

The application of the Payment Accounts Regulations 2015 in respect of alternative arrangements for switching accounts



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1. The Payment Accounts Regulations 2015

The Treasury has designated the Payment Systems Regulator (PSR) as the competent authority under the Payment Accounts Regulations (PARs) responsible for the designation and monitoring of 'alternative arrangements for switching'.

In March 2016 we published a consultation paper and draft guidance explaining:

- how to apply for designation as an 'alternative arrangement' for switching
- how we will assess applications for designation
- how we will monitor and enforce compliance of alternative arrangements for switching

We also set out our proposals for regulatory fees relating to the PARs.

Four stakeholders responded to our consultation. In this document we provide a summary of the main points raised, and give our responses. We also set out our final decision on our regulatory fees relating to the PARs.

We are publishing our final guidance on our approach to implementing the PARs alongside this document.

Background

- 1.1** On 23 July the European Parliament and the Council of the European Union adopted the Payment Accounts Directive (PAD), which was published in the Official Journal of the European Union on 28 August 2014.¹
- 1.2** The PAD sets common regulatory standards across EU Member States to improve transparency and comparability of current account fees; facilitate current account switching; and ensure access to bank accounts with basic features.
- 1.3** The EU Directive has been transposed into UK law through the Payment Accounts Regulations 2015 (the PARs).²
- 1.4** The PARs require payment service providers (PSPs) to provide a switching service³ for payment accounts.

1 Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features: eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2014_257_R_0008

2 The Payment Accounts Regulations 2015 (SI 2015/2038), which implement PAD in the UK, as amended from time to time: www.legislation.gov.uk/uksi/2015/2038/pdfs/uksi_20152038_en.pdf

3 As defined in regulation 2 of the PARs, "switching" or "switching service" means, upon a consumer's request, transferring from one payment service provider to another either the information about all or some standing orders for credit transfers, recurring direct debits and recurring incoming credit transfers executed on a payment account, or any positive payment account balance from one payment account to the other, or both, with or without closing the former payment account'.

- 1.5** PSPs can satisfy that requirement by providing a switching service in line with the requirements for switching set out in the PARs, or by being a member of an ‘alternative switching scheme’⁴, designated by the PSR as meeting the requirements of the PARs for alternative switching schemes⁵ and remaining compliant with these requirements.
- 1.6** The Treasury has appointed the FCA as the competent authority under the PARs to be responsible for ensuring that PSPs offer a switching service to their customers.⁶ The PSR is appointed as the competent authority under the PARs for designating alternative switching schemes, and monitoring and enforcing the schemes’ compliance with the designation criteria set out in the PARs.⁷
- 1.7** Not all provisions of the PARs come into force at the same time. Those provisions relating to the PSR’s role will come into force on 18 September 2016.
- 1.8** On 15 March 2016, we published consultation CP16/1, asking for stakeholders’ views on our proposed approach to implementing the provisions of the PARs for which we have been appointed as the competent authority. Our proposed approach was set out in a draft guidance, which we published alongside the consultation paper. In the same consultation, we also sought stakeholders’ views on our proposals for regulatory fees to cover our work related to the PARs.
- 1.9** The final guidance we are publishing with this paper includes:
- our approach to evaluating an application for designation as an alternative switching scheme
 - the application process for a switching scheme to be designated as an alternative switching scheme
 - our approach to collecting fees under the PARs
 - our approach to monitoring compliance with PARs requirements after we have designated an alternative switching scheme
- 1.10** Our final guidance also describes the PSR’s powers and procedures under the PARs (Chapter 7 of the guidance), and our approach to applying penalties for PARs non-compliance (Chapter 8 of the guidance).

Responses to our consultation

- 1.11** Four stakeholders responded to the consultation (Bacs, the British Bankers’ Association (BBA), Cheque & Credit (C&C) and HSBC). Respondents were generally supportive of our guidance and made a number of comments, which we have summarised below along with our responses to them. We explain whether our guidance has been revised in light of these comments, or whether it remains the same and why.

⁴ A switching scheme that provides switching services and has applied to the PSR for designation as an alternative arrangement under Regulation 15(1) PARs.

⁵ Whilst the PARs refer to ‘switching services’ and ‘alternative switching arrangements’, we sometimes use the term ‘alternative switching scheme’ in the same context.

⁶ PARs, Schedule 3.

⁷ PARs, Part 3, Regulation 15.

The designation criteria

1.12 In order to designate an alternative switching scheme, we must be satisfied that it meets the three designation criteria set out in the PARs. These are that the scheme should:

- be clearly in the interest of the consumer
- not impose upon the consumer any burden additional to those imposed by paragraphs 2 to 6 of Schedule 3 of the PARs
- ensure that the procedure for switching is completed at least within the same overall timeframe that applies in the case of a switching scheme that meets the requirements of paragraphs 2 to 6 of Schedule 3 of the PARs

1.13 We set out our approach to assessing applications for designation against these three criteria in Chapter 3 of our guidance, along with the type of supporting information we will seek.

Respondents' comments

1.14 Bacs provided a number of comments about the information requirements for applicants. It noted that the founding principle of the Current Account Switch Service (CASS) is that the responsibility for the switch resides with the 'new bank' (the receiving PSP) and that the operator can only be held liable for the overall service design and for setting the rules that all members agree to comply with. Based on this, Bacs sees a significant difference between customer complaints about the design of the service compared with complaints that the customer has not received the service as designed (for whatever reason). The former would certainly be Bacs' responsibility to resolve by working with the industry, whereas service delivery is more likely to be the responsibility of individual members, or other stakeholders. Bacs also noted that complaints received by CASS members are regarded as highly confidential because they represent market sensitive data and therefore members have never shared these with Bacs.

1.15 Bacs also said that CASS does not cover customer claims for compensation within its scheme rules. Bacs considers that all customer claims for compensation are matters for the PSPs to resolve themselves and fall outside the scope of the scheme. Bacs does not hold information about how often its members have paid compensation to a customer, or about the value of the compensation.

Our response and changes to the guidance

1.16 We note Bacs' points about complaints. However, for the purposes of our designation decision, we would want to know whether Bacs, as the operator of CASS, has received any complaints either from consumers or its members. We have amended our guidance to reflect that we may request information on complaints addressed to the operator (from either its members or third parties, including consumers), if any, and how the operator dealt with them.

1.17 We note that we have the powers under the PARs to request information directly from the members of an alternative switching scheme as well as the operator if we consider it necessary to fulfil our obligations under the PARs. The PARs apply to all participants in the scheme (both the transferring and the receiving PSP).

1.18 On the point about compensation, we understand that Bacs would not normally pay compensation to consumers but its members may be liable to do so. Therefore we have removed references to requesting information about compensation paid to customers by the operator of an alternative switching scheme.

1.19 We note that where a consumer incurs financial loss as a direct result of the PSP failing to comply with the requirements of a designated alternative switching scheme, the PSP must reimburse the consumer the full amount of the loss without delay. The exceptions to this are when the loss results

from abnormal and unforeseen circumstances beyond the PSP's control or from the PSP's compliance with any statutory obligation.⁸ We have the power to request this information directly from the members of an alternative switching scheme for the purposes of fulfilling our obligations under the PARs, where necessary.⁹

1.20 Our changes are reflected in paragraph 3.11 of the guidance.

The application process

1.21 In Chapter 4 of our guidance we explain how to apply for designation and who can apply, as well as our process for cancelling a designation.

Respondents' comments

1.22 The BBA requested that if we think we cannot process an application from an operator in time to provide a decision by 18 September 2016, we inform the applicant in advance and as early as possible, so that, if necessary, the members have time to comply with the PARs requirements through other arrangements¹⁰ which also come into force on 18 September 2016. The BBA also expressed concerns about the impact of immediate cancellation of a designation, as this may not give members sufficient time to make necessary arrangements to comply with the PARs.

Our response and changes to the guidance

1.23 We acknowledge the BBA's concerns. Any issues or delays with the designation decision of an alternative switching scheme could make its members non-compliant with the PARs after 18 September 2016. The same would be the case if we cancel the designation certification of an alternative switching scheme with immediate effect, without giving notice to its members.

1.24 We have noted in the *Next steps* section of this policy statement that if we take the view that an application from an operator of an alternative switching scheme cannot be processed in time to provide a decision by 18 September 2016, we will inform the operator as early as practicable.

1.25 We have the power to cancel a designation certificate at any time if we find that the designated switching scheme no longer meets the PARs requirements. The PARs require us to give the scheme's operator at least three months' notice of cancellation. In our draft guidance we had said that under such circumstances we will write to the operator stating the reason(s) for the cancellation at least three months before the cancellation takes effect, unless the breach is serious enough to require immediate cancellation.

1.26 Since the PARs do not provide for cancellations to take immediate effect, we have removed references to this in our final guidance.

1.27 Our changes are reflected in paragraph 4.13 of the guidance.

Our approach to monitoring compliance of designated schemes

1.28 In Chapter 5 of our guidance, we describe how we will monitor designated switching schemes to ensure they continue to meet the PARs requirements.

1.29 For monitoring purposes, we will require scheme operators to give us the same type of information that they provide in the designation application. We will assess this evidence, as well as complaints made to us about designated switching schemes.

⁸ PARs Schedule 5, paragraph 4.

⁹ PARs Schedule 4, paragraph 7.

¹⁰ These arrangements will fall under the FCA's remit.

Respondents' comments

- 1.30** The BBA requested that we send copies of any complaints from customers to the relevant PSP, to ensure that they have seen them if they have not received them directly. The BBA considers it of vital importance that PSPs are made aware of such complaints.

Our response and changes to the guidance

- 1.31** We would normally notify the operator and relevant members if we receive complaints about a scheme and, where appropriate, provide details of the complaints. Our guidance reflects our position in paragraph 5.10. However, it may not always be appropriate to release information about complaints for confidentiality reasons.

Our powers and procedures under the PARs

- 1.32** Under the PARs, we have a range of powers over designated switching schemes and members of these schemes for the purpose of ensuring that the switching service continues to meet the requirements of the PARs. Chapter 7 of our guidance sets out practical information on how we will exercise these powers, where we have determined that it is appropriate to do so.

Respondents' comments

- 1.33** The BBA commented that our draft guidance gives details of certain circumstances where we might not be able to consult with the recipient of an information request on the scope of the request, required actions and deadlines before we issue the request. The BBA encouraged us to give advance notice of information requests and consult on their scope wherever possible, to allow the recipient sufficient time to collate the data and respond.
- 1.34** The BBA also commented that our draft guidance describes how we can apply to court for an injunction if a person fails to comply with a notice to provide information, and that if we obtain an injunction we will normally publish details of the non-compliance and the measure we have taken in response. We will also publish details of any penalty applied to the operator. The BBA is concerned that this approach of publication by default could be onerous for PSPs and is not in line with the usual FCA practice, where the BBA understands that publication of the details of an injunction might only occur in extreme cases. The BBA asked for our approach to be amended in line with FCA practice.

Our response and changes to the guidance

- 1.35** On the BBA's first point, we note that our guidance already says that we expect to give recipients of information requests advance notice whenever practicable, so that they can manage their resources accordingly (paragraph 7.6 of our guidance). We do not think we need to add anything more.
- 1.36** On the BBA's second point, we note that the FCA's practice is the subject of a different regulation. We do not consider that we should amend our guidance. Our normal practice will be to publish details of the non-compliance and the measures we have taken as well as the penalty imposed.

Other comments

- 1.37** Bacs pointed out that there is no requirement for designated alternative switching schemes to be adapted to enable switching between foreign currency payment accounts, and that there is no requirement for the operator of a designated alternative switching scheme to provide such a service. The PARs¹¹ require a PSP to offer a switching service between payment accounts that are (a) denominated in the same currency and (b) opened or held with a PSP located in UK. We understand

¹¹ PARs Part 3, Regulation 14(1).

from this that PSPs must offer to switch between accounts in the same currency – not necessarily just sterling to sterling, but also euro to euro and Thai baht to Thai baht, for example – as long as they are payment accounts with a PSP located in the UK. However, a designated switching scheme does not have to adapt its switching service to offer switching services between payment accounts denominated in all currencies. It could, for example, offer switching only between payment accounts denominated in sterling. If this is the case, PSPs will need to ensure that other arrangements are in place in order to fulfil their duty to offer a switching service for accounts denominated in the same currency where the currency concerned is not sterling.

- 1.38** In its response, C&C said it is currently building a new Image Clearing System (ICS) to accommodate the current switching service. This will enable cheques drawn on (and credits to the credit of) switched accounts to be redirected centrally to the new bank within the same timescales. It added that there is a possibility that if there was more than one switching scheme, there could be a conflict in switching information provided to ICS and any PSP. C&C also said switching is important for customers and helps other regulatory initiatives such as ring fencing. We note C&C's comments, but we do not think changes are required to the guidance.
- 1.39** HSBC said that it notes the definition of consumer in the glossary of our guidance but that when the term consumer is featured throughout the guidance, it would like to ensure that the definition is broad and not just limited to personal customers. The definition in our glossary is the definition set out in the PARs, so the same definition should apply in all cases in our guidance.¹²

Allocation and collection of PSR fees under the PARs

- 1.40** In the same consultation we also sought stakeholders' view on our proposals for regulatory fees for the PARs, and consulted on the allocation of our regulatory fees for our PARs activities for fee year 2016/17. Respondents were supportive of our fees proposals. Respondents only had one comment, which we refer to and provide our view below. We have decided to implement our PARs fees proposals as set out in our March consultation paper CP16/1.

Respondents' comments

- 1.41** Bacs and the BBA noted that since we intend to review the fees charged annually, we should provide as much advance notice of changes as possible – preferably before the end of the calendar year preceding a fee year.

Our response and changes to the guidance

- 1.42** We acknowledge this timing concern. We anticipate that the annual fee in subsequent years will be lower, as we will have recovered the set-up costs in the first annual fee. However, under certain circumstances (for example, where we have to start an investigation) the annual fee may increase, as any costs would be part of our ongoing annual monitoring costs and would need to be recovered. The PARs give us the power to charge an annual fee to the operator of an alternative switching scheme. The annual fee must not exceed the cost we incur in exercising our functions under the PARs in relation to the switching scheme during the relevant 12-month period. As explained in our draft guidance, where our costs vary significantly from estimates at the time of the invoice, we will adjust subsequent annual fees as necessary to ensure our costs are properly reflected in compliance with the PARs.
- 1.43** It would not be practical to have final cost estimates as early as the end of the previous calendar year as our budget is usually finalised by March. However, if we expect the annual fee figure to

¹² Consumer is defined as a natural person who is acting for purposes which are outside his trade, business, craft or profession (PARs Part 1, paragraph 2).

change materially from the previous fee year, we will aim to give notice of this as early as reasonably practicable – particularly when we expect the fee to increase.

1.44 We have updated our guidance to clarify our intention to provide notice of material changes to the annual fee to relevant operators as early as reasonably practicable.

1.45 Our changes are reflected in paragraphs 6.10 and 6.11 of the guidance.

Estimate of PARs fees for fee year 2016/17

1.46 As set out above, all respondents considered our estimates for our activities for the fee year 2016/17 relating to our functions under the PARs to be reasonable. These will be as follows:

Application fee:

1.47 Each operator of an alternative switching scheme which applies for designation will be required to pay a one-off application fee to reflect the costs of assessing whether to designate the scheme. This will be £5,000 for fee year 2016/17.

1.48 As we set out in our consultation paper CP16/1, the applicant should pay the application fee at the time it submits its application. If an applicant does not pay the application fee, the PARs enable us to treat the application as not having been made.¹³

Annual fee:

1.49 Each operator of a designated switching scheme will pay a first annual fee covering the cost of our functions under the PARs in the 12 month period following the designation of that scheme. For fee year 2016/17 this will be £12,000 plus set up costs, as set out below.

1.50 Where necessary, to ensure compliance with the PARs, we will adjust subsequent annual fees to address any significant difference between the last annual fee paid and our actual costs.

1.51 Under the PARs, the first annual fee is to be paid 'within 12 months' of a designation certificate being issued.¹⁴ Subsequent annual fees must be paid before each anniversary of the designation certificate being issued.¹⁵

1.52 For the first annual fee, we will invoice operators within four weeks of issuing the designation certificate. The operator will be required to pay the invoice in full within 30 days of the date of the invoice.

1.53 In subsequent years, at least two months before each anniversary of issuing the designation certificate, we will issue an invoice for the annual fee for the subsequent fee year. The operator of a designated scheme must pay the annual fee by the due date, which will be before the designation anniversary.

1.54 If an operator of a designated switching scheme does not pay the total amount of its annual fee before the end of the date on which it is due, we will seek to recover it as a debt, plus any additional costs incurred in relation to the late payment of the annual fee.

Set-up costs:

1.55 In addition, as set out in our consultation, for fee year 2016/17 we have a one-off total set up cost of £6,000 in relation to our PARs functions. We will recover this entirely in 2016/17 from schemes

¹³ PARs Schedule 4, paragraph 4 (3).

¹⁴ PARs Schedule 4, paragraph 5 (a).

¹⁵ PARs Schedule 4, paragraph 5 (b).

designated in fee year 2016/17, adding the set-up cost to the £12,000 first annual fee. This is consistent with the way we have recovered set-up costs for the PSR generally.

- 1.56** Although we can designate more than one alternative switching scheme, we anticipate that the Bacs-operated CASS may be the only scheme applying for designation, in the year 2016/17. This would mean that CASS would bear all of our PARs set-up costs.
- 1.57** If other schemes are also designated in the year 2016/17, we will consider the allocation of our set-up costs. Our starting point would be that each operator should bear an equal share of the set-up costs, but we will consider this in light of the relevant circumstances. If our set-up costs have already been paid in full by one operator by the time another scheme applies for designation, we will consider how best to address the situation. For example, we may give any operators that have already paid the setup costs an appropriate credit against their second year annual fee.
- 1.58** For the set-up costs, we will invoice operators at the same time we invoice the annual fee for 2016/17. As set out in paragraph 1.52, this will be within four weeks of our issuing the designation certificate. The operator will be required to pay these invoices in full within 30 days of the date of the invoice.

Next steps

- 1.59** Operators that want an alternative switching scheme to be designated under the PARs by 18 September 2016 will have to compile and submit their applications to us by 10 June 2016. Applications should be compiled in line with the requirements set out in the guidance.
- 1.60** We will review any such applications received by 10 June and issue designation decisions before 18 September 2016. If we do not think we can process an application in time to provide a decision by 18 September 2016, we will tell the applicant as early as practicable, explaining the reasons.
- 1.61** We note that applicants will have to pay the one-off application fee as set out in paragraph 1.47 at the time of their application. In the four weeks after we issue the designation certificates in September 2016, we will invoice the operators of designated switching schemes for the first annual fee. For 2016/17 this will include the set-up fee as set out in paragraph 1.55. The operators will be required to pay these invoices in full within 30 days of the date of the invoice.
- 1.62** For information about paying the one-off application fee, or if you have any questions about the application process, please email us at PARsimplementation@PSR.org.uk.

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