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**Payment Services Regulations:
Review and Call for Evidence**

HMT

January 2023

Response from The Payments Association

Introduction

The Payments Association welcomes the opportunity to contribute to HMT “*Payment Services Regulations: Review and Call for Evidence*”.

The community’s response contained in this paper reflects views expressed by our members and industry experts recommended by them who have been interviewed and who are referenced below. As The Payment Association’s membership includes a wide range of companies from across the payments value chain, and diverse viewpoints across all job roles, this response cannot and does not claim to fully represent the views of all members.

We are grateful to the contributors to this response, which has been drafted by Riccardo Tordera, our Head of Policy & Government Relations. We would also like to express our thanks to HMT for their continuing openness in these discussions. We hope it advances our collective efforts to ensure that the UK’s payments industry continues to be progressive, world-leading and secure, and effective at serving the needs of everyone who pays and gets paid.

With special thanks to:

- Jane Barber, Payments Regulatory & Trade Association Lead, NatWest Group
- Jonathan Bye, Payments Regulatory & Trade Association Lead, NatWest Group
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- Omar Salem, Head of Legal & Regulatory Affairs, Alibra
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Contents

The section numbering below corresponds to the numbering of the 'questions for respondents' in this paper.

- 1. How should the payment services framework evolve – and what should be the government's priorities – to better promote the following government objectives for payments regulation:**
 - A. Achieving agile and proportionate regulation, which facilitates the international competitiveness of the UK economy through growth and innovation in the UK payments sector**
 - B. Ensuring appropriate trust and protection for consumers**
 - C. Ensuring the resilience and integrity of the UK's payment market**
 - D. Fostering competition, in the interests of consumers**

In answering the above, the government would welcome concrete reflections from stakeholders for future policy, rather than the principles which should underpin regulation/regulatory change.

We would welcome an evolution of the payment services framework based on a strategic and consistent agenda that can enable the UK to remain at the forefront of innovation. We suggest the construction of a cohesive framework covering payments services, electronic money and digital currencies. The current fragmented approach to regulation where different regulators develop different approaches (e.g. divergence between GDPR and payments services regulations) makes it difficult for businesses to operate. In the post-Brexit world, we now have the opportunity to ensure alignment across the different regulations, regulators, and stakeholders to achieve greater cohesion. UK Plc needs to maintain the rhythm that was present before Brexit, and to remain focused on the real innovations that are happening in payments, such as the implementation of open banking, open finance and digital currencies, from crypto to stablecoins and CBDCs.

We appreciate the concept of agile and proportionate regulation but we must ensure that, if we move to a regulator-based creation of rules, there is proper oversight to ensure the powers so derogated are both fair and equitable. We firmly believe that it is important that the FCA and the PSR have the right range of powers to enable them to be agile. Further, we welcome the BoE taking a more active role in supervising the companies that are systemic in payments.

- 2. To what extent would you support rationalising and/or removing the distinctions in regulation between payment institutions and electronic money institutions – in effect, combining the two sets of legislation? Would this be easier for the sector to navigate and/or lead to better outcomes?**

The EU environment has always enforced a divergent and separate regulation for payment services and electronic money. This was not a British agenda. Now the UK has a chance to create homogenized regulations whereby different levels of oversight will apply and e-money just becomes a higher level of payments services rather than a separate regulation. This will make life easier as payment businesses grow and wish to amend their licenses through the different levels.

Nonetheless, whilst business conduct rules and operational rules are the same for e-money and PIs, we would welcome some distinctions to be granted between EMIs and PIs from a prudential point of view.

3. Are (a) the definitions and (b) the scope of the regulated activities in the payments services and e-money framework clear and do they capture the right actors and activities within regulation?

We welcome a same risk – same regulation approach. Moreover, we are supportive of a comprehensive framework that’s agile enough to adapt itself to our rapidly evolving industry, to ensure the attractiveness of the UK payments environment.

Given the possibility of a wholesale overhauling of existing payment services and e-money regulations, it would be good for HMT to liaise with the industry and create a new spectrum of activities commencing with account information services and moving all the way up to a quasi-deposit taking / banking services with consequent increases in both capital adequacy and governance as the business risks increase.

We have identified a possible spectrum to be created as per the table below:

Activity	capital requirement	reporting requirements	governance requirements	safeguarding
AISP	none	low	low	n
PISP	none	low	low	n
Small PI	low	low	low	n
Small EMI	low	low	low	n
Money Remittance	low	medium	medium	n
PI low risk	medium	medium	medium	y
PI standard	medium	medium/high	medium/high	y
PI high risk	medium/high	medium/high	medium/high	y
EMI low risk	medium/high	medium/high	medium/high	y
EMI standard	high	high	high	y
EMI high risk	High+	High+	High+	y

4. Do the exclusions under the PSRs and the EMRs continue to be appropriate (includes limited network, electronic communication, commercial agent etc)?

We recommend reviewing the exclusions and bringing them in at the lower end of the suggested spectrum for light-touch regulation. Although more businesses would be caught by the regulation, this will not add a greater burden on regulators or businesses, but this would create better protection for consumers. It is important if these exclusions are brought within the regulations, that this happens proportionately and does not result in unintended consequences to the existing status quo.

5. How, if at all, might the framework for the authorisation of payment institutions and electronic money institutions be reformed?

As previously discussed, a more cohesive and clear regulation can be developed by creating a full spectrum of payment services with proportionate capital requirements and governance. Further, in terms of authorisation of e-money, we welcome the addition of a new category of issuers, for stablecoins (s-money).

6. How, if at all, might the framework for the registration of small payment institutions and small electronic money institutions be reformed?

We believe that by creating a full spectrum of payment services, both small EMIs and PIs will then fall within regulation rather than be excluded as they currently are. This would make it easier for start-ups to progress to higher levels within the spectrum without having to start a new process of application. In this way, as businesses grow, they can apply for high levels of authorisation without having to start a new application process each time they hit a new business threshold. This would enable a far more flexible and proportionate regulation enabling businesses to grow and thrive.

7. How, if at all, might the registration requirements for account information service providers be reformed?

We see them at the lowest end of the spectrum, with the least oversight regulation applying to them.

8. Does the regulatory framework for payment initiation service providers (PISPs) and account information service providers (AISPs) sufficiently support the growth of this sector, and ensure a level playing field, and fair access to payment accounts, to support competition and growth?

We appreciate some big changes happen quickly, such as an effective advancement of open banking, and the creation of more rigorous rules when dealing with disputes.

Nonetheless, it is our belief that the framework itself supports the sector's growth, albeit that problems exist in its practical application. The fact that the UK regulatory framework is better than the EU does not mean that in the UK there is no margin for improvement in order to continue the evolution / implementation of open banking in the UK.

The biggest hindering factor to PISPs and AISPs is indeed their ability to work seamlessly with account providers whilst open banking continues to be developed. It is important that JROC ensures a level playing field for all such providers whilst simultaneously protecting consumers.

9. How, if at all, might the registration requirements or wider regime for agents be reformed?

It is our view that regulators have always been concerned that businesses are registering as EMI agents and PI agents purely to give the impression of being a regulated entity to both consumers and business partners of such agents even when the agents were not using their agent status to offer regulated services. More recently, the FCA has pushed for many agents to be downgraded to distributors, which are not required to be formally registered, and has enabled these businesses to carry out the same activities as they were when they were agents. Where the agent status is really required, this should push the regulated entity higher up the spectrum with high levels of governance and capital required to reflect the higher level of risk they are taking on. Under the new spectrum, this would be easy to achieve.

10. Is the current framework for the provision of information to payment service users effective? If not, how should its scope change?

We welcome a full review to be undertaken in order to discover whether payments services users are happy with the information they are receiving and if it is suitable / proportionate to the payments services that they are using.

11. Are there particular changes that you would advocate to the Crossborder Payments Regulation in relation to the transparency of currency conversion, and what would these entail?

In our experience these requirements are appropriate and have proven to be sufficient. We are unaware of any issues with the current notification regime for FX on cross border transfers.

12. What has been the experience of a) providers and b) users/customers in relation to the termination of payment services contracts? Does the existing framework strike an appropriate balance of rights and obligations between payment service users and payment service providers, including but not limited to a notice period applying in such cases?

Recent months with the withdrawal and failures of several regulatory & technology providers has demonstrated that there is clear governance in the termination of service to end users. Where applicable, in our experience timely notification to the end user has been issued in adherence to scheme and regulatory requirements, with funds refunded to alternative accounts nominated by the end user. While this process appears to operate within the current guidelines, we are convinced that this needs a deeper survey of users/providers to obtain a full overview where the process can be improved further.

13. With reference to paragraph 31 of the accompanying review, do stakeholders have any feedback on the government's view:

- that, as a general principle, a notice period and fair and open communication with a customer must apply before payment services are terminated?

Yes, we agree.

- that the regulations and wider law operate here as set out under paragraph 29?

Yes, we agree

14. How and when do providers cease to do business with a user, and in what circumstances is a notice period not applied?

Our members have indicated situations such as a potential case of fraud, money laundering concerns or other circumstances where an account is used in breach of terms and conditions. Nonetheless, caution remains vital to avoid unintended consequences. We welcome a serious reflection on where certain approaches could lead to in practice.

15. How effective are the current requirements in the Payment Services Regulations, notably under Regulations 51 and 71 – are these sufficiently clear or would they benefit from greater clarity, in particular to ensure that notice-periods are given and customer communication is clear and fair?

We believe they are sufficient and give a good level of flexibility when needed. Further, the new Consumer Duty approach is expected to provide more holistic support to acting in the customer's interest which would include clarity on notice period communication, etc.

16. Should there be additional protections for payment service users against the termination of contracts? Should anything be specific to protect their freedom of

expression – e.g. to ensure that adequate (or longer) notice is given in such cases, and what communication requirements should apply?

In our opinion, the new Consumer Duty approach will cover this. We do not think any further modification is required.

17. What provision, if any, should the regulatory framework make regarding charges for payment services?

Again, we think the new Consumer Duty approach will ensure that if charges are made, they are fair.

18. Does the existing framework strike an appropriate balance of rights and obligations between:

- **Sending and receiving payment service providers?**
- **Account servicing payment service providers and payment initiation service providers/account information service providers?**

We believe that the existing framework broadly works, and it shouldn't be modified at this stage.

19. Are consumers adequately protected from evolving fraud threats under the existing legislation – is further policy needed to ensure this, and how should that policy be framed?

The new Consumer Duty approach will no doubt require issuers to offer greater protection here. However, we do not want to create an environment where consumers are increasingly free from any responsibility for their decisions. A disproportionate focus on consumer protection risks creating significant imbalance in the payments ecosystem to the point that it can trigger systemic risk. Our goal remains to mitigate fraud and at the same time to find the right technological solutions and balance in liability.

20. In relation to payment transactions which payment service providers suspect could be the result of fraud, is there a case for amending the execution times for payments to enable enhanced customer engagement? What requirements should apply here to ensure the risk to legitimate payments is minimised and that such delays only apply to high-risk, complex-to-resolve cases?

We acknowledge the complexity of this issue. Whilst we are supportive of amending execution time for fraud, we remain conscious that the creation of more prescriptive rules risks creating unnecessary burdens and useless solutions because prescriptive rules do not necessarily solve the problem while dealing with hundreds of different scenarios which are difficult to imagine before they happen. There have been many discussions on this topic suggesting that in certain cases (e.g. romance scams), additional time to speak to the victim may be sufficient to stop the fraud.

However, our priority is the need to balance this necessity with the need to provide certainty of payments.

21. In relation to fraud, whether unauthorised or authorised, is there a need to a) complement rules with data sharing requirements; and b) for further reforms be made to make Strong Customer Authentication work more effectively and proportionately?

Strong Customer Authentication imposes huge implementation challenges to the industry, because the current requirements are extremely prescriptive. At present, the practical result

now is that in certain situations we observe an increase of frictions without necessarily eliminate fraud. Rather, we would welcome an outcome-based approach, and give greater discretion to firms on how to achieve the objective of eliminating fraud. We believe that the industry is working on creating viable data-sharing solutions that could potentially be extremely relevant to fight fraud more effectively, ensuring a better balance between the use of data and benefits to the users.

22. Are the requirements regarding issuance and redemption of electronic money still appropriate?

We think that, in respect of how electronic money is currently defined, the requirements make sense. But when envisioning a wholesale change to create one payment services regime, we believe that there will be no need for redemption requirements as funds will be held like deposits and will be freely exchangeable. This will also enable stablecoins (s-money) to be created under the same framework and to be circulated without redemption.

23. Noting the intention to commission an independent review in due course, do you have any immediate observations on the efficacy of the operation of the Payment and Electronic Money Institutions Insolvency Regulations to date?

Regarding the proposal to carry out an independent review, we strongly believe that it should consider both the PEMIIRs and the safeguarding regime contained in the EMRs and PSRs. The safeguarding and insolvency regimes are intertwined from a policy and legal perspective and so must be considered together. Ipagoo has resulted in considerable uncertainty and needs to be addressed through a review that carefully considers the complexities of the case law, legislation and regulatory practice. We believe that the independent review would be best placed to consider these issues holistically, bearing in mind the importance to customers of getting both the safeguarding and insolvency regime right and ensuring that they work together in tandem.

The review should also consider how the safeguarding framework and the PEMIIRs can be enhanced for the benefit of consumers. In particular, it should look at whether there is a way to ensure that customers do not bear the burden of administrator's costs for returning funds and whether there are ways to ensure that funds can be returned to customers more quickly (e.g. by making it easier for administrators to make interim distributions). These are issues that are currently dealt with in the PSRs, EMRs and the PEMIIRs. Following the independent review, HM Treasury should then set out the policy framework and the FCA should consult on implementation of it.

24. Finally, do you have any other observations relating to the payments framework not encompassed above, and how this could be further improved, in line with the government's objectives?

We firmly believe, as stated in our response to the first question, that this is an opportunity to unify all regulation in the payments arena and create a unified and cohesive set of regulations that embraces the past while remaining open to the natural evolution of the industry.

About The Payments Association

The Payments Association (previously the Emerging Payments Association or EPA) is for payments institutions, big & small. We help our members navigate a complex regulatory environment and facilitate profitable business partnerships.

Our purpose is to empower the most influential community in payments, where the connections, collaboration and learning shape an industry that works for all.

We operate as an independent representative for the industry and its interests, and drive collaboration within the payments sector in order to bring about meaningful change and innovation. We work closely with industry stakeholders such as the Bank of England, the FCA, HM Treasury, the Payment Systems Regulator, Pay.UK, UK Finance and Innovate Finance.

Through our comprehensive programme of activities for members and with guidance from an independent Advisory Board of leading payments CEOs, we facilitate the connections and build the bridges that join the ecosystem together and make it stronger.

These activities include a programme of monthly digital and face-to-face events including our annual conference PAY360 and PAY360 Awards dinner, CEO round tables and training activities.

We run seven stakeholder working Project groups: Inclusion, Regulator, Financial Crime, Cross-Border, Digital Currencies, ESG and Open Banking. The volunteers within these groups represent the collective view of The Payments Association members at industry-critical moments and work together to drive innovation in these areas.

We also conduct exclusive industry research which is made available to our members through our Insights knowledge base. These include monthly whitepapers, insightful interviews and tips from the industry's most successful CEOs. We also undertake policy development and government relations activities aiming at informing and influencing important stakeholders to enable a prosperous, impactful and secure payments ecosystem.

See www.thepaymentsassociation.org for more information.

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