

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



We are asking for comments on this consultation paper by 5.00pm on 12 April 2016.

You can send your comments and responses to our consultation questions by emailing us at PSRconsultations@psr.org.uk

If you email us, we would be grateful if you could provide your response in a Word document (rather than, or in addition to, providing your response as a PDF).

You may respond in writing to the address below (although we ask for respondents to provide their responses electronically wherever possible).

Payment Systems Regulator
PARs consultation response team
25 The North Colonnade
Canary Wharf

London E14 5HS

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. Stakeholders who wish to claim commercial confidentiality over specific items in their response should identify those specific items which they 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 in handling such a request. Any decision we make not to disclose a response is reviewable by the Information Commissioner and the Information Rights Tribunal.

You can download this consultation paper from our website: <http://www.psr.org.uk>

Contents

| | | |
|---|---------------------------------------|---|
| 1 | The Payment Accounts Regulations 2015 | 2 |
|---|---------------------------------------|---|

1. The Payment Accounts Regulations 2015

- The Treasury¹ has designated the Payment Systems Regulator (PSR) and the Financial Conduct Authority (FCA) as the competent authorities for implementing, monitoring and enforcing the Payment Accounts Regulations 2015 (PARs) in the UK.
- FCA has been designated as the competent authority under the PARs responsible for ensuring that PSPs offer a switching service to their customers.
- Our role relates to the designation and monitoring of what the UK's Payment Accounts Regulations 2015 (the PARs) call 'alternative arrangements for switching'.
- We are consulting on draft guidance which explains:
 - 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
- Through this consultation we also set out our proposals in respect of regulatory fees relating to PARs.
- We welcome responses to our consultation questions, which we will consider when finalising our approach.

The purpose of this consultation

- 1.1** On 23 July 2014, 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 2014.² The EU Directive has been transposed into UK law through the Payment Accounts Regulations 2015³ (PARs). Not all provisions of the PARs come into force at same time. Those provisions relating to PSR's role will come into force on 18 September 2016.
- 1.2** The PAD sets common regulatory standards across EU Member States that must be met in order to:
- improve the transparency and comparability of current account fees
 - facilitate current account switching
 - ensure access to bank accounts with basic features

¹ Her Majesty's Treasury

² 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. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2014_257_R_0008

³ The Payment Accounts Regulations 2015 (SI 2015/2038), which implements PAD in the UK, as amended from time to time: http://www.legislation.gov.uk/uksi/2015/2038/pdfs/ukxi_20152038_en.pdf

- 1.3** This includes the introduction of a process for designating switching schemes⁴ which meet certain criteria as ‘alternative arrangements’ for switching.⁵ The PARs distinguish between a switching service offered in line with the requirements in Schedule 3 and a designated alternative switching service. PSPs can choose to provide either or both.
- 1.4** The EU Directive has been transposed into UK law through the Payment Accounts Regulations 2015⁶ (PARs) which come into force on 18 September 2016.
- 1.5** 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. The FCA opened its consultation on its role as competent authority for other aspects of the PARs on 2 March 2016⁷.
- 1.6** The PSR is appointed as the competent authority under the PARs for:
- designating alternative switching schemes; and
 - monitoring and enforcing compliance with the designation criteria, as set out in Part 3 and Schedule 4 of the PARs.
- 1.7** In this consultation we ask stakeholders to give us their views on our approach to implementing the PARs and monitoring compliance with the requirements for alternative switching schemes, as set out in the accompanying draft guidance. We are also seeking views on our proposals in respect of regulatory fees relating to PARs.
- 1.8** We invite stakeholders to comment on our guidance and to respond to our consultation questions by 5.00pm on 12 April 2016.

Draft guidance

- 1.9** The draft guidance we are publishing with this consultation paper explains our proposed approach to designating alternative switching schemes, and our proposed monitoring process and use of enforcement powers.
- 1.10** This 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 monitoring compliance with PARs requirements after we have designated an alternative switching scheme
- 1.11** The draft guidance describes the PSR’s powers and procedures under the PARs (Chapter 7 of the draft guidance), and our approach to applying penalties for PARs non-compliance (Chapter 8 of the draft guidance).

⁴ Under the PARs, ‘switching’ or ‘switching service’ means “upon a consumer’s request, transferring from one PSP 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”, PARs, Regulation 2

⁵ For the purpose of this paper and the draft consultation Guidance we refer to “alternative switching schemes” and “designated alternative switching schemes” interchangeably.

⁶ The Payment Accounts Regulations 2015 (SI 2015/2038), which implements PAD in the UK, as amended from time to time: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/436545/20150618_Payment_Accounts_Regulations_2015_CONSULTATION_DRAFT.pdf

⁷ <https://www.fca.org.uk/static/fca/article-type/consultation%20paper/cp16-07.pdf>

1.12 The draft guidance will be of most interest to the operators of switching schemes who want to be designated as an alternative switching scheme, as well as the payment service providers who might use their services. Consumer organisations and other relevant authorities may also find this draft guidance of interest.

Q1: Do you have any comments on the draft guidance?

Allocation and collection of PSR fees under the PARs

1.13 We are allowed under the PARs to charge fees to fund our activities in relation to the PARs. Fees relating to the funding of the PSR's activities under the PARs will be recovered from operators of alternative switching schemes. The PARs enable the PSR to collect the following types of fee:

- a one-off application fee⁸ to be collected directly from the operator(s) of an account switching scheme which applies to be designated as a PARs compliant alternative switching arrangement
- an annual fee⁹ to be collected from the operator(s) of any switching scheme that has been designated as a PARs compliant alternative switching arrangement. The annual fee reflects the costs of exercising our PARs functions in relation to the designated switching scheme. In year 1 (2016/17), the annual fees would also include the set up costs in relation to our PARs functions.

Application fee

1.14 In line with the requirements of the PARs¹⁰, the application fee we charge will be reflective of the amount of costs we incur or expect to incur in determining whether a designation certificate should be issued. This will therefore include the cost of:

- reviewing the application,
- requesting clarifications or additional information where necessary,
- reviewing any such additional information, and
- issuing the designation certificate.

1.15 If the applicant does not pay the application fee, the PARs enable us to treat the application as not having been made. This means we will not issue a designation certificate.¹¹ We propose to require any applicant to pay the application fee at the time it submits its application. We will not treat an application as having been made until this fee has been paid by the applicant.

Annual fee

1.16 In line with the requirements of the PARs¹², the annual fee will reflect the costs incurred by the PSR in exercising our PARs functions, in relation to the relevant alternative switching arrangement during the relevant 12-month period.

⁸ PARs Schedule 4, paragraph 4

⁹ PARs Schedule 4, paragraph 5

¹⁰ PARs Schedule 4, paragraph 4

¹¹ PARs Schedule 4, paragraph 4 (3)

¹² PARs Schedule 4, paragraph 4

- 1.17** Under the PARs, the first annual fee is to be paid 'within 12 months' of a designation certificate being issued.¹³ Subsequent annual fees must be paid before each anniversary of the designation certificate being issued.¹⁴ Where we think there are significant differences between the fee paid and our costs, we will adjust subsequent annual fees to ensure that our fees do not exceed the relevant costs of exercising our functions under PARs.
- 1.18** As is the case with our Financial Services (Banking Reform) Act (FSBRA) and Interchange Fee Regulation (IFR) fees, we propose that the annual fees are paid in advance, rather than in arrears.
- 1.19** Our proposed approach is to invoice operators for the first annual fee in the four weeks after we issue the designation certificate. The operator will be required to pay these invoices in full within 30 days of the date of the invoice.
- 1.20** In subsequent years, at least two months before each anniversary of issuing the designation certificate, the PSR 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.
- 1.21** 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

- 1.22** For fee year¹⁵ 2016/17 we will have one-off set-up costs in relation to our PARs functions. We propose to recover these set-up costs entirely in 2016/17 and include them in the first annual fee. This is consistent with the way we have recovered set-up costs for the PSR generally.
- 1.23** Although, under the PARs, we can certify more than one alternative switching scheme, we anticipate that, for the year 2016/17, the Bacs-operated Current Account Switch Service (CASS) may be the only scheme applying for designation as a PARs compliant alternative switching scheme. This would mean that CASS would bear all of our PARs set-up costs.
- 1.24** 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 set-up costs an appropriate credit against their second year annual fee.

Estimate of PARs fees for fee year 2016/17

- 1.25** We estimate that the fees for our activities for the fee year 2016/17 relating to our functions under the PARs will be as follows:
- **Application fee:** 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 deciding whether to designate the scheme. This will be £5,000 for fee year 2016/17.
 - **Annual fee:** Each operator of a designated switching scheme will pay a first annual fee covering the cost our functions under the PARs during the twelve months following the designation of that scheme, which for fee year 2016/17 will be £12,000. Where necessary, to ensure compliance

¹³ PARs Schedule 4, paragraph 5 (a)

¹⁴ PAPs Schedule 4, paragraph 5 (b)

¹⁵ 1 April to 31 March inclusive

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

- **Set-up costs:** In addition, for fee year 2016/17, we have one-off total set up costs of £6,000 in relation to our PARs functions. We will recover this from schemes designated in fee year 2016/17, adding the set-up costs to the £12,000 annual fee.

Proposed PARs fees guidance

- 1.26** In the draft guidance we provide further information about collection of fees to supplement the provisions of the PARs.
- 1.27** We intend to review our fees in relation to our PARs functions and duties on an annual basis to make sure they reflect our relevant costs.

Q2: Do you agree with our proposed approach to the implementation of the PARs rules on PSR fees, as set out in the draft PARs fees guidance?

PUB REF: PSR CP16/1

© Payment Systems Regulator 2016
25 The North Colonnade Canary Wharf
London E14 5HS
Website: www.psr.org.uk
All rights reserved