

Consultation paper

Generally applicable  
requirements:  
draft review framework

November 2023

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We welcome your views on this consultation. If you would like to provide comments, please send these to us by **5pm on 22 December 2023**.

You can email your comments to [rulereviewframework@psr.org.uk](mailto:rulereviewframework@psr.org.uk) or write to us at:

Regulatory Reform Team, Policy Division  
Payment Systems Regulator  
12 Endeavour Square  
London E20 1JN

We will consider your comments when preparing our response to this consultation.

We will make all non-confidential responses to this consultation available for public inspection.

We will not regard a standard confidentiality statement in an email message as a request for non-disclosure. If you want to claim commercial confidentiality over specific items in your response, you must identify those specific items which you claim to be commercially confidential. We may nonetheless be required to disclose all responses which include information marked as confidential in order to meet legal obligations, in particular if we are asked to disclose a confidential response under the Freedom of Information Act 2000. We will endeavour to consult you if we receive such a request. Any decision we make not to disclose a response can be reviewed by the Information Commissioner and the Information Rights Tribunal.

You can download this consultation paper from our website:

[www.psr.org.uk/cp23-11-generally-applicable-requirements/](http://www.psr.org.uk/cp23-11-generally-applicable-requirements/)

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# 1 Introduction

**1.1** We are consulting on the way we review our general directions and generally imposed requirements, following recent legislation.

**1.2** 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 system rules

Together, FSBRA calls these 'generally applicable requirements'.<sup>1</sup>

**1.3** We use these powers to advance our statutory objectives. We currently have four general directions in place under FSBRA<sup>2</sup>, and no generally imposed requirements.

**1.4** The Financial Services and Markets Act 2023 (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 'publish a statement of [our] policy with respect to [our] review of requirements under section 104B'.

**1.5** We welcome these requirements. 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 when we updated the directions we put in place in March 2015 (our 'day one' directions) to make sure they were still required and remained fit for purpose.<sup>3</sup>

**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.

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1 See section 104(1) of FSBRA.

2 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 here: [www.psr.org.uk/how-we-regulate/regulatory-framework/general-directions/](https://www.psr.org.uk/how-we-regulate/regulatory-framework/general-directions/)

3 For further information see: [www.psr.org.uk/publications/policy-statements/rp20-1-our-final-revised-day-one-directions-and-response-to-consultation/](https://www.psr.org.uk/publications/policy-statements/rp20-1-our-final-revised-day-one-directions-and-response-to-consultation/)

## This consultation

- 1.7** To meet the requirement in section 104C to publish our statement of policy on keeping our requirements under review, we propose to publish a review framework explaining:
- 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
- 1.8** The process for conducting a review is outside the scope of section 104C, so we have not covered it in this review framework.
- 1.9** We are asking for views on all aspects of the draft framework.
- 1.10** The rest of this consultation paper is set out as follows:
- **Chapter 2** sets out the draft review framework.
  - **Chapter 3** sets out the next steps, including how to respond to this consultation, and a list of the consultation questions.

## 2 The draft review framework

**2.1** In this chapter we set out our approach to our framework for keeping under review generally our generally applicable requirements, as required by section 104C of FSBRA.

**2.2** It is structured in three parts:

- How we will identify the potential need to review a particular requirement, including indicators and evidence we will use.
- The prioritisation criteria we will apply to determine whether to conduct a review.
- The review methods we may use.

### Identifying the potential need for a review

**2.3** There are two routes for us to consider reviewing a generally applicable requirement:

- Through our own initiative.
- Through representations from stakeholders. These may be parties that are subject to the requirement, or other interested parties.<sup>4</sup>

**2.4** We will consider a range of factors to 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.

**2.5** Indicators may include (but are not limited to):

- material changes in facts or circumstances that suggest the requirement will no longer have the effect we intended, or is no longer appropriate (for example, changes in the market characteristics, economic landscape or commercial arrangements)
- changes to legislation or other legal obligations
- changes in our remit or strategy

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<sup>4</sup> These are the routes relevant to this framework. We would also review a generally applicable requirement if the Treasury requires us to under section 104D of FSBRA.

- 2.6** 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) and the Treasury
  - stakeholder information and representations (for example, evidence from stakeholders, complaints we have received, information and representations from a relevant panel<sup>5</sup> (including the PSR Panel), or external academic research and publications)
- 2.7** 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

- 2.8** Stakeholders may make representations asking us to review a generally applicable requirement. You can email us at [contactus@psr.org.uk](mailto:contactus@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 do 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.

- 2.9** Please mark any correspondence with 'Request for review of direction' in the heading, and clearly mark any confidential information within your submission. We are unlikely to make a request for a review public unless we consider there to be a particular public interest reason to publish.<sup>6</sup>
- 2.10** We will initially pass representations to the most relevant PSR team to assess whether there is a case for a review.
- 2.11** 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.

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5 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.

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

## Prioritisation: deciding whether to conduct a review

**2.12** 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 Strategy<sup>7</sup>
- our written guidance, including our administrative priority framework<sup>8</sup>
- public law principles
- the impact on those subject to the requirement or others affected by it

**2.13** Our **statutory objectives** are:

- to promote competition in payment systems
- to promote innovation in payment systems
- to ensure the interests of those that use, or are likely to use, payment systems are taken into account and promoted

**2.14** The FSBRA **regulatory principles** are, in summary:

- the need to use PSR resources efficiently and economically
- the principle that a burden or restrictions should be proportionate
- the desirability of sustainable growth in the medium or long term (including consistency with net zero and other environmental targets)<sup>9</sup>
- the general principle that those who use services should take responsibility for their decisions
- the responsibilities of senior managers of those subject to requirements for compliance
- where appropriate, the desirability of the PSR exercising its functions in a way that recognises differences in the nature and objectives of different businesses
- where appropriate, the desirability of the PSR publishing information relating to persons we have imposed requirements on (or requiring those persons to do so)
- the principle that the PSR should exercise its functions as transparently as possible

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7 We published the PSR Strategy in January 2022, setting out the strategic outcomes we want to see and our short- and long-term priorities: <https://www.psr.org.uk/publications/psr-strategy-documents/the-psr-strategy/>

8 [www.psr.org.uk/publications/general/administrative-priority-framework/](https://www.psr.org.uk/publications/general/administrative-priority-framework/)

9 The reference to the net zero target and other environmental targets was inserted into section 53 by paragraph 3 of Schedule 7 to the Financial Services and Markets Act 2023. At the date of publication of this consultation, the amendment has only been commenced so far as it relates to net zero.



**2.15** 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.

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

## Our review methods

**2.17** If we decide to conduct a review, we will decide on the appropriate methods and timeframe.

**2.18** There is a wide range of methods we may use when carrying out a review of a generally applicable requirement. We will focus on assessing the evidential basis for change. We 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.

**2.19** 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 analyses (CBAs)<sup>10</sup>
- technical analysis (for example, qualitative and/or quantitative analysis)
- legal analysis, or
- any other appropriate methods

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

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<sup>10</sup> We will publish a statement of policy on our use of CBAs in early 2024. This will set out in more detail how and when we use CBAs to inform our policy development.

## 3 Next steps

- 3.1** We are now consulting on our proposed review framework.
- 3.2** This consultation closes on Friday 22 December 2023. Please send any comments or enquiries to [rulereviewframework@psr.org.uk](mailto:rulereviewframework@psr.org.uk)
- 3.3** After assessing the responses to the consultation, we will decide the final wording of our framework, which will be our final statement of policy as required by section 104C of FSBRA. We aim to publish this in early 2024.

### Consultation questions

We welcome views from all interested parties on our proposed review framework for generally applicable requirements. Please provide responses on any aspects and, in particular, the following questions:

- Q1: Do you agree with our proposed approach to keeping our generally applicable requirements under review?**
- Q2: Do you agree with the indicators we have identified? Are there any other indicators you consider worth including? Please explain why.**
- Q3: Do you have any views on the prioritisation factors we propose to use to decide whether to conduct a review?**
- Q4: Do you agree with our proposals on how stakeholders can make representations, and how we will deal with them?**
- Q5: Do you have any views on our review methods?**

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© The Payment Systems Regulator Limited 2023

12 Endeavour Square

London E20 1JN

Telephone: 0300 456 3677

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