



HM Treasury

# Payment service contract termination rule changes

## **Implementation, timings, and next steps**

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October 2023







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## Background

1.1 On 21 July, the Treasury published its policy statement on payment service contract termination rules and freedom of expression, setting out the government's plans to enhance requirements relating to the process and conduct requirements placed on providers of payment services in cases of framework contract termination.<sup>1</sup> The changes include extending the notice period for termination of a framework contract from two months to 90 days and mandating that providers give a clear and tailored reason for termination (both subject to limited exceptions, including if to do so would be unlawful).

1.2 Following the announcement of these planned reforms, the Economic Secretary to the Treasury wrote to firms across the sector to encourage them to act on the new rules without delay and to endeavour to implement these intended changes to help protect and reassure customers. The Minister also met with leaders from the UK's largest banks and building societies on this matter, who expressed their commitment to the principle of non-discrimination based on lawful freedom of expression in the provision of financial services, and to bringing their policies in line with the planned reforms where needed, as soon as possible.

1.3 The government has since engaged with industry, law enforcement authorities and the Financial Conduct Authority (FCA) to develop further detail to support implementation of the reforms in advance of legislation. This has involved identifying the range of circumstances under which banks and other payment service providers may decide to terminate a payment service framework contract and considering a limited set of scenarios where there may be reasons for varying the application of the new requirements.

1.4 This policy statement is intended to provide additional clarity on the implementation of these reforms: their intended scope; the government's expectations for how these reforms should apply to payment service framework contracts in practice, and when the government intends to introduce the legislation to underpin these reforms.

## Intended scope

1.5 The policy statement published on 21 July explained that the new requirements would apply to providers of payment services (including payment accounts) and anticipated that framework contracts concluded on or after the date that the changes are brought into effect would be subject to these new rules.

1.6 Delivery of these contract termination reforms will principally require amendments to regulation 51 of the Payment Services Regulations 2017 ("PSRs") which deals with framework contract termination requirements. To ensure consistency across framework

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<sup>1</sup> ['Payment account contract termination and freedom of expression'](#), HM Treasury, July 2023

contracts, the government considers the scope of firms and services currently in-scope of the existing requirement under regulation 51 should remain the same following amendment. A full list of what is defined as a payment service and what is not a payment service can be found in Schedule 1 to the PSRs.

1.7 The government additionally intends for pre-existing carve outs to apply, specifically for regulated consumer credit agreements and corporate users' framework contracts. The corporate opt-out in regulation 40(7) applies to any or all provisions of Part 6 of the PSRs and will continue to be available in respect to the new requirements. This means that, where the customer is not a consumer, a micro-enterprise or a charity, the parties to a framework contract for payment services may agree that the new requirements do not apply. Whilst this flexibility is retained for users to agree their own terms of notice and transparency at termination, the government's position is clear that firms should – as standard practice – default to offering 90 days' notice and clear and tailored explanatory reasons.

## **The government's expectations for the application of these reforms**

1.8 Clear and tailored explanatory reasons should be provided in cases where a provider decides to terminate a contract for the provision of a payment service, except in limited scenarios including where to do so would be unlawful, inconsistent with wider legal and regulatory requirements, or where this would present risk of significant or serious harm to the customer or another individual (such as the staff of the provider) (this is explored further below). Therefore, if a provider chooses to terminate the contract for primarily commercial reasons, such as due to a policy decision by the provider not to take on the cost or reputational risk of certain categories of customer, this should be made specifically clear to the customer.

1.9 The government does not intend to prescribe on the face of legislation the specific information that should be provided to a customer in such a scenario to constitute clear and tailored explanatory reasons. What matters is the outcome of the communication: that the customer clearly understands why the contract is terminated and the information they receive regarding their terminated framework contract is adequately specific to their circumstances.

1.10 The use of 'reason codes' by providers may be acceptable, insofar as the reason provided is sufficiently specific. For example, if the communication states that the reason for termination is that the customer has breached the provider's 'Acceptable Use Policy' (without referring to which element of the policy has been breached and why), this would be insufficient for the customer to understand why their account is being terminated.

1.11 90 days' notice of a termination should also be provided, except in limited scenarios including where the provider is obliged under legal or regulatory requirements to terminate the contract earlier, or where



there is a documented and reasonable risk of serious or significant harm to the customer, to staff, or a connected third-party to the framework contract.

1.12 Subject to the corporate opt-out (see paragraph 7), the terms of the framework contract may not in of themselves be used to circumvent these requirements. However, a party will still have the right to treat the contract as unenforceable, void or discharged (for example, where there has been a serious and uncorrected breach of contract) applying the general principles of contract law.

## Interactions with wider legal and regulatory obligations

1.13 The Treasury is working closely with regulators and law enforcement agencies to ensure that providers will have the limited flexibility not to provide 90 days' notice of account closure and/or a clear and tailored reason where this would bring the provider into conflict with other legal requirements or regulatory obligations.

1.14 Financial institutions are already experienced in balancing these different obligations in a range of account closure scenarios, supported by existing guidance. For instance:

- Guidance on the termination of accounts, in situations where there are financial crime concerns, is published by the Joint Money Laundering Steering Group (JMLSG)<sup>2</sup>
- The Joint Money Laundering Steering Group (JMLSG) also provides guidance on handling customer complaints<sup>3</sup> and Subject Access Requests<sup>4</sup> in this context, including on liaison with the Financial Ombudsman Service. The Home Office publishes guidance on appropriate disclosures in private civil litigation<sup>5</sup>
- In certain circumstances where a firm is terminating a basic bank account, this already requires the provision of a notice period of at least two months and an explanation of the grounds and justification for the termination to the customer, under regulation 26 of the Payment Accounts Regulations 2015
- A provider may have concerns relating to its security, suspected unauthorised or fraudulent use of the payment instrument, or (where the instrument has a credit line) a significantly increased risk the payer may be unable to pay. The FCA has already issued some guidance on how firms should give reasons for termination, unless to do so would be unlawful, where a firm refuses to execute a

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<sup>2</sup> JMLSG Guidance: '[Prevention of money laundering/combating terrorist financing \(Part 1\)](#)', paragraphs 6.60-6.89

<sup>3</sup> *ibid*, paragraph 6.70

<sup>4</sup> *ibid*, paragraphs 6.90-6.99

<sup>5</sup> Home Office Circular 004/2021: '[Money laundering: the confidentiality and sensitivity of suspicious activity reports \(SARs\) in the context of disclosure in private civil litigation](#)'

payment order (under regulation 82 of the PSRs) or suspends the use of a payment instrument (under regulation 71)<sup>6</sup>

**1.15** The government recognises that there may also be scenarios where providers have a duty to protect their staff and customers from harm, for example under the Health and Safety at Work etc. Act 1974 or the FCA's Consumer Duty. In these instances, firms are likely to need to carefully balance on a case-by-case basis the circumstances whereby alerting a customer to their behaviour may elicit new risks of harm to their staff or others. In these circumstances, providers may be permitted to provide lesser notice or limited transparency for terminating their contract on these grounds, and changes to regulations will ensure space for this. However, immediate account termination should be reserved for the most serious cases where the provider reasonably believes the customer's conduct amounts to an offence (such as a public order offence); such cases will usually involve a call or report being made to police.

## **Next steps**

**1.16** As indicated in the 21 July statement, the government will enact the changes to the relevant regulations via secondary legislation through the powers granted in the Financial Services and Markets Act 2023.

**1.17** The government intends to deliver the secondary legislation to implement these reforms as a priority and is therefore planning to publish a draft statutory instrument by the end of 2023 and make the relevant amendments to the legislation subject to Parliamentary approval as soon as Parliamentary time allows.

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<sup>6</sup> Financial Conduct Authority guidance: [Payment Services and Electronic Money – our Approach](#), paragraph 8.171

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