of payment services. In line with the definition in the PSRs, the framework contract may (or may not) cover the setting up of the account itself, which the PSP is therefore free to cover in an entirely separate contract with the PSU or as a separate section or module of a broader contract with the PSU, which for convenience might also include the payment services ‘framework contract’ element as an additional module or section.

The same framework contract can govern payments into/out of several accounts, provided all of the accounts are with the same payment service user. The two months’ notice requirement for changes only relates to the framework contract elements of a PSU’s terms and conditions.

Whichever way a PSP chooses to construct its terms and conditions, it needs to be transparent to the PSU which sections are covered by the PSRs’ two months’ notice requirement.

b) Reaching agreements with customers – opt-out for corporate customers

Regulation reference: Regulation 33(4) (Article 30(1) and (2)) - Application of Part 5.

Except where the payment service user is:

- (a) a consumer*
- (b) a micro-enterprise, or*
- (c) a charity,*

the parties may agree that any or all of the provisions of this Part do not apply to a contract for payment services.

Regulation reference: Regulation 51(3) (PSD Article 51) – Application of Part 6.

Except where the payment service user is a consumer, a micro-enterprise or a charity, the parties may agree that:

- (a) any or all of regulations 54(1), 55(2), 60, 62, 63, 64, 67, 75, 76 and 77 do not apply;*
- (b) a different period of time applies for the purposes of regulation 59(1).*

Best practice guidance:

PSPs are allowed to opt out of applying a number of provisions (all of Part 5 and certain regulations of Part 6) to corporate clients, subject to the clients' agreement. Decisions on whether or not to exercise the opt-out are made at PSP level, rather than country or regional level and the opt-out may be applied in whole or in part.

The agreement of the customer to the opt-out is required. The FSA has clarified in its Approach Document that in their view it must be clear which provisions are being disapplied. As the PSRs do not specify how agreement must be reached, the manner of obtaining consent for the opt-out is a matter of contractual construction between the PSP and its corporate customer.

c) Reference for payment transactions and use of “where appropriate” in providing information to the PSU

Regulation reference: Regulation 46 (Article 48(1)(a)) – Information for the payee on individual payment transactions.

- (1) As soon as reasonably practicable after the execution of an individual payment transaction under a framework contract, the payee's payment service provider must provide to the payee the information specified in paragraph (2).*
- (2) The information referred to in paragraph (1) is:*
 - (a) a reference enabling the payee to identify the payment transaction and, where appropriate, the payer, and any information transferred with the payment transaction.*

(Also see similar usage of the phrase “where appropriate” under Regulations 37, 38 and 45)

Best practice guidance:

A PSP does not need to provide the PSU with a ‘unique’ reference for each transaction. Merely, the PSP must provide the PSU with sufficient information by which he can identify the transaction.

Additionally, the PSRs (under Regulations 46(2), 37(2), 38(2) and 45(2)) provide a minimum list of information to be passed on. This means that a PSP can tailor the additional information that they provide to the product/service in question. The specific use of the term “where appropriate” in this context allows the PSP to take into consideration such factors as scheme rules (such as those in the SEPA SCT and SDD Rulebooks), practical constraints around communication channels and applicable law such as data protection requirements.

The key requirement is one of transparency - on a practical level this means ensuring that payment service users are given the necessary information to identify their transactions.

Bulk payments

Under systems used for bulk payments, information on individual transactions is not broken down, meaning that additional processes would be required to make it available to the customer.

For a bulk payment service being used on the sending side (e.g. salary payments), the bulk payment will be marked on the account as a single debit. The information on the multiple credit transfers being made against it would be available at the PSU’s request; however, they would already have much of the information on the individual transactions that make up the bulk payment since they submitted the payment order originally.

For a bulk payment service being used on the receiving side (e.g. charity donations), the bulk payment will be marked on the account as a single credit. The information on multiple payments that make up that credit would be available to the PSU if so requested.

PSPs could add detail to the contract with the customer that outlines the limits of the service and that individual information on bulk payments is available upon request.

The PSRs also allow PSPs the right to offer improved services to their customers and this bulk payment system could be viewed as an additional service. It should be emphasised that offering such a service would be entirely at the discretion of the PSP.

d) Application of PSRs information requirements to ATM transactions

This table describes the impact of the PSRs on various scenarios involving ATM transactions, including what information must be provided to the payment service user and by whom and the point at which information must be provided.

When withdrawing cash, the payment service user’s relationship is always with the card issuer, regardless of whether the ATM being used belongs to his PSP or

is the ATM of another provider. The applicable information requirements are those set out under Regulation 45 (except where they are disapplied where there is an overlap with the Consumer Credit Act).

Note also that Independent ATM Deployers (IADs) are not in scope of the PSRs (see chapter 15.5, Q.44 of the FSA's Perimeter Guidance).

The Commission confirmed during transposition that Article 49 on currency and currency conversion (Regulation 49) does not apply to ATM withdrawals. However, it is worth noting that the LINK ATM Scheme rules on Dynamic Currency Conversion (DCC) in the UK already contractually mandate compliance with corresponding information requirements in any event.

	Scenario	What is the relevant information; when is it provided; and which party provides it?
1	Use of own bank ATM to withdraw sterling	Information on the transaction will appear on the statement (after execution) provided by the cardholder's PSP.
2	Use of own bank ATM to withdraw euro or other EEA currency using Dynamic Currency Conversion (DCC)	Currency conversion information will appear on screen (prior to execution) and subsequently on the receipt from the ATM owner (the cardholder's own PSP in this scenario), as required by the LINK ATM Scheme rules. The customer's statement will detail how much has been withdrawn in sterling (after execution), and this will be provided by the cardholder's PSP.
3	Use of own bank ATM to withdraw euro or other EEA currency not using DCC	All information relating to the currency conversion and withdrawal will appear on the statement (after execution), provided by the cardholder's PSP.
4	Use of non-own bank ATM to withdraw sterling	Information on the transaction will appear on the statement (after execution), provided by the cardholder's PSP.
5	Use of non-own bank ATM to withdraw euro or other EEA currency using DCC	Currency conversion information will appear on screen (prior to execution) and subsequently on the receipt, provided by the ATM owner, as required by the LINK ATM Scheme rules. The customer's statement will detail how much has been withdrawn in sterling (after execution), and this will be provided by the cardholder's PSP.
6	Use of non-own bank ATM to withdraw euro or other EEA currency not using DCC	All information relating to the currency conversion and withdrawal will appear on the statement (after execution), provided by the cardholder's PSP.

e) Spending limits

Regulation reference: Schedule 4 paragraph 2(f) (Article 42(2)(f)) – Prior general information for framework contracts

Whether spending limits for the use of a payment instrument may be agreed in accordance with regulation 56(1)

Regulation reference: Regulation 56(1) (Article 55(1)) – Limit on the use of payment instruments

Where a specific payment instrument is used for the purpose of giving consent to the execution of a payment transaction, the payer and its payment service provider may agree on spending limits for any payment transactions executed through that payment instrument.

Best practice guidance:

The framework contract can include a provision on whether there is a possibility to agree on spending limits for the use of a payment instrument (Schedule 4 (2) (f)). Additionally, Regulation 56(1) allows for the possibility to agree on the actual spending limits.

A pre-notification of two months is not required for changing the spending limit if the framework contract includes a provision on the possibility to have such limits. However, the two months' notice period would still apply where the framework contract has not provided for the ability to set spending limits.

This is consistent with the Commission's response to FAQ 191.

It should be remembered that Schedule 4 (apart from paragraph (3)(b)) is disapplied in the case of consumer credit agreements.

3. General FAQs

1) Article 4 (12) (Regulation 2 (1)) – Does a framework contract have to be a self contained-document?

For the purposes of the PSD, the framework contract referred to means those terms which apply to payment services. A payment service provider's framework contract (i.e. the payment services terms) could form part of a broader contract containing provisions relating to non-payment services, but for PSD purposes the framework contract should be taken as referring only to the payment services related elements of that broader contract. Examples of non-payment services that could form part of the wider terms and conditions are cheque clearing, regulated overdrafts and investment services offered to private banking customers.

The PSD does not require a framework contract to be a self-contained document. While a PSP may wish to structure a framework contract into a self-contained document for convenience, it may also structure the framework contract as a modular document such that individual payment services could be covered by separate sections or indeed by separate documents.

The PSD does not prescribe how a PSP should structure its contractual arrangements with its users, leaving PSPs with the freedom of choice in this respect. This freedom of choice would, for example, allow a PSP to treat a framework contract as extending to terms and conditions relating to any underlying payment account.

2) Article 44(3) (Regulation 42 (6)) - To the extent it applies, how should the obligation in Article 44(3) to implement and calculate changes in interest and exchange rates "in a neutral manner that does not discriminate against payment service users" be construed?

The main thrust of the provision focuses on openness and fair treatment - what is implied by the provision is that PSPs should be transparent and take care to ensure that customers are treated fairly.

3) Articles 44 (Regulation 42) - Does the two months' notice period apply to the addition of new payment services to an existing framework contract?

The aim of this provision is to protect the payment service user from a unilateral change proposed or imposed by the payment service provider. In case the PSP proposes a change to an element already agreed in the framework contract, the two months period applies. As far as a new element, such as a new payment service, is offered and the customer is ready to accept it immediately, this should be possible and the period of two months does not apply. However, the contractual provisions for the new service can later form an integral part of the former framework contract.

4) Articles 47(1)-(2) and 48(1)-(2) (Regulations 45 and 46) – Can the obligation to 'provide or make available' the information in Article 47(1) and 48 (1) be satisfied by providing an electronic statement rather than a monthly paper based statement?

Yes, if agreed in the framework contract the obligation to 'provide or make available' the information in Article 47(1) / 48 (1) can be satisfied by providing an electronic statement rather than a monthly paper based statement – but PSPs may also wish to consider making the monthly information available on paper at a customer's request (e.g. where a customer does not have electronic access). Where there are no transactions (or the transactions relate only to the payment of interest) there is no obligation under the PSD to provide the information.

5) Do the information requirements for a framework contract specified in the PSD apply to transactions to/from a non-payment account (e.g. fixed term savings account)?

The information requirements refer to the execution of payment transactions, which may be made to or from a non-payment account. Therefore, requirements that do not specifically mention the use of a payment account would logically apply to transactions that are in scope but do not involve a payment account at one or both ends. This could include the information in a framework contract to cover the execution of future and successive payment transactions.

6) To what extent do the PSRs provisions apply to non-payment accounts?

The PSRs govern the provision of payment services. Some requirements only cover payment accounts and therefore do not apply to accounts outside this category. Examples of these are:

- Reference to the interest rate on the underlying payment account (as per FSA's interpretation on interest rates);
- Information and execution provisions relating to cash placements or withdrawals;
- The value dating of funds; and
- Restoring the debited payment account to the state it would have been in had the unauthorised or non-executed or defective transaction not taken place.

Relevant information requirements that relate to the provision of payment services and the execution of payment transactions should be provided to a PSU holding a non-payment account (where applicable). However, it is up to individual PSPs to decide how to structure their terms and conditions and whether to include this information as part of the overall contractual document relating to the non-payment account, or as a separate section or module.

However, PSPs should always consider the other elements to the Banking Conduct Regime – the FSA’s Principles for Businesses and BCOBS – when considering regulatory compliance and enforcement for all relevant products and account types.

7) To what extent do the PSRs impact overdrafts?

An overdraft on an account of a consumer would be generally considered to fall within the definition of a consumer credit agreement under the Consumer Credit Act (CCA). This includes both 'implied term' overdrafts and those that have been expressly agreed.

As the PSRs contain carve-outs for regulated agreements where there is an overlap in requirements for the PSRs and the CCA, overdrafts are subject to this disapplication. The Regulations that do not apply to consumer overdrafts are detailed in Regulations 34 and 52. This means that as Regulation 42 (changes to contractual information) does not apply, the requirement under consumer credit law takes precedence and at least 7 days’ notice is required for changes to interest rates on regulated overdrafts.

However, subject to these disapplications, the other non-disapplied Regulations will apply with respect to either the regulated agreement or payment transactions (provided they are in scope of the PSRs) that take place on an overdraft.

IV. Payment transaction processing and rights and obligations

1. Introduction

Part 6 of the PSRs set out the rights and obligations of payment service providers and users in respect of payment transaction processing. It aims to streamline and benchmark operational conduct of business requirements to increase efficiencies in the Single Market for payments as well as to increase consumer protection in a harmonised way, with the aim of triggering more cross-border activity to enhance competition and trade.

The main points to note in relation to rights and obligations are as follows:

- The corporate opt-out recognises the differing positions of consumers and businesses, with the option, in relation to certain Regulations, that “the parties may agree” that they do not apply.
- Certain provisions under Part 6 do not apply where there is a regulated contract under the Consumer Credit Act, such as a contract covering a consumer credit card.
- PSPs may not charge customers for providing information required under the Regulations, or for taking certain corrective or preventative measures specified.
- There is a legal obligation on the customer to use any payment instrument (e.g. a debit card) in accordance with its terms and conditions of issue, to take all reasonable steps to keep it secure, and to notify the issuer without undue delay of its loss, theft, misappropriation or unauthorised use.
- PSPs issuing payment instruments are subject to various obligations such as ensuring that the personalised security features are not accessible to other persons and not sending unsolicited payment instruments (except as a replacement).
- The PSRs introduce a long-stop 13-month time limit after the date of debit for a customer to claim that a transaction was unauthorised or incorrectly executed (excluding credit card transactions that are covered by the CCA); these claims should in any event be made without undue delay. However, in the UK a policy decision was taken not to change the unlimited period of the Direct Debit Guarantee.
- Where a transaction has been found to be unauthorised, the PSP has an obligation to immediately refund the amount of the transaction and, where applicable, restore the payment account to the state it would have been in had the transaction not happened.
- For payments in euro; in the domestic currency of the EU member state concerned (i.e. sterling for transactions in the UK); or where there is only one currency conversion between euro and the domestic currency, and the transfer is cross-border and denominated in euro, the PSRs introduce a default maximum timescale for execution of D+1, but PSPs can agree up to D+3 until 1 January 2012 with their customers.

- For transactions in a Member State currency other than those listed above (e.g. a Danish kroner transfer between accounts in the UK) the Regulations allow an execution time of up to four business days.
- The PSRs clearly set out the requirements for the point in time of receipt for a payment order; this is important as it is key to the execution time provisions.
- The PSRs aim to remove “float” by requiring that the credit value date for the payee’s payment account must be no later than the business day on which the amount is credited to the account of the payee’s PSP.

2. Inter-bank best practices in relation to key PSRs operational requirements

a) Full amount principle and charging

Regulation reference: Regulation 68 (1) and (2) (Article 67(1) and (2)) – Amounts transferred and amounts received

- (1) Subject to paragraph (2), the payment service providers of the payer and payee must ensure that the full amount of the payment transaction is transferred and that no charges are deducted from the amount transferred.*
- (2) The payee and its payment service provider may agree for the payment service provider to deduct its charges from the amount transferred before crediting it to the payee provided that the full amount of the payment transaction and the amount of the charges are clearly stated in the Information provided to the payee.*

Regulation reference: Regulation 54(2) (Article 52(2)) – Charges applicable

- (2) Where a payment transaction does not involve any currency conversion, the respective payment service providers must ensure that:*
- (a) the payee pays any charges levied by the payee’s payment service provider; and*
 - (b) the payer pays any charges levied by the payer’s payment service provider.*

Context:

As required by **Regulation 68**, no deductions of charges are allowed from the full amount of a payment transaction, except by the payee’s PSP where this has been agreed with the payee. For Regulation 68 to apply both legs of the payments should be in the EEA and the transaction should be in euro or another Member State currency. *[Note: Attention needs to be paid here to where certain Member States, not including the UK, are choosing to apply additional provisions to one-leg or non-Member State currency transactions as part of their national transpositions.]*

In turn, **Regulation 54(2)** establishes the charging principle that the payer and payee should pay the charges levied by their respective service providers, unless the payment transaction involves a currency conversion. *[Note: Recital 41 of the*

PSD makes clear that this requirement has no direct impact on pricing between PSPs or/and their intermediaries.]

When looking at the implications from a practical perspective on the applicability of the traditional cross-border charging options (OUR/SHA/BEN) for payments falling under the scope of the Regulations, the following should be observed:

- i) The SHA option is clearly allowed, whether or not there is a currency conversion, as it is fully in line with the 'share principle' so long as the full amount principle in Regulation 68 is respected.
- ii) In practical terms the use of the BEN option does not make sense for a PSD-compliant payment due to the requirement to adhere to the full-amount principle in Regulation 68.
- iii) The OUR option is still clearly allowed where there is a currency conversion. Where there is no currency conversion, the Commission Services have advised – for example in the answer to FAQ 196 – that their view in these circumstances is “*it will not be possible to indicate the OUR option any longer for payment transactions covered under the Directive, which do not involve any currency conversion. For these transactions, the SHARE principle applies in accordance with Regulation 54(2)*”. This position was further re-enforced by the Commission Services in their subsequent answer to FAQ 253. **[Note: This position is believed to be supported by a number of Member States, but not by all, as some are believed to favour a greater level of contractual freedom around the ongoing use of the OUR option – something which the Commission Services believe is not in line with the intention of the European legislators. PSPs may need to pay close attention to the detail of national transposition texts.]** In a UK context, the FSA has stated in its Approach Document that OUR will not be effective unless the transaction involves a currency conversion.

Best practice guidance:

1) Payer's PSP

- Where the payment is to be sent in a Member State currency and to an EU/EEA Beneficiary Bank BIC then the general rule is that no deductions can be made to the full amount (Regulation 68). The exception is if the payment relates to an out-of-scope transaction (e.g. an asset servicing payment).
- Additionally, if the payment is being made in a Member State currency and to an EU/EEA Beneficiary Bank BIC and does not relate to an out-of-scope activity, then in the view of the Commission Services charging code SHA would generally seem to be the appropriate charging code to use for credit transfers.
- All traditional charging options (OUR/SHA/BEN) of course remain available for out-of-scope payments.

2) Intermediary PSP

- An intermediary PSP should not deduct its charges from the full amount for payments sent by a payer's PSP located in an EU/EEA country when the

payment is in an EU/EEA currency and is destined for an EU/EEA Beneficiary bank BIC.

- In respect of handling charging codes, the logical approach for an intermediary would be to forward on the charging code it receives in a payment message, unless there are contractual terms agreed with its client PSP to amend the code in some circumstances.

3) Payee's PSP

- Regulation 68(2) does allow a payee's PSP to deduct charges - but only if this has been agreed with the payee. Otherwise, the full amount will need to be credited and any charges taken separately.
- In some cases a payee's PSP is not in a position to know the full circumstances surrounding a payment (e.g. whether a currency conversion has been applied or whether the payment relates to Schedule 1 Part 2 out-of-scope activity, such as securities asset servicing). Accordingly, the payee's PSP would be advised not to reject an incoming payment simply on the basis of the charging code used.
- For payments outside the scope of the PSRs, existing market practice around inter-bank charge codes handling prevails.

b) Currency conversion and execution timescales for different payment transactions

Regulations reference: Regulation 51(1)(c) (Article 2(2) – Scope) – Application of Part 6

(1) This Part applies to a contract for payment services where:

(c) Where the payment services are carried out in euro or in the currency of an EEA State that has not adopted the euro as its currency.

Regulations reference: Regulation 69 (Article 68 – Scope) – Application of regulations 70 to 72

(1) Regulations 70 to 72 apply to any transaction:

(a) in euro;

(b) in sterling; or

(c) involving only one currency conversion between the euro and sterling, provided that:

(i) the currency conversion is carried out in the United Kingdom; and

(ii) in the case of cross-border payment transactions, the cross-border transfer takes place in euro.

(2) In respect of any other transaction, the payment service user may agree with the payment service provider that regulations 70 (other than regulation 70 (4)) to 72 do not apply.

Regulations reference: Regulation 70 (Article 68(2) – Scope/Article 69 – Payment transactions to a payment account) – Payment transactions to a payment account

- (1) Subject to paragraphs (2), (3) and (4), the payer's payment service provider must ensure that the amount of the payment transaction is credited to the payee's payment service provider's account by the end of the business day following the time of receipt of the payment order.*
- (2) Until 1st January 2012, the payer and their payment service provider may agree that the amount of the payment transaction is to be credited to the payee's payment service provider's account by the end of the third business day following the time of receipt of the payment order.*
- (3) Where a payment transaction is initiated by way of a paper payment order:
 - (a) the reference in paragraph (1) to the end of the business day following the time of receipt of the payment order is to be treated as a reference to the end of the second business day following the time of receipt of the payment order; and*
 - (b) the reference in paragraph (2) to the end of the third business day following the time of receipt of the payment order is to be treated as a reference to the end of the fourth business day following the time of receipt of the payment order.**
- (4) Where a payment transaction:
 - (a) does not fall within paragraphs (a) to (c) of regulation 69(1); but*
 - (b) is to be executed wholly within the EEA, the payer's payment service provider must ensure that the amount of the payment transaction is credited to the payee's payment service provider's account by the end of the fourth business day following the time of receipt of the payment order.**
- (5) The payee's payment service provider must value date and credit the amount of the payment transaction to the payee's payment account following its receipt of the funds.*
- (6) The payee's payment service provider must transmit a payment order initiated by or through the payee to the payer's payment service provider within the time limits agreed between the payee and its payment service provider, enabling settlement in respect of a direct debit to occur on the agreed due date.*

Background:

The issue is the extent to which the PSRs regulate the time taken to conduct a currency exchange which takes place at one or both ends of a payment transaction – such as where a payment service user wishes to make a payment in a currency which is different to the currency of the account which he wishes to have debited, or to have a payment arriving in one currency credited to an account in another currency.

Regulation 69 defines the scope of application of the execution time and value dating articles (Regulations 70 - 72). Throughout Regulation 69, reference is made to the types of 'payment transactions' to which Regulations 70 to 72 apply.

Best practice guidance:

The Commission Services has indicated to the industry at European level that payments involving a currency conversion between two EU/EEA currencies are regarded as 'other' transactions and hence governed by Article 68(2) (Regulation 69(2)), except in the specific case foreseen in Article 68(1)(c) (Regulation 69(1)(c)). Hence an execution time period longer than that set out in Article 69 (Regulation 70) may be agreed between the payment service user and his PSP, so long as this is no longer than D+4.

c) Value date and availability of funds**Regulation reference: Regulation 73 (1) and (2) (Article 73(1)) – Value date and availability of funds**

- (1) The credit value date for the payee's payment account must be no later than the business day on which the amount of the payment transaction is credited to the account of the payee's payment service provider.*
- (2) The payee's payment service provider must ensure that the amount of payment transaction is at the payee's disposal immediately after that amount has been credited to that payment service provider's account.*

Best practice guidance:

The definition and relevance of "business day" is important to the requirements of Regulation 73 as it dictates when the amount of the transaction must be credited and made available to the PSU.

Therefore, this means that:

- 1) In requiring the payee's PSP to put the amount of a payment transaction at the payee's disposal 'immediately', there is a presumption that the credit to the payee's PSP's account has happened on a business day for that PSP.
- 2) Consequently, if the credit to the payee's PSP's account was on a non-business day, the requirement is that the funds should be credited and made available to the payee no later than the following business day.

'Immediately' in the context of the Regulations refers to the point at which the payee's PSP has all the information necessary to credit the amount on the payee's amount. This is in line with the Commission's response to its FAQ 208 on this issue.

d) Cash placement

The Commission also confirmed in FAQ 204 that for payments in non-EEA currencies, the requirements of Article 73 (Regulation 73) do not apply.

Regulation reference: Regulation 72 (Article 71) – Cash placed on a payment account

Where a payment service user places cash on its payment account with a payment service provider in the same currency as that payment account, the payment service provider must:

- (a) if the user is a consumer, micro-enterprise or charity, ensure that the amount is made available and value dated immediately after the receipt of the funds;*
- (b) in any other case, ensure that the amount is made available and value dated no later than the end of the business day after the receipt of the funds.*

Best practice guidance:

1) Status of payment service user

The payment service user should be interpreted as referring to the holder of the payment account rather than the person making the cash placement. This will ensure that the aims of the legislation are achieved whilst also bringing clarity and certainty to the operational processes that PSPs will need to follow. This would mean that where the PSU is a consumer, micro-enterprise or small charity, he will be entitled to the benefit of immediate availability and value dating. So, for example, where an employee of a supermarket places cash on a payment account held by the supermarket, the user is the supermarket (not the employee).

2) Dealing with discrepancies

PSPs have the ability to make corrections to the amount credited to a customer's account, should forgeries or counting errors be discovered afterwards. However, if corrections are made, then corrected post-transaction information will also need to be provided or made available to the customer. Additionally, PSPs still have to abide by other relevant requirements such as anti-money laundering rules. In case of reasonable doubts of counterfeiting, money laundering or other illicit activities, the PSP should be allowed to withhold the funds.

3) Identifying the “point in time of receipt”

The FSA has confirmed that in identifying the time of receipt of the funds, similar principles may be applied here as those used in identifying the “point in time of receipt” for a payment order under Regulation 65 (see paragraph 8.131 of the FSA's Approach Document).

This means that, for example, receipt of cash other than on a business day (e.g. a Saturday) or after a cut-off time towards the end of a business day (e.g. 3.30pm) is deemed to have been received on the next business day and for cut-off times to be set near the end of a business day. It also means that deferred receipt can be agreed between the PSP and the user, which is very important from a practical perspective as it allows for a wide range of convenient methods of cash placement to continue to be offered to payment service users, such as night safes. Deferred receipt (Regulation 65(4)) allows for the PSP and PSU to agree that the payment order will be deemed to have been received on an agreed day.

The same principle can be applied where a PSP (PSP A) accepts a cash placement from a customer of a different PSP (PSP B) under a network extension arrangement. Such an arrangement exists for customers to be able to use PSPs other than their own for ease and convenience, particularly in rural or remote areas where access to banking facilities may be limited, or where a foreign bank does not have a full network of branches available. The customer will receive immediate availability and value dating when PSP B is in receipt of the funds from PSP A. Regulation 70 execution times will apply to the arrangement between PSP A and PSP B. Invariably these arrangements enable a service to be provided to customers that would not otherwise be available.

Where a cash placement is made in this way and should any error occur, the PSU's own PSP (PSP B) will remain liable to its customer for the correct crediting of the transaction to their account. This is because the customer's framework contract governing the placement is with PSP B. If the error is found to rest with the PSP that accepted the placement (PSP A), then PSP B will have a right of recourse to PSP A.

The key requirement here is of transparency and customer perception – it needs to be clear to the customer when their cash deposit will be deemed to have been received by their PSP and consequently credited to their payment account, for all methods.

The following table illustrates a non-exhaustive list of scenarios of how customers can place cash with their PSP. The point in time of receipt in the scenarios given are illustrative and not definitive as ultimately, it is up to individual PSPs to assess their own methods of accepting cash placements and how the Regulation 72 requirements apply.

Method of deposit	Point in time of receipt by account-holding PSP
Over the counter – branch of account-holding PSP	Receipt is when the customer hands over the cash at the counter.
Over the counter – different PSP under network extension arrangements	Receipt is when the amount of the cash placement is received by the account-holding PSP.
Day deposit box	Receipt is when the box is opened by the PSP. A cut-off time can be displayed on the box to clearly indicate at what time the box will be opened and that any deposits after this time will be deemed to be received the next business day.
Real-time deposit box	Receipt is when the customer makes the deposit in the box.
Hybrid deposit box	Receipt and access to funds varies according to the exact functionality of the box but falls between the day deposit boxes and real-time deposit boxes. The deposit is typically made using an envelope and the contents cannot be checked immediately. Receipt of the placement by the PSP is when the envelope is opened. Signage should indicate the time that the deposit is deemed to have taken place and/or when access to funds will be given.
Night deposit box	Receipt is when the box is opened the following morning (on a business day).
Cash collection centres	There are numerous ways that PSPs use cash centres for cash collection, particularly with corporate customers. The key is when the PSP is actually in receipt of the funds (and the information necessary for crediting the customer's account). As the PSRs allow PSPs the right to offer improved services to their customers, as part of the contractual agreement a PSP may decide to provide value to a customer before the placement is actually processed. However, there is no obligation under the PSRs to do this.

Regulation reference: Regulation 61 (Article 60) – Payment service provider’s liability for unauthorised payment transactions

Subject to regulations 59 and 60, where an executed payment transaction was not authorised in accordance with regulation 55, the payment service provider must immediately:

- (a) refund the amount of the unauthorised payment transaction to the payer; and*
- (b) where applicable, restore the debited payment account to the state it would have been in had the unauthorised payment transaction not taken place.*

Extract from FSA Approach Document (paragraph 8.93)

There is a balance to be struck between a customer’s right to an immediate refund for an unauthorised payment transaction, and the need to determine whether the payment transaction was properly authorised, or whether the customer has failed in their own obligations with regard to the payment instrument used, so that the claim is invalid. We expect payment service providers to take a reasonable approach to this. In our view it would usually be reasonable to investigate a claim before making a refund if there is prima facie evidence to suggest that either fraud or deliberate, or grossly negligent behaviour on the part of the customer may have occurred. Otherwise, we would generally expect the payment service provider to make the refund and other correcting actions immediately. Where an investigation is justified, it will need to be carried out as quickly as possible in light of the circumstances.

Best practice guidance:

Where the PSP decides to investigate an unauthorised transaction, it does so at its own risk. While there is some scope to investigate unauthorised consumer transactions where the PSP believes there is prima facie evidence to suggest that either fraud, or deliberate, or grossly negligent behaviour, it is likely that PSPs will risk-assess claims of unauthorised transactions from corporate customers differently to those from consumers, given the typically higher transaction values and greater scope for fraud associated with corporate transactions. Exercising the corporate opt-out in relation to Regulation 60 may reduce the impact of Regulation 61 when a corporate customer is involved.

However, the ultimate approach to this issue will be decided at PSP level and will be a risk-based decision taking into account the practices and tolerance levels of the business as well as policy, risk and compliance functions. It is important to note that Regulation 61 is disapplied for regulated agreements, such as consumer credit cards.

3. General FAQs

- 1) The receipts of some currencies (e.g. NOK, SEK) depend on the operations of nostro banks. In this context, if a nostro bank credits a PSP's nostro account held by it on Monday but the PSP is on a non-business day and cannot receive the payment-related data until Tuesday, which is when the PSP is able to credit its own clients' accounts immediately, is the PSP in this scenario compliant with the obligation to make the funds available at the payee's disposal "immediately" in Article 73 (Regulation 73)?

Yes, the PSP would seem to be compliant as Article 73 refers to the “business day on which the amount of the payment transaction is credited to the account of the payee’s payment service provider”. Additionally, the Commission Services have indicated that 'immediately' in the context of Article 73 refers to the point in time at which the payee's payment service provider has all the information necessary to credit the amount on the payee's account. (Please refer to the Commission's response to Question 208 on the list of the FAQ's on the Commission's PSD web-page.)

- 2) Article 71 (Regulation 72) – Is it permissible to defer receipt of cash, in line with the principles applicable to "point in time of receipt" of payment orders, by making it clear and specifying to the user that deemed (deferred) receipt occurs at some later point (an example being where a customer deposits cash with a different PSP under a network extension arrangement).

In identifying the point in time at which the cash is deemed to have been received, similar principles to those used in identifying the "point in time of receipt" for a payment order may be used. Therefore, cash not taken over the counter by a cashier (for example, left in a night safe, or in a day safe) can be deemed to have been received at a later point, if the PSP has informed the PSU of this deferred receipt. The customer's perception is an important element. PSPs should ensure clarity of communication with the customer (with appropriate prominence and timeliness) as to when receipt is deemed/deferred to avoid any misunderstanding that might arise.

Annex A. Glossary, abbreviations and acronyms

A number of the terms used in this document are defined in Regulation 2 of the PSRs and are not repeated here.

- **DCC** – Dynamic Currency Conversion
- **EEA** – European Economic Area. This includes the 27 members that comprise the European Community plus Norway, Iceland and Liechtenstein of the European Free Trade Association.
- **EBF** – European Banking Federation
- **EPC** – European Payments Council
- **FSA** – Financial Services Authority
- **OFT** – Office of Fair Trading
- **PSD** – Payment Services Directive
- **PSP** – Payment Service Provider
- **PSRs** – Payment Services Regulations
- **PSU** – Payment Service User
- **SEPA** – Single Euro Payments Area

Annex B. References

The final text of the Directive (in English) can be found on the following website:

http://eurlex.europa.eu/LexUriServ/site/en/oj/2007/l_319/l_31920071205en00010036.pdf

A corrigendum to the Directive has been published at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:187:0005:0005:EN:PDF>

Relevant documents on the PSD can be found on the following website:

http://ec.europa.eu/internal_market/payments/framework/transposition_en.htm

The Payment Services Regulations can be found on the following website:

http://www.hm-treasury.gov.uk/d_si_payment-services_regulations100209.pdf

Relevant documents produced by the FSA can be found on the following website:

<http://www.fsa.gov.uk/Pages/About/What/International/psd/>

Annex C. Websites

The websites of the main UK and European bodies are:

UK

Financial Services Authority

www.fsa.gov.uk

HM Treasury

www.hm-treasury.gov.uk

Payments Council

www.paymentscouncil.org.uk

Europe

European Central Bank

www.ecb.eu

European Commission

www.ec.europa.eu

European Payments Council

www.europeanpaymentscouncil.eu

European Banking Federation

www.fbe.be

Contact

Payments Council

Mercury House

Triton Court

14 Finsbury Square

London

EC2A 1LQ

Tel: 020 7711 6200

Email: press@ukpayments.org.uk

www.paymentscouncil.org.uk