

Policy statement

The final framework for reviewing generally applicable requirements

Response to consultation
CP23/11 and final decision

April 2024

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1 Executive summary

We recently carried out a consultation (CP23/11) with stakeholders on how we review our generally applicable requirements.

All respondents broadly agreed with our proposals. Some also suggested further enhancements.

We will proceed with our proposals but adopt some of these further suggestions.

New legislation requires us to publish a 'statement of policy' on keeping under review our generally applicable requirements. We publish this review framework at the end of this document which should be considered our final statement of policy.

Generally applicable requirements

1.1 The Financial Services (Banking Reform) Act (FSBRA) 2013 gives us powers to issue 'generally applicable requirements' to regulate payment systems that the Treasury designates. This means we can issue:

- general directions to participants in payment systems
- generally imposed requirements on operators about system rules

1.2 The Financial Services and Markets Act (FSMA) 2023 amended FSBRA so we must also:

- keep under review any generally applicable requirements
- publish a 'statement of policy' about our review

Our consultation

1.3 We consulted on a draft review framework (CP23/11) from 7 November 2023 to 22 December 2023. We asked stakeholders for feedback, in particular on these aspects:

1. our proposed approach to keeping our generally applicable requirements under review
2. the indicators we identified and any others they think we should include
3. prioritisation factors we propose for deciding whether to conduct a review
4. our proposals on how stakeholders can make representations and how we deal with them
5. views on our review methods

Responses and decisions

- 1.4** Five stakeholders (including large banks and a trade body) responded and all broadly agreed with our proposals. Respondents also suggested enhancements:
- a fallback period after which a review should be conducted
 - additional indicators
 - points about the transparency of any request for a review
 - points about how we may conduct a review
- 1.5** Having considered all responses, we will proceed with our proposals. But we will also incorporate in our framework some of the additional suggestions, to:
- commit us also to consider a review of a generally applicable requirement if we have not reviewed it in the last five years
 - add cost of compliance to the list of indicators
 - make explicit that our executive will be made aware of any stakeholder requests for review
 - include an option for an independent third-party review
- 1.6** Some respondents asked for specific directions to be included in this framework in addition to general directions. FSMA 2023 only requires our policy to apply to generally applicable requirements, but we will apply the same principles to specific directions where appropriate.
- 1.7** Annex 1 is our final policy framework for monitoring our generally applicable requirements. This is the 'statement of policy' that FSMA 2023 requires us to publish. It is effective from the date of publication of this document.

2 Introduction

This chapter provides a background on our new requirements to review our generally applicable requirements, what we consulted on and the questions we asked stakeholders to comment on.

It also provides an overview of the structure of this publication.

Background

- 2.1** We have powers under Part 5 of the Financial Services (Banking Reform) Act (FSBRA) 2013 to regulate payment systems designated by the Treasury. These include the power to issue:
- general directions to participants in payment systems
 - generally imposed requirements on operators about system rules
- 2.2** Together, FSBRA calls these ‘generally applicable requirements’.
- 2.3** We use these powers to advance our statutory objectives. We currently have four general directions in place under FSBRA¹ and no generally imposed requirements.
- 2.4** The Financial Services and Markets Act (FSMA) 2023 added new sections to FSBRA, with new requirements for us:
- Section 104B requires us to ‘keep under review generally any generally applicable requirements’.
 - Section 104C requires us to ‘prepare and publish a statement of [our] policy with respect to [our] review of requirements under section 104B’.
- 2.5** We already regularly review our general and specific directions, and include expiry dates where appropriate, to ensure that our regulatory requirements remain up to date. We last conducted a full review of our general directions in 2020. At that time, we updated the directions we had put in place in March 2015 (our ‘day one’ directions) to make sure they were still necessary and remained fit for purpose.
- 2.6** Our reviews of our generally applicable requirements may result in a range of outcomes. We may:
- amend or revoke requirements
 - introduce new or different requirements
 - make no changes

¹ We have five general directions in all, but we issued General Direction 3 under the Payment Services Regulations 2017, not FSBRA. You can see our general directions [on our website](#).

2.7 We published a draft review framework, as our statement of policy for consultation, which set out:

- how we will identify when we should review generally applicable requirements
- how stakeholders can request a review or respond to our relevant consultations
- how we would prioritise a review
- the methods we may use

Consultation

2.8 We consulted on our draft review framework and invited views from stakeholders, including those impacted by the regulations and obligations we enforce. We asked stakeholders to give their views on any aspects of the framework, and in particular on the following questions:

Question 1: Do you agree with our proposed approach to keeping our generally applicable requirements under review?

Question 2: Do you agree with indicators we have identified? Are there any other indicators you consider worth including? Please explain why.

Question 3: Do you have any views on the prioritisation factors we propose to use to decide whether to conduct a review?

Question 4: Do you agree with our proposals on how stakeholders can make representations, and how we deal with them?

Question 5: Do you have any views on our review methods?

2.9 The consultation ran from 7 November 2023 to 22 December 2023. Five stakeholders, including large banks and a trade body, sent us responses.

The structure of this publication

2.10 The rest of this document is structured as follows:

- **Chapter 3** details the responses received to CP23/11 and our views.
- **Chapter 4** outlines our decisions on changes to the draft review framework.
- **Annex 1** contains our final review framework.

3 Responses to our consultation and our views

Respondents provided feedback on all five of our questions and gave us additional views. All respondents broadly agreed with our proposals, but respondents suggested some additions that they believe would enhance our framework. These covered:

- proposals for a fallback period after which we should review a generally applicable requirement
- additional examples of indicators we may consider
- points about the transparency of any request for a review
- points about how we may conduct reviews, including suggestions on process

In reaching our final decision, we have considered all the responses. We have decided to proceed with the proposals outlined in CP23/11 but also to incorporate some of the additional suggestions. The final policy includes changes and additions that will:

- also commit us to consider a review of a generally applicable requirement if it has not been subject to a review in the last five years
 - add cost of compliance to the list of examples of indicators
 - make explicit that our executive will be made aware of any requests for review from stakeholders
 - add an option for an independent third party to conduct a review
-

Question 1: Do you agree with our proposed approach?

Respondents' views

- 3.1** All respondents responded to this question, and all supported our proposed approach, subject to a number of specific comments. Several respondents said we should periodically check the indicators we use to assess the need for a review.
- 3.2** As an additional route for a review, respondents also suggested that after a pre-determined number of years, we should automatically review. Most respondents suggested five years and one respondent suggested three years. One respondent further suggested a review 12 months after we have implemented a requirement.

Our view

- 3.3** We welcome the support for our proposed approach. We keep our general directions under general review to see whether they continue to deliver the outcomes we seek. In 2020, we reviewed our 'day one' general directions (which we put in place in March 2015) to see if they are still fit for purpose.
- 3.4** In deciding whether to review a generally applicable requirement, we will take into account several indicators, as outlined. We expect that stakeholder representations and our supervision and compliance monitoring work will identify when a requirement is out of date.
- 3.5** However, we recognise the benefit of an additional route for review of a generally applicable requirement. This would commit us to consider the case for reviewing the requirement if we have not done so in the last five years. To decide if there is a case for a review under this route, we will still consider a combination of indicators – for example, stakeholder representations, change in economic landscape and internal activities.

Question 2: Do you agree with the indicators we have identified?

Respondents' views

- 3.6** All five respondents broadly agreed with the indicators we have identified. Some respondents asked us to include wider regulatory burdens as indicators – including from the PSR and other regulators – as well as the overall regulatory road map.
- 3.7** One respondent said our framework should specify metrics we should assess against a benchmark for triggering a review. They said these metrics should be consistent with the Financial Conduct Authority's (FCA) approach to reviewing requirements. This respondent also suggested we should include:
- costs of compliance
 - ongoing costs associated with the review
 - a comparison of actual costs with those that a cost benefit analysis (CBA) predicted for the requirement

Our view

- 3.8** We welcome agreement from respondents on the indicators we have identified. The framework list of indicators that we expect to use to assess the need for a review is not exhaustive and should be interpreted broadly. However, we recognise that stakeholders might benefit from further examples, so we will add cost of compliance to the list.
- 3.9** Each requirement is likely to be different, so we will need to consider a range of factors to look for indicators that it is no longer up to date or relevant. To allow for indicators appropriate to each requirement, the framework must be flexible and broad. Specific metrics would make the framework narrower and more inflexible, so we will not set any.

- 3.10** We do not agree that our use of indicators needs to match the FCA's. The FCA's rule books are much larger and more complex than our general directions, and its statement of policy is not directly comparable to our review framework.

Question 3: Do you have any views on our prioritisation factors?

Respondents' views

- 3.11** All respondents agreed with our proposed prioritisation factors for deciding whether to conduct a review. Some respondents suggested that we should take into account the regulatory roadmap and its initiatives, particularly the focus on UK growth. One respondent suggested that prioritisation factors should also take into account whether a review has been carried out in the last 12 months.

Our view

- 3.12** We welcome the agreement on our prioritisation factors. The range of factors set out in the draft framework already include FSBRA regulatory principles – including reference to growth objectives (post-FSMA implementation) – so we do not propose to make any amendments.
- 3.13** Whether a review has been carried out in the recent past (that is, the last 12 months) will form part of the range of factors that we will consider as indicators of whether a requirement is still achieving its intended purpose, so we will not need to address it again when considering prioritisation factors.

Question 4: Do you agree with our proposals on how stakeholders can make representations?

Respondents' views

- 3.14** All respondents agreed with our proposals on how stakeholders can make representations and how we can deal with them. Some respondents asked for further detail on the process, including on governance. Specifically, they wanted greater transparency on how our executive will learn that a stakeholder has requested a review. Some said we should publish every representation about a review alongside our response.
- 3.15** One respondent suggested we should carry out a review within a defined time and expedite it if there are adverse unintended consequences or other harms. Another respondent suggested that we should invite views from stakeholders – in other words, have structured stakeholder engagement in reviews, as the Competition and Markets Authority (CMA) does.

Our view

- 3.16** We welcome the agreement on our proposals. Our proposed framework already explained how stakeholders can approach us with a request to review. Any representation made to us will be subject to our internal governance, as the framework will state. We do not propose blanket publication of every representation alongside our response. Some representations may be confidential, and we do not want a prospect of publication to deter representations.
- 3.17** Each review should be tailored to the requirement in question, so we do not propose fixed timescales for reviews. Any PSR review is likely to involve a consultation process, giving stakeholders the opportunity to comment. As this is our existing approach, we see no need to include it in our framework.

Question 5: Do you have any views on our review methods?

Respondents' views

- 3.18** All but one respondent provided views on our review methods. Two respondents suggested that we should have an option to use an independent third party to review. Respondents said we should:
- set out our capacity for conducting reviews
 - give stakeholders an indication of likely time and effort
 - include costs of compliance and a mandatory CBA

Our view

- 3.19** We welcome these views from stakeholders and note that they were positive. We have decided to include an option for an independent third party to conduct a review, where appropriate, though we do not expect this to be our usual approach. Only our executive can decide on the outcome of a review, so we will limit the scope of independent reviews to fact finding. This is in line with our existing practice where an independent review will provide for an objective and transparent process for sensitive issues. For example, we have used independent reviews in our work on authorised push payment (APP) scams.
- 3.20** We said we may use CBAs as part of our analysis of evidence gathered for reviews. We will continue to do so, subject to our CBA approach as outlined in our published CBA framework.
- 3.21** When we carry out a review, we will publicly set out the approach we will take, including what criteria we will use and how we will make our decision. As well as making clear to stakeholders how we will approach the review, this will give us flexibility to tailor it to the specific requirement.

Separate comments

Additional respondents' views

- 3.22** Our framework does not cover specific directions, because they are outside the scope of our legal requirement under FSMA 2023. However, respondents wanted to understand how our approach differs between general directions and specific directions, and specifically the process for reviewing specific directions.
- 3.23** One respondent suggested that we should review our requirements for APP fraud reimbursement 12 months after their implementation, in line with the Future of Payments Review recommendation.² The respondent felt this would be an important opportunity to demonstrate the effectiveness and analytical rigour of our review process.

Our view

- 3.24** Our consultation stated that specific directions have their own review processes – for example, built-in review periods and sunset clauses. However, we will apply the principles of our general directions policy to specific directions, where appropriate. For example, a specific direction may have no expiry date or mechanism for review, or we may not have thought an earlier review appropriate. In such cases, we are likely to consider reviewing the specific direction after five years.

² www.gov.uk/government/publications/future-of-payments-review-2023

4 Our decision

We have decided to proceed with the proposals outlined in CP23/11 but to incorporate some of the additional suggestions we have outlined above.

Final review framework

- 4.1** In reaching our final decision, we have considered all the responses provided to us on consultation paper CP23/11. We have decided to proceed with the proposals we outlined there, and to incorporate within the framework some suggestions based on the feedback from respondents.
- 4.2** These changes and additions to the framework will:
- commit us to consider a review of a generally applicable requirement if it has not been subject to a review in the last five years (providing an additional route for review)
 - add cost of compliance as a further example in the non-exhaustive list of indicators
 - make explicit that our executive will be made aware of any stakeholder requests for review
 - include an option for an independent third party to conduct a review where appropriate
- 4.3** The framework as published in Annex 1 of this document is now our final 'statement of policy' for keeping under review generally our generally applicable requirements. It comes into effect from the date this document is published.

Annex 1

The review framework

The framework as published here in Annex 1 of this document fulfils our legal obligation to publish a statement of policy for keeping under review generally our generally applicable requirements.

Background and purpose of the review framework

- 1.1** The Payment Systems Regulator (PSR) has powers under Part 5 of the Financial Services (Banking Reform) Act 2013 (FSBRA) to regulate payment systems designated by the Treasury. These include the power to issue:
- general directions to participants in payment systems
 - generally imposed requirements relating to operators about system rules
- 1.2** Together, FSBRA calls these ‘generally applicable requirements’.³
- 1.3** We use these powers to advance our statutory objectives. We currently have four general directions in place under FSBRA,⁴ and no generally imposed requirements.
- 1.4** Under the Financial Services (Banking Reform) Act 2013 (FSBRA):
- section 104B requires us to ‘keep under review generally any generally applicable requirements’
 - section 104C requires us to ‘prepare and publish a statement of [our] policy with respect to [our] review of requirements under section 104B’
- We already regularly review our general and specific directions, and include expiry dates where appropriate, to ensure that our regulatory requirements remain up to date.
- 1.5** To meet the requirement in section 104C, this document contains our statement of policy on keeping our requirements under review.
- 1.6** Our reviews of our generally applicable requirements may result in a range of outcomes. We may amend or revoke requirements, introduce new or different requirements, or make no changes.

³ See section 104(1) of FSBRA.

⁴ We have five general directions in all, but we issued General Direction 3 under the Payment Services Regulations 2017, not FSBRA. You can see our general directions on [our website](#).

The review framework

1.7 We structure our review framework as follows:

1. How we will identify the need to review a particular requirement, including indicators and evidence we will use
2. How stakeholders can request a review
3. The prioritisation criteria we will apply to determine whether to conduct a review
4. The review methods we may use

Identifying the potential need for a review

1.8 We may consider reviewing a generally applicable requirement in any of three situations:⁵

- at any time through our own initiative
- at any time through representations from stakeholders (parties that are subject to the requirement, or other interested parties)
- if the requirement has not been reviewed in the previous five years

1.9 We will look for indicators that a requirement is no longer up-to-date or relevant. If we do not identify any indicators, we will not review the requirement.

1.10 Indicators may include (but are not limited to):

- changes to legislation or other legal obligations
- changes in our remit or strategy
- material changes in facts or circumstances that suggest the requirement will no longer have the effect we intended, or is no longer appropriate

Such changes may be in market characteristics, economic landscape, compliance costs or commercial arrangements, for example.

1.11 To evaluate whether one or more indicators are present, we may use:

- information we have gained through our work (such as market reviews or thematic reviews)
- our experience of enforcing, monitoring, supervising and applying the requirement, including evidence of non-compliance
- information from, or actions agreed with, other regulators or governmental bodies, including the Financial Conduct Authority, the Bank of England (including the Prudential Regulation Authority)⁶ and the Treasury
- stakeholder information and representations

5 These are the situations relevant under this framework. We would also review a generally applicable requirement if the Treasury requires us to do so under section 104D of FSBRA.

6 Those parties covered by the cross-authority memorandum of understanding (MoU).

In this last category, we include evidence from stakeholders, complaints we have received, information and representations from a relevant panel (including the PSR Panel),⁷ or external academic research and publications.

- 1.12** We will look for evidence that a requirement has become less effective, or that the circumstances justifying it have changed.

How stakeholders can request a review

- 1.13** Stakeholders may make representations asking us to review a generally applicable requirement. You can email us at rules.review@psr.org.uk or write to us at:

Payment Systems Regulator
12 Endeavour Square
Stratford
London E20 1JN

Tell us why you think we should conduct a review, providing evidence to support your view. Relevant panels can also make representations in this way, or through their usual channels of communication with us.

- 1.14** Please head any correspondence as 'Request for review of direction', and clearly mark any confidential information within your submission. We will try to publish information relating to a request for a review. We will not publish any confidential information or any request that the requester has asked not to be published.⁸
- 1.15** We will initially pass representations to the most relevant PSR team to assess whether there is a case for a review. The PSR executive will be made aware of requests for reviews.
- 1.16** We may decide not to review the relevant requirement. In these cases, we will tell those who made the representations our decision, and how to complain if they disagree with it.

⁷ In addition to the PSR Panel, this refers to the panels mentioned in sections 1RA(8) and 2NA(8) of the Financial Services and Markets Act 2000.

⁸ We are required to comply with freedom of information obligations, which may result in us disclosing a request. If we are considering doing so, we will endeavour to consult the requester.

Prioritisation: deciding whether to conduct a review

- 1.17** Once we have identified indicators that a review may be appropriate, we will decide whether to prioritise that review. We will take account of a range of factors, including (but not limited to):
- our statutory objectives (sections 50, 51 and 52 of FSBRA)
 - the FSBRA regulatory principles (section 53)
 - the PSR Strategy⁹
 - our written guidance, including our administrative priority framework¹⁰
 - public law principles
 - the impact on those who are subject to the requirement or on others whom it affects
- 1.18** Our statutory objectives are:
- to promote competition in payment systems
 - to promote innovation in payment systems
 - to ensure that the interests of those who use, or are likely to use, payment systems are taken into account and promoted
- 1.19** The FSBRA regulatory principles are, in summary:
- the need to use PSR resources efficiently and economically
 - a burden or restrictions should be proportionate
 - sustainable growth is desirable in the medium or long term (including consistency with net zero and other environmental targets)¹¹
 - those who use services should take responsibility for their decisions
 - compliance is the responsibility of senior managers of stakeholders that are subject to our requirements
 - where appropriate, we should exercise our functions in a way that recognises differences in the nature and objectives of different businesses
 - where appropriate, we should publish information relating to persons on whom we have imposed requirements on (or we should oblige them to do so themselves)
 - we should exercise our functions as transparently as possible

9 We published the [PSR Strategy](#) in January 2022, setting out the strategic outcomes we want to see and our short- and long-term priorities.

10 Our administrative priority framework is available on [our website](#).

11 FSMA 2023 (Schedule 7, paragraph 3) inserted into FSBRA section 53 the reference to the net zero target and other environmental targets. At the date of publication, the amendment has only been commenced so far as it relates to net zero.

1.20 Our administrative priority framework allows us to use our resources in the most efficient and effective manner to further our statutory objectives, functions and duties.

1.21 Whether we decide to take a review forward will depend on the specific circumstances, including any initial evidence to support it. If we decide to review any requirements, we may publicise this at an appropriate time. We will publicise any outcomes.

Our review methods

1.22 If we decide to conduct a review, we will decide on the appropriate methods and timeframe on a case-by-case basis.

1.23 We may use a wide range of methods for reviewing a generally applicable requirement. The review will focus on assessing the evidential basis for change. It will look at our original rationale for the requirement, analyse how effective it has been, and assess evidence that may indicate what a change will achieve.

1.24 To gather further evidence, we may seek stakeholder views, issue data requests, or obtain information from public or private sources. To analyse the evidence and assess the impact a requirement has had, we may use:

- cost benefit analyses¹²
- technical analysis (for example, qualitative or quantitative analysis)
- legal analysis
- any other appropriate methods

1.25 We may decide to carry out the review ourselves, or we may choose an independent third party to carry out the review. If we opt for an independent review, we will set out the terms of the review at the beginning, and we will ultimately decide the outcome of the review.

1.26 Where appropriate, we will publish the criteria for a review, along with other relevant details.

1.27 Following the review, we may revoke or amend the requirement, introduce new or different regulatory requirements, or decide to make no changes.

¹² Subject to our CBAs framework, published separately.

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