


KEYSTONE LAW

PAYMENT SERVICE REGULATIONS REVIEW & CALL FOR EVIDENCE

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GIFT CARDS - BACKGROUND

Primary financial service regulation: Electronic Money Regulations 2011 (EMR)

- Gift cards that fall within definition of e-money are subject to EMR and can only be issued by a firm authorised to issue e-money.
- Sets framework for authorisation and supervision of e-money institutions.
- It mirrors or refers to many of the requirements that are set in the Payment Services Regulations 2017 (PSR).
- PSR sets the framework for authorisation and supervision of payment institutions (PI)
- PIs carry on payment services e.g. operating a payment account, issuing payment instruments i.e. cards, executing payment transactions on behalf of users.
- PSR contains the limited network exclusions (LNE). LNE in the EMR are the same.

INPUT TO HMT CALL FOR EVIDENCE

Consultation Paper

[Payment Services Regulations Review and Call for Evidence - GOV.UK](https://www.gov.uk/government/consultations/payment-services-regulations-review-and-call-for-evidence)
www.gov.uk

Closes: 7 April 2023

OVERVIEW

Topic	Areas for consideration
The future regulatory framework for payments and e-money	<ul style="list-style-type: none">▪ Potentially merging the legal frameworks for payment institutions and e-money institutions, i.e., combining the PSRs 2017 and EMRs 2011▪ How the payment services framework can evolve to meet the government's objectives for payment services regulation
Definitions, exclusions and scope	<ul style="list-style-type: none">▪ Future-proofing definitions and scope of the regulated activities in the payments and e-money framework▪ Future-proofing certain exclusions (e.g. limited network exemption), i.e., are they still appropriate
Regulatory reforms	<ul style="list-style-type: none">▪ Authorisation framework for payment and e-money institutions▪ Registration framework for small payment and e-money institutions▪ Registration requirements for AISPs (account information service providers)▪ Registration requirements and wider regime for agents▪ Regulatory framework for PISPs (payment initiation service providers) and AISPs (account information service providers)

OVERVIEW

Topic	Areas for consideration
Information requirements	<ul style="list-style-type: none">▪ Effectiveness of the rules on the provision of information to payment service users▪ Potential changes to the Cross Border Payments Regulations, in relation to transparency of charges which involve currency conversion
Rights and obligations	<ul style="list-style-type: none">▪ In relation to the termination of payment services contracts
Issuance and redeemability of e-money	<ul style="list-style-type: none">▪ Whether the requirements are still appropriate
Wider considerations	<ul style="list-style-type: none">▪ Charges for payment services▪ Protecting consumers from fraud▪ Ensuring a balance of rights and obligations between sending and receiving PSPs, and account servicing payment service providers and PISPs / AISPs
Payment and e-money insolvency regulations	<ul style="list-style-type: none">▪ Are the rules producing the intended result

CALL FOR EVIDENCE

HMT General questions

▪**How should the payment services framework evolve – and what should be the government’s priorities – to better promote the following government objectives for payments regulation:**

- A. Achieving agile and proportionate regulation, which facilitates the international competitiveness of the UK economy through growth and innovation in the UK payments sector
- B. Ensuring appropriate trust and protection for consumers
- C. Ensuring the resilience and integrity of the UK’s payment market
- D. Fostering competition, in the interests of consumers

Government would welcome **concrete reflections from stakeholders** for future policy, rather than the principles which should underpin regulation/regulatory change

GCVA General comments

- We support the FCA in having the ability to fine-tune regulations as the market evolves rather than through a change in primary legislation (law) i.e. by implementing requirements through FCA rules under a framework set by government.
- Future policy needs to strike a balance, i.e., ensuring that one or more of the government’s objectives is not met at the expense of another, e.g., consumer protection is a fundamental principle that regulators and firms will want to maintain, but over-zealous rules (e.g. mandatory reimbursement) could detrimentally impact firms e.g. new firms, niche service providers that don’t have funds to cover reimbursement payments. Impact on new entrants and competition leading to a poor outcome for customers and competition in the market.
- Blanket regulation (e.g., Consumer Duty, mandatory reimbursement) is making it difficult for firms to enter or remain in the market and this impacts consumer choice. There needs to be an degree of proportionality based on the nature of the product provided.
- Pis/EMIs generally operate on a low margin basis. The focus is not only on making sure they provide a service that meets a need but reducing the impact of fraud. Fraudulent activity can have severe consequences for a firm’s viability – this is being forgotten.

CALL FOR EVIDENCE

HMT General questions

- To what extent would you support rationalising and/or removing the distinctions in regulation between payment institutions and electronic money institutions – in effect, combining the two sets of legislation?
- Would this be easier for the sector to navigate and/or lead to better outcomes?

GCVA General comments

- In principle, yes. The products and services provided overlap significantly and it would address an historic perception in the market that they are different.
- However, we would need to understand what this looks like:
 - Would there be a wholesale review of the capital requirements? (this would present an opportunity for the FCA to understand the range of products and services in the market)
 - Do the existing prohibitions/requirements for EMIs meet the original objectives of the EMRs?

CALL FOR EVIDENCE

HMT Questions

- Are (a) the **definitions** and (b) the **scope of the regulated activities** in the payments services and e-money framework **clear** and do they capture the right actors and activities within regulation?
- Do the **exclusions** under the PSR and the EMR **continue to be appropriate** (includes limited network, electronic communication, commercial agent etc)?
- LNE; services based on specific payment instruments that can be used only in a limited way and meet one of the following conditions—
 - (i) allow the holder to acquire goods or services only in the issuer's premises;
 - (ii) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer;
 - (iii) may be used only to acquire a very limited range of goods or services; or
 - (iv) are valid only in a single EEA State, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer.

GCVA member input required

LNE is ambiguous but is FCA guidance helpful?

Which LNE do you rely on?

Clarification on term “professional issuer” vs “issuer”.

Member experience with notifications in UK?

CALL FOR EVIDENCE

Other areas of the Call for Evidence

- Do members have any comments or concerns about the following areas?
 - ❖ Are there any particular changes you would advocate to the **Cross-border Payments Regulation** relating to the transparency of currency conversion?
 - ❖ **Termination of payment services contracts** – does the existing framework (mandatory 2 month notice by issuer unless fraud etc) strike an appropriate balance of rights and obligations between users and providers?
 - ❖ **Are consumers adequately protected from evolving fraud threats** under existing legislation? Is further policy needed?
 - ❖ In relation to fraud, **is there a case for amending the execution times for payments** to enable enhanced customer engagement? What requirements should apply here to ensure the risk to legitimate payments is minimised and that such delays only apply to high-risk, complex-to-resolve cases?
 - ❖ In relation to fraud, whether unauthorised or authorised, is there a need to a) complement rules with data sharing requirements; and b) for **further reforms be made to make Strong Customer Authentication** work more effectively and proportionately?
 - ❖ Does the existing framework strike an appropriate balance of rights and obligations between a) sending and receiving payment service providers?, and b) Account servicing payment service providers and payment initiation service providers/account information service providers?

FOR FURTHER INFORMATION



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