The Payment Services (Amendment) Regulations 2024

Lead department	HM Treasury
Summary of proposal	The proposal would allow payment services providers (PSPs) to pause a payment to a payee's account for up to three additional business days when certain conditions are met.
Submission type	Impact assessment (IA) – 3 July 2024
Legislation type	Secondary legislation
Implementation date	October 2024
Policy stage	Final
RPC reference	RPC-HMT-5354(1)
Opinion type	Formal
Date of issue	14 August 2024

RPC opinion

Rating[1]	**RPC opinion**
Fit for purpose	On first submission the IA received an initial review notice (IRN). The revised IA has satisfactorily addressed issues around non-monetised business costs, impacts on business payment services users and clarity of the calculations. There are some areas that could be strengthened, such as wider impacts and M&E plan.

Business impact target assessment

	Department assessment	**RPC validated**
Classification	Qualifying regulatory provision	Qualifying regulatory provision (OUT)
Equivalent annual net direct cost to business (EANDCB)	-£33.1 million (initial estimate) -£9.3 million (final estimate)	-£9.3 million (*2019 prices, 2020 pv base year*)
Business impact target (BIT) score	-£165.7 million (initial estimate) -£46.5 million (final estimate)	-£46.5 million
Business net present value	£86.3 million	
Overall net present value	£87.7 million	

[1] The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the Better Regulation Framework. RPC ratings are fit for purpose or not fit for purpose.

RPC summary

Category	Quality[2]	RPC comments
EANDCB	**Green**	The revised IA addresses the issues around non-monetised business costs, impacts on business payment services users and clarity of the calculations.
Small and micro business assessment (SaMBA)	**Green**	Small business PSPs will only use the proposal if they expect it to be beneficial to them. The SaMBA usefully addresses impacts on small business payment service users, discussing potential disproportionate impacts from delayed payments but noting benefits to them from reduced fraud.
Rationale and options	**Satisfactory**	The IA provides a sufficient assessment of the problem under consideration and the rationale for intervention. The assessment of options could be improved by discussing potential variations on the proposal, such as on the three additional days to pause payments and the conditions under which the exemption can be used.
Cost-benefit analysis	**Satisfactory**	The IA monetises benefits to individuals as payment services users. The revised IA usefully includes more assessment of risks around legitimate payments being slowed down. The IA would benefit from sensitivity analysis on key assumptions where there are particular uncertainties.
Wider impacts	**Weak**	The IA could usefully expand its discussion of wider impacts, in particular addressing any competition impacts. The IA could also provide more information on potential costs to the FCA of monitoring the proposal.
Monitoring and evaluation plan	**Weak**	The revised IA helpfully includes information on what the FCA is planning to do to monitor and evaluate the proposal. The IA would benefit from including detail on the data that will be collected and how it will be used to assess the effectiveness of the proposal, extent of the business benefits and risks.

[2] The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings here.

Response to initial review

As originally submitted, the IA was not fit for purpose. The RPC was unable to validate the department's EANDCB figure for the reasons listed below.

Non-monetised costs to business

The IA noted costs to businesses wishing to make use of the exemption, such as transitional (for example, related to IT systems) and ongoing (for example, related to consumer communications). Other than a very small familiarisation cost, the IA did not monetise these impacts. In principle, these costs should be deducted from the benefits to business of using the exemption, to arrive at a net benefit figure. The department needed to do this or justify why it was not possible or disproportionate to monetise these costs.

Missing impact

The IA needed to address the impact on businesses as consumers in its assessment of direct impacts on business and monetise where proportionate to do so.

Clarity and consistency of the calculations

There were areas where the calculation of the benefit to business appeared to be incorrect or at least unclear. The IA needed to address these.

The present IA has addressed these points satisfactorily, as described under 'EANDCB' below.

Summary of proposal

The proposal is to amend The Payment Services Regulations 2017 by introducing an exemption to the current requirement that payment services providers (PSPs) must credit the amount of the payment transaction to a payee's account by the end of the following business day. Under the exemption, PSPs will be able to pause a payment for up to three additional business days when the following conditions met: (a) there are reasonable grounds to suspect fraud or dishonesty from someone other than the payer; and (b) the PSP needs additional time to contact the payer or seek information from a third party, who might help establish whether a payment is fraudulent or dissuade them from making a payment.

The IA estimates a net present value of £87.7 million (with an upper estimate of £172.5 million, both in 2019 prices, 2020 present value base year). These consist of benefits to PSPs through a reduction in the amount they need to reimburse customers (£86.3 million) and benefits to consumers of avoided excess fees (£1.4 million). These savings arise from the proposal reducing fraud. The former figure is treated as a direct benefit to business and, as there are no (significant) monetised direct costs to business, forms the estimated EANDCB figure of -£9.3 million (2019 prices, 2020 present value base year).

EANDCB

Non-monetised costs to business

The IA presents the limited cost information obtained through its engagement with industry, and now provides a detailed explanation of why it is not possible to use it to provide reliable monetised costs estimates (pages 31-35). The IA also now explains in some detail why it does not consider it to be proportionate to seek further information in this area. On balance, this appears to be reasonable. It would seem likely that asking industry to provide further cost data would not be productive. It also appears that costs to business of exercising the exemption would be relatively low, and certainly lower that the monetised benefits (otherwise businesses would not exercise the exemption). However, the IA could be improved by discussing further the expected level of net benefits relative to the benefits monetised.

Missing impact

The IA now addresses the direct impact on businesses as payment service users (paragraphs 8.11-8.16, pages 39-40). This discusses not just the benefits to businesses of greater protection from falling victim to fraud, but also the potential costs to them of legitimate payments being delayed. The EANDCB figure appears to exclude benefits to payment service users from avoided excess fees, on the basis that the large majority are personal customers. The IA could potentially adjust the benefit figure to allow for a proportion of the benefit to accrue to business payment service users, but, given the very small numbers involved, the department's approach appears to be proportionate.

Clarity and consistency of the calculations

There were a number of areas where the calculation of the benefit to business needed to be clarified. The revised IA addresses this and it is now possible to follow the calculations presented. In particular, the revised IA corrects a spreadsheet error in the calculation of the payments generating a potential fraud alert (now 2.7 million-16.4 million - 0.04% to 0.24% of total payment volumes - compared to 16 million to 27 million previously). This affects subsequent calculations and explains most of the substantial reduction in the estimated direct net benefit to business (and is reflected in the change in EANDCB figure).

Direct/indirect impacts

The IA treats the avoided reimbursement costs to PSPs from reduced fraud as a direct benefit to business. This appears to be in line with recent Confirmation of Payee cases. The IA has now helpfully also included a discussion on why it is appropriate to treat these benefits as direct (pages 10-11), referencing RPC guidance.

Presentation of EANDCB point estimate

The IA presents a range for the EANDCB, with an upper bound of -£18.2 million reflecting the high end of the range presented above for payments generating a potential fraud alert. Using the low end of this range results in an EANDCB figure of -£3.0 million.

The RPC asked the department for clarity and justification of the best estimate EANDCB being put forward for validation. In response, the department has liaised with *UK Finance* (who provided the estimates for the range of payments generating a potential fraud alert) and has given careful consideration to choice of a best estimate. The department considers that factors pointing towards a figure at the lower end of the range (for example, innovations within the sector aimed to reduce fraud, such as enhanced fraud data) slightly outweigh factors pointing towards a figure towards the higher end of the range (for example, innovations by fraudsters). The department's best estimate of -£9.3 million is, therefore, just below the mid-point of the -£3.0 million to -18.2 million range (equivalent to 0.12% in the 0.04% to 0.24% range referred to above).

The department will need to revise the IA document before publication to reflect its best estimate figure and the reasoning behind it.

SaMBA

The SaMBA usefully considers the impact of the proposal in terms of impacts, not just on PSPs, but also payment service users. For impacts on PSPs, the IA explains that difficulties in data on number of employees has meant that the FCA has used an income measure to rank PSPs by size. This indicates that around 252 PSPs might be regarded as 'small'. The IA explains that the proposal is permissive, and PSPs are only expected to use it if it is beneficial to them.

For impacts on payment service users, the IA considers both costs and benefits. The IA notes that around 3.4 per cent of investment, romance and impersonation authorised push payment (APP) scams, which this proposal is most likely to affect, were accounted for by non-personal customers in 2022. SMB payment service users would benefit from not having to pay excess fees on fraud cases averted by the proposal. On costs, the IA acknowledges that delayed payments may affect SMBs more keenly than larger businesses. The IA notes that the conditions on use of the exemption by the PSP means that the proportion of payments affected is expected to be very small. In addition, the IA notes that small and medium businesses will be able to use a "corporate opt out" from the changes being introduced in this legislation, with the agreement of their PSP. The IA helpfully includes a short section on medium-sized businesses, which reaches similar conclusions to those relating to SMBs.

Rationale and options

The IA provides a sufficient assessment of the problem under consideration and the rationale for intervention. The IA describes existing protections against payments fraud and how its engagement with industry has indicated that further measures are required. The IA sets out data on the level of existing payments fraud and describes how the proposal can be expected to reduce this.

The IA presents two options: do nothing and the proposal. It is implicit that existing legal requirements prevent a non-regulatory solution to the problem, although the IA could address this more explicitly. The IA explains that the proposal balances the benefits that real-time payments have delivered for the economy, whilst ensuring that PSPs have the right tools to tackle APP fraud. However, the IA would be improved by discussing potential variations on the proposal, such as on the three additional days to pause payments and the conditions under which this can be exercised.

Cost-benefit analysis

Impacts on individuals

The explains that, although payment service users are currently eligible for reimbursement of losses through fraud, this is subject to a maximum excess fee of £100 levied by PSPs. The IA usefully, therefore, monetises the benefit to individuals of not having to pay this excess fee when the proposal avoids fraud.

Risks

The RPC's initial review had concerns around the limited assessment of risks to payment services users, in particular around the slowing down of legitimate transactions. The IA now includes a new section on risks (section 11, pages 43-44). This provides some reassurance that the design of the proposal, in particular the conditions to using the exemption, helps to mitigate this risk. The IA would benefit from discussing further how these risks will be monitored.

Evidence and data

The assumptions behind the estimated range of impacts are reasonably well-evidenced and sourced. The IA draws heavily on different forms of information produced by *UK Finance*, including published annual data and Fraud Reports. The IA generally explains the uncertainties in the evidence and, particularly, around quantifying the extent to which the proposal might reduce payment fraud. The IA would benefit from drawing out further how key assumptions have been drawn from analysis of the data, such as the percentage split between payment scams and 'false flags', or made through informed judgement by *UK Finance*, and from undertaking sensitivity analysis, as appropriate.

Presentation

The calculation of benefits has many steps and, although these can be followed, the department could consider whether the presentation could be made clearer, such as by presenting a table with each step in the calculation as a row.

Wider impacts

The IA includes a detailed discussion of equality impacts, but only very briefly explains that it expects no trade, innovation or environmental impacts. The IA could usefully expand proportionately on this and discuss any competition impacts. The IA could also provide more information on potential costs to the FCA of monitoring the proposal.

Monitoring and evaluation plan

The original IA contained very little information on monitoring and evaluation plans, seemingly in part because The Payment Services Regulations 2017 are already subject to a post-implementation review. The department has now liaised with the FCA, and the revised IA helpfully includes information on what the FCA is planning to do to monitor and evaluate the proposal. The IA would benefit from including more specific detail on the data that will be collected, how it will be used to assess the effectiveness of the proposal, extent of the business benefits and risks, and timelines for reviews.

Regulatory Policy Committee

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A Committee member did not participate in the scrutiny of this case to avoid a potential conflict of interest.