



HM Treasury

# Implementation of the EU payment accounts directive:

Consultation response

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November 2015





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# Introduction

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## Background to the consultation

1. The Payment Accounts Directive (2014/92/EU) ('PAD') was published in the Official Journal of the European Union on 28 August 2014. The final text of the Directive is available in full online at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0092>.
2. PAD sets common regulatory standards that Member States are required to meet in order to:
  - Improve the transparency and comparability of fees related to payment accounts that are used for day-to-day payment transactions;
  - Facilitate switching of those accounts; and
  - Ensure access to bank accounts with basic features.
3. The government is required to have implemented PAD in the United Kingdom by 18 September 2016 to meet its treaty obligations and avoid the risk of facing legal proceedings as a result of infraction.
4. This requires the government to make new secondary legislation and to apply and modify provision in existing legislation that underpins the regulation of relevant payment accounts.
5. The UK has already taken domestic action on the majority of the areas addressed in PAD, including:
  - A series of measures delivered through government agreement with the banking industry to improve transparency of fees and charges, including annual statements and text message alerts for unarranged overdraft fees;
  - The creation of the 7-day Current Account Switch Service (CASS) which was launched in the UK in September 2013; and
  - Improving UK banks' existing basic bank account offer, alongside their other retail current accounts.
6. The UK government's objective for the negotiations on PAD was therefore to align the requirements as far as possible with existing UK practice, with a view to minimising any negative impact on UK industry and consumers.
7. The government adopted a similar approach in considering how to implement PAD. The approach to implementation, set out in the consultation document published on 23 June 2015, aimed to minimise negative impacts on UK industry and consumers by using copy-out where possible and, where allowed by the Directive, using flexibility to preserve existing UK practice.

**8.** The government received 13 responses to the consultation. Responses came primarily from payment service providers and trade bodies that represent payment service providers, as well as some consumer groups. A full list of respondents can be found at Annex A.

## **Next steps**

**9.** The government has published the final legislation, the Payment Accounts Regulations 2015, alongside this summary of responses. After being laid in Parliament, the legislation will be subject to scrutiny by both Houses of Parliament before it is made and comes into effect from September 2016.

**10.** After the regulations have been made, the Financial Conduct Authority (FCA) will consult in the usual manner on any rule changes it considers necessary to give effect to the regulations. The Payment Systems Regulator (PSR) will consider the appropriate designation and monitoring process and will provide further information on this in due course.



# General approach to implementation

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## Introduction

11. This chapter considers the overarching question posed in the consultation document, which asked whether the government's overall approach to the implementation of PAD is appropriate.

## Question 1

Do you agree with the government's overall proposed approach to the implementation of PAD, including the clarification of the Directive's scope and application?

## Summary of responses

12. Most of the respondents who addressed the question of the government's overall proposed approach to the implementation of PAD agreed with the government's intention of minimising negative impacts on industry and preserving as far as possible existing UK practice.

13. Although most respondents agreed with the government's view that PAD broadly applies to current accounts, a majority of responses from payment service providers and trade bodies representing payment service providers requested that the regulations include further clarification on the precise type of payment accounts that were in or out of scope. Specifically, respondents requested more definitive wording on the types of accounts that may be out of scope (referring in particular to savings accounts) and clarification of the meaning of 'day-to-day payment transactions'.

14. A number of respondents suggested amending the definition of 'payment account' based on a statement made by the former Economic Secretary to the Treasury, Andrea Leadsom, during Parliamentary proceedings regarding the Immigration Act 2014<sup>1</sup> which explained the government's view of what constitutes a current account. Based on this, one respondent suggested amending the definition of 'payment account' from:

*"payment account" means an account held in the name of one or more consumers through which consumers are able to place funds, withdraw cash and execute and receive payment transactions to and from third parties, including the execution of credit transfers, but does not include any of the following types of account provided that the account is not used for day-to-day payment transactions: savings accounts; credit card accounts where funds are usually paid in for the sole purpose of repaying a credit card debt; current account mortgages or e-money accounts.*

To

*"payment account" means an account held in the name of one or more consumers through which consumers are able to place funds, withdraw cash and execute and receive payment*

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<sup>1</sup> The statement is available at <http://www.publications.parliament.uk/pa/cm201415/cmgeneral/deleg5/141105/141105s01.htm>.

*transactions to and from third parties (including the execution of credit transfers) using the following day-to-day payment transactions: debit cards, cheques, Direct Debits, Standing Orders, BACS, and CHAPS credit transfers. Savings accounts; credit card accounts where funds are usually paid in for the sole purpose of repaying a credit card debt; current account mortgages or e-money accounts are excluded from the definition of payment account.*

**15.** One respondent suggested that a statement from the Economic Secretary to the Treasury in the House of Commons reiterating the government's view that it is broadly current accounts that will be in scope would provide clarity to industry if it is decided that the definition of 'payment account' cannot be amended.

### **Government response**

**16.** The government is not proposing to change the definition of 'payment account' in the regulations. The government is bound to comply with the Directive and further clarification, narrowing the scope beyond what is set out in the Directive, may affect the government's compliance with the Directive.

**17.** It is the government's view that the definition of 'payment account' in the regulations should be sufficient to limit the scope to current accounts – or accounts that have functionalities directly comparable to those of current accounts – in the UK. It will be for firms themselves to determine whether each of the accounts they offer falls within the scope of the regulations, and whether the regulations therefore apply to them.

# Comparison of fees and charges

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**18.** PAD includes a number of requirements aimed at improving the transparency and comparability of fees and charges related to payment accounts. The UK already has a number of initiatives in place in order to achieve this. For example, annual summaries have been provided to consumers since an agreement was reached between banks and the former Office of Fair Trading in 2011. Text alerts have also been used by banks to warn customers at risk of over-running on their accounts.

**19.** Under PAD, Member States are required to implement a number of initiatives in order to improve the transparency and comparability of fees between Member States as well as within each country.

**20.** The government has proposed to employ copy-out with regards to measures concerning transparency and comparability of fees. This chapter considers the questions posed in the consultation document regarding these measures, which focus on the costs that payment service providers expect to incur as a result of the measures.

## Comparison website

**21.** The government proposed in its consultation document that the Money Advice Service (MAS) be required to operate a comparison website that complied with PAD.

### Question 2

Do you agree with the government's proposed approach to the comparison website requirements in PAD?

### Question 3

Based on the government's proposed approach, do you agree that existing payment service providers and comparison website providers will not incur costs as a result of the comparison website requirements in PAD?

## Summary of responses

**22.** All respondents that answered Question 2 were broadly in agreement with the government's proposed approach to the comparison website requirements. It was noted by one respondent that the running of the website should not give MAS any advantage over other comparison websites. Another respondent also noted that it would be important for MAS to work closely with industry and to ensure the quality of data published on the website.

**23.** Payment service providers' views differed in regards to Question 3. Some firms agreed that firms would not incur costs as a result of the comparison website requirements in PAD. Some firms, however, considered that the costs may vary based on the level of detailed information a payment service provider was required to provide to MAS. A small number of firms considered that costs may be incurred depending on how the website would be funded.

MAS is funded through levies on industry which are set and collected by the FCA in accordance with its powers under the Financial Services Act 2010. Although the costs of setting up and running the website may be funded through efficiency savings within the MAS budget, they could be passed on to industry by increasing the levy.

**24.** None of the respondents addressed the second part of Question 3, which considers the costs that may be incurred by comparison website providers. However, as mentioned above, the issue of MAS having incumbent and network advantages over other comparison websites was raised as a possibility. The same firm suggested that the government should monitor the impact of the role given to MAS on other comparison websites and on the development of other comparison websites.

## **Government response**

**25.** The government does not propose to amend its approach to implementing PAD's requirements on the comparison website.

**26.** The government has noted the view that whether or not costs will be incurred by firms as a result of the proposed approach may depend on how the costs of setting up and running the website are funded. This has been reflected in the final stage Impact Assessment on the implementation of PAD.

**27.** The government considers that it is unlikely that MAS will unfairly benefit as a result of operating the comparison website. This is because the comparison website will only be required to provide limited information as required by PAD. Other comparison websites are very likely to continue to offer a wider range of services.

## **Packaged bank accounts**

**28.** Under the Payment Accounts Regulations 2015, providers of packaged bank accounts will be required to inform the consumer whether it is possible to purchase the payment account separately from the same provider. If so, they will be required to provide separate information regarding the costs and fees associated with each of the other products and services offered in the package that can be purchased separately from that provider.

## **Question 4**

Do you agree with the government's proposed approach to packaged accounts in the regulations?

## **Question 5**

What is your assessment of the potential costs to payment service providers of compliance with the requirements on packaged accounts, both in terms of the burden on your business, and in terms of consumer behaviour?

## **Summary of responses**

**29.** A number of firms that responded to these two questions considered that they would not be affected by the regulations concerning packaged bank accounts, either because they do not offer packaged bank accounts, or because the way in which the products are offered means that they are already PAD compliant or would be out of scope. However, of the firms and one trade association that responded to these two questions, including some firms that offered products that they considered to be out of scope, most requested clarification on areas including:

- Whether the disclosure of costs and fees is only required if all of the products that form part of the package are available separately from the same provider;
- Whether the disclosure of costs and fees is only required if the products that are available separately are offered on the same terms and conditions outside of the package;
- Whether the disclosure of costs and fees is only required when the products and services that are available separately from the payment services provider rather than a separate entity in the same corporate group.

**30.** One response also noted that whilst draft regulation 13 regarding packaged bank accounts was broadly a copy-out of the Directive, it was not an exact copy-out, raising possible questions around the intention of the regulation.

**31.** A number of firms indicated in their responses that they considered themselves to be exempt from the draft regulations concerning packaged bank accounts. Firms' responses indicated that the conclusion was reached on the basis of certain assumptions, such as that the disclosure of costs and fees would only be required if the product or service was available separately on identical terms and conditions. These firms indicated that they did not anticipate significant costs as a result of the regulations concerning packaged bank accounts if their assumptions were correct, but that costs could be substantial if the assumptions were incorrect. Some responses, on the other hand, indicated that costs to firms could not be estimated without further information or clarification. The government would like to draw all firms' attention to its response below.

**32.** A small number of consumer groups also responded to Question 4. One respondent disagreed that the measures concerning packaged accounts should apply to new customers only. The respondent suggested that the regulations should require providers of packaged bank accounts to disclose to existing customers, at least annually, whether it is possible to continue using the payment account without purchasing, or continuing to pay for, additional products and services. If it is possible to purchase the additional products and services separately, the respondent suggested that the payment service provider would also be required to disclose the costs and fees for each of the elements that is available separately.

**33.** Another consumer group suggested that the government should specify that packaged bank accounts should not be offered to consumers if the consumer has originally sought access to another, free, account.

**34.** None of the responses received discussed the potential costs to consumers as a result of the draft regulations concerning packaged bank accounts.

## **Government response**

**35.** The government acknowledges that the wording of draft regulation 13, although based on the wording included in the Directive, was not an exact copy-out. The government has therefore amended regulation 13 with the aim of aligning it more closely with the Directive. The amendment aims to make clear that a provider of a packaged bank account must inform a consumer whether or not it is possible to purchase the payment account separately. If the payment account is available separately, the payment service provider must provide separate information regarding the costs and fees associated with each of the other products and services offered in the package that can also be purchased separately.

**36.** The regulation has also been amended to clarify that the provisions will apply in cases where both the payment account and the other products and services are available separately from the same provider.

**37.** The Directive does not specify that it is only in cases where a product or service is available separately on identical terms and conditions that the provisions will apply. The government therefore does not consider that the assumption made by certain firms, i.e. that they will not be required to disclose the costs and fees of products and services available separately because they are not offered on identical terms and conditions, is correct. Information regarding the costs and fees associated with each of the products and services offered in a package that can be purchased separately should be provided even if the products and services are available on different terms and conditions, but can nonetheless be considered to be a comparable product or service. The government considers that if the above assumption was made, there would be minimal benefits to consumers from the provisions. This is because two products or services that may be considered to be the same may often be offered on terms and conditions that are slightly different, but not different enough to substantially alter the actual service or product. It may also encourage firms to make minor alterations to their terms and conditions to avoid the disclosure requirements in the regulations, which would contradict the intention of the Directive.

**38.** Neither the Directive nor the regulations require regulation 13 to apply in cases where the products and services are available from a separate entity in the same corporate group, rather than the payment service provider as defined in the regulations. The government considers this to be sufficiently clear and therefore does not propose to amend the regulation to clarify this point.

**39.** The government considers that the suggestions to extend the requirements concerning packaged bank accounts to existing customers, and to prevent a payment service provider from offering a packaged bank account to a consumer who has sought access to another, free, account, would extend the scope of the regulations beyond what is required by PAD. The government therefore does not propose to change the regulations to incorporate these suggestions.

**40.** None of the responses received discussed how the costs and fee information to be disclosed to consumers should be presented. However, the government understands that providers of packaged bank accounts have previously agreed with the FCA to ensure that cost information does not mislead consumers into thinking that a packaged bank account represents better value where this may not necessarily be the case for the individual concerned. The government expects that measures such as these will be taken into account by providers of packaged bank accounts when considering how to present information on costs and fees.

## Other issues

**41.** One respondent requested that the government include a definition for the terms 'product' and 'service' in the regulations. The respondent argued that the definition for these two terms would impact on the way draft regulation 13 could be interpreted. The respondent did acknowledge, however, that a definition also risked negatively impacting on industry. The respondent did not propose a suitable definition.

**42.** Having considered the issue, the government has decided not to include a definition of the terms 'product' and 'service' in the regulations, as the government considers that such a definition risks being either too restrictive, constraining consumer benefits, or too broad, extending the scope of the regulations beyond what is intended. In addition, a definition of either term may date very quickly due to innovation and could impact negatively on other pieces of legislation.

**43.** With regards to packaged bank accounts, clarification was also requested from a number of respondents on the meaning of 'linked' services. Concern was expressed that whilst

the aim of PAD and the draft regulations was for services such as insurance to be targeted, lack of clarity risked services such as overdrafts being within scope of the measures concerning packaged bank accounts. The government has been clear that the products and services targeted by this measure are services not linked to payment accounts. In the UK, this may be, for example, insurance products. Services linked to UK payment accounts, including by definition any of the services on the 'linked services list' would not be affected by the provisions of regulation 13 (the FCA has developed and submitted the provisional UK linked services list to the European Banking Authority in line with the process set out in PAD Article 3).

**44.** A broader concern for payment service providers and trade associations with regards to the measures to improve the comparison of fees and charges was the limited time available for implementing changes. Respondents requested that the government show flexibility in considering the timescales available to firms for implementing measures concerning customer information. Although the government acknowledges this concern, the timescales set by the Directive cannot be amended. The government intends to allow payment service providers the maximum amount of time allowed under the Directive to implement the required changes. Draft regulation 1 (2) has therefore been amended to state that regulations 6 to 12 will come into force six months after the FCA publishes the linked services list (the draft regulations had originally stated that these regulations would come into force three months after the FCA publishes the linked services list).

**45.** One trade association and one firm requested clarification on the meaning of 'where applicable' with regards to draft regulation 7. Draft regulation 7 requires payment service providers to use, where applicable, the terminology set out in the linked services list in its contractual, commercial and marketing information. This means that the individual terms on the national list must be used where they are needed to refer to the service concerned. The government considers that payment service providers will have to decide how to interpret regulation 7 and whether to apply it to channels of communication including in branch, on-line and on the telephone. If these channels of communication are being used for contractual, commercial or marketing purposes related to payment accounts, it is likely that the standardised terms would be appropriate, as these channels are used for the provision of customer information. This will also provide consistency for consumers and help avoid confusion.

**46.** One firm also asked if customer information that does not directly relate to payment accounts would also have to incorporate the standardised terms. This is not required by the regulations, but in practice it would ensure consistency across firms' communications and prevent confusion among customers. Should firms wish to use the standardised terms throughout their customer information, the government does not consider that these changes would be required to be implemented within the same timescales as those applicable to the statement of fees, fee information document, glossary or contractual, commercial and marketing information.

**47.** One trade association and one firm also requested confirmation that the annual statement of fees was expected to replace existing annual summaries. Until the implementing technical standards on the annual statement of fees have been drafted by the European Banking Authority and adopted by the European Commission, it will be difficult to determine whether the statement of fees will include all the information currently provided by annual summaries, or offer firms the flexibility to include any additional information which is included in annual summaries but is not explicitly required in the statement of fees. The need for guidance on whether the statement of fees may replace existing annual summaries will be considered after the implementing technical standards on the statement of fees have been agreed.

**48.** A small number of respondents also reported a discrepancy between draft Schedule 2 (3) (c) (ii) and Article 5 (2) (b), where the term 'services' in the Directive was referenced as 'service' in the draft regulations. This discrepancy has now been addressed.



# Switching

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**49.** The consultation document set out the government's proposal for meeting PAD's requirements on switching. The proposed approach involved using the option allowed under Article 10(1) of PAD to allow CASS to seek designation as an alternative switching service. Payment account providers that are not already members of CASS, and that choose not to join CASS, would be required to offer a separate PAD compliant switching service, as outlined in the draft regulations' Schedule 3. Alternatively, if another switching service were to emerge over time and be designated as an alternative switching service, a payment service provider could offer this service instead. However, for the foreseeable future the government expects that the only alternative arrangement in the UK will be CASS.

**50.** The consultation document stated that the government would welcome any information from respondents that will help to establish:

- the number of UK payment service providers engaged in providing payment accounts that may meet the definition of a payment account set out in the draft regulations;
- the number of UK payment service providers, if any, that would no longer engage in such activity if required to either join CASS or to meet the minimum requirements in the draft regulations;
- the cost to payment service providers who provide current accounts outside CASS of setting up the systems and processes to meet the minimum requirements in PAD;
- the benefit to an individual consumer, requesting a switch either inside or outside CASS, from the introduction of the regulations; and
- the impact on, and potential costs to, payment service providers or other affected parties involved in CASS at present.

## Question 6

What would you expect the costs and benefits to be of the government's proposed approach to the switching requirements in PAD?

## Summary of responses

**51.** Firms that are members of CASS who responded to the consultation approved of the government's intention to use the option allowed under PAD to continue to use an alternative switching service. However, CASS members indicated that they may still incur costs under the proposed approach as a result of having to meet the requirements associated with completing a switch where the receiving firm is not a member of CASS. Firms did not include estimates of these costs. One firm suggested that the proposed implementation approach could be improved, and costs to CASS members limited, if all firms were required to join CASS.

**52.** Two responses discussed the costs that would be incurred by firms that offer currency accounts. Under PAD, UK firms that offer currency accounts will have to meet the requirements around switching if a customer wishes to switch to another currency account which is held in the same currency and with another payment service provider located in the UK. The firms that discussed this issue expressed concern that currency accounts had been brought into scope unintentionally and that the measures were likely to result in significant costs for payment service providers whilst delivering little benefit to consumers due to low demand.

**53.** All of the firms that responded to the consultation are already members of CASS. No information was therefore received regarding the anticipated costs to non CASS members as a result of the proposed approach on switching.

**54.** None of the responses received addressed costs or benefits to consumers as a result of the proposed measures.

## **Government response**

**55.** The government considers that CASS members are already likely to have procedures for completing a switch where the receiving firm is not a member of CASS. However, the government understands that as firms operating outside CASS will be required to develop a PAD compliant switching service if they choose to remain outside CASS, requirements are also likely to change for CASS members who have to meet the requirements associated with completing a switch where the receiving firm is not a member of CASS. The government therefore acknowledges that despite the intention of minimising negative impacts to CASS members through the proposed approach to implementation, CASS members may nonetheless incur costs as a result of meeting the requirements associated with completing a switch where the receiving firm is not a member of CASS. This point has been acknowledged in our final stage impact assessment.

**56.** The government does not propose to impose a requirement on all payment service providers in scope to join CASS. Some firms may not meet the criteria for joining CASS and the government considers that the voluntary nature of the scheme is a key characteristic of CASS.

**57.** Certain currency accounts are included in the scope of the regulations. The aim of these provisions is to ensure that a switching service must only be offered between payment accounts held in the same currency and avoid the requirement for a switching service to be offered between a payment account denominated in sterling and a payment account denominated in another currency, such as euro, which would result in a significantly larger cost to firms. The government has acknowledged that providers of currency accounts are likely to incur a cost as a result of PAD in its final stage Impact Assessment. However, the government believes that costs may be mitigated by the small number of firms that are likely to be impacted and by the fact that only a proportion of currency accounts are likely to fall within the definition of a 'payment account' used in the regulations.

## **Other issues**

**58.** The issue of cross-border switching was raised by a small number of respondents. This included a request for reassurance that the regulations do not require a switching service such as CASS to be offered for cross-border switching. The government can confirm that a service that meets the requirements outlined in draft Schedule 3 is only required for switches taking place in the UK, although payment service providers will be required to assist customers who wish to open a payment account in another Member State in line with regulation 17.

**59.** Responses also sought clarification on how a positive balance could be transferred to a former customer's new payment account in a different Member State. One respondent requested clarification on whether, for example, a cheque would be suitable. The Directive and the regulations do not specify how the transfer of funds should be made, but the term 'transfer' should be interpreted in line with the definition of 'credit transfer' provided in the Directive's Article 2 (20). The government considers that it is at the discretion of the payment service provider to decide the most appropriate mechanism for the transfer of funds.

**60.** One response queried the impact of the proposed approach on the UK's 'Partial Only' switch service, which is not PAD compliant. The respondent noted that 'Partial Only' participants would incur costs as a result of having to offer a PAD compliant switching service, which the government has acknowledged in its final stage impact assessment. In addition, the respondent requested clarification on whether:

- 'Partial Only' in its current form could continue to be offered by CASS members if a customer had first declined to use CASS; and
- The only option for consumers banking with a non CASS member was a PAD compliant switching service (meaning that 'Partial Only' could not be offered to those consumers, for example).

**61.** The government considers that provided a payment service provider offers either a PAD compliant switching service or a designated alternative switching service, the payment service provider will also be able to offer a non-compliant service such as 'Partial Only'. The government considers that a non-compliant service such as 'Partial Only' may also be offered to customers alongside the PAD compliant service or the designated alternative switching service. This will ensure existing provision may be maintained and provides choice for customers.

**62.** It was noted by one respondent that whilst it supported the government's approach to switching, the approach, if CASS is designated as an alternative switching service, should not give CASS incumbency or network advantages over other schemes that could also be developed as an alternative switching service. The government considers that the regulations would not prevent another alternative switching service from developing, should there be demand for such a service.

**63.** None of the responses to the consultation addressed the role of the PSR provided for in the regulations, except with regards to requesting further information about the designation process. Having considered the regulations further, the government has considered it appropriate to provide the PSR with the power to impose penalties for the failure to comply and the power to issue warning notices. These powers will ensure the PSR has alternative tools in respect of the operator of a designated alternative arrangement other than only revoking the arrangement's designation. The PSR will not be able to use these powers against the firms that are members of a designated alternative switching scheme, only the operator of the arrangement. As an independent Regulator, the PSR will consider the appropriate designation and monitoring process and will provide further information on this in due course.



# Basic bank accounts

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**65.** The consultation document set out the measures that the government proposed to implement to meet PAD's requirements related to basic bank accounts (or payment accounts with basic features, as they are referred to in the Directive and the draft regulations). The consultation document stated that in the government's opinion, the draft legislation published reflected the UK's existing basic bank account policy, but brought it into line with the requirements in PAD where necessary.

## Genuine interest test

**66.** The Directive offers Member States the option to require that consumers who wish to open a basic bank account in the UK 'show a genuine interest in doing so', provided that demonstration of the genuine interest is not made too burdensome or difficult. The draft regulations published alongside the consultation did not include a requirement to demonstrate a genuine interest, but the government expressed its openness to suggestions as to how such a test might be constructed and applied.

## Question 7

How could a 'genuine interest' test be applied to applications for basic bank accounts in the UK, without presenting an excessive burden to the consumer?

## Summary of responses

**67.** Responses diverged on whether a genuine interest test should be applied to applications for basic bank accounts in the UK. Consumer groups and one firm indicated that a genuine interest test should not be applied as it risked being burdensome for consumers, would be difficult to apply consistently and fairly across providers, and risked being exploited by payment service providers to avoid opening basic bank accounts.

**68.** Other firms and one trade association were in favour of applying a genuine interest test. These responses indicated that a genuine interest test would be of value, given that providers of basic bank accounts would have fewer rights to terminate a framework contract than under the 2014 agreement on basic bank accounts. Firms also indicated that a genuine interest test could support firms' existing 'Know Your Customer' checks and mitigate risks of fraud. Firms felt that this was particularly necessary given the possible difficulties in carrying out identity verification checks for customers resident in another Member State.

**69.** Suggestions from respondents for a suitable genuine interest test included ownership, or demonstrable intention to purchase a property in the UK; the presence of family members that are resident or at school in the UK; a customer being based in the UK for work or studying, or carrying out regular work related travel to the UK; proof of regular use of sterling or future need of this; or evidence of an intention to apply for asylum in the UK. Another suggestion was to require applicants to collect documents required to operate the account from a UK address or UK provider's branch.

## Government response

**70.** The government has considered the benefits and risks attached to developing and applying a genuine interest test and has concluded that at this time, a genuine interest test will not be included in the regulations. The government considers that the suggestions made for a genuine interest test requiring a geographical link to the UK are likely to be too burdensome for consumers resident in other Member States. One of the aims of PAD is to ensure consumers in Member States are entitled to a basic bank account in other Member States even if they do not have a particular geographical link to the other Member State.

**71.** The government acknowledges that payment service providers may have to consider whether to revise their account opening procedures to process applications from non-UK EU customers. However, the government considers that draft regulation 25, which requires and allows payment service providers to refuse an application for a basic bank account under certain circumstances, such as where opening the account would be contrary to the Money Laundering Regulations, would allow payment service providers to refuse applications where it has not been possible to sufficiently verify an applicant's identity.

**72.** The government remains open to reviewing this particular aspect of the regulations and will consider amending the regulations at a later date if a suitable test can be identified and a need for a genuine interest test becomes apparent.

## Grounds for refusal to open a basic bank account or terminate a framework contract for a basic bank account

**73.** The Directive specifies that an application for a basic bank account must or may be refused, and that basic bank accounts may be closed, under particular circumstances. For example, firms may close an existing account where the consumer has: deliberately used the account for illegal purposes; not performed a transaction on the account for more than 24 months; provided incorrect information in order to obtain the account; is no longer resident in the EU; or has opened a second account with at least the same features as a basic bank account.

**74.** The Directive allows Member States to identify limited and specific additional cases where firms may be required or may choose to refuse an application for a basic bank account. These cases need to be based on domestic law, and be aimed at either facilitating access, or avoiding abuses by consumers of their right to a basic bank account. The draft regulations published alongside the consultation document proposed a number of cases under which an application for a basic bank account may or must be refused (see draft regulation 25). The draft regulations also outlined the circumstances under which a credit institution could terminate a framework contract.

## Question 8

Are there other limited and specific criteria based on UK domestic law that you consider should allow participating credit institutions to refuse to open a basic bank account, or terminate a framework contract?

## Summary of responses

**75.** A number of firms and one trade association warned against aiming to include an exhaustive list of circumstances under which a framework contract for a payment account with basic features could be terminated, or an application for a payment account with basic features could be refused. Respondents argued that this type of approach risked being too limiting and a

suggestion was made to include wording in the regulations which would allow a credit institution to refuse an application or close an account where opening the account or keeping it open would amount to a breach of the bank's legal or regulatory obligations.

**76.** Other suggestions were made to include references to specific legislation or particular circumstances in regulation 25. These included refusing an application where:

- Information provided by the consumer as part of the application process is incorrect or untrue;
- The credit institution considers that the applicant's conduct amounts to the commission of an offence under the Fraud Act 2006;
- Where opening the account could lead the payment service provider to be in breach of the duty of care to protect employees;
- Where the opening of the account would be unlawful due to UK or international sanctions to which the consumer is subject.

**77.** Suggestions were also made to amend regulation 26, which includes provisions for terminating framework contracts for the provision of basic bank accounts. Suggestions included aligning regulation 26 more closely to regulation 25, such as by including a reference to the Fraud Act 2006 and the Money Laundering Regulations 2007.

**78.** One respondent also suggested that the legal coverage of Section 4 of the Public Order Act 1986 and the Protection from Harassment Act 1997 may not extend to Scotland and Northern Ireland.

**79.** One consumer group expressed concern that the regulations placed significant emphasis on the Money Laundering Regulations and risked encouraging a lack of flexibility in the way firms carry out identity verification checks on customers. The response indicated that this could lead to customers wrongly being denied access to a basic bank account.

## **Government response**

**80.** The government agrees that seeking to establish an exhaustive list of circumstances under which an application for a payment account with basic features could be refused, risks inadvertently excluding other circumstances where a bank may lawfully refuse an application for a basic bank account. Under regulation 25 (1), a credit institution must refuse to open a basic bank account where to do so would be unlawful, including under the specific legislation mentioned in the regulation. Regulation 25 (2) lists further circumstances in which a credit institution may refuse to open a basic bank account, although it does not require the credit institution to do so.

**81.** Regulation 25 (1) has been amended to include a reference to the Fraud Act 2006. This reference will require a credit institution to refuse an application for a basic bank account where the information submitted by an applicant for a basic bank account was known to be untrue by the applicant, or the applicant failed to disclose information that they are under a legal duty to disclose.

**82.** The government has considered the application of the Public Order Act 1986 and the Protection from Harassment 1997 in Scotland and Northern Ireland. The government has concluded that the above mentioned legislation would not be sufficient to allow credit institutions to terminate framework contracts in Scotland and Northern Ireland as they would in England and Wales. References to the relevant provisions in Scotland and Northern Ireland have therefore been added to regulations 25 and 26.

**83.** The government considers that the references to the Public Order Act 1986 and the Protection from Harassment Act 1997 (and the corresponding Northern Irish and Scottish legislation) will give firms a sufficient basis on which to protect their employees. A reference to the duty of care to protect employees has therefore not been added to regulations 25 or 26.

**84.** A reference to UK and international sanctions has not been added to the Regulations due to the possibility of HM Treasury authorising the provision of financial services under particular circumstances where the sanctions otherwise prohibit the provision of financial services. The majority of financial sanctions regimes in the UK do not prohibit the provision of financial services to a designated person but rather prohibit any person dealing with the funds or economic resources of a designated person, or making funds or economic resources available to them. This is widely referred to as an asset freeze.

**85.** Although the government understands the appeal of aligning regulation 26 more closely to regulation 25, the government considers that regulation 26 (2) (a) already allows a credit institution to close a framework contract where to keep it open would risk breaching the Fraud Act 2006 and the Money Laundering Regulations 2007. A reference to the Fraud Act 2006 or the Money Laundering Regulations 2007 has therefore not been included.

**86.** The government acknowledges that banks' approach to identity verification checks can make it difficult to open a bank account. The Money Laundering Regulations are deliberately not prescriptive, providing flexibility in order to promote a proportionate and effective risk based approach so that they safeguard against the potential risks but that the verification process is not unnecessarily burdensome for the customer. Each business will have its own policies on identification and on when additional, more comprehensive checks should be undertaken. In line with the Joint Money Laundering Steering Group guidance notes, the government encourages credit institutions to adopt a risk based approach when setting identification requirements and processes. The guidance also aims to ensure that businesses do not unnecessarily deny services by adopting restrictive procedures. There is no legal or regulatory barrier to banks providing services to non-residents.

## **Participation in and costs of basic bank accounts**

**87.** The consultation document explained that the government was interested in collecting information about the likely impact of the changes to basic bank accounts in order to assess the policy approach and provide an estimate of costs and benefits for the final impact assessment.

### **Question 9**

What would you expect the costs and benefits to be of the government's proposed approach to basic bank accounts after September 2016?

### **Summary of responses**

**88.** Firms and one trade association indicated that costs were likely to be incurred as a result of the wider eligibility for basic bank accounts under PAD, in comparison to the 2014 agreement. Firms indicated that demand for basic bank accounts was likely to increase due to the eligibility of consumers in other Member States who either do not have a payment account in the UK or are not eligible for any other payment account offered by a credit institution that is not a basic bank account.

**89.** Firms and one trade association also indicated that costs to firms may increase due to the more limited criteria under which a credit institution could terminate a framework contract.



**90.** The draft regulations published alongside the consultation document implied that all the services outlined in draft regulation 19 had to be provided free of charge, including transactions carried out in other Member States and therefore in a foreign currency. Credit institutions have been able to charge fees for services involving foreign currencies, including to basic bank account customers, and will continue to be able to do this under the 2014 agreement. Firms indicated that if this were to change, there would be a further cost to credit institutions.

**91.** Under the 2014 agreement on basic bank accounts, providers of basic bank accounts may not charge a basic bank account holder for any of the standard features associated with a basic bank account, an overdrawn balance, or an unpaid payment. A small number of firms suggested moving away from the fee-free nature of basic bank accounts, and allowing credit institutions to charge basic bank account customers for some services. Firms suggested that this would mitigate the costs to firms as well as the potential increase in demand from consumers in other Member States.

**92.** As mentioned earlier in this document, firms also indicated that wider eligibility for basic bank accounts, and eligibility of consumers resident in other Member States, could impact on the processes credit institutions carry out to comply with anti-money laundering regulations. Firms responded that they anticipated a cost as a result of reviewing their processes and potentially amending them.

## **Government response**

**93.** The government has acknowledged in its final stage Impact Assessment that the size of banks' basic bank account stocks may grow due to the wider eligibility criteria under PAD. However, firms were not able to provide estimates of the anticipated increase in demand for basic bank accounts under PAD. The government also considers that increases in demand may be mitigated by the 2014 agreement on basic bank accounts<sup>1</sup>, which allows credit institutions to upgrade basic bank account holders to standard current accounts based on certain criteria.

**94.** Having considered the implications of draft regulations 19 and 20, the government acknowledges that the draft regulations would have required firms to provide standard services associated with a basic bank account in currencies other than sterling for free, such as withdrawing foreign currency abroad. This would be a departure from the 2014 agreement and increase the costs to firms. Regulations 19 and 20 have therefore been revised. Firms will be required to provide all the services outlined in regulation 19, but only those involving sterling transactions will be required to be provided for free. However, any fees that a credit institution charges for services that are not carried out in sterling must be reasonable and take into account at least national income levels and average fees charged by UK credit institutions in respect of those services. These requirements are set out in regulation 20.

**95.** The government considers that any change to the draft regulations which would allow a credit institution to charge a fee for the standard services associated with a basic bank account, beyond those that may be charged for services carried out involving foreign currency, would represent a significant departure from the 2014 agreement. The government therefore does not propose to allow credit institutions to charge a fee to basic bank account customers for the services outlined in regulation 19 provided that they are carried out in sterling.

**96.** Firms did not provide estimates of the costs they expected to incur from reviewing their account opening processes. The regulations do not place any additional identity verification requirements on firms beyond their existing duties under other regulations. However, firms may

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<sup>1</sup> Further information regarding the 2014 agreement can be found in paragraph 99.

decide to review their account opening processes in respect of non-UK residents and this cost has been acknowledged and estimated in the final stage impact assessment.

## Other issues

**97.** One trade association and a small number of firms requested examples of what may constitute discrimination under regulation 18. The government considers that regulation 18 (1) cannot be interpreted as only applying to basic bank accounts. Payment service providers will be aware that under the Equality Act 2010, it is already illegal to discriminate against customers on the basis of a number of characteristics. However, the government considers that it would not be discriminatory to provide customer information in English only.

**98.** One trade association requested further information on the impact of PAD on the future of the 2014 agreement. The regulations confirm measures included in the 2014 agreement where the measures are compatible with PAD, but not all the measures in the 2014 agreement are addressed in the regulations. The government expects that the measures in the agreement that are not covered by PAD will continue after the regulations come into force. At present, the government intends to communicate to designated credit institutions, as part of the designation process outlined in draft regulation 21, its expectation that measures that are not covered in the regulations (such as upgrading and reporting requirements) will continue.

**99.** One firm requested further clarity on the criteria the government proposes to take into account when assessing whether to designate a credit institution as a provider of basic bank accounts. The firm suggested that when considering a credit institution's geographical coverage, the government should also take into account the number of the credit institution's branches that can offer current accounts. The same firm suggested a market share threshold of greater than 5% with nationwide distribution as a potentially suitable threshold for assessing whether to designate a credit institution. Having considered this suggestion, the government does not propose to alter the criteria set out in the regulations. In addition, it is possible that credit institutions that only have a regional presence may be eligible for designation to ensure consumers in all parts of the UK can access a basic bank account.

**100.** One consumer group also asked for further information on how the government intends to raise awareness among consumers about basic bank accounts. The government expects that the implementation of the 2014 agreement on basic bank accounts, due to come into force at the end of this year, will raise awareness about basic bank accounts. The regulations also require MAS to endeavour to raise awareness among consumers about the availability of basic bank accounts. Additional measures to fulfil the requirements in the regulations will be considered closer to the date upon which the Payment Accounts Regulations 2015 come into force.

**101.** In contrast to the views shared by firms and trade bodies, one respondent, a consumer group, expressed concern that the government did not intend to include provisions on access to savings accounts (similar to the provisions on access to basic bank accounts) in the regulations. The respondent indicated that it would be beneficial for provisions on savings accounts to be included to improve access to these accounts for families recovering from financial difficulty. However, Recital 12 of the Directive makes clear that savings accounts should in principle be excluded from the scope of PAD unless they are used for day-to-day payment transactions. The government therefore does not propose to extend the application of PAD to all savings accounts.

# Amendments to UK legislation

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**102.** The consultation document noted that based on the government's proposed implementation of PAD, a number of amendments to legislation would be required, including amendments to:

- The Financial Services and Markets Act 2000 (FSMA) – such as amendments to the FCA's powers in respect of information gathering and sharing, investigations and discipline;
- The Financial Services (Banking Reform) Act 2013 – in order to confer a new power on the PSR in respect of designating alternative switching arrangements;
- FSMA (Service of Notices) Regulations 2000 and FSMA (Disclosure of Confidential Information) Regulations 2001.

**103.** As mentioned in the consultation document, the government sought to use copy-out where possible in drafting the changes. However, this is not always appropriate as the provisions apply existing legislation, which is structured differently to PAD.

## Question 10

Do you have any comments on the government's proposed changes to existing UK legislation or secondary legislation?

## Summary of responses

**104.** None of the responses received reported views on the government's proposed changes to existing UK legislation or secondary legislation.

## Government response

**105.** In line with the lack of responses received on this issue, the government considers that the proposed changes to existing UK legislation or secondary legislation do not need to be revised.



# Annex A – List of respondents

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Bacs Payment Schemes Limited

Barclays

British Bankers' Association

Building Societies Association

Electronic Money Association

Financial Services Consumer Panel

The General Consumer Council for Northern Ireland

Lloyds Banking Group

The Money Charity

Payments UK

StepChange Debt Charity

Virgin Money

Yorkshire Building Society



### **HM Treasury contacts**

This document can be downloaded from  
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