HM Treasury

The Payment Services (Amendment) Regulations 2024

Delaying payments processing when there are reasonable grounds to suspect fraud or dishonesty

Policy Note

March 2024

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Chapter 1
Context

1.1 Over the last several years, the UK has seen an increase in Authorised Push Payment (APP) fraud. This is where a payer is deceived or defrauded into authorising a payment to a criminal. APP fraud has increased both in value and volume, with many individuals suffering significant financial and emotional harm.

1.2 The government has taken strong action to support victims of APP fraud. This includes legislating to require the Payment Systems Regulator to introduce a mandatory reimbursement requirement in relation to payment orders executed over the Faster Payment System and which were executed subsequent to fraud or dishonesty (including APP fraud) under section 72 of the Financial Services and Markets Act 2023.

1.3 In May 2023, the government published its ambitious fraud strategy. This included a commitment to investigate how legislation might need change to allow Payment Service Providers (PSPs – such as banks) to adopt a risk-based approach to payments and allow further time to assess potentially fraudulent payments. This would aim to further tackle APP fraud whilst minimising impacts on legitimate payment flows. The government also previously sought views on this policy through its Call for Evidence on the Payment Services Regulations 2017.

1.4 The government has now decided to introduce this legislation and is taking this forward as a priority, on an accelerated basis. The government will set out its wider approach to the Payment Services Regulations 2017 as part of delivering a Smarter Regulatory Framework for financial services in due course. [1]

1.5 The government is publishing a near-final version of this statutory instrument (SI) which would allow PSPs to adopt a risk-based approach to payments, alongside this explanatory policy note. The government welcomes any technical comments on the draft SI.

[1] The Financial Services and Markets Act 2023 repealed assimilated law in financial services, subject to commencement. This allows the government to deliver a Smarter Regulatory Framework which is tailored to the UK. Assimilated law will be replaced with rules set by the UK's operationally independent and expert financial services regulators, operating within a framework set by Parliament and the Government. This will allow financial services regulation to be tailored to the UK's markets and be updated in the future in an agile and streamlined manner.

Chapter 2

Purpose

2.1 The note sets out the policy background for adopting a risk-based approach to payments, a summary of the policy intent and how the statutory instrument will achieve this, stakeholders likely to be impacted and how to comment on the SI.

2.2 This publication is the near-final version of this SI. It is being published for technical checks, such as any oversights in the legal drafting that would mean that the SI would not achieve the desired outcomes explained in this note, or that would lead to significant unintended consequences.

2.3 The draft instrument is still in development. The drafting approach, and other technical aspects of the proposal, may change before the final instrument is laid before Parliament.

Chapter 3
Policy background

3.1 The Payment Services Regulations 2017 is assimilated law which broadly governs the authorisation and associated requirements for authorised or registered payment service providers (PSPs). This includes the rights and obligations in relation to the provision of payment services.

3.2 The Financial Services and Markets Act 2023 contains a number of new legislative powers, which work together as a set of tools as the government repeals assimilated law in order to deliver a Smarter Regulatory Framework for financial services. These include a power to modify legislation, providing HM Treasury with a power to make targeted modifications to assimilated law

3.3 Currently, the Payment Services Regulations 2017 require that once an outbound payment order is received, the amount of the payment transaction is credited to the payee's payment service provider's account by the end of the next business day from receiving the payment order (D+1). This applies to (in summary) PSPs operating from the UK which are carrying out non-paper order transactions in sterling within the UK; euro transactions in the UK/EEA under an EEA payment scheme (SEPA); and some sterling /euro conversions in the UK under an EEA payment scheme.

3.4 PSPs are also able to refuse a payment order, and unless it is otherwise unlawful to do so, the PSP must (among other things) notify the payment service user of the refusal and the reasons behind the refusal.

Chapter 4
Summary of statutory instrument

4.1 This statutory instrument amends the Payment Services Regulations 2017 and allows PSPs to delay the execution of an outbound payment transaction by up to four business days from the time the order is received which is currently not permitted in legislation. This will be permissible only where there are reasonable grounds to suspect a payment order from a payer has been placed subsequent to fraud or dishonesty perpetrated by someone else (excluding the payer) and those grounds are established by no later than the end of the next business day following receipt of the payment order. The delay may also only be used where the payer's PSP requires further time to contact the customer or a third party, such as law enforcement, to establish whether to execute the payment.

4.2 PSPs will be required to inform customers of any delays, the reasons behind their decision, and what information or actions are needed to help the payment service provider decide whether to execute the order. However, this will not be required to the extent complying would be unlawful, for example, where doing so would contravene obligations under anti-money laundering or economic crime law.

4.3 The thresholds for any delay will ensure that payment service providers must have an evidential basis to delay a payment, whilst ensuring that suspicious payments are properly investigated and rejected as required. To help ensure that consumers and businesses do not incur any costs as a result of any delays to payments, payment service providers will be liable for any interest or charges resulting from a delay to payments.

4.4 This legislation only applies to Authorised Push Payments executed within the UK in sterling. Small, medium, and large businesses, which may have numerous obligations to make timely payments to suppliers, will be able to opt out of these provisions with the mutual agreement of their payment service provider.

4.5 To monitor the impact of this legislation and ensure it is used in a proportionate manner, the FCA will engage with payment service providers over reporting requirements in respect of compliance with the new provisions.

4.6 This legislation does not make any changes to the Payment Services Regulations 2017 with regard to inbound payments, whereby a

payment service provider receives a payment from another payment service provider. This is because there are already obligations under financial crime legislation for payment service providers to delay inbound payments in certain circumstances. Therefore, the government considers that legislative change for inbound payments is not required.

Chapter 5
Stakeholders

5.1 This SI will impact PSPs who will be able to carry out further checks on suspicious payments. This policy will also impact individuals and businesses, whose payments may be delayed beyond current D+1 timescales where there are reasonable grounds to suspect a payment order from a payer has been placed subsequent to fraud or dishonesty perpetrated by a third party (other than the payer). However, it is expected that this will impact a very small percentage of overall payments, will prevent payments arising from a scam from occurring, and consumers and businesses will not lose out from any funds as a result of any delays to payments.

5.2 When this SI is laid before Parliament, the government will publish an impact assessment setting out the benefits and costs of this policy.

Chapter 6
Next steps

6.1 HM Treasury intends to lay this instrument before Parliament in summer 2024 and for it to commence at the same time as the Payment Systems Regulator's rules on mandatory reimbursement for APP fraud take effect (7 October 2024). HM Treasury will consider technical comments on this draft statutory instrument, focused on any changes that need to be made to this draft instrument to achieve the policy intent set out in section four of this policy note.

6.2 Any comments should be provided to Jamie.Slater@hmtreasury.gov.uk by 12 April 2024.

6.3 HM Treasury plans to lay this instrument before Parliament in summer 2024, subject to Parliamentary time allowing.

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This document can be downloaded from www.gov.uk

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