HM Treasury

# The Payment Services (Contract Terminations Amendment) Regulations 2024

## Policy note

March 2024

HM Treasury

# The Payment Services (Contract Terminations Amendment) Regulations 2024

## Policy note

March 2024



This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gov.uk

ISBN: 978-1-917151-06-1 PU: 3418

# Contents


| | | |
|---|---|---|
| **Chapter 1** | **Context** | **7** |
| **Chapter 2** | **Summary of the draft statutory instrument** | **9** |
| | Exceptions to the requirements | 11 |
| | Further considerations | 13 |
| **Chapter 3** | **Next steps** | **15** |

# Chapter 1
# Context

1.1 In July 2023, following its review of the Payment Services Regulations 2017 earlier that year, the government committed to bringing forward legislative reforms to strengthen requirements in these Regulations concerning contract terminations.[1] This followed several high-profile instances of alleged 'de-banking'. This is a broad term used in different contexts but here refers to cases of termination of a bank account or payment service motivated by a customer's personal or political beliefs.

1.2 The government has been unequivocal in its view that customers should not see a payment service terminated on grounds relating to their lawful freedom of expression including, for example, political beliefs. Regulation 18 of the Payment Accounts Regulations 2015 already prohibits credit institutions from discriminating against consumers legally resident in the UK on a wide range of grounds when they apply for or access a payment account. These grounds include their political or other opinions.

1.3 Since its July and later October policy statements, concerning the scope, approach, and delivery of these reforms,[2] the government has continued to engage closely with regulators, law enforcement agencies and industry. The government's goal has been to ensure the reforms achieve the right balance between strengthening customer protections and operationalising any changes proportionately, considering the wider legal and regulatory obligations already incumbent on providers of payment services.

1.4 This policy note sets out the rationale underpinning the legislation that will enact these reforms. This note includes both the intended exceptions to the rules as well as wider scenarios the government has considered (including where the government considers these are covered elsewhere in the regulations), following extensive engagement with external stakeholders.

1.5 It accompanies the publication of the near-final version of the draft statutory instrument (SI). The draft SI 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.

---

1 'Payment account contract termination and freedom of expression: Policy statement', HM Treasury, July 2023

2 'Payment service contract termination rule changes: implementation, timings, and next steps', HM Treasury, October 2023

This draft instrument is still in development. The drafting approach and other technical aspects of the proposal may be subject to change before the final instrument is laid before Parliament.

# Chapter 2

# Summary of the draft statutory instrument

2.1 As set out in the government's July 2023 statement, the new requirements will apply to providers of payment services within the scope of regulation 51 of the Payment Services Regulations 2017, which contains the existing rules governing provider-initiated framework contract terminations. A full list of what is and is not defined as a payment service can be found in Schedule 1 to these Regulations.

2.2 Framework contracts concluded for an indefinite period on or after the date that the changes are brought into effect will be subject to the new requirements. Nevertheless, the government expects all users of payment services to be treated fairly in a contract termination scenario, which also accords with the FCA's Consumer Duty, as it applies to the closure of customers' accounts.[3]

2.3 The government received some representation through the course of developing the policy that the rules on terminations – which apply across a broad spectrum of defined payment services – may not always apply appropriately to different products or services offered to different types of clients. For example, the relationship a merchant service provider has with a merchant customer is different from the relationship a bank has with a retail customer. While the government recognises that the concerns that prompted this review of the legislation were raised in the context of retail customer services, the issue that has been surfaced is a pre-existing and broader one relating to the wide definition of a payment service as derived from EU law.

2.4 The government has therefore concluded it is appropriate to address its reforms to contract termination rules to all payment services providers. There will be opportunity to revisit the case for calibrating rules across different business models in the context of the longer programme of work to repeal and replace this legislation as part of the Smarter Regulatory Framework for financial services, when the FCA may consider if the rules need further tailoring. For now, the government has introduced a targeted and limited exception for business models where the relationship with the end customer is intermediated.[4]

---

3 See, UK Payment Accounts: access and closures (fca.org.uk).

4 See regulation 2(3)(b), inserted paragraph (5D)(e); further explained below.

2.5 The core reforms to legislation contained in this draft SI apply to provider-initiated terminations of framework contracts concluded for an indefinite period and entered into on or after the day the SI would come into force. They are summarised as follows –

a) The notice period for provider-initiated terminations of framework contracts concluded for an indefinite period is increased from the current two months to 90 days – see regulation 2(3)(b) of the draft SI and inserted paragraph (5B). This is intended to ensure affected users of payment services in receipt of a termination notice have greater time to communicate with or make a complaint to their provider, potentially raise a complaint with the Financial Ombudsman Service (FOS), and/or seek an alternative service with time to mitigate the effect of the termination.

b) Providers will be required to give affected users a sufficiently detailed and specific explanation so the customer can understand why their particular contract is being terminated – see regulation 2(3)(b) and inserted paragraph (5C). The government's public policy is to ensure that customers receive a sufficiently detailed and specific explanation for their termination. This wording is expected to achieve the high standard of transparency that users deserve, and the government will not prescribe in the legislation the specific information that should be provided to a customer. 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.

   The use of 'reason codes' by providers may be acceptable, insofar as the reason provided is sufficiently detailed and 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 contract is being terminated.

   Providers will be required to also set out how a complaint against the termination may be made, and to state a user's right to refer any complaint to the FOS, where the user has that right.

c) Clarification is provided that it is prohibited to insert clauses in contracts which avoid the new termination requirements by providing for discharge of the contract by agreement – see regulation 2(4). However, as set out in the 2 October statement, the corporate opt-out in regulation 40(7) will apply to the new requirements, which means that where the customer is not an

individual consumer, micro-enterprise or a charity, the parties to the framework contract may agree that the new requirements do not apply.

d) Specific circumstances may disapply some or all of the requirements to ensure that providers can continue to meet other requirements and duties – set out in regulation 2(3)(b), inserted paragraphs (5D) and (5E). The nature and rationale guiding these exceptions is set out in further detail below.

e) Corresponding changes are made to rules concerning the refusal of applications for and termination of basic bank accounts in regulations 25 and 26 respectively of the Payment Accounts Regulations 2015 – see regulation 3. This is to ensure that users of this type of payment service (widely treated as a utility) benefit from an equivalent level of protection as appropriate.

## Exceptions to the requirements

2.6 The government has always understood and been clear in its communications to date that any strengthening of the termination requirements must be carefully balanced to account for providers' other legal obligations. These include requirements under financial crime legislation to avoid 'tipping off' persons suspected of money laundering or terrorist financing, and duties to ensure safety from harm for customers or staff.

2.7 The government has worked closely with the FCA, law enforcement and has engaged industry to inform a drafting approach that means providers retain flexibility to depart from the requirements where to do otherwise would bring them into conflict with other legal requirements.

2.8 The legislation is drafted so that none of the requirements to give notice or provide reasoning to affected users apply in the following circumstances – see regulation 2(3)(b), inserted paragraph (5D) –

a) Where providers are obligated to cease transactions with the user under regulation 31(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 because they are unable to apply customer due diligence measures.

b) Where providers are required to terminate in accordance with section 40G of the Immigration Act 2014, ensuring cases governed by that provision will continue to follow existing practice.

c) Where providers reasonably believe a payment service provided under the framework contract is being used or is likely to be used in connection with serious crime. The definition of a serious crime derives from the Serious Crime Act 2007.

d) Where a provider is required to terminate a contract by the FCA, the Treasury or the Secretary of State, ensuring providers are not in conflict with their obligations to relevant public authorities.

e) Where providers reasonably believe their customer has committed an offence in connection with the provision of goods or services to a third party. This exception is to account for scenarios where the relationship is not a direct one between the provider and the customer at the end of the chain, for example, where the provider's relationship is with a merchant or other business customer who is, in turn, servicing a retail customer. This exception is intended to cover, for example, where the activity of a merchant towards their customer is harmful (and is the result of an offence); or where the merchant has otherwise committed an offence in the provision of goods and services to a third party.

2.9 Where any of the exceptions in regulation 2(3)(b), inserted paragraph (5D), apply, the requirements – in relation to giving notice and customer communication – will not apply.[5]

2.10 The legislation further provides, in regulation 2(3)(b), inserted paragraph (5E), that where a provider is subject to any other legal obligation that conflicts with the requirements, the other legal obligation prevails but, *to the extent possible*, the provider should comply with the termination requirements. This exception requires the provider to assess the extent of the conflict preventing them from giving notice to or being transparent with the user. In practice, this means that, in the event of such a conflict, providers must consider whether they are still able to apply the notice and reasons requirements, in full or in part.

2.11 This general exception in inserted paragraph (5E) is also without prejudice to the exceptions in inserted paragraph (5D), meaning that where both are available, the paragraph (5D) exception can be applied, meaning that none of the notice and reasons requirements apply.

2.12 An example of where an exception may be available under paragraph (5E) is where a provider may hold obligations to protect their staff from customer-initiated harm under the Health and Safety at Work etc. Act 1974. In so doing, the provider should consider their obligations under the Act and determine the maximum notice and transparency they can provide to the customer in question whilst complying with those obligations.

2.13 This provision is purposefully broad in referring to "legal requirements", in recognition of the wide range of legal obligations, including regulatory requirements, that a provider may face and where they are already expected to balance a range of factors when determining how to comply with different obligations. The legislation

---

5 This differs from the operation of the exception in inserted 2(3)(b), inserted paragraph (5E), for which see paragraphs 1.15-1.18 of this note for further detail.

does not in the list of exceptions specify each and every duty incumbent on providers, so as to ensure it remains relevant over time. A legal requirement would, for example, extend to regulatory requirements but not mere guidance which is not legally binding (and which is typically of a more advisory nature).

2.14 Separately, the amended legislation will retain regulation 51(7), which recognises the rights of the parties to the framework contract to treat it, in accordance with the general law of contract, as unenforceable, void or discharged, save for the added clarification that the parties may not agree that the contract may be discharged in a manner that avoids the requirements. This is designed to address an ambiguity in the existing regulations and ensure that providers do not "contract out" of their obligations, other than where this is permitted (for example, in relation to the corporate opt-out).

## Further considerations

2.15 There are several issues that the government has considered in developing its approach, which are not addressed directly in these new provisions, including where the government wishes to avoid duplication and believes the matter is addressed elsewhere in the regulations.

2.16 This includes, for example, managing different types of credit risk. It is expected that existing provisions which allow the instant freezing of payment instruments in relation to credit liability (regulation 71(2)(c) of the 2017 Regulations) are sufficient. Relevant too is the amendment of contractual terms by the provider with 2 months' notice which may be unilateral where the contract so provides, subject to applicable notice requirements (regulation 50). These mechanisms are sufficient to enable providers to manage credit risk implications effectively. Providers should therefore consider their ability to cease the provision of said credit line (such as an overdraft) without the ceasing of the underlying payment account facility itself. This is the fairer approach to customers, where a temporary cessation while the customer seeks to resolve their financial constraints is more proportionate than the removal of the underlying financial service entirely.

2.17 The government also observes that customer-initiated terminations are already permitted (see regulation 51(1)). Similarly, the regulation of dormancy of bank and building society accounts exists elsewhere in legislation (see the Dormant Bank and Building Society Accounts Act 2008). It is expected that providers monitor duration of dormancy effectively ahead of giving notice to terminate.

2.18 The government has also considered scenarios where the customer is found to have set up a duplicate account(s) after a previous account was terminated (or did so in anticipation of termination). As a general point, the government expects that effective due diligence procedures should be sufficient to prevent customers evading

onboarding controls. Where customers are specifically found to have provided false information in applying for duplicate accounts (such as under a different legal name or address), this may be grounds for termination outside the notice and communication requirements where this amounts to fraud. Circumstances may also allow the provider the right to treat the contract as unenforceable, void or discharged in accordance with general contract law.

2.19 The government also considered cases where a provider is under a contractual obligation to a commercial partner to terminate, without necessarily knowing the reason why. In these circumstances it is possible that information giving rise to a need to terminate could be shared confidentially in line with providers' other legal obligations, or that sufficient evidence and reassurance could be given from a commercial partner to satisfy the provider that one of the exceptions above applies. Providers in receipt of relevant information from commercial partners should conduct their own due diligence when determining whether to terminate and provide the required degree of notice and transparency.

# Chapter 3

# Next steps

3.1 The government intends to lay this instrument before Parliament in Summer 2024, subject to Parliamentary timing, and for it to commence as soon as practicable thereafter. HM Treasury will consider technical comments on this draft statutory instrument to achieve the policy intent set out in this policy note.

3.2 Any comments should be provided to contractterminationstechnicalcomments@hmtreasury.gov.uk.

**HM Treasury contacts**

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk